

MUNICIPAL COURT JUDICIAL CONFERENCE

JUNE 28, 1985

Chaired by: Justice Robert L. Clifford

CHIEF JUSTICE WILENTZ: This morning, the Supreme Court Task Force on the Improvement of Municipal Courts will make its first public presentation of its findings and recommendations. This report represents the culmination of about twenty months of work.

It is, as I am sure all of you now know, a very impressive and weighty document. You will be hearing from the Chairman of the Task Force, Justice Clifford, as well as from the chairs of the five Task Force committees, who will discuss the recommendations of the report in some depth.

I would like to spend a few minutes to place this report in perspective and to discuss why the Supreme Court considered this undertaking essential. Over the past several years, the Judicial Conference has been devoted to a full scaled review of major elements of the judicial system, including the Criminal Division. We had a conference on speedy trial. The Civil Division, I guess it was last year that we had our case management study conference. Family Division, several years ago we devoted the conference exclusively to the structure, organization and operation of the new Family Court. And Probation, we spent one conference exclusively on the probation function. As well as an overall review of the trial court support structure, and that was the conference that we had on the committee on efficiency in the courts.

As a result, we have made considerable progress in overhauling the trial courts, revitalizing the administration apparatus and, I hope, improving the procedures governing civil case processing, and other case processing.

We have tried to gain efficiency, but not at the expense of quality. Rather our search has been for ways to maintain and enhance the quality of decision-making, through improvements to the machinery of justice.

The Supreme Court Task Force on the Improvement of Municipal Courts, represents a continuation of these efforts. In many ways, this undertaking may be ever more critical than the others. The Municipal Courts are the courts where our citizens meet justice face to face. They affect more people, by far, than the rest of the judicial system combined.

The citizens' impression of the judiciary, the citizens' respect for the judiciary, depend more

on these courts and their judges than on anyone, or on anything else. The number of cases and people involved is so great that any improvement in the Municipal Court system, even a small improvement, probably does more good for more people, as well as for the judiciary, than the most successful Supreme Court project in any other area.

Despite the importance of these courts, their performance has fallen short of our standards of fair and efficient justice. This is not to say that progress has been totally lacking in this area. The Municipal Courts were upgraded following the basic constitutional reform of 1947. The development of a professional, although part time, Municipal Court Bench, dates from that time, but the Municipal Court has never been able to achieve a satisfactory standard of performance.

From the late 1950's, through the early 1970's, a much discussed proposal focused upon the abolition of home rule in favor of regional courts. The debate over regionalization did not yield any progress in the improvement of the courts, rather, it had the unintended consequence of stifling reform. Initiatives aimed at achieving long-term improvements were hard to justify, amid debate over replacement of the entire system.

As a result, the level of innovation was low, and those improvements which did occur, were accomplished on a periodic and piecemeal basis. Despite these obstacles, some progress did occur, but the ever increasing demands on the Municipal Courts made more fundamental change essential. Legislation imposed new jurisdiction and new duties. Stiffer penalties increased the demand for trials. Uncollected fines and the inability to hold scofflaws accountable, diminished both revenues and, especially, diminished respect for the courts.

Greater public concern with drunken driving matters translated into troublesome backlogs. The initiation of the speedy trial program, at the Superior Court level, required greater expedition in the handling of indictable offenses. But most of all, the increase in filings, from over five hundred thousand a year in 1949 to over five million filings a year today, was the clearest signal for reform.

All of these factors made it clear that these courts needed major assistance, and required greater integration with the rest of the court system.

For far too long, they had operated at the periphery of the judicial system. Efforts had to be made to increase the level of communication among the Municipal Courts and between the Municipal Courts and the Assignment Judges and others with administrative responsibility.

Only in that manner, could a coordination of intention and action be achieved, so as to maximize the effectiveness of this local court system. Only in that way, could we respond to their needs, overcome their weaknesses and increase their strengths. Only then, would the Municipal Courts be able to assume their proper role as an integral part of the judiciary.

A decision was made, therefore, to establish this Task Force, with a mandate to identify and analyze the major problems confronting these courts. To determine the appropriate, feasible solutions to these problems, and to devise practical strategies for the implementation of those solutions.

It was determined right from the start that the local court concept would be preserved. There were plenty of other things to do with these courts, without trying to turn the world upside down. The Task Force was asked not to consider regionalization or changes in the method of appointing judges, but rather to determine steps within the present framework that could be taken to overcome the difficulties which long had plagued these courts.

In other words, we decided that instead of fighting and fighting the battles, over the structure of this court, battles which have been lost year after year, we would see what we could do by way of improvement, by accepting the present system of appointing Municipal Court judges and by accepting the fact that they are going to remain local courts.

Through the work of the Task Force, the Municipal Court system has been subjected to the closest scrutiny and examination in its history. The recommendations of the Task Force touch on every aspect of Municipal Court operations. The presentation of this report at today's Judicial Conference will allow for a discussion of the issues and the inclusion of your suggestions in the formal submission to the Supreme Court.

Your role today is to scrutinize the report. Discuss and debate its proposals. Ask hard questions.

Identify any weaknesses and inconsistencies and determine for yourself whether this program of reform ought to go forward, either as suggested here by the Task Force, or with such modifications as you may suggest. We are counting on you to tell us clearly and frankly whether this program should be encouraged.

From my point of view, one of the best things about New Jersey Supreme Court is the willingness of its members to take over my job. Justice Clifford has done so as Chairman of the Committee on Jury Utilization. Justice Clifford has done so as Chairman of the Committee on Probation. Two mammoth undertakings that will affect our courts for many years. His present work as Chair of this Task Force presents us with an even more fundamental challenge, with even greater opportunity to improve the judiciary and to serve the public.

The thesis of his Task Force is that the most important part of the judiciary, the Municipal Court, can and must strive to be as good as the rest of the judiciary. The judges and support staff of the Municipal Courts are determined to achieve that goal, and I believe that our municipalities not only share that determination, but are willing to take the necessary steps in that direction. Steps believed, in the past, to be out of the question.

This is not the state it was forty years ago. The quality of our Municipal Court judges is high. They have become more and more professional. Our citizens know more, our citizens expect more. Their mayors and other elected officials are ready to support the right formula for quality justice at home, in every village and in every town, and in every city of this State. I believe that Justice Clifford and his Task Force have found that formula.

I am proud to present the Chairman of the Task Force to you, Justice Robert L. Clifford.

JUSTICE CLIFFORD: Thank you, Chief Justice. The generosity of that introduction puts me in mind of the story of the very wealthy Texan, that may be a little redundant, who has this enormous ranch and was giving a party one evening for hundreds of guests, who were not astonished when they walked out to the swimming pool, because of the level of lavishness that attended this enormously wealthy man's entertainment endeavors, to find the swimming pool filled with crocodiles. As the evening wore on and the wine flowed, he announced that he would make an award to

anybody who swam across his swimming pool, could have the choice of his ranch, queen's ranch, or his uranium mines that were spread through the hills or the hand of his fair daughter.

The party wore on, got a little noisy, got very active and lo and behold, late in the evening, everyone turned around to find this little guy racing across the pool with the alligators snapping at his heels all the way across, and jumped out the other side. The alligators jumped up and missed him, and there he was, soaking wet, and the host, good to his word, said, well, now, young fellow, what can I do for you. You are entitled to have the queen's ranch here, I gave my word. No, sir, thank you very much, I don't want that.

Well, then -- he could see the way this was going, you are entitled to have my uranium mines, help yourself. No, I don't think I want that. Well, I gave my word, you can have the hand of my daughter. If that's your wish, I suppose it is. He said no, I don't really want that. Well, what can I do for you, there must be something. He said, all I want is to find that guy that shoved me in the pool with all these alligators.

Which is not to suggest, Chief Justice, that you shoved me in the pool with all these alligators, but I'll tell you, if I escape the day the way he did the evening, I shall be much satisfied.

The efforts of this Task Force, as the Chief Justice has indicated to you, began with the appointment in September of 1983, of some forty-one members. The members included people experienced in Municipal Court affairs, or in working with the Municipal Courts, and I am most pleased to have been asked to serve as the Chair.

An outline of the subject matter of the Task Force's consideration was presented to the Municipal Court Judges Judicial Conference on October 26th of 1983. At that time, over two hundred and fifty Municipal Court judges were asked to flush out those problem areas by listing the most serious problems that they thought affected their courts.

There were not just some, not just dozens, there were scores of problems that were -- that appeared to be common to several jurisdictions and from this material, five major issue areas were identified and the Task Force membership was then

divided into committees to cover these areas.

The committees and the subjects that they addressed are found in your agenda and they are the Committee on Accountability, that is headed by Professor Donald E. Kepner, Professor of Law at Rutgers University in Camden, who is second to my left, and your right. Committee on Administration, which was chaired by Assignment Judge Samuel D. Lenox, Jr., at my far left. The Committee on Budgets, Personnel and Space was chaired by Assignment Judge Philip Gruccio, who as many of you know, suffered the loss of his father and hence will be unable to be with us today. But in his place instead, Judge Sam Serata has consented to pick up the load.

You know, I hesitate to single out any member of the Task Force as being more important than the other, and indeed, it probably is inaccurate, but at the risk of being inaccurate, and running other risks that you run when you single people out, I have to tell you that Judge Serata has proven to be well, nigh, indispensable to the efforts of this Task Force.

There is the Committee on Traffic and Computerization, which is chaired by Judge Betty Lester, now a Superior Court Judge, and at the time of her appointment, Presiding Judge of the Newark Municipal Court. And the Committee on Trials, chaired by Superior Court Judge William Walls.

Judge Lester, as I say, was a Municipal Court Judge when we started this thing, and now is a Superior Court Judge, and if any of you people out there have a hankering to be a Superior Court Judge, in the time it took us to give birth to this elephant, four of the members of the Task Force ascended to Superior Court status. In addition to Judge Lester, who was then a Municipal Court Judge, as I told you, Judge Peter Giovine, who was a Municipal Court Judge, and is now a Superior Court Judge; Judge Shirley Tolentino, who was a Municipal Court Judge in Jersey City and is now a Superior Court, sitting in Hudson County; and I think, Judge Ernie Hawkins has cleared all the hurdles, except that of having taken the oath as a Superior Court Judge.

And in addition to that, Judge Neil Shuster was a Municipal Prosecutor and is now the Municipal Court Judge in Princeton and Bruce Weekes was the Public Defender in Atlantic County and is now a Municipal Court Judge in Atlantic City -- was the Public Defender in Atlantic City and is now the

Municipal Court Judge in Atlantic County. Which is all by way of saying, we have spent a lot of time on this project.

We have expended a great deal of effort. The levity of my opening remark does not set the tone for today's effort. This is serious business. The Municipal Courts have serious problems. The people that have shared the burden of putting this report together have given serious effort to their serious endeavor and we are serious about your participation, along with that of the hundreds, literally hundreds of people, who have served on the local advisory committees to make these recommendations a reality.

The people who chaired these committees were selected on the basis of their background, their knowledge and experience in the respective subject areas. Each of them has demonstrated a commitment to the work of the Task Force, as well as a capability of bringing together the diverse views of the members. That is no easy task.

I was apprehensive when the Chief Justice named some forty-one people to a Task Force, large enough to be representative, surely. I was not certain that it was small enough to be manageable and my contribution to this, if any, has been not with respect to the substance, Chief, but as a Traffic Manager, and I have learned some exquisite moves.

But without the expertise of the people who chaired these subcommittees, we would have floundered. As to the Task Force's subject matter, let me take just a minute to touch on the subject matters on which five committees have focused.

The Committee on Accountability addressed, as you might guess, the problem of accountability. The Municipal Courts are local. The overwhelming majority of our people who come in contact with the judicial system do so through these courts. It is from them that their impressions of the administration of justice are formed, for better or for worse, and that impression lasts.

It is important, therefore, that their accountability be insured and that they live up to community expectations, and to that end, this Committee's work included the development of a forum at the local level, to study the means by which these courts might be made more responsive to community needs.



The Committee on Administration addressed the need to develop a management structure that would insure the efficient operation of the Municipal Courts. No court, of course, however large or small, can function properly without a sound organizational structure and proper delegation of authority. The Municipal Court judge must play a primary role in the administration of his court.

Furthermore, a management structure has to be developed at both the vicinage and state levels, to insure against administration oversight. You will hear more today about the Presiding Judge and case manager recommendations, which address these needs.

The Committee on Budgets, Personnel and Space examined the resources that are currently allocated to the Municipal Courts. It recommends the adoption of funding standards to guide the courts in the preparation of their budgets. It seems clear, from even a cursory examination of the filings, disposition, case backlog and paper flow backlog, that these courts have not been given the resources needed to provide high quality services to the public.

This Committee's work should go far, if it is accepted, if it is put into effect, to reverse that pattern of neglect that has rendered the Municipal Courts the stepchildren of the judicial system.

Most crucial to the ability of the Municipal Courts to meet the demands of their increasing caseloads and related paperwork is the development of a statewide Municipal Court computer system, especially in the traffic area.

There are, of course, a lot of questions that have to be answered in this area, and let me tell you, I readily acknowledge, I acknowledge in public, that I am a computer moron. I leave that business of computer microchips and high tech to our computer naven on the court, Justice Pollock.

One thing, however, came through, even to me, that computerization is becoming a necessity. Many high volume courts are struggling with existing staff, with no automation. Others are using one service or another, private or public. The challenge we face is to coordinate the computer usage on a statewide basis, so that it becomes a tool of the court.

The Committee on Traffic Computerization has

been formulating a plan in this critical area, and you will hear of that today.

The Committee on Trials, finally, examined the entire case processing system, from the filing of a complaint through trial procedure and available sentencing alternatives and programs. The aim was to develop a system and empower it to move cases efficiently and expeditiously. All the while, safeguarding the defendant's rights.

Now, as you can see from this very brief overview, the Task Force undertaking was, indeed, an ambitious endeavor. It required not only the members of its -- the efforts of its members, but it required significant grassroots participation as well. The structure, therefore, was expanded to include local advisory committees on the vicinage level.

The chairperson, or the co-chair, of each local committee was a Municipal Court judge, designated by the Assignment Judge. To insure continuity and coordination between the State and the local committees, a Municipal Court judge was also a member of our Task Force. The remaining members of the local advisory committees came from the Municipal Courts and from agencies that are affiliated with those courts, within the vicinage.

In the work -- the work of the local advisory committees can't be -- can't receive enough emphasis. Once all the problem areas had been apportioned to our Task Force committees, the issues were developed in position papers. You have got copies of them. Let me tell you one thing, I think what you got were the position papers that covered the workshops that you indicated that you wished to attend. If it worked out right, you got position papers that go with those workshops. If you want others, they will be available. If you want all five of them, they will be available at the front desk.

If they run out of them, as they may, all you have to do is write to -- you can write to me, if you want. You can write to the Administrative Office of the Courts and we will get them to you.

The position papers were then reviewed by the Task Force membership as a whole, and they were forwarded out to the local advisory committees for review and comments. Their comments then went back to the drafters of the papers and, I'll tell you, the local advisory committees were not bashful. They

weren't unimaginative. They came out with different reactions that we -- in some instances, we had maybe thought about. In some instances, maybe we feared. Some, that we hadn't even thought of.

With the result that before the final submission to the Task Force for adoption, the drafters had to modify these papers. The Task Force report, therefore, includes the reaction and advice of over four hundred people who made up these local advisory committees. The Task Force considered these views in their deliberations and adopted many of them in their final decisions, primarily, because it was understood that the local advisory committee comments were based on practical and realistic concerns.

The Chief Justice mentioned that the mission of this Task Force was not to remake the wheel. We were cautioned against it. And we were able, I think, to communicate that message successfully to the local advisory committees, who understood that what they came up with had to be workable. Not onerous to the judges and court clerks who will be asked to implement policy. Not unduly burdensome to the Bar, who will be asked to live with these recommendations, should they be adopted. And equally importantly, the Task Force has endeavored to keep the cost of these recommendations low in order to gain the governing bodies in their search for funding.

Essentially, this is the background of the specific recommendations that are going to be placed before you today by the committee chairpersons. Before I turn the program over to those people, I want to thank everyone who has participated in the production of the report. Not just the members of the Task Force who have labored so mightily and so patiently and so indulgently over the last year and a half or so, but also the members of the local advisory committees and the people in the Administrative Office of the Courts, who have performed yeoman service for us.

Jack McCarthy is known to many of you and has been a strong and guiding influence; and in particular, I have to commend the work of John Podaszwa, who is the Assistant Trial Court Administrator in Mercer County, on loan to us; and he deserves special recognition for having taken over the Task Force project at a crucial point in its work, and so ably pulled it all together.

Let me cover a couple of housekeeping items.

These are important. Here is a major housekeeping item, there is a car in the parking lot with the lights on, ZIC-524, if that means -- I hope it means something to someone here. ZIC-524, you are not going to have a battery left.

Another one is that it may be in the agenda, I'm not sure. Yes, it has room numbers assigned for the workshops that you selected. There is a slight twist the old and the lit, because we were unaware that the college was running some things, and anyway, the room to which you go, you will find printed on your badge. Look at that one. Don't pay attention to the room -- it may coincide with what is on the agenda and it may not. Go to the one that is on your badge, please.

To your impasse relief, I'm sure, despite the fact that the agenda does not include a break between the end of the presentation of these chairpersons and the start of the workshops, we are going to try and have a break, when we adjourn here, and before you go to the workshop. It is going to be a break break, that's all, no coffee, no nothing. Just, you know, break.

And then, if you would, travel directly to the workshops. I'm afraid that many of you will have to go outdoors, but that won't hurt. There is no break listed in the afternoon session, but there will be one before the commencement of the closing session at 3 p.m. and Director Lipscher now, has volunteered to spring for some coke and fruit juice and that kind of stuff. So what he saved in the morning, you are going to pick up in the afternoon.

And finally, we have varied the format to which some of you have become accustomed at the closing session. I think, if you recall it before, the chairpersons scurried around and tried to report to the assemblage the reactions, the thoughts that had come out of their workshops. We want to save the time because we concluded, rightly or wrongly, that that served to cut off the time available to people who had traveled a long distance or a short distance, but who are interested in the work of the Task Force, and have something to say; or have questions that they wish to ask. This is the day not to be shy. At three o'clock, if you have a question, we will endeavor to answer it.

If you have something that you want to say, we will hear it. We encourage you, and we solicit

your attendance at that full session, so that you may unburden yourselves of whatever views, reactions, questions you may have.

Without further ado, let me turn over to the chairpersons of these various committees, the presentation of the work of their committees. I will be able to do it a lot more successfully if I find the agenda, which tell me that Professor Kepner, who headed the Committee on Accountability is first to speak. Professor Don Kepner.

PROFESSOR KEPNER: Chief Justice Wilentz, Justice Clifford, Members of the Council. You may have noticed that I'm the only non-judicial chairman and initially, this gave me great concern. What do I do with all of these judges. Then I suddenly remembered a story about a drama critic, who had criticized very bitterly a play that appeared on a New York stage, whereupon the playwright was quite taken back by all this, and said what does he know. He said he has never written a play in his life, and the critic's response was, that was true, but he was a better judge of lamb chops than any sheep that ever lived.

The Committee on Accountability was assigned eight different topics. Four of these topics arose because of matters of public interest that have focused on the Municipal Court. Some of the topics are matters of what, I would consider, judicial housecleaning. That is, that procedures that have taken place for the improvement of the Superior Court were to be considered for adoption in the Municipal Court.

One of our primary concerns was the driving while intoxicated problem. When I attended the Municipal Court Judicial Conference, almost two years ago, a considerable part of the entire session was devoted to that problem, and you will remember that we were having the difficulty with the breath testing machines. That the cases were scattered, that were being handled differently throughout the various Municipal Courts and the backlog was rather dreadful.

Our Committee was given two assignments. One to determine what could be done about relieving the backlog. Secondly, what we could do about preventing the backlog. Fortunately, the Supreme Court relieved us of the first responsibility, when they initiated the program to aim towards cleaning up the DWI backlog.

Now, what about trying to prevent backlogs in the future. What are the problems that arise with respect to DWI cases that distinguish them from other types? Well, in the first instance, we know that they are litigated more vigorously and more frequently than many types of cases that fall within the Municipal Court jurisdiction.

Secondly, we know that the number of experts who may testify with respect to the matter of extrapolating the readings are very limited and so the schedules, of course, have oftentimes -- have been built on availability.

Thirdly, we know that there are a very limited number of experts who can certify the authenticity of the machines.

Fourthly, that the matters of adjournment provided have resulted in the delay in trying these cases.

Now, what is our proposals? Well, in our first instance, we have suggested that the prosecutor, the Municipal Prosecutor, play an important role in all DWI cases. Now, he should be responsible for actually prosecuting the case. We think it is inappropriate for judges to judge and to act as prosecutor. We think that it is his responsibility to see that his police officers are present. We think that he should be responsible for taking care of discovery. Now, this is not to say that he personally should do that. That's not what we mean. What we are saying, though, that the primary responsibility for seeing the suitable process for handling discovery matters are handled by the prosecutor.

We think that the court clerk should specially mark all DWI cases, so that they can constantly be monitored. We think the court clerk, in many instances, actually handle the requests for adjournments, should be slowed in granting adjournments and that the prosecutors, in many instances, should oppose the request for adjournment, unless requested on a seemingly valid grounds.

That we think that every Municipal Court should adopt standby procedures where if they find that their cases are not being properly processed, and you do have a delay, that an effort will be made to immediately remove that background. And in the event that we do not have sufficient number of police officers and State Police to certify the machines,

that we -- the alternative would be either to -- if they will not provide more, would be to provide either local officials; or it was one time suggested, but it's not in our report, that maybe this function ought to be handled by Weights and Measures anyway. That was not our final recommendation.

Now, the second matter we discussed is the question of domestic violence. I don't know of any legislation that is more positive in its effort to respond to a social problem than Title 20, Chapter 25, of the Statutes. Just to read one sentence out of the legislative findings, where it is stated, "It is, therefore, the intent of the Legislature to assure the victims of domestic violence the maximum protection from abuse the law can provide."

Now, we have the good fortune of having the report of the Task Force of the Supreme Court, the Task Force on women, and that their findings was, (1) that judges were not living up to the letter of the law; (2) that the police officers did not understand and enforce the act; (3) that there was not appropriate means for advising the victims of this abuse. And that fifth, that the municipal judges were reluctant enforcers of the statute.

After considerable consideration, after having the advice of the local advisory committee, the Committee has come up with a number of recommendations. Our first one is that we think it is appropriate that the Legislature should review the act, with the view of requiring that all criminal cases arising out of domestic violence situations be handled by the Superior Court.

Secondly, that while the act itself provides that in emergencies, the Municipal Court should hear the request for temporary relief and enforce the various noncriminal means that are designed to prevent further acts of violence, that this is overcome. Instead of being the emergency, in many instances, the courts are the primary -- the Municipal Courts are the primary enforcers, and we don't think this is really the best way to do it.

As a practical matter, should the municipal judges be placed in the position of having to chastise the local police because they don't think they are really living up to the act. So we think that this -- that you ought to have only in extreme instances, should the Municipal Courts in any way be involved in the enforcement of this act.

We think that the effort should be made to require -- I'm sorry. That we should amend the statute to provide that whenever an order is issued, a temporary order is issued, that it should specify what acts will require the imposition of contempt or other sanction for its nonenforcement. Currently, the act says it may. Oftentimes, nothing is done and that the act is really not being enforced in the manner it was intended.

That we think that the judges who hear these cases should have access to all prior complaints, criminal or civil. That counseling should be mandatory and that the -- there should be further training for police and judges in the administration of this act.

Now, the third area of our concern, it seems to me, was the product of the first two. That is that we know that the great interest in DWI cases. We know, also, the case of the child abuse, the battered spouse, are also matters that have received a great deal of public attention.

This raises the question of making court records accessible to the public. There is some obvious conflict in this one. On the one hand, the right of privacy, the right of confidentiality. On the other, the right of the public to know. So this means that there must be some kind of an accommodation. We propose that Rule 1.3:8, which deals with the accessed records, should be amended to specifically identify those documents that should be made available to the public. Those that may not, that should not be made available.

That we should have procedures for making records available within a reasonable time during the normal working days, taking into account the limitations placed upon some Municipal Courts by the fact that they just don't have enough people. We think that it is appropriate that there might be some reasonable fee charged for providing these records, but certainly not a fee that would curtail or prevent the access to these records.

To illustrate some of the documents that should be made public, this would include docket books, subpoenas, traffic tickets, court calendar, general correspondence, such as letters of representations, notice to defendants, witnesses and information from the Division of Motor Vehicle.



Confidential records, that is, those that should not be included are probation records, police investigation reports, other than the routine traffic accident reports which are entered into evidence, search warrant, court personnel records, domestic violence complaints and training programs of court personnel. Well, I'm sorry, that was not in that -- that is not a matter of record, that is another matter.

All right. Now, our third point that we want to make with respect to this matter is that it is necessary to train court personnel with respect to handling these requests and become familiar with what is available and what is not available; and at this time, we just don't have that kind of training.

Another area in which we spent some time was this matter of victim witnesses services. That this is the -- the Superior Court has adopted programs which are designed to protect victims, recognize their interests and that it is the recommendation of our Committee that, again, subject to limitations placed upon Municipal Courts, due to their limited physical facilities and their limited staff, that, nevertheless, that they can do such -- take such steps as having on-call subpoenas; on notifying victims and witnesses of the process or the progress that the case has been made. Having an opportunity for their input in bail determinations. On adjournments, on plea negotiations; and to provide restitution as one of the means for resolving these matters.

That this would all give the victims and witnesses some assurances they presently do not have and certainly if this is important enough for the Superior Court, the Municipal Courts' participants are entitled to the same consideration.

That we spent some time on the matter of uniformity of sentencing and that our conclusion was that this is a matter that requires some further study, that you ought to have a committee representing the various interests of not only the criminal justice system, but the public. That the rules which provide the standards in the criminal justice code be amended to cover more specifically some of the problems and the rules that are enforced in the Municipal Courts.

We also recommended for further study the matter of sentencing alternatives. That is, the use of restitution, release programs. That community services, a great deal of work is being done with that

at the present time. That because of difficulties in our personnel -- in our Committee membership, that this is a matter that we got to rather late, and that we thought was inappropriate, in view of the fine work, such as Judge Keyko's Committee and the other organization working this, that we should do nothing except to recommend this matter be continued and that these various studies be consolidated and be made available.

Finally, the matter of great importance is this matter of calendar performance. That the Municipal Courts pointed out, should give quality justice in timely fashion. That the courts should be interested in backlog reduction; and I don't think I need to labor that idea with this particular group. We emphasize the importance of speedy trials. That we noted that at the Municipal Court Judges Judicial Conference held two years ago, that it was the consensus of opinion of the judges at that time, that the indictables should be finished forty-eight hours from the first offense: parking, fourteen days; ordinance violation, twenty-one days; moving violation, thirty days; disorderly persons, petty disorderly persons, forty-five days; DWI, sixty days.

That also that we are accumulating, I say we, the AIC, has accumulated a great many statistics concerning the performance of the courts, and from this, that is expected that there will be some standards for determining how many cases courts should have; and taking into account the performance of each court with comparable courts. That we should be studying the costs of these courts and that once it is known that these figures are available, you can see that this is going to require the local Municipal Courts to watch their own figures to say that they are performing in accordance with the standards.

Now, no way, in no way, does the Committee suggest that efficiency is to be at the expense of justice. I have presented this report with some reluctance, not because I disagree with the basic findings, they are all sound. Not because I'm not familiar or unaccustomed to discussing legal issues and legal institutions, rather because it is an awesome task for me to try to present by these few conclusionary remarks the fact that hundreds of hours of study, of deliberation, of discussion, and reconsideration, has gone into this report; and I am proud to have been a part of this enterprise and I hope that we have your continued support, that these may finally be adopted. Thank you.

JUSTICE CLIFFORD: Thank you very much, indeed, Professor Kepner. Not even a quarter of ten in the morning and I pulled the first part of the conference. I notice from the agenda that I was to have called upon the Chairman of the Administration Committee first, but if that's the worse we do today, I shall be deliriously happy.

I must tell you that a member of the Administration Committee and one who has consented to participate in the workshop of that Committee is Mrs. Ann O'Connor, who last year, at least, I don't know how long the term runs, but was the President of the Municipal Court Clerks Association. A body of people who are intensely interested and have manifested their intense interest in the work of this Task Force. They have been major contributors. They have made available, at their annual meeting, as a forum for all these chairpeople to explain the work of the Committee, not once, but twice.

The first year we told them what we intended to do. The second year we attempted to tell them what we have attempted to accomplish and we are most grateful to Ann O'Connor and the Municipal Court Clerks Association for their major contribution to the work of the Task Force.

Now, the person upon whom, apparently, I should have called first, namely, Judge Samuel D. Lenox, Jr., Chairman of the Administration Committee. Good Lenox.

JUDGE LENOX: Ladies and Gentlemen, good morning. We all recognize that the Municipal Courts have gone under increasing pressure from a more complex world. Caseloads have expanded and the nature of the cases has also changed, reflecting society's demands for additional court involvement.

While in many municipalities, the courts are still staffed by only a judge and a clerk, some courts are now characterized by as many as six judges, daily sessions and staffs of fifty to a hundred employees. Courts in some urban municipalities have more judges and are supported by larger staffs than the judiciaries in six of our smaller counties.

During the long period of expansion, and the number, size and complexity of the Municipal Courts, they have developed on a somewhat ad hoc basis, in response to the specific needs at the time, and have become organized in different ways from court to

court, with different levels of responsibility and oversight. They have operated successfully, primarily because of the hard work and dedication of the judges and support staff.

The need to bring to Municipal Court administration a measure of uniformity and improved organization, was immediately apparent to the Subcommittee on Administration. As the name suggests, the subcommittee studied primarily the management of the Municipal Courts, as opposed to the manner in which they performed their judicial function.

We studied the present administration of the Municipal Courts, as carried out by those charged with that responsibility at the local vicinage, or county and state levels. The Subcommittee on Administration has proposed to the Task Force, and now proposes to this Conference, a new administrative structure for managing the Municipal Court system, and has made other recommendations to promote more efficient operation of the Municipal Courts by the judges and court staff.

From a historical standpoint, many of the recommendations which we make are the culmination of those of the work of the Committee on Efficiency and the Management Structure Committee, regarding the management of the entire judicial system. Some of the most significant work in New Jersey judicial reform in recent years has been in the organization and management of the trial courts under the leadership of Chief Justice Wilentz.

Through this effort, there has emerged a new administrative structure in the Superior Court. The primary aspects of this system are the organization of the court into divisions, and the management of those divisions under the authority of the Assignment Judge, by Presiding Judges and case managers. Each Presiding Judge is designated by the Chief Justice and is responsible for the performance of the judges and all court support personnel within his division.

The case manager provides a professional administrator with expertise in such areas as budget and personnel management. This new system in the Superior Court is still in its infancy, but it is working well.

The Assignment Judge remains as the top official in the vicinage, but his role has changed somewhat because of the establishment of the Presiding

Judges and the development of the administrative support structure. No longer must the Assignment Judge carry virtually the entire burden of assuring the smooth flow of work. Much of his responsibility has been designated to efficient administrative judges and managers.

It is with that background that the Subcommittee on Administration began its work. What we now propose is to bring the Municipal Courts into the court system. For many years, the Municipal Courts have been the stepchildren of the judiciary, acting almost as independent contractors under the indirect oversight of the Assignment Judge.

We seek to establish a Municipal Division, patterned after the system now in place in the Superior Court. The Municipal Division will be organized, as are the other courts on a vicinage basis. In each vicinage, there will be a Presiding Judge of the Municipal Courts, charged with most of the management responsibilities now vested in the Assignment Judge.

He will be designated by the Chief Justice on recommendation of the Assignment Judge and will be chosen from among the sitting judges, Municipal Court judges, in the vicinage. The Presiding Judge will serve on the state payroll, with a performance of his administrative duties, but will remain on the municipal payroll for the performance of his judicial function in the Municipal Court or Courts in which he sits.

This judge in each vicinage will bring to the Municipal Courts an administrator with direct oversight control on a daily, rather than a sporadic basis, and will be a judge with intimate knowledge of Municipal Court problems. He will be one with a keen and dominant interest in Municipal Court matters, who will have an essential role in implementing and carrying out all of the recommendations of the Task Force.

The Presiding Judges in the Trial Divisions of the Superior Court are each supported by a case manager. Similarly, we recommend the appointment in each vicinage of a case manager in whom will be vested the administrative responsibility over all the Municipal Courts. That person will serve on the county payroll and be accountable to the Presiding Judge. He will have the sole function of providing assistance and support service to the vicinage

## Municipal Courts.

Some of the vicinages already have an assistant court administrator devoting full time to the Municipal Courts. The structure we propose will make Municipal Court management through the Presiding Judge, case manager, executive team, uniform in every vicinage. To support this new administrative structure, we have proposed an expanded Municipal Court Services Unit in the Administrative Office of the Courts.

At the present time, the Administrative Office is divided into a number of divisions, each headed by an Assistant Director. The Municipal Courts are now served by a small subdivision working within the Division of Criminal Practice. I believe there is only three people assigned to that unit. We recommend the establishment of a Division of Municipal Court Practice, with its own Assistant Director and additional personnel and resources.

This will bring the Municipal Courts to the same level of support services that is provided the Superior Court judges and their staffs. We believe that this new division in the AOC will be necessary to implement the many recommendations of the Task Force in the years to come.

After it was first organized, our Subcommittee attempted to add to the membership additional Municipal Court Clerks, and with them we addressed a number of specific problems confronted by the Court Clerks' offices. They told us of the problems which arise when a court is faced with a workload crisis, caused by a sudden increase in complaints received, or by a loss of staff resulting from illness or death or resignations or vacations. We established a procedure to be followed, and developed priorities for the performance of work in the Clerk's Office, during a time of temporary crisis.

We further recommend that the Administrative Office develop formal guidelines and procedures to be followed and a method for providing short-term clerical assistance to the courts in crisis, until the problem is resolved.

The Subcommittee also addressed the problem of Municipal Courts which have long-term problems, rather than simply a temporary crisis. This is the court which is backlogged because of poorly trained personnel, insufficient staffing, inadequate resources

or funding, or other problems within the office itself. That situation cannot be resolved by a temporary band-aid type solution, it requires major surgery.

We are recommending the establishment in each vicinage of an Emergency Management Visitation Team, a group of experts in each area of specialty in the Clerk's office, chosen from among the personnel within the vicinage. The team will act as a trained unit, prepared to move into a problem court and provide technical assistance as long as is necessary to correct the deficiencies in the system, train the office personnel and return the court to one which can, again, function efficiently.

Another recommended change by the Subcommittee has already been implemented. We recommended the preparation and publication of a procedures manual for court clerks. This recommendation has been implemented through a grant received and the project was conducted by the National Center for State Courts. This reference and training document defines the responsibilities of the personnel in the Clerk's office and contains an appendix of all of the standard forms used. It incorporates all existing directives, the Municipal Court Manual, statutes, court rules and policies and procedures regarding bookkeeping and financial control over the one hundred million dollars annually handled by the Municipal Courts.

We also studied the forms used in the Clerk's Office and have recommended that no new forms or reports be imposed on the Municipal Courts, until after they have been reviewed and approved. We request the Supreme Court to establish a committee to perform this function and also to review all existing report forms to determine whether the importance of the data collected justifies the work required to obtain it.

In another area we are recommending that the law enforcement authorities, rather than the court clerks be charged with the responsibility of preparing nontraffic complaints filed in the Municipal Courts. We believe that law enforcement authorities should prosecute and the judiciary should judge, and that from both a functional standpoint and from an appearance standpoint, the present practice is improper. In order not to impair access to the courts, the clerks will continue to prepare civilian complaints. We recognize the impact on the police,

resulting from this shifting of responsibility and we, therefore, provide for lead time before implementation and for the establishment of standards and procedures to make this change possible.

The Subcommittee has also addressed two problems universal in all courts, scheduling conflicts and postponements. Scheduling conflicts result primarily from conflicting commitments which attorneys have in other courts. Our recommendation contains a specific schedule of courts and types of cases and establishes an order of priority in the event of conflict to which judges, clerks and lawyers may refer to as a guide to resolving them.

We also propose a procedure to be followed when the conflicts cannot be resolved at the local level. With regard to a policy on granting or denying a request to postpone a scheduled trial, we have not recommended the specific policy, we have recommended that there be developed and promulgated a statewide policy with firm and uniform guidelines upon which everyone may rely. We have also made a number of suggestions on how to reduce the need for postponements.

Perhaps the most difficult and significant subject we addressed is that of the payment of fines, of delinquent fines, penalties and costs, which the court has ordered to be paid in installments. This is a staggering problem involving millions of dollars in lost revenues. Obviously, we found no magic solution, but we have made fifteen interesting proposals for the improvement of collections. Time won't permit an in-depth discussion of this, but one innovative suggestion warrants mention.

We propose that when a judge enters an installment payment order, he be empowered to order the surrender of the defendant's driver's license and to issue to him a temporary license, printed on red paper, with an expiration date coinciding with the date on which the defendant must make full payment of his obligation. This is a very popular recommendation with the court clerks, who applauded it vigorously when it was presented to them at their conference recently in Cherry Hill.

This procedure will compel the defendant, who is in default on his payments, to return to court, without the necessity of notices. Without the necessity of a warrant being issued. If he does not do so, he will automatically be driving on the revoked



list. This procedure, we suggest, be implemented in cooperation with the Division of Motor Vehicles to prevent the defendant from obtaining a duplicate or a new driver's license.

Next, working through different authors, the Subcommittee also produced two papers calling for the establishment of permanent vicinage committees. One called the Vicinage Advisory Management Team; and the other committee was one to coordinate the activities of the court and the many agencies and departments at the local, county and state levels, with which the court interacts.

The Subcommittee later consolidated these concepts into a single committee to perform both functions, with a broad membership to be composed of many of those who served on the local advisory committees, for the Task Force. Each vicinage committee will meet regularly to identify and resolve problems which inhibit a smooth working relationship with interacting agencies and the efficient functioning of the Municipal Courts.

In addition, we recommend the establishment of contact personnel in each agency and a directory of such persons to be available in each court, in order that individual difficulties may be quickly overcome. We have also recommended a modification of the present trial de novo procedure for appealing Municipal Court judgments to the Superior Court.

For many years, the Municipal Court judges have objected to the existing procedure. Instead of the present automatic right to a new trial on the record of the court below, whereby the Superior Court judge may substitute his judgment of the facts of the case for that of the Municipal Court judge, we recommend a procedure for an appeal to the Law Division, under the same standard of review as now exists in an appeal from the Law Division to the Appellate Division. Thus, the question before the Superior Court Law Division judge will be whether the Municipal Court judge has committed legal error, and will not involve a new determination of the facts already decided by the Municipal Court.

The Superior Court judge will also be required to give written reasons for his reversal of the judgment of the lower court, so that the judges will know what it was that -- the manner in which they have erred.

We believe the trial de novo procedure developed at a time when the Municipal Courts were lay magistrates, and that with the present well-educated Municipal Court Bench, the appellate procedures should conform to that in other courts.

Another somewhat controversial recommendation is that for the establishment in the Municipal Courts of a statewide pretrial intervention program by the incorporation of such a system into the program now functioning in the Superior Court. There are many ramifications of this proposal, which can be discussed in our workshops today.

We have also proposed on an optional basis a program for expanded use of community dispute resolution committees, utilizing volunteer citizens and diversion to these committees of citizen complaints for amicable resolution outside the normal judicial process.

And finally, the Subcommittee considered the substantial concern, which has been expressed by the judges and court clerks, regarding their potential liability from lawsuits, which may be instituted against them for their actions or inactions in the performance of their duties.

The question is how they may be provided with protection against liability, the payment of judgments and the cost of legal representation. We found that the court clerks and their staff enjoy no immunity and that the judges have only a qualified immunity and may be subject to these adverse consequences. We found no way to provide protection against all possible liability, while we considered various alternatives, we ultimately focused upon a legislative remedy.

This, however, will provide no protection against Federal civil rights actions or for violations of constitutional rights or acts of bad faith. Municipal Court judges and their staff are included in the immunities under the Tort Claims Act, but they do not have the same rights as state employees to representation by the Attorney General and indemnification by the state for judgments entered against them.

We recommend that the Tort Claims Act be amended to correct this inequity. We also recommend that until this legislation is enacted, the municipalities be encouraged to enact a form of

ordinance, which we have prepared, providing for insurance coverage and legal representation.

And finally, we suggest that the AOC establish continuing education programs, which will assist the judges and their staff in avoiding the pitfalls, which may subject them to such liability.

In the short time allotted for this presentation, I've been permitted only brief mention of the sixteen position papers which were submitted to the Task Force by the Subcommittee on Administration. They represent a year and a half of work by many dedicated people. Some of the recommendations are controversial and there will be much to be discussed in our workshops today.

In conclusion, let me say this, the call to abolish the Municipal Courts or merge them into a regional network of full-time courts, has abated. The present system will be retained under a new framework, with which we can confront our present and future demands. While our Subcommittee began its work with the realization that we might, ultimately, recommend revolutionary changes in the structure and administration of the Municipal Court system, we have not done so. We believe we have recommended substantial improvements in the existing system.

The Municipal Courts have long been neglected, provided with inadequate facilities, resources and personnel. As a result, filings now exceed dispositions by more than eighty thousand cases a year, yet these courts dispose of all -- of over four and a half million matters annually. The number of cases is so great that the need for improvement cannot be realistically disputed.

It has been the tradition of the New Jersey judiciary and the goal of the Task Force to have the finest system of justice in the country. That goal is most important in the Municipal Courts. It seems almost trite to say that these courts have the greatest volume of cases and the most frequent contact by citizens with the judicial system, but it has been said so often because it is so true.

We, on this Subcommittee, as do all of those on the Task Force, hope that what we present to you today will be a format for a new and efficient system for Municipal Court operations that will serve as a model for years to come. Thank you.

JUSTICE CLIFFORD: Thank you, Judge Lenox. Not even ten o'clock and the Chief Justice reminds me that I blew it the first time around when I said that I had the wrong order of the speakers. I was looking at an agenda you see with that cover, which is a draft, and you are looking at this one, and you are wondering why is he saying it's the wrong order. It was the right order and I knew it all along, don't worry about it. We're going to get it -- we'll get there.

The Committee on Budgets, Personnel and Space is headed by Judge Phil Gruccio, who I told you cannot be with us today and Judge Sam J. Serata, who is the Municipal Court Judge of Vineland and has been an extraordinarily -- played an extraordinarily major role in the contribution that he made to the work of the Task Force, has consented to take over for Judge Gruccio.

I noticed that one of the participants in the workshop on Budgets, Personnel and Space is Mayor Catherine Frank. Mayor Frank was the -- I think it's correct. The President or Chairman of the Conference of Mayors had one, too, made available as a forum that Conference, so that we could explain to those who have a stake, a big stake, in the work of this Task Force, what it was we were up to.

Judge Gruccio, during the course of the year, at the meeting of the Conference of Mayors, attempted, I understand most successfully, to explain the work that this body has been engaged in for a year and a half. Judge Serata on the Committee on Budgets, Personnel and Space.

JUDGE SERATA: Thank you, Mr. Justice. Good morning, Ladies and Gentlemen. I'm about to start across the pool of procedures and I would indicate to you that this particular subject of budget, personnel and space involves a pool of procedures in itself.

When the first meeting was held by Judge Gruccio, with a group of judges at the Municipal Court Conference in October of 1968, I believe it was, the first large procedure loomed, and that was the identification of the basic problem in this area, and it is twofold.

Number one, this particular area, oddly enough, despite its name, deals with money, control and quality and when you get dealing with those things in municipalities and with Municipal Court judges, you

find out it becomes very sensitive. The large crocodile that soon emerged, which is the biggest problem of all, are the pressures that exist on Municipal Courts, and are focused in this particular area.

You find that on the question of money, control and quality of courts and court personnel and the facilities, that you have an intersection of the two counteracting forces. Number one, basically the municipal force that is able to provide and under the statutory scheme of things, provides the money and the personnel for the operation of the court and the constitutional mandate that the Chief Justice and Supreme Court be responsible for the administration of the court system.

You find stuck somewhere in the middle of that is the Municipal Court judge who is responsible for the operation of his court, and yet he is dependent upon the municipal governing body in one form or another for his appointment and he really doesn't often have control over the personnel who operate the court for him.

You also examine the Municipal Court structure in the State of New Jersey and you find that there are very few full-time Municipal Court judges. There are even less -- I think there is one judge who is a prime time judge, that's me. That's a judge who is limited and cannot engage in contested litigation, and the vast majority of Municipal Court judges, probably about two hundred and eighty, or two hundred and seventy-five of the Municipal Court judges in the state, are part-time Municipal Court judges.

So that when you find that they are interested in their practice and they are also interested in and responsible for the proper management of the court, and they have to do that with personnel that they don't always have something to say about with regard to selection, employment, firing or salary, you find that there is a large crocodile lurking in the swimming pool, when you become involved in budgets, personnel and space in the Municipal Court.

Essentially, if you have had the opportunity to read the report and if you have read any of the position papers, you will find that threading through all of these position papers, you find basically three themes.

Number one, that the Supreme Court is responsible for the administration of all of the courts of the State of New Jersey, which includes the Municipal Courts.

Number two, you will find that there is increasing imposition of the power of the Chief Justice exercised through the Assignment Judge into the internal workings of the Municipal Court, which sort of gives the Municipal Court judge or the court clerks who are dependent upon municipal officials for their appointment, a buffer, or someone else who will be responsible for taking up the ball, so to speak, or carrying the ball, and being responsible to see that the court has basically what it needs in order to operate properly.

The third thing that the Committee concerned itself with was basically the quality of personnel who work in court, and that, of course, gets itself involved in the question of practice limitations, of duties, qualifications and eligibility and evaluation of court personnel, as well as termination of court personnel, including judges. Although termination of judges was not dealt with by the subcommittee, but other employees termination was.

The other aspect was to provide a proper house for the Court, or a proper physical facility. Now, when we look at the ten position papers that were prepared by the subcommittee or the Committee on Budgets, Personnel and Space, you will find, and it is to be commended on these members, that I reviewed them all last night again and they are nicely written and reflect a great deal of thought and effort on the members of the Committee.

Some of the information and some parts of the position papers were produced and the information supplied through the efforts of the Administration Office of the Courts and various members of that Committee. When we analyze those position papers, which I am going to proceed to do, we find that they line up in a certain order. At least, I think that they line up in an order.

The first paper dealt with the problem of budget preparation and approval. That particular paper provides for various aspects that involve themselves in other areas of the subcommittee's work. Essentially, what that provides for is a uniform method of budget preparation on uniform forms to be exercised throughout the state. Some vicinages are

now doing it and I believe that what we found out was, that there are varying degrees among the vicinages, as to how this is being done.

Essentially, what the paper calls for is the preparation and submission of a proposed budget by the Municipal Court to the Assignment Judge and the trial court administrator's office, and if it comes into being, the Presiding Municipal Court Judge, of course, will have a large part to play in all of these things, as the first assistant of the Assignment Judge. As I understand that position to be.

But the concept is that the budget paper preparation or submission would then be reviewed and must be approved by the Assignment Judge, and there is provision, also, for the creation of a Budget Committee, within the municipality, that is sort of a meet and discuss committee. In smaller municipalities, that may very well constitute the entire governing body. In larger municipalities, that meet and discuss committee would constitute the chief financial officer, one member of the governing body and the Municipal Court judge, who would be accompanied by either the Assignment Judge or Presiding Municipal Court Judge or a member of the trial court administrator's office, who would be knowledgeable about these things, so that there would be an opportunity to present the budget to the municipal governing body and explain the needs of the court.

Then there is a budget impasse. Assuming that the municipality does not go along with the needs of the Municipal Court, there is a budget impasse procedure, very similar to the budget impasse procedure that is now in effect as far as Assignment Judges are concerned and their respective counties, whereby the Assignment Judge would indicate to the governing body that the budget approval that they have given is not satisfactory. Give them an opportunity to revise that, and if not revised, there would be an appeal taken to the Chief Justice and it would then be referred to sort of a blue ribbon panel, that exercises at the properties of an Appellate Court, who would then review and ultimately there would be an order indicating what the budget would be.

At the time of the appeal, the municipality would have an opportunity to be heard and present its position with regard to the Municipal Court budget. That, in effect, would relieve the Municipal Court judge of being in the middle in that sandwich or the

Municipal Court Clerk of being in the middle of that problem, where the court needs and the desires of the municipality to provide funding, would intersect. The things that come out of this particular position paper would be a uniform reporting system on what municipalities do, to both the Assignment Judge and the Administrative Office of the Courts.

That would permit the establishment of several interesting things. Number one, and most importantly, it would provide a data base, which would give a lot of information concerning workloads of courts, what salaries there are and what court expenses are, which leads to the second papers, which is the budget ratio paper that was produced.

Now, budget ratio talks about the workload or caseload of a court in connection with the amount of money that is required in order to operate the court. An initial survey of these figures, based upon really imperfect data supplied to the Administrative Office of the Courts, would indicate, I think, that it costs a little over \$5 on the average to process each case. It costs more in smaller courts, smaller volume courts, than it does in larger volume courts, so that there is something of the Ford theory that if you can make more of them or do more of them, you can do it more cheaply.

If you are going to handle cases, I assume that that theory applies also in the general economy of manufacturing, but it certainly appears to be evident when you analyze the returns of the Municipal Courts. So that the budget ratio paper deals -- is sort of an offshoot of the budget preparation and approval paper, because it provides data that will allow information to be supplied, which is very important when you go to a budget hearing.

The concept is that if you are going to go and make application for increased salaries, that what you should be in a position to do is to show what comparable court clerks or comparable judges are being paid in terms of salary. What the facilities are in comparable courts and be able to convince the municipal governing body that this is what they should do.

I would indicate that in the course of this particular -- some research that I did, it is very interesting to see that the concept of comedy threads itself through the relationship of the judiciary and the legislature and the executive body. It seems that



no one really wants to have a confrontation, yet the judiciary wishes to remain independent. Independence of the Municipal Courts from the travels of the police, of the governing body and of the governing body, either in its legislative function or the administration of municipalities in their executive function, is a very, very important thing, no matter how you want to study Municipal Courts. Those things interweave themselves, so that the Municipal Courts are not isolated and can't act insulated from the entire world.

The Municipal Court, while it should be independent, has to be able to live with the other parts of government. That is particularly evident when one looks at the papers that are prepared on security and the question of a minimum standard for facilities. There are two papers. There is sort of a meander from the general thread of the Budget, Personnel and Space Subcommittee goals, but these two papers deal with minimum requirements of security, and it is very interesting, security in the Municipal Court, according to the position paper, is delegated to the Chief of Police of the municipality if there is a police force in the municipality. So that the problem of security becomes a police function, even though it is the court.

Also, if there is no police department in the municipality, which is true in many of the smaller municipalities, the problem is then delegated to the County Sheriff's Office. The feeling in this regard is that the County Sheriff is already familiar with the security responsibilities for the Superior Court and the information that he has, the experience he has for the security of the Municipal Courts, can be taken from his experience with the Superior Courts.

There are recommendations in these papers for minimum courtroom facilities, minimum sanitary facilities. I saw an article in the paper, I think, within the last two weeks, about a courtroom that had sanitary problems with it. There are many problems involving facilities. The minimum standards of facilities for courts deals with this kind of problem, recommends that where the municipality is going to construct a new physical facility, that review of the plans for the court be submitted to the Assignment Judge and, perhaps, there should be an architectural review section provided by the Administrative Office of the Courts, that would have an opportunity to look at the proposed plans and that they would have to have some kind of approval.

So that there would be, at least, minimum standards guaranteed. Minimum standards for facilities also would contemplate certain safety and security problems. For example, the recommendation is that the Bench have some type of bullet-proof facility. That there be an ability to control access to the courtroom by people and that there should be screening of the people when they come into the courtroom.

Many Municipal Courts have virtually no security and some of the facilities are rudimentary, as you are all familiar. Also, many of the Clerks' offices have inadequate space. People are crowded into one large room and they work on top of each other, with no ability to divide desks or prevent people from having privacy when they are working; and all of that is contemplated and presented very nicely in the paper and the position on the minimum standards for facilities.

The Committee also dealt with the problem of personnel, which is probably going to be the balance. You will find that the question of salaries of personnel is covered in a separate paper. Much of the information that is derived there is derived from data which was acquired by the Administrative Office of the Courts. There are some recommendations in connection with that, that deal with also the concept of classification of personnel.

This Subcommittee felt, after reviewing the volume of courts, and the sizes of courts, and the number of employees, that basically, there are three divisions of Municipal Courts, according to size. They are one, two and three, depending upon their volume. I believe that the largest number of courts probably fall into Division 3, which is a one or two person staff. The middle division is a staff that is -- has a part-time judge, has a full-time clerk and probably five or six employees, either part-time or full-time. And the first category, of course, are the larger Municipal Courts in the state. Many of them with full-time judges or judges who spend a good deal of their time on the Bench.

The classification of salaries is also broken down according to the sizes of the courts. As far as clerks and other personnel are concerned. The qualifications of the Clerk/Administrator, which is a new concept. The concept being that the Clerk/Administrator would be a joint employee. He

would -- that would be selected by the cooperative efforts of the governing body, who by statute, has the right to appoint court clerks and other Municipal Court employees, but also with the concurrence of the Assignment Judge, so that there would be input from the judicial side of the government as to the employment of these personnel.

The problem now is that many times the Municipal Court judge is not consulted at all and certainly, the Assignment Judge is not consulted with regard to the employment, particularly of the clerk or Clerk/Administrator, who is such a vital part of the administration of the courts. When one considers that the Municipal Court judge is part-time, many of us Municipal Court judges simply sit on the Bench and feel that that ends our responsibility, or that is primarily our responsibility and the administrative problems of the court are left to that all essential person, the court clerk. Who bears the brunt of all of the problems that come up on a day to day basis, while the judge comes in and puts on his robe and sits. In many instances, this is so.

One of the concepts and one of the important functions of this particular Committee, was to draw the Municipal Court judge more into the problems of administration of the courts and the judges end of the court system through the Assignment Judge, into the problems of administration of the Municipal Courts. Which has sort of been left out there in limbo somewhere, with the court clerk having to obey the mandates of the Administrative Office of the Courts, and the Supreme Court, and subject to limitations placed upon her by the governing body, who supplies the funding. These problems have to be resolved, and we hope that we have offered solutions to the problems.

The other area of personnel that was considered were the problem of duties, quality and appointment of personnel in the court, as well as both judicial and clerical with the court. These are enumerated in the position papers, and I'm not going to go into the detail, the requirements for a court clerk.

In a Class One municipality, just basically, it provides that that individual has to have a Bachelor's degree, plus, I believe, it's four years of experience, or two years of experience that is involved, and that the Bachelor Degree requirement can be waived, I believe, through an experience

requirement, and there are other requirements. One of the fundamental things that the Subcommittee, or this Committee on Budget, Personnel and Space recommends, is continuing education of Municipal Court personnel, whether it be judges, clerks or whoever it is, but these things are very important.

As far as the judicial end of the situation, the recommendation is, essentially, that a Municipal Court judge, one statutory -- or a legislative change is recommended and that is, there was a distinct feeling that has been approved by the Task Force in general, that no person should serve as a Municipal Court judge unless he has five years admission and practice of law. That there is something wrong with a brand new lawyer coming in and sitting on the Municipal Court Bench. That there ought to be some experience level, and the feeling was that five years would be important.

Also, there was consideration given to the pay of Municipal Court judges and studies were made for them, as well as for the clerks, that based upon the volume of the court and the experience. One controversial position that was adopted has been the limitation of the pay of the Municipal Court judge. Some Municipal Court judges, because they are willing to work hard, make a lot of money, and if they are lucky, they may work for municipalities that pay well. In that kind of situation, it is entirely possible that a Municipal Court judge can earn more than a Superior Court judge, or perhaps even more than a Superior Court Justice. There is some feeling that a Municipal Court judge, regardless of the time that he puts in or what his position is, should not be able to do this.

There is also the feeling that if you wish to work hard, or if you are fortunate in life, that in our way of looking at things, you should be able to make as much money as you can, that's part of our free economy. That particular problem is addressed by the Committee, and the feeling was that the Assignment Judge should be permitted to review.

I am advised that my time is up. There are two other areas that I want to cover very briefly with you, despite the admonition given to me; and that is, that there is a paper that is prepared on nepotism in the Municipal Courts, that involves the problem of employment of the mayor's daughter by the governing body and that type of thing, which is to be barred and can be done by court rule.

The hiring and firing of employees, or the employment or termination, again, involves the input of the Assignment Judge into that area. Particularly, on termination of employees, that there should be a hearing permitted.

The last subject is probably the most controversial. It was one paper that was prepared on limitations of practice of Municipal Court judges. That did not get through the Task Force, but there was a -- I think it was the only position paper that was turned down and that was done by a close vote of the Task Force.

The problem there was that after much review by the local advisory committees, the position of the Committee was that judges should be -- that there should be an evolution of the judges toward becoming, at least, prime time. That is, that they should not become involved in contested litigation, because of the many problems involving appearance of impropriety that are involved. That was a minimal approach, some of us felt. Some of us felt that there should be an evolution over a period of ten years, probably to full-time Municipal Court judges, who would not be allowed to engage in private practice.

Fortunately, or unfortunately, I guess depending upon your position, the Task Force decided that it would take no position with regard to that particular subject, and with that, my talk is concluded. Thank you.

JUSTICE CLIFFORD: Thank you, Judge Serata. So much for the heavy hand and iron fist of the Chairman who succeeds in intimidating all of the members. That's characterized the work of this Task Force all along. It explains why we took eighteen months, for one thing. Thank you, Judge Serata.

The Committee on Traffic and Computerization was chaired by Superior Court Judge Betty Lester, who will give you the overview of the work of that Committee. Judge Lester.

JUDGE LESTER: Good morning, Ladies and Gentlemen. This has to be the third time that I have been asked to summarize the year and a half work of my Committee, and each time I am given less time. So I'll get to the point, and I promise not to overstay my welcome.

The primary mandate of the Committee on

Traffic and Computerization was to document and analyze current traffic case processing methods employed in the Municipal Courts in the State; to evaluate the extent to which these methods were meeting the present needs of the court, or the extent to which the methods presently employed represented impediments to efficient processing and effective revenue collection in the future; and to recommend, if justified, a system of automated communication, which would accommodate the reliance of other agencies upon the courts for accurate information and the need for oversight management of the courts, utilizing the data that they provide.

We began our work with many assumptions. Most of which were destroyed along the way, and not too many facts. Consequently, this Committee spent well over a third of its time attempting to, first of all, determine what was out there. Secondly, to determine wherein it was broken; and thirdly, to hopefully propose intelligent ways to fix that which was broken.

We discovered, to our amazement, that most traffic cases in this State presently, approximately two-thirds, were already being processed by some form of automation. Despite the fact that the majority of the 530 courts themselves are not computerized. Only eighteen courts in the State had either on-line computers and ninety-four courts had access to computers through Service Bureau contractors.

We further found that the majority of problems in terms of processing backlogs and uncollected revenues were reported in the very courts who were presently utilizing computers. We further discovered that many of the problems experienced by the courts, whether utilizing computers or not, were as a result of factors over which the courts have little present control.

Factors ranging from an inability to provide resources of personnel and equipment, as has been mentioned by some of the other speakers, the resources needed to get the job done; to an inability to cope with forms and administrative procedures which no longer accommodate the needs of the courts individually, nor the needs of a massive network processing in excess of four million traffic tickets annually.

Now, you have heard other speakers mention that the total processing of the court is somewhere

close to five million. You can see that, to a large extent, many of the cases handled by the court are traffic cases.

Those courts presently utilizing computers were further found laboring under the additional burden of attempting to survive in a procedural and administrative atmosphere, which never contemplated their existence as processors in an automated atmosphere.

The cumulative effect of all of these problems is that all Municipal Courts presently experience, to varying degrees, an inability to either process, adjudicate or collect every traffic ticket issued in their jurisdiction. The result of these difficulties translates into processing backlog and lost revenues. Hence, prior to, and in preparation for, conversion to any mechanical system, enhancements in the processing and enforcement must occur. Procedures must be streamlined and uniformly applied and a general housekeeping must occur.

The issues that concern themselves with general processing enhancements and collection enhancements are contained in the position papers of this Committee, which are contained in the appendix to your materials. And unfortunately, are too numerous to summarize here. I have been asked to direct my comments to the major position paper of this Committee, which was the master plan.

Towards the -- having confronted those issues, toward the issue of whether an automated system was feasible or necessary, the Committee found some other disturbing facts. The Department of Motor Vehicles, which is absolutely and totally reliant upon the Municipal Courts for the maintenance of driver histories and abstracts, which is one of its chief functions, was communicating, and is communicating, with the court in a totally manual fashion. With very few exceptions, and those exceptions are in several of the larger courts.

The myriad of complicated paperwork transactions necessary for the court to report that which it has done is mind boggling. Further, the Committee found that the Administrative Office of the Courts, the agency which is reliant upon the court for information with regard -- with which it needs to make intelligent decisions concerning the management of the court and the running of the court and the needs of the court, was also totally reliant upon manual

communications. Communications to which a large degree overlapped the reports necessary to provide the information required by the Department of Motor Vehicles.

The conclusion became inescapable that automation was necessary if the court was not to fold, under not only its burden of doing its work, but the additional burden of reporting that which it had done to the agencies which relied upon it for information. Hence, toward the ultimate goal of a central bank of information, relating to traffic case processing, with the ability to transmit and receive data electronically between and among the courts, the Department of Motor Vehicles and the Administrative Office of the Courts, the Committee has made the following recommendations.

Number one, that of the courts who are presently processing traffic tickets manually, and that represents 418 of the 500 courts, that those courts be required to prepare for electronic communications with the Central Data Bank, proposed to be resident with the Administrative Office of the Courts, and that that communication be through computer terminal.

The Committee reasoned that while the volume of cases handled in any individual court, processing manually, does not necessarily warrant the use of computers for local processing, collectively manual courts process approximately thirty-six percent of all tickets in the State. These manual courts also tend to handle more moving violations than others, which renders the Department of Motor Vehicles particularly dependent upon them for information. Hence, any statewide system could not function well without the benefit of the information from these courts. Keeping in mind, however, that the benefit is primarily to the system, rather than to the courts individually, the Committee has recommended that the expense and the expertise associated with electronically hooking up the courts through terminal be funded at the sole expense of the State.

The Committee has recommended further that of those courts presently using in-house computers, and at the time of the study there were eighteen, and these courts tend to be the high volume processors, that the status quo be maintained in those courts for the present and possibly indefinitely. The Committee recognized in reaching this decision that the courts who have computerized, have done so primarily out of



self-defense over the years and without a great deal of guidance.

That, at this point in their development, they have devoted large resources, in terms of personnel and funds, to the systems that they presently have. And for that reason, would tend to be extremely reluctant to scrap the effort that they have invested in, in years and time.

The Committee also recognized that the current in-house computers, the high volume processors, had a very real need to perform local processing, which some of the smaller volume courts did not. And that their present equipment permitted local processing -- them to meet their local processing needs. Specifically as it related to personnel, work flow, reports to local agencies, such as the governing body, and communications, large volumes of communications between the court and the police department. Particularly, in the areas of warrants, in the urban areas.

With regard to the hookup of the in-house computer, the present in-house computer users, with the proposed statewide system, the Committee has recommended that the Administrative Office of the Courts undertake the study of the feasibility of translator programs, which would permit them to maintain their present equipment and still communicate with the central system.

The Committee has recommended that the expense of the design and implementation of translator programs for the large users be borne by the State, and that the equipment expense necessary for this type of communication be borne by the municipality.

The last class of users falls into the category of those presently being serviced by service contractors. Private organizations that undertake, for a fee, to primarily data input traffic ticket information into a computer system, resident with the service contractor, rather than with the court. The Committee took no philosophical position with regard to the relative worth of the existence of service contractors, but rather, recognized the fact that they do exist. That they currently service 94 of the courts, some of whom are larger volume courts, and that in the service to their 94 customers, the service contractors process fifty-three percent of all traffic tickets in the State presently.

We, therefore, attempted to accommodate the existence of service contractors, as well as the fact that many courts were more than satisfied with the services being provided by them. The Committee, therefore, recommended that service contractors be required to standardize the services that they provide to the courts, which is not presently the case, so that there would be a uniform service and that the AOC should overtake the setting of standards for service contractors. That the feasibility of direct computer linkage between service contractor computers and the proposed Administrative Office of the Courts' Central Data Bank, would also have to be made accessible.

Of course, the alternative is always left to those courts presently utilizing service contractors to adopt any of the other modes proposed by the Committee. Namely, either direct terminal linkage and assuming responsibility for data entry, and/or, at some point, upgrading to even mainline systems for local processing.

As the day progresses and the issues are presented, which are contained in some of the other papers of the court -- of the Committee rather, you may feel that the proposals that this Committee has made are ambitious, to say the least. And they are. The effort thus far expended may pall in comparison to that which remains to be done, and at the risk of telling another crocodile joke, the year and a half -- at the beginning of the year and a half when we started our study, we didn't know very much about what was out there and what the problems were.

We can, at least, at this point, take heart from the fact that at least we know where the crocodiles are at this point. Thank you very much.

JUSTICE CLIFFORD: Thank you, Judge Lester. The Chairman of the Committee on Trials is Judge William Walls of the Superior Court, and he sits in Essex County. Judge Walls knows this system like the back of his hand. I have referred to him here before as our all-purpose, all-state, utility infielder. He can do it all. So confident am I that he can do it all, that I know he's not even going to skip a beat when I tell him he is going to have to cut his presentation in about half, so that we can proceed to the workshops and he will do so with extraordinary aplomb. Judge Walls.

JUDGE WALLS: Well, if I threw this away, I wouldn't know what to say, but let me say this, the

last is not necessarily the best, but this time it is the bottom line, because we are dealing with the reason for the whole system. We are dealing with the arena and the place for the conduct of trials. The resolution of conflicts between government and citizens and between citizens and citizens and citizens.

I am going to make my presentation, unlike a Municipal Court judge, in deference to the Supreme Court, because the Supreme Court controls me. I'm not necessarily a Municipal Court judge. But let me say this, I am going to make the presentation also using two assumptions, and those two are, that some of you have read these papers and some of you have not; and consequently, I'm just going to give highlights, which will hopefully not bore those of you who have done your homework, but also enlighten those of you who possibly might need to.

I have no -- I make no guarantee that what I'm saying will provide banter for cocktail parties nor data for trivial pursuit, but it should be worthwhile, because as I said, that's what we're all about. We have ten position papers, and they were more or less functional in approach, in the sense that we took a person from his being summoned, his or her being summoned, into court, through the process of arraignment, to the process of bail setting, to the process of obtaining counsel and to the actual trial.

With regard to the service of summons, we have -- we, the Committee, have no recommendations to make with regard to any substantive changes in the regular procedure, because the regular procedure, we think, is very good. That is to say that great use is made of the alternate system of service of a summons and complaint by regular mail, instead of the police having to personally serve or the use of Rule 4:4-4.

That is very good, and do you know why, because proof of the pudding is not in the eating, but in the fact that defendants show up after they have been mailed notices. A great majority of defendants show up and so that's what -- that's the purpose of the rule. Form follows function.

But in any event, the Committee has, therefore, only one suggestion. That with regard to those who do not show up, and there is need then for the institution of contempt proceedings, the need for a police officer to personally search out and serve the person with the contempt notice, and in the event

of adjudication of contempt, then that person should pay for such expense and should pay a sum of up to \$100.

Now, after that person is in court, and there is a need for bail, we ought -- we, throughout the year, have constantly reminded ourselves, in order that we should remind you, and everyone involved in this criminal procedure, because practically all of Municipal Court is what we call quasi-criminal, that is bail serves only one purpose. To insure that the defendant is present in court at all times required. It serves no other purpose. It is not for preventive detention. It is not to provide a kitty to take your fines out when you have assessed them against an absent defendant. I underline an absent defendant.

That's not the purpose of bail. We also recommend that every Assignment Judge in the State consider the employment and the adoption of uniform bail guidelines. Not that we expect to have bails set in Gloucester the same as the bail set in Hudson or Warren, but that within each particular county, there be uniformity of bail, and that it be -- it recognize the basic elements which should go into determination of bail. That is, residence, lack of record, presence of record, nature of crime, roots to the community, nonroots to the community and so forth.

We further recommend that there be a further and more universal use of the ten percent cash alternative to bail, and by that we mean what we say. That is to say ten percent cash alternative. It is not ten percent deposit, it is ten percent cash alternative to the normal bail.

And lastly, with regard to this paper, bail should be set by the judge. Only in abnormal circumstances should he delegate that responsibility to his court clerk, and only in the most extreme of emergent matters, should he delegate that responsibility to the police.

Now bail has been set and there is need for counsel and as we all know, because we are dealing with matters which may involve consequences of magnitude, that is a jail imprisonment or imposition of fines of \$200 or more or imposition of loss of driving privileges or suspension of driving privileges of more than ten days.

Am I going fast enough for you, Justice?

JUSTICE CLIFFORD: I'll tell you when you get to the end.

JUDGE WALLS: All right. Then we should be aware that in such a circumstance, a person who cannot afford a lawyer, but who is subjected to that risk, is entitled to a lawyer, and therefore, we, in our papers, recommend that the various municipalities establish some definite system for the providing of counsel. Whether it be by a Public Defender's Office, whether it be by the establishment of a system where pool attorneys, on a per case basis, or even a rotation -- a rotational list of unpaid attorneys, something definite and regular be established.

Also, we further recommend hardly that there be some sort of investigatory circumstance or procedure to determine whether or not a person is, in fact, indigent. And that can possibly be done through your Public Defender's Office, if you have one, or through some other bureaucratic establishment.

Now, that he has, or she has, a lawyer, and subject to this type of a case, then we further suggest and recommend strongly that every Municipal Court have a prosecutor on a regular basis. And regular basis means simply that every case that comes to trial shall be prosecuted by that person. Whether it be arising out of police complaint or by civilian.

Now, obviously, the main reason for that is to maintain the integrity of the court. Too often, it has been stereotypical, but at times, most stereotypes have some element of truth at one time or another, that is, that the judge became the prosecutor. And that is, for want of any other more eloquent legal expression, that is unfair. That is unfair to our system and unfair to justice.

So consequently, I find that through our Committee that most municipalities do have that set up, but nevertheless, we find that, unfortunately, that not every municipality has a regular prosecutor.

Now, with prosecutors and defense attorneys, there comes time to discuss reality of life, and that at times is revealed by a plea arrangement, and we urge the Supreme Court to permit Municipal Courts, when and only if there is a prosecutor, to entertain a plea arrangement, arrived at between defense counsel and prosecutor, or between a defendant who knowingly has waived his right to counsel.

Just for an aside, just as a tip to Municipal Court judges who possibly may not be as conversant with taking pleas as Superior Court judges are, I would suggest this, because it is the law. That is, in order to take a plea arrangement, there has to be a factual basis for the crime. There has to be evidence of guilt. You cannot, because a person says well, all right, I'm innocent, but I don't feel like wasting another time from the job, I'm going to plead guilty to this. You cannot take that plea. You cannot take that plea.

The judge, also, may not take direct part in the negotiation of the plea. That is between the prosecutor and the defense, but the judge has one final role, though. He has the right to accept or reject. He is not bound, just because the prosecutor comes and says that that is the plea arrangement.

As we rocket along, we deal now with frivolous complaints. Those are a necessity, those are like flu and acne, they are with us forever. Because any person may file a complaint and that's the way it should be, but there does not have to be any issuance of a summons in the absence of probable cause, and so consequently, the Committee dealt with this problem and we will deal with it further, probably, at our workshops.

But really, there is really no -- I don't believe any answer to it, because with the exception of possibly having a hearing to establish probable cause, and then in that event, you may as well, as I look at it, you may as well have the trial.

But speaking about the trial, trial should be open to the public. There should be regular sessions and this caused the greatest controversy of all, and I have to slow down, because I wrote this paper.

That is, the courts should advise all defendants of all rights, regardless of how much time it takes and particularly, obviously, with regard to consequences of magnitude, you must orally take time out to advise that defendant of his right. You cannot rely upon the fact that he or she may have heard it at six o'clock when court was to begin, and he may have read it on a bulletin board outside.

And I think that is it. I hope that that has provided you with some insight with what we have done. And if not, I'm sorry.

JUSTICE CLIFFORD: Thank you, Judge Walls. I told you nobody makes a double-play without a hitch, better than he.

Now, then I assured you at the beginning that we would have a break between now and the commencement of the workshops. I don't always tell the truth. No break. We have to go directly to the workshops.

Please do whatever it is -- whatever is necessary for you to remain comfortable while you are at the workshops.

MINUTES  
THE NEW JERSEY JUDICIAL CONFERENCE  
MIDDLESEX COUNTY COLLEGE  
June 28, 1985

Committee on:

A. Accountability

Panelist: Professor Donald E. Kepner, Chairman  
Ms. Carol J. Brennan  
Honorable Anthony H. Guerino  
Nancy Lotstein, Esq.

1. Calendar Performance Evaluation

Ms. Brennan reviewed the above paper involving calendar performance. One commenter expressed doubt that this proposal could be implemented due to the reluctance on the part of municipalities to give their courts greater financing. Judge Guerino noted that the Task Force was attempting to better the system with full awareness that there are real limitations on the courts. Professor Kepner noted that other position papers such as the papers concerning budget impasse procedures and the presiding judges concept are an integral part of this issue and that proposal to compare like courts - i.e., courts will be evaluated on the quantitative jobs they are doing. He further noted that if a court did not meet minimum standards, it must be closed. This prompted comment by an unidentified person that he had never seen a court closed in his 20 years as a judge, and that although he had threatened to close courts on several



occasions, he never had to do so because the municipality came through with adequate financing.

2. Processing of Drunk Driving Cases

Ms. Lotstein reviewed this paper, indicating that these are the problem areas causing delays beyond the 60 day guidelines:

- (1) difficulty in scheduling of expert witnesses,
- (2) certification of breathalyzers,
- (3) playing of videotapes,
- (4) scheduling of police appearance
- (5) requirements for discovery.

Concerning the issue of the scheduling of expert witnesses, it was suggested that the parties stipulate to such testimony. Judge Guarino noted that while this would appear to be a practical solution, prosecutors object to it and do not want to so stipulate. He noted that he had ruled in his court that testimony of expert witnesses be taken by videotape where scheduling is a problem, but that a Superior Court Judge had set his ruling aside and determined that same must be done in person. It was further noted that in a marijuana case, the expert must be brought in.

It was noted that pursuant to the Romano decision breathalyzer certification must occur every 60 days and that this causes delays in the disposition of these cases. Ms. Lotstein had earlier noted that the State Police have advised that they have added six new experts to the seven they had. The State Police indicate that they will now be able to certify every breathalyzer within 30 days.

Professor Kepner noted for the record that there was tremendous objection to the 60 day program. It was suggested that the 60 days were unreasonable and that the 1983 Judicial Conference did not mandate such a

program, but that the Chief Justice decided it was a goal. Inquiry was made as to where was the order of the Chief Justice referred to on page 165 of the Report of the Task Force. Professor Kepner emphasized that at the 1983 Judicial Conference, five of the Committee Chairmen (of which he was one) were asked what the processing time should be for a particular case.

Further, it was suggested that the program is unreasonable because Rules 7:4-2(g) and 3:13 allow 40 days for discovery and further, the program is an intrusion on an individual's constitutional rights. The overriding consideration should be the quality of justice. It gives an attorney little time to review the case to determine whether to try it. Judge Guerino responded that indeed justice by numbers is not justice, but that it is well known that defense counsel may be benefitted by such delays. The defendant has an interest in beginning his rehabilitation, therefore, the case should be stated at arraignment.

It was further suggested that words like "accountability," "calendar control" and "comparison of like counts" are bureaucratic pressures to dispose of numbers at the expense of quality of justice. In contrast, it was also noted that the 60 day program was a good one which was working well in Union County where by cooperating with other municipal courts, they are able to meet the 60 day program with, of course, certain exceptions for illness, etc.

It was suggested that while it was right for the Committee to place the areas for providing discovery on the prosecutor, at the municipal level the prosecutor will not have the luxury of assistant prosecutors and full time investigators as does the county prosecutor. Since the discovery comes from the State Police, the Marine Police, etc., and in order to avoid delays inherent in the discovery process, the rule should be revised to

turn the responsibility for providing discovery over to the State Police, the Marine Police, etc. Ms. Lotstein responded that discovery was a legal determination and that it would be inappropriate for a police officer to make that determination. Judge Guerino further noted that the remedy for delay in providing discovery is dismissal of the case.

There was some discussion regarding early administrative revocation. It was suggested that a case should be closed out pursuant to a rule and a defendant's licence suspended. Ms. Lotstein indicated that this was not a recommendation of the Committee because it was thought that if we can accomplish the goals we have set for ourselves, we may not need an administration close out penalty. It was also suggested that any administrative suspension process to adjudication would be a presumption of guilt rather than ~~innocence~~ which is clearly unconstitutional.

### 3. Domestic Violence

Judge Guerino reviewed the Committee's paper regarding domestic violence. There was considerable discussion concerning the Committee's recommendations that the Family Court should have sole jurisdiction with respect to criminal cases involving domestic violence and that the Family Court should be contacted first when issuing temporary restraining orders and the municipal courts be used only as a last resort. It was suggested that there was often difficulty in determining whether the parties were cohabitants since the temporary restraining order is effective for one year. Judge Guerino responded that since the county is in a better position to know whether the parties are living apart or have left the jurisdiction, the Family Court should hear the matter. It was pointed out that in the victim-witness area, we are asking for more sensitivity; but in

the domestic violence area, we want to give jurisdiction to the Family Court who is not as familiar as the municipal court with the local police and the local situation, etc. Judge Guerino responded that the county becomes involved anyway since the papers are executed by the sheriff. He asked, however, that there was a problem with requiring filing at a distant court and recommended that perhaps intake could be accomplished by local police and could be utilized for this purpose. Ms. Lotstein noted that juvenile intake maintains a cadre of experts who could arrange for the transportation. Judge Guerino further voted that it is the county Family Crisis Resource Center which has the resources which are required in the domestic violence context. A subsequent workshop attendee recommended that domestic violence matters be removed from the municipal court entirely and that all criminal complaints arising out of same be transferred to Family Court.

Another issue provoking considerable discussion concerned the requirement that the Family Court hear all applications for temporary restraining orders except in emergent situations. It was suggested that a Superior Court judge has too many municipalities within his jurisdiction to accommodate this requirement.

In a subsequent workshop a Family Court judge from Camden County indicated that the only way an emergent duty Superior Court judge could handle all domestic violence cases would be for him to stay up all night on the weekend. Judge Guerino responded that since municipal court judges are part-time judgeships on part-time pay, with a private practice, they do not have the commitment. Professor Kepner indicated that while the recommendation was not in the Committee's initial position paper, several local advisory committees had suggested that these matters should be taken out of

municipal courts. The Committee thereafter adopted this recommendation. It was suggested, however, that it made no sense to take this matter out of the municipal court, since the defendant is in the custody of the municipal police and the municipal judge can come down and investigate the condition of the defendant. One municipal judge advised that he had instructed his court clerk that if the application occurred after hours, the municipal court would take it. Another comment indicated that in Camden County, applications occurring during the day are forwarded to Family Court and those arising on weekends and holidays remain in municipal court.

The Committee's recommendation that the Family Court have sole jurisdiction with respect to criminal cases involving domestic evidence also generated considerable discussion. A Family Court judge from Camden County indicated that while he was in favor of this recommendation, even for murder (although that would require a waiver of the right to a jury trial), he noted that currently he had six complaints, including a DWI matter, and he questioned whether it was appropriate for him to be trying all of them.

Inquiry was made as to whether it was the police who were the problem regarding sensitivity to the domestic violence victim's situation and whether this could be corrected. Judge Guerino noted that often the police as well as court personnel talk the victim out of filing a complaint and that this can be corrected and must be because often the result is serious injury or death to the victim. It was suggested that temporary restraining orders are difficult to enforce and that uniform guidelines should be made. It was also noted that where police and municipal prosecutors do not comply, they are subject to civil judgments. Professor Kepner indicated that pursuant to Title 42 the police must act reasonably.

## PROPOSED MINUTES

COMMITTEE ON ACCOUNTABILITY  
WORKSHOPS

1985 JUDICIAL CONFERENCE

JUNE 28, 1985

Panelists: Hon. Shirley A. Tolentino, Chair  
Hon. Frederick C. Schneider, III  
Hon. Thomas P. Kelly

These minutes cover three of the six workshops presented by the Committee on Accountability. In attendance was representation from the judiciary, bar, governmental authorities, and the public, including Supreme Court Justices, Assignment Judges, legislators, county and municipal prosecutors, defense lawyers, private bar, mayors, and court clerks.

The theme of accountability was kept at the forefront as each panelist presented a brief commentary on a particular area of interest. Workshop discussions were dominated by comments about (1) Public Access to Court Records; (2) Community Advisory Committee; (3) Domestic Violence Relief; and (4) DWI Case Processing.

## TOPICS UNDER DISCUSSION

(1) Public Access to Court Records, Position 6.6

Attendees expressed general agreement with this recommendation to provide the press and public access to non-confidential records, which would be enumerated in the court rules. Attendees questioned two areas, however, (1) whether the listing of publicly-accessible records fall under the requirements of releasing information and/or documents under the Right to Know Law, and (2) whether

Motor Vehicle abstracts should be made available to the press and public by the court. Attendees felt that although the public and press should have a right to such information, the courts releasing a defendant's prior offenses gives the appearance of impropriety. Additional comments indicated that an entire file on a case should not be public information, and, specifically, the addresses of victims and witnesses be kept confidential. [This is contrary to existing policy.]

(2) Community Advisory Committee, Position 1.3

One of the workshop attendees suggested that "persons from health and human services" be among the listing of nonpartisan local community advisory committees that would be created to enhance citizen involvement in the municipal courts. Position 1.3 of the Task Force Report addresses this topic and does indeed include such persons and agencies (pages 14-15).

(3) Domestic Violence Relief, Position 6.1

Attendees generally expressed concern over two of the recommendations of the Domestic Violence Relief Position. Namely, "the Family Court should have sole jurisdiction with respect to criminal cases involving domestic violence." Some discussion favored giving municipal courts sole jurisdiction except with indictable criminal matters, which should be handled in the Superior Court. Some attendees felt that the local judge could more adequately handle such cases if the courts' hours, staffing, funding, responsibilities, and in some cases logistical jurisdiction, were expanded. [Municipal

courts currently do not have the jurisdiction some comments suggested.] Other discussion encouraged Superior Court jurisdiction "because they have all the experts such as probation and counseling." Further comments, which are provided for in the Task Force Report, suggested that authority be given to professionals in the probation area to handle domestic violence problems.

The other recommendation under Domestic Violence that generated discussion was "the Family Court should be contacted first when issuing of Temporary Restraining Orders and the Municipal Courts be used only as a last resort."

This recommendation, which seeks uniformity in contempt procedures, generated discussion as to its effectiveness. "Temporary restraining orders (TRO) should be issued by both the local courts and the Superior Court," voiced one workshop attendee, expressing disagreement with this recommendation that Municipal Courts be used only as a last resort. It was further felt that the local police should serve papers. One of the general problems viewed under this recommendation it was mentioned, would be the provision of transportation to courts supplying TROs, especially in rural areas.

#### (4) DWI Case Processing

One objection was raised over a suggestion in Appendix A to the Report that limited licenses be issued to DWI offenders requiring the use of automobiles for employment, or to provide transportation for the elderly and handicapped. The chair noted, however, that that suggestion was rejected by the Task Force.

Concern was expressed over the disparate time frames at voluntary surrender of license. Attendees questioned: does the time



run at arrest or at adjudication?

Members of the bar in attendance voiced strong disagreement over the sixty day adjudication goal for DWI case processing. Attendees suggested 90 to 120 days as more reasonable, stating that the "rush to justice" over DWI backlog affected justice. Francis X. Moore, Esq., in attendance at one of the Accountability Workshops, was asked to present the bar's view at the plenary session.

Additional comments that were made at the workshops are listed below. Time constraints, however, did not permit further discussion.

- There should be an emphasis on the five-day rule before taking guilty pleas.

- It's ~~a~~ problem when DWI cases are involved with indictable offenses.

- No adjournments should be allowed in DWI cases.

It was noted, however, that a problem with scheduling arises when experts are sought. A lawyer from Bergen County indicated that in his county no adjournments are granted in DWI cases beyond 60 days old.

- Provisions should be made to supply basic information to victims in death by auto cases (without indictment or complaint).

- Attempts should be made to coordinate civil case management and criminal case management.

Attendees at each workshop were encouraged by the chair to participate in the plenary session at the close of the final workshop. Some attorneys indicated they would have representation at the plenary session to put their concerns on the record.

## ADMINISTRATION COMMITTEE

Panelists - Hon. Samuel D. Lenox, A.J.S.C.  
Hon. R. Kevin McGrory, J.M.C.  
Ms. Peggy Lavery, Court Court  
Harold Sherman, Esq.

The work of the Administration Committee encompassed a wide range of issues as contained in 16 separate position papers. Following a presentation outlining the proposed administrative structure, the floor was opened to questions during each of the three workshop sessions.

One topic attracting some degree of attention was the Presiding Judge proposal. Questions were raised as to where the Presiding Judge will physically be situated, and who will be responsible for funding the position and providing for attendant needs. A question was also raised as to the applicability of the Presiding Judge concept to small, rural (i.e., South Jersey) courts/vicinages. In two of the sessions the potential adjudicative role of the Presiding Judge drew comments, particularly as to the Presiding Judge's role in any Central Judicial Processing (CJP) program which might be in progress or in the planning stages.

The Committee's proposals regarding the establishment of a PTI program in the municipal courts also attracted attention. A Superior Court judge questioned whether such a program might not be unrealistic, and whether giving municipal court defendants a "free shot at the apple" might not weaken the deterrent effect of the law. Comments were also made that a PTI program would be costly, and would involve too much paperwork (thereby increasing the work of court personnel). Another attendee, while agreeing with the concept in theory, questioned whether there would be a significant loss in revenue (as a result of fewer fines

being imposed). The financial impact on VCCB revenue was also raised. A suggestion was made that the current section 27 criteria (Conditional Discharge Drug Offenses) could simply be expanded to include simple assaults, thereby providing an alternative means of disposing of those charges without creating an entirely new program. A suggestion was also made that existing facilities (such as TASC, alcohol rehabilitation programs, neighborhood dispute resolution groups, or various clinical service establishments) might be able to serve the same monitoring function as a PTI program, thereby eliminating the necessity of establishing a new and separate organization.

The Task Force recommendation that police departments (instead of court clerks) be charged with the responsibility of preparing complaints was another important subject of discussion. Specifically, it was asked what would happen in situations in which a municipality had no local police force (being serviced instead by the State Police). Another attendee indicated his belief that the police departments would be unwilling to assume this duty, and would probably try to "slough it off" on the court clerks. It was suggested that a directive from the Assignment Judges might be helpful in implementing this recommendation. Despite the foregoing comments, nobody expressed any dissatisfaction with the general concept, with the exception of a prosecutor who questioned the potential prosecutorial involvement in the process (i.e., in assisting the police in filing complaints), especially where the prosecutor is not party to any background information or investigation.

The remainder of the questions raised in the workshops were scattered among a variety of topics. Several were directed at various proposals pertaining to the collection of fines, with one attendee seeking specific details concerning the proposed uniform procedures for the collection of partial payments, and a court clerk recounting the difficulties experienced with credit card payments. A question was raised as to the use of the "red license" to compel the payment of fines and costs, and whether this would be available for all fines or just traffic cases. A practicing attorney questioned the legal status of an expired red license when the underlying "genuine license" was still presumably valid.

In addition, an attorney in private practice took the opportunity to criticize municipal courts that severely restrict access by the public by removing telephones from the hook so as to allow court personnel to do paperwork uninterrupted. He noted that this can cause (or exacerbate) numerous problems, especially when an attorney is seeking to resolve a calendar conflict. He also noted that some judges refuse to take court-related phone calls while in their law offices, leaving an attorney without recourse or remedy. The same attorney also asked whether the Committee's calendar conflict resolution recommendation (i.e., the hierarchy of priorities) should not include workman's compensation, Tax Court and other administrative hearings. The question was also asked as to who will ultimately be responsible for resolving conflicts, problems, i.e., the Presiding or Assignment Judge.

Finally, it should be noted that one attendee congratulated the Task Force on its proposal concerning the abolition of the trial de novo appeal process. There was no apparent disagreement with this position.

## PROPOSED MINUTES FROM ADMINISTRATION WORKSHOPS

PANELISTS - Hon. David A. Keyko, J.M.C., Chairman  
Hon. Evan William Jahos, J.M.C.  
Ms. Ann O'Connor, Court Clerk  
Hon. Thomas A. Scattergood, J.M.C.

Three areas that attracted particular attention in the Administration Workshops headed by Judge David Keyko were Presiding Judge - Municipal Courts , Pretrial Intervention in the Municipal Courts, and Community Dispute Resolution Committees. I've also noted the more brief discussions with regard to Conflicts In Scheduling, Partial Payments , Preparation of Complaints, and AOC Services.

Of primary concern with regard to the concept of Presiding Judge - Municipal Courts (Position 1.1) was (as stated by one judge), "the continuity of the position based on its tenuousness." The concern was that if a Presiding Judge, after, learning the procedures, is not reappointed to the bench and therefore loses his position as Presiding Judge, it would render the position subject to politics and would therefore be unstable. Some attendees further noted that such a situation could result in difficulty attracting enough qualified applicants.

A suggestion that the Presiding Judge should be a prior Municipal Court Judge with five (5) years experience in administration, who "would serve at the pleasure of the Chief Justice" was offered. Another suggestion was to evaluate the Presiding Judge position more closely, and change the title to "Presiding Administrator."

The third concept (Position 2.1) debated was the Community Dispute Resolution Committees (CDRC's). A few participants questioned the value of CDRC's given the fact that the product (or agreement) is not legally binding. Another person opposing the idea of allowing citizens to hear other citizens' complaints felt the mediators should be professionals.

One attorney indicated he was very experienced with mediation and knowledgeable of various programs and stated the concept was proven successful in other areas. He further said that the prevailing model or ("Mediation Model") is made up of either citizens, lawyers, business people, etc. He further noted a 70-95% success rate even though the product is not legally binding. A very low recurrence rate was also noted, the cause of which, he said, is that the persons reach their own solutions.

With regard to (position 2.2.) Pretrial Intervention (PTI) in the Municipal Courts, the overall opinion was that basic concept is good; however, the participants felt many problems need to be looked into including giving PTI a different name and keeping it separate from County PTI.

If the responsibility of running Municipal PTI is placed with the county, they felt, it would be a burden on County PTI and the Prosecutor, which could result in the loss of calendar control. Questions such as "Who will do the investigations to determine whether a person has already been on PTI (say, in another county)" and "Would participation in municipal PTI preclude one from applying to Superior Court PTI?" were raised.

One attorney cautioned that the current PTI system should be looked at to avoid the unnecessary bureaucratizing of Municipal PTI.

Programs such as Parsippany-Troy Hills' Committee of 15 mixed-background members that meets once every 5 weeks and Mercer County's Informal Hearing Program, consisting of two full-time professionals - were also mentioned as very successful. In addition, there was overall agreement that mediators - whatever their background should be well - trained. At the conclusion of this topic the attendees were in agreement that the dispute resolution concept seemed worthwhile and that CDRCs should be considered at least on a pilot basis in the Municipal Court.

(Position 1.5) AOC Services - The general opinion was that the AOC Services concept is a good idea; however, it was noted that a three-person staff could not effectively service all Municipal Courts and that when helping the courts, they should help court staff, not police them.

Other discussions involved the following:

(Position 2.3) Conflicts in Scheduling - It was said that the priority list "should tie into civil court scheduling, not just Municipal and that "there should be a mandatory list that everyone follows."

(Position 5.2) Preparation of Complaints - Questions raised were "Who is best qualified to determine what the proper charge is that should be placed on a complaint or even what warrants the filing of the complaint?" What about persons from whom police do not want to take complaints?"; "Should police also make referrals to dispute resolution committees?" There were divergent views on who should take complaints - some participants thought police should not, but prosecutors should. Others thought that since the police process the complaints, they should prepare the complaints.

It was noted that in one Municipality citizen complaints are referred to the Detective's Office for an interview and questions about witnesses, etc. The overall consensus seemed to be that Municipal Courts Clerks should not prepare complaints.

(Position 6.7) Partial Payments - There was general agreement that the key is with the judge to effectively collect fines. A question was raised as to the use of the "Red License" and whether there would be a problem with other Red Licenses from other Municipal Courts with later dates. Further, a suggestion was made by an attorney in private practice that the courts should use credit cards in the payment of fines.



MINUTES  
WORKSHOP  
COMMITTEE ON BUDGETS, PERSONNEL AND SPACE  
1985 JUDICIAL CONFERENCE  
JUNE 28, 1985

Hon. Philip A. Gruccio, Chairman  
Hon. Samuel J. Serata  
Mayor Catherine Frank  
Hon. Ronald E. Fava  
Hon. Burton C. Pariser  
Hon. Robert H. Switzer  
Mr. Robert S. Helik

Attendees at the Budgets, Personnel and Space Workshop expressed three primary concerns: (1) source of funding; (2) budget procedures; and (3) employment practices. Specifically discussed were:

- . Tenure for Municipal Court Judges - Position 3.2
- . Municipal Court Clerk/Administrator: Qualifications and Compensation - Position 3.7
- . Employment and Termination of Municipal Court Personnel - Position 3.10
- . Budget Reporting - Position 4.1
- . Budget Caps - Position 4.2
- . Impasse Procedure - Position 4.3

TENURE - Position 3.2

One judge noted that the issue of tenure does not resolve the problem for 99 percent of the judges. Judge Pariser responded that in effect this recommendation would minimize, not eliminate, the effects of local political processes.

MUNICIPAL COURT CLERK/ADMINISTRATOR: QUALIFICATIONS AND  
COMPENSATION - Position 3.7

Attendees wanted to know how the salaries of court clerks would be upgraded, expressing concern over budget caps. The panel noted that the Task Force supports pending legislation that excludes municipal court budgets from cap considerations. Furthermore, the budget impasse procedure (Position 4.3) should provide a mechanism for increasing court clerks' salaries.

Another attendee felt that three classifications of court clerks was insufficient, suggesting a fourth level to create greater disparity to correspond with court size. The panel noted that the suggested salary ranges were recommended minimums, thus, a town could pay more.

One attendee questioned whether the new titles and salaries affected deputy court clerks who would often take over for court clerks. Clarification was given that deputy court clerks could also have a court clerk/administrator title but at a lower level than the court clerk in the town.

EMPLOYMENT AND TERMINATION OF MUNICIPAL COURT PERSONNEL -  
Position 3.10

The elimination of nepotism was questioned with regard to the grandfather clause, which allows continued employment for those relatives currently in the system. The panel noted that it would be difficult to make a nepotism rule retroactive, possibly denying the rights of others. If the nepotism rule is accepted, problem situations will be weeded out eventually. Furthermore, some employees have civil service tenure, making it "very difficult to just simply summarily by rule, legislate them out of a position."

BUDGETS AND FINANCES - Positions 4.1 - 4.3

Panel remarks introduced a discussion of budget related items by noting that the Task Force seeks to mesh together the two areas of supervision for the municipal courts," namely, the governing body on one hand and the AOC on the other hand. This meshing would bring about efficient court operations by providing adequate funding.

BUDGET IMPASSE PROCEDURE - Position 4.3

One attendee expressed a problem with budgets, that Assignment Judges are not sensitive enough to the requests on a budget. They don't see the cuts that are already made before submitting the budget and, therefore, are inclined to "cut" what the court has requested. Panel member responded by stating this was precisely what their recommendation aimed to correct. In the past, some Assignment Judges have been very involved in the process, and others have not. It has been largely a situation based on the judge's personality and whether he likes being involved with the municipal courts. What is being recommended, it was explained, is that once the budget goes up for first reading, that it go back to the Assignment Judge, who evaluates it and responds accordingly. This will include him, without regard to personalities, in the budget process.

Another attendee inquired as to the "clout" of the panel who would preside over the impasse dispute, should one occur, between the municipality and the court. In response, it was stated that it was the hope of the Committee that the panel would have clout, more specifically, that which would equal the panel's on the county

level. It was added that that panel's decisions are equal to court orders.

A question was raised with regard to the threat of a judge not being re-appointed if the municipality dislikes his stand on the budget and arguing over what is necessary. In response to this issue, it was noted that judges are responsible to make sure that the court runs properly and to accept the potential hazards of being a judge, one of which is not being re-appointed. It was then pointed out that the recommendation of the Task Force for tenure of municipal court judges should at least in part, address this problem.

#### BUDGET REPORTING - Position 4.1

One attendee remarked if a municipal court judge did not support an Assignment Judge in budgeting for his court, it could weaken the Assignment Judge's position. Another municipal court judge stated his experience with seven courts and the difficulties he faced there securing budgetary needs. It was noted by Task Force members that if and when the Assignment Judge, Presiding Judge, and Case Manager for Municipal Courts positions are implemented, they should further insulate the municipal court judge.

#### BUDGET CAPS - Position 4.2

A workshop attendee expressed interest in municipal court budgets reaching outside the cap. Despite the large collection of fines, elected municipal officials still control. Another attendee suggested that a State of the Court Address be given to municipal bodies in each town by the municipal court judge, indicating the courts' development and needs.

JUDICIAL COMPENSATION - Position 3.5

Judge Weinhofer raised the issue that we should not be setting a minimum salary for municipal court judges per court session as this might give municipal governing officials the idea that they should only pay the minimum amount, which would hinder those judges who are earning more than the minimum. Committee members indicated that there were several municipalities around the State that paid less than \$150 per court session, and it was therefore necessary to ensure that those judges be brought up to some minimum standard.

TRAFFIC AND COMPUTERIZATION COMMITTEE

Panelists: Honorable Betty J. Lester, Chairperson  
Honorable Anthony J. Frasca  
J. Mary Farrell  
Marty Lyons  
Mary Anne Sorrentino

The workshops of the Traffic and Computerization Committee were presented in three sessions. Each workshop was chaired by Essex County Superior Court Judge Betty J. Lester. The panelists included Newark Municipal Court Judge Anthony J. Frasca, Millburn Township Municipal Court Clerk J. Mary Farrell, Project Manager Marty Lyons, and Dover Township Municipal Court Clerk Mary Anne Sorrentino. The position papers were presented in all three sessions by Judge Frasca, after which the floor was opened for comment.

In the first session, much discussion revolved around the redistribution of funds, which occurred in 1982. Judge Frasca cited several examples of how the distribution of motor vehicle fine monies can vary from case to case depending upon complaint circumstances. He elaborated that the allocation of traffic revenues to the municipality, county or state may differ in each case as per Title 39:5-41 which became effective on January 1, 1983. A number of the participants voiced an opposing opinion to this procedure, thereby agreeing with the recommendations for a change in the revenue distribution system. Many explained that although the municipal court handles a case, it doesn't appear equitable that, in some instances, the municipality receives only a small portion of the total revenue. The group unanimously concurred with the Task Force Position 4.4 to

re-evaluate municipal revenue distribution.

The issue of municipal court computerization was also covered. In session one, Mr. James Rebo, Administrative Office of the Courts (AOC) Assistant Director in Information Services, was requested to respond to the specifics of computerization by Judge Lester. Questions included, "What will be the AOC's role in total computerization?" and "When will statewide municipal court computerization eventuate?" Questions were also raised as to whether municipalities should obtain their own computer locally or wait for the AOC computer implementation. There appeared to be a general concern as to the time frame when municipal courts would be fully automated. The participants agreed that computerization should be implemented as soon as possible to terminate the labor-intensive methods currently being performed throughout the state. It was the general consensus that an AOC sponsored system was preferred to municipalities developing individual systems and was essential to statewide uniformity (see Positions 7.3 to 7.3d).

The most vociferous discussion occurred in the third workshop in reference to the state of communication between the municipal court clerks and the AOC. Although fully covered (in the Administration workshops), the grievances pointed to a lack of rapport between the clerks and the AOC. Several participants aired dissatisfaction with the AOC's "edicts" and its attitude toward the implementation of new procedures. One attendee claimed the AOC did not seek input as to the ticket design change. Another clerk, however, praised the Unit's quality of work and its dedication to serve the municipalities

as best as possible. Most participants agreed whole-heartedly with the latter's comments.

Finally, the question of insurance card validity (see Position 2.9) was discussed in both sessions two and three. Questions were raised as to what document should be used to verify the proof of insurance. Positions were taken that such papers could be fabricated or falsified especially if an insurance agent is a personal friend of the insured. The general consensus was that authority should be given to the Violations Bureau to accept proof of insurance and that statewide guidelines should be composed and implemented in all municipal courts specifying one document as proof of insurance coverage.

In conclusion, the participants in all three workshops concurred with the findings of the Task Force and its recommendations. Furthermore, the clerks pledged their support to the implementation of any and all of the goals suggested by the Traffic and Computerization Committee.



TRIALS COMMITTEE

Panelists: Honorable William H. Walls  
Honorable Peter J. Giovine  
Honorable H. Scott Hart

John Cannel, Esq.  
Honorable Neil H. Shuster  
Edmund J. Tucker, Esq.

The workshops of the Committee on Trials were divided into two concurrent sessions given at three separate times. The first panel consisted of Judge William Walls, Chairperson, Judge Peter Giovine and Judge H. Scott Hart. The second panel was chaired by Mr. John Cannel, and was assisted by Mr. Edmund Tucker and Judge Neil Shuster. The Committee on Trials presented ten position papers as the topic for discussion during the workshops. Of these, four papers raised particular interest and were the subject of debate.

The paper entitled "Role of the Municipal Prosecutor" (Position 3.11) received the most attention specifically with reference to the proposals concerning the handling of citizens' cross complaints. During the discussion of this topic, the majority of the attendees overwhelmingly recommended against the participation of prosecutors in citizens' cross complaints. It was stated that this places prosecutors in a potentially unethical position, thereby making them vulnerable to ethics complaints filed by disgruntled litigants (see Exhibit 1). The issue of the right against self-incrimination was also raised, with attendees pointing out that when the prosecutor interviewed each complainant, their Fifth Amendment rights

could be jeopardized by the prosecutor's involvement in both sides of the case.

One recommendation set forth by the attendees was to permit the prosecutor to be a presenter of facts. The prosecutor would not cross examine the complainants; instead, he would present the facts of the case to the court. Another recommendation made by Judge A. Jerome Moore was to give the Municipal Judge the authority in cross complaints to involve the prosecutor if he desires. The strongest recommendation, however, was for municipal prosecutors not to be involved in any cross complaints and the court advise the litigants to retain counsel if they desire. Finally, there was a consensus among the workshop participants that if municipal prosecutors handle all cases the process may encourage the filing of frivolous complaints because the court is required to accept every complaint for filing under the rules of court. One final suggestion regarding this issue was to use neighborhood dispute panels (Position 2.1) as an alternative to citizen cross complaints.

Plea agreements in municipal courts (Position 6.5) received considerable support from the workshop attendees. The majority stated that the practice is already being done in most municipal courts and that the time has come to permit its use with the necessary procedural safeguards. One individual, however, voiced concern over the plea bargaining concept, stating that saving the court some time is not really a legitimate concern.

The issue of individual advisement of rights in every case (Position 5.3) was evenly divided throughout the workshops. While some participants considered advising each defendant of

his rights individually to be essential, others argued that it was time-consuming and unnecessary. One participant, Judge Schepps, cited the example of a defendant whose summons is payable through the violations bureau but decides to appear in court and plead guilty with a statement. Had the defendant paid the summons through the violations bureau, he would not have been advised of any rights. However, the same defendant who wishes to have his day in court must be advised of his rights pursuant to the recommendation.

This topic was debated at great length without agreement on an acceptable alternative. Certain participants believed a general announcement at the commencement of the court session was sufficient, provided that each defendant facing a consequence of magnitude was advised individually of his rights. Others strongly defended the fundamental constitutional provision of individual advisement of rights, regardless of time constraints.

With regard to Position 3.12, the assignment of counsel in indigency cases, the response from the participants was that the present system is abused because it is ineffective. There was a consensus that new methods need to be developed with an emphasis on providing for the verification of information provided by the applicant. One suggestion from a representative of the private bar was that the Lawyers Referral Service be utilized in more cases. This system was considered by some of the participants to be an excellent way to determine whether a defendant is capable of affording counsel. There was also some general discussion during the workshops regarding defendants

who have been assigned counsel who subsequently acquire the means to pay for same. Some suggestions from the participants include entering civil judgments against them and perhaps giving the Judge the authority to suspend driving privileges until the matter is settled.

MUNICIPAL COURT JUDICIAL CONVERENCE

Question and Answer Session

JUNE 28, 1985

Chaired by: Justice Robert L. Clifford

QUESTION AND ANSWER SESSION  
CONDUCTED BY JUSTICE CLIFFORD

JUSTICE CLIFFORD: Agenda describes this as open floor discussion. While the crowd is spread out a little, and we still have some here, the only one who has received a formal dispensation is Judge Charles Michael Egan, Jr., who made application. It was given powerful consideration and was granted, in view of the fact that tomorrow is the date of marriage of Charles Michael Egan, III and he has some minor function to perform tonight in connection with the groom's dinner or something. So he begged off and he has taken off.

Now, Ladies and Gentlemen, is the time for you to have your say. The lion's claws have been shielded or whatever the proper term is. It seems to me throughout much of this discussion, at least in some of the workshops that I attended, I understand that was not the case in others. This is open season. You are free to make inquiry of anything that is connected with this report or what you think the report -- the work of the Task Force should have been. It can be a general question. It can be a specific question. You can repeat what you had to say in the workshop, if you think that a wider audience's hearing of it is desirable, or whether you think so or not. You have a bigger audience to have your say is the point I seek to make.

If all you wish to do is make comment, react to the work of the Task Force, either positive, which we would be delighted to hear or negative, which we will tolerate graciously, we hope. You are once again free to do so and we encourage you to do so. This, as those of you who have attended these sessions before, will detect is a departure from our previous format, but it is intentional and designed to give you an opportunity to have your say. We do not want people to leave this conference with the feeling that they were not heard, weren't given an opportunity to be heard, or that they were, in any fashion, restricted. So there you are. The floor is open.

Now, we have microphones -- it is a bit of a nuisance for you, I know, but it will assist us, if you would be kind enough when you are recognized to go to one of the microphones and if you remember to do so, it would help us if you would give us your name, because all of these proceedings are being recorded. We are going to have minutes of them, and we would wish to be able to identify those who make the

comments or ask the questions, in the event that we want to inquire further of you or your position, or simply so that you may have appropriate identification.

So with that, who would like to go. Yes, Mr. Moore.

MR. MOORE: Should I stand over there, Justice?

JUSTICE CLIFFORD: Mr. Moore, I have eighteen months experience, and I know, number one, that we don't need a microphone for you; and number two, we know who you are. Francis Xavier Moore, representing the private Bar and a marvelous contributor to the work of this Task Force. Mr. Moore, please.

MR. MOORE: Thank you, Justice. Justice, I am speaking to that position paper dealing with the -- in Appendix A, as to the DWI processing in 6.2. It appears there on frequent occasions that what was alleged to have been a goal of a sixty-day disposition for DWI's is recited, I might add ad nauseum. I respectfully submit that it is just unrealistic. I acknowledge the fact that if I were told because of my position as a practicing attorney by the Supreme Court, that I must dispose of drunk driving in ten days, you probably could hang me on a rack and I would dispose of them because of my fear of the Supreme Court. That doesn't make the sixty day provision a proper provision.

7:4-2G and 3:13-3, provide for forty days within their own confines. Ten, obviously, for the securing of discovery through the defense, ten for the prosecution and twenty reciprocal. Judge Pressler put a lot of time and creation in that rule. Therefore, if you took the weekends out of sixty days, forty days of discovery, that would mean that there would be two or three days that some individual defendant charged with that offense, could secure private counsel.

I don't know of many lawyers that would be capable in that limited period of time of securing the amount of money necessary to secure private defense. I don't think that it should be a rule. Now, I recognize that at various times, the Chief Justice referred to it as a goal, but the way it appears in here, it appears number one, as though the statewide program will become a rule. Practically speaking in Monmouth County, it is a rule and practically speaking

in my appearances before many Municipal Court judges. they live by it as though it were a rule. They live by it as though it were a rule to the extent that the evidence required for a "monitoring disposition of DWI" becomes offensive. Because it does not, at any point, speak of the justice for the defendant. It simply speaks of a time limitation in which you can dispose of them. That is offensive to me as a professional, who set a time limitation on capable Municipal Court judges who can extend it. Although I recognize that probably Judge Lenox had the great comment, which I agree with, and that's that, all of the cases in which I filed an appearance should be considered extraordinary, therefore outside the sixty day rule.

But I appreciate, and I am delighted with this capacity to be able to rebut whatever statement I make. I only hope that you will take into consideration the possibility of striking out any time provisions with DWI and leave the power or the control of those, to the Municipal Court judges in this State. Thank you very much.

JUSTICE CLIFFORD: To what extent would it meet your objection, Mr. Moore, if, in fact, as I gather you believe it not to be the fact, it were treated as a goal rather than a rule?

MR. MOORE: As I am saying, the fact that they would consider a goal, Justice, doesn't bother me, but understand that in Monmouth County, at the present time, in order to get an adjournment after the sixty days, I have to get on the telephone with the Assignment Judge to request an adjournment in any municipality. That is very distasteful to me, although I enjoy speaking with Judge Milburn at the proper times. Adjournments are not one of the things that I enjoy speaking to him about.

JUSTICE CLIFFORD: Thank you. Would any other member of the conference wish to speak to the same subject, respond or otherwise react? The members of the Task Force, I assure you, are not unfamiliar with Mr. Moore's position in this regard, and hence, I would seek to have response, perhaps, from outside the Task Force. Yes, ma'am.

MS. LOTTSTEIN: Mr. Justice, I hope I don't need a microphone. Can I be heard? My name is Nancy Lottstein and I am the Subcommittee Chairman on that particular paper. I am Assistant County Prosecutor in Gloucester County. Judge Walls, that's Gloucester.



JUDGE WALLS: So it's not New England, all right.

MS. LOTTSTEIN: We get a little self-conscious, in my case, talking about it, and my position is that that paper was written with the idea in mind that sixty days was the goal and that we treated that sixty day goal like we would a rule in this respect, it was to be looked at as the best way. In the event, it was not the best way, then in those particular circumstances, the Court could always, as the courts in New Jersey do, look to the surrounding circumstances, and if it was appropriate to extend the time, then the time would be extended.

But for the routine case, and I'm sorry to say routine, because right away I'll be told that every case is individual. But I would hope for practical purposes and for the sake of brevity, in a routine case that did not involve extensive discovery, the sixty day goal was appropriate.

If somebody is in the hospital for six months, we are not talking about that. For that reason, we are looking at that sixty day goal as a good idea. As a goal we should try to attain, and we were the Committee of Accountability. We are looking to the effect on the defendant, certainly. But also we are accountable to the public, and that's the other interest in all of this. Thank you.

JUSTICE CLIFFORD: Now, then, having exhausted that subject, I invite your inquiry or comment or question on any other. Yes, ma'm. Right behind you. I don't know if you can reach it from there. It may come off the top.

MS. SARANTINO: I'm Maryanne Sarantino. I'm the Court Administrator from the Township of Dover, County of Ocean, and President of the Municipal Court Clerks Association of New Jersey. I have been requested to speak on behalf of the Municipal Court Clerks Association of New Jersey with respect to the culmination of two years arduous work, compiling the plans for the improvement of the Municipal Court system. The extent of research, hours spent away from daily work and families and the opportunity for the court clerks to have input in all phases of the Task Force cannot be measured in words alone.

Those of us who gave of our time did so with no idea of just what it would entail. But speaking for all clerks who participated, we would do it again.

This has not been a job of futility. We are already reaping some of the benefits. We would like to thank all the chairpersons of the subcommittees, for including the court clerks on their committees and best of all, for listening to what we had to say.

Everyone, from Chief Justice Wilentz, to those persons in the Administrative Office, who worked on the booklet, should be commended. They did a fantastic job. Of course, all changes are not being received with open arms, but the overall reaction is very favorable. We are happy to see that the doors of communication, long closed, have finally opened between the Municipal Courts and the judicial system. We hope this attitude will continue and grow in the future. Thank you.

JUSTICE CLIFFORD: Now it's our turn. Thank you very much, indeed, Ms. Sarantino, and I express the gratitude of the entire Task Force for the magnificent assistance and the cooperation we had from all of the court clerks who served and from your Association in support of our endeavors. Thank you.

Anyone else with a question or comment?  
Now is the time. Yes. Judge Serata.

JUDGE SERATA: Yes. If I may --

JUSTICE CLIFFORD: Are you going to tilt at that same windmill?

JUDGE SERATA: Yes, sir. Should I go down there or can I do it from up here? Ladies and Gentlemen, I'm here, and I speak, I know, on behalf of Judge Gruccio and myself particularly, and we speak personally. There is a minority position paper that was not adopted in full by the Task Force, concerning limitations of practice of Municipal Court judges, which I feel very strongly about.

Some of us feel strongly and some of us not so strongly, and some are very much opposed. There is a very, very great problem, I believe, and I know Judge Gruccio believes, concerning the appearance and the propriety of Municipal Court judges who practice law, and particularly Municipal Court judges who engage in trial practice, in addition to being a Municipal Court judge.

We feel, and I am satisfied, that the appearance, as far as the public is concerned, is that when a lawyer appears before that Municipal Court

Position 3.4

judge, who is involved on the other side of litigation with him, or perhaps on the same side, that somehow justice is being perverted in the Municipal Court. Now, I think that this is very important when you look at the report of the Task Force in this regard, you will find out that the Municipal Courts come in contact with more people than any other court and the entire rest of the court system, as it exists.

It becomes very, very important in the -- from the standpoint of the person who is the beneficiary, customer, defendant, client, of the Municipal Court system, or the criminal justice system, and what his impression of that system is, when he sees a lawyer who is a judge, and who then is involved in other kinds of litigation, or in the private practice of law in opposition to the lawyer who is there to represent him in that court on that day.

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We are very concerned about that appearance and whether or not people have the feeling that they are being delivered justice or that the court is untrammelled from other interests. If you will read the position paper, you will see that there are other considerations. For example, a benign property settlement has certain conflicts of interest in it. If the property settlement does not go through, you then get involved in the problem of who is going to get the down payment, and if the judge represents one side and the defense counsel represents the other side, you have that problem compounded, as far as what's being done as far as delivery of justice in the Municipal Court.

I would urge you to speak up on behalf of some more comprehensive limitation of practice on Municipal Court judges. The problem, we believe, at least for the time being within the scope of the system, should be that Municipal Court judges, at least within five years of this time, that none of them should be involved in contested litigation, which is really twofold in its aspects.

Number one, it avoids the out and out confrontation in a courtroom between the Municipal Court judge and the defense counsel who appears before him; and also, it avoids the problem of the scheduling conflicts that exist now with the pressures that are being brought upon the trial bar to try cases in both the civil and the criminal areas of the Superior Court. That must interfere with the scheduling of cases in the Municipal Court, sooner or later. If

that's the situation, then that conflict alone should justify removal of the Municipal Court judge from that area of practice.

There is nothing more bitter than a contested matrimonial action; and I would indicate that there are Municipal Court judges who are now involved in the practice of matrimonial law, who are in opposition to the attorneys who appear before them in Municipal Courts. Just put yourself in the position of the defendant who has a breathalyzer reading of .13 and is represented by a defense counsel, who in another case, didn't get the visitation that he wanted and the Municipal Court judge was on the other side. He is sitting there, and his driving privilege is relied upon and a lot of money, anymore, because drunken driving is a serious offense, and there sits the Municipal Court judge passing judgment.

Perhaps that defendant who is the drunken driving defendant, isn't aware of the relationship between those two lawyers, but what does he think if he finds out five days later that there was that relationship between them; and because of that, and many other improprieties that exist in that kind of relationship, I would urge that there be some extension of the limitations of practice. At least to remove the Municipal Court judges from the representation of clients in contested litigations. Thank you.

JUSTICE CLIFFORD: Thank you, Judge Serata. This position, so eloquently put by Judge Serata, occupied a considerable amount of time in the Task Force. I can politely describe the debate as vigorous, spirited. It is a knotty problem that is summarized on Pages, I think about 85, of the text, and there is the corresponding position paper that will summarize positions also.

The position voiced by Judge Serata is shared, I think as he said, by Judge Gruccio. I detect from the show of hands that there may be some who wish likewise to address the same problem. Judge Parressi.

JUDGE PARRESSI: If it please the Task Force, I was a member, I guess I still am, a member of that particular subcommittee, and spirited was a minor word compared to what went on in the discussion. Now, I don't see Judge Fava here. I don't know if he is still here, Ron, but in any event, he has the

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Continued

alternate position and perhaps rightfully so.

What he is concerned with is that you are going to be removing from the Municipal Court Bench, people who are very qualified. If you take a man and you say to him, you are only going to make \$8,000 a year because you are the judge in a small town and you can't practice law, or you can't go to court, what are you going to do; and in a sense, through the back door, you are making regionalization by saying this man, or the judge in that small town, will really have to be a judge who has five towns, so he can make enough money, and he's really a full-time judge, he's just bifurcated in sixteen places.

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Continued

I took a middle road, I don't mean to be such a conciliatory person. I'm not by nature. I was a trial attorney for many years, and when I came to the Bench, I gave up the criminal practice, and I came to that discussion very much opposed to the limitation of practice. I felt that lawyers have integrity and they are entitled to that position and we shouldn't have to put such restrictions on them.

After many months and years of discussion with Sam, I have been brought around. I do think inherently there is something wrong with a Municipal Court judge appearing as a trial attorney against trial attorneys who then have to appear before him. I would like to say that I have been brought to that position over great opposition, but I do now believe it.

But then we are faced with the problem, if we are not going to be regionalizing through the back door, what is an answer. I think I have one, because what happens is, if you aren't aware, all of you, the limitation on practice of the individual judge also applies to his office associates and partners, that's the rub. Because if you say to me I can't practice in court, then I would say, all right, I will be the solicitor, I need my barrister, but nobody will practice with me, they can't share space with me. They can't be partners with me, and I have become a pariah and I am practicing in a phone booth. It's the only place they let me live.

So if we would allow the Municipal Court judge a practice, we have to allow him to have his partner or office associate be his barrister, be his trial attorney, and then I think all of the problems disappear. We may not have the problem again. There may be an appearance again of impropriety, but I think

it's much less so and perhaps solves the problem.

If I never am able to go to court, I don't need six towns to be a judge in. I can be a judge in one, and I can make a good living as a lawyer, without going to court, provided I can turn the case over to my associate when it has to be tried. And that's the position I take, which is somewhere in the middle, and I think it is very workable.

JUSTICE CLIFFORD: Thank you, sir. Yes.

JUDGE VICKNESS: My name is Paul Vickness. I'm judge in Mt. Olive Township, and I do have the other viewpoint. I think that the underlying assumption is that when two attorneys litigate, they litigate against each other, and that's not true. Ours is an adversarial system where an attorney advocates the position of his client and while it may be that my client and another attorney's client don't agree, I don't allow myself and ideally, no attorney should allow himself to be put in the position where because the clients can't agree, the attorneys take it personally and get in the middle. They shouldn't.

They are advocating a position for their clients. With regard to the scheduling conflicts, I agree. If an attorney is going to take a Municipal Court judgeship, then he has got to make sure that his Municipal Court judgeship can be done at such time that it doesn't conflict with his ability to practice law.

One of the ways of doing it, obviously, is running an evening court when the civil courts aren't in session. This topic, among all others, and I served as a co-chairman of the advisory committee in the Morris and Sussex vicinage, and the only thing that people ever called me about was this proposal and I got a call from probably nine or ten different judges about this proposal. They all were mollified because they were told that the position paper was not accepted, and everybody said, well, if it wasn't accepted, it's nothing to worry about.

Now, I'm beginning to get the feeling that the position paper wasn't accepted. We have held the conference, we have gone through an entire conference today, and the judges who are under the assumption back in the trenches that they have nothing to worry about, are going to wake up when there is a court rule that says in five years, you are either not going to be a judge, or you are not going to be able to have a

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Continued

trial practice and then there is not going to be anybody left to talk to about it. Because this was something they were told wasn't going to be accepted and it is going to be accepted when nobody can have anything to say.

I was under the impression and I think in almost everything else, this conference has been a free expression of ideas and while I'm very happy that you brought it up, so that at least those of us who are here can express our opinions, those who left before this point and those who aren't here, are not going to have an opportunity to be heard, if this, in fact, is going to be accepted as a position that people are under the impression was not going to be the position and I think that's regrettable.

JUSTICE CLIFFORD: You scared them, Sam. Let me see if I can calm your apprehensions. The position of Judge Serata, that Judge Serata spoke to, is a minority position. The recommendations of the Task Force are as embodied here. I'll tell you in a minute what we are going to do to refine them. I would be -- I think it is impossible that that recommendation would change, that remains a minority position and the recommendation of the Task Force is not to impose the limitations that the minority position would impose. That's all there is to that.

If, I suppose, there -- we were confronted with an enormous groundswell, growing out of this conference, that expressed the sentiment of the conference that nothing would do but to adopt the minority position, then we would have a more difficult problem. But I don't think we have the problem and while I'm not about to suggest that you go back and tell all your brethren they have nothing to worry about, I think you can go back and tell your brethren that the majority position remains the majority position.

The minority position deserves and has received, and will continue to receive, I'm sure, respectful consideration and continued thought. These recommendations will go to the Supreme Court. I don't -- I do not, at this late date, presume to predict what the Supreme Court will do, but this will remain the recommendation of the Task Force.

Is there anyone else who would wish to address this subject? Or any other. Lose your inhibitions. Come forward. Yes, sir.

MR. DAVIS: I'm a little far from a mike, but I, perhaps, have the opportunity or the expertise of my friend, Mr. Moore, I can be heard. I'm Gilford Davis, I am rehab counselor, the Somerset Sheriff's Department, and I am addressing this subject on pretrial intervention on the municipal level; and my question is, as it stands now, a person who has one bite at the apple on the Superior Court level, as it respects pretrial intervention, what would be his status if he had it once on the municipal level and a little later on, needed it again? Could you address that?

JUSTICE CLIFFORD: Is Judge Keyko still here?

JUDGE KEYKO: I'm hiding.

JUSTICE CLIFFORD: Come out of hiding and share your wisdom, David, please.

JUDGE KEYKO: One of the problems we have with municipal pretrial intervention is its name, first of all, the Judge probably pointed that out, but when we're getting into that area, that draws too much criticism and much more than was needed or intended. The question of whether if you are getting PTI's, supposedly in the Municipal Court, you should be allowed to have one, and the Superior Court. The answer to that question is, I don't know. You know, that's for the Superior Court and the Rules Committee to decide as it progresses and one of the difficulties that we are going to have with municipal intervention, whatever we call it, is finding out whether or not they ever even had that one bite of the apple, because certain offenses are not filed statewide in SBI or the computer itself.

So it might be more or less like an honor system to be used in limited circumstances, but more just than the present system we have now, where somebody with more serious offense can have that opportunity and somebody with a much less serious offense, must face a trial. I think the successful combination of the concept is going to be that we agree that it is a good idea and that we are working towards resolving these minor questions, really.

But I think that it would perfectly all right if the Superior Court took the position that it's irrelevant whether or not you are ever given adjudication in the Municipal Court or they may take the position if you had it once, then you can't have



it again, but that remains to be seen. It's something for them to decide. Thank you.

JUSTICE CLIFFORD: Is there any other question or comment directed -- yes, sir.

A SPEAKER: Maybe I didn't understand the question. Was the question, why wasn't there pretrial intervention available on a Municipal Court level?

JUSTICE CLIFFORD: I didn't understand that to be the question.

A SPEAKER: Then I don't have any comment.

JUSTICE CLIFFORD: Any other question or comment? On any point. Judge McGrory.

JUDGE MC GRORY: My name is Kevin McGrory, from Trenton Municipal Court. I mentioned today in one of the workshops that Judge Lenox and I and Mr. Sherman and Miss Lafferty were involved and that it might be a good idea, especially for individuals who were not part of the Task Force, but have been asked to come here today for their input, to give us a little input that you might not be willing to give either at this moment or because you might want to think about your input a little bit more before you do.

I was going to suggest, as I did at one of the panels, that you went to three workshops today and with regard to each one of those workshops, there is an appendix in the back of the materials that we received, that contains the position papers in full and on the front, of course, is the title page. I thought that it would be a good idea if you would be kind enough to, at your leisure, but fairly expeditiously, read those papers, give them some thought and then photocopy the front of that particular appendix, with regard to the committee, and either just write a short note or write on the front that you endorse the concept or you don't endorse the concept or that you have some difficulties with it that you would like to address and then if you would be kind enough just to mail those photocopies in.

In case, you don't understand what I'm talking about. These are the appendix cover sheets and as you can see, on each one, the topic is listed with the page number, and there is a little space right next to each one, where you could write some

type of comment as to whether you endorse it, do not endorse it, have some comment that you would like to make and could simply, with regard to the three workshops or the four papers, if you would like to read all of the four, mail those into the Task Force, to Mr. Pedesler, I assume, for purposes so that the panel continually gets some input.

Also, to give us the authority perhaps to contact you to discuss further with you, any sentiments that you might have. I would like to -- the final Task Force to have some input. That's all. That's my point.

JUSTICE CLIFFORD: That's a -- it's a very good suggestion and, of course, you realize that I was just about to make it myself. It is so good. I invited this morning your written comments or responses or reactions to be sent, if you wish, to me. I'm in the Morris County Courthouse, but you can send them either to Jack McCarthy or to Mr. Pedesler or to the Director, Director Lipscher, or just to the AOC, believe it or not, they will all get to the same place. I encourage you to do that which Judge McGrory has recommended.

I'm not sure I liked the answer anyway that I gave you earlier. The recommendation of the Task Force is going to remain the recommendation of the Task Force and Judge Serata remains in the minority and the recommendation of the Task Force. What I did not articulately communicate was the notion that it may well be that there would be a different thought coming out of this conference. It wouldn't change the recommendation of the Task Force. It would mean that the conference had not met, agreed with, the recommendation of the Task Force, and that would become the recommendation of this conference.

Which would leave the Supreme Court in a bit of a quandry perhaps, but our Task Force recommendation, I can now tell you, would remain the same. To the extent that that brings comfort or discomfort to your colleagues, you are free to communicate that refined, somewhat refined, if less comprehensible answer to your previous question.

Yes, ma'am.

A SPEAKER: I just would like to know how long you think that all this is going to take, before anything is really done with what, you know, put forward?

JUSTICE CLIFFORD: That goes a little bit to my earlier comment. I wasn't being fresh, I wasn't being disrespectful. I wouldn't undertake to comment in respect to what the Supreme Court would do. By that I mean, I'm not about to suggest a timetable. But you have introduced a subject that I wanted to bring up anyway. What is going to happen with all of this? What is going to happen is that the results of these sessions, which as you may have observed, have been recorded, will be reduced to sort of minutes form.

This is going to take a little time. The staff is going to have to address it very quickly, while this is all reasonably fresh in their minds and distribute among the members of the Executive Committee of the Task Force. I guess to the entire Task Force, the minutes of this judicial conference. We hope to be able to sift out of those minutes some reactions or some recommendations that will cause us to think through our positions a little further.

Whatever refinements are required to be made in the Task Force report will -- I hesitate to fall back on the expression, but will in due course, be put in written form. Realistically, we are in the summer. I suspect that over the summer that the staff would be putting together the minutes and the reaction of this conference, getting stuff on paper and send it out to the members of the Task Force. I don't see the Executive Committee meeting before the Fall. I have already discussed this with Jack McCarthy and I would hope that we would be able to have a meeting of the Executive Committee early in September.

If our work has not become more complicated than its inherent nature makes it, I would think that we would be able to have in final form and final recommendation form, the completed Task Force report for submission to the Supreme Court as the -- I don't know, I guess the Fall. Sometime in the Fall.

A SPEAKER: Is that to be a goal, Chief?

JUSTICE CLIFFORD: Well, yes, that's a goal. Our goal, and I think we can meet that goal. Get our report to the Supreme Court in the Fall. Where it goes from there, depends upon the agenda of the Chief Justice and other items that are on the Court's platter.

Are there other comments or inquiries? Yes, sir.

JUDGE GIOVINE: Justice Clifford, Peter Giovine from Ocean County. I hesitate to speak, but first of all, I would like to indicate, I'm not speaking as a member of the Task Force. I'm speaking as a member of someone who sat on one of the panels this morning as one of the speakers. I'm very surprised there were at least eight or nine speakers who spoke against municipal prosecutors being furnished in every case to every litigant. I haven't heard anybody speak against that proposal and quite frankly, I did want to put, at least, that on the record. That there was a good deal of opinion against that particular proposal.

I respectfully submit that we are letting an opportunity go by. I hesitated to speak and yet I am speaking. I feel that there are others here who would, but just aren't; and I think that, at least, a straw vote should be taken, perhaps, with regard -- there is over fifty position papers that are there, you've got a couple hundred people still here in this auditorium. I think some ideas should be gotten, as to the consensus of these people that are here. I think it is a tremendous opportunity.

JUSTICE CLIFFORD: Judge, I think it is an opportunity that, unless there is strong sentiments to the contrary, I may be tempted to let go by. If the suggestion is that we take up fifty papers and have a straw vote on each of them. If that is the suggestion, I think by far the better exercise of discretion would be to follow Judge McGrory's route and impose on the members of the conference, the burden of indicating to us by -- in some fashion. He suggested photocopying the cover and just sticking a comment on it or writing a paper, if you wish, and mailing the comment, which will not impose on the members of this conference the inhibitions that they may otherwise suffer by speaking in this audience.

I'm frank to confess to you that I have noticed a certain inhibition in this session, that assuredly was not present in the workshops that I attended, where people were crawling all over each other to get to address contentious subjects. The one that you mentioned, as well you know, is one that sparked long, and once again, spirited discussion within the Task Force, and I suspect that it did in the workshops.

Maybe I ought to take a straw vote on whether we ought to have a straw vote. Mind you, the straw vote on the straw vote -- we are going to go

through fifty papers, all in favor of going through fifty papers with a straw vote. I don't think it carried. Which is not, however, to speak disrespectfully of your suggestion, but the members of the conference, I hope, we made the point, almost ad nauseum, that we solicit, most earnestly, your response. Give it to us. I know it's going to take a twenty cent stamp, in writing, if you will, in some fashion, send it down to the AOC.

That important paper, in particular, if you don't address the others. There are others such as the presiding judge concept. There are others, the PTI concept. The position that Judge Serata raised. Dozens of others. It seemed to me drew all kinds of commentary this morning, but the late afternoon and perhaps the exhaustion of the occasion has stilled your voices somewhat.

Any other comment? Yes, ma'am.

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MS. MOBLEY: Justice, and Members of the Conference, perhaps your kind encouragement has dropped some of the inhibitions. Kathleen Mobley, member of the Morris County Bar and defense counsel. One of the issues I have not found addressed in the multiple works that you have and the multiple issues that you have addressed is the question of pro bono counsel.

I would strongly recommend that that issue be looked at. We are talking about the rights of the public and the rights of the defendant. When the defendant is indigent, and some counsel is assigned, I think it would be quite appropriate that the Supreme Court look into the quality of that representation and some fair method of remuneration. Thank you.

JUSTICE CLIFFORD: Yes, thank you, Ms. Mobley. I'm fumbling because I labor under the impression that -- I know we discussed it. I'm laboring under the impression that we reduced it to writing. Now, Judge Walls, you may, of course, respond. Yes, sir. Please. Come on up here.

JUDGE WALLS: What the last speaker said is a repetition, a good repetition, of what she brought to our attention in the last workshop we had and that caused some spirited and interesting discussion, as did other subjects, but I don't think I can answer that definitively, other than to suggest to all of you what was revealed to us in that last session by Judge McConnell from Gloucester County; and that is that

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when a person comes in and is handed a 5A Form and answers the question of whether that person can afford a lawyer and answers it no. According to Judge McConnell, in that county, that person is then, in effect, challenged and asked, well, did you see -- what lawyers have you interviewed and if that person has not interviewed any, or in any event, that person is then sent to a lawyer's referral committee, which is, I believe, established by that county bar, and as a result of that interview process, that person obtains counsel from the private bar. Or possibly, has his matter resolved in the context that he realizes that possibly going to the trouble of not having counsel might be disadvantageous and since that, the game is not worth the candle.

So I think what Judge McConnell pointed out was something which, unfortunately, the Committee, the subcommittee, had not really challenged and that is, we did not challenge that question can you afford a lawyer, and that's one of the difficulties that I think plagues the Municipal Court, as well as the Superior Court. The determination of indigency and how sincere is that determination made and how effective is that determination made.

So I would suggest that possibly we might look to our southern county for advice with regard to expediting and processing these 5A Forms, especially if we all realize that the 5A Form is not -- did not come down from Mt. Sinai and that it is subject to change and innovation and just as Judge McConnell has adopted that form, possibly other counties should do the same thing. The thrust of what I'm saying is that each county should really investigate the establishment of a procedure to determine the basic question of indigency and how it relates to obtaining pro bono, or other members of the private bar, as counsel. Thank you.

JUSTICE CLIFFORD: Thank you, Judge Walls. Ms. Mobley, my recollection, I'm happy to report, was indeed correct. The Task Force addressed the problem. As I examine -- you might want to look at Appendix E, position papers of the Committee on Trials, at Page 42, 43. As I look at it, it doesn't sound an awful lot like coming to grips with the problem, but I -- we did recognize it and your nod of the head indicates that you are familiar with the recommendation of the Task Force, that the use -- that the method of using unpaid private attorneys is less desirable than either of two other systems. Namely, employment of a staff public defender, use of a panel of private attorneys,

paid on a per case basis.

The position paper says that while this method, namely, that of rotational appointment of unpaid counsel, while this method of counsel should not be forbidden, it should be discouraged. It is important that a specific organized system should be adopted, as Judge Walls just emphasized. The practice currently in use in some courts of assigning whichever lawyer is present in the court that day to defend a person facing a consequence of magnitude is unacceptable.

Such a system can never be expected to provide adequate counsel. The system chose, eventually, should be approved by the Assignment Judge and this recommendation will insure that some system has, in fact, been chosen.

But I repeat, it doesn't sound like we went head on into that, does it?

Is there anyone else that would wish to address either that or any other subject or raise any other question? With that, I would simply reiterate the -- I would reiterate my -- as Chairman of the Task Force, my own gratitude for the extraordinary cooperation that the members and the staff, all the organizations and associations who have participated in this effort, have brought to it. To express to the members of this conference, our appreciation of your indulgence, your interest, your study and your response.

The Chief Justice has graciously consented to say just a few closing remarks and so Chief Justice Wilentz.

JUSTICE WILENTZ: Thank you, Justice Clifford. First of all, I want to thank you, Justice Clifford, the people who are at the head table here for their leading of the various workshops. You all, apparently, escaped relatively unscathed and all of the people who served on the Task Force and put in so much time, gave so much of themselves and all of the people on the advisory committees and the people who cooperated with the work of all of the people involved in this. It was really a herculean effort.

In addition to the other sources of information about what happened today, it would be helpful if those who participated in the panels, especially those who led the panels, would give us a

summary of the kinds of points that seemed to be bothering the participants, as best you can remember them.

Certainly, the minority positions expressed in the Task Force report will be considered by the court. As to how long it will take before all of this gets done, have patience. It has been forty years in coming, so a little bit longer, if you can wait. It has been just about that long and during all of that time, the Supreme Court has had the extensive power over the administration of the Municipal Courts and extensive power over the practice and procedure of the Municipal Courts.

The Supreme Court has exercised that power very, very sparingly and very, very cautiously. In other words, there has been in place since 1947, an enormous reservoir of power that the Supreme Court might have used in the past, which we have not yet used. There are many reasons for that. One reason, I suppose, is that the court has had quite a few other things to do, especially I imagine, in trying to do its best to exercise its power over administering the regular Superior Courts, county courts and other courts.

The other main reason, I think, why we have not yet fully exercised the powers that we have over the Municipal Courts is because of this same old wondering and worrying when we are really going to reform the Municipal Courts. When are we going to make it a regional court. When will the judges be appointed by the Governor. When will it become the same as the rest of the courts. From waiting and waiting, I suspect that less has been done to improve the Municipal Courts than could have been done.

There has been progress, without any question, but it has been relatively slow. One of the results of that is that there are some very, very fine judges and excellent support staff who don't have the kind of resources that they are really entitled to. They don't have the kind of quarters that they are entitled to. Another result, perhaps, is that in some cases, some of the judges are perhaps not quite as good as we would like them to be. As all of you would like them to be.

Anyway, in view of all of those things, we have decided to have this Task Force to see just how far we can go in improving the Municipal Courts without having some kind of radical reformation of the



entire structure, and it was really an exciting thing today to participate in these panels and to listen to this wide open discussion about subjects that have really not been discussed before. Sort of sky's the limit kind of questions, and answers. A kind of hope and feeling about a court system that can be much better and that so many people obviously want to see become much better.

When I spoke here this morning, I asked that you be direct and frank. As Justice Clifford indicated, some of you certainly were very direct and very frank and that was helpful. We have a clear and sort of simple goal here. We want to improve the quality of the judges of the Municipal Courts. We think there ought to be certain kinds of minimum qualifications in terms of experience and education.

We want to improve the quality of the quarters of the Municipal Court. We want to improve the efficiency of the Municipal Courts, and we know that all of that is going to take the dedication of more time and more resources and more money than have been given to the Municipal Courts in the past.

It is clear that the recommendations of this Task Force, if they are approved by the Supreme Court, and some perhaps by the legislature, will go a long distance in achieving those goals. As someone indicated, they may not be perfect, but they are quite clearly aimed in the right direction.

We, I think, are ready for that day, that we have all hoped for and dreamed about, when the Municipal Courts will become part of the court system. We have waited long enough and I think our citizens are entitled to have their court perform just as well as any other court in the State. I believe that this Task Force has pointed the way and I think it is now up to us to do our part.

I think we owe it to the people of this State to get the job done. Thank you.

JUSTICE CLIFFORD: Thank you, Chief Justice, and the conference, Ladies and Gentlemen, is adjourned.

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