



Staff Memorandum

**HOUSE OF DELEGATES
Agenda Item #6**

REQUESTED ACTION: Endorsement of the report of the Special Committee on Public Trust and Confidence in the Legal System.

Attached is the report of the Special Committee on Public Trust and Confidence in the Legal System ("Special Committee"). The report focuses on issues relating to:

- (1) bias and prejudice and access to justice;
- (2) delays in justice and the need for a comprehensible user-friendly court system;
- (3) legal and judicial ethics;
- (4) the jury system and provision of adequate court facilities; and
- (5) public understanding and media portrayal of the legal system.

An informational presentation on the report was given at the November 4, 2000 House of Delegates meeting, and the report was circulated to Association Committees and Sections and local bar associations at that time to afford reasonable opportunity for review and input prior to formal action.

The Committee has received the attached comments and has made a number of modifications to the report that was initially presented in November 2000, to address issues raised. For convenient reference, enclosed is a listing of those amendments with additions indicated in underscoring and deletions in strike-through text.

The Special Committee's recommendations, incorporating the modifications, are set forth between pages 65 and 76 of the report and are attached to this memorandum for ease in review. The Special Committee has used check marks to identify those items that deserve a high priority because of their particular importance or timeliness. The summary provides page references for the discussion of these issues and recommendations in the report.

As noted in the introduction to the report, public trust and confidence in the legal system is fundamental and all encompassing. Without the confidence and trust of those who should be using the system, voluntary adherence to the law and the effective operation of the legal system are undermined. Moreover, virtually everything related to the courts, the law, the police or any branch of government impacts on the public's perception of the legal system. Because of the significance of public trust and confidence, the Association has addressed issues in this area since its inception and continues to focus attention on this subject, given the problems and cynicism prevalent today.

The establishment of the Special Committee stems from a 1999 National Conference on Building Public Trust and Confidence in the Justice System that was conducted in Washington, DC. In advance of that conference, the chief justices of the various states were urged to form state-level committees to identify issues affecting public trust and confidence in their states' justice systems and to formulate strategies to address those issues. In response, Chief Judge Judith S. Kaye appointed the Committee to Promote Public Trust and Confidence in the Legal System ("State Committee") which released a report in May 1999 to coincide with the national conference. After the conference, the State Committee began the second phase of its work - the implementation of the strategies identified in that report.

In late 1999, the Association appointed the Special Committee with a diverse composition which included the chairs of Sections and Committees that address issues relating to the justice system, as well as practitioners representing a broad range of experience, practice settings and geographic locations. The Special Committee was charged with reviewing the report and recommendations of the State Committee, preparing a response, and formulating recommendations for Association action to enhance public trust and confidence in the legal system. In carrying out this charge, the Special Committee coordinated with other relevant groups both within and outside the Association.

The attached report is the product of the Special Committee's nearly year-long study. Its five subject areas, listed above, parallel those examined in the State Committee report. The Special Committee report addresses each of these topics separately, including a discussion of the State Committee strategies, as well as adding its own recommendations with respect to particular issues. The Special Committee identifies those items in the State Committee report that it fully supports, those that it supports in part or with modification, and those that it does not believe are appropriate strategies.

Comments on the report have been received to date from the Committee on Alternative Dispute Resolution, Committee on Attorney Professionalism, Committee on Attorneys in Public Service, Committee on Continuing Legal Education, Ad Hoc Committee on the Jury System, Committee on Legal Education and Admission to the Bar, Committee on Professional Discipline, and Committee on Women in the Law, Commercial and Federal Litigation Section, Young Lawyers Section, Association of the Bar of the City of New York, and the Bar Association of Nassau County. You will be informed of any additional comments.

Ellen Lieberman, Chair of the Special Committee on Public Trust and Confidence in the Legal System, accompanied by other representatives of the Special Committee, will present the report of the House of Delegates.

NEW YORK STATE BAR ASSOCIATION
Special Committee to Promote Public Trust and Confidence
in the Legal System

Amendments of the Special Committee to Its Report to the House Of Delegates:
Enhancing Public Trust and Confidence in the Legal System
- January 2001 -

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1. Bias and Prejudice and Access to Justice

a. Bias and Prejudice - Diversity in the Profession

We recommend, as an initial step, that the Association compile information on the numbers of attorneys and judges of color in various positions in the legal profession and in different communities of the state. While this information is available for law students,³ data about employment in various fields of law and work settings in New York State is only accessible in bits and pieces. The lack of a complete statewide picture hinders discussions and the development of initiatives tailored to advancing diversity in particular areas. The availability of this resource also would enable us to measure progress. Access to this information also would be useful in informing students about the range of career possibilities and how best to prepare for these different paths. Similarly, we recommend compilation of data about areas of practice, career paths and related information concerning women in the profession. We are delighted to learn of the Committee on Women in the Law's ongoing work and plans in this area.

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2. Bias and Prejudice and Access to Justice

b. Access to Justice - Services for Persons of Modest Means

We also cite the value of the Court System's community dispute resolution centers in assisting persons of modest means. Initiated in 1981 and long supported by the Association, the centers handle referrals from courts of minor disputes, such as interpersonal problems arising between neighbors and families. These forums have the added benefit of helping to ease case congestion and curb delay.

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2. Need for a Comprehensible, User-Friendly Court System, Addressing Delays in Justice

b. Addressing Delays in Justice - Expedition of Discovery

Under current practice, the award of prejudgment interest is limited to specific actions such as wrongful death, breach of contract, and recovery of property damages, but is not recoverable in actions based on personal injury. We share the opinion of the State Committee that awarding prejudgment interest in personal injury actions should serve to ~~reduce the incentive for defendants to delay the conclusion~~ expedite the settlement of the case and hence reduce the costs of litigation to the client.

³ For instance, *The American Bar Association Guide to Approved Law Schools - 2000 Edition* reports that, in the fall semester of 1998, the minority student population at the 15 law schools in New York State averaged 23.4 percent, ranging from 16.5 percent to 44.6 percent. At 68.

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2. Need for a Comprehensible, User-Friendly Court System, Addressing Delays in Justice

b. Addressing Delays in Justice - Other Issues of Delay

Additionally, the Special Committee commends the State Committee for proposing expansion of existing innovative attempts, commenced in large measure through the initiatives of the Chief Judge, to address a variety of sociolegal problems that surface in the judicial system but are not susceptible to effective and long-term resolution through traditional mechanisms. These innovations include the development of specialized courts such as: Drug Courts, Community Courts, Domestic Violence Courts, juvenile parts in the adult criminal courts and Teen Courts; and ~~of adjunct programs that divert litigants from the Court System or strengthen litigants' ability to avoid future court involvement: including ADR and voluntary mediation and parenting skills programs~~ promotion of development of a multi-door court where ADR is one of the options litigants have through the Court System at the earliest stages of their disputes. All of these experimental courts and programs appear initially to be more effective than traditional court procedures but need to be carefully evaluated over the longer term.

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4. Legal and Judicial Ethics

a. Ethical Issues Regarding Attorneys and Attorney Civility - Publicizing Attorney Malfeasance

~~In our view, further publicizing attorney malfeasance will lessen - not promote - public trust in the legal system and could be counterproductive. In addition, such publicity could mislead the public into believing that most or many attorneys are unethical, which we know to be untrue.~~ The Association and other bar organizations provide educational resources for the media in covering law-related matters and they provide interviews, statements or news releases on particular issues in the news. With regard to situations of malfeasance, we suggest that information provided to the media clarify that most lawyers are honorable and occasions of malfeasance are rare, as reflected in disciplinary statistics.⁷⁶ Rather than focus unduly on attorney malfeasance, the Special Committee recommends using resources to educate the public about attorney selection, attorney-client communication and remedies or avenues available to address grievances.

⁷⁶ In 1999, 242 of the state's 112,000 practicing attorneys were disciplined, including 86 disbarments, 106 suspensions for certain periods of time, 24 censures, and 26 acceptances of resignations. Lawyer Discipline Report, *supra* note 72.

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4. Legal and Judicial Ethics

a. Ethical Issues Regarding Attorneys and Attorney Civility - Disciplinary Proceedings

As a means of making the public aware that members of the profession are accountable, the State Committee urges amendment to Judiciary Law §90(1) to open the disciplinary proceedings to the public once a *prima facie* case has been established. The Association has reviewed this issue over the years and, in the past, has ~~continued to~~ opposed the earlier opening of these proceedings, noting that the Appellate Division currently has the authority to intervene in appropriate cases and order interim suspensions and public disclosure to safeguard the public. The Association has urged use of these existing provisions when necessary.⁷⁹ ~~In taking this position, the Association concluded that opening disciplinary proceedings at an earlier stage is not needed for the protection of the public since such safeguards are available through the appropriate exercise of existing powers by the Appellate Division, but the existing confidentiality is necessary to protect lawyers against unsubstantiated and unproved claims or complaints. The Special Committee agrees with this view.~~ The House of Delegates is also on record as encouraging review of the procedures in the various Judicial Departments to promote consistency in sanctions throughout the state.⁸⁰

The present system has presented some difficulties. First, some Departments have read good cause more strictly than others and been less willing to order interim suspensions or public disclosure. Second, lack of uniform procedures has led to concern that, in some Departments, grievance committees could too readily and without due process destroy a lawyer's reputation by making an unfounded charge public.

In reviewing the Association's prior position, we believe its major concern has been ensuring due process for attorneys to protect them from having insubstantial claims or complaints made public. Weighing the Association's concern against the need to foster public confidence in the system, however, we conclude that both can be accommodated. Thus, we support the State Committee's proposal to open the disciplinary proceedings to the public once a *prima facie* case has been established, provided that (1) the Appellate Divisions have uniform provisions for the establishment of a *prima facie* case and public access and (2) that a judge makes such determinations. This action would provide appropriate public access and promote confidence in system and, at the same time, by opening the proceeding at this point only upon a judge's decision, provide attorneys with appropriate protections.

⁷⁹ Action of the House of Delegates, June 24, 1995 and January 26, 1996.

⁸⁰ Action of the House of Delegates, June 24, 1995.

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4. Legal and Judicial Ethics

a. Ethical Issues Regarding Attorneys and Attorney Civility - Professionalism, Civility

It is our view that some young lawyers equate incivility with strong advocacy. The Special Committee stresses the importance of drawing this distinction in law school and MCLE courses. Mentoring programs for young lawyers, already in place in many bar associations, should be encouraged to include civility in their discussions. Likewise, we would urge law firms to cover this issue in in-house legal education, mentoring programs, and in discussions of partners with associates. Such presentations should include case examples from practitioners as to how they successfully advocated their position while preserving civility.

SUMMARY OF RECOMMENDATIONS

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1. Bias and Prejudice and Access to Justice

a. Bias and Prejudice - Diversity in the Profession

- ✓ 1. Concur with State Committee proposal for greater representation of minorities in the courts but would not focus particularly on the judiciary. Instead, urge enhanced opportunities and diversity at all levels of employment in the justice system and in all elements of the legal profession, including public and private sectors and law schools. [pp. 4-5]
 - a. To assist in this effort, recommend that the Association compile information on the numbers of attorneys and judges of color in various positions in the legal profession and in different communities of the state to aid in assessing and monitoring efforts to enhance diversity. [p. 5]
 - b. Similarly, recommend compiling data on practice areas, career paths and related information concerning women in profession. [p. 5]

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2. Need for a Comprehensible, User-Friendly Court System, Addressing Delays in Justice

b. Addressing Delays in Justice

1. Expedition of Discovery

- a. Support State Committee recommendations to enhance discovery practice and reduce delay, cost and inconvenience to both parties and witnesses, thus enhancing trust and confidence in the legal system:
- 3. Provision for pre-judgment interest on personal injury awards by amendment of CPLR Section 5001 to ~~reduce the incentive for defendants to delay the conclusion~~ expedite the settlement of the case and hence reduce the costs of litigation to the client. [pp. 25-26]

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2. Need for a Comprehensible, User-Friendly Court System, Addressing Delays in Justice

b. Addressing Delays in Justice

2. Other issues of delay

b. Commend State Committee for proposing expansion of innovative attempts to address a variety of sociolegal problems that surface in the judicial system but are not susceptible to effective and long-term resolution through traditional mechanisms. These innovations include the development of specialized courts and ~~of adjunct programs that divert litigants from the Court System or strengthen litigants' ability to avoid future court involvement, including ADR and voluntary mediation and parenting skills programs~~ promotion of development of multi-door court where ADR is one of options litigants have through Court System at earliest stages of their disputes. [p. 28]

1. Urge careful evaluation of these experimental courts and programs over the longer term. [p. 28]

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4. Legal and Judicial Ethics

a. Ethical issues regarding attorneys and attorney civility

1. Publicizing attorney malfeasance

a. Agree with State Committee recommendation to give continued attention to attorney misuse of client funds ~~but believe further publicizing attorney malfeasance will lessen - not promote - public trust in the legal system and could be counterproductive and could mislead the public into believing that many attorneys are unethical~~ but urges devoting resources to public education and media information on attorney selection, communication and related issues [pp. 35-37]

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4. Legal and Judicial Ethics

a. Ethical issues regarding attorneys and attorney civility

4. Disciplinary proceedings

a. ~~Disagree with~~ Support State Committee's proposal recommended amendment to open the disciplinary proceedings to the public once a *prima facie* case has been established, provided that (1) the Appellate Divisions have uniform provisions for the establishment of a *prima facie* case and public access and (2) that a judge makes such determinations.

~~1. Recommend that the Association reaffirm its position that earlier opening of these proceedings is not needed, since the Appellate Division currently has the authority to intervene in appropriate cases and order interim suspensions and public disclosure to safeguard the public.~~ [p. 39]

SUMMARY OF RECOMMENDATIONS

Set forth below is a summary of the recommendations contained, and discussed in more detail, in the text of this report. Although we believe that all of these recommendations are important and worthy of consideration, we have specifically identified some (delineated by check marks) that we believe deserve the highest priority because they are of particular importance or timeliness.

1. Bias and Prejudice and Access to Justice

a. Bias and prejudice

- ✓ 1. Concur with State Committee proposal for greater representation of minorities in the courts but would not focus particularly on the judiciary. Instead, urge enhanced opportunities and diversity at all levels of employment in the justice system and in all elements of the legal profession, including public and private sectors and law schools. [pp. 4-5]
 - a. To assist in this effort, recommend that the Association compile information on the numbers of attorneys and judges of color in various positions in the legal profession and in different communities of the state to aid in assessing and monitoring efforts to enhance diversity. [p. 5]
 - b. Similarly, recommend compiling data on practice areas, career paths and related information concerning women in profession. [p. 5]
- ✓ 2. Encourage bar associations and law schools to continue to enhance programs and resources to help attorneys and law students build career development skills and law office procedures that promote diversity in hiring and retention of a workforce that reflects diversity. [p. 5]
- ✓ 3. Agree with State Committee in encouraging bar associations and law schools to provide programs and materials on diversity issues. [pp. 6-7]
 - a. Recommend that the Association and other bar associations incorporate diversity issues into MCLE, law office management programs and resources. [p. 6]
 - b. Suggest the Association and law schools collaborate in presenting a roundtable of legal educators and clinicians on diversity awareness issues, with the schools sharing experiences and effective initiatives. [pp. 6-7]
- ✓ 4. Endorse State Committee's proposal for statewide sensitivity training and education programs for judges, law clerks, secretaries, clerks of the court and staff, and security personnel and district attorneys, but urge that such training be interactive and ongoing. Suggest considering offering MCLE credit for judges and Court System attorneys instructing and attending such programs. [pp. 5-6]
- ✓ 5. Encourage additional training of court personnel in customer service skills. [p. 6]
- 6. Concerning State Committee's recommendation for incentives and disincentives for staff on treatment of court users, urge the Court System to emphasize positive examples and recognition of staff in promoting proper conduct. [p. 6]
- 7. Endorse State Committee recommendation to increase and provide more consistent attention to the needs of people with disabilities and people for whom English is not the primary language. Urge each court to evaluate efforts to serve persons with disabilities and take necessary remedial measures. [p. 7]

8. *Additional issue and recommendation not addressed in State Committee report:* Seek amendment to the statute concerning change of venue, to provide a right of appeal or a right to seek leave to appeal to the Court of Appeals. [pp. 7-8]

b. Access to justice

1. Funding for civil and criminal legal services
 - a. Endorse State Committee recommendations, continue Association initiatives and urge collaboration of bar associations, Court System and others to:
 - ✓1. Call for state legislation to increase compensation rates for counsel provided in Article 18-B for indigent defendants in criminal matters and in certain Family Court proceedings. [pp. 10-13]
 - ✓2. Pursue adequate funding in federal appropriations for civil legal assistance to the poor, without undue restrictions to most effectively provide counsel. [pp. 13-15]
 - ✓3. Seek establishment of a regularized funding source for civil legal services at the state level so that the existence of legal services is not placed in jeopardy year to year. [pp. 13-15]
 4. Urge increased funding for public defenders' offices so that resources are proportionate to those allotted to prosecutors' offices. [p. 12]
 - b. Urge Association to continue to speak out when state budget cuts are made in defense services to ensure that defense offices are not disadvantaged. [p. 12]
 - ✓c. Recommend that the Association reaffirm its positions for adequate funding of civil and criminal legal services, continue discussions with lawmakers, and expand its education of the public, and civic and business entities to strengthen the number and diversity of voices speaking on behalf of legal counsel for those in need. [pp. 14-15]
 1. Reiterate opposition to proposals to increase court or attorney registration fees as a source of such funding. [p. 14]
2. *Pro bono* service
 - a. Give continued attention to the State Committee recommendation to enhance the efforts of bar associations and law schools in soliciting volunteers and appropriately matching attorneys to clients. [pp. 15-18]
 - b. Encourage ongoing sharing of the best practices by bar associations, law schools and other entities regarding volunteer legal services programs. [p. 15]
 - c. To prompt the strongest volunteer efforts, maintain flexibility in *pro bono* development to tailor programs to area needs. [pp. 15-16]
 - d. Enhance Association publicity of law firms' *pro bono* initiatives statewide and urge additional recognition locally. [pp. 16-17]
 - e. Encourage and aid law offices in developing workplace policies that facilitate *pro bono* services. Include this issue in Association law office management programs and materials and prepare sample workplace policies. [p. 17]
 - f. Recommend that the Association meet with government representatives to encourage creation of guidelines to facilitate *pro bono* service by attorneys in the public sector. [p. 17]
 - g. Encourage corporate law departments to facilitate *pro bono* service among their legal staffs. [p. 17]

- h. Ask judges to encourage *pro bono* service in their presentations at admission ceremonies. [p. 17]
 - i. Urge the courts, as well as firms, to consider ways to ameliorate scheduling difficulties that lawyers may encounter in seeking to perform *pro bono* service. [pp. 17-18]
3. *Pro se* assistance and alternatives
- a. Urge Association, local bars, legal services programs and others to increase emphasis on the following, which we view as more important than making available *pro se* assistants in the courts who are trained to answer procedural questions as recommended by the State Committee:
 - 1. informing people about when and how an attorney can help. [p. 18]
 - 2. assisting people in obtaining counsel. [pp. 18-19]
 - 3. developing panels for persons with modest means. [pp. 18-19]
 - 4. establishing services that provide one source for those seeking help with legal problems, including *pro bono* service for low-income persons and lawyer referral or other assistance for those with modest income. [p. 19]
 - b. Encourage further development of and publicity among the profession and public of group and prepaid legal services. [pp. 19-20]
4. Family law matters
- a. Concur with State Committee recommendations to increase judges' awareness of the inequitable bargaining position that can occur in matrimonial cases and encourage temporary awards of attorney fees and maintenance where appropriate. [p. 20]
 - b. Urge Association to reaffirm and pursue its support of legislation to require the court to grant interim counsel fees in appropriate situations and where such is denied or deferred, direct that the court provide the reasons in writing. [pp. 20-21]
 - c. Consistent with Association position, seek safeguards in court-annexed ADR in matrimonial matters to ensure that the programs are voluntary, the parties are individually represented and the neutrals are sufficiently trained. [p. 21]
 - d. Urge courts to apply safeguards to avoid inequitable bargaining positions to matters that are not strictly matrimonial, *e.g.*, involving persons who have a child together but are not married. [p. 21]

2. Need for a Comprehensible User-Friendly Court System, Addressing Delays in Justice

a. Need for a comprehensible user-friendly Court System

- 1. Endorse recommendations of State Committee to promote a comprehensible user-friendly Court System:
 - ✓ a. Restructure present Court System to consist of two branches: one with local or limited jurisdiction and one with statewide jurisdiction [p.22].
 - ✓ b. Endorse State Committee's proposals to develop a brochure for users of the court and multilingual videotapes and other written educational material, possibly in a collaboration of bench and bar, to explain legal terminology, court etiquette and protocol, court procedures and the role of the judge. [pp. 22-23]

1. Recommend making these materials court specific, presented in a clear non-technical manner and made available in a variety of places in addition to courthouses. [pp. 21-23]
 2. Urge priority in developing these materials for those courts in which individuals, most frequently of limited means, often appear without counsel such as the landlord and tenant courts, Small Claims Court and Family Court.
 - c. Install better signs in courthouses. [p. 21]
 - ✓d. Support State Committee's recommendation to expand provision of Children's Centers. [pp. 21-23]
 1. Recommend giving priority to establishment in courts where persons are most frequently of limited means and appear without representation. [pp. 22-23]
 - e. Create an ombudsman position, possibly through the use of volunteers, to help people who have difficulty reading English to understand instructions, complete forms and navigate the courthouse. [p. 21]
 - f. Endorse recommendation of the State Committee for more trained translators with language skills in a greater variety of languages in the courthouses in this state. [pp. 21-24]
 - g. Provide procedural handbooks and training for all county clerk office personnel and court clerks who respond to inquiries from litigants to ensure that consistent and appropriate information is given. [pp. 21-24]
 - h. Provide in public places (*e.g.*, shopping mall or library) multilingual kiosks for obtaining information regarding case status and directions to the courthouse, and curbside drop boxes for paying fines or delivering papers, similar to library depository boxes. [p. 21]
 - i. Support State Committee proposal for handbooks and community resource materials to assist court personnel and the judiciary in aiding litigants and the public with problems that cannot be fully resolved in the courtroom. Urge involvement of bar associations and other groups in the development of these materials. [pp. 21-24]
 - j. Develop community justice centers, which reflect the culture and norms of the community they serve, for handling minor criminal matters. [p. 21]
 - k. Favor State Committee proposal for development of forms for a variety of courts in which litigants frequently appear without counsel, but stress that this recommendation cannot and must not be viewed as a substitute for creating permanent and adequate funding for civil legal services. [pp. 21-24]
2. Access to the database
- ✓a. Support expansion and modification of the OCA website/database, as the State Committee recommended, to allow attorneys, judges and the public in general to access court schedules and other information on line at no cost. [pp. 24-25]
 1. Further, urge modification of the website/database to make it user-friendly. [p. 24]
 2. Applaud OCA's new website service to allow attorneys and the public in the same jurisdictions the opportunity to check for case scheduling information and limited case history information, but call for expansion to all counties and courts in the state and to include information beyond scheduling. [p. 24]
 3. Recommend use of the website/database to promote educational materials developed pursuant to recommendations of the State Committee, as well as for

the recommended compilation and dissemination of community resource information. [pp. 24-25]

b. Addressing delays in justice

1. Expedition of discovery
 - a. Support State Committee recommendations to enhance discovery practice and reduce delay, cost and inconvenience to both parties and witnesses, thus enhancing trust and confidence in the legal system:
 1. Regulation of deposition practice and prevention of dilatory practices by amendment of CPLR Rules 3113 and 3115. [p. 25]
 2. Simplified procedures for the production, discovery and use of non-party business records by amendments to CPLR Sections 2305(b), 3120, 3122 and a new 3122-a. [pp. 25-26]
 3. Provision for pre-judgment interest on personal injury awards by amendment of CPLR Section 5001 to expedite the settlement of the case and hence reduce the costs of litigation to the client. [pp. 25-26]
 4. To balance the preceding, amend Rule 3221 “offer to compromise” measure, depriving a claimant of the right to recover costs or interest from the time that a settlement offer is made if the offer is not accepted and the claimant fails to obtain a more favorable judgment. [p. 26]
 - b. Endorse increased use of phone conferencing to monitor status and hear arguments of motions. [p. 26]
 - c. Achieving prompt settlements
 1. Endorse State Committee recommendation for greater use of voluntary mediation and other ADR programs to facilitate such settlements. [p. 26]
 2. Urge judges to involve either themselves or other appropriate court officials in settlement questions as soon as a matter is brought before them; increase budgets to provide for the designation and, particularly, for the training of such officials. [p. 27]
2. Other issues of delay
 - a. Endorse State Committee recommendation to increase the number of judges, public defenders, prosecutors and support staff and to fill judicial vacancies and create additional judgeships expeditiously. [pp. 27-28]
 - b. Commend State Committee for proposing expansion of innovative attempts to address a variety of sociolegal problems that surface in the judicial system but are not susceptible to effective and long-term resolution through traditional mechanisms. These innovations include the development of specialized courts and promotion of development of multi-door court where ADR is one of options litigants have through Court System at earliest stages of their disputes. [p. 28]
 1. Urge careful evaluation of these experimental courts and programs over the longer term. [p. 28]

3. Jury System Experience; Adequate Funding for Court Facilities

a. Jury system

1. *Per diem* for town and village justice court jurors
 - ✓ a. Endorse State Committee recommendation to require town and village justice court jurors to be compensated on the same basis as other jurors. [pp. 29-30]
 1. Support the Court System legislative proposal for state assumption of these costs. [p. 30]
2. Jury notice, information in advance of service, parking, payment
 - ✓ a. Support State Committee proposals for the following but recommend pilot projects to accommodate different local conditions and needs:
 1. Clarify jury summonses by providing more information about the expected length of jury service. [pp. 30-31]
 2. Use e-mail or automated telephone systems to obtain information from jurors in advance of service. [pp. 30-31]
 3. Consider payment of parking allowances to jurors, especially for those jurors who are not paid for their service. [pp. 30-31]
 4. Improve the system for juror payment, both as to frequency and timeliness. [pp. 30-31]
3. Communication with jurors
 - a. Endorse State Committee recommendations to:
 1. Require judges and their staffs to report to the Commissioner of Jurors Office when trials will not be proceeding on the scheduled date or at the scheduled time so jurors are not brought in unnecessarily. [p. 29]
 2. Remind judges to be more courteous and attuned to jurors' lives and needs. [p. 29]
 3. Ask judges to give jurors instructions regarding procedures, their role and conduct prior to the commencement of trial, allow note taking, give a special instruction if there are attorneys or judges on the jury panel, and give jurors a copy of the instructions on the law (charge) for reference during deliberations. [p. 29]
4. Grand jury
 - ✓ a. Urge inclusion of procedures for grand jurors within the State Committee's proposed improvements for trial jurors concerning the jury notice, information in advance of service, parking and payment. [p. 31]
 - ✓ b. Favor development of an orientation program specific to grand jurors. [p. 31]
 - ✓ c. Seek clarification that the function of grand jury administration properly belongs with the court, to eliminate the *ad hoc* and varying approaches in different counties. [pp. 31-32]

b. Court facilities

- ✓ 1. Endorse State Committee proposal for Court System to formulate a budget and strategic plan, both short term and long term, to develop resources to assure development and maintenance of dignified facilities that promote respect but also urge that these initiatives be expanded to include:

- a. review of grand jury facility conditions and needs. [p. 33]
- b. a survey of conditions in town and village justice courts. [p. 33]
- ✓2. Favor State Committee proposal for the Court System to carefully monitor the cleaning requirements in court rules to provide decent, clean, safe and accessible court facilities but also encourage:
 - a. local bar associations to review adequacy of court facilities as ongoing project and work directly with committees that OCA contemplates establishing in each district to monitor cleanliness, maintenance and user friendliness of the court facilities. [p. 33]
 - b. Association as well as other statewide organizations to play a role in state collection of data and concerns regarding court facilities. [pp. 33-34]
- 3. Support State Committee recommendation to increase the number of magnetometers and the size of courthouse foyers, where possible, so people are not left waiting to gain entry to the courthouse. [p. 33]
- 4. Urge, as recommended by the State Committee, establishment of areas where attorneys and clients can speak privately and separate waiting areas for victims and alleged perpetrators, and their respective families. [p. 33]
- 5. Endorse State Committee's call to enhance accommodations for court users by making available food and beverages either through vending machines or a courthouse cafeteria. [p. 33]
- 6. Support State Committee proposal for the Court System to seek information through questionnaires from court users and court personnel regarding the adequacies and deficiencies of court facilities and their ideas for improvement. [p. 33]
- ✓7. Favor State Committee proposal for community projects to "spruce up" the courthouse or its grounds as short-term solutions. [p. 34]
 - a. As part of this effort, encourage law firms and others to donate furniture. [p. 34]
 - b. But press for adequate state funding to properly equip court facilities with furnishings and technology. [p. 34]

4. Legal and Judicial Ethics

a. Ethical issues regarding attorneys and attorney civility

- 1. Publicizing attorney malfeasance
 - a. Agree with State Committee recommendation to give continued attention to attorney misuse of client funds but urges devoting resources to public education and media information on attorney selection, communication and related issues. [pp. 35-37]
 - b. Suggest that information be provided to the media to clarify that most lawyers are honorable and occasions of malfeasance are rare. [pp. 36-37]
 - c. Recommend education about attorney selection, attorney-client communication, and remedies available to address grievances. [pp. 36-37]
- 2. Education on law office management
 - a. Regarding State Committee recommendation for programs for law students and new admittees on the practical aspects of setting up and running a practice:
 - 1. Applaud increased initiatives by law schools and bar associations and encourage continued instruction in this area, including in law school the use of

- practitioners to provide students with the opportunity to learn what practical issues have been confronted in the law office and how attorneys have handled them. [p. 37]
2. Cite recent revision of the multi-state professional responsibility examination to test broader aspects of professional responsibility and not just the formalized ethics rules. [p. 37]
 3. Urge development of educational materials for attorneys on client communication and rapport. [pp. 37-38]
3. Substance abuse
 - a. Concerning State Committee proposal for more statewide coordination of efforts to assist lawyers who may be experiencing personal problems such as substance abuse and mental illness:
 1. Recommend wider publicity about existing bar programs and their confidential nature so that those in need of such services know that help is available. [p. 38]
 2. Suggest including a brochure about lawyer assistance programs in the Court System's biennial attorney registration mailing. [p. 38]
 3. Provide information to judges across the state to increase their awareness of these confidential services and the opportunity to refer those experiencing problems. [p. 38]
 4. Urge each law-related entity to: (a) review its procedures for helping members of the bench, bar and students to be informed and obtain appropriate services; (b) if it has not done so, take advantage of bar lawyer assistance programs, services and guidance; and (c) take steps to remedy any gaps. [p. 38]
 5. Recommend that bar associations and other MCLE providers assess their course offerings to ensure that this topic is included in both the practical skills programs for new admittees and the seminars for more experienced attorneys. [p. 38]
 4. Disciplinary proceedings
 - a. Support State Committee's proposal to open disciplinary proceedings to public once a *prima facie* case has been established, provided that (1) Appellate Divisions have uniform provisions for the establishment of a *prima facie* case and public access and (2) that a judge makes such determinations. [p. 39]
 - b. Urge Association to reiterate its call for review of procedures in the various Judicial Departments to promote consistency in sanctions throughout the state. [p. 39]
 5. Professionalism, civility
 - a. Regarding State Committee call for law schools and bar associations to offer mentoring programs for new attorneys and classes on professionalism and civility:
 1. Increased involvement by law schools and bar associations is under way. [pp. 39-40]
 2. Urge law schools, bar associations and law offices to review their course offerings and mentoring programs to ensure that there is adequate consideration of these issues. [p. 40]
 - b. Recommend that the distinction between incivility and zealous advocacy be addressed in law school and bar association MCLE courses; law office and in-house education; and mentoring through bar associations and law firms. [p. 40]

- ✓ c. Request each Judicial Department to provide a seminar for newly admitted attorneys, such as that initiated in the First Department, which would provide guidance on such topics as civility, ethics, professionalism and the importance of *pro bono* services. [p. 40]
 - d. Encourage distribution of written materials on these issues by bar organizations, law schools and law offices which also serves to underscore the importance placed by the bar and law office on civil conduct. [p. 40]
 - e. Concerning State Committee call for judicial authority to require civil behavior of attorneys, with judges to set an example of professional conduct:
 - 1. Believe setting objective standards for such conduct would be problematic and potentially have a chilling effect on zealous advocacy. [p. 41]
 - 2. Instead, recommend increased training of judges on maintaining control in the courtroom. [p. 41]
6. Specialization
- a. Disagree with State Committee proposal to explore providing certification of attorneys as specialists as a means of enhancing public confidence. Lack of certification should not mean that the attorney is less trustworthy. In fact, specialization may be more of a promotional issue than one of public trust. [p. 41]
7. Retainer agreements
- a. Endorse State Committee recommendation to require written retainer agreements, regardless of the amount involved, to help ensure that the client understands the services and arrangements. To address situations where attorneys provide counsel on a continuing basis to the same client, further recommend requiring written retainer agreements when the legal work to be accomplished is significantly different than that involved in the prior representation. [pp. 41-42]
 - b. In addition to State Committee recommendations, suggest that:
 - 1. Attorneys send a confirming letter, when possible, when the attorney decides not to represent the person after a consultation. [p. 42]
 - 2. Attorneys seek a written statement signed by any client who waives a conflict of interest. [p. 42]
8. Attorney solicitation
- a. Regarding State Committee call for monitoring of questionable advertising practices and reporting unethical or misleading conduct to the grievance committees:
 - 1. Instead, given the enormity of the task and limited resources, suggest grievance committees make periodic spot checks of written, radio and television advertising for compliance with the Code of Professional Responsibility. [p. 42]
 - 2. Recommend discussion of advertising issues in Association and local bar association educational programs and materials on practice management and professional responsibility. [pp. 42-43]
 - 3. Urge preparation of a brochure for attorneys on this subject. [p. 42]
 - b. Concerning State Committee recommendation that disclosure to clients be required if the matters are to be referred to other counsel:
 - 1. Note recent Code of Professional Responsibility amendment prohibiting solicitation without such disclosure. [p. 43]

- c. On State Committee's suggested creation of a brochure on how to select an attorney:
 1. Suggest combining information contained in various Association pamphlets to include such issues as attorney selection, attorney-client communication, means of preventing misunderstandings, and ways of resolving complaints. [p. 43]
 2. Suggest inclusion of information on how to select an attorney in public education programs. p[p. 43-44]

b. Ethical concerns, constraints relating to judges

1. Judicial independence
 - a. Rather than pursuing State Committee proposal to establish district committees of judges, attorneys and court administrators to defend against attacks on judiciary:
 1. Recommend continued work in this area by bar associations, including media and public education. [p. 44]
 2. Urge bar associations to assess procedures for response to unwarranted attacks and education on this issue. [p. 44]
 - b. Endorse the recommendation of the State Committee for a handbook for judges with rules and guidelines regarding allowable or advisable judicial responses to the media and public inquiry, and extra-judicial activities. [pp. 44-45]
 1. Suggest more discussion of these issues in judicial education sessions. [p. 45]
 2. Suggest providing a handbook on this subject to the media. [p. 45]
 - c. Agree with State Committee that limits of judicial authority are important topics in adult and youth educational initiatives and in background for the media. [p. 45]
 1. Note current Association and local bar initiatives. [p. 45]
 2. Encourage bar associations to engage in community education. [p. 45]
 - d. Disagree with State Committee recommendation to ask judges to explain in court a settlement, decision or procedure, especially in cases that are of high public concern and interest. To do so could leave the impression that the judge is seeking public approval and runs contrary to the concept of judicial independence. [p. 45]
 1. Recommend informing public and media that the appellate process is the appropriate remedy for an unfair or erroneous decision. [p. 45]
 - e. Concur with State Committee to encourage volunteer activity by judges, as well as lawyers. Suggest discussion in judicial education programs, along with discussion of the Code of Judicial Conduct provisions. [p. 45]
 - f. Regarding State Committee recommendation to heighten judges' awareness that explaining delays and being prompt and productive are important in maintaining public trust in the justice system:
 1. Believe most judges give such explanations. [p. 45]
 2. If lack of punctuality and productivity is an ongoing problem, recommend addressing the issue in the judicial education programs. [p. 45]
 3. Call for handling individual problems in particular courtrooms by court administrators. [p. 45]
2. Mandatory sentencing
 - a. Agree with State Committee's call for review of mandatory sentencing laws with a view toward maximizing judicial discretion. [p. 46]

- ✓ 1. Review and pursue revision of mandatory drug sentencing provisions to remedy unduly harsh sentences on those with low-level involvement. [pp. 45-46]
- 3. Politics and judicial selection
 - a. Concur with State Committee that the present long terms of offices should be retained to limit the need for judges' political activities. [p. 46]
 - b. Support State Committee's proposal for re-examination of Election Law provisions that prohibit judicial candidates from knowing who contributed to their campaign, as such information is already known by seeing those who attend fund-raising events. [p. 46]
 - 1. Urge repeal of this prohibition, provided that the names and amounts contributed are made public. [p. 46]
 - c. Question the feasibility of the State Committee's recommendation to discourage judicial candidates from seeking endorsement of special interest groups that give the impression that the candidate has a position on an issue. Guidance for the candidate is given in the Code of Judicial Conduct. [p. 47]
 - ✓ d. Encourage establishment of local bar committees, similar to that of the Bar Association of Erie County, which provides judicial candidates with information on appropriate campaign conduct and monitors such conduct. [p. 47]
 - e. Endorse State Committee proposal for establishment of guidelines for fair judicial campaign practices and creation of a handbook on ethical constraints in judicial campaigns and activities upon taking the bench. [p. 47]
 - f. Join with State Committee in encouraging commitments from elected and appointed officials, candidates, and their staffs in other branches of government not to engage in personal attacks on judges. [p. 47]
- 4. Town and village justice courts
 - ✓ a. *Additional issue and recommendation not addressed by State Committee:* Seek amendment in the law to require town and village justices to be admitted to the bar, to be consistent with the eligibility requirement for judges in other courts and in recognition of the increased complexity and demands on these local courts. [pp. 47-49]

5. Public Understanding and Media Portrayal of the Legal System

a. Public understanding

1. For students

- ✓ a. Expand and enhance training of teachers in law-related education. [pp. 49-54]
 - 1. Replicate the LYC/P.A.T.C.H. Summer Institute training program to reach 300-400 teachers each year. [pp. 52-54]
 - 2. Add a half-day workshop for new teachers to the statewide Conference on Law-Related Education. [pp. 52-54]
 - 3. Expand print resources for teachers, and republication of undated materials for new teachers. [p. 54]
 - 4. Create and distribute via the internet a library containing informational resources, such as U.S. Supreme Court decisions, and teaching strategies for various grade levels and including suggested activities. [p. 54]

5. Create an interactive internet resource for the direct use of students designed to move step-by-step through the decision-making process and mimic the interactivity of good law-related methods in the classroom. [p. 54]
6. Use the internet and e-mail to arrange lawyer visits to classrooms. [p. 54]
- b. Create a catalog of existing Association and OCA resources for teachers, ascertain their current usage, and institute a sustaining promotion program to ensure the widest use possible. [pp. 54-55]
- c. Sponsor a statewide contest for students to develop videotapes and/or computer software regarding the judicial system that could be used for educational purposes. [pp. 55-56]
2. For the general public
 - a. Create and nurture alliances with other legal and non-legal organizations that would be helpful in assisting the promotion of issues and positions important to the courts and legal profession. [p. 56]
 - b. Use "Non-Commercial Sustaining Announcements" on radio and television statewide to promote understanding of the legal system. [pp. 56-57]
 - c. Encourage production of television programs that explain the legal system. [pp. 57-58]
 - d. Expand Tel-Law, a program of telephone-accessed tape-recorded messages about legal issues, to all counties and/or availability of this information through the Association website. [p. 58]

b. Local initiatives

- ✓1. Strongly encourage local bar associations to aggressively seek opportunities to promote the courts and bar, increase their community involvement across the broadest possible spectrum of legal and non-legal activities, and engage other educational, civic, business, professional, labor and religious organizations. [pp. 58-61]
2. Encourage bar associations in the state to conduct programs on lawyer advertising at bar meetings that include input from advertising professionals on what constitutes good and effective advertising. [p. 61]

c. Media portrayal

- ✓1. Distribute background information to newsrooms on legal issues in the news. [p. 62]
2. Increase distribution of the Association's *Legal Handbook for New York State Journalists* to reporters who cover the legal issues. [pp. 62-63]
3. Encourage the courts to designate a public information officer in each district who would be available to the media at all times. [p. 63]
4. Consider establishing a satellite office of the Media Services Department in New York City. [pp. 63-64]
5. Develop and disseminate to all judges guidelines regarding allowable/advisable judicial responses to the media and public inquiry and on handling criticism and consider enhanced media training for judges. [p. 64]

NEW YORK STATE BAR ASSOCIATION

**Special Committee on Public Trust
and Confidence in the Legal System**

**REPORT TO THE HOUSE OF DELEGATES:
ENHANCING PUBLIC TRUST AND CONFIDENCE
IN THE LEGAL SYSTEM**

January 2001

The Committee is solely responsible for the contents of this report and the recommendations contained herein. Unless and until adopted in whole or in part by the Executive Committee or House Delegates of the New York State Bar Association, no part of this report should be attributed to the Association.

**REPORT TO THE HOUSE OF DELEGATES:
ENHANCING PUBLIC TRUST AND CONFIDENCE
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APPENDIX A

Report to the Chief Judge and Chief Administrative Judge
Of the Committee to Promote Public Trust and Confidence in the Legal System

**REPORT TO THE HOUSE OF DELEGATES:
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IN THE LEGAL SYSTEM**

January 2001

INTRODUCTION

Our legal system touches all aspects of our lives and all elements of our society. It underlies the operation of our democratic government, the protection of our civil rights and liberties, and the effective functioning of our entire economic system. If those who should be using the legal system lack confidence in its fairness, in its ability to deliver justice in a timely way or in their ability to have access to that system, however, voluntary obedience to the law and the appropriate and effective operation of the legal system are then clearly undermined.

Today, the Court System is used to mediate housing disputes, enforce business contracts, prosecute crimes, resolve social problems resulting from dysfunctional families and drug addiction, protect individual liberties and compensate for property and personal injuries, and that's just a sampling from one day's docket! And public perception may also be impacted, directly or indirectly, by factors and events beyond the Court System itself - alleged campaign finance violations, racial profiling by police, elected representatives enjoying the favors and accepting the perks of lobbyists. Thus, the issue of public trust and confidence in the legal system is fundamental and all encompassing.

It is not a new issue for the New York State Bar Association (Association) but one that the Association has been addressing since its inception through its many sections, standing and special committees, and task forces. The Association, however, cannot rest on its laurels and applaud itself for its past contributions. Rather, it must continue to focus its attention on this subject because we face challenging new problems in an era of cynical public attitudes and because public trust and confidence in the legal system will always be in need of diligent and continuing attention to ensure that our democratic government and our economic system operate in an orderly and effective manner, that our civil rights and liberties are protected, and that the public perceives this to be so.

State Committee and Special Committee

In May 1999, a National Conference on Building Public Trust and Confidence in the Justice System was held in Washington, D.C. Then Association President James C. Moore participated in the National Conference. In advance of the Conference, the chief justice of each state was urged to form a state committee with diverse representation to identify issues affecting public trust and confidence in the state's justice system and to formulate strategies to address those issues. As suggested, New York State's Chief Judge Judith S. Kaye appointed such a distinguished and broadly representative advisory committee (State Committee). The State Committee drafted a report. (State Committee Report, provided in Appendix A.) which was released to the public in May 1999 to coincide with the National Conference. After the National

Conference, the State Committee then began the second phase of its work, implementation of the strategies detailed in the State Committee Report.

In late 1999, Thomas O. Rice, then President of the Association, formed a Special Committee on Public Trust and Confidence in the Legal System (Special Committee). The Association's Special Committee included the Chairs of Association sections and committees that address issues relating to the justice system, and its members represent various fields of practice, experience and locations. (See listing in the conclusion of this report at 77.) The Special Committee was charged with reviewing the State Committee Report and any further recommendations of the State Committee, formulating a response and formulating recommendations for Association action. The Special Committee was charged to work together with other entities within and without the Association in accomplishing its mission. In addition to reaching out to other committees and sections within the Association, many of whom appointed liaisons for this purpose, the Special Committee reached out informally to other entities outside the Association and communicated extensively and worked with the State Committee.

We commend Judge Kaye and the Office of Court Administration (OCA) for their vision in recognizing the importance of public trust and confidence in the legal system and their actions, including appointment of the State Committee, to address the issue. We salute the State Committee, as well, for its extensive work in compiling a constructive and comprehensive agenda and its efforts, just now beginning, to implement its strategies and recommendations. The creation of the position of Deputy Chief Administrative Judge for Justice Initiatives and the appointment of the Hon. Juanita Bing Newton also are applauded. This action gives recognition to the importance of the issue and the need to address it comprehensively on a continuing and priority basis.

There have been many reports on a variety of law-related subjects over the decades - but the determination to go that extra step and turn the suggestions into reality, the agenda into action, make the efforts of the State Committee extraordinarily important and meaningful. We would also like to express our sincere appreciation to the State Committee for its openness and spirit of cooperation and for permitting us to labor with them, side-by-side, in the vineyards.

Issues Affecting Public Trust and Confidence

This report discusses five specific issues, and the accompanying strategies for action, identified in the State Committee Report:

- bias and prejudice and access to justice;
- delays in justice and the need for a comprehensible user-friendly Court System;
- the jury system experience and adequate funding for court facilities;
- legal and judicial ethics; and
- public understanding and media portrayal of the legal system.

Among the specific strategies and recommendations included in the State Committee Report, this report identifies many that we fully support, including some that we believe deserve the highest priority because they are of particular importance or timeliness. This report also notes some

strategies and recommendations we support only in part or with modification, and some we do not believe are the most appropriate strategy to achieve our common goals. In a few instances, we have ventured beyond the four corners of the State Committee Report and made additional recommendations. (A summary of the Special Committee's recommendations precedes the conclusion of this report at 65.)

While public understanding of the legal system is one of the five issues identified and addressed in the State Committee Report, we must take note that, in a sense, it is more than just another issue. Public understanding is a pervasive factor in addressing each of the other identified issues and all those laboring to improve public trust and confidence must work on both facets of the problem: making substantive real improvements in the operation of the system and improving public understanding of how the legal system operates. To be most effective, this effort requires ongoing attention and, where possible, the cooperative and coordinated efforts of all those involved in the legal process, as well as concerned citizens in all walks of life.

REPORT AND RECOMMENDATIONS

1. Bias and Prejudice and Access to Justice

a. Bias and Prejudice

Providing for full and equal opportunity for participation in the legal profession is a critical element in maintaining public confidence in the legal system. Likewise, those utilizing the courts and legal services must receive fair and even-handed treatment and be free from bias and prejudice. Both principles have been expressed in Association resolutions and initiatives over the years.¹

Both require the continued attention of the bench, bar and academic community, individually and cooperatively. We applaud the recommendations of the State Committee to combat bias and prejudice² and propose additional actions.

Priorities

Of prime importance are measures to:

- ✓ Promote opportunities and greater representation in the legal profession for all segments of society and at all levels of employment in the justice system.
- ✓ Provide training and related steps to ensure that those involved in legal matters are treated fairly and respectfully.

Diversity in the Profession

The State Committee recommends promoting "greater representation of minorities in the justice system, particularly judges." We agree, but stress that efforts to enhance diversity

¹ Including, Resolutions of the Association House of Delegates for: prohibitions against discrimination in law school admission and employment (January 16, 1982); full and equal participation in the profession by minorities and women (January 16, 1986); status of women lawyers and court employees (June 26-27, 1987); amendments to the Lawyer's Code of Professional Responsibility (Code of Professional Responsibility) to include a specific Disciplinary Rule (DR) barring unlawful discrimination in the practice of law and Ethical Consideration (EC) for a lawyer to avoid bias toward parties in the legal profession (June 26-27, 1987).

² State Committee Report, Section B(1), Bias and Prejudice at 6-9:

- a. Provide statewide sensitivity training and education programs for judges, law clerks, secretaries, clerks of the court and staff (including county clerk office personnel), security personnel and district attorneys.
- b. Encourage bar associations and law schools to establish programs and offer classes which sensitize attorneys to issues of diversity.
- c. Create incentives and disincentives for staff based on their treatment of those who use the Court System.
- d. Increase and provide more consistent attention to the needs of people with disabilities and people for whom English is not the primary language.
- e. Promote greater representation of minorities in the justice system, particularly judges.
- f. Provide plain language brochures regarding complaint and grievance procedures for court employees and members of the public who feel they have been subjected to discrimination.

should be made within all positions of the Court System, including court clerks, officers and other personnel, as well as judges.

This objective equally applies to law offices in private, corporate and public sectors. The importance of attracting and retaining a diverse workforce has received heightened visibility and more law offices are assessing their procedures and workplace environment in the past decade. There is considerable opportunity, however, to do more in terms of recruitment and career development.

We recommend, as an initial step, that the Association compile information on the numbers of attorneys and judges of color in various positions in the legal profession and in different communities of the state. While this information is available for law students,³ data about employment in various fields of law and work settings in New York State is only accessible in bits and pieces. The lack of a complete statewide picture hinders discussions and the development of initiatives tailored to advancing diversity in particular areas. The availability of this resource also would enable us to measure progress. Access to this information also would be useful in informing students about the range of career possibilities and how best to prepare for these different paths. Similarly, we recommend compilation of data about areas of practice, career paths and related information concerning women in the profession. We are delighted to learn of the Committee on Women in the Law's ongoing work and plans in this area.

Bar associations, the Court System and law schools should be commended for the development of programs and resources that aid law students and attorneys in building career development skills and assist law offices in instituting procedures that promote diversity in hiring and retention. These entities should be urged to continue such educational endeavors.

Also to be commended and encouraged are collaborative discussions, such as the recent roundtable of the judiciary, law firm and law school representatives, held in the Capital District in April 2000, concerning opportunities, procedures and perceptions. Providing students, attorneys and law offices with the educational resources to evaluate their procedures and goals would be an important contribution in seeking inclusiveness and thereby enhancing confidence that the justice system is open and more reflective of society.

Judges and Other Court Personnel

The State Committee recommends statewide sensitivity training and educational programs for judges, law clerks, secretaries, court clerks and staff, security personnel, and district attorneys.

While this proposal is meritorious, the Special Committee believes that, to be most effective, such education should be instituted on an ongoing basis, with follow-up

³ For instance, *The American Bar Association Guide to Approved Law Schools - 2000 Edition* reports that, in the fall semester of 1998, the minority student population at the 15 schools in New York State averaged 23.4 percent, ranging from 16.5 percent to 44.6 percent. At 68.

sessions, and should provide for interactive components. Consideration should be given to utilizing a facilitator experienced in this subject matter. The use of a videotape, as suggested by the State Committee, would promote consistency in training but would be best used in conjunction with the interactive training. This would help participants to recognize that their or others' conduct may contribute to problems and to apply the training in their communications. We further recommend that discussion of bias and prejudice be raised in general human resources training, case preparation, and other sessions. Consideration should be given to offering mandatory continuing legal education (MCLE) credit for judges and Court System attorneys instructing and attending such programs. Additional training in customer service would be valuable.

We are pleased to learn that the New York County Supreme Court personnel have participated in customer service education and were planning sessions on diversity and bias. We also note other actions of the Court System creating offices specifically charged with promoting and addressing complaints of bias in the Court System.⁴

The State Committee recommends creation of incentives for positive conduct and disincentives for inappropriate behavior. We favor emphasis on the positive, going beyond employee recognition postings. The inclusion in customer service training, described above, and recognition in performance reviews and promotions are constructive steps.

Practitioners, Legal Educators and Law Students

We agree that efforts to increase awareness of diversity issues should involve the bar and legal education community, as well as the Court System. Accordingly, we concur with the State Committee in encouraging bar associations and law schools to provide programs and resources on these issues.

We recommend that the Association and other bar associations incorporate the subject matter of awareness of diversity into MCLE programs. This also should be a subject in law office management programs and resources, including those designed for attorneys in firm leadership and hiring roles.

Likewise, it is important to include these topics in law school instruction and forums to emphasize the importance of an inclusive profession. To aid in this objective and share experiences and effective initiatives, the Special Committee proposes that the Association and law schools collaborate in presentation of a roundtable forum for law school teachers and clinical instructors on awareness of diversity issues.

Law schools in New York have been expanding efforts to enhance diversity. We note, for example, the involvement of Albany Law School's Diversity Committee in roundtables with law firm representatives to discuss diversity issues in interviewing and hiring and in hosting a dialogue on issues of power, differences and perception relating to

⁴ Workplace Diversity Office, instituted in 1989, and the Office of Special Inspector General for Bias Matters, established in 1998.

personal and professional growth in the law; Touro's emphasis on diversity issues in its week-long orientation for entering students and its instruction in legal analysis by using cases involving hate speech and hate crime; and SUNY Buffalo's interdisciplinary law studies program teaching students how the law affects and is affected by social and cultural contexts.

The increased attention to diversity issues in legal education also is evidenced by a survey of faculty released by the American Association of Law Schools earlier this year. The study found that approximately three quarters of faculty members responding value racial and ethnic diversity in the classroom, believe that their school places importance on diversity; and see diversity as important in helping students examine their own views and acquainting them with different experiences and perspectives.⁵

The proposed roundtable forum would enable school representatives to discuss the steps that they have taken and learn what has been effective at other institutions. Additionally, the involvement of the bar would promote diversity initiatives throughout legal careers and would provide opportunity for legal educators and the bar to hear each other's perspectives and concerns.

Court Users

The Special Committee concurs with the recommendation to increase and give more consistent attention to providing information and assistance to court users that meets the needs of people with disabilities and people for whom English is not the primary language. These measures would serve as a means of increasing understanding and therefore building public confidence. [See related State Committee proposal for an ombudsman position to help those with difficulty in understanding English, under section (2) of this report at 21, note 46(vi), pertaining to user-friendly courts.]

We suggest that each court assess its ability to serve persons in these circumstances and take necessary remedial measures. This evaluation should include the availability of signage, materials in large print, audio versions or languages other than English, interpreters, and the accessibility of facilities.

Change of Venue

The Special Committee offers an additional recommendation, not addressed in the State Committee report, to assist in promoting public confidence in the justice system and the view that the process is fair. Cases in which a change of venue is sought are often matters in the public eye bringing out high emotion and opinion.

Current law⁶ provides that, by motion of either the defense or prosecution, the appellate division may order a change of venue of the trial to a court in another county. To achieve

⁵ Richard A. White, *Preliminary Report: Law School Faculty Views on Diversity in the Classroom and the Law School Community* (May 2000) at 15.

⁶ Criminal Procedure Law § 230.20(2).

a change of venue, the motion must demonstrate "reasonable cause to believe that a fair and impartial trial cannot be had in such county." Decisions on motions for a venue change have required circumstances that go beyond extensive media focus and public attention⁷ and most frequently necessitate a futile attempt to select an impartial jury.

In the recent pretrial change of venue ruling in the case involving the police shooting of Amadou Diallo, the Appellate Division, First Department stated:

What is unique about this case is the scale and intensity of the public clamor that preceded the indictments, which we can only conclude, would be repeated at trial.... Based upon the totality of the evidence we find that this case cannot be tried in Bronx County, or anywhere else in the City of New York, without an atmosphere in which the jurors would be under enormous pressure to reach the verdict demanded by public opinion. We are also convinced that this is the rare case where a motion for a change of venue should be granted prior to trial, rather than deferred pending an attempt to select an impartial jury. In our view such an attempt would be a 'futile process.' (*People v. Culhane*, 33 NY2d 90, 110).⁸

The statute, however, does not include provision to seek an appeal to the Court of Appeals. Given the intense public concern about cases of this nature and about the effect of changing venue, we recommend amendment to the statute to provide a right of appeal or a right to seek leave to appeal to the Court of Appeals. Provision for review by a higher court would aid in enhancing public confidence and would be consistent with the justice system's provision for appellate review.

b. Access to Justice

"Justice, which is not justice to all, is not justice at all."

So observed the Association Committee on Legal Aid Societies some 80 years ago in encouraging bar associations to assist in the development of programs statewide to promote access to legal counsel. When a system to protect the rights of indigent men and women is lacking, the Committee concluded, "you shake the faith of the people in government and bring in question the fundamental fairness of our institutions."⁹ This conclusion was echoed approximately a half century later in the Statement of Findings and Declaration of Purpose for the Legal Services Corporation Act: "For many of our

⁷ See, *People v. Boudin*, 90 AD2d 253 at 255, ruling that "evidence of widespread publicity, even when supported by the results of surveys of the attitudes of potential jurors, is generally regarded as nothing more than some proof that a fair trial may be impossible in the locality in which the crime occurred"; and *People v. DiPiazza*, 24 NY2d 342 at 347-348, 300 NYS2d 545, 248 NE2d 412, the movant needs to show "popular passion and prejudice."

⁸ *People v. Boss*, 261 AD2d 1 at 6.

⁹ *Report of Committee on Legal Aid Societies*, published in *Proceedings of the New York State Bar Association* (1920) at 107.

citizens, the availability of legal services has reaffirmed faith in our government of laws."¹⁰

These views hold true for criminal as well as civil matters. Clearly, whether the matter involves the criminal justice system or a civil dispute, the opportunity to obtain legal counsel places those with economic hardship on a more level footing in resolving their cases, strengthens their voices, and in so doing, builds confidence in the justice system. Unfortunately, the insufficient and inconsistent provision of resources for legal services has jeopardized access to the justice system for those most lacking the financial ability and wherewithal to obtain this assistance.

Throughout its history, the Association has given concerted attention to ensuring that the door to the courts and to legal counsel is open to all New Yorkers. This effort has involved initiatives to facilitate access for those with low and middle income, and persons with disabilities, to encourage volunteer service among members of the profession, to promote diversity and opportunity in the justice system, and to educate the public about rights, responsibilities, the functions of the courts, and the availability of assistance with legal problems.

Among the seminal efforts of the Association to promote access to the justice system, the 1919 report referenced above includes a survey of existing legal aid programs across the state.¹¹ An examination of unmet civil legal needs of low-income persons, commissioned by the Association and issued in 1990, continues to be a major reference source.¹² A report and recommendations aided in the establishment of additional voluntary initiatives on the part of the private bar.¹³ The Association is on record favoring voluntary and opposing mandatory *pro bono* service and advocating government-funded programs complemented by the voluntary efforts of the private bar. In the past decade, the Association has been at the forefront in pressing for the preservation of the federal Legal Services Corporation program at adequate funding levels.

The Special Committee concurs with most of the recommendations made by the State Committee to enhance access to justice¹⁴ with some suggested modifications and additions.

¹⁰ 42 USC § 2996(4).

¹¹ Legal Aid Societies Committee Report, *supra* note 9 at 102-109.

¹² *The New York Legal Needs Study*, Association Committee on Legal Aid (1990, rev. December 1993).

¹³ *Report of the Special Committee to Review the Proposed Plan for Mandatory Pro bono Services*, Association Special Committee (October 16, 1989).

¹⁴ State Committee Report, Section B(2), Access to Justice at 10-14.

- a. Recognize that legal services programs have been historically underfunded and that a plan needs to be developed based on demographics and areas of need that ensures stable and adequate funding for legal services, both civil and criminal.
- b. Create a permanent fund for civil legal services.
- c. Increase funding for public defenders' offices.
- d. Increase compensation for assigned/appointed counsel under Judiciary Law § 35.
- e. Encourage increased *pro bono* (free legal service) activities by lawyers.

Priorities

The Association has taken priority action to seek:

- ✓ State legislation to remedy dismally low and long out-of-date compensation rates for counsel provided in Article 18-B for indigent defendants in criminal matters and in certain Family Court proceedings.
- ✓ Adequate funding in federal appropriations for civil legal assistance to the poor, without undue restrictions to most effectively provide counsel, and a regularized funding source at the state level so that the existence of legal services is not placed in jeopardy year to year.

The Special Committee agrees that both these matters are of equal and critical importance and should continue to receive priority attention, through the efforts of Association leaders and entities, working with other public and private organizations. The Association has utilized a grassroots procedure, embracing the value of developing and operating programs that take into consideration local conditions and needs. We concur that this cooperative and flexible approach is most effective. As stated in an October 28, 1998 resolution of the Association House of Delegates:

The Association recognizes that the critical problem of underrepresentation jeopardizes both the welfare of poor persons and the legitimacy of the justice system itself.... [Q]uality legal services is best delivered by fully funded staff programs which should be augmented by an increase in vigorous, organized voluntary *pro bono* efforts.... [T]he strongest and most effective volunteer efforts have evolved at the local level where the local bar, paid legal services staff, and the local judiciary and others have come together cooperatively to assess the local need and tailor a local solution.

Criminal Justice

The Special Committee supports increased compensation for assigned/appointed counsel under the Article 18-B plan.¹⁵ The legislation providing for assigned counsel for indigents in criminal and certain Family Court proceedings, was enacted in 1965 with the support of the Association which stated that "[l]awyers who are assigned to represent

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- f. Help law schools and appropriate agencies develop tuition assistance programs for law school students similar to programs offered in medical schools.
 - g. Create *pro se* positions in court facilities to assist people in their efforts to represent themselves.
 - h. Make judges more aware of the inequitable bargaining positions that can occur in matrimonial cases.

¹⁵ Judiciary Law § 35 (enabling the court to assign counsel in designated proceedings for those financially unable to obtain representation); County Law § 722 (requiring counties to provide for assigned counsel to indigent criminal defendants through public defenders, legal aid contract, assigned counsel program, or a combination of these resources); Family Court Act § 262(c) (providing for assigned counsel to indigent adults in neglect, abuse, family offense, custody and certain other Family Court matters).

indigents should be compensated sufficiently to permit them to devote the time, care and patience to the preparation and disposition of the case which are necessary to meaningful exercise of the right to counsel."¹⁶ Sadly, the statutorily set hourly rates of \$40 in court and \$25 outside the courtroom have not been updated since 1986, despite the bench and bar's voices of concern about the impact of rates caught in this time-warp.

This rate has been raised only one other time - to \$25 and \$15 in 1977. New York also is out of step with the actions of other areas. In 1992, 17 jurisdictions paid less than New York State for courtroom work and 8 paid less for out of court work.¹⁷ Today, only one state has a lower compensation level than that of New York.¹⁸ Higher rates also are provided by the federal government and in New York State for outside counsel retained to represent state and local government in civil matters¹⁹ and for court-appointed psychiatrists and non-lawyer professionals.²⁰

In a 1999 report,²¹ the Court System reported that while caseloads increase, compensation does not generally cover overhead; the number of attorneys taking assignments under 18-B has dropped significantly²² and the experience level of 18-B attorneys also has declined. Comparable data was seen in Family Court. Citing the 18-B attorneys as essential in New York for meeting the constitutional and statutory mandate, the Court System found "major disruption and delay" because of the decrease in participation.²³ Litigation is pending in state and federal courts contending that the present compensation levels deny meaningful counsel required by the state and federal constitutions.²⁴

¹⁶ Report of the Association Committee on Penal Law and Criminal Procedure, No. 48 at 2 (1965).

¹⁷ *Indigent Services*, The Spangenberg Group, (October 1992 draft), Appendix A.

¹⁸ *Assigned Counsel Compensation in New York: A Growing Crisis*, report of the Unified Court System (January 2000) at 6. "... only New Jersey, which compensates at an hourly rate of \$30 for in-court work and \$25 for out-of-court work, pays less than New York. Unlike New York, however, New Jersey has an extensive statewide public defender office and relies on assigned counsel to handle only a small portion (no more than 10 percent) of its indigent criminal cases." See also, Spangenberg Group, *Rates of Compensation Paid to Court Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview* (November 1999).

¹⁹ Under Public Officers Law § 17.

²⁰ Administrative Order of the Chief Administrator of the Courts (February 6, 1992) pursuant to Judiciary Law § 35 and County Law § 722-c adopting the following guidelines: psychiatrist - \$125; certified psychologist - \$90; physician - \$200; certified social worker - \$45; licensed investigator - \$32.

²¹ Assigned Counsel Compensation Report, *supra* note 18 at 8-9.

²² Assigned Counsel Compensation Report, *supra* note 18 at 9-13. For example, the 18-B panel memberships in New York City and the Bronx declined 60 percent in 1989-99; meanwhile, criminal filings, increased more than 15 percent in New York City between 1989 and 1998. Similarly, 18-B attorneys in Erie County dropped by 33 percent while the increase in filings exceeded 24 percent.

²³ Action of the Association House of Delegates, April 12, 1997.

²⁴ *Liotti v. The State of New York, Nassau County and the Bar Association of Nassau County, Inc.* (January 18, 2000); *New York County Lawyers' Association v. Pataki* (February 18, 2000).

By Association House of Delegates action, at meetings with lawmakers and in public presentations, the Association has decried these out-of-date rates. For example, in 1997 the House of Delegates favored basing the compensation on the level of the charge and eliminating compensation caps and the distinction between work inside and outside of the courtroom. Recognizing the fiscal burdens shouldered by local governments, the Association position calls for the state to assume the cost of the increase or full cost, so as to relieve local governments. Comparable adjustments were urged for law guardians.²⁵

As the new legislative session approaches, we recommend that the Association reaffirm its previously stated position to this effect. In so doing, the Special Committee urges the Association to continue advocacy for regularized and sufficient funding, utilizing its position as a non-political entity to help depoliticize this issue. In furthering this effort, we recommend that the Association request that the various law-related entities, including the courts, the District Attorneys' Association and the Attorney General's office, continue to speak out for legal services for the indigent and the importance of having all parties represented by counsel to ensure justice and public confidence in the legal system. Where appropriate, joint meetings with lawmakers and public education appearances should be pursued to demonstrate these mutually held views.

We applaud the statements of the District Attorneys' Association favoring collaborative work with the defense community on initiatives such as obtaining increased assigned counsel. In discussing issues for the year ahead, the President of that association, Robert M. Carney, recently advised, "We depend upon an active, experienced and professional defense bar."²⁶

More than half of the state's 62 counties have public defender programs, the majority of which provide for the attorneys as part-time positions.²⁷ The public defender administers the assigned counsel program in a number of these counties. We endorse the additional recommendation of the State Committee for increased funding for public defenders' offices and the contention that public defender funding should be more proportionate to that allotted to prosecutors' offices.

Over the years, the Association has stressed the need to ensure that funding for prosecution and defense programs are balanced if justice is to be achieved and to be perceived as even handed. Concern has been expressed when state budgets are proposed that have eliminated or substantially reduced funding, for example, for defense support services. Local offices, in particular those in sparsely populated communities, should be able to call on such services. We recommend that the Association continue to speak out when such cuts are made in defense services.

²⁵ Family Court Act § 249 (requiring appointment of a law guardian for minors in Family Court abuse, neglect, delinquency and other matters). These attorney costs are covered by the state through the Court System budget. *See*, § 245(c).

²⁶ John Caher, "Schenectady District Attorney Takes Helm of Prosecutor Group," *New York Law Journal* (July 31, 2000) at 2.

²⁷ "New York Indigent Defense Structure," New York State Defenders Association.

Advocacy for the assigned counsel and public defender programs requires a multi-faceted approach, including the following actions:

- ✓ Further meetings with lawmakers to secure legislation to provide needed funding and resources.
- ✓ Ongoing education of the public and discussions with local government officials and community and civic group leaders to increase awareness of the importance of having a defense mechanism for the indigent equipped with the resources that places it on an equal footing with that of the prosecutor's office.
- ✓ Additional bar association committees and programs that provide opportunities for those with experience in prosecution and defense to share perspectives, advance their professional development on substantive law and procedure, and work cooperatively to devise improvements in the justice system. The joint prosecution/defense meetings with legislators conducted through the Association Criminal Justice Section and the public/private partnership training conference of the Association Committee on Legal Aid are excellent models of collaboration.
- ✓ Work with law schools to encourage and ensure that public service is a viable option for those entering the profession, that the curriculum and clinical programs encompass these skills, and that opportunities are available for attorneys in prosecution and defense to serve as speakers in the classroom and student meetings, adjunct faculty, clinical advisers, and mentors.

In citing the need for prosecution and defense to work together to ensure that all elements of the justice system are strong and have the necessary resources, Attorney General Janet Reno observed, "When the conviction of a defendant is challenged on the basis of inadequate representation, the very legitimacy of the conviction itself is called into question. Our criminal justice system is interdependent: if one leg of the system is weaker than the others, the whole system will ultimately falter."²⁸

Civil Legal Services for the Indigent

The Special Committee wholeheartedly supports the recommendations of the State Committee to:

- a) Recognize that legal services programs have been historically underfunded and that a plan needs to be developed based on demographics and areas of need that ensures stable and adequate funding for civil, as well as criminal, legal services.
- b) Create a permanent fund for civil legal services.

²⁸ "Six Building Blocks for Indigent Defense," remarks presented at National Symposium on Indigent Defense in Washington, DC (February 25, 1999).

The civil legal services programs throughout New York State provide representation to those who cannot afford it on legal problems involving fundamental issues of housing, health, family, unemployment, disabilities, and elder law, aiding New Yorkers of all ages. In addition to ensuring representation, we note the important role of counsel in helping to resolve matters before they reach the litigation stage. The programs benefit both the individual and community, providing a key element in maintaining the public's confidence that equal justice is more than a concept.

The Association has consistently supported provision of civil legal services programs with stable and adequate funding, pressing this issue in meetings with lawmakers and others. It has forged legal services/private bar partnerships and cooperative efforts with local bars, law schools and others in pursuing these objectives.

The need for a stable source of funding is clear. When programs are left in doubt from year to year as to whether appropriations will be forthcoming, staff are unable to maintain consistent service or plan ahead; they must devote time and effort to pressing for funding - time which could be better spent in delivering legal assistance. These actions diminish public confidence in the legal system's ability to effect justice for all and create the impression that government does not consider legal services to be a vital element. The veto of funds for legal services in one year's state budget has forced programs to reduce staff and find ways to keep their doors open and not leave clients adrift. While money is restored the next year, the impact of the previous cuts has caused programs to lose ground. The cuts never really heal.

Innovative proposals have been made identifying possible sources of funding. In 1998, for example, the Association House of Delegates supported a proposal of the Chief Judge's Legal Services Project²⁹ for legislation to establish an Access to Justice Fund to provide a regular funding mechanism earmarked for civil legal services by making changes in the Abandoned Property Law.

We do not, however, agree with the view of the Legal Services Project and the State Committee's suggestions that the revenues could be derived, as a last resort, from discrete increases in law-related fees. The Association has opposed further increases in court filing or attorney fees to fund legal services or other programs. Court filing fees are among the highest in the various states.³⁰ Further increases could create a practical economic hurdle; particularly for the individual or small business, in accessing the justice system and in the decision to pursue legal matters. Increasing these fees also would be unfair since provision of legal services to those in need is a societal concern, not a responsibility that should be funded solely by those who utilize the courts to resolve matters.

The bar must persist in its legislative advocacy for sufficient resources, coupled with education. We urge the Association to reaffirm its positions, continue discussions with lawmakers, and expand its education of the public and civic and business entities to

²⁹ *Funding Civil Legal Services for the Poor: Report to the Chief Judge, Legal Services Project* (May 1998).

³⁰ *Civil Filing and Answer Fees in State Courts*, report of National Center for State Courts (October 24, 1995).

strengthen the number and diversity of voices speaking on behalf of legal counsel for those in need and to provide opportunities for those diverse groups to advocate together in meetings and public statements.

Pro Bono Service

The legal profession can be proud of its extensive volunteerism. According to the most recent Court System survey in 1997, New York attorneys donated approximately 2 million hours of *pro bono* legal services, averaging 42 hours per attorney.³¹

The recommendation of the State Committee to encourage increased *pro bono* activities is in accord with the Association's position to promote and facilitate voluntary legal services for those in need.

Following a comprehensive report in 1989, the Association House of Delegates called for increased voluntary legal services to the indigent, rather than mandating such service. As part of the report, the Association presented a plan to increase *pro bono* activity by broadening opportunities, reducing barriers to attorney participation in such programs, developing additional projects in various fields of law and expanding training and resources. The plan called for cooperative efforts of bar associations, the courts, public and private programs, law schools, and others. To assist, the Association established a President's Committee on Access to Justice, a staff department devoted to facilitating legal services, and a grassroots legal services/private bar network to work together to seek sufficient resources for legal services programs, exchange information, and promote complementary voluntary service.

The State Committee parallels the views of the Association that *pro bono* service is valuable but should not be the primary means of representation for the indigent; adequately funded legal services programs, instead, should be the main source.³² It should be noted that many of the legal services programs have developed private bar *pro bono* programs to work with the legal services offices; training and backup support through legal services programs have provided opportunities for more attorneys to volunteer. Cuts in government-funded legal services programs impact on these *pro bono* initiatives.

A further suggestion of the State Committee, to enhance the organized efforts of bar associations and law schools in soliciting and matching legal services volunteers, also merits continued attention. Through the Association Committee on Legal Aid's Legal Assistance Partnership Conference and through the New York State Conference of Bar Leaders, bar leaders and legal services providers have shared information on effective *pro bono* development and recruitment procedures. We encourage an ongoing exchange of best practices by these and other entities. In contemplating means of enhancing administration, however, we should keep in mind the observation of the Association's

³¹ "Survey Detailing *Pro Bono* Activity of New York Attorneys Released," Unified Court System press release (March 4, 1999).

³² State Committee Report at 13.

1989 resolution that locally developed programs tailored to area needs prompt the strongest volunteer efforts. This flexibility should be maintained in program development.

The Court System *pro bono* survey found that the average number of *pro bono* hours declined from 43.5 to 41.9 since 1992. Some connection could be drawn with the heightened competition and demands within the profession in recent years in firms large, mid-size and small.

A much-discussed large firm survey reported that while many offices experienced a banner year financially in 1999, *pro bono* service by their attorneys declined.³³ In a seven-year comparison, the average 56 hours of *pro bono* dropped to 36, according to the survey. Of 28 New York firms profiled, the average *pro bono* hours per lawyer in a firm ranged from 6.3 to 83.2 and the percentage of lawyers exceeding 20 hours of volunteer service varied from 9.5 to 59.6. Burgeoning caseloads, escalating pressures to produce billable hours and increased focus on the bottom line are among the factors identified as distracting attention of firm management and attorneys away from *pro bono* opportunities. This is cause for concern and for additional effort on the part of individual attorneys, firm management, and bar associations.

To maintain perspective, we should not lose sight of the sunlight among these clouds. Attorneys in these New York-based firms devoted more than 564,000 hours to *pro bono* work last year. These rays of sunshine also can aid in turning around the low levels of *pro bono* at some firms by providing model policies and procedures that enable them to handle the workload growth without diminishing commitment to public service. The Association's Commercial and Federal Litigation Section has produced a resource, helpful to both attorneys and firm management, that analyzes *pro bono* externships and fellowship programs, cites the benefits of *pro bono* initiatives, and encourages law firms and corporate law departments to consider establishing such programs.³⁴ Among other firms' approaches are collaborations with legal services offices and corporate clients; establishment of centralized *pro bono* programs and coordinators for assignments and training; inclusion of *pro bono* to some extent in the goals for amount of hours worked; and participation of partners in *pro bono* cases who, in turn, involve the associates who work with them.

These firms deserve to be spotlighted and applauded for their efforts. It was heartening to read news accounts of some of these programs in conjunction with reporting about the above-referenced survey.³⁵ The Association's Annual President's Awards include

³³ Greg Winter, "Legal Firms Cutting Back on Free Services for Poor," *The New York Times* (August 17, 2000) describing a survey conducted by the *American Lawyer*.

³⁴ *Pro Bono Innovations: A Report on Associate Externships and Fellowships*, Association Commercial and Federal Litigation Section Committee on *Pro Bono* and Public Interest. Approved by the Section in November 1999.

³⁵ "In Focus: *Pro Bono*," *The National Law Journal* (August 28, 2000). Eric Adler, "Law Grads Stay Loyal While Flexing *Pro Bono* Wings" at C18. Sean Delany, "Biz Law Is Future of *Pro Bono* Growth" at C18. Maria Shim, "Trickle-down Theory Not Hitting *Pro Bono*" at C19.

commendation of small/mid-size and large law firms for their exemplary *pro bono* programs. We recommend additional publicity of firms' *pro bono* initiatives statewide and additional recognition locally.

Firms increasingly utilize workplace resources to devise procedures aimed at balancing professional and personal responsibilities and enhancing diversity. Our Association has, for example, prepared sample policies on alternative work arrangements. We suggest the development of such resources to assist firms of various sizes to establish *pro bono* programs and identify effective practices used by other firms. Additionally, we recommend that this topic be included in law office management seminars to underscore that *pro bono* opportunities should be an integral part of a law firm culture and to emphasize the importance of firms encouraging and assisting attorneys in performing volunteer activities. Law office policies that encourage *pro bono* service also can aid in attorney recruitment and retention.

The Association, in the past, has worked with government agencies to seek their encouragement of *pro bono* service among their staff attorneys, development of guidelines for volunteer service that do not conflict with their staff responsibilities, and identification of such opportunities. For example, in 1998, the Attorney General distributed a memorandum to Department of Law attorneys, encouraging volunteer service and appointed a committee to work with the Association to identify projects appropriate for their involvement.

As in private practice, *pro bono* efforts are strengthened when an office makes a formal commitment to encourage voluntary service and institutionalizes this pronouncement through guidelines and programs. In June 2000, Ohio joined approximately a dozen states in formulating a *pro bono* policy for attorneys employed by the state.³⁶ Ohio's action by executive order is one model; establishment of procedures tailored to particular agencies is among other possibilities. We encourage renewed outreach to government officials to consider an appropriate approach in New York State government for the development of public sector *pro bono* guidelines and opportunities. The resulting procedures should be well publicized among government attorneys.

Similar initiatives - recognizing exemplary efforts, encouraging development of workplace policies that promote volunteer service, and discussion in office management educational programs and materials - should be advanced with respect to corporate law departments.

As a further step, we urge that judges encourage *pro bono* service in their presentations at admission ceremonies. We also recommend that the courts, as well as firms, consider ways to ameliorate scheduling difficulties that lawyers may encounter in seeking to perform *pro bono* service.

Many newer members of the profession (*i.e.*, those who have been practicing law for five years or less) who are working in large firms are drawn to *pro bono* for the possibilities

³⁶ *Pro Bono* Legal Services Policy (June 7, 2000) and Executive Order of Ohio Governor Bob Taft (June 12, 2000).

of increased responsibility, experience, client contact and the human interest of the cases. However, these lawyers have the least amount of control over their schedules and their time. To the extent that judges and the Court System, in general, can recognize and "work with" this reality, *pro bono* participation can be encouraged and increased.

For example, in some courts, judges do not provide a "time certain" for a case. We have been told of such occasions when, on Family Court dates, litigants and their attorneys arrived at the courthouse early in the morning but were faced with the possibility of waiting the entire day for their case to be called. The prospect of being unavailable to partners and senior associates for a full business day each time one of the *pro bono* clients needs to make a brief appearance before a judge can be too great an impediment to taking *pro bono* cases for such attorneys. We suggest, as possible approaches to reduce this hurdle, requesting judges to give "times certain" whenever possible or providing expanded, evening or weekend hours for court appearances.

A recent modification to court rules will aid in encouraging volunteer service. We applaud the Appellate Divisions' amendment to court rules to allow experienced attorneys to earn a portion of their MCLE through *pro bono* service.³⁷ These provisions will aid in promoting volunteer opportunities and involvement by attorneys and law office procedures to facilitate *pro bono* service. The Association Committee on Legal Aid, Special Committee to Review MCLE Rules, and President's Committee on Access to Justice jointly submitted suggestions to the Court System regarding the development of regulations for this rule.

***Pro Se* Assistance**

The State Committee wisely states that "the creation of *pro se* positions should not be viewed as a preferred or reliable method of providing equal access to justice."³⁸ Yet, given the volume of cases, the State Committee suggests establishing *pro se* assistants who would be trained to answer procedural questions but not provide legal advice.

We recommend placing the emphasis on informing people about when and how an attorney can help, assisting people in obtaining counsel, and developing panels for persons with modest means.

Services for Persons of Modest Means

Five years ago, in a report endorsed by the Association House of Delegates, the Association's *Ad Hoc* Committee on Non-Lawyer Practice observed that while many decried a dearth of legal services for persons of modest means, new admittees and other members of the bar had difficulty securing positions in the law or maintaining viable practices. The *Ad Hoc* Committee urged experimentation to match underutilized lawyers

³⁷ 22 NYCRR § 1500.22, providing that no more than six hours of MCLE credit may be earned through *pro bono* service in a two-year reporting period and no more than one credit hour awarded for every six hours of such legal work.

³⁸ State Committee Report at 13.

with persons in these circumstances.³⁹ At that time, a number of local bars offered modest means panels, with screening, in conjunction with their referral services.

The creation of a modest means panel also was among the recommendations of the Association's Commission on Providing Access to Legal Services for Middle-Income Consumers, in a report endorsed by the House of Delegates. In reaching and serving persons who can pay something but not usual rates, the Commission noted that modest means "programs are intended to supplement, not compete with, professional work of lawyers in private practice."⁴⁰

In Monroe County, various legal services programs and the local bar worked together to create a Community Legal Information and Referral Program which directs callers to services appropriate to their situation, including *pro bono* or legal services attorneys for indigent persons or lawyer referral panel attorneys for those of modest means. This one calling point eases the confusion for the caller and provides time-saving screening for the attorneys.

Providing the means of making counsel available, through programs with modest means panels, sliding fee scales and other approaches, should be the subject of further development by bar associations, legal services programs, law offices, and collaborations of these entities. We also encourage development of more services that provide one source for those seeking help with legal problems, including *pro bono* service for low-income persons and lawyer referral or other assistance for those with modest income.

Another option meriting further development and publicity is group and prepaid legal services. Similar to health plans in concept and of particular interest to middle-income consumers, these plans are offered through some employee benefit packages by collective bargaining or as an optional payroll deduction benefit. Promoting prevention of legal problems where possible and focusing on more frequent type of legal matters, plans generally provide for initial consultations, with further legal services available if needed. Nationally, more than 100 million have such coverage.

Prepaid plans, which have seen growth in the Midwest and South, have been hindered in New York by the temporary nature of legislation that allowed coverage in experimental periods. Prepaid plans received a boost in New York with the enactment of legislation effective in 1999 that expanded the kinds of legal services and provided for a choice of full coverage through the plan's attorney panel or retention of other attorneys with beneficiaries assuming the additional cost.⁴¹ Prepaid plans afford solo and small practitioners additional opportunities to serve this population. The Association has endorsed legislation and other efforts to advance the availability of prepaid plans for the

³⁹ *Final Report*, Association *Ad Hoc* Committee on Non-Lawyer Practice (May 1995) at 41.

⁴⁰ *Final Report and Recommendations to the House of Delegates*, Association Commission on Providing Access to Legal Services for Middle-Income Consumers (June 1996) at 13.

⁴¹ Laws of 1998, ch. 65, amending Insurance Law §§ 1113, 1116 and 2103.

past two decades. We urge that these initiatives continue, as well as actions to increase the awareness of the public, labor organizations and others about this approach.

We also cite the value of the Court System's community dispute resolution centers in assisting persons of modest means. Initiated in 1981 and long supported by the Association, the centers handle referrals from courts of minor disputes, such as interpersonal problems arising between neighbors and families. These forums have the added benefit of helping to ease case congestion and curb delay.

These various approaches would assist in promoting access to legal counsel and, as a result, build confidence in the justice system among this population of New Yorkers.

Family Law Matters

The importance of assuring access to legal counsel is clearly seen in matrimonial matters where a lack of financial resources can place the non-moneyed spouse at a disadvantage in negotiations and resolution of the matter. The imbalance created from financial inability to obtain legal assistance fosters a negative perception of the legal system and diminishes confidence in the process for the non-moneyed spouse and the public.

The State Committee recommends making judges more aware of the inequitable bargaining position that can occur in matrimonial cases and encourages temporary awards of attorney fees and maintenance where appropriate.

Domestic Relations Law 73 currently allows the court to direct the moneyed spouse to provide for counsel fees, expert fees and other reasonable litigation expenses of the other spouse. In a study of procedures in matrimonial matters in 1993, a committee of the Chief Judge heard testimony that a number of courts denied or deferred such awards until trial.⁴² As a result, recommendations were made in that study to provide for fees and expenses in appropriate cases and awards at an earlier stage in the matter. To encourage this action, the Court Rules were amended in 1994 to require courts to specify in writing the factors considered and reasons in decisions whether to award counsel, appraisal or accounting fees.⁴³ That was an important step but legislation also is needed.

The Association has been on record in support of legislation to require the court to grant interim counsel fees in appropriate situations and where such is denied or deferred, direct that the court provide the reasons in writing.⁴⁴ OCA also has proposed legislation to establish a rebuttable presumption for interim counsel fees in matrimonial matters.

⁴² Chief Judge's Committee to Examine Lawyer Conduct in Matrimonial Actions (May 1993).

⁴³ 22 NYCRR § 202.16(k)(7).

⁴⁴ Position of the Association House of Delegates taken January 28, 1994. Also recommended in *Report to the House of Delegates*, Association Task Force on Family Law (August 19, 1996) at 58-60; adopted by the House of Delegates on April 12, 1997.

We urge the Association to reaffirm its position and pursue action in meetings with legislators. This also is an appropriate measure for collaborative advocacy with other organizations within and outside the legal profession.

With the increased use of alternatives for dispute resolution (ADR), we note another position of the Association's House of Delegates to facilitate access to counsel and avoid imbalances in power in matrimonial cases. This measure seeks safeguards in court-annexed ADR to ensure that the programs are voluntary, the parties are individually represented and the neutrals are sufficiently trained.⁴⁵

Inequitable bargaining positions in cases that are not strictly "matrimonial" matters also should be addressed. For example, a man and woman who have had children together without having been legally married may face litigation with respect to child support, custody and visitation to the same extent as a couple in the process of dissolving a legal marriage. We are informed of situations of non-custodial parents faced with an action for child support who responded by filing an action for custody or visitation. Provision for counsel is equally important in matters of this nature, in both court appearances and ADR programs, to enable parties to be on an equal footing.

2. Need for a Comprehensible User-Friendly Court System, Addressing Delays in Justice

The Special Committee endorses the recommendations of the State Committee with respect to promoting a comprehensible user-friendly Court System.⁴⁶ We agree that efforts to ensure that procedures are understandable and consistently applied and that directions are clearly stated, that the Court System is not fraught with unnecessary delays and costs, and that the court structure is accessible and navigable will aid in promoting dignity and respect and building confidence in the justice system. In our view, particular recommendations in the State Committee's report should receive priority and additional measures can be taken to help

⁴⁵ Adopted by the Association House of Delegates on April 12, 1997.

⁴⁶ State Committee Report, Section B((3)(a), User-Friendly, Comprehensible Court System at 15-19

- i. Restructure the present Court System to consist of two branches: one with local or limited jurisdiction and one with statewide jurisdiction.
- ii. Develop videotapes and user-friendly educational materials to explain legal terminology, court etiquette/protocol, the procedures of each court, and restraints on judicial commentary.
- iii. Develop a brochure for users of the courts.
- iv. Install better signs in courthouses.
- v. Expand children's centers in courthouses.
- vi. Create an ombudsman position, possibly through the use of volunteers, to help people who have difficulty reading English understand instructions and complete forms and to navigate the courthouse.
- vii. Provide more translators in courthouses.
- viii. Provide procedural handbooks and training for all county clerk office personnel and court clerks who respond to inquiries from litigants to ensure that consistent and appropriate information is given.
- ix. Provide in a public place (*e.g.*, shopping mall or library) multilingual kiosks for paying fines, obtaining information regarding case status and directions to the courthouse, and curbside drop boxes for paying fines or delivering papers, similar to library depository boxes.
- x. To assist the courts in making appropriate referrals, make available to judges and other court personnel information regarding community resources.
- xi. Develop community justice centers, which reflect the culture and norms of the community they serve, for handling minor criminal matters.

reach the overall goal of making the Court System more user-friendly. These specific steps are set out below.

Priority: Court Restructuring

- ✓ Restructure the Court System from the present nine tiers of trial-level courts to two branches - one with local or limited jurisdiction and one with statewide jurisdiction.

The State Committee has made its highest priority for a more user-friendly, comprehensible Court System to be the restructure and unification of the various courts in New York State to two branches, one with local or limited jurisdiction and one with statewide jurisdiction. The Special Committee strongly supports that goal. The Association has, together with the State Committee, recently publicly supported Governor Pataki, Chief Judge Kaye and others in advocating such unification. This is consistent with 20 years of support by the Association of court unification, most recently evidenced by the April 1998 action by the House of Delegates endorsing a state constitutional amendment providing for unification.

Unification would provide more efficient and less confusing access to justice than the current system that requires that certain matters be litigated in specialized courts or courts of limited jurisdiction while other aspects of the same dispute may be litigated in either the Supreme Court or yet another specialized court. This cumbersome procedure can be particularly oppressive for persons of limited means who nonetheless have the most urgent need for justice, such as in connection with family disputes which now may be litigated in both Family Court and Supreme Court. Even though the Legislature did not act on the unification bills pending before it in the session which ended in June 2000, we believe the goal of unification remains critical and that new legislation should be introduced at the earliest time permitted by law.

a. More User-Friendly Courts

Achieving the State Committee's goal of having a more user-friendly Court System requires that court utilization be examined not only from the vantage point of the regular users of the courts - the lawyers, judges, court personnel and others who frequent the courts on an almost daily basis - but also from the vantage points of jurors, parties, witnesses and the public. Without question, providing mechanisms that familiarize the less frequent participants in the judicial process with the courts and their respective roles in the process is essential to increasing the public understanding and respect for the judicial process.

Priorities

Among measures to promote user-friendly courts, we recommend giving priority to the following:

- ✓ Development of court-specific brochures, multilingual videotapes and other written educational material for court users, possibly in a collaboration of bench and bar, to explain legal terminology, court procedures, and the role of the judge, with

distribution in the courts and other locations, giving priority to preparing these materials for those courts serving individuals of limited means and/or who often appear without counsel.

- ✓ Provision of more Children's Centers in the courts, including but not limited to Family Court, particularly in facilities used most often by persons of limited means and/or who more frequently appear without representation.
- ✓ Expansion and modification of the OCA website/database to allow attorneys, judges and the public to access court schedules and other information on line at no cost.

The development of an educational video for trial jurors approximately 20 years ago is an example of a cooperative bench/bar project. This film, utilized as an orientation for prospective jurors and as an educational resource for other adults and students across the state, was produced by the Association and Court System. A video is currently being developed specifically for grand jurors, largely as a result of the recommendations contained in the Report of the Chief Judge's Grand Jury Project.⁴⁷ [See additional discussion in segment (3)(b) at 31 of this report regarding the jury system.]

In a similar vein, the Special Committee endorses the State Committee's proposal to develop multilingual videotapes and other written educational material to explain legal terminology, court etiquette and protocol, court procedures and the role of the judge. These materials should be court specific, presented in a clear non-technical manner and made available in a variety of places in addition to courthouses. Such projects also could be undertaken and distributed by collaboration of bench and bar.⁴⁸ [For further discussion of public education, note section (5) at 56-61 of this report concerning public understanding and media portrayal.]

Priority should be given to developing these materials for those courts in which individuals, most frequently of limited means, often appear without counsel such as the landlord and tenant courts, Small Claims Court and the Family Court. It is for these courts, in particular, that the creation of Children's Centers should be a priority as well. (However we do not limit our support for the creation of Children's Centers to these courts.)

While we also support the recommendation that forms be developed for a variety of courts in which litigants frequently appear without counsel, this recommendation - along with the State Committee's proposal to create *pro se* positions in courts to assist people who are unrepresented - cannot and must not be viewed as substitutes for creating

⁴⁷ Report to Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman (March 31, 1999), Vol. 1 at 35.

⁴⁸ As an example, we note the recent cooperative development and publication of the booklet, "The Family Court and You," by the Association Committee on Women in the Law with the Court System, the Association Committee on Children and the Law, the Women's Bar Association of the State of New York, and The Fund for Modern Courts (April 1998).

permanent and adequate funding for civil legal services. [See additional discussion above at 18 in segment (1)(b) of this report pertaining to access to the justice system.]

Fundamental to ensuring that the courts are more user-friendly is the recognition that New York has a multilingual population. The Special Committee endorses the recommendation of the State Committee that more trained translators with language skills in a greater variety of languages are needed in the courthouses in this state.

The development of handbooks and community resource materials to assist court personnel and the judiciary in aiding litigants and the public with problems that cannot be fully resolved in the courtroom are recommendations which we support. We believe that bar associations and other groups also should be asked to participate in the development of these handbooks and resource materials.

Access to the Database

The Special Committee supports the expansion and modification of the OCA web site/database to allow attorneys, judges and the public in general to access court schedules and other information on line at no cost.

By way of background, in 1996 OCA exclusively licensed its data to Data Base Technologies, Inc. The data at that time and at present includes civil cases in the First, Second, Eighth, Ninth, Eleventh and Twelfth judicial districts (75 percent of all filings in the state). The database also includes New York City judgment docket and lien books for the Bronx, Kings, New York, Queens and Richmond counties as well as the statewide attorney registry. Access to the data is difficult (a special program, called PC Anywhere, is needed to utilize it) and can be expensive (currently \$1.75 per minute). It does not allow for a graphical interface (you can't use a mouse to navigate the screen) and the system is slow because it is formatted in ASCII, an ancient format.

OCA has recently added a new service to its website to allow attorneys and the public in the same jurisdictions the opportunity to check for case scheduling information and limited case history information. This is a positive step, but more must be done to expand to all counties and courts in the state and to include information beyond scheduling.

Expansion of the website/database and modification to make it user-friendly will help achieve a number of goals set by the State Committee. The website/database would be essential to the State Committee's recommendation to create public kiosks to obtain information about case status. Similar information booths in each courthouse with access to the data also would assist the public in obtaining the location and time of their court proceeding. The website/database also could be utilized to promote educational materials developed pursuant to recommendations of the State Committee, as well as for the recommended compilation and dissemination of community resource information.

A comprehensive database available to the public on line also would promote public use and understanding of the legal system. The public could search for judgments against contractors before hiring one to do work on their homes. Clients concerned about delays

would have access to court calendar data for information about case status. *Pro se* litigants would be able to access court calendars on line and would not need to rely upon mailed notices or legal publications for such information. Judges could use the system for information about the availability of counsel. The possible uses are virtually endless and the benefits would include helping to demystify the system to the public.

The Special Committee strongly supports the adoption of a plan to modernize the database and provide user-friendly public access at no charge on the internet. However, privacy issues concerning Family Court matters and criminal matters would have to be appropriately addressed.

b. Addressing Delays in Justice

Expedition of Discovery

Expressing a concern for delays in justice and the impact of such delays on the public's trust and confidence in the legal system, the State Committee recommends several revisions to Article 31 of the Civil Practice Law and Rules (CPLR) and other discovery practices to reduce delay. Specific proposals, earlier incorporated in the Court System's Comprehensive Civil Justice Program, include regulation of deposition practice by amendment of CPLR Rules 3113 and 3115; simplified procedures for the production, discovery and use of non-party business records by amendments to CPLR Sections 2305(b), 3120, 3122 and a new 3122-a; and the amendment of CPLR Section 5001 to provide for pre-judgment interest on personal injury awards. Alternative dates are proposed for the time from which interest will run.

These are laudatory proposals that, with the exception of the measures to regulate deposition practice,⁴⁹ have previously received Association endorsement. In many instances, these revisions also would reduce cost and inconvenience to both parties and witnesses, thus enhancing confidence in the legal system. Significantly, legislation designed to implement these proposals is pending. The Special Committee supports these proposals.

Amendment of CPLR Rules 3113 and 3115 will assist in preventing several dilatory and disruptive practices that are often encountered during the conduct of examinations before trial. They include the so-called speaking objections which interfere with the smooth flow of the deposition and often signal the witness on how a question should be answered, the dilatory tactic of deliberately interrupting the conduct of a deposition, and the practice of directing a witness not to answer a question. Reasonable and clear limits on the practice of directing a witness not to answer are codified as is the mechanism for counsel to make such a direction.

⁴⁹ The deposition practice proposals were endorsed by the Association Special Committee to Review the Court System's Comprehensive Civil Justice System (May 1999) at 12. That review committee also urged availability of judges by telephone to rule on motions, as a means of reducing delays.

The proposed amendments to CPLR Sections 2305(b), 3120 and 3122, and the enactment of a new CPLR Section 3122-a will simplify the methods for obtaining discovery of documents, particularly routine business records, from non-party witnesses, and procuring their admission into evidence by a signed, sworn certification that will in many instances obviate the need for the non-party's representative to actually appear in court. These proposals, and the pending legislation, also permit a non-party to be reimbursed for reasonable production expenses.

Under current practice, the award of prejudgment interest is limited to specific actions such as wrongful death, breach of contract, and recovery of property damages, but is not recoverable in actions based on personal injury. We share the opinion of the State Committee that awarding prejudgment interest in personal injury actions should serve to expedite the settlement of the case and hence reduce the costs of litigation to the client.

To balance the pending amendment of CPLR Section 5001, a modification is proposed to Rule 3221 "offer to compromise" depriving a claimant of the right to recover costs or interest from the time that a settlement offer is made if the offer is not accepted and the claimant fails to obtain a more favorable judgment.

The Special Committee enthusiastically endorses the recommendation of the State Committee for the increased use of phone conferencing to monitor status and hear arguments of motions. This proposal, growing out of recommendations from the District Task Forces to Reduce Litigation Cost and Delay that were convened in 1996 and 1997, should significantly reduce the time and expense of counsel, particularly in rural, upstate districts, who currently must travel long distances to participate in pre-trial conferences, scheduling conferences and oral argument of motions.

The Special Committee supports the foregoing recommendations for legislative change and for the increased use of phone conferencing.

Achieving Prompt Settlements

One of the clearest ways to encourage public confidence in the Court System is to facilitate the prompt settlement of disputes instead of going through a lengthy and expensive trial. Since most litigation, and particularly commercial litigation, ends in settlement rather than trial, it follows that steps that will encourage early voluntary settlement will enhance the public's perception of the courts. The State Committee recommends, and we endorse, greater use of voluntary mediation and other ADR programs to facilitate such settlements.

The Association is on record favoring expanded availability of voluntary court-annexed and court-referred alternative dispute resolution, as well as development of standards for neutrals and enhanced education of the bench, bar and law students about the use of ADR.⁵⁰

⁵⁰ By action of the Association House of Delegates, June 26, 1999 following presentation of a report and recommendations by the Association Committee on ADR.

Greater involvement by the courts themselves in settlement also may be required. In a forthcoming report on the results of a survey of counsel conducted by the Association Commercial and Federal Litigation Section, an overwhelming 88 percent felt it was a good idea for the court itself to become involved in settlement discussions and a significant number (17 percent) identified the availability of the court to participate actively in settling the matter to be a very important factor in choosing whether to file a case in federal or in state court or in arbitration.

Unlike federal courts in which there are mandatory early scheduling conferences which often provide the opportunity to raise the issue of settlement, judges in the state courts do not become involved in an action until there is a Request for Judicial Intervention, which may not occur until well into the case. Nonetheless, even under the present state system, judges should be urged to involve either themselves or other appropriate court officials in settlement questions as soon as a matter is brought before them. Significantly, 69 percent of the respondents to the Association's Commercial and Federal Litigation Section survey would prefer mandatory settlement conferences.⁵¹

While many practitioners would prefer to have the trial judge directly involved in such discussions, we recognize that many trial judges, particularly in a non-jury case, do not wish to participate in settlement talks because of concern that it may affect their views of the merits of the case. In that event, cases could be referred to another judge or to a judicial hearing officer or other designated court-annexed official to conduct such settlement discussions. We urge that budgets be increased to provide for the designation and, particularly, for the training of such officials. The expense of such a project could well be less than the cost to the court and litigants of having to try disputes which otherwise could have been resolved through an early settlement effort.

Other Issues of Delay

One of the recommendations contained in the State Committee report regarding delays in justice is to increase the number of judges, public defenders, prosecutors, and support staff. The Special Committee agrees that, with the burgeoning caseload (both civil and criminal), judicial vacancies should be filled expeditiously and the creation of additional judgeships should not be subjected to delays based on partisanship.

Beyond this, unquestionably inadequate funding for other participants in the system reduces the personnel and other resources available. As noted in the State Committee Report, the deplorable rates available for assigned/appointed counsel for criminal and certain Family Court matters,⁵² as well as the inadequate funding of many public defender and legal services programs inevitably reduces the number of lawyers available, which contributes to client dissatisfaction and systemic delay. Raising the rates for assigned counsel and the funding levels for defender programs are critical components if we are to

⁵¹ Indeed, more than 75 percent of respondents practicing 20 years or more favored such mandatory conferences. The number dropped to 54.7 percent for those admitted 10 years or less.

⁵² Judiciary Law §35; County Law § 722; and Family Court § 262(c), *supra* note 15.

improve public confidence in the system. [The access to justice section (1)(b) of this report provides further discussion and recommendations at 10-13.]

Additionally, the Special Committee commends the State Committee for proposing expansion of existing innovative attempts, commenced in large measure through the initiatives of the Chief Judge, to address a variety of sociolegal problems that surface in the judicial system but are not susceptible to effective and long-term resolution through traditional mechanisms. These innovations include the development of specialized courts such as: Drug Courts, Community Courts, Domestic Violence Courts, juvenile parts in the adult criminal courts and Teen Courts; and promotion of development of a multi-door court where ADR is one of the options litigants have through the Court System at the earliest stages of their disputes. All of these experimental courts and programs appear initially to be more effective than traditional court procedures but need to be carefully evaluated over the longer term.

3. Jury System Experience; Adequate Funding for Court Facilities

a. Jury System

The jury system, as a keystone in our system of justice, must function effectively and with due dignity for the process and the people involved. Public opinion research shows that this is a critical element in building public confidence. In a national survey, approximately 78 percent of those responding considered the jury process to be the fairest way of determining guilt or innocence and 69 percent identified juries as the most important part of the justice system.⁵³

The OCA and the Association have undertaken initiatives to improve this vital process, including studies and recommendations for change in legislation, rules and procedure. The Chief Judge's Jury Project⁵⁴ examined and issued proposals to enhance the jury experience and to turn around the public's perception that jury service is to be avoided or simply endured. This effort was continued through additional Court System committee reports, legislative proposals and related measures. The Association also has been heavily involved in assessing how the jury system is functioning, proposing improvements that take into consideration local needs in this very diverse state, and undertaking projects to increase public understanding.⁵⁵

⁵³ *Perceptions of the U.S. Justice System*, report of survey commissioned by the American Bar Association (ABA) and conducted by M/A/R/C Research (February 24, 1999) at 6-7.

⁵⁴ *The Jury Project, Report to the Chief Judge of the State of New York* (March 31, 1994).

⁵⁵ See, for example, *Report to the House of Delegates on the Jury Project Committee Report*, Association Ad Hoc Committee on the Jury System (June 25, 1994); *Summary Report of the Ad Hoc Committee on the Jury System* (June 1995); Association House of Delegates resolution on voir dire rules approved on November 4, 1995; *Voir Dire in Civil and Criminal Cases*, the Ad Hoc Committee's survey and recommendations (December 1999), approved by the House of Delegates on April 8, 2000.

The State Committee's proposals pertaining to the jury system⁵⁶ build on this work. The Special Committee supports these recommendations and presents additional proposals for action.

Priorities

We believe that the following recommendations contained in the State Committee Report should be given priority for implementation:

- ✓ Institute *per diem* compensation for town and village justice court jurors.
- ✓ Conduct pilot projects, tailored to address local conditions and needs, to:
 - Make jury summonses more explicit as to terms of service.
 - Increase use of technology, including automated telephone systems and use of electronic mail to obtain information from jurors in advance of service.
 - Provide parking or parking reimbursement where public transportation is not available or feasible.
 - Improve procedures so that jurors receive compensation more quickly.

We also urge the following additional strategies relating to grand juries be incorporated into the initiatives and given priority in implementation in furtherance of promoting public confidence in the legal system:

- ✓ Include grand jurors in relation in the projects noted above to improve the jury notice, secure information in advance of service, and facilitate juror parking and payment.
- ✓ Develop an orientation program specific to grand jurors.
- ✓ Designate the court to have responsibility for administrative functions for the grand jury.

***Per Diem* for Town and Village Justice Court Jurors**

In 1995, legislation was enacted to increase the *per diem* rates for jurors effective in 1997 from \$15 to \$27.50 and in 1998 to the present \$40, unless paid by the employer during

⁵⁶ State Committee Report, Section B(3)(b), Judicial Administration, Jury System Experience at 19-22

- i. Make jury summonses more explicit as to the term of service.
- ii. Institute a *per diem* for Town and Village Justice Court jurors.
- iii. Consider payment of parking allowances to jurors, especially for those jurors who are not paid for their service.
- iv. Increase the use of technology.
- v. Require judges and their staffs to report to the Commissioner of Jurors Office when a trial will not be proceeding on the scheduled date or at the scheduled time so jurors are not brought in unnecessarily.
- vi. Remind judges to be more courteous and attuned to jurors' lives and needs.
- vii. Ask judges to give jurors instructions regarding procedures and their role and conduct prior to the commencement of trial, allow note taking, give a special instruction if there are attorneys or judges on the jury panel, and give jurors a copy of the instructions on the law (charge) to refer to during deliberations.
- viii. Improve the system for payment of jurors so they receive their compensation more quickly.

jury service. This measure was part of the Court System's jury reform initiatives and was fully supported by the Association. This provision, however, does not cover the town and village justice courts because the operation of justice courts is funded by their administering municipalities.

Jurors who serve in local justice courts are often not paid or are paid whatever sum the county or municipality allocates. While in the past these jurors served most frequently in the evenings or on weekends, increasingly they are required to participate during the workday.⁵⁷ We join with the State Committee in urging that they be compensated on the same basis as other jurors.

The State Committee Report did not initially make any recommendations about the source of future funding for compensation of town and village court jurors. OCA, however, has now proposed that these costs be assumed by the State of New York.⁵⁸ The estimated annual cost to the State would be \$2.6 million based on the average number of trials in local justice courts per year. A bill to this effect was introduced during the last legislative session but the bill did not come out of committee by the close of the 2000 session. We support the state assumption of these costs and urge introduction of legislation in the 2001 new session.

As OCA observed in its legislative proposal, "Juror enthusiasm and cooperation are no less important at the Justice Court level than in any other trial court in the system; and, to nurture that enthusiasm and cooperation and, ultimately, public faith in the administration of justice, jurors must fairly and consistently be compensated."⁵⁹

Jury Notice Form, Information in Advance of Service, Parking and Payment

The State Committee makes a number of recommendations regarding juror notification and service including: clarifying jury summonses by providing more information about the expected length of jury service; using e-mail or automated telephone systems to obtain information from jurors in advance of service; providing parking or parking reimbursement for jurors in jurisdictions in which public transportation is not available or feasible; and improving the system for juror payment (both as to frequency and timeliness).

We support the initiation of pilot efforts in connection with each of these proposals. In so doing, local differences must be recognized and accommodated so that procedures meet the practical needs of the people in the particular community. For example, while juror

⁵⁷ This trend stems, in part, from the increased population of towns which now exceeds 8 million. According to census data, only 36 percent of the state population lived in towns in 1960; by 1990, this percentage climbed to encompass almost half the state's population - 47 percent.

⁵⁸ Introduced as S.6919 in the 2000 legislative session, to amend § 521 of the Judiciary Law and §§ 1306 and 2014 of the Unified Justice Court Act to provide for state assumption of juror fees and travel expenses of jurors serving in local justice courts.

⁵⁹ *The Judiciary's 2000 Legislative Agenda* (December 1999) at 23.

parking may be a priority in a suburban or rural jurisdiction or even in portions of some cities, parking for jurors may not be realistic in other heavily congested urban settings.

Grand Jurors

The State Committee Report focuses on improving the jury experience for petit jurors. Specific inclusion of the needs and concern of grand jurors also is recommended. More than 25,000 New Yorkers serve as grand jurors in the course of a year,⁶⁰ for time periods ranging from 2 to 25 days.⁶¹ Given the integral role of the grand jury in criminal justice and the number of citizens involved in this service, it is important to include a review of the grand jury process in considering means of ensuring public confidence in the legal system.

The Association has been active in reviewing and suggesting improvements to enhance the functioning of the grand jury process and increase the understanding of grand jurors. Among the initiatives, a report with recommendations was made by the Association Special Committee on the Grand Jury Project in 1999, including analysis of the proposals of the Chief Judge's Grand Jury Project committee.⁶² The report of the Association's Special Committee on the Grand Jury Project demonstrates that ensuring that the grand jury process functions effectively also will aid in promoting public confidence in the justice system.

We would include grand jurors within the improvements noted above for jury notice, information in advance of service, parking and payment of jurors. Additionally, we support the development of an orientation program specifically for grand jurors, including production of a film on the grand jury. We are pleased to note that OCA has begun work on a script for the film project with the assistance of practitioners including members of the Association. Additionally, we support the development of a handbook to be provided to grand jurors.⁶³

Responsibility for administration of the grand jury needs to be clarified. As the Grand Jury Project observed, "Because there are no clear answers in the law, because in some jurisdictions one agency has room in its budget and another does not, or simply because

⁶⁰ *The Grand Jury Project*, Volume I (March 31, 1999) at 75.

⁶¹ *Id.* at 40.

⁶² *Analysis of the Proposals Presented in the Grand Jury Project*, Association Special Committee on the Grand Jury Project (August 1999).

⁶³ Giving grand jurors a handbook required legislation because of statutory proscriptions. Under the Criminal Procedure Law, § 190.20(5), "After a grand jury has been sworn, the court must deliver or cause to be delivered to each grand juror a printed copy of all the provisions of this article [§ 190], and the court may, in addition, give the grand jurors any oral instructions relating to the proper performance of their duties as it deems necessary or appropriate" and § 190.25(6): "The legal advisors of the grand jury are the court and the district attorney, and the grand jury may not seek or receive legal advice from any other source." A bill to permit written instructions in general was signed by the Governor in October 2000 as Chapter 497. In considering this bill, the Special Committee on the Grand Jury Project supported the legislation but only insofar as it would permit the court to provide a handbook to grand jurors.

the administrative offices of one agency are located closer to the grand jury chamber, each county has determined somewhat differently who will undertake responsibility for various tasks, such as responding to complaints about the physical space in which the grand jurors operate, supplying whatever conveniences and services that can be made available to them and calling jurors who are absent to determine the reason for their absence and their continued availability."⁶⁴ In many areas, the district attorney's office has assumed these functions, largely by default.

We support the Grand Jury Project recommendation that the function of grand jury administration more properly belongs with the court. We note that OCA is currently working with Juror Commissioners and District Attorneys to have the court resume this function throughout the state. This change would relieve prosecutors of these tasks and avoid placing them in what could be an uncomfortable role. In so doing, this would clarify the relationship of the prosecutor, as a legal adviser to the grand jury who has responsibility of submitting evidence⁶⁵ to the grand jury which is charged with hearing, examining this evidence and determining what action should be taken.⁶⁶

b. Court Facilities

Adequate and dignified court facilities are necessary in establishing that the third branch of government is indeed equal and is considered by government to perform vital functions. It also is vital to provide facilities that are clean and safe for the thousands of citizens who come to the courthouse every year and for those who work in the courts.

Over the years, the Association has been active in supporting legislation and related actions to obtain court facilities with sufficient space and resources to meet contemporary demands. Likewise, the Association has rallied behind measures for state assumption of maintenance costs to ensure that regular maintenance and cleaning are performed.⁶⁷

Consistent with these positions, the Special Committee endorses the proposals of the State Committee⁶⁸ for adequate funding to provide and maintain court facilities that promote public respect in the justice system.

⁶⁴ Grand Jury Project, *supra* note 60 at 66.

⁶⁵ Criminal Procedure Law §§ 190.25[6] and 190.55[2].

⁶⁶ CPL §§ 190.05, 190.25[5], and 190.60.

⁶⁷ Including Association House of Delegates support on April 16, 1994 for legislation to provide state funding for Appellate Division facilities to eliminate disparate methods of funding, and Association Executive Committee endorsement on June 24, 1994 of a bill for state assumption of responsibility for cleaning and minor repairs of court facilities.

⁶⁸ State Committee Report, Section B(3)(d), Judicial Administration, Adequate Funding to Assure Court Facilities That Promote Respect, at 30-31

- i. Formulate a budget and a strategic plan, both short term and long term, to develop resources to assure development and maintenance of dignified facilities that promote respect.
- ii. Carefully monitor the cleaning requirements set forth in the Rules of the Chief Judge Section 34.1 and Appendix thereto to provide decent, clean, safe and accessible court facilities.

Priorities

Among the State Committee recommendations, we see the need for prompt action for the following and would expand these initiatives as indicated:

- ✓ Development of budgets and strategic plans to ensure that facilities are adequate and properly maintained, in which we would include the grand jury facilities and town and village justice courts.
- ✓ Careful monitoring of the cleaning and maintenance of court facilities, with, we would suggest, ongoing bar association involvement in reviewing and reporting on the condition of these buildings.
- ✓ Adequate funding to properly equip court facilities with furnishings and technology and encouraging, as a short-term measure, donations of furniture and volunteer "spruce up" efforts.

Strategic Plans

The State Committee proposes that budgets and strategic plans be developed to assure that court facilities are both adequate for their purpose and properly maintained. The Special Committee supports these recommendations but also urges that these initiatives be expanded to include a review of grand jury facilities and needs plus a survey of conditions in town and village justice courts.

Maintenance

An ongoing oversight role for local bar associations should be encouraged by the Association. Local review benefits from the regular presence of attorneys for the community in the courthouses and their familiarity with the facilities, conditions and needs. This provides a "hands on" approach and involvement in obtaining improvements.⁶⁹ The local bar associations should work directly with committees that OCA contemplates establishing in each district to monitor cleanliness, maintenance and user friendliness of the court facilities. At the same time there is an important role for the Association to play in coordinating state collection of data and concerns regarding court

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- iii. Increase the number of magnetometers and the size of courthouse foyers, where possible, so people are not left waiting to gain entry to the courthouse.
 - iv. Establish areas where attorneys and clients can speak privately.
 - v. Establish separate waiting areas for victims and alleged perpetrators and their families.
 - vi. Make available food and beverages either through vending machines or a courthouse cafeteria.
 - vii. Seek information through questionnaires from court users and court personnel regarding the adequacies and deficiencies of court facilities and their ideas for improvement.
 - viii. Initiate community projects to "spruce up" the courthouse or its grounds.

⁶⁹ We cite, for example, *Report on the Worst Conditions in Each State Courthouse in New York County*, prepared by Special Committee on State Court Facilities of the New York County Lawyers' Association (NYCLA) and approved by the NYCLA Board of Directors November 8, 1999.

facilities, as well as for other statewide organizations such as The Fund for Modern Courts, which has included facilities in its court monitoring reports.

State takeover of all aspects of court facilities, including maintenance of the courthouses must be accomplished as promptly as possible. In 1996, legislation urged by the Court System was enacted which authorized the state to incrementally assume management responsibility and the cost of cleaning and minor repair of court facilities.⁷⁰ This welcome measure will aid in ensuring that sufficient resources and priority are given to upkeep of courthouses, helping to rectify past problems in some areas where locally provided maintenance was lacking.

Donations of Furniture and Equipment

Over the short term, the Special Committee suggests that law firms and corporate law offices be encouraged to donate furniture and equipment when they are upgrading their own facilities. Local bar associations can serve a useful role in the collection and distribution process. We note that a number of county bar associations have developed such programs. Nevertheless, such short-term measures should not obscure the essential point that it is and should be the responsibility of the state to provide adequate funding so that courthouses throughout the state are properly equipped with up-to-date furniture, furnishings and technology and are properly and adequately maintained.

4. Legal and Judicial Ethics

As the Code of Professional Responsibility recognizes:

It is the desire for the respect and confidence of the members of the profession and of the society which the lawyer serves that should provide to a lawyer the incentive for the highest degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction.⁷¹

While this is true for any individual attorney or judge, it is even more so for the profession as a whole. Unfortunately, while the ethical fortitude of any one lawyer will rarely garner notice, the infrequent ethical lapses are plastered on the front page of the news. We must, therefore, continue to strive to hold ourselves, judges and attorneys, to the highest ethical standards in our daily professional lives if we are going to succeed in promoting public trust and confidence in the legal system.

The Association Committee on Professional Discipline's annual report provides heartening news: Attorney disciplinary matters declined in 1999, reversing what had been a 10-year trend toward increased complaints and sanctions against lawyers.⁷² As Barry Kamins, the

⁷⁰ Laws of 1996, c. 686.

⁷¹ Code of Professional Responsibility, Preamble, at 1.

⁷² Statewide new disciplinary matters investigated by the Departments decreased approximately 7 percent in 1999, while disciplinary actions by committees and the courts declined by around 11 percent last year. See, *Annual Report on Lawyer Discipline in New York State for the Year 1999* at 5. Claims against the Lawyers' Fund for

Chair of the Professional Discipline Committee explained, these decreases are likely the result of a heightened awareness of ethics and increased communications between attorneys and their clients, as well as the fruit of MCLE in ethics.⁷³

It is important that we not only celebrate these results, but also try to enlist the media to report the good news to the public. However, as the State Committee has recognized, there are many additional steps that we can take to help promote the public's confidence in the ethics of our profession.

The Special Committee supports most of the recommendations made by the State Committee concerning legal and judicial ethics⁷⁴ with few modifications and additions. It should be noted

Client Protection dropped by a staggering 46 percent. *See, Seventeenth Annual Report of the Board of Trustees 2000, The Lawyers' Fund* at 3.

⁷³ "New York State Bar Association Releases 1999 Lawyer Discipline Figures," Association press release (August 3, 2000).

⁷⁴ Section B(4), Legal and Judicial Ethics at 32-38.

- a. Ethical Issues Regarding Attorneys and Attorney Civility
 - i. Give continuing attention to attorney misuse of client funds.
 - ii. Make the public aware that errant attorneys and judges are accountable and subject to sanctions by opening to the public disciplinary proceedings once a *prima facie* case has been established.
 - iii. Encourage judges to exercise their authority to control and require civil behavior of attorneys.
 - iv. Ask law schools and bar associations to establish programs and offer classes on professionalism and civility.
 - v. Explore certification of attorneys as specialists in certain areas of the law upon passing a competency examination.
 - vi. Require clear, written retainer agreements to reduce the opportunity for misunderstanding of fee arrangements.
- b. Attorney Solicitation
 - i. Monitor questionable advertising practices by attorneys and report those whose conduct is unethical or misleading to the attorney grievance committees.
 - ii. Require attorneys to disclose to clients if their case will be referred to other counsel.
 - iii. Create a brochure on how to select an attorney including questions one should ask during the initial interview.
- c. Judicial Independence and Isolation and Ethical Constraints on Judges' Ability to Speak Out in Response to Media
 - i. Create standing committees in each district composed of bar, bench and court administrators to defend broad-based generalized attacks on the judiciary.
 - ii. Produce and disseminate a handbook for judges which can serve as a centralized source for rules and guidelines regarding allowable/advisable judicial responses to media and public inquiry (*e.g.*, judges' ability to speak out on the procedural aspects of a decision, as distinguished from the merits or substantive aspects) and extra-judicial activities.
 - iii. Ask judges to take time to explain, in court, a settlement, decision or procedure, especially for cases that are of high public concern and interest. This presents a good opportunity to show the openness of the judiciary and to educate the public.
 - iv. Ask judges to be more involved in community and educational activities. This would help dispel the view that judges are isolated.
 - v. Heighten judicial awareness of the importance to public confidence in being on time for court, explaining delays (to the extent appropriate), and working a full day.
 - vi. Seek review of mandatory sentencing laws with a view toward maximizing judicial discretion.
 - vii. Educate the public regarding the role of judges and the limits on their power, using elementary and secondary education programs and other educational efforts.
- d. Influence of Politics on Judicial Selection

that many of the State Committee's recommendations relating to ethics have already been implemented.

Priorities

We identify the measures below as priorities in addressing ethical concerns affecting the bench and bar:

- ✓ Encourage establishment of local bar committees, similar to that of the Bar Association of Erie County, which provides judicial candidates with information on appropriate campaign conduct and monitors such conduct.
- ✓ Request each Judicial Department to provide a seminar for newly admitted attorneys, such as that initiated in the First Department, which would provide guidance on such topics as civility, ethics, professionalism and the importance of *pro bono* services.
- ✓ Review and pursue revision of mandatory drug sentencing provisions to remedy unduly harsh sentences on those with low-level involvement.
- ✓ Seek amendment in the law to require town and village justices to be admitted to the bar, to be consistent with the eligibility requirement for judges in other courts and in recognition of the increased complexity and demands on these local courts.

a. Ethical Issues Regarding Attorneys and Attorney Civility

Publicizing Attorney Malfeasance

The State Committee recommends several approaches in calling for continuing attention to the issue of misuse of client funds, including increased awareness of the Lawyers' Fund for Client Protection (Lawyer's Fund). We agree that further steps should be taken to address problems in professional conduct and public understanding of attorney misuse of client funds. We concur with the State Committee's observation that "while less than one percent of lawyers present this problem, the impression is that this is much more prevalent."⁷⁵

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- i. Retain long terms of office for judges to limit the need for political activity and regulate the political activities and associations that judges may pursue.
 - ii. Re-examine Election Law provisions which prohibit judicial candidates from knowing who contributed to their campaigns.
 - iii. Discourage judicial candidates from seeking the endorsement of special interest groups or parties that require or give the impression that the judicial candidate has a position on an issue in contravention of Canons 2, 3, 4, and 7 of the Code of Judicial Conduct.
 - iv. Establish guidelines for fair campaign practices for judicial elections.
 - v. Seek agreement from appointed officials, elected officials and candidates and their staffs in other branches of government not to engage in personal attacks on judges.

⁷⁵ State Committee Report at 32.

The Association and other bar organizations provide background educational resources for the media in covering law-related matters and they provide interviews, statements or news releases on particular issues in the news. With regard to situations of malfeasance, we suggest that information provided to the media clarify that most lawyers are honorable and occasions of malfeasance are rare, as reflected in disciplinary statistics.⁷⁶ Rather than focus unduly on attorney malfeasance, the Special Committee recommends using resources to educate the public about attorney selection, attorney-client communication and remedies or avenues available to address grievances. [See discussion of brochure below in this section of the report at 42-43 under attorney solicitation.]

Education on Law Office Management

The State Committee also calls for programs for law students and new admittees on the practical aspects of setting up and running a practice, with emphasis on handling of trust funds, Interest on Lawyer Account (IOLA) funds, and other accounts. The Association has long advocated for and provided education on law office management and professional responsibility. The inclusion of these subjects in MCLE also was successfully urged by the Association.⁷⁷

With regard to law schools, our survey found that more than half of the 15 schools in the state offer courses in the practical aspects of setting up and running a law practice and most include such issues (*i.e.*, handling trust funds, IOLA and other bank accounts) in other courses. We applaud these initiatives and encourage the schools to promote instruction in this area and use practitioners as adjuncts or guest presenters in the classroom to provide students with the opportunity to learn what practical issues have been confronted in the law office and how attorneys have handled them.

We are pleased that a recent revision of the multi-state professional responsibility examination includes broader aspects of professional responsibility and not just the testing of formalized ethics rules.

We also urge further development of educational materials for attorneys on client communication that stress fostering positive client relationships similar to initiatives of business to build good rapport with customers. Such materials are necessary because of the paucity of training currently available to law students and practitioners in the techniques that put clients at ease and generate mutual trust and faith and because many lawyers enter solo or small firm practice without the benefit of mentoring and training from experienced practitioners. Improved communications by lawyers would make

⁷⁶ In 1999, 242 of the state's 112,000 practicing attorneys were disciplined, including 86 disbarments, 106 suspensions for certain periods of time, 24 censures, and 26 acceptances of resignations. Lawyer Discipline Report, *supra* note 72.

⁷⁷ 22 NYCRR §1500.12: Minimum Requirements (a) Credit Hours. Each newly admitted attorney shall complete a minimum of 32 credit hours of accredited transitional education within the first two (2) years of the date of admission to the Bar. Sixteen (16) accredited hours shall be completed in each of the first two (2) years of admission to the Bar as follows: three (3) hours of ethics and professionalism; six (6) hours of skills; and seven (7) hours of law practice management and areas of professional practice.

client expectations more accurate and improve client satisfaction with their attorney and the system.

Substance Abuse

The State Committee has proposed more statewide coordination of efforts to assist lawyers who may be experiencing personal problems such as substance abuse and mental illness, as cases involving misuse of funds often involve these problems. It is expected that if intervention is provided early enough, more serious problems will be avoided.

For the past 10 years, the Association has maintained a Lawyer Assistance Program (Program), providing education and confidential assistance to lawyers, judges, law students and their families concerning alcohol and drug abuse, stress management and depression. Working with a full-time director, committee and network of more than 300 volunteers, the Program operates a 24-hour hotline, conducts educational programs, an annual conference, interventions and referrals, and coordinates with local bar substance abuse programs.

We recommend wider publicity about these programs and their confidential nature so that those in need of such services know that help is available. Among other steps, we suggest including a brochure about lawyer assistance programs in the Court System's biennial attorney registration mailing, and providing information to judges across the state to increase their awareness of these confidential services and opportunity to refer those experiencing problems. We note that the Chief Judge's Commission on Alcohol and Substance Abuse in the Profession also is studying this issue.

Additionally, a key element in successfully combating substance abuse is the involvement of entities in addition to the Association in disseminating lawyer assistance educational information and encouraging members of the profession to seek assistance with such problems. The Program has forged alliances with many other bar organizations, grievance committees, the courts, and law schools, as well as relevant health providers. We urge each law-related entity to: (a) review its procedures for helping members of the bench and bar and students to be informed and obtain appropriate services; (b) if it has not done so, take advantage of bar lawyer assistance programs, services and guidance; and (c) take steps to remedy any gaps.

The Association successfully proposed inclusion of substance abuse in the court rules for possible topics for MCLE professional responsibility credit.⁷⁸ We recommend that bar associations and other MCLE providers assess their course offerings to ensure that this topic is included in both the practical skills programs for new admittees and the seminars for more experienced attorneys.

⁷⁸ *Id.* at §1500.2(e): Law Practice Management must relate to the practice of law and may encompass, among other things, office management, applications of technology, state and federal court procedures, *substance abuse control, stress management*, management of legal work and avoiding malpractice and litigation. (*Emphasis added.*)

Disciplinary Proceedings

As a means of making the public aware that members of the profession are accountable, the State Committee urges amendment to Judiciary Law §90(1) to open the disciplinary proceedings to the public once a *prima facie* case has been established. The Association has reviewed this issue over the years and, in the past, has opposed the earlier opening of these proceedings, noting that the Appellate Division currently has the authority to intervene in appropriate cases and order interim suspensions and public disclosure to safeguard the public. The Association has urged use of these existing provisions when necessary.⁷⁹ The House of Delegates also is on record as encouraging review of the procedures in the various Judicial Departments to promote consistency in sanctions throughout the state⁸⁰ and we reiterate and recommend such review.

The present system has presented some difficulties. First, some Departments have read good cause more strictly than others and been less willing to order interim suspensions or public disclosure. Second, lack of uniform procedures has led to concern that, in some Departments, grievance committees could too readily and without due process destroy a lawyer's reputation by making an unfounded charge public.

In reviewing the Association's prior position, we believe its major concern has been ensuring due process for attorneys to protect them from having insubstantial claims or complaints made public. Weighing the Association's concern against the need to foster public confidence in the system, however, we conclude that both can be accommodated. Thus, we support the State Committee's proposal to open the disciplinary proceedings to the public once a *prima facie* case has been established, provided that (1) the Appellate Divisions have uniform provisions for the establishment of a *prima facie* case and public access and (2) that a judge makes such determinations. This action would provide appropriate public access and promote confidence in system and, at the same time, by opening the proceeding at this point only upon a judge's decision, provide attorneys with appropriate protections.

Professionalism, Civility

The State Committee calls on law schools and bar associations to offer mentoring programs for new attorneys and classes on professionalism and civility. This is an area of increasing involvement by both law schools and the bar. The Association has provided courses on professional conduct, designed for both the new and experienced attorney.⁸¹ A

⁷⁹ Action of the Association House of Delegates, June 24, 1995 and January 26, 1996.

⁸⁰ Action of the Association House of Delegates, June 24, 1995.

⁸¹ In the past year, for example, an Association MCLE program was conducted on "An Introduction to Civility and Ethics in Civil Litigation: What Every Lawyer Should Know" and the Committee on Attorney Discipline presented a program on recent Code of Professional Responsibility amendments. An MCLE seminar on "Avoiding Malpractice and Client Grievances" was scheduled for October 2000. Section programming also included professional conduct in the respective field of concentration; for example: the Young Lawyers Section discussed balancing ethical obligations with the drive to succeed, changes in the Code of Professional Responsibility and real-life ethical dilemmas; the Committee on Attorney Professionalism and Entertainment, Arts and Sports Law Section illustrated issues of professional responsibility with clips of movies and a panel

number of local bar associations also offer programs on professional responsibility. The inclusion of a professional responsibility component in MCLE for new admittees and more experienced attorneys has underscored the importance of continuing education on this subject.

Our survey of law schools in the state found that all offer separate courses in professional responsibility and all provide some instruction in professionalism and civility as an aspect of professional responsibility. It also is common for issues of professional responsibility to be raised in most other courses, particularly in clinical programs.

We urge law schools and bar associations to review their course offerings and mentoring programs to ensure that there is adequate consideration of these topics. These subjects also should be included in law firm in-house education, mentoring and discussions.

It is our view that some lawyers equate incivility with strong advocacy. The Special Committee stresses the importance of drawing this distinction in law school and MCLE courses. Mentoring programs for young lawyers, already in place in many bar associations, should be encouraged to include civility in their discussions. Likewise, we would urge law firms to cover this issue in in-house legal education, mentoring programs, and in discussions of partners with associates. Such presentations should include case examples from practitioners as to how they successfully advocated their position while preserving civility.

We note that the Appellate Division, First Department, instituted a rule in 1999 requiring applicants for bar admission to attend an orientation program on ethics and professionalism.⁸² The rule, which directs the Chair of the Character and Fitness Committee to conduct such orientations, stemmed from pilot programs in which members of the bench and bar spoke with applicants on these issues. This program provides important transitional education to new admittees as to the high values and standards expected of the profession. We recommend similar programs in other areas of the state.

Distribution of written materials on these issues⁸³ by bar organizations, law schools and law offices also serves to underscore the importance placed by the bar and law office on civil conduct. The Association's Commercial and Federal Litigation Section observed in a report on incivility in depositions:

discussion; the Municipal Law Section described ethical concerns in the courtroom; the Trusts and Estates Law Section considered evidentiary ethical issues of lawyers who represent fiduciaries; the General Practice Section panelists debated ethics in the practice of law; the Labor and Employment Law Section discussed means of dealing with a difficult client; and the Council of Judicial Associations and Committee on Judicial Administration held a dialogue on handling problem situations in lawyer/judge communications.

⁸² 22 NYCRR Part 602.3.

⁸³ For example, the aspirational Standards of Civility issued by the Court System; *Guidelines on Civility in Litigation*, issued by the Association Commercial and Federal Litigation Section and endorsed by the Association House of Delegates on January 27, 1995; *Report on Uncivil Conduct in Depositions*, also produced by the Section, published in *The NY Litigator* (November 1996) at 29-37.

When behavior in a deposition crosses the line from zealous advocacy to uncivil or unprofessional conduct, no one wins. Costs are unnecessarily increased, judicial resources are wasted, the public image of lawyers is diminished, and perhaps most importantly, the clients' legitimate interests are not advanced.⁸⁴

Whether in depositions or any other point in the legal process, we agree and would add that, as a result, public confidence also is eroded.

The State Committee calls for judicial authority to require civil behavior of attorneys, with judges to set an example of professional conduct. We agree that judges' demeanor and attitude can affect the degree of civility between the attorneys and in communications from the attorneys to the judge and litigants. Setting objective standards for such conduct would be problematic and potentially have a chilling effect on zealous advocacy. Instead, we would recommend increased training of judges on maintaining control in the courtroom.

Specialization

The State Committee sees certification of attorneys as specialists as a complement to MCLE in fostering attorney competence and recommends exploring development of certification plans that included competency examinations. Under the Code of Professional Responsibility, lawyers or firms can state that their practice is limited to certain areas of law but cannot indicate that they are specialists in those fields, with narrow exceptions.⁸⁵

In 1986 and 1979 votes, the Association House of Delegates rejected proposed specialization plans. Concerns were voiced in those debates that the establishment of certification could give the misimpression that those who maintained a general practice or chose not to seek certification were not as competent as those designated as specialists. Lack of certification should not mean that the attorney is less trustworthy. In fact, specialization may be more of a promotional issue than one of public trust. We, therefore, do not recommend specialization as a means of enhancing public confidence.

Retainer Agreements

To reduce opportunity for misunderstanding of fee arrangements, the State Committee favors a requirement of clear, written retainer agreements. Written retainers are now

⁸⁴ *Id.*, *NY Litigator* at 35.

⁸⁵ On June 29, 1996 the Association House of Delegates recommended and on June 30, 1999, the Appellate Divisions adopted a change to the Code of Professional Responsibility, DR 2-105, to allow attorneys to announce their certification status by other jurisdictions or ABA-approved entities if they include certain disclaimer language that certification is not required for practice in New York and does not necessarily indicate greater competence than other attorneys experienced in the particular field of law.

required in all matrimonial cases.⁸⁶ The Association House of Delegates is on record in favor of requiring letters of engagement for cases involving fees of \$5,000.⁸⁷

The Special Committee endorses the proposal for retainer agreements for all legal services rendered, regardless of the amount involved, to help ensure that the client understands the services and arrangements. Retainer agreements can be particularly useful to the understanding of clients inexperienced in engaging attorneys. Such clients may have cases of great significance to them but involve only small monetary fees. We, therefore, do not recommend inclusion of a fee amount to trigger the retainer requirement. To address situations where attorneys provide counsel on a continuing basis to the same client, we recommend requiring written retainer agreements when the legal work to be accomplished is significantly different than that involved in the prior representation.

When persons consult an attorney but the attorney decides not to represent them, we recommend that the attorney send a letter, when possible, confirming that the attorney will not be providing legal services. We also suggest that an attorney seek a written statement signed by any client who waives a conflict of interest. These steps also would serve to avoid misunderstanding or ambiguity that can impact unfavorably on public trust and confidence in the legal system.

Attorney Solicitation

The State Committee reports that concerns about inflammatory and unprofessional advertising by some attorneys was a recurrent theme at the public hearings conducted in the development of its Report.⁸⁸ The State Committee urges monitoring of questionable advertising practices and reporting unethical or misleading conduct to the grievance committees. The recommendation does not specifically provide which entity would perform this function.

The Code of Professional Responsibility prohibits communications that are false, deceptive or misleading.⁸⁹ Given the enormity of the task of monitoring advertising, the challenge of determining what advertising crosses the line from free speech to prohibited communications, and the limited resources in the disciplinary process, we suggest that the various grievance committees make periodic spot checks of written, radio and television advertising for Code of Professional Responsibility compliance.

The Association and local bar associations should discuss appropriate and inappropriate conduct in advertising, including the applicable Code of Professional Responsibility

⁸⁶ 22 NYCRR § 1400.3.

⁸⁷ By action January 26, 1996, following the report of the Association Review Committee on the recommendations of the Chief Judge's Committee on the Profession and the Courts.

⁸⁸ State Committee Report at 35.

⁸⁹ DR 2-101(A). See the companion EC 2-14 providing examples for attorneys' guidance.

provisions, in educational programs and materials on practice management and professional responsibility. We further suggest preparation of a brochure for attorneys on this subject.

The State Committee also recommends that disclosure to clients be required if the matters are to be referred to other counsel. We are pleased that an amendment to the Code of Professional Responsibility, proposed by the Association, prohibits solicitation when the attorney intends or expects, but does not disclose, that the legal services necessary to handle the matter competently will be performed primarily by an attorney not affiliated as a partner, associate or of counsel.⁹⁰ As this amendment was adopted in 1999, it is too soon to assess its impact.

In addressing attorney solicitation concerns, the State Committee suggests creation of a brochure on how to select an attorney, what questions to ask during the initial meeting, roles of attorneys, and limitations and responsibilities of attorneys as officers of the court. Individuals frequently lack knowledge of their legal rights and responsibilities, the appropriate selection of legal counsel or available remedies if they believe they are aggrieved. Further, clients seeking legal help are often in an emotional state, making it more difficult for them to understand and evaluate their options and choices. Clients and potential clients should have the information necessary to make wiser legal choices and more intelligent and reasoned decisions. More accurate client expectations would lead, in turn, to less dissatisfaction with a particular lawyer and with the legal system. A simply written explanatory brochure would help.

The Association offers various brochures for clients and the general public, some of which contain some information that would be useful in this respect.⁹¹ We recommend compiling an updated brochure with existing material and any other information that would enable a potential client to select and make the first consultation with a lawyer. This resource should address the two-way nature of communication needed in an attorney-client relationship as well as fee computation and also provide information about resolving complaints, including the addresses of grievance offices and the Lawyer's Fund. This amplified resource would aid in preventing misunderstandings and help clients and prospective clients have a better understanding in retaining legal counsel.

This brochure could be available at the various bar associations, courthouses, and public libraries, and possibly be distributed at supermarkets, drug stores, transportation hubs and other public locations. We suggest publicity to the general public, civic groups, and the profession about the availability of such an educational resource. A number of local bar associations conduct adult education sessions, radio programs or other public service

⁹⁰ DR 2-103(a)(2)(e). Proposed June 29, 1996 by the Association House of Delegates; approved by the Appellate Divisions June 30, 1999.

⁹¹ Such as "You and Your Lawyer," from the Committee on Public Relations and "A Guide to Disciplinary Procedures in New York State," produced by the Committee on Professional Discipline. The former includes a description of the Statement of Client's Rights posted in law offices as provided under 22 NYCRR Part 1210, and the corresponding statement of client responsibilities developed by the Committee on Attorney Professionalism and distributed in cooperation with OCA.

initiatives, and this brochure or the substance of its message on how to select an attorney may be a useful topic in their programming.

b. Ethical Concerns, Constraints Relating to Judges

The Code of Judicial Conduct stresses the role of the judge in preserving public confidence in the legal system:

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system.⁹²

Judicial Independence

Broad-based general attacks on the judiciary promote disrespect of judicial independence and erode public confidence. The State Committee offers several recommendations to maintain judicial independence and educate the public about the ethical constraints on judges' ability to speak out.

The State Committee proposes establishment of district committees composed of judges, attorneys and court administrators to defend against such attacks. The Association and many local bar associations have either committees in place or other means of response in the event of unwarranted criticism of the judiciary and also provide education on the importance of judicial independence. The Association, for example, has distributed informational materials to the media and lawmakers and issued guidelines to help delineate constructive criticism from "judge-bashing."⁹³ The topic of judicial independence was added in a recent updating of its *Legal Handbook for New York State Journalists*.

While local bar associations may be in the best position to determine whether and how a response should be made to a situation in their communities, both the Association and local bar associations should continue to be involved in educating the public and the media about these issues. We believe that these bar initiatives should be continued and urge each association to assess its procedures for commenting on particular situations and ensure that its public and media education efforts include this topic.

We agree with a recommendation of the State Committee for preparation of a handbook for judges with rules and guidelines regarding allowable or advisable judicial responses

⁹² 22 NYCRR § 100. Preamble.

⁹³ Guidelines issued April 23, 1996. For educational background, the Association Special Committee on Judicial Independence also compiled and distributed observations of bench and bar leaders, *Independence of the Judiciary: The Right of a Free People* (1996).

to the media and public inquiry, and extra-judicial activities. We also suggest more detailed discussions of these issues in the judicial education sessions. Additionally, a handbook designed for the media may be useful in enhancing awareness of limits placed on a judge in responding to reporters' inquiries. This educational resource could help eliminate the perception that the judge is "stonewalling" when he or she refuses to engage in such discussions. [See section 5 of the this report at 62-64 for additional discussion of initiatives to aid in media coverage of the courts.]

The State Committee recommends education of the public on the limits of judicial authority through elementary and secondary school programs and other means. We agree that this is an important topic in adult and youth educational initiatives and in background for the media. We note the Association's ongoing law-related education work with teachers through its Law, Youth & Citizenship Program (LYC) and the involvement of many local bar associations in speaking in area schools and addressing community groups. All bar associations should be encouraged to engage in such community outreach programs.

We have concerns, however, about another State Committee recommendation that would ask judges to explain in court a settlement, decision or procedure, especially in cases that are of high public concern and interest. While this recommendation is intended to enhance public understanding of the judicial process, a judge should not be required to justify or persuade the general public of the validity of his or her decision. To do so could leave the impression that the judge is seeking public approval and runs contrary to the concept of judicial independence. Further, the public and media should be informed and should understand that the appropriate remedy for an unfair or erroneous decision is found within the legal system itself, namely appeal to a higher court.

The State Committee observes that volunteer activities by judges in the community help dispel the view that the judiciary is isolated. Such involvement by both bench and bar helps break down stereotyping and enables the public to become acquainted with members of the bench and bar on a less formal level. While this recommendation is more aspirational in nature, volunteer activity should be encouraged among judges. Such a suggestion could be made at judicial education programs, along with discussion of the relevant Code of Judicial Conduct proscriptions to minimize risk of conflict.⁹⁴

The State Committee also calls for heightening judges' awareness that explaining delays and being prompt and productive are important in maintaining public trust in the justice system. Most judges keep jurors, litigants and others informed of reasons for delays; most attorneys discuss these circumstances with their clients and also explain that, although the judge is not on the bench, it does not mean he or she is not working. If lack of punctuality and productivity is perceived as an ongoing problem, the issue should be addressed in the judicial education programs. Certainly, individual problems in particular courtrooms should be handled by court administrators.

⁹⁴ Code of Judicial Conduct, *supra* note 92, at § 100.4.

Mandatory Sentencing

As an additional measure to build public confidence, the State Committee recommends review of mandatory sentencing laws with a view toward maximizing judicial discretion. The mandatory drug sentencing laws,⁹⁵ enacted in 1973, have generated considerable debate and varying proposals for reform.⁹⁶ In general, we believe that the mandatory drug sentencing laws have had a deleterious effect on public trust by imposing unduly harsh sentences on those with low-level involvement and we recommend that the laws be revised.

While review of specific remedies is beyond the Special Committee's purview, we urge continued attention and input from the bench and bar. We note that the Association's Criminal Justice Section has previously called for modification of these laws. We applaud the Section's ongoing involvement in studying proposals and making recommendations concerning the fairness of these provisions, thereby building public confidence in the justice system.

Politics and Judicial Selection

We concur with the State Committee that the present long terms of offices should be retained to limit the need for judges' political activities.

The State Committee also seeks re-examination of Election Law provisions that prohibit judicial candidates from knowing who contributed to their campaign. That Report cogently observes that, as a judicial candidate may participate in his or her campaign and attend campaign functions to some extent,⁹⁷ judges have only to scan the room of their fund-raising events to be aware of contributors to their campaigns. The State Committee Report concludes, "Public trust is eroded by such an incongruous procedure."⁹⁸ We recommend repeal of this prohibition, provided that the names and amounts contributed are made public. Such information could also assist in determining whether recusal may be appropriate.

⁹⁵ Penal Law §§ 70.00; 70.06.

⁹⁶ For example, in its June 2000 report to the Chief Judge, *Confronting the Cycle of Addiction & Recidivism*, the Commission on Drugs and the Courts advised that it could not reach a consensus on the merits of mandatory sentencing laws but urged amendment of the current Class A-1 felony provisions to grant interest-of-justice jurisdiction to the Appellate Division to reduce sentences in appropriate cases where the 15-year minimum would be unduly harsh.

⁹⁷ Code of Judicial Conduct, *supra* note 92, at § 100.5(2): "A judge or non-judge who is a candidate for public election to judicial office may participate in his or her own campaign for judicial office as provided in this section....During the window period as defined in § 100.0(Q) of this Part, a judge or non-judge who is a candidate for public election to judicial office, except as prohibited by law, may: (i) attend or speak to gatherings on his or her own behalf, provided the candidate provided that the candidate does not personally solicit contributions...."

⁹⁸ State Committee Report at 38.

Another proposal by the State Committee seems an impossible task from a practical standpoint - to discourage judicial candidates from seeking endorsement of special interest groups that give the impression that the candidate has a position on an issue. Guidance for the candidate is given in the Code of Judicial Conduct which proscribes a judge or non-judge candidate for judicial office from making "statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court..."⁹⁹ We also are mindful that political parties may exercise the right of free speech by expressing support for certain judicial candidates.

We recommend that bar associations inform the public and media about unique aspects of and considerations in judicial elections as part of their educational initiatives and that efforts be made to ensure that judicial candidates are knowledgeable about campaign restrictions. The Bar Association of Erie County's Judicial Oversight Committee sends letters to judicial candidates, providing information on appropriate campaign conduct; the Oversight Committee also reviews and helps resolve complaints of inappropriate campaign conduct. We suggest other bar associations consider the educational and/or oversight aspects of this initiative.

The State Committee proposes establishment of guidelines for fair judicial campaign practices and creation of a handbook on ethical constraints in judicial campaigns and activities upon taking the bench. We believe that these resources would be helpful. Along the same lines, we join with the State Committee in encouraging commitments from elected and appointed officials, candidates, and their staffs in other branches of government not to engage in personal attacks on judges. Such attacks demean the judicial process and thereby reduce public confidence in the system.

Non-Lawyer Judges

The Special Committee makes an additional recommendation that was not contained in the report of the State Committee. Consistent with provisions for other judges and in recognition of increasing demands and complexities in the law, we urge a change in the law to require town and village justices to be admitted to the bar. This is particularly important in criminal matters.

Population growth of suburban and rural areas has increased demands on town and village justice courts. Approximately 2,300 justices sit in these courts of limited jurisdiction, which are governed by the Uniform Justice Court Act. In criminal matters, the justices can hear misdemeanors and conduct preliminary proceedings in felonies; in civil cases, the amount sought to be recovered or property value cannot exceed \$3,000; for real property cases, justice courts have jurisdiction over summary proceedings for recovery of real property and judgment for rent in unlimited amount.¹⁰⁰ Traffic cases and minor violations also are handled in these courts. As Herald Price Fahringer has noted, although jurisdiction is restricted:

⁹⁹ Code of Judicial Conduct, *supra* note 92, at § 100.5(d)(ii).

¹⁰⁰ Article 2.

What lies below the waterline of their jurisdiction is still important. They can be places of harsh reckoning. The right to drive a car can be lost and with it, one's livelihood. Moreover, jail sentences are frequently imposed, defendants are bound over for grand jury action and people are evicted from their homes - to mention only a few of the more calamitous consequences that can befall a person charged in these courts. In addition, it is often the less fortunate, those with limited resources, who must take refuge in the lower tier of our judicial system.¹⁰¹

For these reasons and considering that local justice courts handle issues that occur in so many people's everyday lives, these courts have been aptly called "the first line of defense of our justice system."¹⁰² It is therefore critical that these courts operate in a manner that promotes public confidence in the legal process.

Unlike judges in other courts in the state, admission to the bar is not necessary to serve as a town or village justice.¹⁰³ Such justices are required to take an initial 35-hour educational program, followed by a 12-hour advanced course, and an annual update thereafter.¹⁰⁴ Greater education is necessary to perform certain other services. For example, the state requires hair removal waxing technicians to complete 75 hours of training and pass an examination.¹⁰⁵

It is unfair for litigants in civil or criminal cases to have matters determined by a person who may be unfamiliar with the law and not bound by the Code of Professional Responsibility and/or Code of Judicial Conduct. It is ironic that the same matter, occurring within a city, would come before a judge who must necessarily be admitted to the bar. Judges for the various other courts in New York State Court System are required to be admitted to the bar for periods ranging from five to ten years. In the several communities where traffic violations are adjudicated administratively,¹⁰⁶ rather than by local justices or city court judges, the hearing officers conducting the sessions are attorneys.¹⁰⁷ These are the same types of matters, except for their locations, that are handled in town and village court. New York is one of only a handful of states that continue to allow non-lawyer justices.¹⁰⁸ In modern times, there is no reason that all

¹⁰¹ "A Tour of Our Front Line Courts." *Criminal Justice Journal* (Winter 1998) at 128. Book review of *Village, Town and District Courts in New York*, by James E. Morris, Robert G. Bogle, Thomas F. Liotti and Maryrita Dibieli (West Publishing, 1998).

¹⁰² *Id.*, quoting *Village, Town and District Courts in New York*.

¹⁰³ New York Constitution, Article 6, § 20(c).

¹⁰⁴ *Id.* and 22 NYCRR § 17.2.

¹⁰⁵ Department of State, Legal Memorandum L107.

¹⁰⁶ New York City, Buffalo, Rochester and western Suffolk County.

¹⁰⁷ *Report of the Association Task Force on Administrative Adjudication* (July 14, 1988), at 23.

¹⁰⁸ Jennifer Jordan, "A Court of Common Sense," Associated Press, published in the *Times Union*, Albany NY (September 17, 2000).

judges cannot and should not be lawyers, and public confidence requires that local justices have appropriate training and are held to appropriate, enforceable ethical standards.

5. Public Understanding and Media Portrayal of the Legal System

The public's understanding of the mission of the justice system and how it affects everyday life is essential in achieving trust and confidence of those who utilize the legal process to address a particular matter and of the public in general. In proposing educational initiatives,¹⁰⁹ the State Committee observes that "the combination of lack of public understanding and inaccurate or incomplete media portrayal impacts not only the perceptions about the justice system, but the very way the judicial system operates. Public pressure has an effect on legislation involving the courts and judicial discretion and can affect judiciary budgets."¹¹⁰

¹⁰⁹ State Committee Report, Section B(5), Public Understanding and Media Portrayal at 38-43:

- a. Educating Students About the Justice System
 - i. Advocate for expanded and practical coverage of the judicial system in school systems beginning at grade school level and continuing into secondary schools and college.
 - ii. Sponsor contests for students to develop a videotape and/or computer software regarding the judicial system that could be used for educational purposes.
 - iii. Explore the feasibility of initiating the production and broadcasting of a television program about the courts in which teenagers serve as the hosts/moderators.
- b. Public Knowledge and Understanding of the Justice System/Openness of Legal System
 - i. Establish and/or expand Speakers' Bureaus of judges and attorneys available to speak to schools, churches and civic groups.
 - ii. Produce with local radio (usually talk radio is the most receptive) a series of 30-second audio spots defining legal terms, court procedures, and specific areas of the law which will serve to inform the listening public.
 - iii. Develop with bar associations public service announcements regarding the role of courts and the judiciary.
 - iv. Initiate a court open house education day for families.
 - v. Develop a series of videotapes and materials on legal topics for use in public libraries and schools.
 - vi. Publicize good deeds/contributions to the community by attorneys, judiciary, judicial staff, court employees and law schools.
 - vii. Establish a "Law Hot Line" or "Ask a Lawyer" newspaper column and/or web site for educational purposes.
- c. Media Portrayal of Courts/Criticism of Courts by Public Officials
 - i. Disseminate the public information videotapes and educational materials, proposed above, to the media for use in training persons who will be covering the courts.
 - ii. Designate a person in each district as the public information officer available to the media to answer questions beyond normal business hours.
 - iii. Develop and disseminate to all judges guidelines regarding allowable/advisable judicial responses to the media and public inquiry and on handling criticism.
- d. Public Perception of Lenient Sentencing and Appeals Overturning Convictions
 - i. Develop for dissemination to the media, schools and public libraries a videotape which addresses procedural safeguards afforded under our Constitution, considerations in sentencing and the appeals process.

¹¹⁰ State Committee Report, at 39.

This portion of the report is appropriately the final chapter of the five areas studied, since public education and communication are necessary to fully address the issues and implement the proposed improvements in each of the preceding chapters.

We have subdivided this subject into: (a) Public Understanding,” including educational ideas for both school children and adults; (b) “Local Initiatives,” suggesting projects local bar associations can undertake; and (c) “Media Portrayal,” providing proposals for improving accuracy in journalism.

During our study, we discovered an extraordinary breadth and depth of activities already under way in New York State addressing the public trust and confidence concerns raised by the Chief Judge. These are projects undertaken quietly, perhaps too quietly, by members of the bar who have perceived a problem and a way to correct it. Where appropriate, these projects are discussed in conjunction with our own thoughts. Having considered in detail the various existing initiatives to improve public understanding and media portrayal of the justice system, and having reviewed various ways in which they may be improved, we make the recommendations set forth below.¹¹¹

Priorities

We believe all of our recommendations can be accomplished, that one does not compete with another. Having said that however, they are prioritized according to the sequence in which they appear.

a. Public Understanding

For Students

- ✓ Expand and enhance training of teachers in law-related education.
 - Replicate the LYC/P.A.T.C.H. Summer Institute training program to reach 300-400 teachers each year.
 - Add a half-day workshop for new teachers to the statewide Conference on Law-Related Education.
 - Expand print resources for teachers and republish undated materials for new teachers.
 - Create and distribute via the internet a library containing informational resources, such as U.S Supreme Court decisions, and teaching strategies for various grade levels and including suggested activities.
 - Create an interactive internet resource for the direct use of students designed to move step-by-step through the decision-making process and mimic the interactivity of good law-related methods in the classroom.
 - Use the internet and e-mail to arrange lawyer visits to classrooms.

¹¹¹ *NB:* In reviewing the issues, representatives of the Special Committee and the State Committee maintained close contact and shared information in developing their recommendations relating to public understanding and media portrayal of the justice system. Their mutual identity of interest and substantive conclusions were so apparent that, in large part, the substance and language of this section of the report were drafted jointly by the two groups.

- ✓ Create a catalog of existing Association and OCA resources for teachers, ascertain their current usage, and institute a sustaining promotion program to ensure the widest use possible.
- ✓ Sponsor a statewide contest for students to develop videotapes and/or computer software regarding the judicial system that could be used for educational purposes.

For the General Public

- ✓ Create and nurture alliances with other legal and non-legal organizations that would be helpful in assisting the promotion of issues and positions important to the courts and legal profession.
- ✓ Use "Non-Commercial Sustaining Announcements" on radio and television statewide to promote understanding of the legal system.
- ✓ Expand Tel-Law, a program of telephone-accessed tape-recorded messages about the legal issues, to all counties and recommend that the Association consider providing this information by way of the Internet to ensure statewide availability.

b. Local Initiatives

- ✓ Strongly encourage local bar associations to aggressively seek opportunities to promote the courts and bar, to increase their community involvement across the broadest possible spectrum of legal and non-legal activities, and to engage other educational, civic, business, professional, labor and religious organizations.
- ✓ Encourage bar associations in the state to include programs on lawyer advertising at bar meetings that includes the input from advertising professionals on what constitutes good and effective advertising.

c. Media Portrayal

- ✓ Distribute background information to newsrooms on legal issues currently in the news.
- ✓ Increase the availability of the Association's *Legal Handbook for New York State Journalists* to reporters who cover the legal issues.
- ✓ Encourage the courts to designate a public information officer in each district who would be available to the media at all times.
- ✓ Consider establishing a satellite office of the Media Services Department in New York City.
- ✓ Develop and disseminate to all judges guidelines regarding allowable/advisable judicial responses to the media and public inquiry and on handling criticism.

a. Public Understanding

Youth Education

A 1998 ABA survey of public attitude¹¹² found that more than 80 percent of those polled identified social studies classes as their main source of knowledge about the legal system.

In New York, that social studies curriculum includes consistent and repeated instruction in civics, law and justice. It is not an accident. The Association and OCA have provided more resources to schools than any other legal entities in the nation. It may be safe to say that no other profession, trade, business or civic group has made as concentrated or effective an effort to involve itself in the general education process anywhere or at any time.

Background on these efforts is useful in considering additional steps. In 1974, the Association established LYC as a cooperative initiative with the New York State Education Department.

LYC and the Association Committee on Citizenship Education have directly participated with the Education Department in the creation of Social Studies standards and the development of the Social Studies core curriculum. These form the basis for all state standardized testing, and have wide and deep coverage of the law, the justice system, civics, and citizenship from Kindergarten through 12th Grade.

Additionally, LYC trains New York's social studies teachers and develops and distributes the teaching materials and study aids used in the state's schools. In short, for the last 26 years, Social Studies education in New York State has been, in large measure, the product of its lawyers, working with educators across the state.

LYC is heavily involved in the creation of a new syllabus for the 12th Grade Government course, which is the final and required citizenship preparation course. Schools today are tightly focused on the new content requirements and in working to raise student achievement, because of the combination of new state Regents exams, which all students must pass to graduate; exams at the 4th and 8th Grade levels, which students must pass or be given remedial help; and the institution of school report cards which publicly compare each district to two other similarly situated districts. LYC's efforts have been designed to dovetail and support the needs of teachers and students. Additional teacher training, resources and student-centered projects that directly support the new realities in the schools would be practical and valuable means of advancing law-related education in the schools.

In 1999, a typical year, 400 educators were trained at LYC's three-day statewide Conference on Law-Related Education, which featured 42 workshops. One hundred teachers received 30 hours of training in an LYC program conducted in cooperation with Operation P.A.T.C.H., the law-related education of the Northport-East Northport school

¹¹² ABA Survey, *supra* note 53 at 99.

districts. At three regional council meetings, 250 teachers were given an additional one hour of training, and 220 were trained as coaches for the high school statewide mock trial competition. Further, 610 teachers, administrators and lawyers were tutored in issues of school law and how to address these matters in their institutions.

LYC conducts a high school mock trial competition annually in more than 500 schools. Local bars participate in the preliminary rounds, providing judges and lawyers to serve as coaches and officials. In recent years, an interstate competition also has been conducted with Maryland students. Another resource for teachers, LYC provides Association member attorneys to lecture in the classroom statewide. At present, this program, undertaken with a number of local bar associations, is very active in the 14 most populous counties of the state. LYC also provides print and internet resource material to teachers and students on an ongoing basis.¹¹³

Teacher Training - Now, however, a crisis looms – a crisis that also presents an opportunity and is the nexus of our principal and priority recommendation.

At least 40-50 percent of New York's experienced Social Studies teachers will retire within the next three to five years. While LYC has provided extensive and comprehensive training and shared new resources annually with thousands of these teachers for more than two decades, their retirement will result in a much younger staff, with far less content knowledge about the law and without the training in the law-related methods which are as vital as legal content. Bluntly put, legal content without the effective techniques of law-related education, which demand interactive teaching strategies and place students in action-based learning opportunities, is unproductive.

This fundamental point must be given highest priority: If the legal profession and, given its extensive experience in youth education, the Association, in particular, do not engage the new generation of teachers and provide the training and resources that they need, then the quality of law-related instruction will diminish and the knowledge of young citizens about the justice system will suffer long-term diminution. Each middle and high school Social Studies teacher whom we reach with training and relevant content/methods resources has direct contact with 150 students each day, 180 days per year. By way of example, our November 1999 mailing of 5,000 copies of our updated *United States Supreme Court Decisions* book, which includes briefs of the 32 required cases for the 11th Grade U.S. History Regents course and exam, will impact the learning of all 150,000 students who will take that exam next June. That effort - in creating the second edition and printing the book - cost less than \$5,000.

While we work within the state curriculum mandates in designing new training efforts and resources, we also need to carefully hone our message to ensure that we have a lasting impact on student knowledge and attitudes. This is no small point and goes to the heart of some of the discouraging findings from the previously cited ABA survey.¹¹⁴ Students learn best and deepest through curriculum stages which address the same topics

¹¹³ Further information on existing Association educational programs can be found at www.nysba.org.

¹¹⁴ ABA Survey, *supra* note 53.

at age appropriate levels in a number of different grades and which fuse the content with active learner methods. Research shows that retention levels rise from a low of about 5 percent with lectures, to about 25 percent with matching visuals, to more than 90 percent in active learning situations. The goal is ensuring that a 40-year-old will still know the justice system and appreciate its value.

We believe that three themes are vital to communicate: 1) due process and the adversarial system, including the legitimate role of attorneys on both sides of a case; 2) judicial independence; and 3) the jury system and the duty of jury service. These points can be highlighted through many opportunities provided by state guidelines.

Therefore, we recommend

- Replicating the LYC/P.A.T.C.H. Summer Institute training program to reach 300-400 teachers each year.
- Adding a half-day workshop for new teachers to the statewide Conference on Law-Related Education.
- Expanding print resources for teachers and republishing undated materials for new teachers.
- Creating and distributing via the internet a library containing informational resources, such as U.S. Supreme Court decisions, and teaching strategies for various grade levels and including suggested activities. In the alternative, schools may be able to effectively use existing web sites such as www.lexisone.com, or www.law.cornell.edu, to gather state and federal court decisions. The Association may be able to expedite such efforts with appropriate links to its own website.
- Creating an interactive internet resource for the direct use of students designed to move step-by-step through the decision-making process and mimic the interactivity of good law-related methods in the classroom.
- Using the internet to arrange lawyer visits to classrooms. Lawyer visits are difficult in rural counties, but can be made easier. Using e-mail, teachers could contact the appropriate bar association, the bar association contact interested lawyers, and lawyers and teachers converse at their individual convenience to make necessary arrangements.

Additional funding sources must be identified and solicited. There is a significant difference between budgeted funding, such as LYC has received from the Association, and grant funding provided for short duration for a specific project. To address issues of public understanding, in a larger and lasting way, long-term sources are necessary. Law-related education programs that depend on money available for the short term spend much of their time chasing funding, and too little actually impacting student learning.

Attaining and maintaining a satisfactory level of public understanding, trust, and confidence is a problem of long standing, not a short-term problem that ever has or ever will be successfully addressed with a few grant projects. Having the necessary impact on the problem requires the kind of long-term commitment which the Association and the profession have shown over the past quarter century.

Resource Catalog - The array of resources available to teachers currently is impressive, but not widely enough known. This information includes videos, booklets and other materials on rights and responsibilities, produced through the Association, other bar associations, and law schools.¹¹⁵ Consequently, these potentially valuable teaching aids are underutilized. We propose that summer interns be employed to work with OCA and the Association to create a catalog, and that LYC annually ensure that Social Studies teachers statewide have the catalog and are encouraged to use it.

Video/Software Contest - As part of the continuing program to assist in educating students about the legal process, we propose that the Association sponsor a statewide contest for students to develop and produce computer software programs and videotape presentations relating to the judicial system.

Any grade or secondary school student in New York State or any group of such students working together would be eligible to enter; the winning entry or entries would be distributed for educational use in the school system. Entries would be judged on the basis of originality and effectiveness. Ideally, there would be a cash prize in each category: video and computer software program. The contest would be promoted principally to secondary and middle school students.

¹¹⁵ Among these resources are:

- A videotape series of 26 half-hour interview programs, "It's in Your Court," covering a wide range of topics relating to the courts. Produced and hosted by U.S. Customs Court Judge Gregory Carmen, these programs have been broadcast on Long Island Public Access television, and have been provided by the Association to the central library system. They are available for loan to individual libraries across the state.
- A series of 16 videos produced by NYCLA.
- Videotapes of the oral arguments before the New York State Court of Appeals, made and retained by Albany Law School as an educational resources for the public, profession and law students. The presentations also have been shown on cable television.
- On-line seminars for high school students conducted by the ABA. This year's topic was "Access Denied, R-Rating, V-Chip: Should Youth Access to the Internet and Mass Media Be Restricted?" Approximately 1,500 students took part in 50 classrooms in 26 states.
- A videotape series on topics in "Disabilities and the Law." Produced by the Association Committee on Issues Affecting People With Disabilities in cooperation with the New York State Commission on Quality Care for the Mentally Disabled and the New York State Cable Commission, these programs are intended to educate persons with disabilities and their families on their rights and responsibilities and to enhance public understanding of relevant issues.
- Association public education booklets on a variety of law-related subjects for general distribution. These include "The Courts of New York," explaining how the Court System operates, including the natural friction existing between the courts and the media, prepared by the Committee on Justice and the Community; the 13-topic "Legal Ease" series, produced by the Committee on Public Relations with relevant substantive committees and sections; "Determining the Amount Under the Child Support Standards Act" from the Committee on Children and the Law and the New York State Commission on Child Support; "17 Benefits for Older New Yorkers" compiled by the Elder Law Section in cooperation with the New York City Department of Aging; "Guidelines for Guardians," prepared by the Elder Law Section for laypersons; "Senior Citizens Handbook" on law, procedure and other relevant information for senior citizens, from the Young Lawyers Section; "Family Court and You," jointly created by the Committees on Women in the Law and Children in the Law, with the Women's Bar Association, The Fund for Modern Courts and OCA, to explain preparations for appearing in Family Court and related matters.
- An annual essay contest for high school students. Though it may be viewed as old-fashioned technology, this project was renewed recently by the Association Committee on Justice and the Community. The winner is awarded a cash prize.

We believe it would be wise to seek funding for the administration of the contest and for the prizes that in no way competes with the fund raising necessary to effect completion of the other programs recommended herein.

For the General Public

Strategic Alliances - Public understanding relies to a great extent on attitudes conveyed by public officials and civic activists of all stripes. From time to time lawyers, the judiciary, and/or the legal system as a whole are subject to unfair attacks. In many situations these attacks are to support the interests of a particular group. Thus, for example, the public tends to blame lawyers for perceived excessive jury awards. Judges are castigated when providing what one group regards as too lenient justice or too harsh justice.

The bench and bar would benefit enormously from having allies with whom they could take up sympathetic causes. For example, while the need for higher salaries for public defenders is obvious, for the profession to promote it appears self-serving in many quarters. However, there are other civic advocates who share the bar's view on this issue. A cooperative relationship with such other like-minded organizations would aid immeasurably in moving the public and Legislature beyond the "self-serving" problem and focus their attention where it belongs – on the merits of the issue itself.

Therefore, a system of "strategic alliances" should be established. A "strategic alliance" is a relationship between members of the legal profession and respected professional, cultural, charitable, political, and business groups. The desired goal is to fashion informal contacts between members of the Association Executive Committee and the leadership of these groups. While the contacts must of necessity be informal, the reaching out to these groups should be ongoing and organized. In this way, when a controversy arises, and it is felt that the other organizations would share our view, the bench and bar would be able to solicit their support.

The Association Committee on Public Relations has prepared an initial list of several hundred organizations of all kinds that may be potential allies either generally or with respect to specific issues. Such organizations could potentially assist in communicating the positions and needs of the legal system to the public, media, constituents and the Legislature. Examples of issues that could gain from such alliances include court reorganization, assigned counsel compensation, legal services funding and judicial independence.

The benefits in advancing the important issues for which we fight make it appropriate that we begin this long-term process of developing strategic alliances. Of course, in forming such alliances, neither the Association nor any other organization would be committed in advance to the support of any agenda or any specific issue, *quid pro quo*, but we would work cooperatively on those matters we mutually support.

Non-Commercial Sustaining Announcements - Only about 15 million people watch the nightly national news on television, out of a population of over 275 million. Fewer than

10 million read the three weekly news magazines. Ten percent of the New York population has never attended high school, and another 15 percent never graduated. The net effect is a significant proportion of citizens with very weak knowledge of the law and justice system, despite our best efforts to reach them. A third strategy, besides better public education and better journalism, will help reach these people.

While some people do not actively keep up with the news, and while some have lost interest in formal education, nearly everyone at some point in a given week spends time listening to or viewing entertainment radio and television. Short, attention-getting messages are very effective in reaching such people, as most advertisers will attest. Paid advertising is very expensive. Public Service Announcements (PSAs), while inexpensive, are of limited value as they are generally scheduled during times of day when audiences are lowest.

Non-commercial sustaining announcements (NCSAs), however, offer a relatively inexpensive way to gain nearly the same kind of exposure as commercial announcements. NCSAs are a hybrid under Federal Communications Rules. For a modest fixed fee, payable to a state broadcasters association, a non-profit organization can contract for a set number of announcements to be aired on all member radio or television stations in all broadcast day parts for a period of several weeks. Stations must treat them as commercials and schedule them accordingly. In New York, the state broadcasters association guarantees exposure in all parts of the day over a multi-week run.

The Association has used NCSAs, paying the New York State Broadcasters Association \$25,000 to arrange for the airing of these announcements in each of three years. Production costs averaged \$5,000. The first two years, Association NCSAs were aired on approximately 200 radio stations and covered topics relating to the elements of the law with which ordinary citizens are most likely to come into contact, *i.e.*, buying and selling a home, preparing a will, working with a lawyer. In 1999, NCSAs were aired on 39 television stations, promoting jury service. The value of these announcements, if purchased as ordinary commercials, was approximately \$750,000.

In this era of cynical public attitudes, attempting to use NCSAs for puffery would be counterproductive. Instead, NCSAs can best be used and to great effect to announce, explain and promote these and many other positive elements of the legal system for which there is a tangible public benefit, *e.g.*, improvements in jury service. A series of NCSAs is available to any particular organization only once or twice a year and we recommend that the Association and OCA make use of this vehicle.

Education Through Television - Court TV has already done some work in the production of programs intended to explain the Court System, the legal process, and the legal profession.¹¹⁶ With our urging and involvement, that network, as well as public

¹¹⁶ Court TV has produced three programs oriented to students - "Your Turn" on Saturday afternoon is formatted similarly to "Oprah" or "Phil Donahue" and involves teenagers discussing legal/social issues; "Opening the Door to Diversity" aired annually in October, and then made available on tape, together with lesson plans, to schools; and "Choices and Consequences," a series produced on an ongoing basis which uses hypothetical cases to illustrate criminal problems adolescents can encounter, and how law enforcement and the courts handle them. Tapes, lesson plans and internet resources are available to schools. Additionally, Court TV has produced a one-

television and perhaps other broadcast entities could be encouraged to do more. Advantages include Court TV's need for programming, an audience pre-disposed to accept such material, and inherent promotional opportunities. Existing and future Court TV or other network initiatives in this vein should be included in the resource catalog recommended above.

We also look forward to the report and recommendations of the Association's newly established Special Committee on Cameras in the Courtroom concerning provision for audio-visual coverage of courtroom proceedings in criminal and civil matters.

Tel-Law Messages - The Association operates an automated "Tel-Law" program that last year generated 26,723 calls. Callers hear a menu from which they can select from 48 pre-recorded messages in English and 46 in Spanish describing various basic legal issues, rights and responsibilities. The program, providing one- to two-minute messages, has been run in cooperation with the New York City Department of Consumer Affairs, the county bar associations in Nassau, Suffolk and Onondaga, and the Help Service of SUNY Fredonia. Not all topics are available in all participating counties; some topics are localized. The Association prepares the scripts and tapes; the equipment is maintained by the local co-sponsoring entity. The expansion of the Tel-Law program to all counties should be encouraged, with outreach to seek the participation of additional bar associations and other civic organizations. In some areas, however, maintenance of a Tel-Law service may not be feasible. Therefore, the Association also should consider providing this information by way of the Internet to ensure statewide availability.

b. Local Initiatives

The more we, as individual lawyers and as an organized, unified bar are perceived in friendly, constructive ways, the more we will be seen as a natural and positive part of the community. As local bar associations demonstrate they are part of the everyday workings of their communities, public understanding will grow. We strongly encourage local bar associations to aggressively seek opportunities to promote the courts and bar, to increase their community involvement across the broadest possible spectrum of legal and non-legal activities, and to engage other educational, civic, business, professional, labor and religious organizations.

This also should be an area of continued involvement of the Association, including production of resource materials that can be used in the community, collaboration on programs, and provision of opportunities for bar associations across the state to share experiences and project ideas that could be replicated elsewhere.

There are any number of ways a local bar association can do this and excellent examples of local bar initiatives currently in place. We include but a partial list:

hour documentary, "Transitions: Your Kids in Their Own Words" which is about and featuring teenagers but targeted to adults. Videos are available. See www.courtstv.com for further information about this programming.

- **Speakers' Bureaus** - The former Association Committee on Courts and the Community operated a speakers' bureau for a number of years, but it fell into disuse. Perhaps this function would be particularly effectively handled by local bar associations with direct access to potential audiences. We endorse the proposal of the State Committee's Subcommittee on Public Understanding and Media Portrayal to ask the Chief Judge and Chief Administrative Judge to write to all the judges and local bars in the state on this matter in more or less the following terms:

We understand that many bar associations maintain speakers' bureaus to facilitate providing speakers for civic, church and school groups. Judges have been urged to participate in such speakers' bureaus. If you do not have such a bureau, we would urge you to create one and to publicize the availability of judges and leading lawyers in your community to speak about the legal system to groups in the community. If you already have such a bureau, we would ask you to expand it to solicit the participation of your members and to disseminate to various groups the availability of the speaker service.

We further recommend that the Association increase its publicity about the availability of its various public information materials for use by local bar associations for speakers' bureaus or other community education projects. Building on our proposal to enhance teachers' awareness of Association resources through preparation of a catalog, we suggest that the Association compile a subject matter listing of materials of interest in the community, for ease in reference and order fulfillment. [See proposal in this segment of the report at 54-55 regarding public understanding for students.]

- **Court Tours** - There are a number of court tours available around the state, and initiatives are being undertaken to enhance and standardize them. There is little publicity about them, however. We encourage OCA to organize this project. We also see opportunities for local bar involvement in the tours and in publicity for these events.
- **Town Halls** - For the past two years, the Association Committee on Justice and the Community has conducted successful town meetings on facets of the criminal justice system, the first in New York City and the second in Westchester County. In each instance, a panel of experts discussed with the public various aspects of legal and court procedure. A 90-minute videotape of this year's town meeting is available from the Association's Media Services Department. While this tape should certainly be part of the catalog for teachers, local bar associations also could use it as a guide in planning their own town meetings or "people's law schools."
- **Community Betterment Projects** - Local bar associations ought not limit their community outreach activities to law-related projects but also aggressively seek opportunities to become involved in community betterment projects of all kinds, from litter clean up to cultural programs to youth sports. Professional and social events also can be organized and hosted by local bars that foster sharing of experience, networking, and opportunities for cross counseling. A number of local bar

associations have undertaken such projects, including the Monroe County Bar Association's "Tools for Schools" providing basic school equipment for students; the Bar Association of Nassau County's "We Care" program which has aided the Family Court nursery, provided emergency hotline cards to students, and helped other projects; the Albany County Bar Association's volunteer day for Habitat for Humanity and its run for domestic violence services; and the Bar Association of Erie County's "Lawyers for Learning" with attorneys helping students with schoolwork, and sharing stories and activities.

- **Media Outreach** - Local bar associations can be very effective at media outreach. There already is more so-called "good news" about lawyers published regularly in the state's magazines and newspapers than most lawyers realize. Local associations, however, are especially well-suited to look for and publicize story opportunities that go beyond events surrounding Law Day: *e.g.*, lawyers involved in local government, lawyers saving lives, teaching, helping with charitable activities, participating in children's programs – anything that shows lawyers as integral parts of their communities. We encourage local bars to ensure that this is a part of their media communications efforts. Likewise, the Association should continue to seek opportunities to provide to the media and include in Association publications examples of lawyers' law-related and community volunteerism, to recognize and encourage such efforts among members of the profession.

Moreover, local bar associations are in a unique position to identify and help journalists in their communities prevent mistakes and, in so doing, better inform the public. One way is to be vigilant for errors and take steps to correct them. The media do appreciate it when mistakes are pointed out and suggestions are offered on preventing them in the future when it is done in a constructive, non-confrontational manner.

Local associations have an opportunity to better educate local journalists generally with short, subject specific seminars. Such seminars would be particularly appealing if given by local lawyers with whom local reporters are more likely to come into contact. Programs also could be held in collaboration with the Association and/or utilize reference material prepared by the Association for the media.

The Association Committee on Public Relations has considered the idea of a multiple-day "Law School for Journalists" on a statewide basis, but has found, through polling of reporters and news executives that the idea would be largely unwelcome because of the time commitment required and cost. Several law schools, however, currently present such sessions for the media.

Between 1976 and 1986, the Association provided newspapers in the state with articles on Court of Appeals opinions. This program was stopped due to lack of interest on the part of the papers, in part because Court of Appeals opinions tend to come in groups and the papers preferred a regular input. Some local attorneys continue to write columns for their local newspapers as a marketing tool. The Association has, on occasion, provided articles to local newspapers on timely topics, with most success in placement in small dailies, weeklies, and "Penny Savers," as

such publications are generally eager for material and thus more willing to accept it from unsolicited sources.

Local bar associations can build upon these projects and experiences themselves and in many instances could find success because of their very proximity to local media outlets. This concept also has a broadcast application in that local associations can offer and provide their officers and members as guests on local radio and television talk shows. Hardly a week goes by when there is not a legal topic of interest in the news. Whether it is a local, state or national matter, local media are grateful to have local input on it.

- **Websites** - Lastly, where a local bar association does not now have a website, we urge its development. Such sites should include machinery to permit feedback and public inquiry, and its availability should be publicized in a sustaining manner.

The Association can facilitate such activities by creating a resource guide to outline the programs already under way in various local bar associations, and making the guide available to all local associations. The Association can further assist by providing the resources necessary to such programs where local associations are unable to do so themselves. Similarly, where local bar associations have had success with outreach programs, they should be encouraged to look for opportunities to share their skills with other associations.

Guidance on Lawyer Advertising

Bad advertising, no matter who the intended audience nor what the purpose, inevitably leaves the public with the wrong impression of the advertiser, leaves the advertiser open to accusations of misrepresentation, and damages the public image of the advertiser and its colleagues, much to the consternation of the colleagues. As is true in any other type of advertising, poor lawyer advertising is simply poor advertising at its most basic level.

Enlisting the help of advertising professionals could go a long way toward improving it across the board. Sharing of standards with the American Association of Advertising Agencies (commonly called the "Four A's") and the American Advertising Federation would head off many problems before they occur. The professionals in that field can assist lawyers in creating advertising that effectively promotes the services of lawyers, maintains a positive public demeanor, and educates the public. Likewise, advertising professionals are in a position to spot potential problems. Moreover, advertising professionals are acutely aware of public sensibilities and can guide lawyers toward a correct marketing strategy. Guidance also can be found at the larger media organizations. We recommend that the Association and local bar associations consider inviting advertising professionals to conduct seminars and to exhibit at meetings. [For further recommendations in addressing misrepresentations in advertising, see segment (4) of this report at 42-43 on legal and judicial ethics.]

c. **Media Portrayal**

Some recent scholarship argues that the low levels of involvement by young adult Americans in the political process stems from a high level of cynicism deriving from political scandal and intense partisanship, and exacerbated by negative media attitudes and practices and reporting. Young adults are choosing not to vote because of their perceptions of how the electoral, legislative, and executive systems operate. Most have certainly been taught the fundamentals of civics and citizenship, but they do not exercise the right to vote. We should recognize the great difficulty that this portends for perceptions of the justice system, which should not be viewed as isolated from the repercussions of these cynical perceptions.

How to dilute intense partisanship and reduce public scandal is outside the scope of our assignment. Media attitudes, practices and reporting with respect to the judicial system, however, fall well within it.

Journalists are the products of the same society, education and experience as everyone else. As such, they know no more than anyone else about the judicial system, except what long experience on a court beat may have taught some of them. Most of the bad reporting, or the perceived unfair reporting, is in actuality ignorant reporting – ignorant with respect to the letter of law and procedure, and as to its spirit as well.

The Association's Committee on Public Relations and Media Services Department have for years been addressing this issue. For example, the Media Services Department is very aggressive in assisting journalists to access information about the judicial system, explain that information, and correct inaccuracies.

Background on Legal Issues in the News

Similarly, the Committee on Public Relations is in the process of developing a service to journalists called "Point of Law" to provide all 750 newsrooms in the state with one-page bulletins, explaining in plain English, some facet of a legal matter then in the news. These bulletins, which should begin appearing in newsrooms in 2001, will be sent between once and five times every week, depending on news flow. Reporters will be encouraged to call the Media Services Department for more information on the point raised, or to arrange an interview with a lawyer on that or any other topic. We anticipate that this project will aid in promoting coverage of legal issues and serve as a source of information.

Reference Resources

The *Legal Handbook for New York State Journalists*, prepared by Professor Jay Wright of Syracuse University and the Association Media Services Department, can become the foundation piece for educating reporters and editors. Now in its second edition, this 200-page loose-leaf reference book of laws, procedure, judicial process, and terminology is designed for use by journalists covering the courts and law-related issues. Brief discussions of relevant differences in the laws of New York's border states are included.

It can be transported easily for fast on-the-spot research. It has proven very popular, with some reporters being known to carry it with them while working.

One copy of the *Handbook* has been provided to each daily newspaper, television station and principal radio station in the state. It also is in use in some of the state's journalism schools and programs. But this is not enough. Ideally, the *Handbook* should be in the hands of every journalist in New York State. However, as some 1,500 copies at \$30 a copy would be necessary, doing so is cost-prohibitive unless additional funding is sought by both the Association and OCA, internally and externally. The Association Media Services Department is exploring ways to offer the handbook on the internet at a significantly reduced price, and working out licensing arrangements with media companies. This resource also could be useful to Social Studies teachers. We encourage efforts to increase distribution of this resource.

Court Public Information Officers

For a variety of reasons, judges should not be expected in most instances to be forthcoming publicly about the activities in their courts. Nevertheless, there should be someone who can speak for the court at the local level.

We believe that ultimately there should be a public relations professional in each court in each county of the state, or at the very least in each Supreme Court district. A public relations professional has the training to quickly see problems developing in news coverage and to move to correct them. A public relations professional has the necessary wherewithal to spot opportunities to fill in the holes in public understanding as they appear, and to find ways to effectively promote the courts' activities to the public and the media. And a public relations professional has the tools to correctly interpret the courts' actions to the media and public.

We are aware of the enormous budget implications of this recommendation. Believing whole-heartedly that OCA would benefit exponentially, we nevertheless understand that funding for such a program is unlikely for the foreseeable future. Still, there should be someone designated in each Supreme Court district as a Public Information Officer (PIO), whether as a principal duty or additional duty. The PIO must be very familiar with the workings of the courts and the clerks' offices, and the ethical rules by which judges and lawyers are bound. The PIO also must know the media operating within the district, and appreciate their differences. Ideally, the PIO should be available 24 hours per day, 7 days per week for media inquiries.

Where no such individual has been appointed, we urge court officials to make such appointments and to ensure that PIOs become active in the National Association of Bar Executives Public Relations Section and regularly attend its training sessions.

In all events, PIOs should avail themselves of all the resources and assistance offered by the Association Media Services Department.

Association Media Presence in New York City

The Association Media Services Department is already recognized as among the most pro-active in the nation. But it is in Albany. The state and national media capital is New York City, and the bar and courts would be better served if it has a presence there.

The Media Services Department spends a significant percentage of its time working with journalists from all over the state. Some of this work entails “pitching” story ideas, and some responding to inquiries. Virtually all news organizations in the state are aware of its work and use its services. To work most effectively with the media in promoting public trust and confidence in the legal system, however, the Department should be located amongst the principal media outlets with which it will deal.

The Association is contemplating the establishment of a secondary general office in New York City. Its plans should include space, personnel and resources for a satellite office for the Media Services Department. But even should the Association opt not to open a general office in New York, we recommend the Association consider establishing a satellite Media Services office there in any event.

Media Guidelines and Training for Judges

There appears to be several sets of guidelines in circulation suggesting what is permitted or recommended with respect to judges' commenting to the media or the public. We believe it would be wise to consolidate all of them into one authoritative guide, and ensure that each judge has one and understands it. It also should be circulated to all local bar associations for their information. [See also, recommendations on communications by judges, in segment (4) at 44-45 of this report on legal and judicial ethics.]

Judges are presently afforded media training by OCA. We recommend that OCA review this training regularly to see if it is sufficient to meet current needs and prepare judges appropriately within the constraints of existing ethical rules. Moreover, this training should include practice in actual media contact situations. To this end, the media training conducted by the Association for its officers and section chairs may contain elements that would have useful application to OCA. While we understand that funding for such a project may not be available at this time, the lack of such training reinforces the need for court public relations professionals, or at least PIOs, to respond to and work with the media to ensure appropriate and accurate coverage and promote public understanding of the justice system.

SUMMARY OF RECOMMENDATIONS

Set forth below is a summary of the recommendations contained, and discussed in more detail, in the text of this report. Although we believe that all of these recommendations are important and worthy of consideration, we have specifically identified some (delineated by check marks) that we believe deserve the highest priority because they are of particular importance or timeliness.

1. Bias and Prejudice and Access to Justice

a. Bias and prejudice

- ✓ 1. Concur with State Committee proposal for greater representation of minorities in the courts but would not focus particularly on the judiciary. Instead, urge enhanced opportunities and diversity at all levels of employment in the justice system and in all elements of the legal profession, including public and private sectors and law schools. [pp. 4-5]
 - a. To assist in this effort, recommend that the Association compile information on the numbers of attorneys and judges of color in various positions in the legal profession and in different communities of the state to aid in assessing and monitoring efforts to enhance diversity. [p. 5]
 - b. Similarly, recommend compiling data on practice areas, career paths and related information concerning women in profession. [p. 5]
- ✓ 2. Encourage bar associations and law schools to continue to enhance programs and resources to help attorneys and law students build career development skills and law office procedures that promote diversity in hiring and retention of a workforce that reflects diversity. [p. 5]
- ✓ 3. Agree with State Committee in encouraging bar associations and law schools to provide programs and materials on diversity issues. [pp. 6-7]
 - a. Recommend that the Association and other bar associations incorporate diversity issues into MCLE, law office management programs and resources. [p. 6]
 - b. Suggest the Association and law schools collaborate in presenting a roundtable of legal educators and clinicians on diversity awareness issues, with the schools sharing experiences and effective initiatives. [pp. 6-7]
- ✓ 4. Endorse State Committee's proposal for statewide sensitivity training and education programs for judges, law clerks, secretaries, clerks of the court and staff, and security personnel and district attorneys, but urge that such training be interactive and ongoing. Suggest considering offering MCLE credit for judges and Court System attorneys instructing and attending such programs. [pp. 5-6]
- ✓ 5. Encourage additional training of court personnel in customer service skills. [p. 6]
 - 6. Concerning State Committee's recommendation for incentives and disincentives for staff on treatment of court users, urge the Court System to emphasize positive examples and recognition of staff in promoting proper conduct. [p. 6]
 - 7. Endorse State Committee recommendation to increase and provide more consistent attention to the needs of people with disabilities and people for whom English is not the primary language. Urge each court to evaluate efforts to serve persons with disabilities and take necessary remedial measures. [p. 7]

8. *Additional issue and recommendation not addressed in State Committee report: Seek amendment to the statute concerning change of venue, to provide a right of appeal or a right to seek leave to appeal to the Court of Appeals. [pp. 7-8]*

b. Access to justice

1. Funding for civil and criminal legal services
 - a. Endorse State Committee recommendations, continue Association initiatives and urge collaboration of bar associations, Court System and others to:
 - ✓ 1. Call for state legislation to increase compensation rates for counsel provided in Article 18-B for indigent defendants in criminal matters and in certain Family Court proceedings. [pp. 10-13]
 - ✓ 2. Pursue adequate funding in federal appropriations for civil legal assistance to the poor, without undue restrictions to most effectively provide counsel. [pp. 13-15]
 - ✓ 3. Seek establishment of a regularized funding source for civil legal services at the state level so that the existence of legal services is not placed in jeopardy year to year. [pp. 13-15]
 4. Urge increased funding for public defenders' offices so that resources are proportionate to those allotted to prosecutors' offices. [p. 12]
 - b. Urge Association to continue to speak out when state budget cuts are made in defense services to ensure that defense offices are not disadvantaged. [p. 12]
 - ✓ c. Recommend that the Association reaffirm its positions for adequate funding of civil and criminal legal services, continue discussions with lawmakers, and expand its education of the public, and civic and business entities to strengthen the number and diversity of voices speaking on behalf of legal counsel for those in need. [pp. 14-15]
 1. Reiterate opposition to proposals to increase court or attorney registration fees as a source of such funding. [p. 14]
2. *Pro bono* service
 - a. Give continued attention to the State Committee recommendation to enhance the efforts of bar associations and law schools in soliciting volunteers and appropriately matching attorneys to clients. [pp. 15-18]
 - b. Encourage ongoing sharing of the best practices by bar associations, law schools and other entities regarding volunteer legal services programs. [p. 15]
 - c. To prompt the strongest volunteer efforts, maintain flexibility in *pro bono* development to tailor programs to area needs. [pp. 15-16]
 - d. Enhance Association publicity of law firms' *pro bono* initiatives statewide and urge additional recognition locally. [pp. 16-17]
 - e. Encourage and aid law offices in developing workplace policies that facilitate *pro bono* services. Include this issue in Association law office management programs and materials and prepare sample workplace policies. [p. 17]
 - f. Recommend that the Association meet with government representatives to encourage creation of guidelines to facilitate *pro bono* service by attorneys in the public sector. [p. 17]
 - g. Encourage corporate law departments to facilitate *pro bono* service among their legal staffs. [p. 17]

- h. Ask judges to encourage *pro bono* service in their presentations at admission ceremonies. [p. 17]
- i. Urge the courts, as well as firms, to consider ways to ameliorate scheduling difficulties that lawyers may encounter in seeking to perform *pro bono* service. [pp. 17-18]
- 3. *Pro se* assistance and alternatives
 - a. Urge Association, local bars, legal services programs and others to increase emphasis on the following, which we view as more important than making available *pro se* assistants in the courts who are trained to answer procedural questions as recommended by the State Committee:
 - 1. informing people about when and how an attorney can help. [p. 18]
 - 2. assisting people in obtaining counsel. [pp. 18-19]
 - 3. developing panels for persons with modest means. [pp. 18-19]
 - 4. establishing services that provide one source for those seeking help with legal problems, including *pro bono* service for low-income persons and lawyer referral or other assistance for those with modest income. [p. 19]
 - b. Encourage further development of and publicity among the profession and public of group and prepaid legal services. [pp. 19-20]
- 4. Family law matters
 - a. Concur with State Committee recommendations to increase judges' awareness of the inequitable bargaining position that can occur in matrimonial cases and encourage temporary awards of attorney fees and maintenance where appropriate. [p. 20]
 - b. Urge Association to reaffirm and pursue its support of legislation to require the court to grant interim counsel fees in appropriate situations and where such is denied or deferred, direct that the court provide the reasons in writing. [pp. 20-21]
 - c. Consistent with Association position, seek safeguards in court-annexed ADR in matrimonial matters to ensure that the programs are voluntary, the parties are individually represented and the neutrals are sufficiently trained. [p. 21]
 - d. Urge courts to apply safeguards to avoid inequitable bargaining positions to matters that are not strictly matrimonial, *e.g.*, involving persons who have a child together but are not married. [p. 21]

2. Need for a Comprehensible User-Friendly Court System, Addressing Delays in Justice

a. Need for a comprehensible user-friendly Court System

- 1. Endorse recommendations of State Committee to promote a comprehensible user-friendly Court System:
 - ✓ a. Restructure present Court System to consist of two branches: one with local or limited jurisdiction and one with statewide jurisdiction [p.22].
 - ✓ b. Endorse State Committee's proposals to develop a brochure for users of the court and multilingual videotapes and other written educational material, possibly in a collaboration of bench and bar, to explain legal terminology, court etiquette and protocol, court procedures and the role of the judge. [pp. 22-23]

1. Recommend making these materials court specific, presented in a clear non-technical manner and made available in a variety of places in addition to courthouses. [pp. 21-23]
 2. Urge priority in developing these materials for those courts in which individuals, most frequently of limited means, often appear without counsel such as the landlord and tenant courts, Small Claims Court and Family Court.
- c. Install better signs in courthouses. [p. 21]
 - ✓d. Support State Committee's recommendation to expand provision of Children's Centers. [pp. 21-23]
 1. Recommend giving priority to establishment in courts where persons are most frequently of limited means and appear without representation. [pp. 22-23]
 - e. Create an ombudsman position, possibly through the use of volunteers, to help people who have difficulty reading English to understand instructions, complete forms and navigate the courthouse. [p. 21]
 - f. Endorse recommendation of the State Committee for more trained translators with language skills in a greater variety of languages in the courthouses in this state. [pp. 21-24]
 - g. Provide procedural handbooks and training for all county clerk office personnel and court clerks who respond to inquiries from litigants to ensure that consistent and appropriate information is given. [pp. 21-24]
 - h. Provide in public places (*e.g.*, shopping mall or library) multilingual kiosks for obtaining information regarding case status and directions to the courthouse, and curbside drop boxes for paying fines or delivering papers, similar to library depository boxes. [p. 21]
 - i. Support State Committee proposal for handbooks and community resource materials to assist court personnel and the judiciary in aiding litigants and the public with problems that cannot be fully resolved in the courtroom. Urge involvement of bar associations and other groups in the development of these materials. [pp. 21-24]
 - j. Develop community justice centers, which reflect the culture and norms of the community they serve, for handling minor criminal matters. [p. 21]
 - k. Favor State Committee proposal for development of forms for a variety of courts in which litigants frequently appear without counsel, but stress that this recommendation cannot and must not be viewed as a substitute for creating permanent and adequate funding for civil legal services. [pp. 21-24]
2. Access to the database
 - ✓a. Support expansion and modification of the OCA website/database, as the State Committee recommended, to allow attorneys, judges and the public in general to access court schedules and other information on line at no cost. [pp. 24-25]
 1. Further, urge modification of the website/database to make it user-friendly. [p. 24]
 2. Applaud OCA's new website service to allow attorneys and the public in the same jurisdictions the opportunity to check for case scheduling information and limited case history information, but call for expansion to all counties and courts in the state and to include information beyond scheduling. [p. 24]
 3. Recommend use of the website/database to promote educational materials developed pursuant to recommendations of the State Committee, as well as for

the recommended compilation and dissemination of community resource information. [pp. 24-25]

b. Addressing delays in justice

1. Expedition of discovery
 - a. Support State Committee recommendations to enhance discovery practice and reduce delay, cost and inconvenience to both parties and witnesses, thus enhancing trust and confidence in the legal system:
 1. Regulation of deposition practice and prevention of dilatory practices by amendment of CPLR Rules 3113 and 3115. [p. 25]
 2. Simplified procedures for the production, discovery and use of non-party business records by amendments to CPLR Sections 2305(b), 3120, 3122 and a new 3122-a. [pp. 25-26]
 3. Provision for pre-judgment interest on personal injury awards by amendment of CPLR Section 5001 to expedite the settlement of the case and hence reduce the costs of litigation to the client. [pp. 25-26]
 4. To balance the preceding, amend Rule 3221 “offer to compromise” measure, depriving a claimant of the right to recover costs or interest from the time that a settlement offer is made if the offer is not accepted and the claimant fails to obtain a more favorable judgment. [p. 26]
 - b. Endorse increased use of phone conferencing to monitor status and hear arguments of motions. [p. 26]
 - c. Achieving prompt settlements
 1. Endorse State Committee recommendation for greater use of voluntary mediation and other ADR programs to facilitate such settlements. [p. 26]
 2. Urge judges to involve either themselves or other appropriate court officials in settlement questions as soon as a matter is brought before them; increase budgets to provide for the designation and, particularly, for the training of such officials. [p. 27]
2. Other issues of delay
 - a. Endorse State Committee recommendation to increase the number of judges, public defenders, prosecutors and support staff and to fill judicial vacancies and create additional judgeships expeditiously. [pp. 27-28]
 - b. Commend State Committee for proposing expansion of innovative attempts to address a variety of sociolegal problems that surface in the judicial system but are not susceptible to effective and long-term resolution through traditional mechanisms. These innovations include the development of specialized courts and promotion of development of multi-door court where ADR is one of options litigants have through Court System at earliest stages of their disputes. [p. 28]
 1. Urge careful evaluation of these experimental courts and programs over the longer term. [p. 28]

3. Jury System Experience; Adequate Funding for Court Facilities

a. Jury system

1. *Per diem* for town and village justice court jurors
 - ✓ a. Endorse State Committee recommendation to require town and village justice court jurors to be compensated on the same basis as other jurors. [pp. 29-30]
 1. Support the Court System legislative proposal for state assumption of these costs. [p. 30]
2. Jury notice, information in advance of service, parking, payment
 - ✓ a. Support State Committee proposals for the following but recommend pilot projects to accommodate different local conditions and needs:
 1. Clarify jury summonses by providing more information about the expected length of jury service. [pp. 30-31]
 2. Use e-mail or automated telephone systems to obtain information from jurors in advance of service. [pp. 30-31]
 3. Consider payment of parking allowances to jurors, especially for those jurors who are not paid for their service. [pp. 30-31]
 4. Improve the system for juror payment, both as to frequency and timeliness. [pp. 30-31]
3. Communication with jurors
 - a. Endorse State Committee recommendations to:
 1. Require judges and their staffs to report to the Commissioner of Jurors Office when trials will not be proceeding on the scheduled date or at the scheduled time so jurors are not brought in unnecessarily. [p. 29]
 2. Remind judges to be more courteous and attuned to jurors' lives and needs. [p. 29]
 3. Ask judges to give jurors instructions regarding procedures, their role and conduct prior to the commencement of trial, allow note taking, give a special instruction if there are attorneys or judges on the jury panel, and give jurors a copy of the instructions on the law (charge) for reference during deliberations. [p. 29]
4. Grand jury
 - ✓ a. Urge inclusion of procedures for grand jurors within the State Committee's proposed improvements for trial jurors concerning the jury notice, information in advance of service, parking and payment. [p. 31]
 - ✓ b. Favor development of an orientation program specific to grand jurors. [p. 31]
 - ✓ c. Seek clarification that the function of grand jury administration properly belongs with the court, to eliminate the *ad hoc* and varying approaches in different counties. [pp. 31-32]

b. Court facilities

- ✓ 1. Endorse State Committee proposal for Court System to formulate a budget and strategic plan, both short term and long term, to develop resources to assure development and maintenance of dignified facilities that promote respect but also urge that these initiatives be expanded to include:

- a. review of grand jury facility conditions and needs. [p. 33]
- b. a survey of conditions in town and village justice courts. [p. 33]
- ✓2. Favor State Committee proposal for the Court System to carefully monitor the cleaning requirements in court rules to provide decent, clean, safe and accessible court facilities but also encourage:
 - a. local bar associations to review adequacy of court facilities as ongoing project and work directly with committees that OCA contemplates establishing in each district to monitor cleanliness, maintenance and user friendliness of the court facilities. [p. 33]
 - b. Association as well as other statewide organizations to play a role in state collection of data and concerns regarding court facilities. [pp. 33-34]
- 3. Support State Committee recommendation to increase the number of magnetometers and the size of courthouse foyers, where possible, so people are not left waiting to gain entry to the courthouse. [p. 33]
- 4. Urge, as recommended by the State Committee, establishment of areas where attorneys and clients can speak privately and separate waiting areas for victims and alleged perpetrators, and their respective families. [p. 33]
- 5. Endorse State Committee's call to enhance accommodations for court users by making available food and beverages either through vending machines or a courthouse cafeteria. [p. 33]
- 6. Support State Committee proposal for the Court System to seek information through questionnaires from court users and court personnel regarding the adequacies and deficiencies of court facilities and their ideas for improvement. [p. 33]
- ✓7. Favor State Committee proposal for community projects to "spruce up" the courthouse or its grounds as short-term solutions. [p. 34]
 - a. As part of this effort, encourage law firms and others to donate furniture. [p. 34]
 - b. But press for adequate state funding to properly equip court facilities with furnishings and technology. [p. 34]

4. Legal and Judicial Ethics

a. Ethical issues regarding attorneys and attorney civility

- 1. Publicizing attorney malfeasance
 - a. Agree with State Committee recommendation to give continued attention to attorney misuse of client funds but urges devoting resources to public education and media information on attorney selection, communication and related issues. [pp. 35-37]
 - b. Suggest that information be provided to the media to clarify that most lawyers are honorable and occasions of malfeasance are rare. [pp. 36-37]
 - c. Recommend education about attorney selection, attorney-client communication, and remedies available to address grievances. [pp. 36-37]
- 2. Education on law office management
 - a. Regarding State Committee recommendation for programs for law students and new admittees on the practical aspects of setting up and running a practice:
 - 1. Applaud increased initiatives by law schools and bar associations and encourage continued instruction in this area, including in law school the use of

- practitioners to provide students with the opportunity to learn what practical issues have been confronted in the law office and how attorneys have handled them. [p. 37]
2. Cite recent revision of the multi-state professional responsibility examination to test broader aspects of professional responsibility and not just the formalized ethics rules. [p. 37]
 3. Urge development of educational materials for attorneys on client communication and rapport. [pp. 37-38]
3. Substance abuse
 - a. Concerning State Committee proposal for more statewide coordination of efforts to assist lawyers who may be experiencing personal problems such as substance abuse and mental illness:
 1. Recommend wider publicity about existing bar programs and their confidential nature so that those in need of such services know that help is available. [p. 38]
 2. Suggest including a brochure about lawyer assistance programs in the Court System's biennial attorney registration mailing. [p. 38]
 3. Provide information to judges across the state to increase their awareness of these confidential services and the opportunity to refer those experiencing problems. [p. 38]
 4. Urge each law-related entity to: (a) review its procedures for helping members of the bench, bar and students to be informed and obtain appropriate services; (b) if it has not done so, take advantage of bar lawyer assistance programs, services and guidance; and (c) take steps to remedy any gaps. [p. 38]
 5. Recommend that bar associations and other MCLE providers assess their course offerings to ensure that this topic is included in both the practical skills programs for new admittees and the seminars for more experienced attorneys. [p. 38]
 4. Disciplinary proceedings
 - a. Support State Committee's proposal to open disciplinary proceedings to public once a *prima facie* case has been established, provided that (1) Appellate Divisions have uniform provisions for the establishment of a *prima facie* case and public access and (2) that a judge makes such determinations. [p. 39]
 - b. Urge Association to reiterate its call for review of procedures in the various Judicial Departments to promote consistency in sanctions throughout the state. [p. 39]
 5. Professionalism, civility
 - a. Regarding State Committee call for law schools and bar associations to offer mentoring programs for new attorneys and classes on professionalism and civility:
 1. Increased involvement by law schools and bar associations is under way. [pp. 39-40]
 2. Urge law schools, bar associations and law offices to review their course offerings and mentoring programs to ensure that there is adequate consideration of these issues. [p. 40]
 - b. Recommend that the distinction between incivility and zealous advocacy be addressed in law school and bar association MCLE courses; law office and in-house education; and mentoring through bar associations and law firms. [p. 40]

- ✓ c. Request each Judicial Department to provide a seminar for newly admitted attorneys, such as that initiated in the First Department, which would provide guidance on such topics as civility, ethics, professionalism and the importance of *pro bono* services. [p. 40]
 - d. Encourage distribution of written materials on these issues by bar organizations, law schools and law offices which also serves to underscore the importance placed by the bar and law office on civil conduct. [p. 40]
 - e. Concerning State Committee call for judicial authority to require civil behavior of attorneys, with judges to set an example of professional conduct:
 - 1. Believe setting objective standards for such conduct would be problematic and potentially have a chilling effect on zealous advocacy. [p. 41]
 - 2. Instead, recommend increased training of judges on maintaining control in the courtroom. [p. 41]
6. Specialization
- a. Disagree with State Committee proposal to explore providing certification of attorneys as specialists as a means of enhancing public confidence. Lack of certification should not mean that the attorney is less trustworthy. In fact, specialization may be more of a promotional issue than one of public trust. [p. 41]
7. Retainer agreements
- a. Endorse State Committee recommendation to require written retainer agreements, regardless of the amount involved, to help ensure that the client understands the services and arrangements. To address situations where attorneys provide counsel on a continuing basis to the same client, further recommend requiring written retainer agreements when the legal work to be accomplished is significantly different than that involved in the prior representation. [pp. 41-42]
 - b. In addition to State Committee recommendations, suggest that:
 - 1. Attorneys send a confirming letter, when possible, when the attorney decides not to represent the person after a consultation. [p. 42]
 - 2. Attorneys seek a written statement signed by any client who waives a conflict of interest. [p. 42]
8. Attorney solicitation
- a. Regarding State Committee call for monitoring of questionable advertising practices and reporting unethical or misleading conduct to the grievance committees:
 - 1. Instead, given the enormity of the task and limited resources, suggest grievance committees make periodic spot checks of written, radio and television advertising for compliance with the Code of Professional Responsibility. [p. 42]
 - 2. Recommend discussion of advertising issues in Association and local bar association educational programs and materials on practice management and professional responsibility. [pp. 42-43]
 - 3. Urge preparation of a brochure for attorneys on this subject. [p. 42]
 - b. Concerning State Committee recommendation that disclosure to clients be required if the matters are to be referred to other counsel:
 - 1. Note recent Code of Professional Responsibility amendment prohibiting solicitation without such disclosure. [p. 43]

- c. On State Committee's suggested creation of a brochure on how to select an attorney:
 - 1. Suggest combining information contained in various Association pamphlets to include such issues as attorney selection, attorney-client communication, means of preventing misunderstandings, and ways of resolving complaints. [p. 43]
 - 2. Suggest inclusion of information on how to select an attorney in public education programs. p[p. 43-44]

b. Ethical concerns, constraints relating to judges

- 1. Judicial independence
 - a. Rather than pursuing State Committee proposal to establish district committees of judges, attorneys and court administrators to defend against attacks on judiciary:
 - 1. Recommend continued work in this area by bar associations, including media and public education. [p. 44]
 - 2. Urge bar associations to assess procedures for response to unwarranted attacks and education on this issue. [p. 44]
 - b. Endorse the recommendation of the State Committee for a handbook for judges with rules and guidelines regarding allowable or advisable judicial responses to the media and public inquiry, and extra-judicial activities. [pp. 44-45]
 - 1. Suggest more discussion of these issues in judicial education sessions. [p. 45]
 - 2. Suggest providing a handbook on this subject to the media. [p. 45]
 - c. Agree with State Committee that limits of judicial authority are important topics in adult and youth educational initiatives and in background for the media. [p. 45]
 - 1. Note current Association and local bar initiatives. [p. 45]
 - 2. Encourage bar associations to engage in community education. [p. 45]
 - d. Disagree with State Committee recommendation to ask judges to explain in court a settlement, decision or procedure, especially in cases that are of high public concern and interest. To do so could leave the impression that the judge is seeking public approval and runs contrary to the concept of judicial independence. [p. 45]
 - 1. Recommend informing public and media that the appellate process is the appropriate remedy for an unfair or erroneous decision. [p. 45]
 - e. Concur with State Committee to encourage volunteer activity by judges, as well as lawyers. Suggest discussion in judicial education programs, along with discussion of the Code of Judicial Conduct provisions. [p. 45]
 - f. Regarding State Committee recommendation to heighten judges' awareness that explaining delays and being prompt and productive are important in maintaining public trust in the justice system:
 - 1. Believe most judges give such explanations. [p. 45]
 - 2. If lack of punctuality and productivity is an ongoing problem, recommend addressing the issue in the judicial education programs. [p. 45]
 - 3. Call for handling individual problems in particular courtrooms by court administrators. [p. 45]
- 2. Mandatory sentencing
 - a. Agree with State Committee's call for review of mandatory sentencing laws with a view toward maximizing judicial discretion. [p. 46]

- ✓ 1. Review and pursue revision of mandatory drug sentencing provisions to remedy unduly harsh sentences on those with low-level involvement. [pp. 45-46]
- 3. Politics and judicial selection
 - a. Concur with State Committee that the present long terms of offices should be retained to limit the need for judges' political activities. [p. 46]
 - b. Support State Committee's proposal for re-examination of Election Law provisions that prohibit judicial candidates from knowing who contributed to their campaign, as such information is already known by seeing those who attend fund-raising events. [p. 46]
 - 1. Urge repeal of this prohibition, provided that the names and amounts contributed are made public. [p. 46]
 - c. Question the feasibility of the State Committee's recommendation to discourage judicial candidates from seeking endorsement of special interest groups that give the impression that the candidate has a position on an issue. Guidance for the candidate is given in the Code of Judicial Conduct. [p. 47]
 - ✓ d. Encourage establishment of local bar committees, similar to that of the Bar Association of Erie County, which provides judicial candidates with information on appropriate campaign conduct and monitors such conduct. [p. 47]
 - e. Endorse State Committee proposal for establishment of guidelines for fair judicial campaign practices and creation of a handbook on ethical constraints in judicial campaigns and activities upon taking the bench. [p. 47]
 - f. Join with State Committee in encouraging commitments from elected and appointed officials, candidates, and their staffs in other branches of government not to engage in personal attacks on judges. [p. 47]
- 4. Town and village justice courts
 - ✓ a. *Additional issue and recommendation not addressed by State Committee:* Seek amendment in the law to require town and village justices to be admitted to the bar, to be consistent with the eligibility requirement for judges in other courts and in recognition of the increased complexity and demands on these local courts. [pp. 47-49]

5. Public Understanding and Media Portrayal of the Legal System

a. Public understanding

- 1. For students
 - ✓ a. Expand and enhance training of teachers in law-related education. [pp. 49-54]
 - 1. Replicate the LYC/P.A.T.C.H. Summer Institute training program to reach 300-400 teachers each year. [pp. 52-54]
 - 2. Add a half-day workshop for new teachers to the statewide Conference on Law-Related Education. [pp. 52-54]
 - 3. Expand print resources for teachers, and republication of undated materials for new teachers. [p. 54]
 - 4. Create and distribute via the internet a library containing informational resources, such as U.S. Supreme Court decisions, and teaching strategies for various grade levels and including suggested activities. [p. 54]

5. Create an interactive internet resource for the direct use of students designed to move step-by-step through the decision-making process and mimic the interactivity of good law-related methods in the classroom. [p. 54]
6. Use the internet and e-mail to arrange lawyer visits to classrooms. [p. 54]
- b. Create a catalog of existing Association and OCA resources for teachers, ascertain their current usage, and institute a sustaining promotion program to ensure the widest use possible. [pp. 54-55]
- c. Sponsor a statewide contest for students to develop videotapes and/or computer software regarding the judicial system that could be used for educational purposes. [pp. 55-56]
2. For the general public
 - a. Create and nurture alliances with other legal and non-legal organizations that would be helpful in assisting the promotion of issues and positions important to the courts and legal profession. [p. 56]
 - b. Use "Non-Commercial Sustaining Announcements" on radio and television statewide to promote understanding of the legal system. [pp. 56-57]
 - c. Encourage production of television programs that explain the legal system. [pp. 57-58]
 - d. Expand Tel-Law, a program of telephone-accessed tape-recorded messages about legal issues, to all counties and/or availability of this information through the Association website. [p. 58]

b. Local initiatives

- ✓ 1. Strongly encourage local bar associations to aggressively seek opportunities to promote the courts and bar, increase their community involvement across the broadest possible spectrum of legal and non-legal activities, and engage other educational, civic, business, professional, labor and religious organizations. [pp. 58-61]
2. Encourage bar associations in the state to conduct programs on lawyer advertising at bar meetings that include input from advertising professionals on what constitutes good and effective advertising. [p. 61]

c. Media portrayal

- ✓ 1. Distribute background information to newsrooms on legal issues in the news. [p. 62]
2. Increase distribution of the Association's *Legal Handbook for New York State Journalists* to reporters who cover the legal issues. [pp. 62-63]
3. Encourage the courts to designate a public information officer in each district who would be available to the media at all times. [p. 63]
4. Consider establishing a satellite office of the Media Services Department in New York City. [pp. 63-64]
5. Develop and disseminate to all judges guidelines regarding allowable/advisable judicial responses to the media and public inquiry and on handling criticism and consider enhanced media training for judges. [p. 64]

CONCLUSION

"Justice in the life and conduct of the State is possible only as first it resides in the hearts and souls of the citizens." This inscription at the entrance to the Department of Justice in Washington serves as a reminder for all entering the building that public trust and confidence is vital to truly do justice. Indeed, nurturing and preserving this confidence must be an integral part of all aspects of the legal process and the work of the bench, bar and lawmakers. It is an objective that must be pursued in daily actions, in the short term and on a long-range basis.

This report, together with the work of the State Committee and the various research projects on this subject, serve as an inscription or aid in increasing awareness of the concerns affecting public trust and as a prescription to making improvements. We focused, in particular, on issues of public confidence relating to bias and prejudice, access to the justice system, the functioning of the jury process, the adequacy of court facilities, ensuring that procedures are comprehensible and user-friendly, and enhancing public understanding and media portrayal. We applaud the many positive steps being taken by bar associations, the courts, law schools, lawyers, judges, educators and others to promote the public's trust. These initiatives are blueprints for replication in other areas of the state.

On each topic, we present a series of recommendations of ways to make further improvement, including those that need priority attention. The key to making strides in this task of such breadth and depth is collaboration coupled with concerted, ongoing effort. The potential for progress, through our individual and collective actions, is enormous.

Respectfully submitted,
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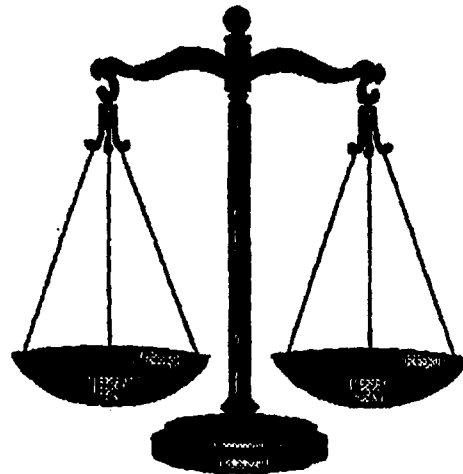
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APPENDIX A

**THE COMMITTEE TO PROMOTE
PUBLIC TRUST AND
CONFIDENCE IN THE
LEGAL SYSTEM**



**Report to the Chief Judge
and
Chief Administrative Judge**

May 1999

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Public Trust and Confidence in the Legal System Examined

SUMMARY OF ISSUES AND STRATEGIES

1. Bias and Prejudice (p. 6)

Strategies:

- a. Provide statewide sensitivity training and education programs for judges, law clerks, secretaries, clerks of the court and staff (including county clerk office personnel), security personnel and district attorneys (p. 7).
- b. Encourage bar associations and law schools to establish programs and offer classes which sensitize attorneys to issues of diversity (p. 8).
- c. Create incentives and disincentives for staff based on their treatment of those who use the court system (p. 9).
- d. Increase and provide more consistent attention to the needs of people with disabilities and people for whom English is not the primary language (p. 9).
- e. Promote greater representation of minorities in the justice system, particularly judges (p. 9).
- f. Provide plain language brochures regarding complaint and grievance procedures for court employees and members of the public who feel they have been subjected to discrimination (p. 9).

2. Access to Justice (p. 10)

Strategies:

- a. Recognize that legal services programs have been historically underfunded and that a plan needs to be developed based on demographics and areas of need that ensures stable and adequate funding for legal services, both civil and criminal (p. 11).
- b. Create a permanent fund for civil legal services (p. 11).
- c. Increase funding for public defenders' offices (p. 11).
- d. Increase compensation for assigned/appointed counsel under Judiciary Law §35 (p. 12).
- e. Encourage increased *pro bono* (free legal service) activities by lawyers (p. 12).
- f. Help law schools and appropriate agencies develop tuition assistance programs for law students similar to programs offered in medical schools (p. 13).
- g. Create *pro se* positions in court facilities to assist people in their efforts to represent themselves (p. 13).

h. Make judges more aware of the inequitable bargaining position that can occur in matrimonial cases (p. 14).

3. Judicial Administration (p. 14)

a. User-Friendly, Comprehensible Court System (p. 15)

Strategies:

- i. Restructure the present court system to consist of two branches: one with local or limited jurisdiction and one with statewide jurisdiction (p. 15).**
- ii. Develop videotapes and user-friendly educational materials to explain legal terminology, court etiquette/protocol, the procedures of each court, and restraints on judicial commentary (p. 16).**
- iii. Develop a brochure for users of the courts (p. 16).**
- iv. Install better signs in courthouses (p. 17).**
- v. Expand childrens centers in courthouses (p. 17).**
- vi. Create an ombudsman position, possibly through the use of volunteers, to help people who have difficulty reading English understand instructions and complete forms and to navigate the courthouse (p. 17).**
- vii. Provide more translators in courthouses (p. 18).**
- viii. Provide procedural handbooks and training for all county clerk office personnel and court clerks who respond to inquiries from litigants to ensure that consistent and appropriate information is given (p. 18).**
- ix. Provide in a public place (e.g., shopping mall or library) multilingual kiosks for paying fines, obtaining information regarding case status and directions to the courthouse, and curbside drop boxes for paying fines or delivering papers, similar to library depository boxes (p. 18).**
- x. To assist the courts in making appropriate referrals, make available to judges and other court personnel information regarding community resources (p. 18).**
- xi. Develop community justice centers, which reflect the culture and norms of the community they serve, for handling minor criminal matters (p. 19).**

b. Jury System Experience (p. 19)

Strategies:

- i. Make jury summonses more explicit as to the term of service (p. 20).**
- ii. Institute a *per diem* for Town and Village Justice Court jurors (p. 20).**
- iii. Consider payment of parking allowances to jurors, especially for those jurors who are not paid for their service (p. 21).**
- iv. Increase the use of technology (p. 21).**

- v. **Require judges and their staffs to report to the Commissioner of Jurors Office when a trial will not be proceeding on the scheduled date or at the scheduled time so jurors are not brought in unnecessarily (p. 21).**
- vi. **Remind judges to be more courteous and attuned to jurors' lives and needs (p. 21).**
- vii. **Ask judges to give jurors instructions regarding procedures and their role and conduct prior to the commencement of trial, allow note taking, give a special instruction if there are attorneys or judges on the jury panel, and give jurors a copy of instructions on the law (charge) to refer to during deliberations (p. 22).**
- viii. **Improve the system for payment of jurors so they receive their compensation more quickly (p. 22).**

c. Delays In Justice (p. 23)

Strategies:

- i. **Revise Article 31 of the Civil Practice Law and Rules (CPLR) and other discovery practices to reduce delay (p. 23).**
- ii. **Encourage amendment of CPLR §5001 to provide for interest on personal injury awards to be calculated and assessed from a fixed date prior to judgment, *i.e.*, date of accrual of the cause of action or date of commencement of the action or proceeding (p. 24).**
- iii. **Continue efforts to use computers to track cases and issue monthly status reports to judges to ensure that matters are handled expeditiously and are timely (p. 24).**
- iv. **Implement new approaches to calendar management practices (p. 24).**
- v. **Modernize court technology for chambers and administrative use (p. 25).**
- vi. **Make more consistent and persistent efforts by the bench and bar to discourage frivolous lawsuits and delaying tactics that squander valuable judicial resources as well as the finances of the litigants (p. 25).**
- vii. **Increase the number of judges, public defenders, prosecutors and support staff, as well as the number of court facilities (p. 26).**
- viii. **Re-examine the separate specialty parts within the Family Court which send the same family to different judges or hearing examiners for different aspects of a case (p. 26).**
- ix. **Develop adjunct programs to the court system to enable parties to learn skills to resolve their problems without the necessity of court intervention or to address related problems, such as chemical dependency, so that the cycle of crime or abuse can be broken (p. 27).**
- x. **Encourage judges to acknowledge and explain to the parties, jurors and counsel at the commencement of a matter when resolution of the case will be delayed and advise them of the reasons for the delay (to the extent appropriate), the anticipated length of the delay and alternatives available (p. 28).**

- xi. Provide parties, especially those who represent themselves, and counsel with a written confirmation of the next court date to ensure timely appearance and to eliminate delay caused by late appearance or failure to appear (p. 29).**
- xii. Require greater accountability by judges for the timely issuance of decisions (p. 29).**

d. Adequate Funding to Assure Dignified Court Facilities that Promote Respect (p. 30)

Strategies:

- i. Formulate a budget and a strategic plan, both short term and long term, to develop resources to assure development and maintenance of dignified facilities that promote respect (p. 30).**
- ii. Carefully monitor the cleaning requirements set forth in the Rules of the Chief Judge Section 34.1 and Appendix thereto to provide decent, clean, safe and accessible court facilities (p. 30).**
- iii. Increase the number of magnetometers and the size of the courthouse foyers where possible, so people are not left waiting to gain entry to the courthouse (p. 31).**
- iv. Establish areas where attorneys and clients can speak privately (p. 31).**
- v. Establish separate waiting areas for victims and alleged perpetrators and their families (p. 31).**
- vi. Make available food and beverages either through vending machines or a courthouse cafeteria (p. 31).**
- vii. Seek information through questionnaires from court users and court personnel regarding the adequacies and deficiencies of court facilities and their ideas for improvement (p. 31).**
- viii. Initiate community projects to 'spruce up' the courthouse or its grounds (p. 31).**

4. Legal and Judicial Ethics (p. 32)

a. Ethical Issues Regarding Attorneys and Attorney Civility (p. 32)

Strategies:

- i. Give continuing attention to attorney misuse of client funds (p. 32).**
- ii. Make the public aware that errant attorneys and judges are accountable and subject to sanctions by opening to the public disciplinary proceedings once a *prima facie* case has been established (p. 33).**
- iii. Encourage judges to exercise their authority to control and require civil behavior of attorneys (p. 34).**
- iv. Ask law schools and bar associations to establish programs and offer classes on professionalism and civility (p. 34).**

- v. Explore certification of attorneys as specialists in certain areas of law upon passing a competency examination (p. 34).
- vi. Require clear, written retainer agreements to reduce the opportunity for misunderstanding of fee arrangements (p. 35).

b. Attorney Solicitation (p. 35)

Strategies:

- i. Monitor questionable advertising practices by attorneys and report those whose conduct is unethical or misleading to the attorney grievance committees (p. 35).
 - ii. Require attorneys to disclose to clients if their case will be referred to other counsel (p. 35).
 - iii. Create a brochure on how to select an attorney including questions one should ask during the initial interview (p. 35).
- c. Judicial Independence and Isolation and Ethical Constraints on Judges' Ability to Speak Out in Response to Media (p. 35)**

Strategies:

- i. Create standing committees in each district composed of bar, bench and court administrators to defend broad-based generalized attacks on the judiciary (p. 36).
- ii. Produce and disseminate a handbook for judges which can serve as a centralized source for rules and guidelines regarding allowable/advisable judicial responses to media and public inquiry (e.g., judges' ability to speak out on the procedural aspects of a decision, as distinguished from the merits or substantive aspects) and the rules governing extra-judicial activities (p. 36).
- iii. Ask judges to take time to explain in court a settlement, decision or procedure, especially for cases that are of high public concern and interest (p. 36).
- iv. Ask judges to be more involved in community and educational activities (p. 36).
- v. Heighten judicial awareness of the importance to public confidence in being on time for court, explaining delays (to the extent appropriate) and working a full day (p. 37).
- vi. Seek review of mandatory sentencing laws with a view toward maximizing judicial discretion (p. 37).
- vii. Educate the public regarding the role of judges and the limits on their power, using elementary and secondary education programs and other educational efforts (p. 37).

d. Influence of Politics on Judicial Selection (p. 37)

Strategies:

- i. Retain long terms of office for judges to limit the need for political activity and regulate the political activities and associations that judges may pursue (p. 37).**
- ii. Reexamine Election Law provisions which prohibit judicial candidates from knowing who contributed to their campaigns (p. 37).**
- iii. Discourage judicial candidates from seeking the endorsement of special interest groups or parties that require or give the impression that the judicial candidate has a position on an issue in contravention of Canons 2, 3, 4 and 7 of the Code of Judicial Conduct (p. 38).**
- iv. Establish guidelines for fair campaign practices for judicial elections (p. 38).**
- v. Seek agreement from appointed officials, elected officials and candidates and their staffs in other branches of government not to engage in personal attacks on judges (p. 38).**

5. Media Portrayal and Public Understanding (p. 38)

a. Educating Students About the Justice System (p. 39)

Strategies:

- i. Advocate for expanded and practical coverage of the judicial system in school systems beginning at grade school level and continuing into secondary schools and college (p. 39).**
- ii. Sponsor contests for students to develop a videotape and/or computer software regarding the judicial system that could be used for educational purposes (p. 40).**
- iii. Explore the feasibility of initiating the production and broadcasting of a television program about the courts in which teenagers serve as the hosts/moderators (p. 40).**

b. Public Knowledge and Understanding of the Justice System/Openness of Legal System (p. 40)

Strategies:

- i. Establish and/or expand Speakers Bureaus of judges and attorneys available to speak to schools, churches and civic groups (p. 40).**
- ii. Produce with local radio (usually talk radio is the most receptive) a series of 30-second audio spots defining legal terms, court procedures and specific areas of law which will serve to inform the listening public (p. 41).**

- iii. **Develop, with bar associations, public service announcements regarding the role of courts and the judiciary (p. 42).**
- iv. **Initiate court open house education day for families (p. 42).**
- v. **Develop a series of videotapes and materials on legal topics for use in public libraries and schools (p. 42).**
- vi. **Publicize good deeds/contributions to the community by attorneys, judiciary, judicial staff, court employees and law schools (p. 42).**
- vii. **Establish a "Law Hot Line" or "Ask a Lawyer" newspaper column and/or a web site for educational purposes (p. 42).**

c. Media Portrayal of Courts/Criticism of Courts by Public Officials (p. 42)

Strategies:

- i. **Disseminate the videotapes and educational materials developed to the media for use in training persons who will be covering the courts (p. 42).**
- ii. **Designate a person in each district as the public information officer available to the media to answer questions beyond normal business hours (p. 43).**
- iii. **Develop and disseminate to all judges guidelines regarding allowable/ advisable judicial responses to the media and public inquiry and on handling criticism (p. 43).**
- iv. **See [4][d][v] at page 38.**

d. Public Perception of Lenient Sentencing and Appeals Overturning Convictions (p. 43).

Strategy:

- i. **Develop for dissemination to the media, schools and public libraries a videotape which addresses procedural safeguards afforded under our Constitution, considerations in sentencing and the appeals process (p. 43).**



I. INTRODUCTION

A. National and State Initiatives on Public Trust and Confidence

Fostering public trust and confidence in the justice system is one of the principal goals of the Conference of Chief Justices, the Conference of Chief Administrators and the American Bar Association. To assure broad-scale efforts to improve public trust and confidence, these groups are joining with major court organizations to conduct a National Conference on Building Public Trust and Confidence in the Justice System in May 1999 in Washington, D.C. In the Spring of 1998 each State Chief Justice was invited to send a five-person delegation to the National Conference and was urged to form a State Committee composed of diverse representatives to identify issues affecting public trust and confidence in his or her respective State and to formulate strategies to address these issues.

The Committee to Promote Public Trust and Confidence in the Legal System, appointed by Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman, has been charged with this mission in New York State. With 31 members, the Committee represents the bench and bar, educators, legislators, local government officials, unions, business, civic and victimrights groups, and the media. The Committee is co-chaired by Appellate Division Justice William C. Thompson and Supreme Court Justice Evelyn Frazee. The press release announcing the Committee and a list of the Committee members is included in Appendix A.

The planning group for the National Conference asked each State Committee first to compile a list of public trust and confidence issues in the State and then to develop

strategies to address these issues. The Committee's primary goal in preparation for the National Conference was to obtain input from the public to assist in identifying issues and strategies. Then, drawing upon the proposals forthcoming from the National Conference, the Committee will develop a strategic plan containing concrete reforms that address both systemic and educational issues critical to elevating public trust and confidence in New York's justice system.

B. State Committee Outreach

Upon embarking on its assigned challenge, the Committee developed the following mission statement to guide its inquiry and deliberations:

The goal of the Committee is to enhance the public's trust and confidence in our legal system. The Committee's focus is twofold — first, to assure that there is a fair and just system by which people who have contact with the legal system are treated with respect and equality, and second, to bring about a greater understanding of and respect for the legal system.

The Committee then focused on the methods to study public trust and confidence issues in New York State. Five major issues were identified to focus the Committee's efforts: (1) Bias and Prejudice; (2) Access to Justice; (3) Judicial Administration; (4) Legal and Judicial Ethics; and (5) Media Portrayal and Public Understanding. A pamphlet describing the Committee, its membership and mission was prepared and distributed to invitees and other interested groups. A copy of the pamphlet is in Appendix B. The issues

and strategies to address them were further developed through public hearings held in New York City and Rochester, which included one hearing coordinated with the annual meeting of the New York State Bar Association. The people invited to testify at the hearings reflected diverse perspectives, interests and contacts with the legal system and included citizens, civic and community groups and representatives of the bench and bar. Lists of those who testified at the hearings are contained in Appendix C.

The Committee also formed two subcommittees for more in-depth study of the issues. The subcommittees, one on Systems and Institutions and one on Education, examined the public trust and confidence issues from their respective subcommittee perspectives and worked in conjunction with the full Committee to achieve the projected goals. The members of the subcommittees are listed in Appendix D.

In addition, the Committee utilized resources and guidance provided by the National Conference organizers and existing publications and reports on related topics. The Committee also benefitted from reports of two ABA Symposiums entitled *Bulwarks of the Republic: Judicial Independence and Accountability in the American System of Justice* (12/98) and *Public Understanding and Perceptions of the American Justice System* (2/99). The reports were prepared by James C. Moore, President of the New York State Bar Association (NYSBA), and a member of the leadership team who will attend the National Conference. Additional insight was provided by one of the Committee members who attended the Mid-Year Conference of the National Association of Court Managers.

Finally, the Committee reviewed relevant publications, including previous reports done by committees and task forces established by the Judiciary that involved issues similar or

related to the work of this Committee. A bibliography containing the publications most useful to this Committee's work is listed in Appendix E.

II. PUBLIC TRUST AND CONFIDENCE IN THE LEGAL SYSTEM EXAMINED

A. Public Trust and Confidence Perspectives

While a decline of public trust and confidence in the legal system may appear to be of recent origin, it has a long history. In an address to the American Bar Association delivered in August 1906, Roscoe Pound, then Dean of the Law Department of the University of Nebraska, observed that

dissatisfaction with the administration of justice is as old as law . . . [A]s long as there have been laws and lawyers, conscientious and well-meaning men have believed that laws were mere arbitrary technicalities, and that the attempt to regulate the relations of mankind in accordance with them resulted largely in injustice. But we must not be deceived by this innocuous and inevitable discontent with all law into overlooking or underrating the real and serious dissatisfaction with courts and lack of respect for law which exists in the United States today.

A recent study has noted that the public's trust and confidence in all governmental institutions have been the subject of decline over the past 30 years.¹ Yet, despite this phenomenon, there is a high level of confidence in the United States justice system (*i.e.*, courts, judges, lawyers and police) with as many as 80% of the people responding to a recent survey that, in spite of its problems, the American justice system is still the best in the world.² This same level of confidence does not apply to lawyers who are viewed favorably by only 14% of those polled.³ While one might feel good about the high approval

¹Nye, Joseph S., Jr., Philip D. Zerkow, and David C. King (EDS), Why People Don't Trust Government. Cambridge, MA: Harvard University Press, 1997.

²Perceptions of the U.S. Justice System. American Bar Association. February 1999. M-A-R-C © Research.

³*Id.*

rating for the judiciary, it is suggested that this may be residual and shrinking rather than growing. Thus, there is need to analyze all aspects of the legal system.⁴

In assessing the issues which seem to be at the heart of the public's disenchantment, the Committee has concluded that some of the dissatisfaction is based in reality; that is, the system is not responding adequately to the public's needs. Some of the dissatisfaction, however, comes from perceptions that are based on a lack of understanding and knowledge about the legal system. It is important to keep in mind that both the reality and the perception must be addressed since, as one person who testified at the public hearings noted, "Perception is reality through the eyes of the beholder."

The Systems and Institutions Subcommittee emphasized and predominately addressed changes to the system which would improve public opinion by those who have contact with it. The Education Subcommittee focused primarily on ways to make the public better informed about the legal system and to reduce misunderstanding.

This report presents strategies for addressing each of the five issues identified to be of public concern as gleaned from the Committee members' experience and observations, comment at the three public hearings, and various studies and articles.

B. Issues and Strategies

1. Bias and Prejudice

This issue addresses the way in which people who have contact with the legal system are treated. If the words of the Pledge of Allegiance "and liberty and justice

⁴Concerns with police brutality and prejudicial application of the law, as with selective stops and citations or tickets, were raised in the public hearings. It is suggested that the Committee may need to expand its focus and bring representatives of various police agencies into the dialogue because the public views the police as part of "the system" of justice.

for all" are to have meaning, then all people should feel that we have a legal system that is free of bias and prejudice and which treats people equally regardless of race, color, national origin, religion, creed, gender, sexual orientation, age, marital status, social status, disability or limited English proficiency. Another aspect of equality, economic equality, is addressed separately under "Access to Justice." If people feel that the system is fair, trust and confidence will follow. Two studies in this area have been conducted in New York State: *The New York State Judicial Commission on Minorities* (Franklin H. Williams Commission), which issued its Executive Summary, Volume I in April 1991, and *The New York State Task Force on Women in the Courts*, which issued its report in March 1986. The work of these two groups revealed that there are biases and prejudices in our judicial system and recommended specific measures to address those problems. Many of these measures have been implemented, but bias and prejudice are longstanding and insidious. Continuing vigilance and effort is needed to ensure fair and equal treatment for those who have contact with the legal system.

The Committee proposes the following strategies:

- a. Provide statewide sensitivity training and education programs for judges, law clerks, secretaries, clerks of the court and staff (including county clerk office personnel), security personnel and district attorneys. A component of this training should address general expectations of professionalism and courtesy of representatives of the court when dealing with the public. In addition, sensitivity training should alert people to the**

special problems faced by those from minority groups or with disabilities or limited English proficiency. This sensitivity training should be part of the initial training for all new court system employees, including judges.

A videotape would ensure consistency both in content and in the timely dissemination of the training and also serve as periodic reinforcement. The development of this videotape and any accompanying materials should be done in collaboration with bar associations and representatives of groups who are the subject of bias and prejudice. These representatives should be from various racial backgrounds and should include women, those who are visually, cognitively or hearing impaired, the physically disabled, those with limited English proficiency, and those who serve these populations, such as language and sign language court interpreters. This collaboration serves two purposes: it assures that the video and any materials that may be developed address the concerns of those who experience bias and prejudice and it establishes contact with community members that can serve as a bridge toward increasing public trust and confidence.

- b. Encourage bar associations and law schools to establish programs and offer classes which sensitize attorneys to issues of diversity.**
- c. Create incentives and disincentives for staff based on their treatment of those who use the court system. Courteous and professional treatment of all those who use the courts should be reinforced through the implementation of (a) "Employee of the Month" postings and awards**

recognizing outstanding conduct; (b) recognition of courteous and professional conduct on performance reviews as a criteria for promotion and job retention; and (c) disciplinary proceedings when there are serious breaches in the expected conduct. Awareness of these reinforcement programs should be part of the training referenced in (a) on page 7 above.

- d. Increase and provide more consistent attention to the needs of people with disabilities and people for whom English is not the primary language. This includes availability of language and sign language interpreters and of other devices (auditory systems or real time transcription) for hearing impaired people, auditory and large print materials for visually impaired people and accessibility for physically challenged people (e.g., parking, the courthouse, courtrooms, restroom and cafeteria facilities).**
- e. Promote greater representation of minorities in the justice system, particularly judges.**
- f. Provide plain language brochures regarding complaint and grievance procedures for court employees and members of the public who feel they have been subjected to discrimination. Brochures should be written in clear language and contain specific information about procedures for seeking redress. The brochure should be available in the courthouse with signs publicizing its availability posted in public areas.**

2. Access to Justice

A widely held public view is that the legal system is based on wealth with one system of justice for the rich and one for the poor. Another group of citizens has also developed — the working poor whose income does not qualify them for free legal assistance, but who are not able to afford an attorney. The reduction of public funding of legal services for the poor at both the national and state levels has exacerbated this situation. If everyone is to have access to justice and if the public is to have confidence that there is fair and equal justice, it is imperative that there be improved and adequate legal assistance and access to justice for people of low income. As Supreme Court Justice Lewis F. Powell observed:

Equal justice under law is not merely a caption on the facade of the Supreme Court building. It is perhaps the most inspiring ideal of our society. . . . It is fundamental that justice should be the same, in substance and availability, without regard to economic status.

Fostering self-representation is not the answer to the lack of representation for the poor and working poor. There needs to be a reliable funding source to ensure that counsel is compensated in a fair and reasonable manner and that there are sufficient attorneys to handle these cases. Absent this, people go unrepresented or lack confidence in their attorneys. Legal services attorneys, public defenders or assigned counsel are often overwhelmed by the number of cases that they must handle and/or are inadequately compensated. This creates the impression that the poor are not receiving the attention their cases merit or that counsel takes the most expedient route, by plea bargaining or settling cases, because they are not

sufficiently compensated or do not have the time to vigorously pursue them.

Suggested strategies include:

- a. Recognize that legal services programs have been historically underfunded and that a plan needs to be developed based on demographics and areas of need that ensures stable and adequate funding for legal services, both civil and criminal.**
- b. Create a permanent fund for civil legal services. The Committee endorses the proposal set forth in the Report to the Chief Judge for Funding Legal Services for the Poor (May 1998) for the creation of an Access to Justice Fund under the control of the IOLA (Interest on Lawyers Account) Board of Trustees.⁹ This fund should be available for civil litigants and in addition to the funding for criminal defense. The Access to Justice Fund would be funded through a dedicated revenue stream from the state abandoned property fund (estimated \$40 million). If this source does not prove adequate, the general fund should provide the balance, at least to the extent of surpluses in the Court Facilities Incentive Aid Fund, that would otherwise be transferred to the General Fund. As a last resort, additional revenues could be derived from discrete increases in certain law-related fees.**
- c. Increase funding for public defenders' offices. These offices handle not only criminal, but also Family Court and Surrogate's Court matters (County**

⁹The Judiciary has submitted a bill to the Legislature to establish the Access to Justice Fund (OCA #99-124).

Law §§ 18-A and B). Attorneys in many public defenders' offices carry an excessive caseload which can compromise the quality of legal service that is rendered. Sufficient funds for investigators also are needed. Funding should be more proportionate to that given to District Attorneys' offices.

d. Increase compensation for assigned/appointed counsel under Judiciary Law § 35. The present fee structure of \$25 per hour for out-of-court time and \$40 per hour for in-court time was last amended in 1985. This is wholly inadequate. As a result, capable, experienced attorneys are declining to serve as appointed or assigned counsel because they cannot afford to work at these rates and meet overhead expenses.

e. Encourage increased *pro bono* (free legal service) activities by lawyers. A statewide *pro bono* survey conducted by the Unified Court System revealed that free legal work provided by New York State lawyers to poor people averaged 42 hours per lawyer in 1997. This is a collective effort by New York State lawyers of more than two million hours of free legal service to indigents each year. Few, if any other, professions can match this effort of service to the poor. Donation of free legal services should be encouraged to continue and increase. The administrative mechanism for soliciting participation by a broader array of attorneys and for matching the need to the provider could be established through organized efforts of bar associations and law schools. While free legal assistance plays a valuable role in providing representation to those with unmet legal needs, it should

not be the primary source of representation for the poor or deemed to be a reliable method of providing access to justice. There needs to be a legal services fund as mentioned in 2(b) at page 11 above. The use of *pro bono* legal services should be reserved to fill the gap of representation for those of moderate income who are unable to afford legal counsel, either by a reduced fee or no fee arrangements.

- f. Help law schools and appropriate agencies develop tuition assistance programs for law school students similar to programs offered in medical schools. These programs would forgive law school tuition debt in return for the student, upon graduation, serving for a designated period as counsel in an office that represents people of low income.
- g. Create *pro se* positions in court facilities to assist people in their efforts to represent themselves. A delicate situation is created if *pro se* positions are funded from the judiciary budget. Court system employees must not be seen as assisting one party to an action or proceeding over the other party(ies) if the courts are to be viewed as fair and impartial. In order to avoid issues of unauthorized practice of law, the individuals serving as *pro se* assistants should be specially trained to answer procedural questions only and not to give legal advice. To ensure truly equal access to justice, reliable funding needs to be established (see [2][a], [b], [c] and [d] above at pages 11 and 12). The creation of *pro se* positions should not be viewed as a preferred or reliable method of providing equal access to justice.

h. Make judges more aware of the inequitable bargaining positions that can occur in matrimonial cases. Temporary awards of attorneys fees and spousal support (maintenance), when appropriate, should be encouraged so economic pressure is not exerted to influence negotiations. ⁶ Sensitivity to the needs of a child for involvement of both parents in his/her life also should be heightened.

3. Judicial Administration

This issue covers four areas of concern: (a) User-friendly, comprehensible court system; (b) Jury system experience; (c) Delays in justice; and (d) Adequate funding to ensure dignified court facilities that promote respect.

Survey data has revealed that exposure to the justice system tends to improve respect for it; yet at the same time, there is a perception that the justice system is too costly and slow.⁷ The survey respondents also indicated a very high regard for juries and a belief that they are the best way of getting to the truth of a matter.⁸ Thus, the operation of the court system, its procedures and its facilities are important components in obtaining and maintaining the public's trust and confidence. Suggested strategies are set forth below under each of the four sub-issues.

⁶The Judiciary has submitted a bill to the Legislature to create a rebuttable presumption that an interim award of counsel fees in matrimonial cases is warranted (OCA #99-91).

⁷M-A-R-C Research for ABA, *supra*.

⁸*Id.*

a. User-Friendly, Comprehensible Court System - The court structure and nomenclature should be understandable to professionals and the public. Predictability and consistency in procedures and application of the law promote trust. The facilities also must be easily accessible to the public and accommodate their needs. There is an important distinction between being customer friendly and treating people fairly and with dignity and respect; some distance is needed in order to maintain authority. While the courts should not become too friendly, it is important that those within the system treat users of the system with dignity and respect. The following recommendations are made:

- I. Restructure the present court system to consist of two branches: one with local or limited jurisdiction and one with statewide jurisdiction.⁹ Within the general jurisdiction, branch divisions should be developed that are devoted to specialized areas of law, but with free transferability of judges and court support staff when expedient or economical to address the area(s) of greatest need. The most striking need for uniformity is in the Family and Supreme Courts in which the procedural anomalies of having two courts which can hear the same type of case is confusing to counsel and parties and wastes time and resources.**

⁹The judiciary proposed a constitutional amendment to restructure the State's trial courts into a two-tiered system and to add a Fifth Judicial Department.

- ii. Develop videotapes and user-friendly educational materials to explain legal terminology, court etiquette/protocol, the procedures of each court, and restraints on judicial commentary. These materials should be multilingual and in large print. As a corollary to this, forms also should be developed for several courts or court procedures, e.g., landlord and tenant matters. Members of the community to be served by the videotape and materials should be included in their development. This would establish a bridge to the community and give better assurance that the material is understandable to those who will be using it. The services of the bar associations and law schools also should be enlisted in developing these materials. This information should be posted on the Internet and made available at kiosks and in court clerks' offices and juror waiting areas. The videotapes and education materials also should be disseminated to public libraries and to schools.**
- iii. Develop a brochure for users of the courts. This brochure should include such information as directions to the courthouse (by automobile or public transportation), location and cost of parking (with handicap parking facilities highlighted), an interior map of the public areas of the courthouse including the location of restrooms, smoking areas, food and beverage facilities (with the location of facilities for the physically challenged highlighted), information about magnetometers and**

searches upon entry to the courthouse, inappropriate courtroom attire, courtroom etiquette, contact information for those needing an interpreter or other special assistance, and information of special interest to jurors. This information also should be made available on audiotape for the visually and cognitively impaired as well as in large type and in several languages. These materials should be reviewed and updated annually. The brochure should be mailed to prospective jurors and made available to attorneys to distribute to clients and witnesses.

- iv. Install better signs in courthouses. Signs should identify the location of various parts, courtrooms, restroom facilities, cafeteria, clerks' offices, and other areas commonly used by the public. Also, an information officer should be stationed at the main entrance or kiosks should be available to give information to people as they enter the building.**
- v. Expand children's centers in courthouses. Children's centers have been a very positive development for those who cannot find or afford childcare in order to appear in court. Expansion of these facilities to more courthouses and consideration of making them available to jurors is encouraged.**
- vi. Create an ombudsman position, possibly through the use of volunteers, to help people who have difficulty reading English**

understand instructions and complete forms and to navigate the courthouse.

- vii. Provide more translators in courthouses.**
- viii. Provide procedural handbooks and training for all county clerk office personnel and court clerks who respond to inquiries from litigants to ensure that consistent and appropriate information is given. A corollary to this is that all clerks' offices where the public has access should have a sign posted prominently that legal advice cannot be given.**
- ix. Provide in a public place (e.g., shopping mall or library) multilingual kiosks for paying fines, obtaining information regarding case status and directions to the courthouse, and curbside drop boxes for paying fines or delivering papers, similar to library depository boxes. This eliminates people having to park and come into the courthouse for these transactions and increases the convenience to the public and others. Consider locating Automated Teller Machines (ATMs) in courthouses near the courts that assess fines so people can easily obtain money to pay fines. Electronic or faxed filing of papers should be implemented where appropriate as a further way to ease access to the courts.**
- x. To assist the courts in making appropriate referrals, make available to judges and other court personnel information**

regarding community resources. The compilation of this information should be in collaboration with bar associations, various agencies and community groups.

xi. Develop community justice centers, which reflect the culture and norms of the community they serve, for handling minor criminal matters. These are problem-solving courts that recognize the toll that low-level crime has on a community. Problems outside the reach of traditional court tools, such as homelessness, drug abuse and mental health issues, can be addressed in this setting. With community input, sanctions that pay back the community can be established, such as community service. These courts are a partnership with the community organizations and other agencies located in the community so that justice is immediate. The purpose is to provide a swift response to minor matters in the hope that, by addressing a situation in a timely and meaningful way, future criminal activity will be deterred. Ancillary benefits are that these courts help make the community feel a part of and invested in the legal system.

b. Jury System Experience - Summoning jurors to the courthouse is an integral part of the justice system, and the most common way for most citizens to have contact with the judicial system. It is imperative that this experience be positive if public trust and confidence is to exist. This was recognized in *The Jury Project* (Report to the Chief Judge, March 31, 1994),

which made recommendations on 20 standards affecting jury service. Further study was undertaken by the *Committee of Lawyers to Enhance the Jury Process*, which was asked to examine the procedural and ethical issues occasioned by the repeal of the bar's automatic exemption from jury service and to recommend improvements in the jury process. The Committee issued its report to the Chief Judge and Chief Administrative Judge in January 1999 and made ten recommendations which addressed the petit or trial jury aspect of the jury system. Currently, a task force is studying the grand jury system. Its report and recommendations are being released this month. The changes that have been made in the jury system as a result of these reports are laudable. In addition to the continued implementation of the excellent suggestions made by these projects, some additional adjustments and accommodations are needed:

- i. **Make jury summonses more explicit as to the term of service.** The "one day or one trial" notation leads to a false belief by many jurors that they only will be serving for one day. As a result, jurors often do not make advance arrangements for longer periods of service. Jurors should be provided with a brochure that provides more information about the courthouse and jury service (see [3][a][iii] at page 16) prior to their first day of service.
- ii. **Institute a *per diem* for Town and Village Justice Court jurors.** Increasingly, justice courts are conducting trials during the day causing

Jurors to miss work. This situation should be brought to the attention of town and village governments with a request for allocation of budgetary resources to provide for payment of Town and Village Justice Court Jurors.

- iii. Consider payment of parking allowances to jurors, especially for those jurors who are not paid for their service.**
- iv. Increase the use of technology. For example, juror qualification questionnaires could be answered by e-mail or an automated telephone system.**
- v. Require judges and their staffs to report to the Commissioner of Jurors Office when a trial will not be proceeding on the scheduled date or at the scheduled time so jurors are not brought in unnecessarily. Failure to do this wastes potential juror time, creates ill will and may result in an individual being deemed to have served and removed from jury rolls for four years unnecessarily. There also should be better communication between chambers and the jury office as to the time jurors are needed. It is disrespectful to require jurors to arrive in the morning when it is known that their services will not be needed until the afternoon.**
- vi. Remind judges to be more courteous and attuned to jurors' lives and needs. Judges should ask if accommodation is needed for health problems (e.g., diabetes, pregnancy, claustrophobia) and let jurors**

know in advance the anticipated schedule while on trial and if they will be required to stay beyond five o'clock so appropriate plans can be made.

vii. Ask judges to give jurors instructions regarding procedures and their role and conduct prior to the commencement of trial, allow note taking, give a special instruction if there are attorneys or judges on the jury panel, and give jurors a copy of the instructions on the law (charge) to refer to during deliberations. Note taking by jurors also should be allowed especially in complex or long cases. To promote attention to the testimony by all jurors, nondesignated jurors should be used with the extra jurors removed at the conclusion of the case just prior to deliberation.¹⁰ Jurors also should be allowed to select the foreperson rather than random appointment by the court of the first juror who is sworn in.

viii. Improve the system for payment of jurors so they receive their compensation more quickly. Suggestions are to install ATMs in the courthouse which give a juror his or her jury compensation upon entry of a specially designated code or to provide jurors with vouchers upon completion of service which can be taken to the county treasurer or director of finance to receive cash.

¹⁰The Judiciary has submitted a bill to the Legislature to eliminate the distinction between trial and alternate jurors in criminal cases (OCA #99-44).

c. Delays In Justice - Attention needs to be paid both to the expense and the delay in the delivery of justice. The two are intertwined as often delay increases the expense of litigation. There are basically three stages in the litigation process where delay can occur: (1) discovery process and preparation for trial, (2) being reached for trial once a case is placed on a trial calendar, and (3) the judge's rendering of a decision. While significant gains have been made in reducing case backlogs and ensuring timely decisions by judges through the use of computer tracking and monitoring of the length of time a case is in the court system (standards and goals) and the number of days from final submission of a matter until decision, more work needs to be done to further reduce delay. More accountability, efficiency, and effective case management is needed, but not to the point that we are obsessed with process and the substance gets lost. It is paramount that decisions be reasoned and matters handled appropriately. "Cookie cutter" justice is not the answer and would serve only to continue or exacerbate lack of public respect for the judicial system. Suggested strategies are:

I. Revise Article 31 of the Civil Practice Law and Rules (CPLR) and other discovery practices to reduce delay. Various Task Forces to Reduce Litigation Cost and Delay were convened throughout the State in 1996 and 1997. The recommendations from this effort should be examined and implemented. Consideration also should be given to the

work of the ABA Section of Litigation Report on Civil Discovery Standards presently underway and the recommendations which come from that review.

- ii. **Encourage amendment of CPLR §5001 to provide for interest on personal injury awards to be calculated and assessed from a fixed date prior to judgment, i.e., date of accrual of the cause of action or date of commencement of the action or proceeding.¹¹ Awarding prejudgment interest serves to reduce the incentive for defendants to possibly delay the conclusion of a case.**
- iii. **Continue efforts to use computers to track cases and issue monthly status reports to judges to ensure that matters are handled expeditiously and are timely. There should be a follow-up inquiry on matters that have been pending beyond the guidelines (standards and goals) for an explanation as to the situation.**
- iv. **Implement new approaches to calendar management practices.**
 - **requests for case status updates published on a web page with attorneys responding by e-mail;**
 - **stagger dockets or calendar calls into one-half hour time slots to prevent overcrowding and waste of attorney and client time waiting for the case to be called;**

¹¹The Judiciary has submitted a bill to the Legislature to provide for prejudgment interest (OCA #89-27).

- **mandatory use of scheduling orders for pre-note of issue cases to ensure timely development of the case for trial;**
 - **institute a rule similar to that in matrimonial cases that requires the filing of a Request for Judicial Intervention (RJI) within a specified period of time after purchase of the index number, thereby creating a uniform starting date to foster better tracking of the length of time the case is pending (standards and goals);**
 - **greater use of case conferences to foster settlement;**
 - **electronic or faxed filing of papers with the court; and**
 - **more use of phone conferencing to monitor status and hear argument of motions to eliminate the time (and expense) of counsel traveling to the courthouse.**
- v. Modernize court technology for chambers and administrative use.**
The difference in the needs of chambers and the needs of court support staff and administration should be recognized when software and equipment purchases are made. Effective training also should be given to promote full utilization of technological resources.
- vi. Make more consistent and persistent efforts by the bench and bar to discourage frivolous lawsuits and delaying tactics that squander valuable judicial resources as well as the finances of the litigants. In this same vein, judges need to more consistently enforce orders. If litigants know that an order will be enforced and that there will**

be penalties for noncompliance, the likelihood of noncompliance and the need for court intervention will decrease.

vii. Increase the number of judges, public defenders, prosecutors and support staff, as well as the number of court facilities. Judicial vacancies should be filled as soon as possible and judges should be added where needed and justified. There cannot be effective justice without adequate resources - human, facilities, and technological - to handle the ever increasing caseload. In 1998 there were over 3.4 million new filings (not including traffic and parking cases), representing a 23% increase in four years. During this same period, only a handful of new trial court judgeships were authorized. While resourceful efforts have been made to address the situation through the use of judicial hearing officers and the reassignment or reallocation of judges, this, in essence, is a patchwork situation and a stopgap measure only. It should not be a longstanding situation. The need for more judges, public defenders, district attorneys and the corresponding staff to adequately handle the burgeoning caseload, as well as the facilities in which to hear the cases, must be recognized and addressed.

viii. Reexamine the separate specialty parts within the Family Court which send the same family to different judges or hearing examiners for different aspects of a case. For example, an individual or family may be sent to the Domestic Violence Part for an order of

protection, to a hearing examiner with regard to support issues and to a judge for custody and visitation issues. If Family Court is to be governed by the Individual Assignment System (IAS), consideration should be given to assigning all matters involving a family and its members to one judge who can gain a historical perspective and familiarity with the member(s) of that family and effect a more holistic approach to meeting their needs for relief and assistance. It also will eliminate the "run around" feeling that litigants have from the present system.

ix. **Develop adjunct programs to the court system to enable parties to learn skills to resolve their problems without the necessity of court intervention or to address related problems, such as chemical dependency, so that the cycle of crime or abuse can be broken. The adversarial system is not always the best method for resolving conflicts as, for instance, in the area of child custody and visitation. Any adjunct programs should provide for appropriate training of the people involved in administering the program and delivering services and should be subject to oversight and monitoring. The following are examples of such programs:**

(a) **Parent education programs for separating or divorcing parents with minor children aimed at reducing the negative impact of the parents' conflicts on the children. If parents are**

able to learn to communicate effectively and resolve their own problems, the need to access the courts to resolve their conflicts should diminish. The reduction of an emotion-laden and stressful atmosphere can also reduce the negative impact of the divorce or separation on the children and help to avoid their involvement in Family or Criminal Court through Persons in Need of Supervision (PINS) petitions, juvenile delinquency (JD) petitions or criminal activity;

(b) **Voluntary mediation and other alternative dispute resolution programs.** These programs foster resolution of a conflict by the parties and can help the parties develop skills for handling future conflict. The mediator or dispute resolution professional is able to spend more time assisting the parties to reach a mutually agreeable disposition than can a judge;

(c) **Drug Courts which seek to address the underlying substance abuse problem that is at the heart of much criminal activity and family discord; and**

(d) **Teen Courts which seek to discourage criminal activity at the outset by subjecting teens to a trial by their peers and by creating a supportive network.**

x. **Encourage judges to acknowledge and explain to the parties, jurors and counsel at the commencement of a matter when**

resolution of the case will be delayed and advise them of the reasons for the delay (to the extent appropriate), the anticipated length of the delay and alternatives available. It is better to be honest with the parties and others involved in the proceeding from the outset if a matter will be delayed or not resolved as quickly as it should be than to give false hope and expectation.

- xi. Provide parties, especially those who represent themselves, and counsel with a written confirmation of the next court date to ensure timely appearance and to eliminate delay caused by late appearance or failure to appear.**
- xii. Require greater accountability by judges for the timely issuance of decisions. If the 60-day rule for release of a decision (Rules of the Chief Judge Section 4.1 [a]) is to have meaning, judges should report on a monthly rather than a quarterly basis regarding the status of their decisions. Also, the rule reads that the 60 days runs from the date of final submission. Abuse of the intent of the rule can occur if a judge asks for a further submission from counsel toward the end of the 60-day period. This starts another 60-day period running. The rule should limit such extensions to two, for a total of 180 days for issuance of a decision. Also, there should be administrative follow-up if a decision appears on two or more monthly reports. These same modifications should be made to the Rules of the Chief Judge**

Section 4.1 (b) regarding the reports of court stenographers or reporters.

- d. Adequate Funding to Assure Dignified Court Facilities that Promote Respect - The courthouse environment affects the outlook and attitude of all those who have contact, whether that be daily contact for employees and attorneys or just transactional contact for litigants, witnesses or jurors. Clean, well-maintained and dignified surroundings are more likely to engender a respect for the system and more courteous interpersonal contacts. The appearance of court facilities is important to maintaining the dignity of the institution. The following strategies are recommended:**
- i. Formulate a budget and a strategic plan, both short term and long term, to develop resources to assure development and maintenance of dignified facilities that promote respect. Clear lines of responsibility and adequate funding should be established. Town and Village supervisors and boards should be contacted and asked to create better facilities for Town and Village Justice Courts, such as raised benches and security.**
 - ii. Carefully monitor the cleaning requirements set forth in the Rules of the Chief Judge Section 34.1 and Appendix thereto to provide decent, clean, safe and accessible court facilities. Individuals or committees should report monthly to the District Administrative Judge**

regarding compliance by maintenance personnel with the Rules and cleaning checklist.

- iii. **Increase the number of magnetometers and the size of courthouse foyers, where possible, so people are not left waiting to gain entry to the courthouse.**
- iv. **Establish areas where attorneys and clients can speak privately. This is especially necessary in sensitive criminal and family issues cases.**
- v. **Establish separate waiting areas for victims and alleged perpetrators and their families. This is particularly needed for domestic violence victims.**
- vi. **Make available food and beverages either through vending machines or a courthouse cafeteria.**
- vii. **Seek information through questionnaires from court users and court personnel regarding the adequacies and deficiencies of court facilities and their ideas for improvement.**
- viii. **Initiate community projects to "spruce up" the courthouse or its grounds. Such projects, with appropriate community dedication ceremonies, also could serve a community purpose, i.e., a rose garden in memory of murdered children or slain police officers.**

4. Legal and Judicial Ethics

This issue addresses ethical issues regarding attorneys and attorney civility, including respect for diversity, attorney solicitation, decline of professionalism, judicial independence and isolation, restraints on judges' ability to speak out in response to media, and the influence of politics on judicial selection. Standards of civility were developed by the *Task Force on Civility* (a/k/a Green Committee), effective January 1, 1998. In November 1995, the *Committee on the Profession and the Courts* (a/k/a Craco Committee) made recommendations to improve professionalism among the bar, client satisfaction, attorney discipline and court management. There should be increased efforts among the bench and bar to seek adherence to the recommendations of these two committees. Attorneys and judges must be credible, honest and straightforward. The public can detect superficiality and its presence leads to skepticism and a lack of respect. Additional strategies are:

a. Ethical Issues Regarding Attorneys and Attorney Civility

I. Give continuing attention to attorney misuse of client funds. While less than one percent of lawyers present this problem, the impression is that this is much more prevalent. To counter this perception, there needs to be:

- (a) better awareness of the existence of the Lawyers Fund for Client Protection through continued and increased publication of awards**

through press releases, public service announcements and brochures;

(b) a more coordinated statewide effort to assist lawyers who may be experiencing personal problems (e.g., alcohol or medication/drug abuse, mental illness) because most problems of misuse of client funds occur in situations in which the attorney is experiencing personal problems; and

(c) programs for law school students and new admittees on the practical aspects of setting up and running a practice, with particular emphasis on how to handle trust funds, IOLA and other bank accounts.

ii. Make the public aware that errant attorneys and judges are accountable and subject to sanctions by opening to the public disciplinary proceedings once a *prima facie* case has been established.¹⁸ There should be procedural protections similar to those for a criminal proceeding for the attorney or judge involved in a disciplinary proceeding. The benefits of such a procedure are that it: eliminates the perception that lawyers and judges are a closed group that look to protect themselves; makes the public aware of the process; makes the public more aware of attorneys who are not upstanding so

¹⁸The Judiciary has submitted a bill to the Legislature to open attorney disciplinary proceedings to the public (OCA #99-144).

it can be more discerning in selecting counsel; and makes possible a better system for tracking disbarred and/or suspended lawyers so they cannot open an office in another locale and repeat the offense.

- iii. **Encourage judges to exercise their authority to control and require civil behavior of attorneys.** Judges should be required to report unethical attorney conduct. Judges also should be mindful that they need to set an example of how to behave in a professional manner before attorney conduct and behavior can expect to be modified.
- iv. **Ask law schools and bar associations to establish programs and offer classes on professionalism and civility.** Bar associations should institute mentoring programs for new attorneys which should include professionalism and civility as well as substantive areas of practice. There need to be greater awareness efforts and attempts to elicit compliance with the standards as enunciated in the Green and Craco Committee reports.
- v. **Explore certification of attorneys as specialists in certain areas of the law upon passing a competency examination.** This would complement mandatory continuing legal education (CLE), which is a positive step in fostering attorney competence. Allowing an attorney who achieves a demonstrated level of competency in a particular area of the law to become certified as a specialist is a logical extension of competency programs.

vi. Require clear, written retainer agreements to reduce the opportunity for misunderstanding of fee arrangements.

b. Attorney Solicitation

A recurrent theme during the hearings was concern with some of the inflammatory and unprofessional advertising by attorneys. Consideration should be given to developing guidelines that are in keeping with the First Amendment.

The following suggestions are made:

- i. Monitor questionable advertising practices by attorneys and report those whose conduct is unethical or misleading to the attorney grievance committees.**
- ii. Require attorneys to disclose to clients if their case will be referred to other counsel.**
- iii. Create a brochure on how to select an attorney including questions one should ask during the initial interview. The brochure also should supply information to the public as to the role of attorneys and their limitations and responsibilities as officers of the court.**

c. Judicial Independence and Isolation and Ethical Constraints on Judges' Ability to Speak Out in Response to Media

A strong and independent judiciary is essential to maintaining respect for the legal system. This means that judges must be free from outside influences which can dictate their decisions. Judges also must be aware of societal concerns properly cognizable in the discharge of their duty. This is a delicate balance of

which the public is not particularly aware. To address the concerns in this area, the following suggestions are made:

- i. Create standing committees in each district composed of bar, bench and court administrators to defend broad-based generalized attacks on the judiciary. This may be supplemented or replaced by the appointment of an information officer in each district to respond to such attacks (see Media Portrayal and Public Understanding, [5][o][ii] at page 43 below).**
- ii. Produce and disseminate a handbook for judges which can serve as a centralized source for rules and guidelines regarding allowable/advisable judicial responses to media and public inquiry (e.g., judges' ability to speak out on the procedural aspects of a decision, as distinguished from the merits or substantive aspects) and extra-judicial activities.**
- iii. Ask judges to take time to explain, in court, a settlement, decision or procedure, especially for cases that are of high public concern and interest. This presents a good opportunity to show the openness of the judiciary and to educate the public.**
- iv. Ask judges to be more involved in community and educational activities. This would help dispel the view that judges are isolated.**

- v. **Heighten judicial awareness of the importance to public confidence in being on time for court, explaining delays (to the extent appropriate), and working a full day.**
 - vi. **Seek review of mandatory sentencing laws with a view toward maximizing judicial discretion.**
 - vii. **Educate the public regarding the role of judges and the limits on their power, using elementary and secondary education programs and other educational efforts. See *Media Portrayal and Public Understanding* (see [5][a][i], [b] and [d] at pages 39, 40 and 43 below).**
- d. Influence of Politics on Judicial Selection**

While proposals have periodically been made for an appointive system for the selection of judges, it does not appear that this change will occur in the near future. Whether judges are appointed or elected, politics will be present. The primary concern is to ensure that others are not in a position to influence judges' decisions. Strategies include:

- i. **Retain long terms of office for judges to limit the need for political activity and regulate the political activities and associations that judges may pursue.**
- ii. **Reexamine Election Law provisions which prohibit judicial candidates from knowing who contributed to their campaigns. This does not reflect reality because judicial candidates attend their**

fundraisers and can see who attends and, therefore, who has contributed. Public trust is eroded by such an incongruous procedure.

III. Discourage judicial candidates from seeking the endorsement of special interest groups or parties that require or give the impression that the judicial candidate has a position on an issue in contravention of Canons 2, 3, 4, and 7 of the Code of Judicial Conduct.

iv. Establish guidelines for fair campaign practices for judicial elections. A handbook should be created which sets forth ethical restraints on judicial campaigns and judicial conduct and activities once elected (see [4][c][ii] at page 36). The Advisory Committee on Judicial Ethics and the Commission on Judicial Conduct should assist in developing this handbook.

v. Seek agreement from appointed officials, elected officials and candidates and their staffs in other branches of government not to engage in personal attacks on judges.

6. Media Portrayal and Public Understanding

This issue is concerned with the lack of public understanding of the judicial branch of our government, its role and the restraints and limitations placed upon it. Topics covered by this issue are (a) educating students about the system; (b) public knowledge and understanding of the justice system/openness of the legal system;

(c) media portrayal of courts/criticism of courts by public officials; and (d) public perception of lenient sentencing and appeals overturning convictions.

Except for the small percentage of people who have direct contact with the courts, the public learns about the court system and forms its impression about the legal system largely through media portrayal. Public perceptions are influenced by entertainment, movies and TV shows, as well as by news reporting. These portrayals may give only partial coverage of a court case — usually the most sensational portion — at the expense of the presentation of a more balanced report that would come from reporting the entire case, including the results of post-trial applications and appeals. This lack of public understanding often is fueled or exacerbated by media inaccuracies or inflammatory portrayal.

The combination of lack of public understanding and inaccurate or incomplete media portrayal impacts not only the perceptions about the judicial system, but the very way the judicial system operates. Public pressure has an effect on legislation involving the courts and judicial discretion and can affect judiciary budgets. It is, therefore, incumbent upon the court system and the bar to become more active in educating the public about the role and functioning of the judiciary and to ensure that media portrayal is accurate and balanced. Strategies in this regard are:

a. Educating Students About the Justice System

- 1. Advocate for expanded and practical coverage of the judicial system in school systems beginning at grade school level and continuing into secondary schools and college. Interactive videos**

have been developed and could be utilized as one way to elicit student interest in this subject. Suggestions for curriculum design such as key points, goals and learning objectives on the legal system and the development of print, video and computer resources to support the learning objectives could be developed in a collaboration of teachers, school administrators, lawyers, judges and court administrators. Again, this serves a secondary salutary purpose by removing judges and attorneys from isolation and making a bridge to the community. As a corollary to this, an annual workshop or a video could be developed to "teach the teachers" about the subject area so they are more comfortable teaching about the judicial system.

- ii. **Sponsor contests for students to develop a videotape and/or computer software regarding the judicial system that could be used for educational purposes.**
- iii. **Explore the feasibility of initiating the production and broadcasting of a television program about the courts in which teenagers serve as the hosts/moderators.**

b. Public Knowledge and Understanding of the Justice System/Openness of Legal System

- i. **Establish and/or expand Speakers Bureaus of judges and attorneys available to speak to schools, churches and civic groups. The following are some programs that could be established to**

educate the public and improve the public image of judges and attorneys:

- **court tours, which may include mock trial or moot court opportunities with a judge;**
- **moot court competitions in which judges and attorneys participate as judges or mentors;**
- **Peoples Law School™— designed to teach the public regarding the legal system and specific areas of law;**
- **Tools for Schools™— collaborations between bar association and other civic organizations to provide school supplies in backpacks for children in low income area schools at the beginning of the school year;**
- **Lawyers for Learning™— a program in which a bar association "adopts" a school in a low income area and attorneys meet with assigned students at least once a week to mentor and give guidance; and**
- **Judicial Advisory Councils composed of community leaders and activists, judges, and attorneys in all judicial districts in the state.**

II. Produce with local radio (usually talk radio is the most receptive) a series of 30-second audio spots defining legal terms, court procedures, and specific areas of the law which will serve to inform the listening public.

- iii. **Develop with bar associations public service announcements regarding the role of courts and the judiciary.**
 - iv. **Initiate court open house education day for families. This should be done as a special event, most appropriately on or about May 1st of every year (Law Day). This would be composed of displays, tours, videos and lectures with advance publicity.**
 - v. **Develop a series of videotapes and materials on legal topics for use in public libraries and schools. In addition to a general overview of the court system and procedures (see [3][a][ii] at page 16 above), particular "hot topics" could be covered such as issues of sentencing and tort reform. These could be made in conjunction with a "Peoples Law School" program (see [5][b][i] at page 40).**
 - vi. **Publicize good deeds/contributions to the community by attorneys, judiciary, judicial staff, court employees and law schools.**
 - vii. **Establish a "Law Hot Line" or "Ask a Lawyer" newspaper column and/or web site for educational purposes.**
- c. Media Portrayal of Courts/Criticism of Courts by Public Officials**
- i. **Disseminate the videotapes and educational materials developed (see [3][a][ii] at page 16 above) to the media for use in training persons who will be covering the courts.**

- ii. **Designate a person in each district as the public information officer available to the media to answer questions beyond normal business hours. This individual would be available to respond when a story is written so that the court system will have input and the ability to control or impact content.**
- iii. **Develop and disseminate to all judges guidelines regarding allowable/advisable judicial responses to the media and public inquiry and on handling criticism (see [4][c][ii] at page 36). As a corollary to this, the media also should be provided with guidelines as to permissible judicial comment.**
- iv. **See [4][d][v] at page 36 above.**

d. Public Perception of Lenient Sentencing and Appeals Overturning Convictions

- i. **Develop for dissemination to the media, schools and public libraries a videotape which addresses procedural safeguards afforded under our Constitution, considerations in sentencing and the appeals process. Public forums on the topic, if possible, should be conducted and timed to coincide with a case of public interest.**

III. NEXT STEPS

With the additional input from the National Conference, the Committee's next step will be to formulate a plan to implement the strategies. A time line for implementation will be developed that takes into consideration both the importance of the need for the change as well as the feasibility of effecting it. As can be seen from the list of strategies, some of the strategies are long term and may be dependent for implementation upon cooperation from other entities outside the judicial system while others can be accomplished fairly quickly and simply within the judicial system structure.

Further insight can be gained by drawing on the observations of those people who have day-to-day contact with the court system in various ways, e.g., attorneys, court employees, witnesses and litigants. This would be similar to the survey now completed by jurors at the conclusion of their service. The Committee is working on a model for such a questionnaire.

The recent appointment of a standing committee on Professionalism and the Law by Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman is a meaningful step in establishing a commitment to promoting the public's trust and confidence in the legal system and a way to anticipate and be responsive to society's legal needs. The same concept should be applied on a local level to the various groups that comprise or are involved in the legal system such as judges, attorneys, police, jail administrators, district attorneys, public defenders, court clerks, court administrators, parole, probation, and jury offices, community leaders and activists, and others who serve or are involved in court programs. The need to communicate and engage in dialogue about

our legal system and its future is critical to engender public trust and confidence in the system.

As with any change, resistance will be encountered. The Committee will address approaches to help build consensus as the task of implementing new structures and procedures is undertaken. Contact persons and groups with which there should be collaboration will be identified to assure a coordinated effort to promote public trust and confidence in the legal system.

In the last few decades, the role, and society's expectation, of the courts have changed from one of administering justice to one of ameliorating underlying problems through referral to or collaboration with social programs. The focus of the Committee's future work should not be just on gaining and improving the public's trust and confidence in the legal system but also on "What do we want our court system to look like in the next 25 years?" Efforts in this regard need to be continuous, rather than continual. That is, there should be ongoing, continuous dialogue, not just flashes of heightened awareness and discussion followed by long periods of silence and inaction. Public confidence is undermined rather than promoted if efforts such as this are undertaken and no real and meaningful change is effected.

While the suggested strategies and the job of improving public trust and confidence in the legal system may seem daunting, it should be kept in mind that often the most significant progress comes from many small steps. Clearly it is a much needed undertaking.

Respectfully submitted,

**Hon. Evelyn Frazee (Co-Chair)
Hon. William C. Thompson (Co-Chair)
Peter A. Bellacosa, Esq.
Gary Brown, Esq.
Danny Donohue
Hon. Jack Doyle
Klaus Eppler, Esq.
John D. Feerick, Esq.
Hon. William J. Fitzpatrick
Hon. Victoria A. Graffeo
Dr. Karen R. Hitchcock
Ruth Hochberger
Barry Kamins, Esq.
Hon. James J. Lack
Glenn Lau-Kee, Esq.
Harold O. Levy, Esq.**

**Elizabeth D. Moore, Esq.
Jeanne Mullgrav
Hon. Roberto Ramirez
Carol Ann Rinzler
Rachel F. Robbins, Esq.
Dr. Richard A. Shick
Hon. Claire Shulman
Hon. Richard D. Simons
Dr. Herman A. Sirols
Hon. Ronald B. Stafford
Hon. Charles J. Tejada
Hon. Helene E. Weinstein
Hon. Charles L. Willis
Hon. Mary M. Work
Peter L. Zimroth, Esq.
Patricia K. Bucklin, Esq. (Counsel)**

May 1999

APPENDIX A

NEWS

**New York State
Unified Court System**

**Jonathan Lippman
Chief Administrative Judge**

**Further Information:
David Bookstaver,
Communications Director
Mal Yee, Assistant Director
(212) 428-2500**

Release: Immediate, November 17, 1998

State and National Initiatives to Build Public Trust and Confidence in the Justice System

NEW YORK—The Unified Court System announces that a five-member delegation from New York, including Chief Judge Judith Kaye and Chief Administrative Judge Jonathan Lippman, will participate in the National Conference on Building Public Trust and Confidence in the Justice System in Washington, D.C., May 13–15, 1999. The goal of the conference is to form a national coalition to address public trust issues and to have each state develop its own strategic plan to improve its justice system. To assist the New York delegation, the Chief Judge has appointed the Committee to Promote Public Trust and Confidence in the Legal System, a high-level advisory committee that will develop a list of public trust concerns and propose strategies to address the issues raised. This advisory committee, chaired by Appellate Division Justice William C. Thompson and Supreme Court Justice Evelyn Frazee, comprises representatives of the bench and the bar, the media, university professors, businesses, unions, civic groups, victims rights groups, legislators and local government officials.

The New York delegation to the conference, sponsored by the American Bar Association, the Conference of Chief Justices and the Conference of State Court Administrators, will consist of

- Chief Judge Judith S. Kaye
- Chief Administrative Judge Jonathan Lippman
- New York State Bar Association President James C. Moore
- League of Women Voters President Evelyn Stock
- New York Urban League President and CEO Dennis M. Walcott

Chief Judge Kaye said, "I am pleased that New York will be represented in the National Conference on Building Public Trust and Confidence in the Justice System— a historic event that promises to be both productive and enriching. The conference provides a unique opportunity for national colloquy on a subject of serious concern to court administrators around the country. I am proud to lend our state's support and look forward to a healthy exchange of ideas and experiences.

The advisory committee we have assembled boasts a distinguished and diverse roster of members and will undoubtedly provide much insight on public perception of the justice system in our state."

Chief Administrative Judge Lippman added, "I would like to thank the other members of the delegation, James Moore, Evelyn Stock and Dennis Walcott, for agreeing to represent New York at the conference with Chief Judge Kaye and myself. I would also like to extend my gratitude to Justice Thompson and Justice Frazee and the individual members of the advisory committee whose research and recommendations will provide the basis for our work at the conference."

The conference will develop a national action plan and determine the role of national organizations in assisting states to effectuate their strategies. A subsequent conference will likely be held the following year.

The Committee to Promote Public Trust and Confidence in the Legal System is expected to hold public hearings around New York State later this year. (A list of committee members is attached.)

###

**The Committee to Promote Public Trust
and Confidence in the Legal System**

Hon. Evelyn Frazee (Co-Chair), Justice of the Supreme Court, Seventh Judicial District

Hon. William C. Thompson (Co-Chair), Associate Justice of the Appellate Division, Second Department

Peter A. Bellacosa, Esq., Partner in the law firm of Kirkland & Ellis, New York City

Gary Brown, Esq., Assistant Attorney General in Charge of the Westchester Regional Office of the Attorney General, Westchester County

Danny Donohue, President of the Civil Service Employees Association, Inc., Albany

Hon. John D. Doyle, County Executive of Monroe County

Klaus Eppler, Esq., Partner in the law firm of Proskauer Rose LLP, New York City

John D. Feerick, Dean of Fordham University School of Law, New York City

Hon. William J. Fitzpatrick, District Attorney of Onondaga County

Hon. Victoria A. Graffeo, Associate Justice of the Appellate Division, Third Department

Dr. Karen R. Hitchcock, President of the State University of New York at Albany

Ruth Hochberger, Editor-in-Chief, *New York Law Journal*, New York City

Barry Kamins, Esq., Partner in the law firm of Flammhaft Levy Kamins & Hirsch, Brooklyn, New York

Hon. James J. Lack, Member of the New York State Senate and Chair of the Senate Judiciary Committee, Suffolk County

Glenn Lau-Kee, Esq., Partner in the law firm of Koo, Larrabee & Lau-Kee, LLP, Ardsley, New York; Past-President of the Asian American Bar Association of New York

Harold O. Levy, Esq., Associate General Counsel, Citigroup, Inc., New York City

Elizabeth D. Moore, Esq., Partner in the law firm of Nixon, Hargrave, Devans & Doyle, LLP, New York City

Jeanne Mullgrav, Director of Court Programs, Victims Services Agency, New York City

Hon. Roberto Ramirez, Member of the New York State Assembly, Bronx County

Carol Ann Rinzler, Author and former grand juror, New York City

Rachel F. Robbins, Esq., General Counsel, J.P. Morgan & Co., Inc., New York City

Dr. Richard A. Shick, Dean of Canisius College, Buffalo

Hon. Claire Shulman, Borough President of Queens County

Hon. Richard D. Simons, Retired Judge of the Court of Appeals, and Counsel to the law firm of McMahon, Grow & Getty, Rome, New York

Dr. Herman A. Sirols, Superintendent of Levittown Public Schools, Nassau County

Hon. Ronald B. Stafford, Member of the New York State Senate and Chair of the Senate Finance Committee, Clinton County

Hon. Charles J. Tejada, Judge of the Court of Claims and Acting Supreme Court Justice, First Judicial District; Past-President of the Association of Judges of Hispanic Heritage

Hon. Helene E. Weinstein, Member of the New York State Assembly and Chair of the Assembly Judiciary Committee, Brooklyn

Hon. Charles L. Willis, Former Justice of the Supreme Court; Of Counsel to the law firm of Harris Beach & Wilcox, Rochester, New York

Hon. Mary M. Work, Judge of the Ulster County Family Court

Peter L. Zimroth, Esq., Partner in the law firm of Arnold & Porter, New York City

APPENDIX B

**A MESSAGE FROM
CHIEF JUDGE JUDITH S. KAYE**

There is nothing more important than the public trust and confidence in our legal system. The very nature and existence of an independent judiciary depend on it.

To foster such trust and confidence, we must ensure that our legal system is fair and just, accessible to all individuals and responsive to the needs of our citizenry. The Committee to Promote Public Trust and Confidence in the Legal System will bring a renewed focus and energy to this important topic. We hope that the grassroots work will generate a broad exchange of ideas and experience, and result in concrete proposals to enhance public trust and confidence in our legal system.

I am enormously grateful to members who have agreed to serve the judiciary in this capacity. I especially want to thank Appellate Division Justice William C. Thompson and Supreme Court Justice Evelyn Frazee for their willingness to co-chair the advisory committee.

ESTABLISHMENT OF THE COMMITTEE

The Committee to Promote Public Trust and Confidence in the Legal System was established in November 1998, by Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lipman to identify initiatives that will further the public's understanding of and respect for our State's legal system. With 31 members, the committee represents the bench and bar, educators, legislators, local government officials, unions, business, civic and victim rights groups, and the media.

MISSION STATEMENT

The goal of the Committee to Promote Public Trust and Confidence in the Legal System is to enhance the public's trust and confidence in our legal system. The committee's focus is two-fold - first, to ensure that there is a fair and just system by which people who have contact with the legal system are treated with respect and equality, and second, to bring about a greater understanding of and respect for the legal system.

**ISSUES OF PUBLIC TRUST
AND CONFIDENCE**

The Committee commenced its work by identifying the issues of public trust and confidence in New York State. These include:

1. Issues of Bias
Treatment of people who have contact with the legal system
2. Access to Justice
Improved legal assistance and access to justice for people of low income
Adequate legal services for low-income people and obligation of local and state governments
3. Judicial Administration
Delays in justice
User-friendly, comprehensible court system
Jury system experience
Adequate funding to ensure respectful court facilities
4. Legal and Judicial Ethics
Ethical issues regarding attorney/attorney-client
Attorney solicitation
Judicial independence and isolation
Influence of politics on judicial selection
Ethical constraints on judges ability to speak out in response to media
5. Media Portrayal and Public Understanding
Media portrayal of constitution of courtesy public officials
Public perception of lenient sentencing and appeals governing convictions
Public knowledge and understanding of the justice system/operation of legal system
Educating students about our system of justice

A Subcommittee on Systems and Institutions with a Subcommittee on Education were created to further examine these issues from an institutional and educational perspective.

NATIONAL INITIATIVE

The State committee was established in conjunction with a national initiative sponsored by the Conference of Chief Justices, the Conference of Chief Administrators and the American Bar Association. As part of this initiative, each Chief Justice was asked to form a committee to identify issues affecting public trust and confidence in their respective States and to formulate strategies to deal with them. To further the State efforts, a National Conference on Building Public Trust and Confidence in the Justice System will be held May 13-15, 1999, in Washington, D.C.

The New York delegation to the National Conference will include:

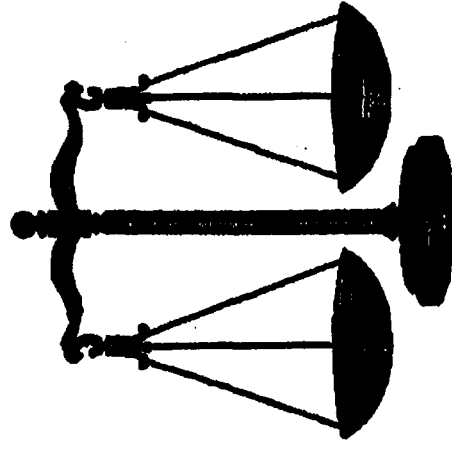
- Hon. Judith S. Kaye, Chief Judge of the State of New York
- Hon. Jonathan Lipman, Chief Administrative Judge of the State of New York
- James C. Moore, President of the New York State Bar Association
- Evelyn Stock, President of the League of Women Voters
- Dennis M. Weisbot, President and CEO of the New York Urban League

The National Conference will develop a national action plan and define the role that national organizations will play in existing states to implement their targeted strategies. Following the National Conference, the New York State committee will develop a strategic plan containing concrete reforms that address both systemic and educational issues critical to elevating public trust and confidence in New York's justice system. An important component of the State committee's efforts will be a series of hearings throughout the State beginning in early 1999 to get input from the public.

The Committee to Promote Public Trust and Confidence in the Legal System

- Hon. Evelyn Frazee (Co-Chair), Justice of the Supreme Court, Seventh Judicial District
- Hon. William C. Thompson (Co-Chair), Associate Justice of the Appellate Division, Second Department
- Peter A. Balocco, Esq., Partner in the law firm of Kitchard & Ellis, New York City
- Gary Brown, Esq., Assistant Attorney General in Charge of the Westchester Regional Office of the Attorney General, Westchester County
- Darryl Donohue, President of the CMI Service Employees Association, Inc., Albany
- Hon. Jack Doyle, County Executive of Monroe County
- Klaus Eppler, Esq., Partner in the law firm of Prosser Rose LLP, New York City
- John D. Feinick, Dean of Fordham University School of Law, New York City
- Hon. William J. Fitzpatrick, District Attorney of Onondaga County
- Hon. Victoria A. Gaffin, Associate Justice of the Appellate Division, Third Department
- Dr. Karen R. Hitchcock, President of the State University of New York at Albany
- Ruth Hochberger, Editor-in-Chief, New York Law Journal, New York City
- Barry Kautza, Esq., Partner in the law firm of Fleishman Levy Kautza & Hirsch, Brooklyn, New York
- Hon. James J. Lack, Member of the New York State Senate and Chair of the Senate Judiciary Committee, Suffolk County
- Glenn Lau-Kee, Esq., Partner in the law firm of Kee and Lau-Kee, New York City; President of the Asian American Bar Association of New York
- Harold O. Levy, Esq., Associate General Counsel, Citigroup, Inc., New York City; Member, New York State Board of Regents
- Elizabeth D. Moore, Esq., Partner in the law firm of Mann, Hargrave, Devans & Doyle, LLP, New York City
- Sarah E. Moss, Esq., Vice-President and General Counsel, Flinn-Bowen, Inc., New York City

THE COMMITTEE TO PROMOTE PUBLIC TRUST AND CONFIDENCE IN THE LEGAL SYSTEM



- Jaime Milgram, Director of Court Programs, Victim Services, Inc., New York City
- Hon. Roberto Ramirez, Member of the New York State Assembly, Essex County
- Carol Ann Finster, Auditor and former grand juror, New York City
- Rachel F. Robbins, Esq., General Counsel, J.P. Morgan & Co., Inc., New York City
- Dr. Richard A. Strick, Dean of Cortland College, Buffalo
- Hon. Claire Shulman, Borough President of Queens County
- Hon. Richard D. Sincora, Retired Judge of the Court of Appeals, and Counsel to the law firm of Maheshon, Grow & Guffy, Roseton, New York
- Dr. Herman A. Strick, Superintendent of Levittown Public Schools, Nassau County
- Hon. Ronald B. Stafford, Member of the New York State Senate and Chair of the Senate Finance Committee, Clinton County
- Hon. Charles J. Tojeda, Judge of the Court of Claims and Acting Supreme Court Justice, First Judicial District; Past-President of the Association of Judges of Hispanic Heritage
- Hon. Helene E. Wehrbach, Member of the New York State Assembly and Chair of the Assembly Judiciary Committee, Brooklyn
- Hon. Charles L. Wills, Former Justice of the Supreme Court of Counsel to the law firm of Harris Beach & Wilson, Rochester, New York
- Hon. Mary M. Wolk, Judge of the Ulster County Family Court
- Peter L. Zaretski, Esq., Partner in the law firm of Arnold & Porter, New York City
- Patricia K. Bazelin, Esq., Counsel to the Committee, New York State Office of Court Administration

Written comments are encouraged and should be sent to:

The Committee to Promote Public Trust and Confidence in the Legal System
 State of New York
 Office of Court Administration
 4 ESP, Suite 2001
 Empire State Plaza
 Albany, New York 12223-1460

Hon. Evelyn Frazee (Co-Chair)
 Justice of the Supreme Court
 Seventh Judicial District

Hon. William C. Thompson (Co-Chair)
 Associate Justice of the Appellate
 Division, Second Department

APPENDIX C

**HEARING FOR THE COMMITTEE TO PROMOTE PUBLIC TRUST
AND CONFIDENCE IN THE LEGAL SYSTEM**

**Marriott Marquis
525 Broadway (between 45th and 46th Streets), New York City
Friday, January 29, 1999
1:00 P.M. - 4:00 P.M.**

SPEAKERS

Eleanor Breitel Alter, Chair, LawyersFund for Client Protection

**Hon. Joan S. Kohout, President, Association of Judges of the Family Court of the State of
New York**

Hon. Thomas R. Sullivan, Chair, Committee on Continuing Legal Education

Hon. Lewis L. Douglass, Chair, Franklin H. Williams Judicial Commission on Minorities

Hanna S. Cohn, Esq., Director, Volunteer Legal Services Project

Hon. Samuel M. Levine, President, Board of Judges, District Court of Nassau County

Charles P. Inclina, Esq., President, Monroe County Bar Association

Hon. M. Dolores Denman, Presiding Justice, Appellate Division, Fourth Department

Louis A. Craco, Esq., Chair, Committee on the Profession and the Courts

James C. Moore, Esq., President, New York State Bar Association

Beverly Poppell, Esq., Chair, New York Bar Association Public Relations Committee

Louis C. England, Esq., President, Suffolk County Bar Association

Michael A. Cooper, Esq., President, Association of the Bar of the City of New York

Hon. Dora L. Irizarry, President, Association of Judges of Hispanic Heritage

Hon. Edwin B. Winkworth, President, New York State Magistrates Association

Stephen D. Hoffman, Esq., President, New York County Lawyers Association

Hon. Guy J. Mangano, Presiding Justice, Appellate Division, Second Department

Hon. Douglas Mills, President, New York State Association of City Court Judges

Susan Lindenauer, Counsel to the Executive Director, Legal Aid Society, New York County



**HEARING FOR THE COMMITTEE TO PROMOTE PUBLIC TRUST
AND CONFIDENCE IN THE LEGAL SYSTEM**

New York County Lawyers Association

14 Vesey Street

New York, New York 10007

Thursday, March 4, 1999

4:00 p.m. - 7:00 p.m.

SPEAKERS

Barbara Reed, Fund for Modern Courts, Inc.

Matthew Sapolin, Center for Independence of the Disabled in New York

Marvin Peguese, Staff Attorney, Lambda Legal Defense and Education Fund, Inc.

Kevin Doyle, Capital Defenders Office

Joan Vermeulen, Lawyers for the Public Interest

Phillis Cherebin, Senior Attorney, Bronx Legal Aid

**Cathleen Clements, Esq., Legal Director, Office of Public Policy & Client Advocacy,
Children's Aid Society**

Susan Branigan, Congresswoman Carolyn Maloney's Office

Bruno Bianchi, Supervisor, Bronx Legal Aid

David Levin, Prisoner Legal Services

Ogden Lewis, Chair, Citizens Union

Dean Emanuelli, Esq.,

Hon. William C. Thompson, Jr., President, Board of Education, New York City

Sonny Carson

Artine Ferguson

**HEARING FOR THE COMMITTEE TO PROMOTE PUBLIC TRUST
AND CONFIDENCE IN THE LEGAL SYSTEM**

**Monday, March 29, 1999
Monroe County Bar Center
One Exchange Street, 5th floor
Rochester, New York**

SPEAKERS

Honorable James Morris, Brighton Town Justice

Richard Kirtland, Equal Rights for Fathers

Sheriff Andrew P. Meloni, Monroe County

Nancy Berlove, President, Sign Language Connection

Lenore Banks, State League of Women Voters

Ann Jones, League of Women Voters of Metropolitan Area

Sandra Frankel, Supervisor, Town of Brighton

Paula Clark, ACLU

Honorable Frank Geraci, Monroe County Court

Susan Soper, Church Women United - Coordinator of Task Force on Courts

Marion Strand, National Organization of Women

Honorable Michael J. Miller, Monroe County Family Court

Charles Perreaud, Monroe County Commissioner of Jurors

Tim Kelly, Rochester Interfaith Jail Ministry

Rosetta Darby McDowell, Esq, President, Monroe County Black Bar Association

Douglas Jones, Esq., Monroe County Bar Association, Chair: Courts Committee

Daniel Head, Past President, Equal Parents for Children

Raymond Hart, Fathers Rights Association of New York State

Robert L. Laird, Deputy Director of Community Services, Action for a Better Community

Linda Kingsley, Esq., Corporation Counsel, City of Rochester

Anil K. Chaddha, Esq., Association of Indians in America - Rochester Genesee Valley Area

Gloria Lopez, Esq., Urban League

James S. Hinman, Esq., Attorney

Gloria Zinone, Former Monroe County Commissioner of Jurors

APPENDIX D

**The Committee to Promote Public Trust
and Confidence in the Legal System**

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& Institutions**

Dean John Feerick, Chair

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Elizabeth D. Moore, Esq.

Jeanne Mullgrav

Carol Rinzler

Rachel F. Robbins, Esq.

Hon. Claire Shulman

Hon. Richard D. Simons

Hon. Charles J. Tejada

Hon. William Thompson

Hon. Helene E. Weinstein

Hon. Charles L. Willis

Hon. Mary M. Work

Subcommittee on Education

Dr. Herman A. Sirois, Chair

Peter Bellacosa, Esq.

Hon. Jack Doyle

Klaus Eppler, Esq.

Hon. Evelyn Frazee

Hon. Victoria A. Graffeo

Dr. Karen Hitchcock

Ruth Hochberger

Barry Kamins, Esq.

Glenn Lau-Kee, Esq.

Dr. Richard A. Shick

Peter Zimroth, Esq.

APPENDIX E

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PROFESSION IN TEXAS
TEXAS SUPREME COURT
TEXAS OFFICE OF COURT ADMINISTRATION
STATE BAR OF TEXAS**

**COMMENTS ON REPORT FROM SECTIONS,
COMMITTEES, BAR ASSOCIATIONS**



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January 5, 2001

Via Facsimile & Mail
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Ellen Lieberman, Esq.
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Re: **Report on Public Trust and Confidence in the Legal System**

Dear Ellen:

Thank you for soliciting our Committee's review and comment on the Special Committee's Report on Public Trust and Confidence in the Legal System (the "Report"). We preface our comments by commending your Committee's thorough and thoughtful analysis of these important matters. Like most lawyers, our Section members have expressed great concern over the apparent deterioration of the public's trust and confidence in our profession, and in the judicial system. Overall, our ad hoc committee, convened for the limited purpose of reviewing the Report, was favorably impressed by the majority of the Report's recommendations. We must note that, because of the time deadline, this commentary/report has not been approved by the Commercial & Federal Litigation Section ("C&FL Section"). Below, we offer our limited commentary and suggestions on matters and issues our ad hoc committee believes are of particular importance to the members of the C&FL Section:

1. Diversity: We note that some aspects of the Report addressing critical issues of bias, prejudice and diversity, reflect a "down-state" perspective that may understate the extent of these problems throughout the state. From the perspective of our "Ad Hoc" Committee, which included several up-state practitioners, the diversity problems identified in your Report, are much more pronounced outside

the metropolitan New York City practice area. As the Report notes, however, it is difficult for us to quantify the extent of the problem because there is no central resource for the collection of data concerning the composition of the judiciary, court staff, or even the Bar. The lack of data on those issues of great importance is surprising, and unacceptable. Accordingly, we recommend that the Report include an urgent recommendation that a project be funded by NYSBA and/or OCA to gather information and data necessary to gauge the nature and scope of the problems associated with a lack of ethnic and gender diversity, which were alluded to, but not defined or measured, in the Report. This information may also be of use to other committees and organizations, such as Judge Kaye's recently formed task force to evaluate the involvement of women and minorities in the high-profile and lucrative commercial litigation practice area. We believe that the collection of this basic information will also provide the Bar, local political organizations and State Court Administration personnel with a useful tool to promote and improve diversity in our legal system in a way that promotes public trust and confidence.

2. Non-Lawyer Judges: We concur with the Report's recommendation that all judges, including town justices, be lawyers. It has been the experience of our Committee members, and many of our colleagues, that a lack of professional legal training presents a significant impediment to the consistent administration of justice at the town and village level, where individuals are most likely to have their first and most direct contact with judges, lawyers and the legal system.

3. Court Restructuring: Our Committee believes that the recently implemented Commercial Part of the Supreme Court has generally been successful in providing a mechanism for the expeditious handling of commercial cases. This, in turn, promotes the efficiency of the court system in general, by making it more specialized and user-friendly, and by relieving pressure upon the other branches of the judiciary. For these reasons, we recommend that the Report include an affirmative recommendation that [the expansion of] the commercial part of the court system be expanded to other areas of the state. Our Committee has no recommendation at this time on the proposed unification of the court system.

4. Mandatory Conferences: The Committee agrees with the recommendation of the Report (p. 22) that early, mandatory scheduling conferences be convened by the assigned judge. Preliminary conferences could be used to arrive at a mutually acceptable discovery schedule, and identify any preliminary issues in the litigation. We suggest that this requirement mirror the requirements of Rule 16 applicable to federal actions, which, in our Committee's experience, has proved to be a successful means of docket control that minimizes the amount of discovery disputes and discovery-related motions.

5. **Pre-judgment Interest:** With respect to the Committee's recommendation that the CPLR be amended to include pre-judgment interest, our Committee does not view this proposed amendment as a necessary step to improve the public's trust and confidence in the legal system. The premise of the proposed amendment is that defendants in civil litigation are responsible for unnecessary and intentional delays in the progress of litigation. We believe that this premise is flawed, and that the proposed amendment would unfairly penalize and blame defendants for delays that occur in the progress of litigation, without regard for the actual reason for the delay. The proposed amendment to CPLR § 3221, which simply tolls the accrual of interest in a plaintiff's favor, does not adequately balance the heavy burden that the proposed amendments would impose exclusively upon defendants.

6. **Alternative Dispute Resolution:** With respect to the Report's recommendation on alternative dispute resolution, we join the Report's recommendation that additional resources be allocated to promote alternative dispute resolution. In addition, our Committee felt that additional resources for the training of professional mediators would boost the confidence of attorneys and their clients in court-sponsored mediation and arbitration. However, we do not support the imposition of mandatory mediation that has been adopted in other jurisdictions.

7. **Circulation of the Journalists' Handbook:** Our Committee agrees with the Report's recommendations concerning the dissemination of a legal handbook explaining the parameters of appropriate commentary on pending legal cases, and other rules applicable to the judiciary. Our Committee suggests, however, that the contents of the handbook not only be disseminated in paper form, but made available on the internet, either on the New York State Bar Association site, or on the site of the Office of Court Administration.

SUMMARY

Except as indicated, our Committee generally supports the recommendations and comments set forth in the Report. Please note, however, that due to the time constraints (which left less than one month [including holidays] for preparation of these comments), it was not possible for the full Committee of the Commercial and Federal Litigation Section to meet and comment on the Report. Accordingly, our comments must necessarily be subject to further review and comment by the full Committee.

Ellen Lieberman, Esq.

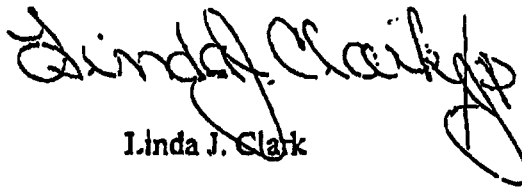
Page 4

January 5, 2001

Thank you again for all of your hard work on this very important project, and please let us know if we may be of further assistance.

Very truly yours,

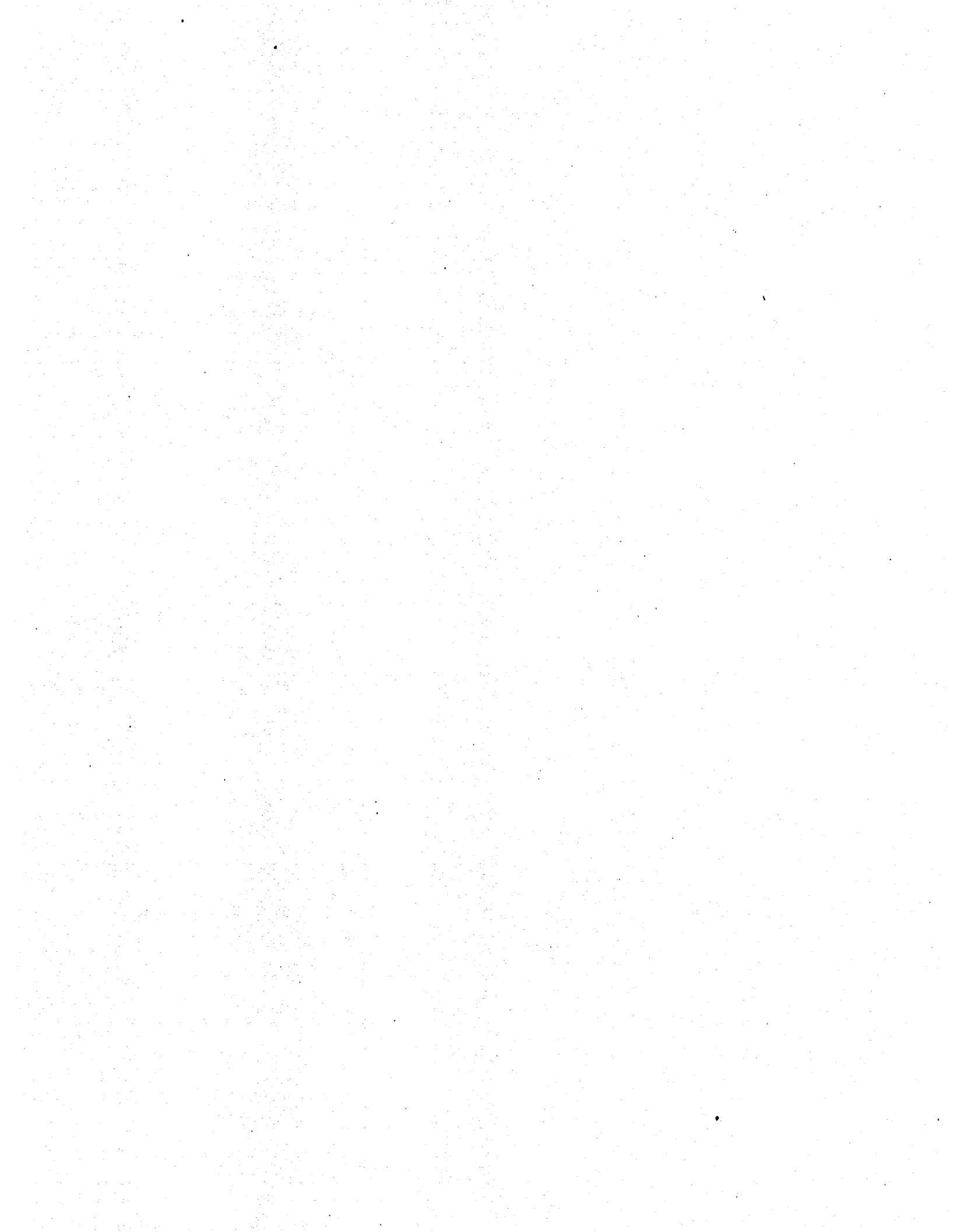
ISEMAN, CUNNINGHAM, RIESTER & HYDE, L.L.P.

A handwritten signature in black ink, appearing to read "Linda J. Clark". The signature is fluid and cursive, with a large loop at the end.

Linda J. Clark

IJC/jvs

c: Bernadette Catalana, Esq. (via facsimile: 716-292-5793)
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MEMORANDUM

TO: L. BETH KRUEGER
FROM: BARBARA SAMEL, CHAIR-ELECT YOUNG LAWYERS SECTION
SUBJECT: REPORT ON PUBLIC TRUST AND CONFIDENCE IN THE LEGAL SYSTEM
DATE: DECEMBER 27, 2000

I have reviewed the Report on Public Trust and Confidence in the Legal System and offer the following comments on behalf of the Young Lawyers Section.

1. Page 4 of the report recommends that the Association compile information on the number of attorneys and judges of color in various positions in the legal profession and in different communities of the state. The Young Lawyers Section would recommend that these statistics also include information on the number of women attorneys represented in various positions in the profession. It would also be helpful to include statistics on years of practice and type of practice, i.e. large private firm, government, corporate. In addition, a mechanism should be developed to discover the reasons why women or minorities leave specific types of practice or choose a particular career path. Statistics alone will not show the whole picture and the Bar can be better prepared to recommend procedures that promote diversity in retention with this additional information.

2. Page 40 discusses professionalism and civility and calls on law schools and bar associations to offer mentoring programs for new attorneys and classes on professionalism and civility. The report states that, "It is our view that some young lawyers equate incivility with strong advocacy," and generally indicates that incivility is a major problem with young lawyers. The Committee should be aware that many young lawyers have experienced unprofessional and overzealous behavior by their older colleagues. In many instances young lawyers feel that older lawyers attempt to take advantage of the fact that they are new to the practice. The Young Lawyers Section does not feel, and there is no evidence, that uncivil behavior is worse among young lawyers than any other age group. This section of the report should be rewritten to reflect the fact that discourteous behavior is evident in the profession generally. We do not however, disagree with the suggestion that law schools as well as bar associations should offer mentoring programs on the topic and that all attorneys have access to such programs.

Thank you for the opportunity to comment on this report. The Young Lawyers Section would be able to endorse the report and its recommendations as a whole if the portion of the report on professionalism and civility was rewritten per the suggestion above.



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COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION

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To: Ellen Lieberman, Esq., Chair
Special Committee on Public Trust and Confidence in the Legal System

L. Beth Krueger, Liaison
Special Committee on Public Trust and Confidence in the Legal System

Date: December 22, 2000

Re: Comments of the Committee on Alternative Dispute Resolution on the
*Report to the House of Delegates: Enhancing Public Trust and Confidence in the
Legal System*

The Committee on Alternative Dispute Resolution appreciates your invitation to review and comment on your committee's report to the House of Delegates entitled *Enhancing Public Trust and Confidence in the Legal System* (the "Report") as well as on the recommendations contained therein. Our Committee will comment on those aspects of the Report that bear directly on issues related to ADR.

On the whole our Committee was very impressed with the Report and the significant effort that your Committee obviously undertook in producing the document. With respect to ADR issues, we generally endorse your Committee's conclusions, and would take this opportunity to share our thoughts with you on certain subjects addressed by or relating to your Report.

Our Committee compliments the Report's insightful recognition of the value of ADR, and agrees with you that ADR provides great benefits affording solutions to many concerns highlighted by your Report. While we will elaborate on some of these advantages, we would like to go on record as stating that ADR is not a replacement for a sick or broken legal system. To the extent that parties face bias or prejudice or are barred access to justice, that there are delays or excessive costs in reaching a fair trial or that our legal system is not "user-friendly," these problems should be fixed, not simply bypassed through resort to ADR. Without an effective legal system providing a reasonable degree of clarity on the outcome of litigation, parties lose the ability to shape the resolution of their dispute through reference to predictably enforceable norms. Understanding that ADR complements and supplements our litigation system, our Committee would make the following observations and suggestions.

- The Report incorporates comments on ADR in connection with (a) the need for a comprehensible user-friendly Court System and (b) the public understanding and media portrayal of the legal system. The Committee agrees in large measure with these comments and would encourage you to extend the application of ADR to a discussion of ADR in connection with bias and prejudice and access to justice, as well.
- ADR processes enhance the trust and confidence of parties in the legal system and generally lessen bias and prejudice. User surveys reflect a high degree of satisfaction with neutrals and the mediation process. This trust and confidence translates into a conviction that the neutral is not biased or prejudiced. Examination of the role and training of mediators supports this because neutrals learn that it is not their views or judgments that matter, but rather the parties' own views and choices. Parties are encouraged to make their *own* assessments of their interests and of the costs and risks of a case going through trial and appeal. To the extent parties seek to be heard, the opportunity to state their "case" in an informal mediation, free from the rules of evidence and other restraints can produce great satisfaction.
- The Report should encourage compiling statistics with respect to the diversity of neutrals that participate in court-annexed ADR programs and should encourage diversity on the panels of neutrals used for court-annexed ADR. (*See Report at 5, 65.*)
- The Report should include neutrals that participate in court-annexed ADR programs in its discussion of sensitivity training. (*See Report at 5-6, 65.*)
- The Report should mention the significant contributions of community dispute resolution centers ("CDRCs") -- which handle referrals from family court, criminal court, landlord and tenant court, and other forums -- in its discussion of programs that provide assistance to individuals of modest means seeking legal assistance. (*See Report at 19, 21, 67, 68.*)
- Our Committee agrees with the Report's discussion addressing imbalances of power in matrimonial and other family law actions. (*See Report at 20-21, 67.*) However, we disagree that measures should ensure "that the [ADR] programs are voluntary." (*Id.*) Mandatory court-annexed programs have proven highly successful. In such programs, judges may compel the parties to participate in one or two mediation sessions. Subsequent sessions occur on a voluntary basis. We are concerned that the current language in the Report suggests that your Committee opposes such programs.
- In addition, ADR provides parties involved in family law cases with the opportunity to articulate their legal, economic and emotional issues with a professional trained to help them in their own problem solving as well as in their interpersonal communication and self-reflection. Were the matrimonial bar to more fully embrace ADR it would permit them to protect their clients while pursuing their goals in a less combative, more collaborative manner which is particularly appropriate in the family law context.

- Our Committee agrees that achieving prompt settlements is a clear way to encourage public confidence in the Court System and that encouraging the use of ADR will increase the number of prompt settlements. We also agree that the availability of court annexed and court-referred ADR should be expanded and that it is appropriate to develop standards for neutrals and to enhance the education of participants in the system about ADR. We would reiterate our concern about the use of the word “voluntary” in this section, given that certain highly effective programs are mandatory (at least for one or two sessions). (*See Report at 26, 69.*)
- The Report should mention that even when ADR does not result in settlement, it frequently helps parties clarify the issues impeding settlement and that are animating their adversaries.
- The Report should include increasing budgets for the designation of neutrals and for ADR training in its discussion of increasing budgets for the designation of and training of officials in connection with settlement discussions (*See Report at 27, 69.*)
- The Report refers to ADR as an adjunct program that “divert[s] litigants from the Court System or strengthens litigants’ ability to avoid future court involvement.” (*See Report at 28, 69.*) Our Committee views ADR as a means of minimizing traditional litigation, but not as a means of “diverting” litigants from the Court System. We are concerned that some people might view such comments as suggesting that through ADR litigants are somehow forfeiting their rights to avail themselves of the courts. In contrast, our Committee promotes the development of a multi-door court where ADR is one of the options litigants have *through* the Court System at the earliest stages of their dispute.
- The Report should encourage the use of peer mediation programs as a means of educating youth about our Legal System and effective dispute resolution. (*See Report at 51-52, 75.*)
- The Report should explicitly mention ADR as part of the first of the three themes that are “vital to communicate” to teachers. (*See Report at 53, 75.*) ADR has become an integral part of our Legal System and will only become more important in the future and must be incorporated into any educational program covering how our justice system operates. Moreover, it provides young people with concepts that they can translate into effective tools for handling their own disputes.

Our Committee asks that your Report address these comments in its final version and commends you, again, on your thoughtful work.



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COMMITTEE ON ATTORNEY PROFESSIONALISM

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December 26, 2000

Memorandum

To: Special Committee on Public Trust and Confidence in the Legal System

Subject: Comments on "Report to the House of Delegates: Enhancing Public Trust and Confidence in the Legal System"

On behalf of the Committee on Attorney Professionalism, I am responding to the request for comments concerning the October 2000 "Report to the House of Delegates: Enhancing Public Trust and Confidence in the Legal System" submitted by the New York State Bar Association's Special Committee on Public Trust and Confidence in the Legal System ("Special Committee"). The Special Committee's work follows the May 1999 report prepared by Chief Judge Kaye's Committee to Promote Public Trust and Confidence in the Legal System (referred to as the "State Committee").

The Special Committee focuses its analysis on five issues: bias and prejudice and access to justice; the need for a comprehensible user-friendly court system; the jury system experience and adequate funding for court facilities; legal and judicial ethics; and public understanding and media portrayal of the legal system priorities.

The difficulty with any report that focuses on the legal system-at-large, rather than on some discrete aspect of legal practice, is insuring that implementation occurs. No one questions that public trust and confidence are paramount to the delivery of justice. With the goal of improving public understanding of how the legal system operates, the Special Committee called for the "cooperative and coordinated efforts of all those involved in the legal process". The Committee on Attorney Professionalism wholeheartedly supports that effort. It stands ready to work with the Judicial Institute on Professionalism in the Law, appointed by Chief Judge Kay and Chief Administrative Judge Jonathan Lippman, or with other committees as appropriate.

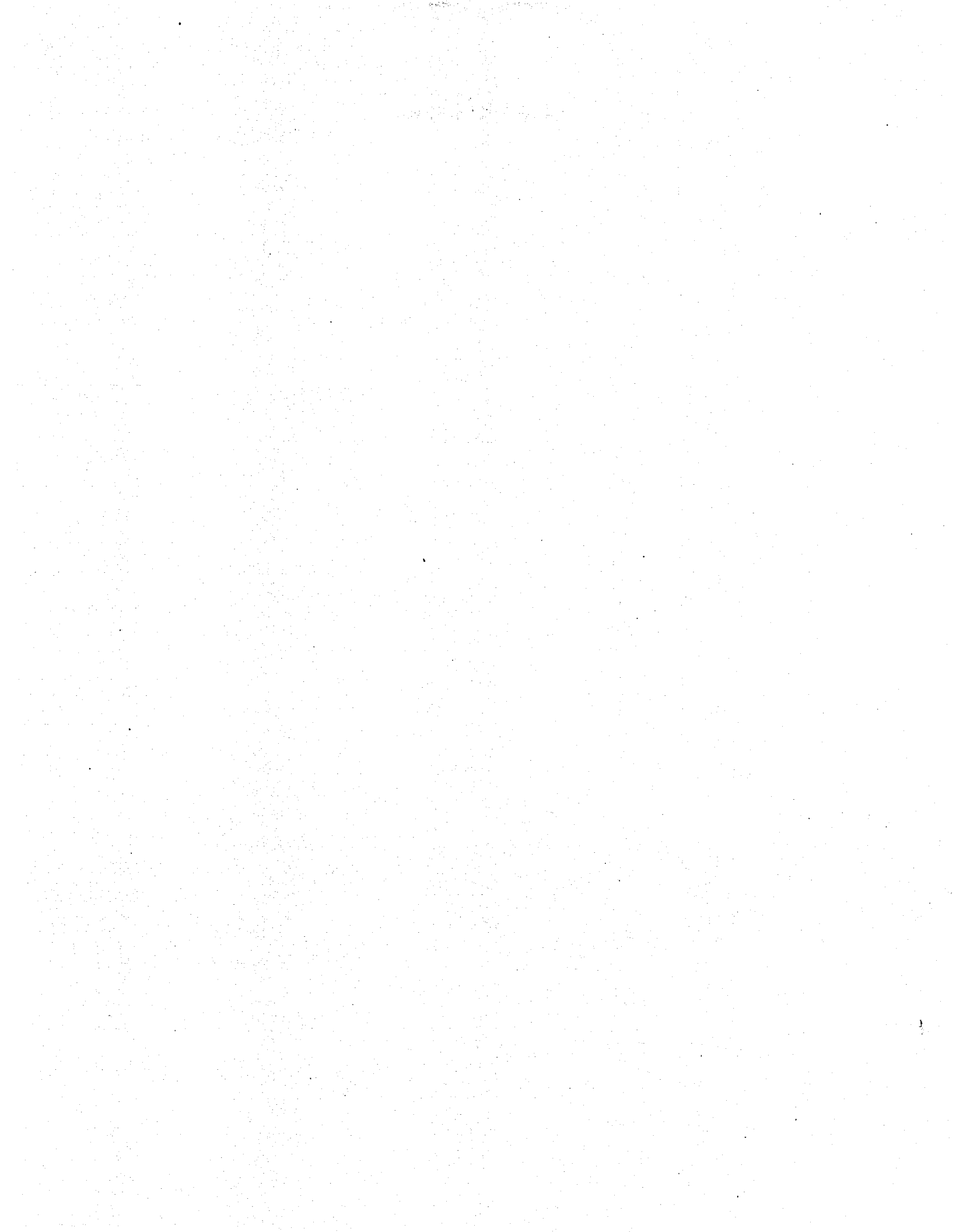
Turning to the Special Committee's Report, the comments of the Committee on Attorney Professionalism concentrate on the fourth point: legal and judicial ethics (pages 34 - 48). We support the priorities identified by the Special Committee based on the State Committee's work. The Special Committee outlined several initiatives to complement the priorities including:

(1) a recommendation that other Departments develop an orientation program on ethics and professionalism for applicants for bar admission. This effort, in particular, seems to be one where our Committee can contribute.

(2) a recommendation that the various grievance committees make periodic checks of written, radio and television advertising for Code of Professional Responsibility compliance and that a brochure be prepared discussing appropriate and inappropriate conduct in advertising. Advertising is often the face of the legal profession, not always a positive one. This Committee supports efforts to steer advertising to compliment the profession rather than undermine it.

The Special Committee's Report is filled with good suggestions on how to turn ideas into practice, too numerous to mention individually. This Committee supports adoption by the Executive Committee and the House of Delegates of the call to action articulated in this Report, and we reiterate our willingness to work to fulfill the desired goals.

cc: William J. Carroll, Esq.
John A. Williamson, Esq.
L. Beth Krueger





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TO: ELLEN LIEBERMAN

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Special Committee on Public Trust and Confidence in the Legal System

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FROM: HENRY M. GREENBERG

Chair

ELLEN B. FISHMAN

Member

Committee on Attorneys in Public Service

RE: REPORT TO THE HOUSE OF DELEGATES: ENHANCING PUBLIC TRUST AND
CONFIDENCE IN THE LEGAL SYSTEM

Thank you for affording the Committee on Attorneys in Public Service the opportunity to comment on the October 2000 Report of the Special Committee on Public Trust and Confidence in the Legal System. We note with interest the many improvements since the last draft that was circulated. The Special Committee has produced a very fine product, in which you can justly take pride.

The Committee on Attorneys in Public Service, while not necessarily in favor of every proposal that has been outlined, can certainly support the Report as a whole. In particular, we are pleased to note the Report's encouragement of pro bono work by government attorneys, which complements our own initiatives (Report at 17, 66).



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COMMITTEE ON CONTINUING LEGAL EDUCATION

CONAL E. MURRAY

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December 20, 2000

Memorandum

To: Special Committee on Public Trust and Confidence in the Legal System

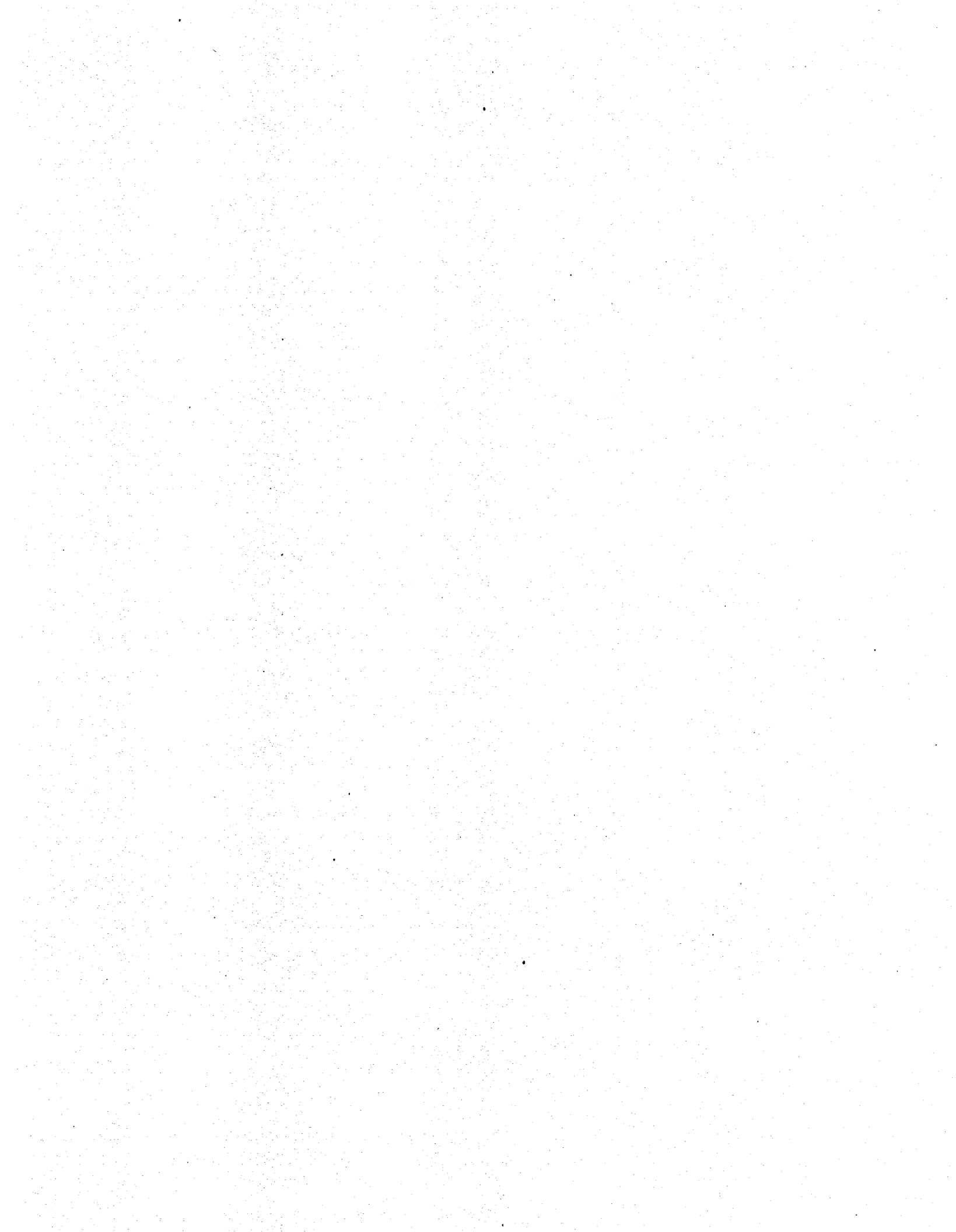
Subject: *Comments on Report to the House of Delegates: Enhancing Public Trust and Confidence in the Legal System*

On behalf of the Committee on Continuing Legal Education, I would like to offer the following comments on the above captioned report. First of all, we commend the Committee for its excellent work in preparing this report. The Report is a very thoughtful and thorough treatment of the subject and contains a number of fine recommendations. While there are numerous references to educational activities throughout the Report, we have focused on the following items for comment.

- Page 65, at paragraph 3.a. (Recommend that the Association and other bar associations incorporate diversity issues into MCLE, law office management programs and resources). We agree and strive to do so where appropriate in our programs and publications.
- Page 72, at paragraph 3.a.5. (Recommend that bar associations and other MCLE providers assess their course offerings to ensure that this topic [substance abuse] is included in both the practical skills programs for new admittees and the seminars for more experienced attorneys). We agree and strive to do so where appropriate in our programs and publications.
- Page 73 at paragraph 5. b. (Recommend that the distinction between incivility and zealous advocacy be addressed in law school and bar association MCLE courses; law office in-house education; and mentoring through bar associations and law firms). We agree and strive to do so where appropriate in our programs and publications. In particular, we have included this topic in our practical skills series for newly admitted attorneys, and in a statewide series of programs we present each spring and fall, for all attorneys, on the topic of "Ethics and Professionalism," cosponsored with NYSBA's Committee on Attorney Professionalism. The same would pertain to the recommendation at page 73, paragraph 8.a.2. (Recommend discussion of advertising issues in Association and local bar association educational programs and materials on practice management and professional responsibility).

We hope that these comments are supportive and helpful, and we welcome the opportunity to assist in the implementation of the Report's recommendations in the area of NYSBA CLE activities.

cc: William J. Carroll, Esq.
John A. Williamson, Esq.
L. Beth Krueger





New York State Bar Association

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January 2, 2001

Ellen Lieberman, Esq.
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Dear Ms. Lieberman:

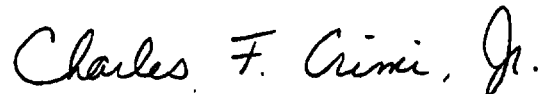
On behalf of the Ad Hoc Committee on the Jury System, thank you for the opportunity to review the report of the Special Committee on Public Trust and Confidence in the Legal System.

Our study focused on the proposals relating to the jury system. I am pleased to report that we endorse each of these recommendations.

We appreciate the Special Committee's advancement of these proposals and its work to improve the effectiveness of the jury process.

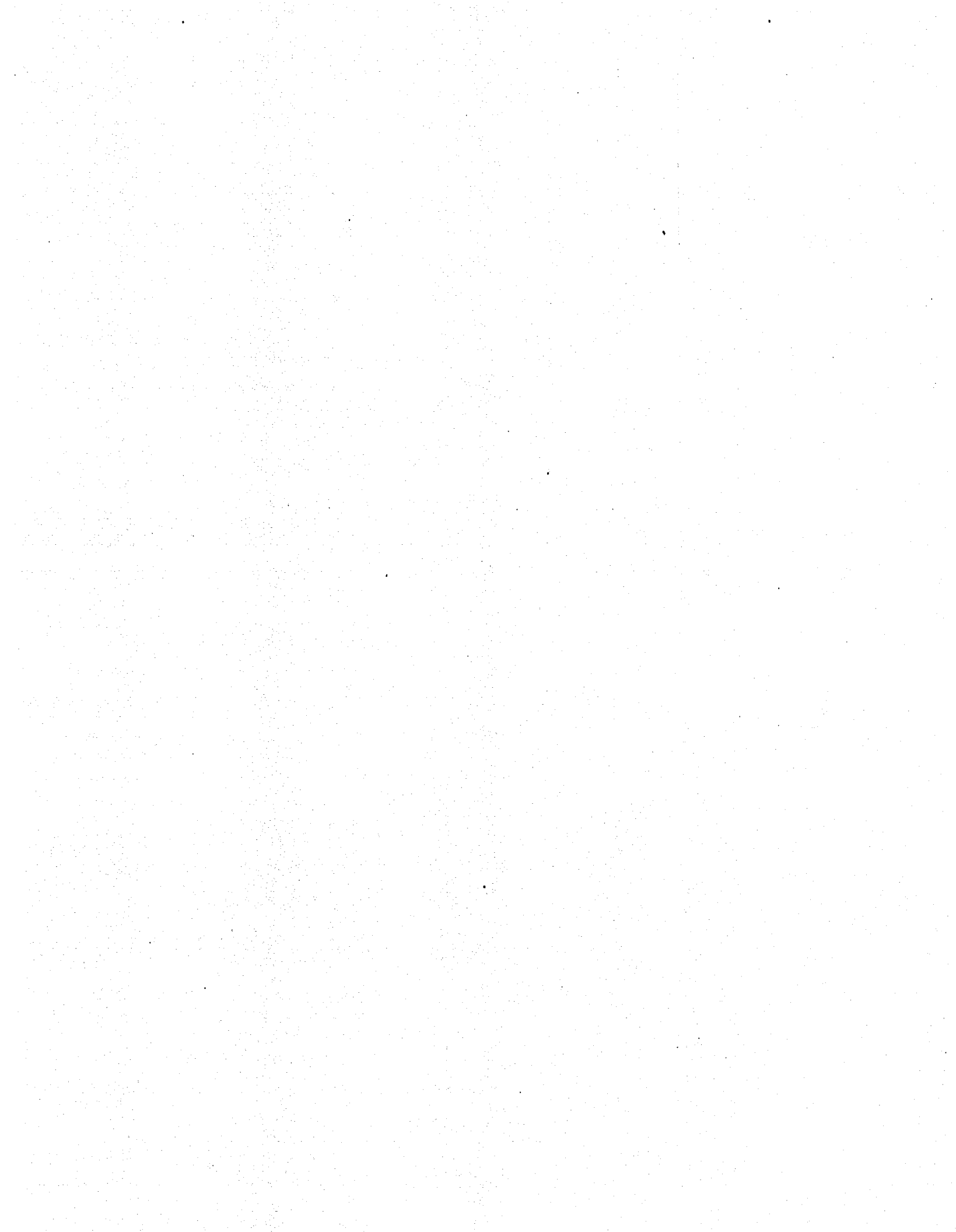
We would be pleased to assist in pursuing implementation of these measures.

Sincerely,



Charles F. Crimi, Jr.

CFC/jck



New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200 • <http://www.nysba.org>



COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR

LAUREN D. RACHLIN

Chair
Kavinoky & Cook
120 Delaware Avenue
Buffalo, NY 14202
716/845-6000
FAX 716/845-6474
lrachlin@prodigy.net

December 27, 2000

L. Beth Krueger
New York State Bar Association
One Elk Street
Albany, NY 12207

Re: Report of the Special Committee on
Public Trust and Confidence in the Legal System

Dear Beth:

The New York State Bar Association Committee on Legal Education and Admission to the Bar has reviewed and fully endorses the report of the Special Committee on Public Trust and Confidence in the Legal System contained in the October 2000 report to the House of Delegates.

Sincerely yours,

KAVINOKY & COOK, LLP



Lauren D. Rachlin

LDR:dmj
153011



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HARVEY B. BESUNDER

ALISON J. BESUNDER*
OF COUNSEL

*Also admitted in MA

December 14, 2000

Ellen Lieberman
c/o L. Beth Krueger
NYS Bar Association
1 Elk Street
Albany, NY 12207

Re: NYS Bar Association, Special Committee on Public Trust and Confidence
in the Legal System

Dear Ms. Lieberman:

I have been asked by Barry Kamins, the current Chair of the NYS Bar Association Committee on Professional Discipline, to comment on the report to the House of Delegates regarding Public Trust and Confidence in the Legal System. [Due to Mr. Kamin's current position as a member of Judge Kaye's Committee, he asked me, as past chair of the State Bar Association Committee to provide you with comments.] Please note however, that due to the time constraints we are unable to convene the entire Committee for their comments.

Generally speaking, I am in favor of the recommendations made by the Committee. However, I am not in favor of opening disciplinary proceedings to the public once a prima-facie case has been established, or at any other stage of the proceeding. In view of the fact that there is currently a mechanism in place for temporary suspension of those attorneys whose activities have become a danger to the public, it seems that there is no benefit to be gained by opening these proceedings. I believe that opening the process to the public transforms the grievance procedure into a public process, one that is subject to influence by public opinion. The grievance process was designed to be independent of such influences. Once the media is alerted to an open grievance proceeding, there is a great concern as to the method of reporting that matter, and a danger that the underlying facts or the process itself will not appropriately be reported to the public.

The current process is sufficiently open to the public. When an attorney is disciplined, censored, or suspended, the finding is made public and published in the New York Law Journal. Very often, the decisions is reported on by local and regional newspapers.

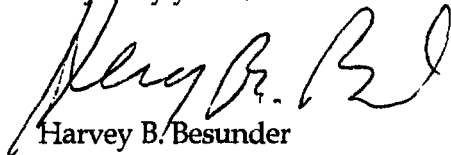
Lieberman letter
December 14, 2000
Page 2

I believe that the current system of maintaining confidentiality with regard to the process, and protecting the complainants as well as the attorney should be maintained without change.

On the other hand, I certainly believe that wide-spread publicity with respect to the pro-bono work and substance abuse programs for lawyers be increased, and that strong efforts be made to ensure that the media reports on these programs and the positive influences and efforts of lawyers, to counter-balance the negative portrayal of the legal profession and lawyers in the media.

The balance of the report is generally well thought out and makes suggestions which will be valuable to the profession.

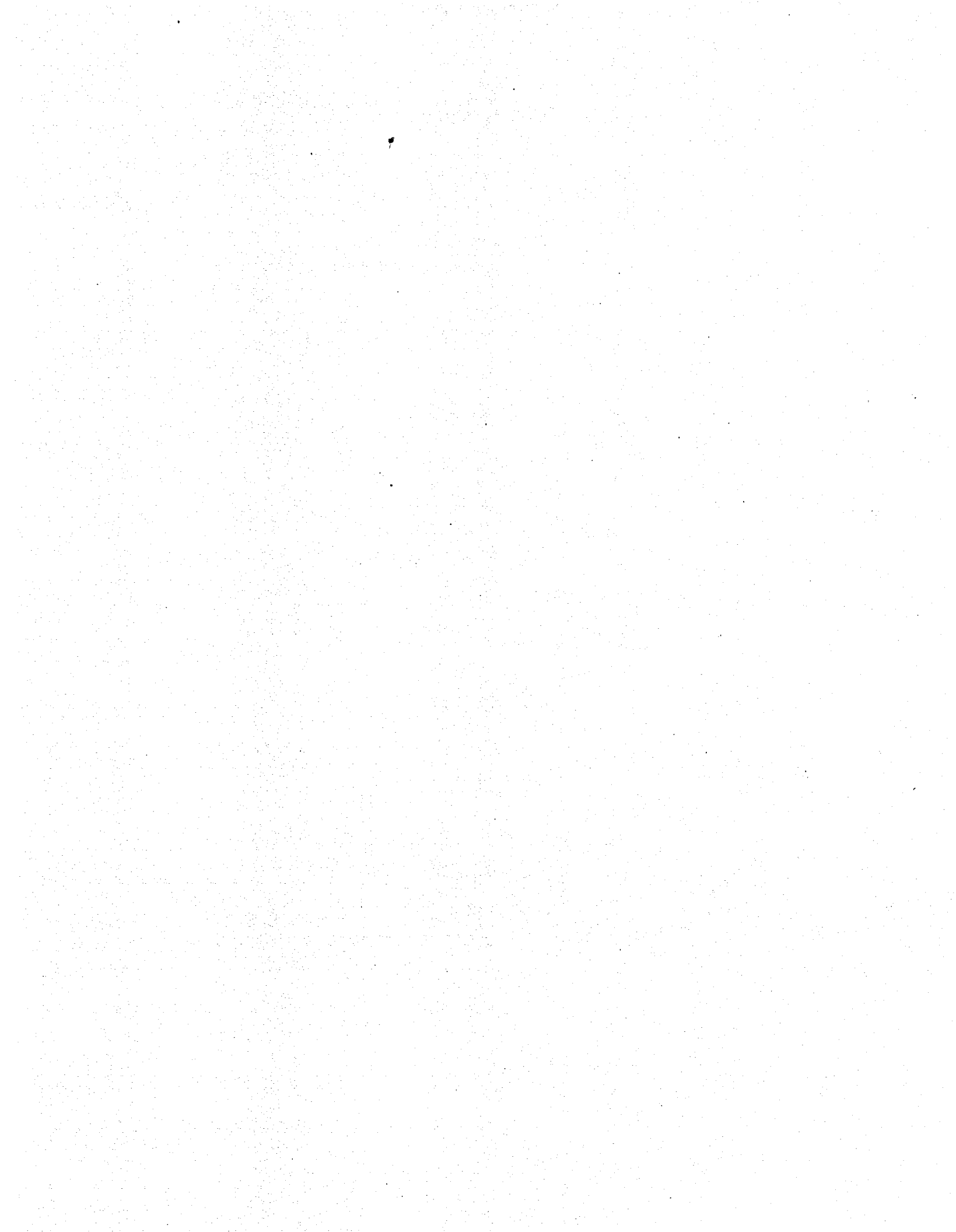
Very truly yours,



Harvey B. Besunder

HBB/ac

cc: Barry Kamins, Esq.





New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200 • <http://www.nysba.org>

COMMITTEE ON WOMEN IN THE LAW

CARLA M. PALUMBO

Chair
The Legal Aid Society
65 West Broad Street
Suite 400
Rochester, NY 14614
716/232-4090
Fax 716/232-2352
carly1002@aol.com

December 21, 2000

Ellen Lieberman, Esq.
Debevoise & Plimpton
875 Third Ave.
New York, NY 10022-6225

Dear Ellen:

The Committee on Women in the Law congratulates the Special Committee on Public Trust and Confidence in the Legal System for its comprehensive work and valuable recommendations to foster public confidence in the justice system.

In particular, we applaud the recommendations to curb bias and promote equal treatment in the justice system, and address concerns in family law matters. Regarding data compilation on minorities in the profession, we note the value of gaining information on women as well. Toward that objective, our Committee plans a survey regarding career paths, opportunities for advancement, workplace concerns, and related issues.

Our Committee reviewed the report at its December 14 meeting and voted for endorsement with two suggestions. We believe that further exploration of specialization would be useful in considering means of building public understanding in the selection and roles of attorneys. We also encourage the Committee to call for pursuit of merit selection of trial judges currently elected. This long-time Association position would enhance public confidence by helping to take politics out of seeking service on the bench.

Please do not hesitate to contact me should you have any questions on our comments. We would be happy to work with you on pursuing these important initiatives.

Sincerely,

Carla M. Palumbo

CMP/jck



**The Association of the Bar
of the City of New York**

42 WEST 44TH STREET
NEW YORK, NY 10036-6689
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EVAN A. DAVIS
PRESIDENT

PHONE: (212) 382-6700
E-MAIL: EDAVIS@ABCNY.ORG

December 21, 2000

L. Beth Krueger
New York State Bar Association
One Elk Street
Albany, New York 12207

Re: Special Committee on Public Trust
and Confidence in the Legal System

Dear Ms. Kreuger:

The Association of the Bar of the City of New York generally supports, with one significant reservation, the report of the Special Committee on Public Trust and Confidence in the Legal System. The report clearly reflects a substantial amount of work by Ellen Lieberman and the members of her committee, and all are to be congratulated.

We note that the recommendations in the report generally track those of the Committee appointed by Chief Judge Kaye. Both reports contain extensive recommendations with regard to education and outreach, and making the justice system more accessible to those who need it. The State Bar, the Association of the Bar and other bar associations around the state have been implementing constructive programs in this area, but clearly more needs to be done to create a public both informed of the justice system and capable of utilizing it effectively.

We take issue with one significant recommendation in the report. Chief Judge Kaye's Committee urged that attorney discipline proceedings be opened to the public once a *prima facie* case has been established. The State Bar Committee report opposes this view, and urges retention of Judiciary Law Section 90, which bars disclosure of discipline until there has been a court determination that serious discipline is warranted.

The public image of lawyers is, if anything, becoming more negative. The general secrecy of disciplinary proceedings cannot foster the confidence in lawyers that is needed. We frequently hear from members of the public frustrated that they cannot learn anything with regard to a lawyer's disciplinary history. Other states have long ago lifted the veil that still enshrouds New York's process. We believe that maintaining confidentiality until after a *prima facie* case is established strikes a balance between the rights of the lawyer and the needs of the public.

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THOMAS F. LIOTTI

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CHRISTOPHER W. ZEH

OF COUNSEL
THOMAS A. ILLMENSEE

December 11, 2000

Ms. L. Beth Krueger
New York State Bar Association
One Elk Street
Albany, New York 12207

Re: Report on Public Trust
and Confidence in the Legal System

Dear Ms. Krueger:

I have received a copy of the above Report from M. Kathryn Meng, Esq., President of the Bar Association of Nassau County, who has requested my response to the Report. I have also left word for you that I would like to re-print this Report as part of the New York State Bar Association's Criminal Justice Section Journal. I am told that you are working those details out through Lyn Curtis and Wendy Pike for our January, 2001 issue.

Second, the members of this Special Committee should be commended for the invaluable service they have performed. Until this Report, our profession, at least since Watergate, has suffered an enormous diminution of its image. Not knowing the cause or what to do about it, the profession has been in a malaise for thirty years on the question of image. This Report has brought us out of the dark ages and into a modern era.

My first suggestion is that this excellent Report has only begun to scratch the surface. What is needed is an ongoing Committee and perhaps a sub-committee that could then seek to implement the recommendations of the Report. Every bar association in the state should have a similar working committee.

Third, I want to thank the Committee for its acknowledgments at page 11, footnote 24 and pages 47 and 48, footnotes 101 and 102. The content of the Report should be disseminated widely. I will make every effort to cite to this Report in next year's version of our book. See, *A Practice Guide to Village, Town and District Courts*, West Group (1999).

Fourth, the Committee has urged that brochures be created for consumers to make our courts more user friendly. In that regard, I have drafted a pamphlet for *pro se* defendants. I have sent copies of this pamphlet with a letter to my colleagues throughout the State. I believe that the pamphlet is precedent setting, but more importantly, helps litigants to better understand their rights. Please feel free to distribute the pamphlet and cover letter as widely as you wish.

Again, please thank the Committee for this outstanding Report. Best regards.

Very truly yours,

Thomas F. Liotti

TFL:ma
encl.

cc: Hon. Judith Kaye
Vincent Doyle, Jr., Esq.
M. Kathryn Meng, Esq.
Kathryn Kase, Esq.



GERALD STERN
ADMINISTRATOR & COUNSEL
EXT 231

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

801 SECOND AVENUE
NEW YORK, NEW YORK 10017

212-949-8860 212-949-8864
TELEPHONE FACSIMILE

December 7, 2000

Hon. Thomas F. Liotti
Village Justice
Village of Westbury
235 Lincoln Place
Westbury, New York 11590-3295

Dear Tom:

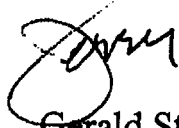
Thank you for sharing with me your Pamphlet on Trial Procedure. It is an excellent document and I wish that something similar could be available to Pro Se Defendants in all courts of the state. My greatest disappointment as a lawyer, resident of this state, and Administrator of the Commission is that Pro Se defendants and other litigants appear in our courts and receive inadequate attention to their rights. This document seeks to educate them in clear, concise terms, and it is clear that judges who would distribute this would also protect the rights of litigants. It's a great pamphlet.

I have skimmed the materials you sent me on the Mogil case and thank you for sending them to me and for your continued expressions of gratitude for my staff's efforts to do our job. I appreciate your kind words, but we did nothing more than what we should be doing. It was an interesting case for all of us. Getting books published is not an easy task; but I appreciate the opportunity to read your manuscript and will do so soon.

I have a request. Instead of my copying the pamphlet for distribution to the Commission members, I would appreciate your sending me about 15 more of the pamphlets. The education of Pro Se litigants is so important that I'd like to share the pamphlet with the Commission. I just wish more judges would seek to do the same as you have done and, equally important, to respect and protect the rights of all those who come to court without counsel.

Again, I thank you for thinking of me, and on a personal note, I wish you and your family the happiest of holidays. I hope your parents are well. Please send them my very best wishes.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gerald Stern", written in a cursive style.

Gerald Stern

INCORPORATED
VILLAGE OF WESTBURY
VILLAGE JUSTICE COURT



PAMPHLET ON TRIAL
PROCEDURE
FOR
PRO SE DEFENDANTS

BY

THE HONORABLE
THOMAS F. LIOTTI
WESTBURY VILLAGE JUSTICE

THE HONORABLE
ELIZABETH D. PESSALA
ACTING VILLAGE JUSTICE

HELEN L. AVERSO
CLERK TO JUSTICE

DOROTHY J. LOTTEN
COURT CLERK

OLGA R. HARCOURT
COURT CLERK

Introduction: Welcome to the Incorporated Village of Westbury Justice Court. If you are *pro se* that means that you are appearing in this case without an attorney. The purpose of this pamphlet is to explain the procedures that the Court will follow during your trial. The Village Justice Court is a local criminal court and a part of New York's Unified Court System. It has jurisdiction over certain types of cases occurring within its geographic boundaries. While the Court will extend every courtesy to you as a *pro se* litigant, it must at all times be fair and impartial. Therefore, it is necessary for you to have some familiarity with courtroom procedure and the rules of evidence. The Court urges you to read this pamphlet carefully and to ask any questions that you may have about it. This is the Court closest to the people and we want to make it user friendly.

Plea Offers and Sentences: In light of your previous record, if any, you should consider any plea offers made to you prior to trial. The court has access to your driving record through the Department of Motor Vehicles. You should also consider the range of sentences and surcharges that may be imposed as well as possible civil penalties, if any, points on your license and eligibility for point reduction programs.

Right to Counsel: You must understand that you have a right to

counsel throughout all stages of these proceedings. If you cannot afford counsel, the Court may assign counsel to you free of charge. In this County, counsel may be assigned only if you are charged with a crime or a violation, that while not a crime, may, upon conviction, carry with it a possible jail term. The Court urges you to carefully consider your options and urges you to have counsel, either retained or assigned, to represent you throughout these proceedings. While you have a right to counsel, you also have the right to represent yourself.

Burden of Proof and Presumption of Innocence: The prosecution has the burden of proof to prove you guilty beyond a reasonable doubt. If they fail in that burden, the charges against you will be dismissed. You are presumed innocent throughout all stages of the proceedings. Do not feel that the Court is angry at you for exercising your Constitutional right to go on trial. On the contrary, the Court is here to serve the public and to support you in the assertion of your Constitutional rights.

Readiness to Proceed: Before announcing your readiness to proceed you should study the charging instrument that has brought you into Court. For example, review the Summons or Simplified Traffic information. Review the law that you are

charged with violating. You may wish to go to the library to review these documents, to do additional research or to plan your trial strategies. There are some law books available at the Westbury Public Library located at 445 Jefferson Street, Westbury, New York 11590 (Tel: 516-333-0176). In addition, there is a County Law Library open to the public. It is located at the Supreme Court Building, 100 Supreme Court Drive, 2nd Floor, Mineola, New York (Tel: 516-579-2903).

On the day of your trial, you should have all of your evidence ready. Once the trial begins, there will be no continuances or adjournments. You should plan your opening and closing statements and prepare for both the direct and cross-examination of witnesses. If you must subpoena witnesses or documents and you are not an attorney, you may contact the Court and it will attempt to assist you in that regard.

Non-Jury Trial: This Court hears only non-jury cases. That means that the Judge will decide issues of fact as well as law. At the end of the trial, the Court may find you guilty or not guilty. It may also reserve decision, meaning that it will render its verdict later and it may also issue an opinion after trial.

Interpreters: If you require the services of a court certified

interpreter, you should advise the Court. This is a free service, but in order to have interpreters available, you must advise the Court prior to the trial date.

The Prosecution: The prosecution in this case has the burden of proof. The prosecutor is an attorney who is appointed by the Village Board of Trustees. In addition, you can expect that Police Officers, Code Enforcement Officers or Building Inspectors as well as other witnesses may testify against you. If you have a Building Code case you have a right to review the Building Department and Assessment files concerning the real property or leasehold in issue. You must make arrangements to do this prior to trial.

Opening: Because the prosecution has the burden of proof, they must go first.

You do not have to give an opening statement, but you may wish to do so.

Direct Case: The People must present evidence in order to prove their case. They cannot ask leading questions. You may object to questions and/or answers. If you wish to object, all you must do is to say the word "objection." The Court will then rule on your "objection" by saying either "sustained" or "overruled." If "sustained," you have won the "objection." If "overruled," you

have lost the "objection." There is a stenographic record being made of the proceedings and you should be certain that all of your objections and other statements that you wish to have recorded, such as the Judge's rulings, are all taken down by the stenographer. It is important to make your "objections" before the witness answers. If the witness has answered and the objection is sustained, then you may wish to have the answer stricken. If you do, you should ask the Court to do so.

You may also have all or any portion of the stenographic record transcribed. This is ordinarily a cost that you will incur unless you make an application, *in forma pauperis* (in the status of a poor person), for the minutes. The Court has discretion to grant or deny your application. During the trial the Court may also act *sua sponte* (upon his own responsibility) to intervene by objecting or making rulings.

Cross-Examination: After the prosecution is done with each witness, you may, if you wish, cross-examine the witnesses. If you decide to do so, you must ask questions of the witness and not make statements. Your questions must be relevant to the case and the witness' direct testimony.

Trial Order of Dismissal: At the close of the People's case you may

wish to make a motion to dismiss based upon your legal and/or factual contention, that the prosecution has not met its burden of proof. The Court may rule on that motion or reserve decision.

Motions: Motions are applications to the Court. Usually they are written but *pro se* (for one's self) defendants, with the Court's permission, may also make them orally.

Evidence: Certified records may qualify as an exception to the hearsay rule. All documents are marked for identification first. You may wish to agree on a list of exhibits with the prosecution prior to trial. You should also review the rules of reciprocal discovery and consider discussing them with the prosecutor. You are not required to testify. Your decision to testify, or not, is a personal and a legal one.

Summations: At the close of the case you and the prosecution will make your closing arguments. The prosecution will tell the Court why it believes it proved its case. You may wish to emphasize why that is not so and what your evidence, if any, showed. At the end of summations, the prosecution may request that you be found guilty, while you may, request that the Court find you not guilty.

The Decision of the Court: The Court may decide its verdict from the Bench or may reserve decision.

It may also ask both sides to submit legal memos to it before it renders its decision. The Court will make findings of fact before it renders its decision. If the Court finds you not guilty, your case is concluded. If you are found guilty then the Court will proceed with sentencing. At sentencing you should make whatever mitigating arguments that you wish.

This pamphlet is a guide that may assist you in making a decision about whether to proceed to trial or concerning a matter of procedure during the trial itself. We hope it is useful to you and that it will streamline trials for both sides thereby making the rendition of justice more efficient and due process of law a reality for all.

Incorporated Village of Westbury
Village Justice Court
235 Lincoln Place
Westbury, NY 11590-3295

Telephone (516) 334-1700 Fax (516) 334-7563

DISCLAIMER

This pamphlet contains some information for *pro se* litigants from the Village Justice Court. It is not legal advice and should not, in any way, be relied upon as such. All defendants are encouraged to seek counsel from an attorney of their choice and to supplement this information with research and preparation of their own. The Village Justice Court, The Mayor, The Board of Trustees, and the Incorporated Village of Westbury disclaim any liability for the information contained herein and express no opinion as to its accuracy.

Pamphlet Design by
Naima N. Smith

