A Court System for The Future:

The Promise of Court Restructuring in New York State

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

February 2007

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ACKNOWLEDGEMENTS

On July 17, 2006, New York State Chief Judge Judith S. Kaye appointed the Special Commission on the Future of the New York State Courts to assess the effectiveness of the state's current court structure and to propose appropriate reforms. The thirty member Commission was comprised of judges and court administrators; academics; representatives from the business community, bar organizations and good government groups; and some of our state's leading legal practitioners.

During the ensuing seven months, the Commission conducted an intensive study of the New York State court system. As part of this effort, the Commission and its staff reviewed the voluminous body of literature that exists on the subject of court structure and past reform efforts, and compiled various statistics and other data to assess the functioning of our court system. The Commission also met with dozens of judges, government officials, leaders of the business community, bar groups, Family Court practitioners, victims of domestic violence, court administrators, and a variety of others with experience in our courts. The Commission met, not only with those who have been supportive of court restructuring, but also with those who have in the past opposed such reforms.

The Commission wishes to thank Chief Judge Kaye and Chief Administrative Judge Jonathan Lippman for the opportunity to participate in this important project. The Commission also wishes to thank representatives of the Office of Court Administration, and in particular its Chief of Operations Ronald P. Younkins, First Deputy and Legislative Counsel Marc C. Bloustein, and Legislative Counsel David Evan Markus for their patience in answering our many questions and requests for data. The Commission also extends its gratitude to Commission member Abraham M. Lackman, President of the Commission on Independent Colleges and Universities, and the former Secretary of the New York State Senate Finance Committee, for spearheading the fiscal analysis that appears in this Report.

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Finally, we note with sadness the passing of Commission member Kermit L. Hall, former President of the University at Albany, State University of New York, and a distinguished legal history scholar. President Hall's knowledge and understanding of the courts was surpassed only by his enduring respect for them. The work of this Commission is a tribute to his influence and his memory.

The Special Commission on the Future of the New York State Courts

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EXECUTIVE SUMMARY

New York State has the most archaic and bizarrely convoluted court structure in the country. Antiquated provisions in our state Constitution create a confusing amalgam of trial courts: an inefficient and wasteful system that causes harm and heartache to all manner of litigants, and costs businesses, municipalities and taxpayers in excess of half a billion dollars per year.

Other states have long ago streamlined their court systems to make them efficient, attractive to business and sensitive to the needs of litigants. New York, on the other hand, continues to operate a blizzard of overlapping courts: Supreme Courts, County Courts, Family Courts, Surrogate's Courts, a Court of Claims, New York City Criminal and Civil Courts, District Courts, City Courts, and Town and Village Justice Courts.

"The judicial article of the Constitution begins: 'There shall be a unified court system for the state.' The reality is otherwise. New York has no unified court system. It is a constitutional fiction. New York has an inheritance of a colorful but confused and sprawling mass of 11 trial courts."

– *Chief Judge Charles D. Breitel, February 1974*

New York has eleven separate trial courts; by contrast, California, a state that has twice our population, has only one.

This complex structure is not simply a matter of academic or historical interest. It imposes significant harm and costs on our state and its people. These include, for example:

- Injured individuals, large and small businesses, and state agencies that must litigate cases simultaneously in the Supreme Court and the Court of Claims whenever the state and a non-state actor are named as parties in a personal injury, medical malpractice, or commercial dispute.
- Families in crisis, which are forced to run from court to court when a single problem is fragmented among the Supreme Court, the Family Court and a criminal court for separate adjudication of matrimonial, custody and domestic violence matters.
- Children and others in guardianship cases, in which proceedings must be initiated simultaneously in the Surrogate's and Family Courts to address related matters in the case of an orphaned child.

More fundamentally, the fragmented nature of our courts prohibits the judicial system from efficiently managing cases in a way that would be natural and obvious in any rational business organization. A backlog that develops in one court, for example, cannot be readily ameliorated by transferring cases from that court to an underused but perfectly capable court across the street. Yet this is exactly what happens every day in the federal courts, and in virtually every other state court system in the nation.

"The state's courts are a mess, impossibly complicated and inefficient. . . . If [court restructuring does not occur,] [c]itizens will continue to struggle with the most complicated court system in the nation."

– *Still Time to Overhaul the Courts, New York Times, June 17, 1998*

What this means is that, in the millions of cases that are handled in our state courts every year, people waste countless hours making redundant court appearances, filing unnecessary papers and briefs, and suffering through delays caused by courthouse backlogs and inefficiencies. In addition to confusion and anguish, the practical effect of this is lost wages, lost productivity, and higher costs and attorneys' fees for individuals, businesses and government entities. Given the number of cases affected (3.7 million cases are resolved annually in the state courts) these hidden costs add up to $502 million per year.

For decades, commissions, scholars, legislative panels and others have decried the inefficient and wasteful structure of the New York courts, and have advanced myriad proposals for reform. Time after time, these efforts have stalled, not for lack of popular support, but for lack of political will. In this arena, generations of good ideas have been undone by the inertia of the status quo.

In the last ten years, New York State's Office of Court Administration ("OCA"), the administrative arm of the state court system, has developed a number of initiatives that have attempted to ameliorate the structural inefficiencies of the court system by way of administrative fiat. These include the introduction of the Commercial Division, a specialized unit within the Supreme Court that focuses on resolving complex business disputes; the Integrated Domestic Violence Courts, which attempt to bring together the separate cases that can arise out of a single family in crisis; and Community Courts, which look more holistically at the related criminal, housing, and family problems that can face litigants in a particular community. These innovations and others have met with

tremendous success, and have garnered widespread attention inside and outside of the state.

These administrative initiatives, however, do not diminish the need for more fundamental change. Such successes have been achieved, not in lieu of, but in the absence of, structural reform. Indeed, if anything, they have demonstrated how much more productive the entire system could be if these types of efficiencies were instituted on a statewide scale. In other words, the administrative achievements of the past decade have made even more compelling the case for statutory and constitutional reform.

"We have an organizational flow chart no business executive would be caught dead with - and no state judiciary should either. . . . We say we want the public to trust and respect our system of justice, but then we hand them this jurisdictional maze that requires a roadmap and compass to navigate."

– *Chief Judge Judith S. Kaye, October 1997*

In July 2006, Chief Judge Judith Kaye established the Special Commission on the Future of the New York State Courts, and gave it a mandate to study and make recommendations in the area of court restructuring. In her 2006 State of the Judiciary address, the Chief Judge said, "The Commission will be asked to look at systems across the nation for ideas, and to prepare a court structure that is free of barriers that force the unnecessary fragmentation of courts and cases, that is user-friendly, has the benefits of both specialization and simplicity and that is accessible to all New Yorkers."

The Commission was comprised of thirty members, including fourteen judges and former judges from the New York State Court of Appeals, the Appellate Division, the Supreme Court (both elected and Acting Supreme Court Justices), the Court of Claims, the Surrogate's Court, the Family Court, the Civil and Criminal Courts of New York City, the upstate City Courts, and the New York City Housing Court. It also included, from across the state, former legislators, academics, practicing lawyers, and representatives of the business community. For the past seven months, the Commission has studied the voluminous record of prior reform efforts; gathered and analyzed data on court filings and productivity; conducted a financial analysis of the impact of potential reform; met with judges, legislators, politicians, business leaders, bar associations, good government organizations and others from around the state; and deliberated extensively as a group. This is our Report.

"The words 'court system' are probably a misnomer for it is difficult to recognize any system in the conglomeration of courts throughout the State. A mere enumeration of the courts is sufficiently bewildering to justify the conclusion that some simplification, some system, is necessary."

– *Tweed Commission, Subcommittee on Modernization and Simplification of the Court Structure (1955)*

"New York has the most complex and costly court system in the country, a system that too often fails to provide justice while imposing an undue burden on taxpayers."

– *Gov. Eliot Spitzer, January 2007*

We believe that it is finally time for change. There is simply no reason why the people and businesses of New York State should have to suffer any longer with the most backward and inefficient court structure in the nation. In recent months, the groundswell of support for court reform has grown stronger, with Governor Eliot Spitzer announcing in his first State of the State Address his intention to introduce a constitutional amendment "to consolidate and integrate our balkanized courts." Against this backdrop, the reform process should begin immediately, and this Report provides a blueprint for that reform. As set forth more fully in the body of the Report, we call for:

- A consolidation of the state's major trial courts into a simple two-tier structure with a single Supreme Court and a statewide network of District Courts.
- The merger into the Supreme Court of the current Court of Claims, the County Courts, the Family Courts and the Surrogate's Courts.
- The creation within the newly merged Supreme Court of six distinct, but not jurisdictionally separate, Divisions: Family, Commercial, State Claims, Criminal, Probate, and a General Division.
- The merger into the District Court of the current Civil and Criminal Courts in New York City, the Nassau and Suffolk District Courts, and the sixty-one City Courts outside of New York City. (This new court would have jurisdiction over misdemeanors, housing cases, and civil claims involving $50,000 or less.)
- The creation of a Fifth Department of the Appellate Division, and the expansion of the pool of judges who are eligible for the Appellate Division to include all those who sit in the newly consolidated Supreme Court.
- The elimination of the constitutional ceiling on the number of Supreme Court judgeships that can be created by the Legislature.

"A streamlined, two-tier court system will eliminate many of the shortcomings of the present system, permit the allocation of resources where they are most needed, reduce the overlapping and conflicting jurisdictions of many of the trial courts, and vastly improve the administration of justice."

– *The Association of the Bar of the City of New York, Council on Judicial Administration (1998)*

These proposals are discussed in much greater detail in the body of this Report, which also includes, as an appendix, a draft of the constitutional amendment that would be needed to implement them.

We note that we have viewed our mandate as being strictly limited to the question of how the court system should be organized. We have not, therefore, made recommendations on how judges should be selected for their positions; what their qualifications should be; what their terms should be; how much they should be paid; or other, similar issues. As a consequence, our proposal is what has in the past been referred to as a "merger in place" plan.

In other words, the structural reforms that we are proposing can be achieved without altering the methods by which the judges of the current myriad courts attain their positions. We recognize, of course, that the question of whether judges should be elected or appointed in New York State is a controversial one, and that it is currently a subject of much study and debate. Given the nature of our mandate, and the fact that the question of court structure is analytically distinct from the question of judicial selection, we leave to others the continued consideration of the judicial selection issue.[2]

"This outmoded and clumsy court structure cries out for change. . . . This archaic mixture of courts makes no sense. It causes: court delay, added expense for many items, mistakes and injustice to litigants who find themselves in the wrong courts, additional burdens for court administrators in moving judicial resources to areas of need, a lack of proper attention to family matters and unnecessary judicial labors in criminal matters."

– *Chief Judge Lawrence H. Cooke, March 1982*

An Overview of This Report

Section One of this Report outlines the current structure of our state's eleven trial courts, which is a hodgepodge of separate courts that were allowed to proliferate for over two hundred years and that have never been rationalized to this day. This section also compares the court structure in New York State to those in other states around the country, including those that have successfully adopted the type of consolidated framework that we propose.

[2] We also do not in this Report make recommendations concerning the state's Town and Village Justice Courts. These courts – which have also been the subject of recent controversy within the state – are not state-funded, and are operationally distinct from the state-funded courts that are supervised by OCA. We note that, three months ago, OCA published an extensive report containing an array of administrative reforms for the Justice Courts, and that those courts were also the subject of recent legislative hearings. While they are controversial, it is clear that these courts play an enormously important role in the state, particularly in suburban and rural regions, and, given this importance, it is our view that additional time and study is needed before structural and other reforms can be evaluated. To this end, we have proposed, and the Chief Judge has agreed, that the term of our Commission be extended, so that we may conduct an appropriate review of this important issue. Our report on the Town and Village Justice Courts will be submitted in the Fall of 2007. This topic is discussed further in Section Six of this Report.

"For 30 years, New York's trial courts have mystified and frustrated those who wind their way through them."

– *Restructure New York Courts, Albany Times Union, March 26, 1997*

Section Two describes the harm and frustration that befall the people and businesses that are forced to use our antiquated and inefficient court system. These include injured plaintiffs, victimized children, families in crisis, municipalities, state agencies, and large and small businesses of every sort.

Section Three sets forth our analysis (an analysis that has never before been conducted) of the fiscal impact that reform would have on businesses, municipalities, state agencies, and individuals throughout the state. It concludes that, with respect to productivity, lost wages, attorneys' fees and related costs, the savings amount to $443 million per year. (Note that this financial analysis, and its conclusion, have been independently verified by the National Center for State Courts.) It goes on to review the additional $59 million in savings that might be realized by the state through reductions in administrative costs at OCA, for a total estimated savings of $502 million per year.

Section Four provides a brief history of past reform efforts, a history which dates back more than fifty years, and describes the many past and present constituencies that have called for reform. This includes a new coalition of business organizations from across our state which has announced its support for "efforts to secure amendment of the New York State Constitution to create a two-tier court system that will greatly improve the administration of justice and result in significant savings in time and expense to individuals and business." Letters of support from this business coalition and other prominent organizations are included as an appendix to this Report.

"It's critical that we pass a constitutional amendment [relating to court reform] this year, so that we don't lose another four years."

– *Gov. George Pataki, April 2000*

Section Five describes the many successful administrative initiatives that OCA has adopted in the past ten years, including the Commercial Division, Community Courts, Integrated Domestic Violence Courts, and others. The success of these initiatives demonstrates how effective a broader consolidation of the courts could be.

Section Six sets forth our detailed proposal for reform. In addition to the points outlined above, this includes a discussion of the types of changes that would be required to the state's procedural codes, and to the courts' computer and other

technology systems. It also discusses the limited impact that the proposal would have on the court system's nonjudicial (including union) employees.

Section Seven discusses the past arguments that have been advanced by some groups in opposition to court reform. These arguments have tended to focus on the perceived unfairness of a system that would have the administrative ability to reassign cases or judges (particularly elected judges) in a manner that would contravene current jurisdictional lines. These concerns and others, however, can be readily addressed, and none of the past arguments should be accepted as a reason to avoid the consolidation and improvements we propose.

Section Eight outlines the steps that must be followed if reform is to be achieved. This includes, not only procedural steps (as noted above, a draft constitutional amendment is included as an appendix), but also thoughts on the types of consensus-building that will be necessary to ensure that court restructuring is once and for all a reality in New York State.

Court restructuring "would offer administrative efficiencies, not just by eliminating redundant management structures and the processing of cases as they move from one court to another, but by the more efficient assignment of judges. The bottom line would be more efficient justice at lower cost. Who could be against that?"

– *New York, with 12 Different Courts, Needs to Do Some Streamlining, Buffalo News, May 24, 1998*

— SECTION ONE —

THE CURRENT STRUCTURE: AN ORGANIZATIONAL MORASS

New York State has one of the finest judiciaries in the nation. The state's 1,203 judges successfully resolve over 3.7 million cases each year.[3] This judiciary is presided over by a Chief Judge who has been recognized for many years as an innovative leader of national stature, and is administered by an organization that is a model of judicial administration for the rest of the country.

The problem is that these judges and administrators are forced by antiquated provisions in our state Constitution to work within an organizational structure that is the most complicated, inefficient and costly in the nation. Our court system has a Byzantine organizational chart that is not the result of any coherent analysis or business plan, but is the vestige of a nineteenth century patchwork in which a variety of idiosyncratic courts were allowed to proliferate despite overlapping and inconsistent jurisdictions. Over time, court administrators have attempted to address the problems caused by this structure by applying temporary and piecemeal fixes that further complicate an already fragmented system.

"The current [court] structure cannot be defended. It is inefficient, costly to litigants and generally not conducive to the swift and sure administration of justice."

– *Atlantic Legal Foundation, March 2005*

The organization of New York's appellate courts is also antiquated and inefficient. The current structure – which divides the state into four appellate departments – was set up in the 1890s, when the state's population was a small fraction of what it is today, and when the population was more evenly distributed. Today, more than a century later, one of these departments, the Second Department, has grown to include half the state's population. As a consequence, it now bears a highly disproportionate share of the state's appellate caseload, resulting in enormous backlogs, delays, and unnecessary costs to all concerned.

[3] These numbers do not include cases and judges in the state's 1,277 Town and Village Justice Courts which, as noted above, are operationally distinct from the state-funded courts that are overseen by OCA.

Our Eleven Trial Courts

New York State has eleven different trial courts. They are: the Supreme Court, which sits in all sixty-two counties statewide; the Court of Claims, which likewise sits statewide; Surrogate's Courts in each county; County Courts in each county outside New York City; Family Courts in New York City and in each of the fifty-seven counties outside the City; a New York City Civil Court; a New York City Criminal Court; District Courts for parts of Long Island; a separate City Court for each of the sixty-one cities outside New York City; and Town and Village Justice Courts in most towns and villages statewide.

The current structure has its roots in 1846, when Article VI of the New York State Constitution was adopted. Prior to that time, the New York State judiciary was comprised of a loose confederation of small courts and judges who traveled around the state, sitting in individual locales for given periods of time during the year. Article VI consolidated the disparate circuit court system and other sundry courts into a Supreme Court and organized the state into eight Judicial Districts. Article VI also established the Court of Appeals, created the Surrogate's Court and converted various other courts into a County Court system.

"[M]ultiplicity of courts is characteristic of archaic law."

– *Roscoe Pound, 1906*

Even with these changes, the New York State court system remained a hodgepodge. Many of the vestigial courts that dated back to colonial times were still in operation in various parts of the state. Prior to the constitutional convention of 1894, New York State still had Courts of Oyer and Terminer (established in 1691 to hear criminal matters) in operation around the state and other, more parochial courts operating at the local level, including the Court of Common Pleas of New York City, the City Court of Brooklyn and the Superior Court of Buffalo. While the constitutional convention of 1894 eliminated a number of these courts, other such courts were preserved. At the beginning of the twentieth century, New York State still had a multiplicity of different courts handling cases throughout the state, including Children's Courts, Domestic Relations Courts, District Courts, Courts of Special Sessions and many other judicial bodies. Over the ensuing fifty years, few changes were proposed, while the responsibilities and caseload of the court

system grew exponentially. By the time the Tweed Commission called for a "Simplified State-wide Court System" in 1955 (see Section Four, below), the need for a more meaningful consolidation of the courts was apparent.[4]

The court structure we are familiar with today took shape in 1962, when a new Article VI of the state Constitution was adopted.[5] The new Article VI offered some structural changes to the court system, but was mainly focused on overhauling the arena of court administration and funding. The structure of eleven trial courts that we have today is virtually unchanged from the one that prevailed in 1962, despite repeated calls for change since that time.

"During the 35 years since the last constitutional reform of the trial courts there have been momentous societal changes, while the courts that serve society's most fundamental needs have remained static."

– *Chief Judge Judith Kaye, October 1997*

A basic overview of this trial court structure reveals a needlessly complex system that causes much confusion even for those familiar with its configuration:

- Supreme Court. The Supreme Court is a court of general jurisdiction, with branches in every county of the state.[6] The Supreme Court has authority to hear nearly any type of case, and generally presides over major civil litigation, including matrimonial, tort, contract and corporate litigation. In New York City, the Supreme Court also presides over all felony criminal prosecutions. Despite this broad authority, however, Justices of the Supreme Court rarely hear family-related matters unless they arise in the context of a matrimonial action. Justices of the Supreme Court are elected to office for fourteen-year terms by voters of each of the twelve Judicial Districts.[7]

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[4] See SUBCOMM. ON MODERNIZATION & SIMPLIFICATION OF THE COURT STRUCTURE, N.Y. TEMP. COMM'N ON THE COURTS, A PROPOSED SIMPLIFIED STATE-WIDE COURT SYSTEM 1-12 (1955) (hereinafter "A PROPOSED SIMPLIFIED STATE-WIDE COURT SYSTEM").

[5] See generally Marc Bloustein, A Short History of the New York Court System, at 3-7 (1987).

[6] See N.Y. CONST. art. VI, § 7.

[7] See id. § 6(c). New York State is divided into twelve Judicial Districts, each of which is comprised of between one and eleven counties. See id. § 6(a) (providing for eleven Judicial Districts); § 6(b) (authorizing Legislature to create additional Judicial Districts once every ten years; the twelfth Judicial District was created by statute). Each Judicial District is allocated a fixed number of Supreme Court Justices. See id. § 6(d).

- County Court. County Courts are located in each county outside of New York City. These courts preside over all felony criminal prosecutions; they also have limited authority to hear lesser civil disputes, although this authority is not generally exercised.[8] County Court judges may not preside over family-related matters or major civil litigation unless they are "multi-hatted,"[9] or administratively assigned to Family Court.[10] Nor can they hear major civil matters unless they are administratively assigned to the Supreme Court.[11] County Court judges are elected to office for ten-year terms by the voters of the county in which the judgeship is established.[12]

- Family Court. Family Courts are located in each county outside New York City; there is also a single, citywide family court within New York City. Family Courts preside over a wide array of family-related matters, including neglect, support and paternity cases, adoptions, guardianship and custody cases, and family offense cases.[13] However, Family Court judges do not have jurisdiction to hear matrimonial cases or family-related criminal matters, even if a case pertains to a family already before that judge in another context (*e.g.*, domestic violence). Family Court judges are also unable to hear custody matters in the matrimonial context. While Family Court judges may issue orders of protection, conflicting or inconsistent orders involving the same family may

[8] See id. § 11(a); see also N.Y. Crim. Proc. Law § 10.20 (McKinney's 2004). The County Courts also serve as the appellate courts for the Town and Village Justice Courts and for the City Courts in the Third and Fourth Departments. See N.Y. CONST. art. VI, § 11(c).

[9] Under the present Constitution and state statute, there are many counties that do not separately elect Family Court judges or Surrogates. See id. § 14. In those counties, the person elected County judge also sits as Family Court judge, Surrogate, or both as the case may be, in addition to being the County judge. Such a position is referred to as a "multi-hatted" judgeship. See id.

[10] See id. § 26(c).

[11] See id.

[12] See id. § 10(a), (b).

[13] See id. § 13(b), (c).

issue from the Supreme Court or a criminal court that is handling another aspect of the matter. Family Court judges within New York City are appointed for ten-year terms by the Mayor.[14] Family Court judges outside New York City are elected to office for ten-year terms by the voters of the county in which the judgeship is located.[15]

- Surrogate's Court. The Surrogate's Courts are located in each county of the state and preside over all matters concerning the estates of decedents, in addition to adoptions, guardianships and related matters.[16] Surrogate's Court judges cannot preside over any other types of matters, even if they relate to a decedent's estate. Surrogate's Court judges are elected to office for fourteen-year terms within New York City and ten-year terms outside New York City, in each case by the voters of the county.[17]

- Court of Claims. These courts are located in several regional sites around the state.[18] They have exclusive authority over claims against the state or by the state against a claimant.[19] Judges sitting in the Court of Claims can only preside over claims against the state and cannot hear any other types of cases or claims. As a result, a case involving claims against the state and other parties must be heard in both the Court of Claims and another court as well, resulting in duplicative proceedings and possibly inconsistent liability judgments.[20] Court of Claims judges are appointed to office for nine-year terms by the Governor, with the advice and consent of the State Senate.[21]

"The current hodge-podge may have made sense at some point during its evolution from colonial times, but not now."

– *Order in the Courts, Newsday, March 26, 1997*

[14] See id. § 13(a).

[15] See id.

[16] See id. § 12(a), (d).

[17] See id. § 12(c).

[18] See id. § 9.

[19] See N.Y. CONST. art. VI, § 9; see also N.Y. Jud. Law, Court of Claims Act art. 2 (McKinney's 1989).

[20] In addition, the state is unable to assert a defense or indemnification claim against a third-party because the third-party is not a "claimant" subject to Court of Claims counterclaim jurisdiction.

[21] See N.Y. CONST. art. VI, § 9.

"Courts called Civil, Criminal, Claims and Family now confuse the public and even many lawyers. A system that defies understanding by those it is supposed to serve cannot be justified by the special service it gives to politicians on and off the bench."

– *Puffed-Up Judges vs. Court Reform, New York Times, Oct. 23, 1985*

- New York City Civil Court. The New York City Civil Court is located in New York City and presides over civil disputes involving damage claims for $25,000 or less, in addition to commercial landlord-tenant disputes and ejectment actions.[22] New York City Civil Court judges are elected to office for ten-year terms by the voters of statutory Civil Court districts.[23] The Housing Part of the New York City Civil Court was established in 1972 to handle residential landlord-tenant disputes. At the time, the Legislature established a corps of hearing officers to preside over these disputes.[24] These hearing officers, later given the title of "Housing Judges,"[25] technically are not judges under the state Constitution, but function as such in every sense of the word. By statute, they are appointed by the Chief Administrative Judge from a list compiled by an Advisory Council.

- New York City Criminal Court. The New York City Criminal Court presides over nonfelony criminal prosecutions and violations of local ordinances in the City of New York.[26] It may not preside over civil matters or felony prosecutions. New York City Criminal Court judges are appointed to office for ten-year terms by the Mayor.[27]

- District Court. There are two of these courts located, respectively, in Nassau County and in part of Suffolk County. These two courts are essentially a Long Island version of the combined New York City Civil and Criminal Courts. The District Courts hear cases involving claims for $15,000 or less, and preside over nonfelony criminal prosecutions and violations of local ordinances.[28] District Court judges may not preside over major civil lit-

[22] See id. § 15(b).

[23] See id. § 15(a).

[24] L. 1972, c. 982.

[25] L. 1978, c. 310.

[26] See N.Y. CONST. art. VI, § 15(c).

[27] See id. § 15(a).

[28] See id. § 16(d).

igation, family-related matters or felony prosecutions. District Court judges are elected to office for six-year terms.[29] In both Nassau and Suffolk Counties, candidates run for office in their respective districts, each drawn along municipal lines; except that, in each county, there is an at-large district that comprises the entirety of the court's geographical area, in which one judge is elected.[30]

- City Court. The City Courts are located in each of the sixty-one cities outside of New York City. Their jurisdiction is the same as that of the District Courts. They preside over lesser civil disputes (*i.e.*, claims for $15,000 or less) and also serve as local criminal courts for nonfelony criminal prosecutions.[31] The City Courts may not preside over major civil litigation, family-related matters or felony criminal prosecutions. City Court judges are elected to office by the voters of the city for which the judgeship is established, or appointed to office by the Mayor (or city council) of such city, as determined by the State Legislature. Full-time City Court judges serve for ten-year terms; part-time City Court judges serve for six-year terms.[32]

- Town and Village Justice Courts. There are 1,277 Justice Courts located in towns and villages across the state. These courts preside over a wide variety of lesser civil actions and over the same range of criminal matters as the New York City Criminal Court, the District Courts and the City Courts.[33] Town and Village Court judges are mostly elected to office for four-year terms, depending on the locality.

As described in Section Four of this Report, for decades there have been calls to restructure and streamline this confusing

"There is simply no reason why a litigant in this State should suffer confusion, delay, added expense and perhaps adverse consequences of a jurisdictional nature because he has selected the wrong court, or because he has presented the courts with a controversy which, by its very nature, cannot be resolved in a single forum under the current system."

– *Action Unit No. 4 of the State Bar Association (1979)*

[29] See id. § 16(h).

[30] The Suffolk County District Court is located in the five western-most towns of the County: Babylon, Brookhaven, Huntington, Islip and Smithtown.

[31] See N.Y. CONST. art. VI, § 17(a); U.C.C.A. art. 2; C.P.L. § 10.10(3).

[32] City Court Judges may be full-time or part-time. See U.C.C.A. § 2104(d). The former are not permitted to practice law while on the bench, whereas the latter are permitted to practice law. Approximately two-thirds of the current corps of about 160 City Court judges are full-time.

[33] See id.; see also Uniform Justice Court Act, N.Y. Jud. Law arts. 2, 20 (McKinney's 1989).

panoply of courts. The average citizen and even experienced practitioners find the current structure difficult to decipher. For example, it makes little sense that a civil matter involving a claim for $10,000 is litigated in Civil Court if the case is brought in New York City, in the District Court if the case is brought on Long Island, and in the City Court or Supreme Court if the case is brought in other parts of the state. To make matters even more confusing, a litigant would have to bring an additional suit in the Court of Claims if the case also involved a claim against the state. Likewise, a nonfelony criminal matter would be prosecuted in Criminal Court if the case were brought in New York City, in the District Court if the case were brought in Nassau County, in the City Court in other parts of the state and, depending on the crime, in the Justice Courts in still other parts of the state. No other state in the country has a system this fragmented.

"The most important measure of any system that resolves and adjudicates disputes is the extent to which it administers justice in a fair and credible manner. If a significant portion of New York's poor are denied meaningful access to the court system, a system for administering justice cannot serve its underlying purpose well."

– *Legal Services of New York, January 2007*

More importantly, the current structure is not merely confusing but is affirmatively harmful to many thousands of New Yorkers who come into contact with the courts each year. As described in Section Two of this Report, injured individuals, families in crisis and businesses of every size are forced each day to engage in unnecessary and expensive litigation and to navigate among courts with overlapping and inconsistent jurisdictions. In addition, as described in Section Three, the current structure is wasteful and costly. Half a billion dollars per year would be saved if our eleven trial courts were consolidated into a more rational and efficient structure.

Temporary Judicial Assignments: A Dysfunctional Solution

Over the past fifty years, our court system has struggled with the provision of the Constitution which limits the number of Supreme Court Justice positions that may be allocated by the Legislature to each Judicial District.[34] Efforts to deal with the shortage of judges resulting from these artificial limitations provide yet another example of the problems inherent in the current system.

[34] See N.Y. CONST. art. VI, § 6(d).

Article VI of the New York State Constitution limits the number of Supreme Court Justices ("JSCs") in each Judicial District to one justice per 50,000 residents, based on the most recent federal census.[35] In recent decades, however, some areas of the state, most significantly New York City, have experienced an explosion of commercial and other litigation that bears little relation to the number of people who actually reside in these jurisdictions. This exponential increase in cases has prompted an extreme need for additional Supreme Court judges to handle the resulting backlogs. However, the arbitrary limitation imposed by the Constitution prevents any increase in the number of Supreme Court Justices allocated to the courts in these beleaguered regions.

Article VI does contain a provision permitting the Chief Administrator of the Courts to temporarily assign to the Supreme Court judges from the Court of Claims, County Court, Surrogate's Court, Family Court and from the New York City Civil and Criminal Courts.[36] As a consequence, since the 1960s, the court system has addressed the shortage of Supreme Court Justices by making use of this temporary assignment power to fill personnel gaps in the Supreme Court. The judges assigned to the Supreme Court through temporary assignment are referred to as "Acting Supreme Court Justices" (or "Acting JSCs"). As Acting Supreme Court Justices, these jurists have the same jurisdiction and salary as elected Supreme Court Justices.

In the early 1970s, in anticipation of the passage of the Rockefeller Drug Laws[37] (which were certain to expand dramatically the number of felony drug cases pending in the state's major cities), the use of temporary judicial assignments to increase the size of the Supreme Court bench reached new heights. In 1973, sixty-eight new Court of Claims judgeships were created, and all of those judges were immediately

[35] See id.

[36] See id. § 26.

[37] L. 1973, c. 603.

designated as Acting Supreme Court Justices and assigned to the Supreme Court on a continuing basis.[38]

Today, 130 — approximately half of the judges serving in the Supreme Court in New York City — are Acting Supreme Court Justices. These judges were not elected to the Supreme Court (or, in many cases, to their original judgeships) but have been placed there by the Chief Administrative Judge as a necessary accommodation to the constitutional limitation on the number of Supreme Court Justices. The heavy reliance on this stopgap measure has thinned the ranks of judges in the New York City Civil and Criminal Courts to the point where those courts are chronically underserved.[39]

This constitutional cap on the number of Supreme Court Justices, and the resulting Acting Supreme Court Justice regime, is another hallmark of our inflexible system. (We note that even opponents of past restructuring proposals have endorsed the elimination of this constitutional restriction.[40]) In Section Six of this Report, we recommend that the constitutional cap finally be lifted and the system of Acting Supreme Court Justices eventually be eliminated.

The Appellate Division: Overloaded and Unbalanced

The Appellate Division of the Supreme Court is the predominant intermediate appellate court of the state. In some ways, the structure of the Appellate Division is even more antiquated and outdated than the structure of the trial courts.

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[38] The New York State Court of Appeals later rejected a legal challenge to these judicial appointments. See Taylor v. Sise, 33 N.Y.2d 357 (1974).

[39] Outside New York City, there also has been significant reliance on temporary assignments to the Supreme Court from among the county-level judges. The frequency and often extended duration of these assignments has necessitated a domino-like second round of temporary assignments to backfill resulting vacancies on the county-level courts. These secondary temporary assignments are filled through the assignment of full-time City Court judges to County and Family Courts.

[40] See YEAR 2000 REPORT OF THE TASK FORCE ON COURT REFORM TO THE ASSOCIATION OF JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK 2 (1999) (hereinafter "JSC REPORT") (supporting bill that would "[r]emove the present limitation on the number of Supreme Court Justices by amendment to the Constitution").

The Appellate Division was established during the Constitutional Convention of 1894, which divided New York State into four judicial departments, each to be served by an Appellate Division. The convention designated New York County as the First Department and directed the Legislature to fix boundaries that would divide the population of the state into roughly equal portions for the remaining departments. The resulting four departments were of relatively equal proportion more than a century ago, but much has changed since then, while the Appellate Division has not.

Today, the Second Department (which consists of Dutchess, Kings, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk and Westchester Counties) includes about one-half of the state's population and bears a caseload that is vastly greater than that of the other three departments.[41] The result is that the Second Department has had to reduce the number of judges presiding in each case (typically to four rather than five judges per oral argument)[42] and litigants before the court have had to wait increasingly longer periods of time for a resolution of their cases.

"Access to appellate justice is a particular problem for the Second Department because our geographic boundaries stretch from Montauk in the east beyond Poughkeepsie to the north. . . . The time and expenses of traveling to Brooklyn often force those who might seek appellate review to think twice."

– *Presiding Justice of the Appellate Division, Second Department, A. Gail Prudenti, January 2007*

In addition, court administrators have taken other measures to address the uneven caseloads and shortage of judges in the Appellate Division. Article VI of the Constitution permits the Governor, upon certification by an Appellate Division that it needs additional justices to dispose of its business, to designate such additional justices.[43] In a practice similar to the temporary judicial assignment system at the trial court level, the Appellate Divisions have made liberal use of this provision and have added numerous additional justices to their ranks. As a result, two-thirds of the justices of the Second Department today are selected pursuant to this procedure. Turning the Constitution on its head,

[41] See Figures 1 and 2 in Appendix i.

[42] The smaller panel size for Second Department cases can have meaningful consequences. Not only are the Second Department's cases being treated differently from all other appellate cases in the state, there is also an important legal effect: because only a two-judge dissent on an issue of law can trigger an as-of-right appeal to the Court of Appeals, it is impossible for a Second Department four-judge panel to yield an automatic appeal to the Court of Appeals. In addition, because of the Second Department's size and relative caseload, intra-departmental splits are common, undermining the certainty of the law in our state.

[43] See N.Y. CONST. art. VI, § 4.

these additional justices serve for indefinite, effectively permanent terms, while the justices who occupy the constitutionally provided seats on the court serve for five-year terms and must seek re-designation after their terms conclude.[44]

There has long existed a strong consensus that at least one additional department should be added to the Appellate Division.[45] As with the constitutional cap on the number of Supreme Court Justices, even opponents of past court restructuring proposals have agreed that a reorganization of the Appellate Division is necessary.[46] However, the politically sensitive question of how the boundaries of the new department would be drawn has stymied attempts to implement this obvious solution to the Appellate Division problem.

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The diagram on the following page illustrates the current trial and appellate court structure of the New York State Court System for both criminal and civil matters.

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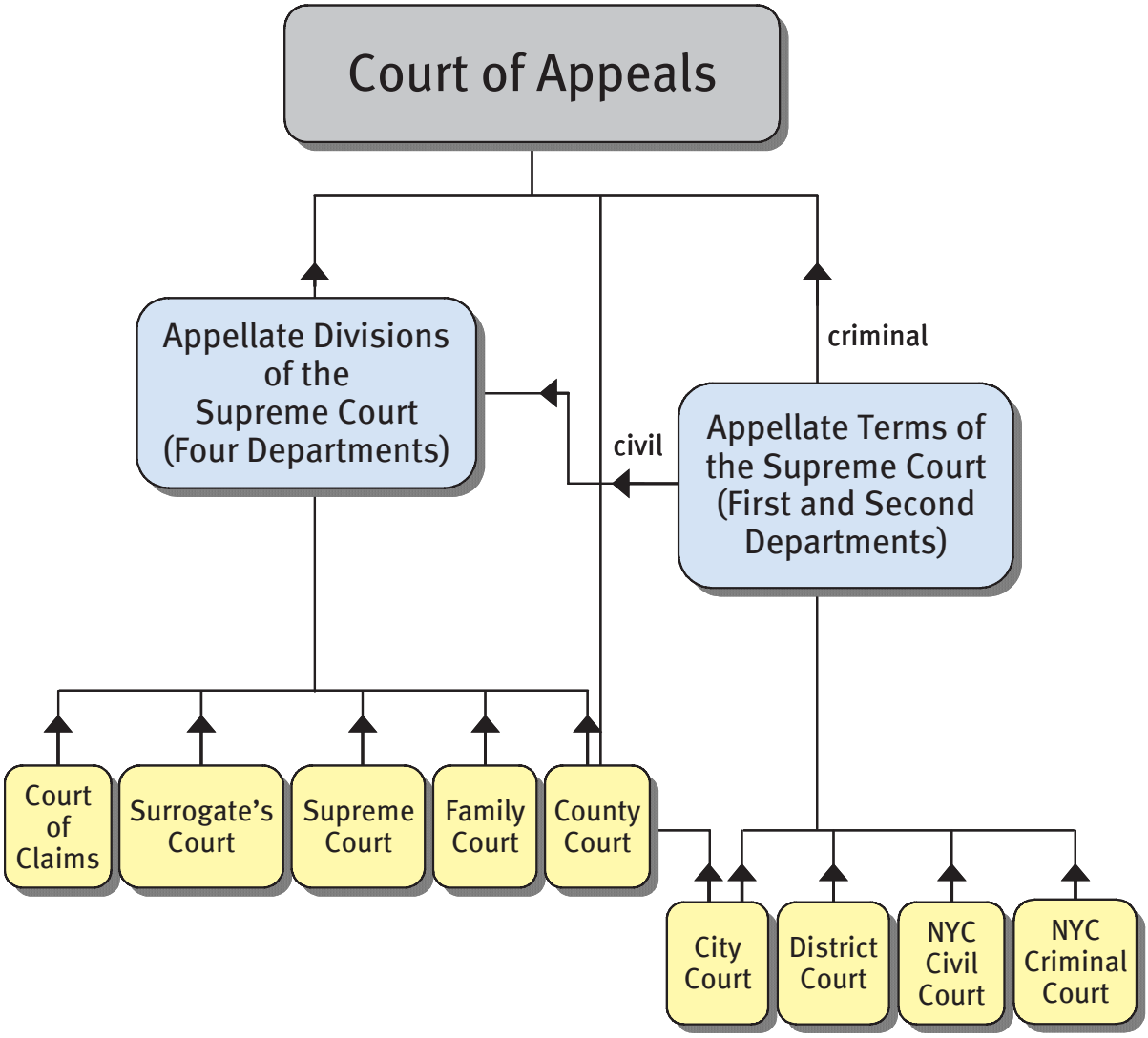
[44] See id. § 4(e) (providing that where an Appellate Division certifies to the Governor that it needs additional justices to handle its work, the Governor may designate additional justices; those justices serve unspecified terms, stepping down from the Court only when the Appellate Division certifies that their assistance is no longer required).

[45] See generally ROBERT MACRATE ET AL., APPELLATE JUSTICE IN NEW YORK (1982).

[46] See JSC REPORT, supra note 40, at 3 (supporting bill that would "[c]reate a Fifth Department of the Appellate Division by Constitutional Amendment").

Current Structure



Note: Town and Village Courts and direct appeals excluded; in the Third and Fourth Departments, criminal appeals from the City Court proceed to the County Court and can be further appealed to the Court of Appeals.

New York in Comparison to Other States

Most other states across the nation long ago streamlined their court systems to eliminate the anachronistic structures and divisions of the past. Two of these – New Jersey and California – provide clear examples of the successes that should be aspired to in New York.

New Jersey

"The Commission will be asked to look at systems across the nation for ideas . . ."

– *Chief Judge Judith Kaye, February 2006*

New Jersey was the first state to heed a 1906 call from Roscoe Pound for trial court unification throughout the states.[47] Although it took several decades to achieve, in 1947 New Jersey adopted a new state Constitution which made great strides in unifying its state trial courts.[48]

Prior to 1947, New Jersey had an astounding maze of courts – approximately seventeen different courts in all, each with its own jurisdiction and rules of practice and procedure.[49] At the time, New Jersey had a Court of Errors and Appeals, a Supreme Court, a Court of Chancery, a Prerogative Court, a Court of Common Pleas, a Circuit Court, an Orphan's Court, a Surrogate's Court, a Court of Oyer and Terminer, a Court of Quarter Sessions, a Court of Special Session, Juvenile and Domestic Relations Court, a Civil District Court, a Criminal District Court, a Small Cause Court, a County Traffic Court, Police Courts, Magistrate Courts, and Family Courts.[50]

After decades without success, and just four years after similar constitutional reforms were soundly defeated in a popular vote, New Jersey citizens voted overwhelmingly to adopt a new

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[47] See Roscoe Pound, The Causes of Popular Dissatisfaction with the Administration of Justice, 29 REP. A.B.A. 395 (1906) ("Our system of courts is archaic . . . in its multiplicity of courts").

[48] See THOMAS A. HENDERSON, THE SIGNIFICANCE OF JUDICIAL STRUCTURE: THE EFFECT OF UNIFICATION ON TRIAL COURT OPERATIONS 3 (1984) (hereinafter "THE SIGNIFICANCE OF JUDICIAL STRUCTURE").

[49] CARLA VIVIAN BELLO & ARTHUR T. VANDERBILT II, NEW JERSEY'S JUDICIAL REVOLUTION, A POLITICAL MIRACLE 19-20 (1997).

[50] See id.; see also Figure 3 in Appendix i.

state Constitution on November 4, 1947.[51] As a result of the new constitution's judicial article, the state's seventeen different courts were consolidated into seven courts – a Supreme Court, a Superior Court, County Courts, Municipal Courts, District Courts, Juvenile and Domestic Relations Courts and Surrogate's Court.[52] Given the structure that predated it and the fact that New Jersey was the first state to make such significant structural reforms in its judiciary, this was a watershed event.

The 1947 reforms were only the first major step in court reform in New Jersey. The New Jersey Constitution of 1947 provided that the Supreme Court "shall make rules governing the administration of all courts in the state and, subject to law, the practice and procedure in all courts."[53] Therefore, although some additional formal consolidation has taken place since 1947, the most significant changes to New Jersey's judiciary have come about through rulemaking. New Jersey's court system has been streamlined even further through rules such as the one which permits all trial court judges to hear cases in all trial courts.[54] As a result, today New Jersey's court system is among the simplest and most structurally efficient in the nation, consisting of a Tax Court, Municipal Court, Superior Court, and the New Jersey Supreme Court. New Jersey's Tax and Municipal Courts are courts of limited jurisdiction and neither has jury trials. The Municipal Courts handle initial appearances in felony cases, misdemeanor cases, DWI/DUI cases and traffic violations. Unsurprisingly, the Tax Court handles state and local tax matters. Thus, all jury trials are held in the Superior Court, which is a single trial court of general jurisdiction with four trial divisions – Civil, Family, General Equity and Criminal – and one Appellate Division.[55]

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[51] See BELLO & VANDERBILT, supra note 49, at 1, 8.

[52] See id. at 97, 149.

[53] Id. at 151.

[54] See id. at 83-84.

[55] See Figure 4 in Appendix i; see also New Jersey Judiciary, A Walk Through the Judicial Process, available at http://www.judiciary.state.nj.us/process.htm#two.

New Jersey provides an example of a large state with both metropolitan and rural areas which shed its arcane court structure in favor of one of the most streamlined and unified court systems in the nation. New Yorkers should take note of an editorial written in 1947 after the passage of the new New Jersey Constitution:

> It is only four years since the last proposal to overhaul the New Jersey constitution was rejected at the polls. The 1947 triumph was fashioned from the ashes of the 1943 defeat. Leaders of the bench and bar of Florida, Louisiana, Arkansas, Michigan, California, Ohio and other states where court organization projects are pending or constitutional revision is in prospect, should gain renewed faith that in spite of setbacks both past and future, there as well as in New Jersey, *it can be done*![56]

California

While not quite as confusing as the New Jersey Courts, California's courts were also an organizational maze prior to 1950. At the time, California's judiciary had a trial court system consisting of Superior Courts and a myriad of limited jurisdiction trial courts established according to subject matter and sometimes monetary jurisdiction. These courts of limited jurisdiction included two different types of Municipal Courts, Township Justice Courts, Class "A" and "B" City Justice Courts, Police Courts, and City Courts.[57]

In 1950, California's citizens voted to amend the Constitution, establishing a two-tier system in which the lower courts of limited jurisdiction would be consolidated into either Municipal or Justice Courts,[58] and the trial courts of general

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[56] Glenn R. Winters, Editor, 31 J. AM. JUDICATURE SOC'Y 131 (1948).

[57] See LARRY L. SIPES, COMMITTED TO JUSTICE, THE RISE OF JUDICIAL ADMINISTRATION IN CALIFORNIA 49 (2002).

[58] See Superior Court of California County of Los Angeles, About the Court: Historical Perspective, available at http://www.lasuperiorcourt.org/about court/history.htm. Districts with a population of less than 40,000 had a Justice Court, and districts with a population greater than 40,000 had a Municipal Court. As California's population increased, the number of Justice Court districts steadily declined. See id.

jurisdiction would become Superior Courts. The Superior Courts had jurisdiction over all felony cases and all general civil cases involving disputes over $25,000 and jurisdiction over probate, juvenile, and family law cases. The lower-tier Municipal and Justice courts had jurisdiction over misdemeanor and infraction cases, civil matters involving claims of $25,000 or less, and preliminary felony proceedings.[59]

Many attempts were made throughout the ensuing four decades to further unify and reform the Superior, Municipal and Justice trial courts in California; however, by and large these efforts failed.[60] Despite these years without success, in 1998 California voters passed a constitutional amendment that provided for voluntary unification of the Superior, Municipal and Justice Courts in each county into a single, countywide trial court system. By January 2001, all fifty-eight California counties had voted to unify their Municipal and Superior Court operations.[61]

As a result of the positive response to the 1998 amendment, California's court structure is now comprised of a single trial level court, called the Superior Court, a single appellate level court, called the Court of Appeal, and a court of last resort, called the Supreme Court. Superior Courts are courts of general jurisdiction and typically hear tort, contract, real property, miscellaneous civil, probate and estate, domestic relations, criminal, juvenile, and traffic infringement matters.[62]

In November 2000, a study on the initial impact of trial court unification was released by California's Administrative Office of the Courts.[63] The study documented many of the benefits of unification, including:

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[59] See MARY ANNE LAHEY ET AL., ANALYSIS OF TRIAL COURT UNIFICATION IN CALIFORNIA, FINAL REPORT 1 (2000).

[60] See Harry N. Scheiber, Innovation, Resistance, and Change: A History of Judicial Reform and the California Courts, 1960-1990, 66 S. CAL. L. REV. 2049, 2077 (1993).

[61] See Trial Court Unification, Fact Sheet, February 2005, available at http://www.courtinfo.ca.gov/reference/documents/factsheets/tcunif.pdf.

[62] See Figure 5 in Appendix i.

[63] See LAHEY ET AL., supra note 59. The analysis was based on the fifty-three trial courts that were unified as of April 1999, when the study was commissioned. See id.

- improved service to the public through reallocation of judicial and staff resources;
- a reduction in backlog and improved case disposition time due to improved court calendars and case management practices;
- judges hearing a wider range of cases than before unification; and
- standardization of local rules, policies and procedures to support the countywide structure of court operations.[64]

"The New York Courts, as presently structured, are inefficient, outdated, and badly in need of reform."

– *Association of Judges of the Family Court of the State of New York, January 2007*

It should be noted that California is twice as populous as New York and its court system is the largest in the nation. California's state courts serve over 36 million people, employ more than 2,000 judicial officers and 19,000 court employees, and hear more than eight million cases each year.[65] To state the obvious, the California model shows that a large and sprawling state need not have a correspondingly complicated court structure.

Many Other States

In addition to New Jersey and California, New York lags far behind many other states which have successfully consolidated and simplified their court structures over the last fifty or more years. Several states followed in the footsteps of New Jersey and California's courts during the 1950s (*e.g.*, Delaware), 1960s (*e.g.*, Colorado) and the 1970s (*e.g.*, Iowa, Illinois, Connecticut and Washington D.C.).[66] Similarly, many other states in the nation have structurally unified systems, including Idaho, Kansas, Minnesota, North Dakota, South Dakota, Wisconsin, Connecticut, and Arkansas.

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[64] Id.

[65] See California Judicial Branch, Fact Sheet, April 2006, available at http://www.courtinfo.ca.gov/reference/documents/factsheets/Calif_Judicial_Branch.pdf

[66] See THE SIGNIFICANCE OF JUDICIAL STRUCTURE, supra note 48, at 4.

In short, when it comes to the structure and efficiency of its court system, New York – which rightly prides itself on being a capital of business, finance, culture and the arts – is an embarrassing backwater. New Yorkers should no longer tolerate the political intransigence and status-quo thinking that have stymied past efforts at court reform. It is time to create a twenty-first century court system in New York.

— SECTION TWO —

THE HUMAN COST OF OUR ARCHAIC SYSTEM: REAL PEOPLE, REAL PROBLEMS

Our inefficient court structure affects, in one way or another, every individual, family, business and witness that enters a state court building. In Section Three, below, we discuss the statewide financial impact of this inefficiency. Putting aside that analysis, however, this structure has serious consequences on a very practical level for all who must rely on our state court system. In this section of the Report, we highlight the impact on two very distinct and different constituencies: business organizations and families in crisis.

A Specific Example: The Business Community

To state the obvious, the vitality of New York State and its citizens is directly dependent on the vitality of its business community. New York businesses provide jobs, pay taxes and are a principal engine of the state's economic prosperity. It is equally obvious that there is serious competition among New York and other states to attract and retain business organizations as taxpayers, employers and residents.

For better or worse, it is a fact of modern life that businesses must use and rely on the courts to an enormous degree. In New York State, a significant portion of the 3.7 million cases resolved each year involves a business organization as a party. The volume and significance of these cases mean that, to an ever-increasing degree, the attractiveness and efficiency of the current system is a factor that affects a company's decision as to where to headquarter its business.[67]

"New York's antiquated and convoluted court structure has impacted the lives of thousands of New Yorkers seeking justice through the court system in matrimonial matters, cases of domestic violence and abuse, business transactions, and other proceedings that New Yorkers regularly rely upon the courts to adjudicate."

– *Citizens Union of the City of New York, January 2007*

[67] As a case in point, the Commercial Division of the Supreme Court has received much praise and interest from the business community as an accessible and efficient court skilled in the management of complex business disputes. See Section Five infra.

Given this reality, it is in the interest of all New Yorkers to ensure that the business community views the New York court system as efficient, up-to-date, and sensitive to the impact that the courts will have on its many business litigants. Unfortunately, our current court structure creates the opposite view.

The inefficiency of our system impacts our state's businesses in a number of ways. First, litigating a business dispute in New York State is a complicated affair; a myriad of courts have jurisdiction over civil matters, and the speed with which a case is adjudicated and the business expertise of the judge varies significantly depending on the court in which the case is heard. Except for cases in the Commercial Division of the Supreme Court, businesses – and particularly small businesses, for which the Commercial Division is often not available – cannot be assured that their cases will be heard in a timely or reliable manner.

Second, the wasted time and lost work described in Section Three is not only a problem for individual litigants, but also for their employers. Each year, tens of thousands of New Yorkers are forced to miss work by spending unnecessary days in court. When a large cross-section of our state's population is subject to such routine absences, the consequences are directly felt by our state's employers. This is yet another factor that makes our state less appealing for businesses.

"As our chaotic, blundering court system exists now in New York, judicial resources are wasted, taxpayers are shortchanged, litigants' rights are compromised and justice is not served. Surely we can do better."

– *Center for Law & Justice, January 2007*

Third, in cases involving the state, businesses, too, are forced to engage in duplicative litigation. In any case involving a claim against the state, a business that is a party to the case may be compelled to engage in two sets of proceedings, one in a civil court and an identical one in the Court of Claims. With costs of discovery rising, and with businesses around the country increasingly concerned about litigation costs and the commitment of management resources to litigation, this presents another reason for a business to steer clear of New York when deciding where to locate its operations.

In short, the disarray of our court system serves as a deterrent to businesses, large and small. A system that wastes a half a billion dollars annually is an anathema to the business

community, which rightly expects efficiency at all levels of government.

Reflecting these concerns, a statewide coalition of business organizations has recently come together specifically to support court restructuring. These groups include the Business Council of New York State, the Partnership for New York City, the Long Island Association, the Westchester County Association and the Metropolitan Development Association of Central New York (collectively known as the Business Coalition for Court Efficiency). In a letter of support (included in Appendix iii), this coalition states that "[a] confusing and redundant court system is not good for the state economy. The business community will support efforts to secure amendment of the New York State Constitution to create a two-tier court system that will greatly improve the administration of justice and result in significant savings in time and expense to individuals and business."

A Specific Example: Families in Crisis

New York's court structure can have disastrous consequences for some of our most vulnerable citizens. Families, particularly poor families, can spend years shuttling back and forth between Family Court, Supreme Court, and Criminal Court, only to end up with inconsistent results arising out of the same or substantially similar facts. Divorce actions in New York State are brought in Supreme Court, yet other family disputes such as custody and visitation proceedings are often adjudicated in Family Court – and rarely is the judge presiding over one part of a family's case educated about what has happened in another part of the same case. Not only is this inconvenient and expensive for families that cannot afford the waste of time or money, it can also be dangerous, as illustrated below, particularly for women and children who have been victims of abuse. A few real-life examples illustrate this point:

"Specific instances of the horror presented by the manner in which we divide resolution of family disputes are not hard to find."

– *Michael Cardozo, October 1997*

* * * *

The following is the testimonial of Orchid G., an immigrant from Egypt who moved to New York City with her husband in 1994. Within a few months of their arrival, Orchid's husband began to abuse her, both verbally and physically. Following a particularly brutal episode which sent her to the hospital, Orchid moved to a domestic violence shelter and began to seek help through the New York State court system. Orchid's testimony presents a cautionary tale for all that is wrong with the present structure.

"I had seven separate cases in three different courts before four different judges. I had custody, visitation, and cross order of protection cases in the Family Court before one judge; I had a child support case in the Family Court before a hearing examiner; I had a case against my husband in Criminal Court; and he had a case against me in Criminal Court before a different judge.

"Over the next four years, there were even more cases before even more judges. I went to Supreme Court for a divorce. I went to Civil Court in a case that my husband's brother brought against me to harass me. After I got child support, my husband refused to pay, so I had to bring three more cases against him before the hearing examiner in Family Court. Then, when the judge in Family Court finally denied my husband unsupervised visitation, his mother brought a case against me.

"In five years I had fourteen separate cases in seven different courtrooms before seven different judges. Each time I appeared before a different judge I had to tell my story over again. I can't tell you how painful it was to tell my story over and over. It made it impossible for me to recover from the traumatic events I had survived.

"It also made it impossible for me to get on with my life—to continue my education and find a job. In the child support case alone, I have been in court 45 times, each time for an entire day. For the custody, visitation, and order of protection cases, I've made more than 100 court appearances, usually for an entire day. Many times I tried to take courses in a community college, but each time I had to drop out because the court cases made me

miss so many classes. I was fired from three different jobs because of the time I had to take off to go to court and prepare for trial.

. . .

"The court system in New York is in desperate need of change. It should be easy and convenient for victims of domestic violence to get help from the courts. Instead it is confusing, frightening, and often even increases the danger that we are in. No victim of domestic violence should have to go through what I did just to try to make a safe life for herself and her child."

* * * *

The following testimonial of John R. offers another example of the significant overlap and failure of communication among the Supreme, Family and Surrogate's Courts in our system today. John and Bethany had a child together, Olivia. When John and Bethany ended their relationship, John began what would become a years-long battle through our court system to maintain a connection with his daughter.

"The first court action in our case was initiated by me – in Brooklyn Family Court in June of 2003. I filed a petition for custody and visitation of Olivia because Bethany had started refusing me access to my child. In retaliation . . . Bethany made false allegations against me of rape and assault that led to my arrest and arraignment in Criminal Court. Bethany also filed a family offense petition in Family Court and obtained a temporary order of protection to prevent me from seeing my child.

"For the next eight months, I had Criminal Court dates nearly once a month and Family Court dates every three months. For each court appearance, I had to take a whole day off of work and the worst thing about Family Court in particular is that we never seemed to make any progress. I would waste a whole day waiting for our case to be called, only to spend just ten minutes before the judge discussing insignificant details and then have our case adjourned for another three months. All the while, I was losing valuable time with my daughter.

"Notwithstanding the results of the DNA test that had been performed in the hospital, Bethany alleged in Family Court that I was not the father of her child. So after eight months in Family Court, the judge simply dismissed my custody and visitation petition, pending a judicial determination of paternity. I immediately filed a new petition in Family Court – this time for a declaration of my paternity of Olivia. Around this time, Bethany and her ex-husband Anthony began living together again – with their son and my daughter. . . . Anthony intervened in the paternity proceeding in Family Court, alleging paternity of Olivia.

. . .

"Then, because Anthony did not like his prospects in Family Court, he went to Supreme Court where he sought to vacate his divorce judgment. . . . The Supreme Court stayed the visitation proceedings in Family Court, which simply prolonged the separation between my daughter and me.

"Ultimately, Anthony's attempt in Supreme Court to shut me out of my daughter's life did not work – but by the time the Supreme Court denied his motion in its entirety, my daughter was two-and-a-half years old and I had not seen her in close to two years.

"Back in Family Court, the judge dismissed Anthony's paternity defenses and ordered another round of genetic marker tests. The results of that test again confirmed that I am the father of Olivia. Finally, in June 2006, the Family Court judge entered an order of filiation finding that I am the father.

"But Anthony was not finished. In May 2006, he went to yet another court in an effort to keep me away from my daughter. He filed an adoption proceeding in Surrogate's Court which, if granted, would have voided my parental rights and accordingly, my rights to visitation.

. . .

"Thankfully, Anthony's attempt to get around the Family Court and Supreme Court proceedings by taking his case to Surrogate's Court did not work either. In August 2006, I resumed

visits with my daughter, but I missed out on more than two-and-a-half crucial years of her life before that.

. . .

"If I had had the opportunity to have one judge hear all parts of this case, I firmly believe that we would not have spent nearly as much time and money to resolve it. Under a consolidated court system, I would have had to take less time off of work, pay fewer attorneys fees (or require less of the Legal Aid attorneys who helped me), avoided endless paper work, and most importantly, been able to get to know my daughter before her third birthday."

* * * *

The testimonial of Jacklyn M. presents another example of a victim of domestic violence becoming tangled in our complicated web of courts.

"My name is Jacklyn M. I am the mother of two children, I live in Brooklyn, New York, and I am a victim of domestic violence. Although both of my parents were born in Puerto Rico, my parents met here in New York, and I was born in this country. My father was an abuser and when I became an adult, I married an abuser. My ex-husband also abused and molested the oldest of our two children.

"In 2001, I left my husband and sought a restraining order against him in Brooklyn Family Court. At that time, I sought a divorce as well as custody of our two children. There was also a criminal case pending against him in Criminal Court, and while our divorce was executed in Supreme Court, custody and visitation proceedings continued in Family Court.

"At the same time, in 2001, I applied for welfare benefits so that I could support my two children after separating from my ex-husband.

. . .

"Because of my money troubles, I was also a defendant for some time in NYC Housing Court. I was not able to pay my portion of rent (some portion of my rent was supposed to be paid

for by HRA) because my welfare benefits were taken away. Throughout 2002, I found myself having to appear in Housing Court on a regular basis. This also took up time and energy and conflicted with my other court appearances. Another reason HRA stopped helping me pay my rent was because they thought I was purposely missing appointments at the welfare center. In fact, I was missing appointments because they conflicted with the many court hearings I had to attend in Criminal, Family and Housing Court. I always tried to call the center to tell them about the court hearings, but no one ever answered the phone – so I was often sanctioned for missed appointments. But, I couldn't help missing the appointments – I had to go in to court for many different appearances and hearings.

. . .

"In July 2003, I had another domestic violence incident which resulted in another restraining order. I had to return to Criminal Court and then again to Family Court. I have attempted to keep my ex-husband away from me and my children, but I feel like I am constantly having to re-explain everything to different judges in different courts and no one ever listens to the fact that he is a danger to me and my family. Additionally, I had to move to get away from my ex-husband which also caused problems in Housing Court and with my welfare case.

"The Criminal Court judge knows the details of what my husband did to me. But then, in Housing Court, the burden is on me to prove that I am a victim of domestic violence (something only the Criminal Court knows about) and that I have a claim against the State for back payment of welfare benefits (something only the Supreme Court judge presiding over the Article 78 proceeding knows about). I have to re-explain everything in Housing Court, without a lawyer. I have to re-explain everything over and over to the State in Administrative Hearings and in an Article 78. And, in Family Court, I have to re-explain every time that I am a victim of domestic violence and that my husband is a danger to me and my children.

"The opportunity to litigate my family-related matters before one Supreme Court Justice would save me time, money,

and terrible stress and heartache. My ultimate goal is to move away from New York so that my children and I can start over in a place where we do not feel scared anymore. But I will be unable to do this until I can save enough money to move – something I will never be able to do if I am forced to live the rest of my life going in circles – appearing before many judges in many courts and having to start from square one every time."

* * * *

The following is the testimonial of Dyandria D., a victim of domestic violence who was further victimized by her batterer as a consequence of our state's confusing court structure.

"In 1995, I filed for divorce from my abusive husband on the grounds of cruel and inhuman treatment in the Queens County Supreme Court. . . . My husband was infuriated over my initiating the divorce action and even more outraged over my seeking meager maintenance and child support payments. In retaliation, and in order to escape his responsibility to support our daughter, my husband stooped so low as to go on record in Supreme Court to deny paternity of our daughter, his only biological child. . . . After the Queens County judge finally ordered DNA testing, my husband dropped the issue.

"Next, my husband tried a second scheme to avoid paying child support – he called the child abuse hotline to report that I was abusing our daughter. Presumably, my husband figured that having our daughter placed in state custody would free him of his child support obligation.

. . .

"The resulting abuse/neglect proceedings were heard in Manhattan Family Court and went on simultaneously with the divorce proceedings in Queens County Supreme Court. . . . In Supreme Court, [my husband] convinced the judge to deny me the meager maintenance I was requesting, on the basis that I was very intelligent and highly capable of procuring any fine job that I sought. In Family Court, however, my husband painted a completely different picture of me for the purpose of preventing me from regaining custody of my child. In Family Court, my

"The indefensible jurisdictional allocation of authority over family matters between Family Court and Supreme Court can result in . . . [a] frustrating, confusing and wasteful process [that] is carried out in the context of proceedings which are often highly emotional and deeply personal in nature."

– *Action Unit No. 4 of the State Bar Association (1979)*

husband told the judge that I was a drug addict and seriously mentally disturbed.

. . .

"On account of these lies, a Family Court judge granted custody of my daughter to her sexually abusive father, holding that he was the better choice. Yet the Queens County Supreme Court has a voluminous case file containing evidence of his lies and manipulation. . . . No reasonable person would claim that the picture that the Supreme Court had of my husband was one of a good dad – yet the Family Court never heard this side of the story and was convinced by his lies and manipulation to grant him custody of my daughter.

"I have not seen my daughter in six years."

— SECTION THREE —

THE FINANCIAL COST OF OUR CURRENT STRUCTURE: HALF A BILLION DOLLARS WASTED EACH YEAR

From a fiscal point of view, New York's court structure is profoundly inefficient. At bottom, the system has too many courts with limited jurisdiction. These limited jurisdiction courts (and the judges who sit in them) cannot hear cases that fall outside their narrow jurisdictional boundaries, making it impossible to manage cases and caseloads in a rational, system-wide manner. As a result, the current system is unduly costly to administer and requires litigants to waste time and money on court dates and tasks that could be avoided in a simpler system.

We have conducted a detailed economic analysis of the costs of our current structure and the substantial savings that would result if the court system were simplified. As set forth more fully in the analysis that appears in Appendix ii, we estimate that approximately $502 million in annual savings would be realized if court reform is achieved. Of this total, $443 million in annual savings would be realized by individual litigants, business litigants, employers, municipalities and others. In addition, we estimate that a further $59 million would be saved in the court system's annual budget.

New York's court system is "widely recognized as the most convoluted, expensive and ridiculous in the country."

– *Why Albany Doesn't Mend the Courts, New York Times, February 21, 2003*

Notably, this analysis does more than simply quantify the amount and value of litigant time that the current court structure wastes. It also highlights lost economic productivity to New York businesses and the New York economy. In other words, the costs at issue create a worrisome drag on New York's economic potential. As the analysis indicates, the trial court consolidation that we have proposed will stop this wasteful drain on our state's economy and will result in savings amounting to half a billion dollars *annually* for our state's people and businesses. What follows is a synopsis of the analysis presented in Appendix ii.

Costs to Individuals, Businesses, Municipalities and Others

"The current structure . . . fails to take full advantage of the capabilities of the judiciary and makes needless and costly demands on attorneys and their clients' time."

– *Atlantic Legal Foundation, March 2005*

The current structure wastes time and money in two fundamental ways.

First, in the current system (with its overabundance of courts with limited jurisdiction), it is generally not possible to reallocate cases from overburdened courts to those with excess capacity. For this reason, enormous docket disparities cannot be remedied, and cases on the dockets of overburdened courts receive less judicial attention than they would if the system allowed for the reallocation of cases. (See Figure 1 below.) For these languishing cases, less judicial attention means less opportunity for judicial case management and less probability of early dispute resolution.

Figure 1: Selected Caseloads (2005)

Court	Sitting Judges (full-time equivalents)[68]	Dispositions	Dispositions per Judge
Supreme Court (civil cases)	376	197,214	525
Supreme Court and County Court (felony cases)	241	53,577	222
Court of Claims	27	1,703	63
Family Court	277[69]	587,181[70]	2,120
Surrogate's Court	50	113,753	2,275

Data provided by OCA

Second, the current system limits the ability of a single judge to take jurisdiction over all claims arising from a given event or transaction. For example, a variety of different legal claims typically attend criminal allegations of domestic violence. Under the current system, these claims generally must be adjudicated in separate courts. The criminal action must be heard in a court with jurisdiction over criminal proceedings. If there is a matrimonial action to dissolve the marriage, that action must be

[68] The number of sitting judges is expressed in terms of full-time equivalents to reflect that (1) some Justices in the Supreme Court hear both criminal and civil cases, (2) some County Court judges also serve in the Surrogate's Court, the Family Court or both, and (3) some judges handle supervisory and administrative tasks in addition to hearing cases.

[69] Includes 125 support magistrates.

[70] Includes matters heard by judges and support magistrates; excludes matters handled by attorney referees and judicial hearing officers.

heard in the Supreme Court. If there are nonmatrimonial proceedings relating to child custody, support, or visitation, those proceedings must be heard in Family Court. And if there are any housing-related issues, those must be heard in a court with jurisdiction over housing matters.

The economic analysis we have conducted (an analysis that has been independently verified by the National Center for State Courts (see Appendix iv)), addresses both of these inefficiencies by quantifying (a) the amount of time that could be saved per case, on a systemwide basis, if our recommended, more flexible structure were in place and certain jurisdictional barriers were eliminated; and (b), separately, the amount of time that could be saved per case in the universe of cases where the subject matter requires appearances to be made in more than one court at the same time. Based upon the amount of time to be saved, the analysis then calculates the monetary savings that could be realized in a variety of ways, by a number of constituencies. These include savings to:

- individuals who could avoid lost wages, travel costs and attorneys' fees by avoiding unnecessary trips to court;
- employers who would otherwise lose productivity when their employees leave for unneeded court appearances;
- municipalities that must bear the cost of court-appointed attorneys in criminal, Family Court and other matters; and
- large and small businesses that could avoid unnecessary attorneys' fees.

Our analysis concludes that such savings will amount to $443 million annually, or more than $4.4 billion over the next ten years. As noted in our analysis, our assumptions are conservative,[71] and there are additional categories of economic savings that we have not attempted to quantify. (For example, we have not attempted to estimate the savings to witnesses (including the reduction in overtime paid to police officers who

"The consolidation of the courts into a two-tiered structure . . . would eliminate the need for litigants to appeal to multiple judges, speed the resolution of disputes, reduce costs associated with litigation, insure greater consistency and equity in judicial decisions, and lead to an overall improvement of case management."

– *Citizens Union of the City of New York, January 2007*

[71]It should be noted that the number of cases at issue is so huge (3.7 million cases resolved per year) that even very conservative assumptions about the availability of efficiency-based savings will produce a savings that is substantial from the point of view of the state's economy.

appear as witnesses), or to family members who accompany litigants to court.)

This type of economic analysis has, to our knowledge, not been previously conducted in the context of a court restructuring proposal, and we submit that these conclusions cast a more dramatic light on prior debates about the topic. In short, we believe that, given the magnitude of the costs involved and the impact on statewide productivity, it would be irresponsible at this point to ignore the need to change the status quo.

Savings to the OCA Budget

A consolidation of the courts would also result in a significant savings in OCA's annual budget. In a February 2002 study, OCA calculated that the state would save $131 million over five years if the court merger proposal then under discussion were enacted.[72] We have conducted an updated analysis and project that the savings to the state would be more substantial, amounting to $59 million per year once court merger is fully implemented, for a five-year total of $295 million.

"The current compartmentalized system needlessly handcuffs court administrators by prohibiting them from drawing upon the full complement of resources at their disposal."

– *Association of Judges of the Family Court of the State of New York, January 2007*

As further detailed in Appendix ii, these projected budgetary savings would be realized from reduced case processing costs as a result of the unified treatment of related cases, and reduced administrative costs needed to manage a simplified administrative structure. The 2002 projections have also been updated to account for the effect of inflation over the past five years, and include an updated tally of the universe of related cases that would be treated together under a merged system.

The analysis of the savings to OCA's budget further illustrates the staggering amount that will be saved under a restructured court system. Added together, the $59 million in annual savings to the state and the $443 million in annual savings to litigants and businesses described above will result in a total savings of $502 million per year.

[72] See N.Y. UNIFIED COURT. SYS., THE BUDGETARY IMPACT OF TRIAL COURT RESTRUCTURING 3 (2002).

— SECTION FOUR —

PAST PROPOSALS, AND THE MANY CALLS FOR REFORM

Decades of Ideas

Our articulation of the court reform issue is, of course, not new. For many generations, commissions such as ours, as well as legislative panels and other groups, have decried the structure of the New York courts, and have proposed a remarkably consistent slate of potential reforms. These include proposals from the Tweed Commission in the 1950s; the Dominick and Vance Commissions in the 1970s; a legislative plan that received first passage in the Legislature in 1986; and a comprehensive reform package proposed by Chief Judge Kaye in 1997 that received resounding support throughout the state. While these proposals differed in their details, all identified the same problems and, in broad strokes, proposed the same solutions: a consolidation of the trial courts and the addition of an appellate department. Yet, after all this time, the structure of the New York State courts remains largely unchanged.

"It is our profound hope that after decades of proposals, the time has finally come to end the waste and inefficiency generated by the New York courts' outmoded and fragmented trial-court structure."

– *Westchester County Association, January 2007*

We have studied these past reform efforts and they have informed our analysis of the current system and our recommendations. The most significant of these efforts are examined briefly in this section.

We observe at the outset that the failure to achieve reform over the last fifty years does not, in our view, reflect a lack of popular support or some substantive deficiency in past recommendations. Rather, we believe that prior efforts failed due to lack of political will and the necessary momentum – a will and momentum that we believe can and should now be developed throughout our state.

The Tweed Commission (1955 – 1958)

Perhaps the most influential group to have studied our court system was the Temporary Commission on the Courts, which was established in 1953 by the New York State Legislature.[73] Between 1955 and 1958, this group, popularly known as the "Tweed Commission" for its chair Harrison Tweed, issued four reports calling for a series of reforms, with consolidation of the state's trial court system as its centerpiece.

The Commission "found that diverse problems such as calendar congestion and delay, complexities of practice and procedure, inadequate handling of youth, children and the family in the courts and lack of proper administrative practices were all either the results of, or aggravated by, the fragmentation of jurisdiction among many courts and the almost complete lack of mechanisms for coordinating the efforts of the various parts of the judicial system toward the effective administration of justice."

– *Tweed Commission (1955)*

In June 1955, the Tweed Commission's Subcommittee on Modernization and Simplification of the Court Structure proposed a complete reorganization of the state's court system.[74] The plan would have consolidated the court system's twenty existing courts into five, and contained the following key elements:

- The Court of Appeals would become the Appeals Court of Last Resort, with seven judges elected statewide to fourteen-year terms.[75]
- The Appellate Court would succeed the Appellate Division in hearing appeals from trial courts, and would be organized in the existing four-department structure and staffed by elected trial court judges appointed to the Appellate Court by the Governor.[76]
- The Superior Court would be established as a trial court of unlimited jurisdiction for all civil and criminal cases, replacing the existing Supreme Court, the Court of Claims, and other lower courts; its judges would be elected to fourteen-year terms.[77] There would be at least one Superior Court judge sitting in every county.[78]
- The District Court would serve as the trial court for misdemeanors, small civil cases, and landlord-tenant dis-

[73] L. 1953, c. 591.

[74] See A PROPOSED SIMPLIFIED STATE-WIDE COURT SYSTEM, supra note 4, at 1-12.

[75] See id. at 2.

[76] See id.

[77] See id. at 3-5.

[78] See id. at 3.

putes; it would also be organized on a countywide basis, with intra-county districts designated by the Legislature and judges elected districtwide to ten-year terms.[79]

- The Magistrates' Court would exercise jurisdiction over traffic and other low-level criminal cases; New York City magistrates would be appointed to ten-year terms by the Mayor, and magistrates elsewhere would be appointed to four-year terms by county boards of supervisors.[80]

In 1957, the Tweed Commission modified this plan in response to significant political pressure. Although the resulting proposal left the central elements of the Tweed Commission's plan largely intact, it contained the following significant changes: it provided for a new Family Court in New York City, and it largely exempted justices of the peace outside of New York City from the plan's provisions.[81] A concurrent resolution memorializing the compromise was passed in the Senate in March 1957, but was not passed in the Assembly,[82] with the splitting of the Tenth District proving to be a particularly divisive issue.[83]

New York's system "is directly contrary to the theory enunciated by Dean Roscoe Pound and accepted as almost axiomatic by those who are students and experts in the field of judicial administration."

– *Tweed Commission (1955)*

In January 1958, the Tweed Commission released another revised plan that backed away from several of the proposals that had been set forth in the 1957 plan. This 1958 plan, which, in large part, would have affected only New York City, provided for the creation of a separate Family Court only in the city, retention of jurisdiction over divorce, annulment, and all matrimonial actions (including uncontested ones) in the Supreme Court, and no change to the rural justices of the peace, village police justices, and upstate city court judges. The 1958 plan also left up to the Legislature whether to split the Tenth District. However, like its predecessor, the plan still called for the merger of the Surrogate's Court into the Supreme Court in New York City and County

[79] See id. at 5-6.

[80] See id. at 6-7.

[81] See Leo Egan, Court Bill Changed in Bid for Backers, N.Y. TIMES, Mar. 21, 1957, at 1, 21.

[82] See Leo Egan, Court Plan Dies as Legislature Ends Its Session, N.Y. TIMES, Mar. 31, 1957, at 1.

[83] See Albany Revolts Balk Court Bills, N.Y. TIMES, Mar. 30, 1957, at 13.

Court upstate as well as the transfer of budgetary and personnel control from individual courts to centralized administrators.

In March 1958, the Tweed Commission sent a further modified version of its plan to the Legislature.[84] This final plan passed the Senate by a wide margin but again failed to secure support in the Assembly.[85] On March 31, 1958, the Tweed Commission – having not been renewed by the Legislature – was dissolved.[86]

The Dominick Commission (1970-1973)

In May 1970, the New York State Legislature established the Temporary State Commission to Study the Courts, and appointed Orange County State Senator D. Clinton Dominick as its chair.[87] The Dominick Commission, as it was known, consisted of twelve members appointed by the Governor and Legislative leadership, and included sitting legislators.[88]

Our court system's "fragmented jurisdiction creates serious problems for litigants and the courts. It prevents a litigant from obtaining complete relief in one judicial forum and requires unnecessary duplication of court work."

– *Dominick Commission (1973)*

In its January 1973 final report, the Dominick Commission issued 180 recommendations covering five broad subject areas: (1) administering the court system, (2) financing the court system, (3) structuring the court system, (4) selecting and disciplining judges, and (5) releasing, detaining and indicting criminal defendants.[89]

With respect to the structure of the state courts, the Dominick Commission's most significant recommendation was the proposed merger of the Supreme Court, the Court of Claims, the County Court, the Surrogate's Court, and the Family Court into a single Superior Court with general and original jurisdiction

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[84] These modifications, which were designed to ease the bill's passage, provided that the Surrogate's Court would not be subject to consolidation in any county with a population exceeding 350,000 people and added four Supreme Court justice seats to Queens County.

[85] See Editorial, Court Reform Defeat, N.Y. TIMES, Mar. 27, 1958, at 32.

[86] See Text of Statement by Harrison Tweed on Court Plan Foes, N.Y. TIMES, Apr. 4, 1958, at 13.

[87] See TEMP. COMM'N ON THE STATE COURT SYS., . . . AND JUSTICE FOR ALL (PART 1) (1973) (listing commission members).

[88] See id.

[89] See id. at 5.

over all criminal and civil matters.[90] A second significant recommendation was the creation of a Fifth Judicial Department that would consist of the Ninth and Tenth Judicial Districts.[91] However, neither of these recommendations was ever considered by the Legislature.[92]

The Vance Commission (1974 – 1976)

Shortly after he was elected governor in 1974, Hugh Carey appointed a Task Force on Judicial Selection and Court Reform, chaired by Cyrus Vance.[93] In a memorandum and proposed constitutional amendment, the "Vance Commission," as it was known, called for changes in (1) the method of selecting judges, (2) the number of trial courts in the state, (3) judicial discipline, (4) court administration, and (5) court financing.[94] With respect to the New York State trial courts, the Vance Commission called for the merger of the following courts into the Supreme Court: the New York City Civil and Criminal Courts, the Court of Claims, the Family Court, the County Court, and the Surrogate's Court.[95]

"Expensive and time-consuming disputes over the jurisdiction of the various courts, and the constant shuttling of one case between various courts, will . . . be eliminated by the proposed merger."

– *Cyrus Vance, Memorandum to Gov. Carey (1976)*

In 1976, the Legislature gave first passage of an amendment to Article VI of the New York State Constitution to provide for the following: (1) gubernatorial appointment of judges to the Court of Appeals, (2) centralization of court administration under the authority of the Chief Judge and Chief Administrative Judge, and (3) abolition of the Court on the Judiciary.[96] In 1977, these proposals were given second passage

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[90] See TEMP. COMM'N ON THE STATE COURT SYS., . . . AND JUSTICE FOR ALL (PART 2) (1973).

[91] See id. at 41.

[92] See Summary of Actions Taken in the 1973 Legislative Session, N.Y. TIMES, May 30, 1973, at 22.

[93] See Press Release, Governor Hugh L. Carey, Special Message to the Legislature (May 3, 1976).

[94] See Cyrus Vance, Chair of the Task Force on Court Reform, Memorandum to Governor Hugh Carey 3-4 (Mar. 30, 1976).

[95] See id. at 3-4.

[96] See Amendment Victory Spurs Court Change, N.Y. TIMES, Nov. 10, 1977, at D16.

by the Legislature and were approved by New York's voters.[97] However, these amendments had no effect on the structure of New York's courts.[98]

New York State Bar Association Report (1979)

On June 21, 1978, the House of Delegates of the New York State Bar Association ("NYSBA") directed NYSBA's president to appoint a group to study reorganization of the New York State courts.[99] As a consequence, on September 29, 1979, the NYSBA House of Delegates adopted two principal recommendations: (1) merger of the County Court, Family Court, Court of Claims, Surrogate's Court, and Civil and Criminal Courts of New York City into the Supreme Court; and (2) establishment of a separate Surrogate's Division of the Supreme Court.[100] These recommendations followed an April 2, 1979 proposal by Governor Carey in his State of the State message that provided for merger of the following courts into the Supreme Court: the Court of Claims, the County Court, the Family Court, the Surrogate's Court, and the Civil and Criminal Courts of the City of New York.[101]

"[T]here are substantial additional benefits to be derived from the merger of the major trial courts, particularly through the elimination of fragmented and overlapping jurisdiction and their resultant waste and confusion."

– *Action Unit No. 4 of the State Bar Association (1979)*

These efforts notwithstanding, the Legislature failed to take any action on the court restructuring proposals put forward by Governor Carey.[102]

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[97] See id. at A1, D16.

[98] See id. at D16.

[99] See N.Y. STATE BAR ASS'N, REPORT OF ACTION UNIT NO. 4 (COURT REORGANIZATION) TO THE HOUSE OF DELEGATES ON TRIAL COURT MERGER AND JUDICIAL SELECTION 1 (1979).

[100] See Resolution of the New York State Bar Association House of Delegates (Sept. 29, 1979).

[101] See N.Y. STATE BAR ASS'N, supra note 99 at 26.

[102] See Frank Lynn, Court System Changes Sought by Carey Face Bipartisan Opposition, N.Y. TIMES, Apr. 9, 1979, at A1; A Summary of the Actions Taken This Year by the New York State Legislature, N.Y. TIMES, June 21, 1979, at B6.

The 1986 Proposals

On July 6, 1985, a plan to restructure the New York courts was announced by John R. Dunne, then Chairman of the Senate Judiciary Committee, and Warren M. Anderson, then Senate Majority Leader.[103] The major elements of this 1985 Senate plan were as follows: (1) merger of the Court of Claims, County Court, Surrogate's Court, Family Court, District Courts, and New York City Criminal and Civil Courts into a single Supreme Court; (2) creation of a Surrogate's Division of the Supreme Court for counties with more than 200,000 people; and (3) creation of a Fifth Judicial Department composed of the Ninth and Tenth Judicial Districts.[104]

Public hearings on the 1985 Senate plan were held in the fall of 1985, and opposition to certain aspects of the plan was voiced. In particular, the Association of the Justices of the Supreme Court opposed the reform proposals.[105]

On July 3, 1986 (the last day of the 1986 legislative session), the Assembly and Senate approved a court reorganization plan (the "Unified Court System Proposal") that closely followed the 1985 Senate plan.[106] Despite securing first passage in 1986, however, the Unified Court System Proposal never reached the voters of New York for ratification. It failed to pass the Legislature again when, as required by the Constitution for any amendment, it was resubmitted for a second vote in 1987.[107]

The 1997 Proposals

The most significant restructuring initiative in recent years was launched on March 19, 1997, when Chief Judge Judith Kaye and Chief Administrative Judge Jonathan Lippman

[103] See Press Release, State Senator John R. Dunne, Senate Court Reorganization Plan Announced (July 8, 1985).

[104] See id. at 1-2.

[105] See Editorial, Puffed-Up Judges vs. Court Reform, N.Y. TIMES, Oct. 23, 1985, at A22.

[106] See Summary of the Major Actions Taken by the New York Legislature in 1986, N.Y. TIMES, July 10, 1986, at B4.

[107] See Frank Lynn, Court Merger Seen as Dead in Legislature, N.Y. TIMES, June 8, 1987, at B1.

proposed a concurrent resolution to amend Article VI of the New York Constitution (the "1997 Proposals") for the purpose of restructuring and simplifying the New York trial courts.[108] The 1997 Proposals contained the following key elements:

- A reconfiguration of the state's major trial courts into a two-tiered structure, consisting of a Supreme Court and a statewide system of District Courts with limited jurisdiction.
- The reconfigured Supreme Court would have at least five divisions – family, commercial, probate, state claims and criminal – and more divisions could be established by the Chief Administrative Judge. The Supreme Court would have general jurisdiction over all civil, criminal and family matters.
- The District Court would have jurisdiction over misdemeanor criminal cases, housing cases, and civil cases involving claims of $50,000 or less.
- The creation of a Fifth Judicial Department to relieve the caseload burden on the state's appellate court system.
- The elimination of the limitation on legislative authority to increase the number of Supreme Court Justices.
- No changes would be made to the process of judicial selection. Under a "merger in place" plan, all judges currently serving in courts merged into the Supreme Court would be elevated to Justices of the Supreme Court for the remainder of their terms, and they and their successors in office would continue subject to the same selection process as applied to their offices prior to merger. Likewise, judges in courts merged into the District Court would become District Court judges (with the selection process for these judgeships preserved).

On April 7, 1997, the proposals were introduced in a concurrent resolution in the New York State Senate.[109] In September 1997, the State Assembly Judiciary Committee announced an alternative set of proposals calling for a more

[108] See Press Release, New York State Unified Court System, Proposal to Reform New York State Court System Submitted to Legislature (Mar. 19, 1997).

[109] See S. Con. Res. 4226 (as introduced on Apr. 7, 1997).

limited restructuring of the trial courts in addition to $40 million in increased funding for civil legal services, increases to the statewide assigned counsel rates, and new screening procedures for judicial appointees.[110] A series of joint public hearings was held around the state by the Senate and Assembly between October 1997 and January 1998.[111] The 1998 legislative session closed on June 18, 1998, however, without a vote in either chamber on the proposed concurrent resolutions.[112]

According to contemporaneous news coverage, the Legislature failed to act despite the fact that Chief Judge Kaye's proposals had enjoyed support from "dozens of good government groups and editorial writers across the state, as well as Gov. George Pataki, Attorney General Dennis Vacco and key members of the Senate. Additionally, the Assembly issued a news release . . . in which it endorsed most of Kaye's proposals."[113]

Finally, in 2002, Chief Judge Kaye announced a modified version of her 1997 court reform proposal. The 2002 proposal incorporated all of the provisions of the 1997 proposal but did not provide for the merger of the Surrogate's Court into the Supreme Court. In addition, the plan provided for mandatory transfer to the Supreme Court of most criminal actions or proceedings involving domestic violence or other family offenses. No legislative action was taken on the 2002 version of the Chief Judge's plan.

* * * *

In short, the historical record is littered with failed proposals for court reform. As we see it, however, the human and financial costs that are being borne by our state and its people, as well as the successes that have now been achieved in other states (states which, too, had a long history of unsuccessful

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[110] See N.Y. ASSEMBLY JUDICIARY COMM., JUDICIAL REFORM, INTEGRITY AND ACCESS TO JUSTICE ACT 5-7 (1997).

[111] See John Caher, Momentum Builds for Court Reform, ALBANY TIMES UNION, Sept. 23, 1997, at A1.

[112] See Richard Perez-Peña, The Highlights: Most Major Issues Are Left Unresolved, N.Y. TIMES, June 19, 1998, at B5.

[113] See John Caher, Kaye Upbeat on Prospects for Reform of State Courts, ALBANY TIMES UNION, June 23, 1998, at B2.

efforts), make the case for reform more compelling than it ever was before.

The Overwhelming Calls for Reform

Restructuring would create a court system that "would be flexible, nimble, and readily able to allocate cases to under-utilized courts. It would save litigants time and resources, and would greatly ease the pressure on overwhelmed courts."

– *Association of Judges of the Family Court of the State of New York, January 2007*

In addition to the various commissions, panels, and other bodies that have studied New York's court system over the past decades, numerous business, political, legal, civic, good-government, and other organizations have voiced their support for court reform. Collectively, these groups have delivered a remarkably clear and consistent message: New York's court system is outdated, inefficient, and badly in need of change.

The consensus behind this message reflects a broad collection of organizations from across the political, geographic, and economic spectrum. This group is not exclusively urban or rural, upstate or downstate, Democrat or Republican. Rather, it spans the ideological compass, composed of varied bodies representing wide-ranging interests. In the past decade alone, more than fifty such groups have taken a public stance in favor of restructuring, joining an already-broad and diverse statewide coalition.[114]

[114] See Press Release, N.Y. State Office of Court Admin., Court Restructuring Proposal Prompts Broad Display of Support (May 12, 1998) (listing the following organizations: American Academy of Matrimonial Lawyers, New York Chapter; American Jewish Congress; Association for Children for Enforcement of Support; Association of Judges of Hispanic Heritage; Association of Judges of the Family Court of New York State; The Association of the Bar of the City of New York; Buffalo Area Metropolitan Ministries; Business Council of New York State, Inc.; Catholic Charities of Schenectady County; Center for Law & Justice, Inc.; Child Care Council of Suffolk; The Children's Aid Society; Citizens Committee for Children; Citizens Union; The City Club of New York; Committee for Modern Courts, Inc.; Commercial Lawyers Conference, Inc.; Correctional Association of New York; Franklin H. Williams Commission on Minorities; Graham-Windham Services to Families and Children; Guild of Catholic Lawyers, Inc.; Inter-Faith Impact; Jewish Board of Family and Children's Services; Judicial Process Commission; Law, Order and Justice Center; League of Women Voters of New York State; Legal Aid Society; The March 19th Coalition; National Committee to Prevent Child Abuse – New York State; Northeast Parent and Child Society; New York Society for the Prevention of Cruelty to Children; New York City Partnership and Chamber of Commerce; New York State Association of City Court Judges; New York State Association of Court of Claims Judges; New York State Community of Churches; New York State Court Appointed Special Advocates Association, Inc.; New York State Judicial Committee on Women in the Courts; New York Urban League; People for the American Way; Rockland County Bar Association, Inc.; Schenectady Inner City Ministry; State Communities Aid Association; Statewide Youth Advocacy; Supreme and County Court Clerks Association; Troy Area United Ministries; United Jewish Federation of Northeastern NY; Victim Services Agency; Women's Bar Association of the State of New York; Women's Prison Association; and YWCA of Schenectady).

Business organizations, in particular, have decried the time and resources that are wasted each year by the current system's inefficient and outdated structure. As these groups have noted, the present system not only forces litigants into multiple courts to resolve closely related matters, but it also prohibits efficient management techniques, leaving court administrators powerless to redistribute cases from overburdened to underutilized courts. The result is an unwieldy, complex system, inhospitable to business and economic growth.

A restructuring "would make the courts less complex and less frustrating for litigants, lawyers, judges and court officers. That's why they are supported by virtually every major legal organization, civic group and newspaper in this state."

– *Stop Dawdling on Court Reform, Daily News, June 14, 1998*

As the Partnership for New York City, one of our state's leading business organizations, recently observed, "New York State has the nation's most inefficient and expensive trial court system." As noted in Section Two, above, the Partnership and several of our state's most prominent business organizations have formed a "Business Coalition for Court Efficiency," and issued a statement indicating strong support for "efforts to secure amendment of the New York State Constitution to create a two-tier court system that will greatly improve the administration of justice and result in significant savings of time and costs to litigants and business."[115]

Good-government groups, likewise, have been united in their criticism of the current system. These groups have similarly called for reforms to remedy the courts' inconsistencies, focusing in particular on the costs to the state of the current system. For example, Citizens Union has stated that the "consolidation of the courts into a more efficient and citizen friendly system for New York is long overdue," and has endorsed the merger of "New York's antiquated and convoluted court structure . . . into a two-tier structure."[116] Likewise, the League of Women Voters of New York State has stated that the current "archaic" system "needlessly wastes the time and resources of litigants, businesses, municipalities, and courts."[117]

[115] See Appendix iii. The business groups in the coalition include: Partnership for New York City, Metropolitan Development Association of Central New York, the Business Council of New York State, Long Island Association, and the Westchester County Association (which has also submitted its own letter of support).

[116] See id.

[117] See id.

Groups representing the indigent also uniformly support restructuring. Significant to these groups, naturally, are the deleterious effects the current system has on members of the low-income community, who can least afford the increased costs imposed by the current system. As Legal Services of New York has stated, the congestion and confusion caused by the current court system "particularly affects the lives of poor people in New York City . . . . Unable to defend themselves adequately, and often missing rescheduled court dates due to lack of child care options or rigid work schedules, poor people lose their homes, medical care, public benefits and families."[118]

Finally, a broad cross-section of legal groups – including statewide bar associations, judges' groups, and local lawyers' associations – stand firmly behind restructuring. In their view, the current court system demeans the quality of justice courts are currently able to provide. Indeed, the New York State Bar Association and the Association of the Bar for the City of New York have for decades supported court restructuring.[119] The Atlantic Legal Foundation has also supported court restructuring for years and has stated that "[t]he current system cannot be defended. It is inefficient, costly to litigants and generally not conducive to the swift administration of justice."[120] These organizations and others have – in addition to historically supporting court reform – specifically endorsed the proposals that we make in this Report. Their statements of support are included in Appendix iii.[121]

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[118] See id.

[119] See id.

[120] See id.

[121] The complete list of organizations that have submitted letters of support is as follows: Association of the Bar of the City of New York, Atlantic Legal Foundation, the Business Council of New York State, Center for Law and Justice, Citizen's Union of the City of New York, the Fund for Modern Courts, League of Women Voters of New York State, Legal Services for New York, Long Island Association, Metropolitan Development Association of Central New York, New York County Lawyers' Association, New York State Association of City Court Judges, New York State Association of Criminal Defense Lawyers, New York State Association of Family Court Judges, New York State Bar Association, Partnership for New York City, and the Westchester County Association.

— SECTION FIVE —

RECENT ADMINISTRATIVE INITIATIVES

In the absence of structural reform, OCA has over the past ten years developed a number of initiatives that have attempted to ameliorate the structural inefficiencies of the court system by way of administrative fiat. These include the introduction of the Commercial Division, a separate unit within the Supreme Court that specializes in addressing complex business disputes; the Integrated Domestic Violence Courts, which attempt to bring together the separate cases that can arise out of a single family in crisis; and Community Courts, which look more holistically at the related criminal, housing, and family problems that can face litigants in a particular community. These innovations and others have met with tremendous success, and have garnered widespread attention inside and outside of the state.

Many of these initiatives have helped realize the types of savings and efficiencies that could be brought about by a true consolidation of the trial court system. At the same time, these successes – while significant – have not been brought to a statewide scale. To achieve such scale, it is clear that reform must be more fundamental, and not the result of administrative action. That said, these initiatives clearly foretell the benefits of a consolidated system. For this reason, several of these successes are described below.

The Commercial Division

Prior to 1995, many New York businesses tried to avoid New York's state courts because the courts were viewed as inefficient, slow and costly, especially as compared to other, more modern state systems. Indeed, this perception was so widespread that New York had developed a reputation as a state whose legal system was hostile to business interests.[122] In 1995, the

[122] Symposium, Refinement or Reinvention: The State of Reform in New
(...continued)

Commercial Division of the New York State Supreme Court was created under the leadership of Chief Judge Kaye in order to concentrate and improve business litigation in one Division of the state court system.

The Commercial Division was the result of the combined efforts of a broad coalition of lawyers, judges, and businesses. In particular, the Business Council of New York State, Inc., a statewide coalition of business organizations, was closely involved in the creation of the Commercial Division. The Division is a forum for resolution of complicated commercial disputes, which typically require greater expertise across the broad and complex expanse of commercial law. Within this more specialized forum, cases are monitored and managed, and deadlines are set and enforced, to ensure that cases progress and that backlogs do not develop in one court versus another.[123]

In a restructured system, "[t]here would be improved case management, more uniform procedures, fewer squabbles over jurisdiction and an end to cases to be resolved in more than one court."

– *Albany Bobbled Court Restructuring, Buffalo News, Aug. 15, 1998*

On November 6, 1995, the Commercial Division officially opened its doors in New York and Monroe Counties. In the ensuing eleven years, the Division has expanded to Albany, Erie, Kings, Nassau, Queens, Suffolk and Westchester Counties, and throughout the Seventh Judicial District.[124] New York's commercial courts handle well over 6,500 cases each year.[125]

The Commercial Division has been an unmitigated success in New York State. For example, the Commercial and Federal Litigation Section of the New York State Bar Association has described the Commercial Division as "a case study in successful judicial administration."[126] At the time the Division

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(...continued)
York, 69 ALB. L. REV. 831 (2006) (Chief Judge Kaye noting that "in the early 1990s, New York courts were so overburdened that the business community and commercial bar often turned to Federal courts and alternative private forums").

[123] New York State Unified Court System, A Brief History of the Commercial Division, available at http://www.nycourts.gov/comdiv/Brief_History_of_CD.htm.

[124] New York State Unified Court System, The Commercial Division of the State of New York, General Information, available at http://www.nycourts.gov/comdiv/general_information.htm.

[125] Claude Solnik, In N.Y. State Supreme Court, It's All Business, LONG ISLAND BUS. NEWS, Sept. 22, 2006.

[126] A Case Study in Successful Judicial Administration: Commercial Division, New York State Supreme Court, N.Y. LITIGATOR, Aug. 1997, at 24.

was created, The Wall Street Journal stated, "[w]hile several other states have been pushing for trial courts devoted exclusively to business litigation, New York is the first in which a general trial court has implemented such a program."[127] The National Law Journal touted the Commercial Division Justices for their rigorous management of cases through "rapid disposition of motion practice, realistic and practical scheduling, and trial dates set early in the case to promote efficiency."[128]

In short, the Commercial Division has shown what can be achieved if court administrators are permitted to apply basic principles of efficient management to a court and body of cases that need particular attention and support. Again, however, the Commercial Division has not been brought to a statewide scale. It is for this reason that we propose to institutionalize, not only the Commercial Division, but the principles that underlie it, to all courts throughout the state (see Section Six below).

Integrated Domestic Violence Courts

"The most troubling example of the disjointed court system is found in the experience of domestic violence victims, who can have their cases brought before as many as four different judges in three different courts and often even more adjudicators."

– *The Fund for Modern Courts, January 2007*

The defining principle of an Integrated Domestic Violence ("IDV") Court is that it handles all related cases pertaining to a single family where the underlying issue is domestic violence.[129] In 1996, Domestic Violence Courts were introduced to handle cases of violence between intimate partners in an effort to enhance offender accountability, increase victim

[127] Court for Business Disputes, WALL ST. J., Oct. 11, 1995, at B8.

[128] Richard M. Goldstein and Bradley I. Ruskin, A Visit to a New York Court Need Not Be An Ordeal, NAT'L L. J., Jun. 28, 1999, at C9. The Commercial Division has also received excellent reviews from business leaders and groups like the Business Council of New York State. For example, in 1999, Peter J. Bijur, the Chairman of the Business Council, applauded the work of the Commercial Division and remarked, "We have now gone in four years' time from a court system that often evoked frustration among businesses, to a business court that is the envy of other states." The American Corporate Counsel Association has expressed its appreciation and support for the Commercial Division and urged other states to follow New York's lead. The American Bar Association's Business Law Section described the Commercial Division in 2000 as "a model of a specialized court devoted to the resolution of business disputes." The 87th Annual Dinner of the New York County Lawyers' Association in December 2001 saluted the Commercial Division and honored the Division's justices.

[129] N.Y. STATE UNIFIED COURT SYS., INTEGRATED DOMESTIC VIOLENCE COURT, MISSION STATEMENT & KEY PRINCIPLES 2 (2005).

safety and facilitate access to specialized services.[130] The IDV concept was first implemented in 2001 and took the efforts of the Domestic Violence Courts a step further – assigning one judge to handle a domestic violence victim's related civil and criminal cases.[131] In approximately twenty percent of criminal domestic violence cases, there is a related matter in another court.

Under the IDV "one family/one-judge" model, both criminal and civil matters, such as custody, visitation, civil protection orders and matrimonial actions, are handled by one judge, rather than various judges in different courts. In this way, the IDV Courts simplify the process for litigants and allow them to overcome the artificial jurisdictional barriers of New York's complex trial court structure. Moreover, this approach promotes better and more consistent judicial decision-making and requires fewer court appearances by the victim. Like Domestic Violence Courts, IDV Courts ensure intensive offender monitoring and accountability and enhanced access to services for victims and their families.[132]

"I remember one occasion in the Bronx IDV court where the lawyers presented us with two conflicting orders; an order from the Criminal Court mandating that the mother stay out of the home and a Family Court order of protection against the father. The children were standing there with no one to take care of them. As an integrated Supreme Court we were able to modify the orders so that one parent could care for the children in the home."

– *Former IDV Court Attorney*

The basis for IDV Court jurisdiction is the interrelationship between the family, criminal and matrimonial matters that can face a single family. The threshold requirement for entry into IDV Court is a criminal case involving domestic violence and a case in Family Court or a matrimonial case in Supreme Court (or both) where the cases have a party in common. IDV Courts may also take Family Court cases together with Supreme Court cases, even if there is no criminal case pending, where the cases have at least one party in common, provided there are allegations of domestic violence in at least one case.[133] Once eligible cases are identified, there are protocols in place to transfer them at the earliest stage from the originating courts to the IDV Court.

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[130] CHIEF ADMINISTRATIVE JUDGE JONATHAN LIPPMAN, TWENTY-EIGHTH ANNUAL REPORT OF THE CHIEF ADMINISTRATOR OF THE COURTS FOR CALENDAR YEAR 2005, at 18 (hereinafter "TWENTY-EIGHTH ANNUAL REPORT").

[131] Id.

[132] Id. at 18.

[133] See N.Y. STATE UNIFIED COURT SYS., INTEGRATED DOMESTIC VIOLENCE COURT, MODEL IDV COURT 2 (2006).

As of January 2007, there were thirty-three IDV Courts in operation with four more scheduled to open within the month. To date, these courts have served approximately 9,000 families by consolidating some 43,000 cases on a per family basis. The average number of cases per family in the IDV Courts was 4.86,[134] meaning that, without consolidation, each such family would have to juggle, on average, nearly five separate cases to address its legal crisis.

Again, the consolidated approach that IDV Courts bring to related family and criminal matters is precisely the type of consolidation that should be brought to bear across all courts on a statewide scale.[135]

Community Courts

New York's Community Courts reflect an effort to bring together government agencies, local civic organizations, businesses, social services providers and community residents to solve neighborhood problems and spur local revitalization.[136] In bringing these resources together, Community Courts are able to look more holistically at the related criminal, housing, and family problems that can face litigants in a particular community.

"Because there is more information [in IDV Courts]…the actual orders that we get…are more solid…everyone knows what is going on with a violation, the order of protection, or visitation. You get your results in real time."

– *Family Law Attorney*

The first of its kind in the country, the Midtown Community Court in Manhattan has been addressing neighborhood problems since 1993. The Court handled almost 16,000 quality-of-life cases during 2006 – cases dealing with prostitution, graffiti and illegal vending – through community restitution and social service sentences.[137] The court has on-site services which include both an adult job-placement program and a youth job-readiness program for young adults. Community

[134] Data provided by OCA.

[135] In order to gain insight into the experiences of litigants and attorneys with cases in the IDV Courts, on December 11, 2006, the Commission hosted a focus group comprised of attorneys who have practiced in these courts. The participants included a Legal Aid attorney, an Assistant District Attorney and defense and family court attorneys associated with a number of organizations focused on representing families in crisis. We have included quotes from the focus group's participants in the margins of this Report.

[136] TWENTY-EIGHTH ANNUAL REPORT, supra note 130, at 19.

[137] Data provided by OCA.

Courts in Hempstead and Syracuse also focus on nonviolent crime and sentences which are community service oriented.[138]

The Red Hook Community Justice Center in Brooklyn is the nation's first multi-jurisdictional community court, with a single judge hearing criminal, housing and family court cases. A second multi-jurisdictional court, the Harlem Community Justice Center, focuses on youth crime, housing and the impact of offenders released from confinement. Programs help landlords and tenants resolve conflicts and provide at-risk youth with a community service corps, tutoring and mentor programs.[139]

These courts are another example of an administrative initiative which has integrated cases to cut across the disparate jurisdictional boundaries of criminal, civil and family court matters. The courts' single forum allows a judge to comprehensively address problems affecting individuals and specific communities.[140]

* * * *

All of the administrative initiatives described above have involved to some degree an effort to overcome the inefficiencies that are created by the artificially fragmented structure of our courts. Despite the initial awkwardness of implementation (*i.e.*, the need to develop procedural "end-runs" around the jurisdictional hurdles) these initiatives have demonstrated that very real efficiencies can be achieved through consolidation and innovation. Again, given this evidence, simplification of our entire court system should be of the highest priority in our state.

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[138] TWENTY-EIGHTH ANNUAL REPORT, supra note 130, at 19.

[139] Id. at 19-20.

[140] The goals of both the Red Hook and Harlem multi-jurisdictional courts include speedier, more effective dispositions and increased compliance with court orders by making information and services available at the courthouse, such as drug treatment, mediation, and entitlement assistance. Among other results, these efforts have led to an increased public confidence in the court system. For example, a 2005 study of Red Hook, Brooklyn reported that seventy-eight percent of respondents had a positive feeling about having a community-based court in their neighborhood. See DANA KRALSTEIN, COMMUNITY COURT RESEARCH, A LITERATURE REVIEW (2005) available at http://www.courtinnovation.org/_uploads/documents/ccresearch.pdf.

— SECTION SIX —

OUR PROPOSAL FOR REFORM

This section of the Report sets out the details of our plan. In broad strokes, we propose a consolidation of our state's major trial courts into a two-tier structure – namely, a statewide Supreme Court and a series of regional District Courts.[141] We also propose the lifting of the constitutional cap on Supreme Court Justices, and the addition of a Fifth Department to the Appellate Division. We believe that this proposal captures the best elements of past proposals to restructure the courts, while introducing new concepts based on our study of the current system and the successful administrative initiatives that have been introduced in recent years.

The benefits of our restructuring proposal are many. Instead of having duplicate and inconsistent proceedings in several different courts, all cases would be heard in either Supreme or District Court. Victims of domestic violence and families in crisis would have all of the issues relevant to their circumstances brought before the same judge. Plaintiffs with claims against both the state and private parties would bring their cases in a single court. Appellate cases would be more evenly distributed among the departments, and cases would proceed more quickly and receive more attention from less burdened judges. In short, virtually all litigants could be expected to save many hours of time and expense in a streamlined system. Finally, the Legislature would be permitted the flexibility to add additional Supreme Court Justices as the population of the state continues to grow.

"Greater efficiencies achieved through Court Restructuring would return the focus back to the administration of quality justice, where it belongs. Public confidence would be restored to a system that has long been viewed in the public eye as insurmountable, and the new, simplified structure would promote public understanding about how the court system operates."

– *The Fund for Modern Courts (2007)*

[141] We considered streamlining our court system even further by proposing a one-tier system. Indeed, California initially consolidated its many trial courts into a two-tier system, but later consolidated further into a single trial court. See pp. 30-32, above. However, we believe there is a benefit in designating a superior court to handle more complex matters, be they civil or criminal, while less substantial matters would still be heard in a separate forum. A two-tier system strikes a balance between the need to make our courts run more efficiently and the need to ensure that minor civil or criminal matters do not unduly occupy the resources of judges and court staff who are engaged in handling more complex commercial disputes, felony criminal prosecutions, and the legal problems of families in crisis. We do not foreclose the possibility, however, that future study of the functioning of the newly merged system will reveal that further consolidation to a one-tier system is appropriate.

The details of our proposal are reflected in this section and also in the draft constitutional amendment we have appended to this Report. This amendment contains all of the tools needed for the Legislature to begin to implement our proposals immediately.

The Supreme Court

"New York's present system is a nightmare of jurisdictions."

– *Don't Imperil Court Reform, Albany Times Union, May 19, 1998*

Court Merger. The most significant component of our restructuring proposal is the merger of New York's major trial courts into a consolidated Supreme Court.[142] Under our plan, the County Court, Family Court, Court of Claims and Surrogate's Court would all be abolished and their judges merged into the Supreme Court. This newly expanded Supreme Court would have general jurisdiction to hear any kind of case, including all family cases and cases that include claims against the state.

Judges. The judges merged into the Supreme Court would become full-fledged Justices of the Supreme Court with the same jurisdiction and authority as existing Supreme Court Justices. Judges of the New York City Civil and Criminal Courts who are serving as Acting Supreme Court Justices would also be added to the newly merged Supreme Court as full Supreme Court Justices.[143]

Specialized Divisions. While the new Supreme Court would be a court of general jurisdiction, it would also have within it several specialized Divisions. For the present, these Divisions would include a Criminal Division for felony criminal

[142] Although nearly all other states and our federal government refer to their courts of last resort as "Supreme Courts," New York State refers to its trial court of general jurisdiction as the "Supreme Court," while the state's highest court is called the "Court of Appeals." Past commentators have proposed that another designation, such as "Superior Court," be used to refer to New York State's trial court, and the redesignation of our Court of Appeals as the Supreme Court, to avoid the obvious confusion that our unusual nomenclature can create. Others, however, have suggested that a change itself would cause unnecessary confusion, and might diminish the respect that the Supreme Court has long enjoyed as the preeminent trial court within the state. In our view, a name change is not critical to the success of court restructuring, and we thus make no recommendations on this potentially divisive issue.

[143] The future of the Acting Supreme Court Justice position, and the method of selection for Justices of the new Supreme Court, is more fully addressed later in this section where the "merger in place" concept is discussed.

prosecutions; a Commercial Division which would be a large scale expansion of the present Commercial Division of the Supreme Court; a Family Division for domestic violence matters and all matters affecting a family; a State Claims Division for cases involving claims against the state (including cases with claims against non-state parties and impleader claims by the state); and a Probate Division for matters concerning estates of decedents. There would also be a General Division to hear all cases not otherwise being heard in the specialized divisions.

It is important to note that our proposal does not call for these Divisions to be mandated by the Constitution. Rather, changes to the system of Divisions, including the establishment of new Divisions or the removal of existing ones, would be controlled administratively so that court administrators can easily make adjustments to reflect changed needs in the future.

The creation of Divisions should not be confused with a continuation of our present structure and its overlapping series of courts. The Division system strikes a balance between the desire to maintain the specialization of judges and staff in particular areas of law while offering judges who previously were confined to a narrow set of responsibilities the opportunity to exercise jurisdiction over a broad array of matters and to render justice more globally and effectively. All Divisions would enjoy the full panoply of the Supreme Court's general and original jurisdiction, and there would be no bar to a justice serving in any one of them from simultaneously serving in another, or from hearing a case outside the embrace of the Division to which he or she is assigned while hearing cases in the Division.

"The compartmentalization of subject matter into specialized courts has created situations where two courts are necessary to decide all aspects of a case, because no one court possesses the jurisdiction to decide all the issues."

– *Dominick Commission (1973)*

Surrogate's Court. As noted above, our restructuring proposal includes the merger of the Surrogate's Court into the newly expanded Supreme Court. We recognize that, given the expertise Surrogate's Court judges bring to bear on a particularly complex area of law, some have suggested that a separate Surrogate's Court be maintained. We are confident, however, that this expertise can be preserved in the Probate Division of the Supreme Court, where these judges will be concentrated. We believe this strikes the appropriate balance between ensuring that judges expert in the law pertaining to the estates of decedents

continue to handle such matters while enabling these same judges to handle related matters and other matters depending on the needs of the court system.

Claims Against the State. Our plan does not alter the right of the state to a nonjury trial. Rather, claims against the state would be heard in the State Claims Division of the Supreme Court. Significantly – as is often the case – if there are claims against defendants other than the state in the same lawsuit, these claims could be heard in the same court, before the same judge. If the other claims require a jury trial, the case could still be consolidated for all pretrial purposes, including the entire discovery phase, which is where much of the duplication between the Court of Claims and other courts now occurs, as well as for the trial itself, during which the same judge could preside over a bench trial for the claims against the state and a concurrent jury trial for all other claims.

Responses to Concerns. We have considered the concern that has been expressed in the past that a restructuring plan such as this will empower court administrators to reassign judges arbitrarily or to retaliate for unpopular decisions. This concern is addressed in detail in Section Seven of this Report, but we have every confidence that OCA and its administrative judges will act appropriately and in good faith. We note that OCA has for many years had the power to reassign judges and has not abused its authority in this regard. Likewise, a restructured system would reduce the need for OCA initiatives and temporary assignments that have raised these concerns in the past. We have considered whether to create a mechanism that would provide a check on administrative reassignment by requiring the consent of the affected judge or by providing some right of appeal. Because we do not believe there is a serious risk of abuse of the judicial reassignment authority, we have not included such a mechanism in our proposal. We note, however, that such a remedy could be easily incorporated, if necessary to ensure confidence in the new system.

The District Court

Court Merger. The second component of our plan is a consolidation of New York's lower trial courts into a new system of regional District Courts statewide. District Courts would be established in New York City, to replace the combination of the New York City Criminal and Civil Courts; on Long Island, to replace the Nassau and Suffolk District Courts, respectively; and in the sixty-one cities outside New York City, to replace each of their present City Courts. The District Courts would preside over civil disputes involving damage claims for $50,000 or less, including small claims cases, and would also serve as local criminal courts, where they would preside over nonfelony criminal prosecutions and violations of local ordinances. The District Courts would also have jurisdiction to hear landlord-tenant disputes, but within New York City residential landlord-tenant disputes would be heard in a special Housing Division in the New York City District Court.[144]

Judges. The judges of the courts being consolidated into the new District Courts will become District Court judges, with the authority to hear all cases – civil or criminal – for which this court has jurisdiction. Housing Judges of the present New York City Housing Court, who now are nonjudicial court employees but who, in discharging their quasi-judicial functions in one of the toughest tribunals in our court system, are true judges in every sense of the word, would become District Court judges presiding in the Housing Division of New York City's District Court.[145]

Nomenclature. We have considered alternative names for this court, and are not wedded to the name "District Court."[146]

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[144] This Housing Division will replace the present Housing Court of the New York City Civil Court. The unique issues concerning resolution of landlord-tenant disputes in New York City are discussed later in this section.

[145] The method of selection for the judges of the new District Court is addressed later in this section where the "merger in place" concept is discussed.

[146] For example, we considered the name "Circuit Court" but concluded that such a designation is more suitable for courts with judges who "ride circuit," traveling among several locations to hear cases. Similarly, we considered the name "Municipal Court" but felt that term does not adequately reflect the jurisdictional breadth of our proposed lower court. Accordingly, we have selected "District Court" which is the term used by many other states, in addition to the Federal court system.

We recognize that some have expressed the concern that this term might be confused with the District Courts on Long Island and might connote an expansion of those courts or some alteration to the Town and Village Justice Courts. Whatever its name, we wish to make absolutely clear that the lower court we have proposed is not an expansion of the Long Island District Courts (to the contrary, our plan abolishes those courts and merges them into our proposed lower court), and, as explained later in this section, our plan makes no changes to the current system of Town and Village Justice Courts.

The Appellate Division

As described in Section One, there is near unanimous consensus that the Appellate Division, which has not been adjusted since 1894, is outdated and unbalanced. The Second Department today includes approximately one-half of the state's population and bears a caseload that is much greater than the other three departments.

"[I]f we are serious about continuing to provide access to justice, the most professional of services to the community we serve, while administering justice in a timely fashion, the New York State Supreme Court Fifth Judicial Department needs to become a reality."

– *Presiding Justice of the Appellate Division, Second Department, A. Gail Prudenti, January 2007*

For this reason, we propose the addition of a Fifth Department to the Appellate Division so that the burden of our state's appellate caseload can be shared more evenly and efficiently.[147] In addition, given that it has taken more than a century to adopt any changes to the Appellate Division system, we believe the Legislature should be permitted to approve future changes to the system without the need for a constitutional amendment so that adjustments can be made more easily.

In addition to long overdue improvements to the Appellate Division's efficiency, our restructuring proposal offers other benefits as well. Most importantly, the pool of Supreme Court Justices would be significantly expanded by the consolidation of New York's major trial courts into a new Supreme Court. Under our plan, all of these new Supreme Court Justices would be eligible for appointment to the Appellate

[147] We leave it to the Legislature to decide if it is more practicable to make changes to the system by adding a Sixth Department as well. We do not oppose the addition of a Sixth Department (or additional departments) so long as the end result is an even, efficient division of cases among the Appellate Division departments.

Division, thereby creating a broader and more diverse pool of candidates available for this court.[148] While we acknowledge and appreciate that our sitting Appellate Division judges are eminently qualified and have served our state with distinction, we believe that the expansion of the pool of candidates can only have a positive effect on the caliber of judges selected to serve in the Appellate courts in the future.

While there has long been a consensus that the Appellate Division should be expanded, there has been little agreement on how to draw the boundaries for the new department. This issue is one of great political sensitivity. If the boundaries for the Fifth Department are drawn (or the boundaries from the other departments are redrawn) around a population center that has a majority concentration of voters from one or the other political party, it is possible that the judges for that department will mainly consist of judges affiliated with that political party. This obstacle has stood in the way of meaningful change to our Appellate Division structure for many decades.

We do not believe that the boundaries of our Appellate Divisions should to any extent be structured around political lines. That said, we take no position on how the lines of a new Fifth Department should be drawn, other than to point out that such boundaries must achieve balance and judicial efficiency. We strongly urge the Legislature to move past the political issues and finally reach agreement on the boundaries of the Fifth Department.[149]

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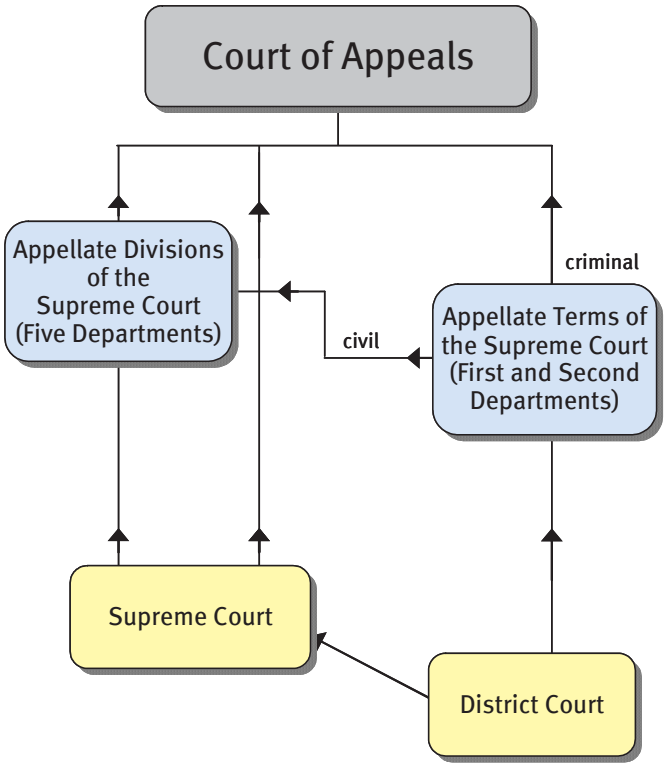
[148] We note the potential concern that this would make eligible for promotion a large number of judges who were never considered eligible for the Appellate Division when they were first elected or appointed. However, we have no reason to believe the selection system for the Appellate Division will be any less rigorous than it is now and we believe there are significant benefits to expanding the pool of candidates to a more diverse group of judges.

[149] We note that past proposals have set a deadline for the Legislature to draw the boundaries for the Fifth Department. Under these proposals, if the Legislature fails to reach agreement by the deadline, OCA would be given a period of time to draw the boundaries, after which the Legislature would be given a final opportunity to offer an alternative plan of its own. We recognize, and do not oppose, the inclusion of a mechanism of this kind if there is concern that the Legislature will fail to reach agreement on this longstanding issue.

The diagram below outlines the structure we have proposed for a new Supreme Court, District Court and Fifth Department of the Appellate Division.

Proposed Structure



Note: Town and Village Courts and direct appeals excluded.

The Concept of "Merger in Place"

Perhaps no issue has proven more divisive in our state than the method by which judges are selected. The debate between whether judges should be popularly elected or whether they should be appointed (often referred to as "merit selection" by supporters) has raged for many decades and has operated in the background, and sometimes the foreground, of many of the prior proposals to restructure our courts.

This issue has attracted particular attention in recent years in the wake of recommendations issued by a commission chaired by John Feerick, former Dean of Fordham University School of Law, and the affirmance by the U.S. Court of Appeals for the Second Circuit of Judge John Gleeson's January 2006 decision holding unconstitutional the current system of judicial elections,

as a result of which near-term legislative changes may be made to the electoral system.[150] In addition, Governor Eliot Spitzer has recently stated in his 2007 State of the State Address that he intends to introduce a constitutional amendment to implement a "merit appointment process" for judicial selection.[151]

We are mindful of the importance of this issue to New York State and the future of our courts. However, we view our mandate as being strictly limited to the question of how the court system should be organized. While some in the past have attempted to link the issue of structural reform with that of judicial selection, we emphatically do not. There is no reason for these two issues to be bound together, and indeed, there is every reason to analyze them, and to propose solutions, on a stand-alone basis.

Accordingly, our plan calls for changes to the structure of the courts while leaving in place the existing system of judicial selection. We have not made recommendations on how judges should be selected, what their terms should be, what their qualifications should be, the issues of mandatory retirement and judicial salaries, and a variety of other issues that are outside the periphery of structural changes to our courts.[152] As a consequence, our proposal is what has in the past been referred to as a "merger in place" plan.

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[150] See N.Y. STATE COMM'N TO PROMOTE PUBLIC CONFIDENCE IN JUDICIAL ELECTIONS, FINAL REPORT TO THE CHIEF JUDGE OF NEW YORK STATE (2006); Lopez Torres v. N.Y. State Bd. of Elections, 411 F. Supp. 2d 212 (2d Cir. 2006).

[151] See Governor Eliot Spitzer, State of the State Address (January 3, 2007), available at http://www.state.ny.us/governor/keydocs/NYS-SoS-2007.pdf.

[152] While we make no formal recommendations in our plan concerning judicial salaries, it is clear that the system of compensation for judges in New York State is abysmal. Our judges have received just two pay raises in the last eighteen years, and a Supreme Court Justice today is paid far less than a first year associate at a New York City law firm. New York State's judges have gone the longest in the country without a pay raise of any kind. If we are to continue to attract the best and the brightest to serve as judges in New York State, a pay increase for judges is needed, and other reforms to the compensation system must be enacted.

Similarly, we have not formally studied the mandatory retirement age for judges in our state. However, based on our study of the court system as a whole, we observe that the mandatory retirement age of seventy has had the effect of forcing some of our state's brightest jurists to retire at a time when they might still have made significant contributions for many additional years. In the context of the broader study of judicial selection that is taking place in our state, we urge that this issue be carefully considered as well.

Under a "merger in place" plan, the future selection process for all of the judges in the new Supreme and District Courts will be just the same as it was before the restructuring. If a judicial seat was previously filled through an election, the seat would continue to be filled by election after restructuring. If a seat was filled by appointment, the judgeship would remain an appointed position. All of the existing terms of office would remain the same as well. In addition, the "merger in place" concept would run with the seat, not with the individual judge, and would continue with the successors of those currently sitting as judges (and with their successors, indefinitely) unless and until the Legislature makes changes to the system of judicial selection and/or changes to other attributes of a particular judicial position.

The "merger in place" concept is best illustrated through the following examples:

- A judgeship that before restructuring was in the Family Court outside New York City and was filled for a ten-year term by countywide election will, after restructuring, be a Supreme Court judgeship likewise subject to election countywide for a ten-year term.
- A judgeship that had been part of the Court of Claims and subject to appointment by the Governor and confirmation by the Senate for a nine-year term will, after restructuring, although now a Supreme Court judgeship, continue to be subject to gubernatorial appointment (and senatorial confirmation) for a nine-year term.
- Those who occupy offices that were judgeships of the Supreme Court prior to the passage of the court restructuring amendment will continue to be elected to office for fourteen-year terms by the voters of their Judicial Districts.
- Judges of the lower courts, which are all to be subsumed into a statewide District Court system, also will continue subject to selection in the same manner as they were in their predecessor courts.

We recognize that a "merger in place" plan creates a number of incongruities, which are discussed below. At bottom, however, this plan is no more complicated in this respect than the present system, in which all of the judges of the various courts

are selected through different methods and for different terms. A "merger in place" plan allows the much-needed goal of court restructuring to be achieved without having to wait for the more controversial judicial selection issue to be resolved.

The Methods of Selection. As noted, we realize that "merger in place" leads to some anomalous results. The newly expanded Supreme Court will have some judges who are elected (*e.g.*, former Family Court judges from outside New York City, former Surrogate's Court judges) and some judges who are appointed (*e.g.*, former Court of Claims judges, former New York City Family Court judges). The judges will also differ in their terms of office: some will sit for fourteen-year terms (preexisting Supreme Court Justice seats), some for ten-year terms (former County Court judges), and some for nine-year terms (former Court of Claims judges). Likewise, the new District Court will have a consolidation of elected and appointed judges with varying terms of office.

While this result is clearly an amalgam, it is no more so than the arrangement that now exists.[153] We believe that what we are proposing provides an infinitely better structure for the courts, *whether or not* a decision is made to change the manner of selection, for the multiplicity of judges who operate within our system today.

Electoral Lines. "Merger in place" leads to similar incongruities with regard to the geographic area in which some of the judges of the new Supreme Court would run for office. Under our plan, judges who occupied their offices as JSCs prior to restructuring would continue to run for office across an entire

[153] Indeed, we observe that our plan is more coherent than the present system – which, to the public, presents the Supreme Court as an elective bench and Supreme Court Justices as serving fourteen-year terms. Of course, the reality is that half of the Justices of the Supreme Court in New York City are really judges of other courts – as a consequence of which, they serve for less than fourteen-year terms, and a sizeable number of them are not even elected, having been appointed to office either by the Governor or by the New York City Mayor. Moreover, all of these Acting JSCs arrive at Supreme Court by means of an administrative assignment by the Chief Administrative Judge – an administrative officer not accountable to the electorate. Under any fair view of the matter, "merger-in-place," which by creating both appointive and elective justices does away with Acting JSCs and court administration's role in deciding who serves on Supreme Court, is a significant improvement over the current system, regardless of how the question of judicial selection is ultimately addressed.

Judicial District. By contrast, judges of the Family Court outside New York City, Surrogate's Court and County Court who have become Justices of the Supreme Court through the restructuring plan would continue to run in their counties only and would not be required to run in the broader Judicial District.

We recognize this incongruity and have considered whether to propose that all elected judges of the new Supreme Court be required to run for office in geographic areas of equal size, either at the county level or the Judicial District level. A remedy of this kind, however, is problematic and would have profound political consequences. On one hand, to require judges who previously ran for office in discrete geographic areas to run in much larger, district-sized areas comprising hundreds of square miles may be viewed as fundamentally unfair, both to the judges and their electors whose influence would be diluted. On the other hand, under a "merger in place" plan, sitting Supreme Court Justices who are required to fund a campaign across wide portions of our state would have the same jurisdiction and authority as judges whose electoral mandate derives from a much smaller set of county voters. This too, may be viewed as a fundamentally unfair solution.

Again, as with the method of selection issue described above, we believe that redrawing electoral lines is beyond our mandate and is a judicial selection issue for others to consider. The system we have proposed is far better, and certainly no more complicated than, the system we live with today. Judges who reach office by election under the present system must run in geographic areas of all shapes and sizes. Our proposal for structural change presents the opportunity to finally achieve critically needed improvements to our court system while leaving aside for now the issue of judicial selection, which is the topic of separate, ongoing debate.

Acting Justices of the Supreme Court. As set forth in Section One, approximately one-half of the judges serving in the Supreme Court in New York City at any given time are Acting JSCs, former New York City Criminal Court, Civil Court, and statewide Court of Claims judges who have been "temporarily" designated to the Supreme Court to increase its ranks.

Our proposal calls for the lifting of the constitutional cap on the number of Justices of the Supreme Court, in addition to increased administrative flexibility so that resources within the newly expanded Supreme Court can be allocated more efficiently. As such, the restructured system will no longer require Acting JSCs, and the temporary-designation power should be a thing of the past.

As for judges currently serving as Acting JSCs, some have suggested that, once the new system is in place, these judges should be returned to the courts to which they were originally elected or appointed. We recognize, however, that many Acting JSCs have served for years with distinction in the Supreme Court, and we would not wish to lose their expertise and experience by having those judges return to other courts.

Accordingly, our plan calls for judges who are currently serving as Acting JSCs to remain in the Supreme Court – where they have served and are needed – as full-fledged Supreme Court Justices. After their terms expire, these judges would be subject to the same selection process as would apply if they were still serving as Acting JSCs.[154] We believe this strikes an appropriate balance between preserving the expertise of an experienced pool of judges while making no changes to the system for how these judges are selected, except that the court administration's role in designating them to the Supreme Court would be eliminated.

NYC Housing Court: A Special Case. The New York City Housing Court presents a unique issue and requires a somewhat different analysis from the other courts being merged into the new District Court.

In 1972, the State Legislature enacted a statute creating the Housing Part of the New York City Civil Court, with jurisdiction over summary proceedings and the enforcement of building codes and other laws prescribing housing standards. It also provided for the use of quasi-judicial hearing officers to preside in the Housing Part in lieu of Civil Court Judges.

[154] In other words, those who came from elected posts on the New York City Civil Court would now be subject to the same election, but for a Supreme Court seat. New York City Criminal Court and Court of Claims appointees would be subject to appointment by the Mayor of New York City and the Governor, respectively.

Today, the Housing Court, as this Part is known, is comprised of approximately fifty such hearing officers (now called Housing Judges), who preside over all residential landlord and tenant cases in New York City. These judges are appointed by the Chief Administrative Judge of the State of New York from an annual list compiled by the Advisory Council, a fourteen member panel comprised of representatives from the real estate industry, tenants' organizations, civic and bar groups, a mayoral appointee and members of the public.

Recognizing the importance of the Housing Court and the fact that its hearing officers already function as constitutional judges in every sense of the word, our plan calls for the Housing Court and its judges to be accorded constitutional status. The Housing Court would remain a distinct branch within the larger District Court, so that its present function as an accessible, user-friendly court for residential landlord and tenant issues is preserved.

We do, however, call for a change to the way Housing Court judges are selected. While, in our view, the Chief Administrative Judge and the Advisory Council have done an exemplary job of working in tandem to select the most qualified and appropriate judges for the Housing Court to date, we believe that under a restructured system, the role of OCA is better suited to the administration of the courts and that the process of selecting judges should be left to others. Our proposal therefore calls for the retention of the Advisory Council but for the Mayor of New York City to select New York City's Housing Court judges.

We have considered whether to recommend the election of Housing Court judges and believe this to be inadvisable. Unlike other aspects of the judicial selection issue, there is a consensus that providing for the election of Housing Court judges would be a mistake given the potential influence that could be brought to bear in the funding of such elections. While others examining the broader question of judicial selection may arrive at a different view, we believe that the Advisory Council should continue to screen and recommend candidates for the Housing Court, and that the Mayor of New York City should select judges from this pool.

Town and Village Justice Courts

There has recently been much public discussion concerning New York State's sprawling system of 1,277 Town and Village Justice Courts (the "Justice Courts"). These courts, located in over 925 towns and 325 villages across New York State, preside over a wide variety of matters, including arraignment of all criminal matters, and the adjudication of misdemeanors, traffic infractions and other violations. The Justice Courts also have jurisdiction over civil matters where the amount at issue does not exceed $3,000. There are nearly 2,000 locally selected town and village justices servicing the Justice Courts. Many of these justices are non-lawyers, as is permitted by law, and have little or no legal training other than a weeklong course that is administered at the beginning of their terms and an annual two-day mandatory training session. At the same time, the Justice Courts perform a critical function by offering ready access to the court system to hundreds of thousands of New Yorkers, particularly upstate, for whom the nearest City or County Court may be dozens of miles away or farther.

"An unfamiliarity with basic legal principles is remarkably common in what are known as the justice courts, legacies of the Colonial era that survive in more than 1,000 New York towns and villages."

– *Delivering Small Town Justice with a Mix of Trial and Error, William Glaberson, New York Times, September 26, 2006*

In recent months, much criticism has been levied at the Justice Courts. The Commission on the Future of Indigent Defense Services, a panel assembled by Chief Judge Kaye to examine the provision of legal services to indigent defendants in New York State, recently studied the Justice Courts in this context and issued troubling conclusions. The panel observed that there is a "widespread abrogation of the right to counsel" in the Justice Courts, and referred to the situation as a "crisis."[155] Additional concerns were raised in a three-part series in the New York Times in September 2006 focusing on problematic cases in the Justice Courts, and describing several of its judges as unfamiliar with basic principles of criminal law and civil rights.[156] More recently, the State Legislature convened a series of hearings to examine the Justice Courts, and to hear testimony from judges, litigants and organizations that monitor the court system and its judges.

[155] See COMM'N ON THE FUTURE OF INDIGENT DEFENSE SERVS., FINAL REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 21 (2006).

[156] See William Glaberson, Broken Bench: In Tiny Courts of N.Y., Abuses of Law and Power, N.Y. TIMES, September 25, 2006; see also id., September 26, 2006 and September 27, 2006.

The issues concerning the Justice Courts are not new. As long ago as 1926, Governor Alfred E. Smith referred to them as "a farce in these days," and a long line of commissions and other groups have since called for wholesale changes to the system. Proposals have ranged from the complete elimination of these courts in favor of an expansion of the district court system, to the requirement that all of the Town and Village justices be attorneys, to more modest suggestions of increased funding and training.

In November 2006, OCA issued an Action Plan for the Justice Courts detailing an array of reforms, some of which are already being implemented. The more significant of these initiatives include (1) a plan to supply the Justice Courts with digital recorders and to make them, in effect, "courts of record" where the proceedings are recorded and cases can be more easily appealed; (2) doubling the current required training period to two weeks and also adding at-home supplementary training sessions; and (3) providing laptops and other much-needed technical support that will make the courts more efficient while allowing OCA to more easily exercise oversight.[157]

Given the issues that have been previously raised, we are deeply concerned about the Justice Courts and the people around our state who must come before them. On the other hand, it has become clear to us that the issues are sufficiently serious and complex as to merit a much more intensive study than we have been able to conduct in the seven months that we have been studying the broader issue of the structure and efficiency of the court system. We also note that the recent OCA initiatives, and the recent hearings by the Legislature, themselves warrant further consideration and study.

To this end, we have proposed, and the Chief Judge has agreed, that the term of our Commission be extended, so that we may conduct an appropriate review of this important issue. Our report on the Justice Courts will be submitted in the Fall of 2007. In the meantime, we note that this additional study should not be seen as a reason to delay initiation of the broad restructuring that we recommend in this Report. Instead, a

[157] See N.Y. UNIFIED COURT SYS., ACTION PLAN FOR THE JUSTICE COURTS 1-7 (2006).

restructuring plan should move forward immediately, regardless of what is ultimately decided about the future of the Justice Courts.

Additional Issues

Technological Changes. In many ways, the confusing technological landscape of New York's present court system mirrors the archaic and convoluted structure of our trial courts. The technology created to service our many distinct courts developed at various times using different technologies such that the computer systems are, generally speaking, not compatible with one another. Therefore, much like the litigant who is forced to have custody issues litigated in Family Court and matrimonial issues litigated in the Supreme Court, the current information systems of the courts do not provide a Supreme Court judge or clerk with access to the computer database of the Family Court, and vice versa. These separate computer systems and databases are another consequence of our balkanized court system.

It is clear that having a uniform computer system – where information concerning all of the cases of the newly merged Supreme Court and of the newly created District Court would reside – is critical to the success of our proposal. We note, however, that instead of being an impediment to court merger, the process of harmonizing the computer systems of the various courts is already well underway, and should at this point make court restructuring even easier to implement.

In spite of a lack of structural reform, OCA recognized some time ago that the need to share data across counties and courts, and the need for various agencies which interact with the courts (*e.g.*, the District Attorney's office, State Police) to have access to the same data, necessitated changes to the current system. In April 1998, OCA issued its plan to institute a Universal Case Management System ("UCMS") for the courts. The goal is to create a single, universalized, case database to facilitate the sharing of data within and between individual civil and criminal courts, and among civil and criminal justice agencies. The hope is that this project – which is being introduced in phases – will be totally completed within the next

five years.[158] Therefore, it is not that the revamping of the court's computer systems is contingent on the success of our proposal, but that the UCMS plan – which is already in motion – makes the case for court restructuring stronger.

OCA has already made substantial progress in creating the UCMS and plans exist for the implementation of further phases. The first Universal Case Management System was operational in all Family Courts statewide in 2003. The "Local Civil"[159] version of the UCMS is currently being tested in two counties and is expected to be implemented statewide over the next two years. This system replaces individual systems located in each of the City and District Courts. The UCMS Criminal and Supreme Civil systems are under development and should be implemented statewide over the next five years. The new UCMS Criminal and Supreme Civil systems will replace two older mainframe-based systems[160] and 150 local county-based systems. Finally, OCA plans to incorporate the specialty applications, including the Drug Court, IDV Court and Mental Health Court applications into UCMS.

In short, much of what is needed by way of information-systems merger is already in place through the phasing in of UCMS. This is not to say that additional planning and reform would be unnecessary in a restructured system.[161] For example, the Court of Claims is currently on a locally based computer system that is not compatible with the Supreme Court system and there are no plans yet in place to merge the Court of Claims into UCMS. Similarly, the current county-based Surrogate's Court

[158] Information provided by OCA.

[159] UCMS Local Civil includes the New York City Civil Court and the City and District Courts outside of New York City.

[160] The mainframe-based Civil Case Information System ("CCIS") was built in 1986 and serves thirteen counties. The Criminal Records and Information System ("CRIMS"), also a mainframe-based system, was built in the early 1990s and serves twenty-four courts of criminal jurisdiction. Information provided by OCA.

[161] Notably, each Appellate Division has its own system. These systems are not compatible with each other, nor are they compatible with the trial courts or the system of the Court of Appeals. However, there is support for making the Appellate Division part of the UCMS. Currently the Court of Appeals has a system that is not compatible with the system of any other court. Information provided by OCA.

systems are standardized throughout the state but there are no plans yet to create a centralized Surrogate's system.[162] However, the building blocks for merger of the court's information systems are in place and much progress has already been made. As such, the necessary technological merger that flows from our proposal is already well underway.

Procedural Changes. To make court restructuring a reality, certain changes will have to be made to our state's procedural codes, including the Civil Practice Law and Rules (CPLR), the various Court Acts (*i.e.*, Surrogate's Court Practice, Court of Claims, Family Court, New York City Civil Court, Uniform District Court, and the Uniform City Court Acts) and the Uniform Rules for the New York State Trial Courts. The codes would need to reflect the new court names, but more importantly, decisions would have to be made as to what substantive and jurisdictional differences are deemed worthy of preservation, even within the newly merged structure. For example, while amendments would be necessary to reflect the merger of the Surrogate's Court, Family Court, and Court of Claims into the Supreme Court (and the creation of a Division within the Supreme Court for each) it may be wise to preserve some of the unique procedures of these former Courts in the new Divisions. The following are a few examples of the substantive and jurisdictional modifications of the various procedural codes that will be required.

Supreme Court, Probate Division. Under our proposal, the Surrogate's Court Practice Act ("SCPA") Article 2 ("Jurisdiction and Powers"), as well as all other articles touching upon jurisdiction and procedure, would have to be amended in order to either eliminate or reconcile procedures different than those provided for in the CPLR, or to provide for their continued use in the Surrogate's Division. For example, Article 3 ("Proceedings, Pleadings and Process") sets out some of the unique procedural features pertaining to trusts and estates, such as the statute of limitations, the pleadings, the contents of a petition, and the joinder of parties, which may be deemed worthy

[162] Information provided by OCA.

of preservation. The use of citation rather than a summons or other form of notice would also have to be reconciled with the CPLR, as would variations in the requirements of service.

The Estates, Powers, and Trusts Law ("EPTL"), which constitutes the substantive law of estates, powers and trusts, would need to reconcile current references to the relationship between the Surrogate's Court and the Supreme Court. For example, the bifurcated nature of the proceedings in wrongful death actions (Part 4 of Article 5), would have to be addressed. According to current practice, the administrator/executor of the decedent's estate is appointed by the Surrogate's Court, after which the administrator/executor commences the wrongful death action in Supreme Court. However, issues related to the administration of the estate continue in the Surrogate's Court while the wrongful death action proceeds in the Supreme Court. Upon conclusion of the wrongful death action the matter is returned to the Surrogate's Court for distribution of any award. Decisions will need to be made as to the best way to proceed in this and other such circumstances as the Surrogate's Court becomes part of the newly expanded Supreme Court.

Supreme Court, Family Division. Many changes to the Family Court Act would be necessitated by the merger of Family Court into the Supreme Court, Family Division. For example, Family Court Act §§ 461-69, which currently address Family Court jurisdiction over cases transferred from Supreme Court and cases in which enforcement of a Supreme Court order is sought, would be unnecessary. Moreover, Family Court Act §§ 641-42 (adoption) and §§ 661-64 (guardianship) would have to extend concurrent Family Court/Surrogate's Court jurisdiction over these subjects to the Supreme Court, Family Division. In addition, Family Court Act § 303.1 (Juvenile Delinquency), which notes that Criminal Procedure Law provisions and related case law do not apply in juvenile delinquency cases unless specified, would have to be considered and its operation within the Family Division determined. The Domestic Relations Law will also have to be altered to provide for jurisdiction in the Supreme Court of all matters previously heard in Family Court.

District Court. Upon the merger of the lower trial courts (the sixty-one upstate City Courts, the New York City Criminal Court, the New York City Civil Court and the two District Courts on Long Island) into a single, statewide District Court, the acts currently governing all of these separate lower courts would need to be reconciled. This would likely require a repeal of certain of these Acts, such as the New York City Civil Court Act, the New York City Criminal Court Act, the Uniform District Court Act and the Uniform City Court Acts and the implementation of a coherent procedural code for the new, statewide District Court. Likewise, the Uniform Rules for each of the current local courts would need to be redrawn.

* * * *

This is by no means a comprehensive accounting of the procedural codes that will need to be amended, and obviously this section does not attempt to identify all of the individual code provisions that will need modification. The Commission recognizes that these considerable tasks must be pursued carefully in the near future. Given that consideration of these issues is underway, however, and given the substantial lead time that will exist between the initial passage of the Constitutional Amendment and a statewide referendum, the Commission has every confidence that there will be sufficient time to complete this undertaking. A streamlining of the procedural codes, where appropriate, will enhance the broader goal of efficiency that will result from a restructuring of the courts.

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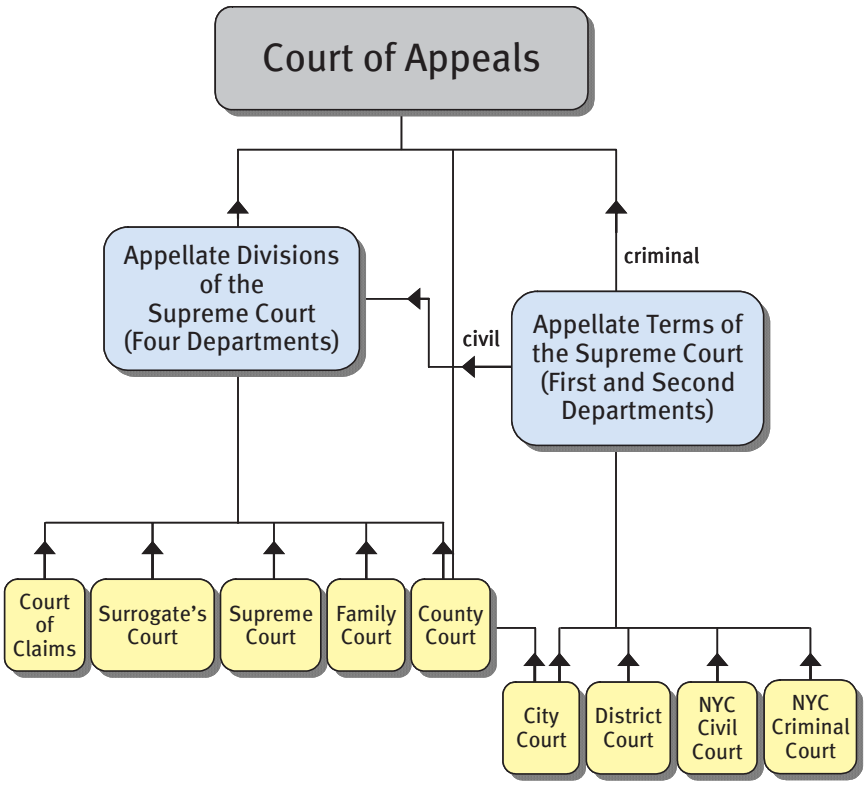
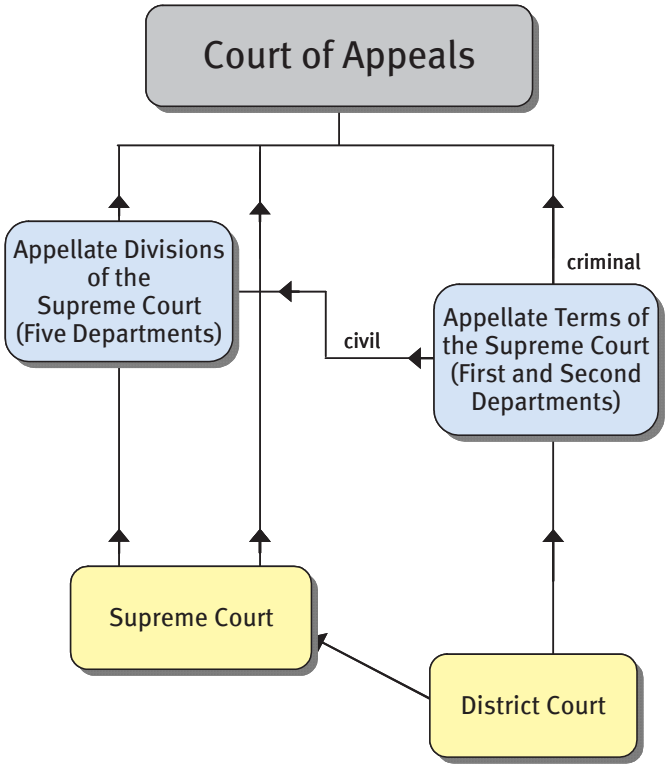
The diagrams on the following page compare the current and proposed trial and appellate court structures of the New York State Court System for both criminal and civil matters.

Current Structure



Proposed Structure



Note: Town and Village Courts and direct appeals excluded; in the Third and Fourth Departments, criminal appeals from the City Court proceed to the County Court and can be further appealed to the Court of Appeals.

— SECTION SEVEN —

OUR RESPONSES TO PAST CONCERNS

Over the past fifty years, the calls for court reform have been remarkably consistent, urging a consolidation of the major trial courts and the expansion of the Appellate Division. During this time, the concerns that have been raised about court reform have likewise been consistent. As set forth below, we believe that the concerns about court reform that have been raised in the past are far outweighed by the benefits to be achieved through a restructuring.

Concerns About the Arbitrary Reassignment of Judges

In 1999, the Association of the Justices of the Supreme Court of the State of New York (the "Association") suggested that court merger would provide OCA with "excessive power" to assign JSCs to specialized divisions in which they have no prior experience nor desire to work.[163] Opponents have further expressed the concern that court merger will allow OCA to transfer judges from the courts in which they currently sit to courts in other parts of the state, distant from their homes and the constituents who elected them. Some have gone even further and suggested that OCA would exercise this power to retaliate against justices who render unpopular decisions, thus undermining the independence of the judiciary.

"Presently, the number of tiers and the multiplicity of different courts at each level have placed unnecessary obstacles before those seeking and those providing justice."

– *Dominick Commission (1973)*

While we understand these concerns, it is important to understand that OCA *already* has the authority to assign JSCs anywhere within the state and in fact, in some of the larger upstate counties, judges are already required to travel great distances. Court restructuring will in no way increase this pre-existing reassignment power, nor will it provide additional reasons for OCA to exercise this authority. In fact, under a restructured court system that elevates many additional judges to

[163] JSC REPORT, supra note 40, at 5.

JSC status, thereby increasing the pool of JSCs and the overall efficiency of the system, the need to transfer justices from one part of the state to another should, if anything, be diminished.

Moreover, we believe there is no basis for the concern that new JSCs will be arbitrarily assigned to areas in which they have no expertise. To the contrary, when assigning new JSCs to newly created Supreme Court parts, every effort should be made to employ the experience of particular judges. For example, current Family Court judges would become Supreme Court Justices, but should be concentrated in the Family Division of the new Supreme Court with jurisdiction over all family-related proceedings. The same would be true of Surrogate's Court judges with respect to the Probate Division of the Supreme Court. We note, however, that even under the current system it is commonplace for judges to preside over a wide variety of cases over the course of a career – judges regularly move from civil to criminal, from misdemeanors to felonies, and from family to commercial matters. While a restructured system would preserve the expertise of judges in particular disciplines, we also expect that a new system would be flexible and permit the reassignment of judges – not arbitrarily, but where changes make sense for the courts, judges and litigants alike.

More fundamentally, we believe that court administrators have acted in good faith to this point and would continue to do so. In studying the now thirty-year history of OCA, we have found that even its most vocal critics have not accused court administrators of reassigning judges in bad faith. Moreover, we believe that court restructuring would create a system that will run more efficiently and be easier to administer. In other words, court reform should allow OCA to function more efficiently and with the same degree of good faith as it has in the past.

We note that a number of past proposals have included a grandfathering provision to prevent arbitrary reassignment of existing Supreme Court Justices – both geographically and as between specialized divisions. Alternatively, others have proposed a mechanism through which judges could appeal their reassignments by OCA. While we do not believe it necessary to provide for such mechanisms, we recognize that these options

might be considered by some as necessary to address short-term objections that stand in the way of long-term reform.

Concerns About Incongruous Electoral Lines

Some have expressed the concern that a merger-in-place plan will create incongruities. In a restructured Supreme Court, for example, two judges sitting side by side in the courthouse with the same authority and jurisdiction as one another may have been elected or appointed by constituencies of vastly different sizes.[164] Specifically, while current Supreme Court Justices must run for election across an entire Judicial District, Family Court judges (outside of New York City) who become Supreme Court Justices as a result of court restructuring would continue to run for election in smaller, countywide elections. Merger-in-place would thus confer all of the authority that JSCs currently enjoy on these new justices, while sparing them the challenges of having to run for election across such a wide geographic area. Likewise, the concern has been expressed that this system could be unfair to voters who elect Supreme Court Justices on a Judicial District basis, on the grounds that such votes would be diluted when other Supreme Court Justices occupying the same office are elected from a much smaller voter pool.[165]

As discussed in Section Six above, we recognize this incongruity and have considered whether to propose that all elected judges of the new Supreme Court be required to run for office in geographic areas of equal size, either at the county level or the Judicial District level. Again, however, we believe that re-drawing electoral lines is beyond our mandate and is a judicial selection issue for others to consider. Whatever one's view of the benefits of election versus appointment, the system we have proposed is far better, and certainly no more complicated, than the system we live with today. Judges who reach office by election under the present system must run in geographic areas of all shapes and sizes. For example, Family Court judges wield

[164] See JSC REPORT, supra note 40, at 5.

[165] Id.

significant authority over our state's families yet are either elected on a countywide basis or are not even elected at all; Supreme Court Justices preside over a wide variety of civil and criminal matters and may be located in the same building as the Family Court, yet its judges today are elected on a Judicial District basis. Our proposal makes no changes to this already complex system of selection while concentrating on much needed structural improvements to the courts. The notion that the resulting system will seem "incongruous" should not stand in the way of reform that will profoundly impact the lives of millions of New Yorkers.

Concerns About "Diluting" the Pool of Justices Eligible for Appointment to Appellate Positions

"A broader pool of judges should make it easier for women and minorities to be designated to the appellate court."

– *Atlantic Legal Foundation, March 2005*

It has been suggested by some that court restructuring would unfairly "dilute" the existing pool of judges eligible for appointment to the Appellate Division. In other words, because consolidation would make selection to the appellate bench possible for large numbers of additional judges, the concern is that this could reduce the chances of selection for existing, experienced JSCs.

We view an expanded pool of potential appellate judges to be a benefit to the public, not a concern. Because only sitting Supreme Court Justices may be appointed to the Appellate Division, the pool of eligible judges is both small and not sufficiently diverse. By elevating Family Court judges, for example, to Supreme Court positions, the number of women and minorities who would be eligible to sit on the appellate bench would be increased.[166] Because a primary focus of efforts to restructure the courts is to facilitate a more equitable administration of justice, we strongly believe that one way to achieve such equality is to provide the means for a more diverse pool of decision makers in our state's appellate courts. We also note that by expanding the pool of eligible judges, the selection

[166] In 2006, 27% of JSCs, excluding Acting JSCs (who are not eligible for appointment to the Appellate Division) were women. By contrast, 71% of the New York City Family Court judges were women and 48% of the Family Court judges outside New York City were women. Data provided by OCA.

process for the Appellate Division will be more competitive and there will be greater assurance that only the most qualified judges will be selected to serve in the appellate courts.

Concerns About the Impact on the Electoral Process

Time and again, the issue of court restructuring has been conflated with the issue of judicial selection. Many have opposed court restructuring in the past because they have feared, rationally or not, that a restructured court system would be the first step toward changes to the way judges attain their positions. Relatedly, a concern has been raised to the effect that restructuring would "undermine the democratic principles of 'one person, one vote' and the Voting Rights Act."[167] Both of these concerns are without merit.

As explained in great detail in Section Six above, our plan calls for no changes at all to the method through which judges reach office. There should be no confusion on this point: our merger-in-place proposal makes not a single change to the system of judicial selection that currently prevails in this state.[168]

"This year, nearly four million cases were filed in the State trial courts. Only by simplifying and restructuring the system will we be able to make maximum use of our judicial resources to efficiently handle such enormous caseloads."

– *Chief Judge Judith Kaye, October 1997*

Court restructuring and judicial selection are distinct issues and the former is not dependent upon any changes to the latter. The message we repeat throughout this Report is that we can realize vast efficiencies through a restructuring while leaving intact the present system of judicial selection. On the other hand, if the concern has to do with the ability of OCA to move, in theory, a duly elected JSC out of his or her district, and/or to sit in a different Division, we note that (as discussed above) OCA already has (and has not abused) that power.

For these reasons, we see no impact whatsoever on the principle of "one person, one vote" and certainly none under the Voting Rights Act. Under our proposal, the system of judicial selection would remain exactly the same as it was before and there would be no impact on the rights of voters.

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[167] JSC REPORT, supra note 40, at 5.

[168] The one exception is for the Housing Court, which presents a unique issue requiring different treatment. See Section Six, above.

The Supposed Ease of an Administrative "Fix"

Some have questioned the need for a constitutional amendment to overhaul the state's court system in light of the various administrative "fixes" implemented by OCA in recent years. For example, given the success of the IDV courts, which have been widely praised and enabled families to bring related claims before a single judge, some may question the need for full-scale reform when administrative improvements such as this are possible. For the following reasons, these temporary solutions are no panacea and offer only a foretaste of the improvements that would occur through a comprehensive restructuring of the courts.

"[T]he shortcomings of the present system are so pervasive that placing additional patches on an already 'crazy quilt' is not a satisfactory answer."

– *Action Unit No. 4 of the State Bar Association (1979)*

First, making these type of changes administratively is a backward and scattershot way to address the wholesale problems facing our courts. As described throughout this Report, these issues have languished for more than a century and today affect nearly every courthouse in the state. Making a change to this or that piece of the system simply cannot effect the kinds of system-wide changes that we have proposed in our plan. Furthermore, most of the administrative fixes currently in place seek to address the inefficiencies created by overlapping cases, yet as discussed above in Section Three, the inefficiencies created by unnecessary appearances in multiple courts account for only one-quarter of the total savings to be realized by individuals through court restructuring.[169]

Second, it is naïve to think that administrative fixes can be uniformly implemented throughout the state. With no overarching legal authority providing for consolidated courts, the benefits of these improvements will not reach the vast majority of those in need. The IDV Courts, for example, do not address – and cannot address – all varieties of family-related matters. As the name suggests, IDV Courts have authority to take cases only if they involve a pending criminal case or, at the very least, allegations of domestic violence. While we believe that it is extremely valuable to have a dedicated legal forum for victims of

[169] See Appendix ii.

domestic violence, there are many other families whose cases do not involve a criminal aspect but who nevertheless must appear in multiple courts to resolve interrelated divorce, custody and visitation issues.

Third, while OCA has managed to develop a number of new and innovative ways to serve the needs of our citizens notwithstanding the current court structure, these "work-arounds" have come at significant cost. It takes enormous effort to administer the IDV Courts, largely because they must be administered within the confines of the current system. There are no cases originally filed in the IDV part of Supreme Court; rather, eligible cases must be transferred from local criminal courts, County Court, or Family Court or reassigned from the matrimonial part of Supreme Court.[170] Court personnel must cross check against separate case management computer systems and contend with separate numbering systems and separate clerk's offices for each of these trial courts in order to identify eligible cases.[171] Once a set of cases has been identified for transfer, the IDV judge must review each file and approve its transfer, and the transfer itself requires notices to be sent out to all of the parties and often physically moving case files from one building to another.[172] While those who administer the IDV Courts work extremely hard, eligible cases still fall through the cracks and even families whose cases are eventually transferred to IDV Courts may experience delay and additional appearances in the courts where their cases were originally filed before the transfer is finalized. Simply put, the administration of IDV Courts is complicated and labor intensive and would be far simpler and less arbitrary under a consolidated system.

"[T]here are a great number of basic and major defects which are not susceptible of change or improvement within the framework of our present courts. These basic difficulties can be dealt with only by the institution of a system which, of itself, will eliminate or mitigate them."

– *Tweed Commission, Subcommittee on Modernization and Simplification of the Court Structure (1955)*

Fourth, constitutional change will legitimize courts that suffer from a lack of resources and a lack of respect on account of their current positions within the judicial hierarchy. As discussed earlier in this Report, Family Court judges adjudicate more than two-and-a-half times the number of cases that

[170] Information provided by OCA.

[171] Id.

[172] Id.

Supreme Court Justices hear every year.[173] The inevitable outgrowths of such taxed resources are endless wait times, an understanding of the complex issues facing individual families that is cursory at best, and an overall sense by litigants that Family Court is for the poor and Supreme Court is for the rich.

Finally, we note the irony inherent in this objection. On one hand, past opponents of reform have sometimes expressed misgivings over granting excessive power and authority to OCA. Yet at the same time, they have argued against restructuring on the ground that OCA should be left to reform the system by administrative fiat. This inconsistency aside, we believe our proposal grants OCA the authority it needs to ensure a much more efficient operation of the courts while diminishing the need for the kinds of administrative, extra-constitutional fixes OCA has had to implement out of necessity in the past.

"[M]erger will result in elevating the status of judges now serving on 'inferior courts' to where they belong."

– *Cyrus Vance, Memorandum to Gov. Carey (1976)*

Concerns About the Fiscal Impact

Opponents of past restructuring proposals have suggested that such initiatives will cost – rather than save – a significant amount of money. In 1999, the Association of Supreme Court Justices claimed that court merger legislation then pending "[w]ould cost in excess of $50 million dollars annually without improving the timely delivery of justice."[174] This claim is both outdated and inaccurate.

The reality is that court reform will create efficiencies and enormous, quantifiable cost savings that will be realized both publicly and privately. Section Three of our Report demonstrates that a restructuring of the courts will save the state budget alone some $59 million per year. More significantly, our detailed analysis shows that private individuals, businesses and municipalities will save $443 million per year, for a total savings of $502 million per year as a result of court restructuring. Our analysis has been vetted by economists, and the respected National Center for State Courts has not only endorsed our

[173] Data provided by OCA.

[174] JSC REPORT, supra note 40, at 4.

projections but referred to them as "conservative."[175] In the face of this detailed analysis and support, it cannot be suggested that court restructuring will have anything other than a significant, positive financial impact on the state's economy and its citizens.

The Effect of Restructuring on Nonjudicial Employees

There are approximately 15,000 nonjudicial personnel employed by the Unified Court System.[176] These comprise a broad spectrum of employees required to maintain the smooth operation of our courts. The courts employ security officers, clerks, law secretaries and court reporters, in addition to custodial and maintenance staffs. Some have expressed the concern that a restructuring of the courts could result in the elimination of jobs for nonjudicial employees as the courts are streamlined and made more efficient. We do not see this as a valid concern.

First, the overall caseload of the courts would remain the same under a restructured system. While these cases would be handled more efficiently and quickly, the need for skilled personnel to operate the courts should not be diminished.

Second, to the extent there is any question about the effect of restructuring on the labor unions for nonjudicial personnel, this, too, should not be a concern. The array of labor unions servicing the court system is complex. There are twelve such unions, which are referred to as "statutory bargaining units" since their existence is codified by statute. We do not believe that any changes to the structure of these unions would be required under a restructured court system. Without detailing here the long history of labor relations for nonjudicial employees, we observe that nearly all of the changes that one would expect to result from

[175] See Appendix iv.

[176] TWENTY-EIGHTH ANNUAL REPORT, supra note 130, at 1.

a restructuring have already been completed through prior labor relations agreements.[177] As a consequence, if the courts were merged, there would not appear to be any reason why the affected employees would not continue to be represented by the same unions, given that the unions do not now track the current court structure.

Accordingly, we do not believe that court restructuring will have anything other than a positive effect on nonjudicial employees or their statutory bargaining units. Indeed, we believe that the prestige and profile of the court system – and its personnel – will only be enhanced by reform.

[177] For example, all court officers are already paid on the same pay scale, so that if Family Court is merged into the Supreme Court, there should be no changes for the court officers of each of these courts or for their respective unions. Similarly, there has been a mixing over time of different job titles among the various unions such that today, even prior to restructuring, one union cannot be said to represent only one type of employee.

— SECTION EIGHT —

THE NECESSARY STEPS TOWARD CHANGE

As set forth in the preceding sections, we believe the case for reform is compelling and that a restructuring of the courts will profoundly affect New York's economy and its citizens. To turn our recommendations into reality, we briefly identify in this section some of the concrete steps that should be followed if meaningful reform is to be achieved.

First, to enact our proposals, a constitutional amendment will have to be passed. This process takes time as it requires two consecutive, separately elected legislatures to pass the amendment. Then, upon passage, the amendment must be presented to the voters for ratification. To facilitate these goals, we have included in the Appendix a draft constitutional amendment that, if passed, would put in place all of the changes we have proposed. The inclusion of a draft constitutional amendment in our Report is designed to offer the Legislature a ready-to-use bill that can be passed without the need to draft legislation from scratch; it also ensures that there is no misunderstanding or confusion regarding our proposals. We are hopeful that the amendment will receive first passage by 2008, second passage in 2009 and be presented to the voters for ratification in November 2009. We urge the Legislature to take up and pass this constitutional amendment before the conclusion of the current session so that we can finally start down the path toward change.

"The current structure is too costly, confusing, and discourages and impedes litigants, both private citizens and businesses, from pursuing their rights."

– *The Fund for Modern Courts, January 2007*

Second, as detailed in Section Six above, certain procedural and technological changes will have to be made to ensure that the restructuring plan we have proposed is consistent with the codes and technology relied on by the courts. Changes in this regard are already underway, and the process of constitutional change is such that there will be a significant lead time of two to three years before the newly restructured court system is a reality. We are confident that, during this time, the necessary amendments to our state's codes and the adjustments to the computer systems of the courts can be completed. Once

the constitutional amendment is passed, we anticipate that additional legislation will be drafted to accomplish these goals. Unlike the structure of the courts, our state's codes have been amended many times before, and there will be ample opportunity to do so again.

Finally, in addition to the procedural need for statutory and constitutional action, there is obviously a fundamental need to build consensus and political will. For too long, well meaning calls for court reform have been followed by inertia and inaction. We are hopeful that those who read this Report will better understand that a restructuring of the courts is important to the economic vitality of our state, and the well-being of its citizens. There already exists a strong consensus in support of court reform, and we are hopeful that our illustration of the problem and proposed solutions will contribute to the realization that our system must finally be changed.

* * * *

We believe that our court system is at a tipping point. Over time, virtually all constituencies with a stake in our courts have called for the system to be restructured. The consensus in favor of reform has grown stronger in recent years, as our system has become increasingly unworkable and complex. Our recommendations have been endorsed by a number of influential organizations, and we expect many more groups to follow suit as our Report is released. Recently, Governor Eliot Spitzer has expressed a keen interest in court restructuring and has announced his intent to submit a constitutional amendment to the Legislature. While meaningful changes to the courts are difficult to achieve, history has shown that at certain times, given the right combination of popular support and political will, extraordinary changes are possible. We believe that, for New York, this time has finally arrived.