

JUDICIAL

JUDICIAL POSITIONS IN BRIEF

Support of a unified state court system with improved provision for judicial selection.

Support of statewide guidelines for law enforcement at all levels to prevent racial and economic profiling.

Support of measures to improve pretrial procedures in the criminal courts.

Support of measures to promote a fair and efficient jury system.

Support of alternatives to incarceration.

COURT SYSTEM

The New York State Court System has been an important League issue for almost 50 years. When the League began its study of the courts in 1955, there was widespread concern over the state of the judicial system. At that time, there were approximately 1500 separate and autonomous courts in the state. This general disorganization had prompted the establishment of a Temporary Commission on the Courts (Tweed Commission), which was in the process of formulating recommendations at the time the League study was adopted. Adopted in 1957, the League's position in support of a unified court system coincided with the Tweed Commission report calling for a sweeping reorganization of the courts. Since its adoption, this position has been the cornerstone of League activity in this area. In 1975 the New York State Bar Association presented the League with the association's first public service award in recognition of the League's work toward improving the judicial system, and in 1990 the League received the Samuel J. Duboff Award from the Fund for Modern Courts in recognition of our long-standing efforts in the area of court reform.

THE NEW YORK STATE JUDICIAL SYSTEM

Statement of Position

As announced by the State Board, 1957

The League of Women Voters of New York State supports measures to obtain a unified, statewide court system.

Framework: The framework of our judicial system shall be incorporated in the state constitution in broad outlines with the details spelled out in implementing legislation.

Structure: There shall be an integrated, statewide court system consisting of a minimum number of trial courts of broad jurisdiction. Cases and judicial personnel shall be transferable from one court to another to the greatest extent possible

Administration: Authority and responsibility for the effective administration of the integrated, statewide court system shall be centralized in a single person or body.

THE NEW YORK STATE JUDICIAL SYSTEM
Statement of Position
As announced by the State Board, 1957

Fiscal Control: The integrated, statewide court system shall be financed by means of a **judicial budget** which shall be prepared by the central administrator or administrative body.

Judicial Personnel: To the fullest extent practicable, all judicial personnel shall be fully qualified members of the bar, prohibited from practicing law, required to devote full time to their judicial duties and restricted from holding any other public or political office.

In 1961 the League worked for passage of a new constitutional judiciary article, the Court Reform Amendment of 1961. Though the new article, which went into effect in 1962, was an improvement, it did not fully satisfy League goals. While the court system was centralized under the Administrative Board of the Judicial Conference, the delegation of this authority to the four Judicial Departments diluted effective central control. The new article did require all judges be lawyers, except those in town and village courts, and judges were prohibited from practicing law while holding judicial office.

Building on the initial court consolidation of 1961, the League continues to work for an integrated system:

- Supporting the incorporation of the Courts of Claims, the Surrogate's, Family, County and the Civil and Criminal Courts of the City of New York into the Supreme Court;
- Establishing a District Court in every county in the state to replace town and village courts; and
- Opposing legislative proposals to fragment existing courts by establishing special parts to meet particular problems.

In 1970 the League was instrumental in the establishment of a new State Commission on the Courts to work on resolving the remaining problems within the system. The commission report, issued in 1973, was compatible with League position with one exception: selection of judges.

In 1971 the League joined with the New York State Bar Association to mobilize a broad coalition of groups in a major campaign for state financing of the courts through a state judicial budget. This goal was finally achieved in 1976 when a bill passed in special session of the Legislature providing for a four-year phase-in of full state funding for court operating costs, except for town and village courts. (Operating costs should be distinguished from construction, repair or maintenance of court facilities, which are still a local responsibility. The League had no position on the "court facilities" bill passed by the Legislature in 1987.)

In 1972 the League led a successful campaign to defeat a proposed constitutional amendment that would have created a Fifth Judicial Department, thereby causing further division of administrative authority. The necessity to oppose creation of an additional department became

moot when voters approved the 1977 constitutional amendment, which unified administration of the state court system and imposed state responsibility.

Although defeated on the ballot in 1975, the amendment for centralized court administration, under a chief administrator, was passed in 1977 with strong League support. The Chief Judge was clearly established as head of the state court system and fulfillment of League goals in this area was nearly complete. The first uniform rules of practice and procedure for the state's trial courts went into effect January 1, 1986.

In 1980 the League, together with the Committee for Modern Courts, Citizens Union and others, drafted a model constitutional amendment to merge the major trial courts and provide for merit selection of judges of the newly merged courts. This was introduced by a large, bipartisan group of legislators. The governor and the New York State Bar Association introduced similar proposals, but the Legislature failed to take any action on court reform in that session. This 'model' court reform bill has been introduced, with growing bipartisan support, in almost every session of the Legislature since 1980, serving to keep the issues alive.

In July 1986 the League supported, and the Legislature voted, first passage of a constitutional amendment merging the state's major trial courts. The method of selecting judges was left largely unchanged; those judicial offices now filled by election remained elective and those filled by appointment remained appointive. Although the amendment did not fully satisfy League goals in regard to judicial selection, inclusion of the District Court, and partial merger of the Surrogate's Court, this proposal was viewed as a significant improvement over the present fragmented court system. Despite intensive League lobbying both at the state and local levels, the newly elected 1987 Legislature failed to vote second passage in the first regular session as required in the constitution.

The 1987 legislative session began with high hopes and intensive lobbying for second passage of a court merger constitutional amendment, but ended with no action

Court Reform - 1988

In 1988 Governor Mario Cuomo proposed a court reform constitutional amendment calling for merger of the major trial courts, merit selection of judges, and retention election for incumbent judges. The League vigorously supported this legislation through lobbying legislators, participating in press conferences and issuing an all member Call To Action.

The campaign for reform was reinforced by the publication of the Commission on Government Integrity (Feerick Commission or COGI) report, Becoming a Judge: Report on the Failings of Judicial Elections in New York State, highly critical of judicial election as a method of selecting judges. The commission recommended a merit selection process by which the mayors would appoint judges to City Courts outside New York City and the Mayor of New York City would appoint Family, Civil, and Criminal Court judges within the city; county level judges outside of New York City would be appointed by local county executives; Supreme Court justices, Surrogate's and Court of Claims judges would be appointed by the governor with Senate confirmation. (See Merit Selection below.)

1988 Family Court Merger Proposal

A different approach to court consolidation was taken by Assembly Judiciary Chairman G. Oliver Koppell who introduced 14 measures to achieve “piecemeal” court merger. Only one of the proposals was even partially successful. First passage was given to a constitutional amendment authorizing Family Court to share concurrent jurisdiction with the Supreme Court over matrimonial actions, distribution of marital property, and custody and support determinations incidental to these actions. After public hearings in the fall indicated lack of support, the measure was not reintroduced for second passage in 1989.

League opposed first passage because we felt that this measure would increase the Family Court’s already overburdened case load without corresponding increases in financial support such as would be forthcoming if the Family Court were merged with the Supreme Court. Furthermore, concurrent jurisdiction with the Supreme Court exacerbates the situation in regard to the existence of separate courts for the rich and the poor and the perception that two kinds of justice are dispensed.

Governor Cuomo’s 1989-1993 Merger/merit Selection Proposal

In 1989 the governor launched a new initiative providing for merger of the major trial courts and a process for local merit selection of most of the judges in the merged court system. This proposal has been introduced in the Assembly every session through 1994. (In the 1994 version, the full-time City Courts were added to the merger.) The League worked with the Committee for Modern Courts to generate a formidable list of Assembly co-sponsors. By the end of the 1993 session, there were 61 Assembly sponsors and co-sponsors and 14 sponsors in the Senate.

The bill provided for local nomination by the chief elected county official for all judges of the merged courts, except for successors to the Court of Claims judgeships (approximately 55 in number, to be appointed by the governor) and the judges within New York City (approximately 400, nominated by the mayor). The County Executive would nominate in the 16 counties where that office exists, and the chair of the county Legislature or board of supervisors would nominate in the other 41 counties, for a total of approximately 400 judgeships.

In previous proposals, the governor was to be the appointing officer for all Supreme Court justices except for successors of the Criminal, Family and Civil Courts in New York City who were to be appointed by the mayor.

Court Merger 1994-95

In the 1994 session, Senate Judiciary Chairman James Lack introduced a merger bill, which did not include the District Court (Nassau and parts of Suffolk counties), Family Court and the New York City Civil and Criminal Courts. The League and Modern Courts could not support a merger plan that did not include the Family Court. We also indicated we would prefer to see the New York City courts included in the plan. The 1995 version did include Family Court. The League took no position on this proposal.

In 1995 League unsuccessfully supported second passage of a constitutional amendment increasing the monetary jurisdiction of the New York City Civil Court from \$25,000 to \$50,000, and raising the jurisdiction of the District Court from \$15,000 to \$50,000. This would have eased the caseload in Supreme Court and also since filing fees are lower in the Civil and District Courts,

would have increased access to these courts for litigants. The goal of court merger is one trial court of uniform jurisdiction, and this amendment was viewed as a step in the right direction. The proposed amendment was narrowly defeated on the November 1995 ballot.

Chief Judge Kaye's 1997 Court Restructuring Proposal

A "restructuring" proposal submitted to the Legislature by Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman has breathed new life into efforts to bring order to the state's system of multiple courts of overlapping or fragmented jurisdiction. New York State has one of the most complex court systems in the nation with a cumbersome structure of nine major trial courts. Merger of the major trial courts has been a League goal since 1955.

Under this proposed constitutional amendment, a two-tiered system would be created, with a "Supreme Court" consisting of the current Supreme Court, Surrogate's Court, Court of Claims, County Court and Family Court. A new "District Court" would consist of the current New York City Civil and Criminal Courts, the City Courts outside of New York City, and the Nassau and Suffolk District Courts. Town and Village Courts would not be included in the restructuring, nor would the Court of Appeals.

As proposed the Supreme Court would be the single trial court of unlimited jurisdiction with special divisions established for public claims, family, probate, criminal and commercial matters. The District Court would have limited jurisdiction and include civil and criminal divisions.

Particularly significant in the restructuring proposal is the establishment of a unified Family/Matrimonial Division of the Supreme Court. Families going through divorce would no longer be required, as they are now, to appear in both the Supreme and Family Courts to resolve different issues in the same case involving separation, custody, support and visitation.

The manner of selecting judges would remain unchanged (merger-in-place). Judgeships in the merged courts, coming from elective positions remain elective; judgeships coming from appointive positions remain appointive.

Another benefit for women and minorities is—this structure would dramatically increase the pool of judges eligible for designation to the Appellate Division, as all judges in the expanded Supreme Court could be considered for appellate service. Presently Appellate Division justices are appointed by the governor from sitting Supreme Court justices and this pool is predominantly white male and caucasian. The new Supreme Court would include former Family Court and County Court judges where women and minorities are more numerous.

In addition to creating the new two-tiered trial court system, the proposed measure would:

- Remove the constitutional limitation, based on population, on the establishment of Supreme
- Court judgeships, replacing temporary judicial assignments with permanent judges; and
- Create a Fifth Judicial Department within the Appellate Division of the Supreme Court to ease the burden on the Second Judicial Department.
- Save court system \$92 million during only the first five years due to increased efficiency.

The amendment must be passed by two consecutive, separately elected Legislatures and by the voters in the following general election.

In 1997 the state board approved in principle this bold initiative and League testified in support of this concept at the public hearings in the fall of 1997.

Court Restructuring 1998-1999

Although the 1998 legislative session ended without first passage of a constitutional amendment to merge New York State's major trial courts into two tiers; i.e., Supreme Court and District Court, we had another opportunity for first passage in the 1999 session.

In the spring of 1999 we were cautiously optimistic. The Senate reintroduced their court restructuring constitutional amendment, similar to Chief Judge Kaye's proposal. The Assembly passed their proposal for partial merger of Family Court and County Court into the Supreme Court. The point is, unlike the 1998 session, both versions were on the table in time for serious negotiations to take place between the two houses.

Unfortunately the delayed budget stalemate and very late passage in early August prevented official action or reaction.

Court Restructuring 2000-2001

Court restructuring bills were again introduced in both houses during the 2000 legislative session. The Senate bill supported the original proposal. The Assembly no longer tied its proposal to funding for the indigent (which had succeeded in killing the bill the previous year). It now backed a plan that would omit the Surrogate's Courts from the consolidation. Both Judge Kaye and Judge Lippman were ready to make compromises, but again nothing happened. The failure in 2000 meant any change would be postponed yet another two years. It was clear that the proposal never captured broad citizen support in spite of the fact that it had the support of the Governor, prominent legislators, the editorial boards of most newspapers and good government groups such as the League and the Committee for Modern Courts. Change was always tied to other matters and many Supreme Court and Surrogate Court judges were successful in their quiet opposition to what they perceived would weaken their importance.

A glimmer of hope appeared in the fall of 2000 when the Committee for Modern Courts conducted a survey asking New York State legislature candidates whether they favored court restructuring. A large number did. Local Leagues were asked to confront their legislators, asking those who were now on record as favoring restructuring what they planned to do about ensuring its passage and asking others to consider it. Each League received a sample Op-Ed/Letter to the Editor supporting restructuring.

With the beginning of the 2001 legislative session, Judge Kaye took the bold step of initiating integrated domestic violence pilot projects in a few areas whereby a family would be assigned to one judge for all of its judicial problems—something that would be possible for everyone with court restructuring.

Again in 2001, the legislative session saw a budget stalemate and passage in early August of a "bare bones" controversial budget that pitted the executive and legislative branches against one another. Court restructuring was not even on the radar screen. We still agree with Judge Kaye

when she said in January 2001, "Court restructuring [is] an essential foundation for a vibrant court system. While we can, through our integrated domestic violence pilots egregious consequences of splintered courts, we need systemic, comprehensive court merger." Court restructuring 2002-2003 continues to be an outstanding issue in the Legislature. The League will continue to do advocacy on this long-standing League issue.

COALITION TO ADEQUATELY FUND THE JUDICIARY

Because of the budget crisis in the 1991 legislative session, the governor cut the judicial budget by \$97 million in the financial plan he submitted to the Legislature in January. The Legislature restored \$20 million leaving the judiciary with a \$77 million reduction. The League joined the Coalition to Adequately Fund the Judiciary in January and worked with the coalition throughout the session urging the governor and the Legislature to approve the judicial budget as originally submitted by the chief judge.

A controversy arose between the judiciary and the executive branches over the constitutionality of the judicial budget cuts. At issue was Article VII, Sec. 1 of the New York State Constitution which requires that "itemized estimates of the financial needs...of the Judiciary, approved by the Court of Appeals and certified by the Chief Judge of the Court of Appeals, shall be transmitted to the Governor . . . for inclusion in the budget without revision but with such recommendations as he may deem proper." Although the governor submitted the judiciary's budget to the Legislature "without revision," he cut the judicial budget in his financial plan, which forms the basis for the Legislature's negotiation of a final budget.

The impact of the judicial budget cuts initially was felt in the civil area as court officials try to cope with the criminal courts and Family Court calendars. The chief judge brought suit in the state court against the governor and the Legislature on the grounds that "severe underfunding" of the courts is unconstitutional. In January 1992 an agreement was reached between the governor and the chief judge whereby the courts would be protected from further cuts in the following fiscal year and also receive a \$19 million increase. The League will continue to press for adequate funding for the judiciary, a separate, independent and co-equal branch of government.

JUDICIAL SELECTION

In 1965 the League adopted a study of judicial selection and tenure. A position was reached the following year supporting merit selection of state judges by a broad-based, nonpartisan nominating commission.

JUDICIAL SELECTION AND DISCIPLINE

Statement of Position

As announced by the State Board, December 1966

Judicial Selection

The League of Women Voters of New York State believes that the present system of partisan judicial election should be abandoned. Judges, unlike members of the executive and legislative branches of government, are not expected to represent political parties or to be responsive to political pressures.

JUDICIAL SELECTION AND DISCIPLINE**Statement of Position****As announced by the State Board, December 1966 (continued)**

Judges should be chosen on the basis of merit. Ultimate control over a major governmental institution should rest with the people, however. Therefore the League supports:

- 1. The establishment of broadly based, nonpartisan nominating commissions, composed of lawyers and lay people, to propose a list of candidates for appointment to judicial vacancies or newly established judgeships.**
- 2. Mandatory appointment by the appropriate chief executive from among the names so proposed.**
- 3. Ratification or disapproval of the appointment by the voters after a suitable period of time. A Tenure Commission should make available to voters an evaluation of the judge's record in office prior to a retention vote.**

Judicial Discipline

The League of Women Voters of New York State believes inadequate the present (1966) constitutional provisions for selecting judges and for administering reprimands to, forcing the retirement of, or removing judges of the state court. They are not sufficient to protect either the interest of the public or of the judges. Therefore the League supports:

- 1. The establishment of broadly based, nonpartisan Judicial Tenure (Conduct) Commissions, composed of lawyers and lay people, to (a) evaluate the record of a Judge scheduled to run for retention and prepare a report for public information; and to (b) receive and investigate in strict confidence complaints from any source about judicial conduct or disability.**
- 2. The submission of recommendation of the Tenure Commissions to an established court so that no judge would be publicly reprimanded, forcibly retired or removed without appropriate legal proceedings.**

In 1974 the League, along with other citizen's groups, opposed a constitutional measure for appointment of judges to the Court of Appeals because it lacked the necessary safeguards to remove the process from politics. Instead, support was given to a model bill for appointment of all judges using nonpartisan nominating commissions.

A major breakthrough was made in 1977 with the passage of a constitutional amendment providing a merit selection plan for the Court of Appeals. This amendment and the implementing legislation, which followed its approval, established a process whereby the state's top judges are appointed by the governor with Senate confirmation from a limited list of candidates recommended by the Commission on Judicial Nomination. This 12-member commission is

balanced politically between lawyers and laypersons, and the power of appointment to the commission is shared by the governor, the Chief Judge of the Court of Appeals and the majority and minority legislative leaders.

Originally, the commission was mandated to submit seven names for the position of Chief Judge and from three to five names for the position of Associate Judge. In the 1983 legislative session, however, a proposal to raise the minimum and maximum numbers of nominees for Associate Judge was considered. League effort to keep the minimum number of recommendations at three was successful, but the maximum number of permissible recommendations was increased from five to seven so that presently the commission may submit as few as three and as many as seven names to the governor when a vacancy for Associate Judge occurs.

Every session of the Legislature brought a number of bills to “reform” the nominating process by returning to an elected Court of Appeals or by turning the Commission on Judicial Nomination into a “screening” body by removing the limit on the number of names it may submit to the Governor for consideration of appointment. The League continued to oppose vigorously all efforts to dismantle or weaken the current nominating process.

Judicial Diversity through Merit Selection 1991-1995

In 1991 the Supreme Court of the United States (Chisom v. Roemer) ruled that judicial election districts must conform to the mandates of the Voting Rights Act to prevent dilution of minority voting strength. In February 1992 the Governor’s Task Force on Judicial Diversity Report, in addition to highlighting the gross under-representation of women and minorities on the NYS court benches, also warned that the large multi-member judicial districts for the state Supreme Court violated the mandates of the Voting Rights Act and probably would not survive a court challenge. In a letter to the New York Times and in testimony at the Joint Senate, Assembly hearings on May 21, 1992, we suggested a better way to achieve diversity on the bench and to meet the requirements of the Voting Rights Act: Abolish judicial elections and establish a merit selection process as now used in selecting judges for the NYS Court of Appeals. A Call To Action was issued in June 1992, but the Legislature recessed without taking any action.

Three suits were filed in the federal Southern District Court challenging New York State’s method of electing Supreme Court justices and New York City Civil Court judges (France v. Cuomo, Del Torro v. Cuomo, Healty v. Cuomo). In 1993 in response to this challenge posed by the Voting Rights Act to New York’s system of electing trial court judges, the League joined with the Committee for Modern Courts, the New York State Bar Association, the Citizens Union of the City of New York, New York State Women’s Bar Association, New York State Council of Churches and State Communities Aid Association in a campaign to secure a constitutional amendment for merit selection of judges. To help spread the word, the League prepared a new publication, Questions and Answers on Merit Selection of Judges, April 1994.

Throughout 1993 and 1994, the legal challenges to New York’s system of electing judges seemed to present a real opportunity for reform. The choice appeared to be merit selection v. redistricting, creating more and smaller judicial districts. League opposed creation of smaller districts because we felt smaller districts increased the potential for politicization of judicial elections—concentrating the influence of political interests.

While the League continued to work with the court reform groups in supporting the Cuomo merger/merit constitutional amendment in the 1994 session and opposing legislation to create smaller judicial election districts, the Justice Department was concluding an investigation into the Legislature's creation of 15 additional Supreme Court judgeships in 1982, 1990 and 1994. As a result of this investigation, the Justice Department tried to block the November 1994 judicial election of these judges or their successors, contending that the state Legislature violated the Voting Rights Act by creating these judgeships without gaining pre-clearance under Sec. 5 of the Voting Rights Act, thereby illegally expanding a discriminatory voting system. A Washington, D.C. federal court overruled the Justice Department and the elections were held and certified. The Justice Department appealed that decision to the federal Supreme Court but withdrew the appeal without explanation in May of 1995.

Meanwhile, the League agreed to join Modern Courts in urging the Justice Department to view merit selection as a progressive step in securing minority voting strength. The reply from Justice indicated it scrutinizes each case individually on its merits but assured us that it has in the past favorably reviewed certain states' merit selection systems.

Voting Rights update 1997

The prognosis is poor for reform of judicial selection through application of the Voting Rights Act Amendment in New York State. Federal Supreme Court decisions of the past few years, particularly the 1995 Georgia case where the court ruled that race could not be the predominant consideration in redistricting decisions, it seems to cast doubt on the constitutionality of this application of the Voting Rights Act as amended in 1982. (Since 1993 the Supreme Court has struck down minority-majority voting districts in North Carolina, Georgia and Texas.)

Governor Pataki's Executive Order

The governor appoints Appellate Division justices and, with Senate confirmation, judges to the Court of Claims and fills vacancies on the Supreme Court and countywide courts. Governors Carey and Cuomo, by Executive Order, established a system of committees to screen candidates for gubernatorial appointments to judgeships.

The League and our court reform allies urged Governor Pataki to improve on previous governors' executive orders governing gubernatorial judicial appointments by: (1) instituting a merit selection process (i.e., placing a limit on the number of nominees forwarded by the screening panels); and (2) mandating diversity in the composition of the screening panels and among those nominated for judgeships.

We were not successful in either of these goals. The Executive Order signed in April 1995 provides no limit on the number of nominees forwarded to the governor. Although the order declares that "highly qualified candidates should be drawn from a cross-section of the state, reflecting a diversity of experience and background," the order also states that committee members reviewing qualifications "shall not give any consideration to the race, religion, gender, national origin, sexual orientation or political party affiliation of a candidate."

The Executive Order establishes a statewide committee to review candidates for the Court of Claims, four departmental committees to screen nominees for the Supreme Court and the

Appellate Divisions in the four judicial departments, and individual county committees for local courts.

While the structure of the committees is similar to that of his predecessors, the balance of appointees to the panel has shifted. In our view it is heavily weighted to the executive branch. Governor Pataki has five appointments and the State Attorney General two appointments to each of the 13 member departmental panels; the governor's counsel is a member of the statewide committee to select Court of Claims judges. (Under the Cuomo committees, the governor named four appointees to a 10 member departmental panel; the Attorney General had no appointments and the governor's counsel was not a member of any committee.)

The League expressed concern over the lack of provision for non-lawyer representation on the committees and unsuccessfully urged the Attorney General to consider making non-lawyer appointments.

Feerick Commission and 2003 Developments

The Feerick Commission, a blue-ribbon commission established by Chief Judge Judith S. Kaye, issued interim proposals calling for independent screening of judicial candidates and tough new ethics rules for those running for judgeships on December 4, 2003.

Fordham University School of Law Professor John D. Feerick, chairman of the 29-member commission, said at a news conference that this proposal for a state-sponsored system for screening judges running for election would be the first in the nation. The purpose in forming this commission was to discuss reform of the judicial election process to foster public confidence in the judiciary. Public confidence means a judiciary-elected or appointed-that is independent -- of the yeas and nays of public opinion and independent of party control. Confidence also rests on a judiciary that is not only qualified but is well qualified.

The League has long held a position of support for merit selection of judicial appointments. Realizing in 2003 that this is not going to happen in the foreseeable future, as an interim step we are focusing on how to bring merit to the election process. The League supports reform of the current system of party control over the selection of Supreme Court judge elections and supports establishment of merit election screening committees.

A merit selection of candidates requires 3 factors:

1. A broad and diverse panel or commission, composed of lawyers and lay persons necessary to reflect the diversity of the community; complete control over the process so that no one faction controls the outcome.
2. The panel would screen candidates and propose a limited number of well qualified candidates from which the party leader(s) must choose. There is limit or cap on the number of nominees forwarded to the party officials who do the final selection of candidates. The cap or limit is used to lessen the choice in the selection of candidates. In New York County-this number is 3 and not less than 2 for each vacancy.

3. Another element of merit in the selection of nominees is that this screening commission is looking for the best qualified candidates available. The current method of screening for convention or for primary is the standard "Qualified" or "Not qualified". In other words current screening commissions do not have to meet standards of excellence. Their standard is to weed out the absolutely unqualified. Merit selection of candidates for election means that nominees must pass the qualification standards, such as the American Bar Association Standards.

JUDICIAL DISCIPLINE

The study on judicial selection and tenure also resulted in a position, adopted in 1966, calling for a commission to handle the discipline and removal of judges.

In 1972 the League was instrumental in introducing a bill in the Legislature to establish a Commission on Judicial Conduct and interested Governor Nelson Rockefeller in the concept. Success came in a relatively short period of time. A temporary Commission on Judicial Conduct was established by statute in 1974 pending the approval of the constitutional amendment to make it permanent.

The Legislature gave first passage in 1974 and second passage in 1975, and the Commission on Judicial Conduct was approved by the voters that fall. In 1976 the League supported a new constitutional amendment to streamline the disciplinary process by eliminating the special Court on the Judiciary and consolidating the investigative and adjudicative functions within the commission subject to review by the Court of Appeals. This amendment, which was approved by the voters in 1977, established the Commission on Judicial Conduct in its present form. Until the formation of the commission, judicial discipline lay entirely within the judiciary itself, leaving decisions to discipline most judges in the hands of the Appellate Divisions. To remove high court judges, it was necessary either to impeach them through the Legislature or call a special Court on the Judiciary; both methods were cumbersome and seldom used. In fact, in the previous 100-year period in which responsibility for disciplining judges was left to the judiciary, only 23 judges were removed from office for misconduct. Since 1975 when the Temporary Commission commenced operations, 102 judges have been removed. The old system discouraged complaints from lawyers, who might have to appear before a judge against whom they lodged a complaint, and from the general public who had difficulty finding the proper avenue for complaints under obscure procedures. The Temporary Commission, and later the permanent Commission on Judicial Conduct, provided for disciplinary procedures partially independent of the judiciary, kept its proceedings confidential to protect judges from unfounded charges, and gave citizens a clear path for lodging complaints.

During every session, the League has vigorously opposed efforts to weaken the authority of the commission in disciplining judges. In 1987 the commission came under heavy criticism from the Chief Judge of the Court of Appeals, primarily for focusing too much time and attention on town and village court justices, many of whom are nonlawyers. This prompted the Assembly Judiciary Committee to hold public hearings to evaluate the commission's ten years of operation. The League testified in support of the commission.

As a result of the hearings, the chairman, G. Oliver Koppell, sponsored a number of bills concerning the commission in the 1988 legislative session, some at the request of the commission. One proposal, supported by the League, became law: creation of an ethics panel to issue advisory opinions on judicial conduct. This legislation authorizes the Office of Court Administration to appoint an advisory panel to give specific interpretations of the state Code of Judicial Conduct. Judges who adhere to the panel's advice are considered as having acted ethically in any subsequent investigation by the Commission on Judicial Conduct; i.e., opinions issued by the panel would be considered binding on the commission in any future investigation.

Another Assembly proposal creating an office of judicial inspector general was introduced in 1988 and reintroduced every session through 1993. In 1989 and 1991 legislation passed in the Assembly but died in the Senate. The legislation was calendared in the 1993 session but never reached the Assembly floor for a vote. The proposed bill would separate the investigative and adjudicative responsibilities of the commission. An independent inspector general, appointed by the commission for a four-year term, with removal only for cause, would investigate and bring charges against judges accused of misconduct. The commission would decide whether the charges merited sanctions.

The League opposed this bill because the state constitution gives the commission the authority to "receive, initiate, investigate and hear complaints . . . and may determine that a judge or justice be admonished, censured or removed from office . . ." (Article VI, Section 22). This arrangement is called the "one tier" system in which the investigative and limited adjudicative functions are combined within the same agency. New York is one of 42 states with a one-tier system. The one-tier system is consistent with American Bar Association standards, which do not recommend the use of multiple bodies to handle matters of judicial conduct. (Commentary to ABA Standards 1.5.) The system has worked well since the present commission was established in 1977.

A one-tier structure does not mean that the courts are removed from the judicial disciplinary process. The Court of Appeals has the power to review commission disciplinary determinations, and the commission is subject to the jurisdiction of the federal and state courts on procedural and other matters raised by judges and others. In over 100 challenges, the state's highest court has never found the commission's powers, practices or procedures, to be too broad, unfair or unconstitutional.

Furthermore in commission proceedings, the investigative and judicial functions are separated where appropriate. Members of the staff who investigate or try cases against a judge are prohibited from later assisting the commission in rendering a decision. The commission prohibits its investigative and litigating personnel from assisting or advising the commission in its deliberations at any stage of formal proceedings. The clerk of the commission, who does not participate in any investigative or adversarial capacity, in any case, assists the commission and referees.

Confidentiality and Public Hearings

The 1988 Annual Report of the Commission on Judicial Conduct recommended legislation to open to the public the hearing stage of the disciplinary process. At present, the initial complaint, the investigation and the hearings are closed to the public by state law. The public becomes aware only when disciplinary action is taken to remove, censure or admonish judges. The commission's proposal, if adopted by the Legislature, would retain confidentiality of the

complaint and the investigation. Only after probable cause has been found and formal charges preferred would the subsequent hearing be open to the public.

The LWVNYS State Board voted at its March 1988, meeting to support the commission's proposal to retain confidentiality of the complaint and investigation but to open the hearing to the public after the commission has found basis for bringing formal charges.

In 1977 voters approved a constitutional amendment, which established broad outlines for the present Commission on Judicial Conduct. In 1978 when the specific legislation to implement the amendment was considered, the League took the position that the whole process should be confidential in order to protect judges from unfavorable publicity arising from unfounded or frivolous charges. At that time, the commission was not operational, and there was no way to foresee the comprehensive nature of the investigative process.

The state League board decision to support open hearings was based on the following reasons:

- Judges are adequately protected from unjust or frivolous complaints because confidentiality remains throughout both the filing of complaints and the investigation. The process becomes open only when the 11-member commission finds there is sufficient evidence, or "probable cause," to warrant filing formal charges. Most judges who are charged are either disciplined or removed. They have the right to appeal to the Court of Appeals, although the high court has never dismissed any of the cases where disciplinary measures were decided in the hearings but has raised or lowered some penalties.
- Public confidence in the integrity of the process would be enhanced if the hearings were open to the public. At present, the closed nature of the entire process may fuel speculation and rumor to the detriment of judicial reputations and public trust. Action of the commission becomes public only at the end of the process when the commission has already judged the judge. Public proceedings would make the commission more accountable, defusing some judge's claims that the commission acts as a star chamber.

Also, as noted in the commission's Annual Report, under the present law there can be no evaluation of the commission's work regarding matters it dismisses. It is impossible for the Legislature and the public to know whether the commission ever improperly dismissed a case.

In 1989 a bill opposed by the League proposed creating the office of judicial inspector general. This bill, which only passed the Assembly, originally contained a provision for opening the formal hearing to the public. It was amended both in the Assembly and Senate to delete that provision, but the bill never reached the Senate floor for a vote. The League will continue to work for open hearings and will continue to oppose separation of the commission's investigative and adjudicative functions.

PRE-ARREST PROFILING

The Fourth Amendment to the United States Constitution, as interpreted by the Supreme Court, requires police have reason to believe a person is involved in criminal activity before stopping or detaining that individual. The perception of racial and economic profiling, stopping individuals based on race or apparent economic status, raises doubts about the fairness of the criminal justice process. While some law enforcement officials across the state have begun to address this issue, countless citizens continue to feel that they have been targeted because of their race or economic status.

Recognizing the importance of this issue, the League adopted a study at state convention in 2001 to consider whether racial and/or economic factors impact on the treatment of individuals during arrest and actions leading up to arrest.

PRE-ARREST PROFILING

Statement of Position

As announced by the State Board, May 2003

The League of Women Voters of New York State believes that racial and economic factors do influence the treatment of citizens during arrest and actions leading up to arrest. The multi-jurisdictional law enforcement system and lack of uniform law enforcement procedures makes assessing the degree of racial and economic profiling and its prevention difficult. To monitor and prevent this practice the League supports:

- **the establishment of statewide guidelines for law enforcement at all levels to prevent racial and economic profiling, including:**
 - **policy statements,**
 - **hiring practices,**
 - **training, including pre-service training and in-service training,**
 - **interactions with civilians,**
 - **record keeping, including collecting data on all stops (pedestrian or vehicle),**
 - **reporting and publicizing results,**
 - **the handling of complaints,**
 - **disciplinary actions for law enforcement personnel who exhibit inappropriate behavior.**

In addition, the League supports the issuance of separate guidelines for interacting with youths to assure non-discriminatory pre-arrest treatment.

The League recognizes the legitimate use of race as an identifying factor by law enforcement in certain instances, for example when issuing a wanted description, and supports that continued use.

PRETRIAL PROCEDURES

In 1973 reflecting a growing concern with both the protection of defendants' rights and the inability of the courts to handle increasing caseloads, the League adopted a study of pretrial procedures in the criminal courts, focusing on four areas: counsel for the indigent, bail and alternatives to bail, plea bargaining, and the grand jury. Consensus was reached in 1975. A 1986 consensus updated the section dealing with the indicting function of the grand jury. (See Grand Jury Position Statement.)

Upon completion of Alternatives to Incarceration (ATI) study in 1993, the portion of Pretrial Procedures relating to Alternatives to Bail was moved under the ATI position. (See ATI Position Statement.)

PRETRIAL PROCEDURES

Statement of Position

As announced by the State Board, December 1975

The ultimate recourse for justice, both for society and the offender, is the court system. The judicial system in New York State still needs reforms in the method of selecting judges, and court structure. Due to the inefficiency and congestion of the judicial system, most criminal proceedings never actually reach the courts.

Given these present realities, the League of Women Voters, while continuing to press for court reform, recommends that the following improvements be made in pretrial procedures:

The rights of defendants should be protected at every stage of a criminal proceeding, including the pre-arraignment period. They should be entitled to competent legal counsel at every stage.

At present, indigent defendants must be provided counsel at full public expense. The quality of defense provided for the indigent should be improved by better training and screening of attorneys.

The League believes those not deemed indigent, but unable to afford full legal fees, should be required to pay for counsel only according to their financial ability. To assure uniform administration of justice, procedural guidelines should be developed for defining indigency for purposes of retaining counsel. Local determination of eligibility should be flexible, however, and each county should continue to determine what system can best provide counsel for its indigent defendants (i.e., public defender, assigned counsel, etc.). Funding for indigent defense should come from all levels of government.

The League concedes the continued necessity for the practice of plea-bargaining to handle the criminal caseload.

PRETRIAL PROCEDURES**Statement of Position****As announced by the State Board, December 1975**

Full written records in the pretrial process are essential to gain public trust and to protect both society and the defendant. They should be kept for all negotiated pleas and all grand jury proceedings, subject to deletions by the court to protect witnesses and defendants. Plea bargaining records should contain, for example, evidence that the defendant understood the implications of his plea and was fully informed of all negotiations, and reasons for the judge's accepting the plea and any promises made to the defendant. Information about the defendant's background and previous criminal record should be reviewed by all parties before an agreement is reached or sentence imposed. Procedural guidelines should be developed to assure equal treatment in the plea bargaining process.

There is an inherent and unresolved conflict between society's need to be protected from dangerous defendants and its need to protect the defendant's constitutional rights. To address this dilemma, as well as many other problems of the pretrial period, guarantee of a speedy trial is an imperative.

Finally, many cases go through the judicial process, which could be better handled by other means. Community and paraprofessional services should be utilized in diverting accused law-breakers from criminal processing to social rehabilitation.

GRAND JURY

In 1985 delegates to State Convention voted for a re-evaluation of the League's position in support of the grand jury indicting and investigative functions. The following year, in March 1986, delegates to State Council agreed to limit the re-evaluation to the indicting function only.

The April 1986 consensus showed clearly that the League was divided on the question of support for the indicting function of the grand jury. Many members favored abolishing this function while others felt it should be retained. Thus we neither support nor oppose the indicting function of the grand jury. All did agree, however, that procedural reforms to protect citizen rights should be instituted in all grand jury proceedings.

GRAND JURY**Statement of Position****As announced by the State Board, May 1986**

The League of Women Voters of New York State supports the grand jury as an investigative body. Whether the grand jury is sitting as an investigative or as an indicting body, grand jurors should be selected at random from a broad cross section of the community and should have clear understanding of the full scope of their powers and responsibilities. Grand jury witnesses, as well as potential defendants, should be entitled to counsel while testifying. Such counsel would serve in an advisory capacity.

GRAND JURY**Statement of Position****As announced by the State Board, May 1986 (continued)****Procedural reforms of the indicting function are needed to protect citizen rights.****The League supports reforms such as: disclosure of exculpatory evidence (favorable to the defendant); increased access to transcript for the defendant and access for witnesses to their own testimony; and statewide standardized instruction for grand jurors, written as well as oral.**

Random selection of both grand and petit juries was made mandatory in 1977, and legislation was enacted in 1978 permitting counsel for witnesses before the grand jury who had waived immunity. The League will continue its efforts to extend this provision to all grand jury witnesses.

Since 1993 the League has unsuccessfully supported Assembly legislation to increase a defendant's access to the transcript. In 1996 League unsuccessfully supported legislation to require judges to provide grand jurors with written instructions concerning the scope of their authority and responsibility.

LEGAL SERVICES FOR THE INDIGENT

In 1983 this portion of the position was broadened to include civil as well as criminal proceedings.

LEGAL SERVICES FOR THE INDIGENT**Statement of position****Adopted by the League in 1975:****The rights of the defendant should be protected at every stage of a criminal proceeding. At present, indigent defendants must be provided counsel at full public expense. The quality of defense provided for the indigent should be improved by better training and screening of attorneys. Funding for indigent defense should come from all levels of government.**

For the last five years, the League has been actively examining how legal representation in Criminal and Family Court matters is provided at public expense under New York statutory law. We have found that reform is greatly needed, and have been working toward improving the system. Now is the time to escalate that work.

CRIMINAL LEGAL SERVICES

In 2000 the League received an award from the New York State Defenders Association for its work on public defense issues. The League will continue this relationship with the New York Defenders Association to make the goal of a unified system become reality.

Our participation in the March 20, 2001 Gideon Legislative Day was intense. League members, representing Capital District chapters as well as the State League, joined Coalition delegations that visited legislators. The legislators were urged to do three things. 1) Restore to the budget those public defense programs that the governor cut. 2) Raise the rate of compensation set for assigned counsel and abolish caps on those fees and related expenses. 3) Establish a schedule of state appropriations to subsidize the rate increase so that it would not simultaneously undermine the provision of public defense services by organized providers (public defenders, legal aid societies and not for profit providers).

In spring 2001 we sent local League presidents a report, *Resolving the Assigned Counsel Fee Crisis: An Opportunity to Provide County Fiscal Relief and Quality Public Defense Services*, by the New York State Defenders Association. It calls for the same actions that the Gideon Coalition lobbied for on March 20th, and adds a call for the creation of an independent and politically insulated statewide Public Defense Commission to oversee the distribution of state funds and the provision of public defense services through a statewide office. The *New York Times* editorial on April 12, 2001, made a similar call for "a strong state role - preferably through a politically insulated commission - in setting quality standards for defense services, including reasonable caps on attorney caseloads, and in exercising vigorous oversight to make sure those standards are met."

Steps in the Right Direction

The 2001 New York Times series, "Two -Tier Justice" recounted many problems with public defense in New York City similar to those the League keeps finding statewide. A lawsuit demonstrating how absurdly low assigned counsel fees created in New York City a crisis of constitutional proportions as to public defense resulted in an injunction raising fees from \$25 in court/\$40 out of court to \$90 per hour across the board in New York City. Before that could be implemented, the Legislature raised fees statewide in 2003 (effective 2004) to \$60 per hour for misdemeanors, \$75 per hour for all other matters. (See more details below.) The lawsuit was settled, dissolving the injunction but leaving "intact the precedential value of the judge's decisions finding that New York's low rates had imperiled the constitutional rights of indigent New Yorkers to obtain counsel" (New York Law Journal, 11/13/03). This is important to other potential suits.

In the midst of the fiscal crisis of 2003, during the 40th anniversary year of the right to counsel decision in *Gideon v Wainwright*, the Legislature passed a reform of public defense services in New York State. The change was included in Part J of one of the budget bills passed over the Governor's veto on May 15, 2003. While this legislation will not end the public defense crisis, it was a victory. Reform of defense services has been a goal of the League, working with the New York State Defenders Association (NYSDA) and others, including the Gideon Coalition, for several years. The increase for fees for assigned counsel representing poor people in criminal and certain other matters increase, beginning in 2004, for the first time since 1986. Fees in cases begun as misdemeanors will be \$60 an hour, in or out of court. In other matters for which publicly paid counsel is provided, including felonies (other than capital cases), appeals, and family court matters, the fees will be \$75. This is a substantial jump from fees of \$25/hour out of court and \$40/hour in court, though it is well below the \$90/hour rate set in litigation in New York City as described in earlier reports; that litigation remains on appeal. Caps on amounts payable per case were unfortunately not dropped, but were increased, as was the cap on fees for investigators and other expert services needed to assist counsel.

An important aspect of the new law is that New York State has agreed to support the public defense function by providing a projected 20 percent on top of what localities are already paying. The bill creates an Indigent Legal Services Fund in the custody of the Comptroller and the Commissioner of Taxation and Finance. Four revenue streams feed this fund, generating an estimated \$65 million per year. Of this, \$25 million is designated for law guardian payments. The remainder will be distributed pursuant to a formula to counties and the City of New York. As long as the funds are used to improve the quality of the local public defense system (public defender office, assigned counsel program or legal aid society), localities may use these funds as they see fit. The state funds are not earmarked for the assigned counsel fee increase. Distribution of funds to localities begins in 2005 and will be made under a formula based on the amount spent by a jurisdiction in the preceding year. Each locality's public defense expenditure will be calculated by the Comptroller as a percentage of total public defense expenditures by all counties and New York City. That same percentage of the fund will be returned to localities. Notably, to receive state funds localities must certify that they spent the same amount in the preceding fiscal year as the year before, unless they can demonstrate a measurable increase in quality. For the first time in New York State history, the examination of the use of experts and investigators, caseload limits, training, resource and similar issues is part of the funding calculus. The fee increase, while welcome, did not constitute needed reform. Real oversight, with standards by which to measure of public defense services, still does not exist. Small steps--a maintenance-of-effort provision that requires localities to use state money to improve quality of public defense, for example--are welcome, but the necessary giant leap remains to be taken.

Counties in Chaos

As a result of the fee increase legislation, which provides only 50% of needed funds, and not until a year from now, counties across the state are hastily reevaluating how they provide public defense services. NYSDA reports that nearly half of New York counties have considered some change concerning their public defense system as a result of the rate hike. Many efforts are directed only at saving money, not improving quality. From requests by assigned counsel programs to survive at all costs to the addition of scaled-back conflict defender offices, localities have tried to deal with the continuing statewide problem of the under-resourced, unfunded mandate of public defense. This is not just a fiscal issue; clients, client communities, and communities at large are increasingly demanding improvement in public defense. The possibility of new litigation has been voiced more than once.

Needed: An Independent Public Defense Commission

In 2002, the State League made "Establish an Independent Public Defense Commission" a priority on its Legislative Agenda. Such a commission would protect constitutionally and statutorily required legal services from control by those with conflicting interests and provide a single, accountable entity to whom any and all concerned groups could turn when quality representation is not met. It would act as a conduit for transmitting state funds to localities that meet standards established by the commission.

A bill to establish an independent public defense commission was drafted in 2001 and presented to the governor and legislature by the Committee for an Independent Public Defense Commission. (see more details below). This committee, chaired by Michael Whiteman, a founding member of the law firm Whiteman Osterman & Hanna and former counsel to Governor Rockefeller, includes two other architects of the current public defense system (former

State Senator Warren M. Anderson and former Assemblyman Richard J. Bartlett) and many others. In 2003, bills similar to the one proposed by the Committee were introduced by Senator Dale M. Volker, R-Erie County, and Assemblyman Joseph R. Lentol, D-Brooklyn.

Local efforts to fix a statewide "system" will continue to be insufficient. League members concerned about this issue should call upon Senate and Assembly representatives to pass the independent public defense commission legislation the 2004 season.

New York State Public Defense Commission Act Proposed Legislation July 2001

On July 9, 2001, the Committee for an Independent Public Defense Commission composed of many former legislators who supported the original 1965 legislation setting up the current system of delivery, announced presentation to the governor and the legislature of proposed legislation which: increases the rate of compensation for lawyers providing legal representation to the poor (so called assigned counsel); provides for an increase in state funding for publicly provided legal representation (Public Defenders); and establishes a public defense commission to oversee the expenditure of state funds and the provision of publicly provided representation.

The public defense commission would be housed in a public benefit corporation governed by an independent board. The commission would be empowered to create and enforce standards regarding the selection, training, workload and performance of lawyers, as well as eligibility standards of clients. It would function as the conduit for state financing; be fiscally accountable to the state, yet independent of both the executive and judicial branches of government.

The proposal also provides for a nominating committee structure to be chaired by the LWVNYS to help assure independence from both the executive and judicial branches of government. In a letter to the League, July 6, 2001, the chair of the Independent Committee, Michael Whiteman wrote to the League: "We have named the New York State League of Women Voters as one of the members of the nominating committee because we believe your organization represents the kind of experience, integrity and independence that will allow the nominating committee process to succeed.

For major provisions of the proposed legislation, see Memo in Support, and "Section-By-Section Analysis of the Public Defense Commission Bill" by NYSDA, August 2001.

Under the proposal, the 13-member unpaid commission would include representatives of the governor, legislative leaders, the New York State Association of Criminal Defense Lawyers, the Vera Institute of Justice, Community Action Association of New York, the New York State Defenders Association and the New York State Bar Association. It would be independent of the Department of Criminal Justice Services and the Judiciary and run by a full time director. While the commission would not have the authority to alter rates - that power would remain with the legislature - it would establish standards for indigent counsel. The general proposal has been endorsed by 29 counties through two organizations, the Inter-County Association of Western New York and the Inter-County Association of the Adirondacks.

Recent League Efforts 2003

In 2003, the League joined the New York State Defenders Association (NYSDA), the New York State Community Action Agency Association, and the Committee for an Independent Public Defense Commission in co-sponsoring a Gideon Day Client-Defender Speak Out. Testimony at

that Speak Out again illustrated the need for public defense reform. (Video clips are available at http://www.nysda.org/Hot_Topics/Gideon_Day/gideon_day.html.)

More recently, the League has been involved, with NYSDA and other groups, in hearings held in specific client communities. As the State League's liaison to NYSDA and a member of NYSDA's Client Advisory Board, Lenore Banks off-board judicial specialist participated in several of these hearing. An initial analysis of findings from one community has been released by NYSDA, "A Preliminary Report Concerning the Inadequacy of Defense Services Available to Farm Workers," analyzing testimony taken at a hearing in Albion and other information about public defense in the farm worker community in western New York State. Other reports will be issued as part of the NYSDA campaign, "Defending the Right to be Heard. Every County. Every Client." League members can learn more about this issue by checking the NYSDA web site, www.nysda.org.

CIVIL LEGAL SERVICES

Interest on Lawyer Account Fund (IOLA)

An innovative method of providing funding for civil legal services to the poor, the Interest on Lawyer Account Fund (IOLA), was supported by the League and enacted in the 1983 legislative session. The fund became operational in October 1984. This program allows attorneys to invest nominal or short-term client deposits so that these otherwise idle funds can be pooled in an interest-bearing bank account. The interest income is channeled to the IOLA Fund of the State of New York, which administers the program and makes grants to law-related public interest programs such as legal service agencies.

In the 1988 legislative session, the League successfully supported legislation to make attorney participation in the IOLA program mandatory. Attorney recruitment efforts were not as successful as originally anticipated. Only 15% of the estimated 60,000 eligible attorneys chose to participate in the voluntary program. Under the mandatory program, IOLA is expected to generate at least \$6 million annually, compared to the \$1.3 million raised in 1987 under the voluntary program.

The League lobbied extensively to get Senate support for this legislation, and the bill was passed and signed into law by the governor. However, since 1997 the constitutionality of this program is being questioned and the future of IOLA appears uncertain.

Disabled Advocacy Program

The League successfully supported creation (1983), continued funding (1985), and increased funding (1987) for the Disabled Advocacy Program (DAP) which provides civil legal services for disabled New Yorkers who have been denied federal disability benefits under standards found to be illegal by the federal courts. By providing legal representation, the Disabled Advocacy Program has allowed disabled citizens of the state to successfully contest wrongful termination or denial of their federal Social Security Disability (SSD) or Supplemental Security Income (SSI) benefits in 85 percent of the cases undertaken.

Funding for Civil Legal Services

In February 1999, League presented testimony at the Public Hearing of the Senate Finance and the Assembly Ways and Means Committees on the Proposed Executive Budget. Our message

was: Include \$13.6 million in funding for Legal Services in the 1999-2000 budget and craft a permanent solution to funding for Legal Services as outlined in Chief Judge Kaye's Legal Services Project Report.

The proposed executive budget provided no funding for civil legal services. This despite the fact the civil legal services programs across the state continue to suffer from last year's loss of state funding. In an effort to rein in spending, last year the governor vetoed more than \$1.5 billion in funding added to the budget by the legislature. Caught in this sweep was almost \$7 million in funding for Civil Legal Services. In response, local programs have scaled back on services, imposed hiring and salary freezes, left vacant positions unfilled, and in some instances undertaken lay-offs. Programs have worked tirelessly to raise additional funding but the real need is for a permanent statewide funding stream for these vital services.

At the end of the 1999 legislative session League was notified in August that the state budget included over \$7 million for civil legal services program. However, the bill to create a permanent funding source passed the Assembly in June 1999 but the Senate failed to act on any proposal for any permanent funding source. The Assembly and the League will continue efforts to secure this permanent funding source for civil legal services.

When provided, Legal Services is a stabilizing effective force. By working with local social services offices, legal services can ensure that rent payments flow appropriately to landlords, avoiding evictions and costly shelter stays. By representing those who have been inappropriately denied or terminated from federal disability benefits, legal services is able to provide financial stability to low income families while at the same time helping to avoid unnecessary state welfare costs. By helping a young mother secure the child support to which her child is entitled, legal services is able to provide some measure of economic security and again help the family avoid the need for public assistance.

ALTERNATIVE DISPUTE RESOLUTION

A portion of the League's pretrial procedures position, diverting certain cases from overcrowded courts to be solved by other means, was broadened to include civil cases. (See pretrial procedures position statement.)

Community Dispute Resolution Centers Program

In 1981 the League supported legislation to create the Community Dispute Resolution Centers Program to facilitate the just and speedy resolution of small disputes by furnishing partial (50%) state support for the creation and operation of such centers for conciliation, mediation, and arbitration as alternatives to pursuing action in civil or criminal court. Since 1981 a series of amendments have enhanced the authority and scope of the centers: in 1984 the program became a permanent part of the Unified Court System, the nation's only permanent state-funded program of its kind; in 1985 the jurisdictional ceiling on monetary awards was increased; and in 1986 referral of selected felonies to these centers for mediation was authorized.

Funding for local programs is based on the 50% principle; the state supplies half of the operating costs and local public and private sources supplies the other half. In 1987 the League successfully supported legislation to provide basic annual grants of up to \$20,000 to each county

served to benefit a sizable number of smaller counties experiencing difficulty in securing sufficient local funding. Operating costs beyond the minimum grant continue to be funded on the 50% principle. Centers have been established in all of the New York State's 62 counties.

As part of our continuing interest in alternatives to court action, the LWVNYS participated in the planning of the 6th New York State Conference on Alternative Dispute Resolution in September 1989.

Small Claims Court

In 1987 the League successfully supported a bill raising the jurisdictional limit in small claims court from \$1500 to \$2000. This measure provides residents of New York State with continued access to simple, inexpensive, dispute resolution procedures and diverts cases from overcrowded calendars in the higher civil courts.

ALTERNATIVES TO INCARCERATION

The 1991 LWVNYS Convention adopted a study of Alternatives to Incarceration (ATI) to expand the judicial position, which had previously addressed only certain aspects of pretrial situations. The 1993 League Legislative Advocacy conference allowed the League to present the new ATI position, announced in February, to the legislators.

Delegates to the LWVNYS Convention in June 1993 voted for "an extension of the ATI study to examine the need for alternatives for those incarcerated under laws and/or significant circumstances that have since changed." Delegates to Council in 1994 voted to discontinue the study based on the state board recommendation that we could take action on these concerns under the current position.

ALTERNATIVES TO BAIL

Statement of Position

As announced by the State Board, December 1975

Assurance that a defendant will return for trial should be obtained through means other than bail, since bail is inherently discriminatory. Alternatives include expanded use of the appearance ticket, release on own recognizance, conditional or supervised release, and detention by written determination of the judge that there is no other alternative.

ATI POSITION

Statement of Position

As announced by the State Board, February 1993

Recognizing the enormous costs of state prisons and local jails, and the distressingly high rates of recidivism, the League of Women Voters of New York State, at its convention in 1991, adopted a study of Alternatives to Incarceration.

ATI POSITION
Statement of Position

As announced by the State Board, February 1993 (continued)

In the criminal justice system there is a need for a broad range of punishments less restrictive than incarceration. Prisons and jails must be viewed as a scarce and expensive resource to be utilized only when necessary. The current system wastes time, money, and human resources. The LWVNYS strongly supports the use of ATI for nonviolent offenders. There is a need for earlier, more effective intervention and, if applicable, treatment. Sanctions should be more innovative, constructive and less restrictive.

Eligibility

The League concurs with the American Bar Association Model Adult Community Corrections Act of February 1992. The following offender groups shall be eligible for sentencing to community-based sanctions:

- (a) those convicted of misdemeanors;
- (b) nonviolent felony offenders, including drug abusers and other offenders with special treatment needs;
- (c) violators of parole, probation, and community corrections conditions whose violation conduct is either non-criminal or would meet either criterion (a) or (b) above had it been charged as a criminal violation;
- (d) offenders who, although not eligible under criteria (a) through (c) above, are found by the court to be the type of individuals for whom such a sentence would be appropriate. In making such a determination, the judge shall consider factors that bear on the danger posed and the likelihood of recidivism by the offender, including but not limited to the following:
 - (i) that the offender has a sponsor in the community;
 - (ii) that the offender is employed or has enrolled in an educational or rehabilitative program;
 - (iii) that the offender has not demonstrated a pattern of violent behavior and does not have a criminal record that indicates a pattern of violent offenses.

Evaluation of individual offenders

From the time of arrest, individual offenders should be carefully screened and matched with appropriate programs. In the screening process, the highest priorities are:

- Public Safety
- Rehabilitation of the offender, including treatment for substance abuse, education beginning with basic literacy skills, vocational responsibility training, and family intervention
- Severity of the crime
- Violence of the crime

**ATI POSITION
Statement of Position**

As announced by the State Board, February 1993 (continued)

Additional factors to be considered are:

- Previous criminal history
- Ties to the community, including job and family
- Deterrence of further criminal activity
- Potential for restitution
- Interest and willingness to take part in alternative program
- Cost of program.

Evaluation of ATI programs:

Evaluation of the effectiveness of an alternative program should include:

- Rate of re-convictions of those who have completed the program
- Rate of successful completions of the program
- Cost of program v. cost of incarceration and other savings to community
- Equal access to the program for all eligible offenders
- Public confidence and community involvement.

Additional factors to be considered are:

- Victim satisfaction with sentence
- Rate of failure to appear (FTA) in court of those in Pre-Trial Release programs compared with rate of FTA of those released on bail.

The Criminal Justice Process:

The LWVNYS strongly supports greater discretion in the use of alternatives at all stages of the criminal justice process; i.e., pre-trial, sentencing, and re-entry.

To encourage use of ATIs:

The League strongly supports:

- Education of the public, legislators, and all personnel in the criminal justice system
- Reform of drug laws
- Repeal of the second felony offender law.

The League also supports:

- State funding incentives for ATI programs
- Expansion of defender-based advocacy programs
- Mandated consideration of least-restrictive sanctions, which should be documented in the presentencing report.

**ATI POSITION
Statement of Position**

As announced by the State Board, February 1993 (continued)

State legislation

The League strongly favors state legislation supporting ATIs. This legislation should include a Master Plan that provides:

- **Funding incentives for the use of ATIs**
- **Evaluation of individual programs**
- **Minimum standards in local program operations**
- **Methods for encouraging community support.**

In conclusion, the LWVNYS believes it is essential that there be long-term evaluation and sufficient funding of alternative programs.

Our position supports the use of ATI at all levels of the criminal justice process, including re-entry, for nonviolent felony offenders. The American Bar Association eligibility criteria adopted as part of our position state that community-based sanctions should be available to an offender who, although convicted of a violent crime, had no pattern of violent behavior and would not pose a threat to the community. The state League board at its March 1994 meeting affirmed that an example for using this criterion might be the case of a battered woman who struck back or killed her abuser in a single act of violence, provided that she had no previous history of violence and would pose no threat to the community.

At its March 1994 meeting, the board affirmed a broad interpretation of the term "alternative" in our position. Thus, we could support sentence reduction measures, such as good time and clemency, for classes of individuals. However, the board felt it inappropriate for the League to support clemency for any particular individual.

The state League board supported in concept other re-entry programs such as (but not limited to) earned eligibility, conditional release and early parole. The Board also reaffirmed support in concept for treatment, vocational and rehabilitation programs under our ATI position. Support for specific legislation will depend upon the criteria in our position.

Persons "incarcerated under laws and/or significant circumstances that have since changed," can use a petition process for sentence review, starting with a direct appeal up through the highest state court. If that fails, the person can file a "440 motion" or "Collateral Attack on a Criminal Conviction". Prisoners Legal Services provides a packet of sample forms for this complex process upon request. The packet is based on A Jailhouse Lawyer's Manual, available in prison libraries.

Our current position already allows the League to take action in opposition to mandatory drug laws and second felony offender laws under which so-called "drug mules" are incarcerated.

Throughout the next decade the League testified and lobbied for adequate funding for pre-trial services, for ATI programs and probation, for prison programs conducive to successful re-entry and for reform of mandatory sentencing laws.

In 1994 we supported reauthorization of legislation to allow release of terminally ill inmates, and legislation to reduce the length of initial sentence for terminally ill offenders. We continued to support legislation for early parole for battered women who had attacked their abusers.

Second Felony Offender Reform legislation of 1995 makes second felony class D and E nonviolent offenders, whose drug addiction contributes to their conduct, eligible for a new "parole supervision" sentence. The new sentence includes three months at a drug treatment facility operated by the Department of Correctional Services (DOCS).

The budget allocated \$20 million for the rehabilitation and operation of the former Willard Psychiatric Center to be converted into a "drug treatment campus." The 750-bed facility opened in October 1995 but was used more for parole violators than to divert second offenders. The law requires that for Class D felonies, the prosecutor as well as the judge must agree to this alternative sentence, which may account for the lack of second felony offenders at Willard.

The League voiced its concerns about the limited number of offenders eligible for diversion and about sending offenders to a prison in rural upstate New York for 90 days rather than to community-based programs in or near inner city communities where most prisoners come from and return.

The 1995 legislation also expanded the Shock Incarceration Program by offering a modified program, "shock lite," for nonviolent offenders who for medical reasons cannot participate in the standard program.

As a result of sentencing changes enacted and proposed in 1996-97, the governor proposed three new maximum-security prisons, each at a capacity of 1,500 and a cost of \$150 million. He also called for the creation of 4,300 additional beds by the year 2000.

The impact of these changes would be less funding available for other critical areas such as education, teen pregnancy programs, and parenting skills programs. The League strongly believes that preventive measures, which could reduce the future prison population, should not be abandoned.

League goals at that point were:

- Restoration of funding for ATI programs, particularly Probation and Pretrial Services programs.
- Full utilization of Willard for the purpose intended, i.e., to divert the low level, nonviolent second felony drug offenders.

Concerning sentencing increases, the League was concerned that:

- The new laws may be too broad, "catching in their net" many people convicted of violent offenses that are not dangerous, predatory or a threat to public safety.
- The new measures would require the state to build additional prisons costing billions of dollars.

The budget passed in July 1996 restored funding to the 1995-96 levels for probation and pre-trial services, for the Demonstration Projects and Alcohol and Drug Treatment Programs, and for Classification Alternative and Intensive Supervision Programs.

The 1997-98 Executive budget proposal included \$635 million for three maximum-security prisons and eleven 200-bed additions to existing facilities. The League joined the Good Government/Fiscal Responsibility Coalition to support alternatives to that proposal. The coalition considered the Executive's proposed financing mechanism fiscally irresponsible, with backdoor financing of dubious constitutionality. We proposed, instead, to put the issue of prison construction before the voters in a state referendum, which, if passed, would result in the issuance of a general obligation bond, which carries a lower interest rate than a revenue bond. At the same time, we urged the Legislature to focus not on prison construction, but on alternatives to incarceration for nonviolent offenders and repeal of the mandatory sentencing statutes.

Prison construction plans and criminal justice reform ultimately became the linchpin of the state leaders' budget negotiations, with the Senate focusing on punishment and the Assembly highlighting treatment. The budget finally adopted in August 1997 planned for one maximum-security prison and eight 200-bed additions to existing facilities at a cost of \$226 million. Also, 250 new domestic violence shelter beds and 500 drug-treatment beds would open. In addition, merit time release was implemented for nonviolent offenders completing certain programs.

1998 saw passage of Jenna's Law, which gave determinate sentences for a first violent felony offense. Instead of parole, the determinate sentence permits conditional release after serving 6/7 of the sentence.

During the 2000 session, the League supported several drug law reform bills. One bill, in both the Assembly and Senate, would have given the option of a sentence to probation for all controlled substance felony convictions, including second felonies. Judges could then impose conditions for rehabilitation, including drug programs, according to existing penal law. That bill also permitted retroactive setting aside of some sentences. Another bill, significant for its Senate Republican sponsorship, would have permitted, for first time B, C, or D drug felonies, a definite sentence of one year or less, or of probation or conditional discharge. No action occurred on either bill.

The League continued support for these bills when they were re-filed in 2001. Members had chosen drug law reform as an issue for emphasis in 2001. Responding to increased community agitation for drug law reform, the governor and leaders in the Assembly and Senate proposed a variety of changes, which ended up as two omnibus bills, one in each House. Unfortunately, these bills were far different from the straightforward ones supported by the League. They reduced some sentences and increased others. They detailed the types and extent of drug

treatment, limiting participation in some cases and mandating treatment in others. They did not meet our position standards for access, flexibility and innovation. Nor did they take account of the poor outcome data for current programs, including the Willard program.

Just before adjourning in June 2002, the Assembly and Senate passed different drug law reform bills, modifications of the ones on which they had taken no action in 2001.

In March 2003 the Senate passed a bill dealing only with Class A drug felonies. Then in early June the Assembly passed a modified form of their 2002 bill, and filed another, shorter bill in mid-June. Heated negotiation among the leaders did not result in a compromise bill. The League continued to press for more options for alternatives for more offenders.

The budget bill passed in May 2003 included several items regarding early discharge from prison or parole. Class AI drug felons can earn merit time. A new presumptive release program bypasses the parole board by allowing the Corrections Commissioner to issue a certificate of earned eligibility to some inmates. Merit termination from parole was shortened from three years to two years for Class A drug felony offenders and after one year for others.

TRIAL JURY

The 1985 LWNYS Convention adopted a study of jury management focusing on selection and exemptions in response to delegate concern over the growing number of occupational exemptions from jury duty, proposals to ban the use of voter registration lists as a source for potential jurors, the great disparities in fees paid to jurors statewide, perceived inequities in the sharing of this civic duty, as well as concerns over efficient utilization of juror time.

TRIAL JURY

Statement of Position

As announced by the State Board, May 14, 1987

The League of Women Voters of New York State supports measures to promote a fair and efficient jury system which:

- **ensures that county jury pools are large enough to meet the needs of the courts;**
- **represents a cross section of the community;**
- **makes jury service pleasant and productive;**
- **ensures that this civic duty is equitably shared by the eligible population.**

We strongly support continued use of voter registration lists in conjunction with lists of state income tax filers and drivers licenses to generate the automated master list compiled by the Office of Court Administration for each county. We advocate a program of public education regarding this composite list to dispel misconceptions concerning links between voter registration and summons to jury duty.

To ensure a sufficient and representative supply of potential jurors, we recognize that other lists may be used in conjunction with the master lists.

TRIAL JURY**Statement of Position****As announced by the State Board, May 14, 1987 (continued)**

We support abolition of all occupational exemptions and disqualifications in favor of a case-by-case review for excusal or postponement.

The criteria for excusal - undue hardship or extreme inconvenience, public safety, and physical and/or mental impairment with report from a doctor - should be applied statewide with some flexibility in local implementation. Postponement policy should remain the responsibility of each Commissioner of Jurors, within guidelines set by the state.

The League supports continued ineligibility of non-English speaking citizens for jury service because of the responsibility a juror bears to understand the nuances of oral argument in a trial.

The primary responsibility for overseeing jury management and coordinating practices lies with the state. We support uniform statewide standards and measures.

Fairness requires the Legislature to address the inequities in jury service fees by instituting a uniform statewide fee.

Efficiency dictates that the “call-in” (where jurors check to see when needed) and “call-out” (where jurors are summoned when required) system should be implemented.

We support measures to reduce the frequency of jury duty in order to distribute this service more equitably among the eligible population. Some possible solutions could include mandating use of the same lists until that list is exhausted or allowing a longer interval between periods of jury service.

Shortly after the 1987 consensus was announced, the Legislature passed a comprehensive trial jury bill that: dropped the requirement that jurors be able to speak the English language (substituting “understand and communicate”); provided a uniform \$15 per day juror fee, with a bonus of \$6 per day for trials lasting more than 30 days; provided a maximum five-day term of service unless engaged in a trial; extended the interval between jury service to four years and provided for strict enforcement measures.

Reluctantly, the League opposed the bill because of the extremely strong consensus on continuing the ineligibility of non-English-speaking jurors. The governor vetoed the bill on other grounds: the expense of the uniform juror fee. A trial jury bill including the \$15 uniform juror fee as well as the other League supported reforms contained in the 1987 proposal passed the Legislature in July 1988 and was signed by the governor.

The League continued to successfully oppose yearly proposals to ban the use of voter registration lists as a source for potential jurors. League efforts were unsuccessful, however, in efforts to abolish statutory exemptions to jury duty until 1995.

Trial Jury Reform: The Jury Project, 1993-95

Chief Judge Judith Kaye made trial jury reform a priority with the appointment in 1993 of The Jury Project, a panel of 30 judges, attorneys, jury commissioners, educators, journalists and business people, charged with thoroughly reviewing jury service in New York State. The Jury Project brought new life to the reform movement.

League testified before the Project in October 1993, stressing the need to expand the jury pool and achieve greater diversity through elimination of automatic occupational exemptions and increased effort at minority outreach. We also urged retention of voter registration lists as one of the three sources used in compiling the jury master lists as well as better utilization of jury volunteers.

The Jury Project Report was issued March 21, 1994. A multitude of reforms (80) were proposed to attain the objectives of: jury pools that are truly representative of the community; a jury system that operates efficiently and effectively; and jury service that is a positive experience for the citizens who are summoned to serve. The League forwarded positive and enthusiastic comments to the Chief judge regarding the many proposals which fall within League position.

The League successfully supported passage of one of the Project recommendations: to widen and diversify the jury pool by adding Department of Social Services and unemployment recipient lists to supplement the master list of driver licensees, state income tax filers, and voter registrants. The legislation was signed by the governor in July 1994.

A notable success for League came at the end of the 1995 session with passage of legislation to abolish all statutory exemptions and most disqualifications from jury duty. In May 1995 Senate Judiciary Chairman, James Lack, held public hearings on an Office of Court Administration bill to accomplish this. League testified in support of the proposal and encouraged the Assembly Judiciary Chair to also act on this legislation.

Another victory came with passage of legislation to raise the juror fee from \$15 to \$27.50 effective February 15, 1996, and \$40 effective February 15, 1997.

Many of the project recommendations have already been implemented administratively by the Office of Court Administration, such as shorter terms of service and elimination of the "permanent qualified list," use of which, in effect, circumvented the four-year disqualification upon completion of a jury service.

Unfinished business in the area of jury reform are:

- opposing efforts to ban the use of voter registration lists as a source for potential jurors and educating the public on the role of multiple lists;

Federal District Courts

There are four U. S. District Courts within New York State and three of the four rely solely on voter registration lists as a source of jurors. The use of voter registration lists is mandated by federal and by New York State law. However, neither federal nor state law precludes use of supplementary lists. The decision to rely solely on voter registration lists is a local decision by

the boards of judges of the respective federal courts. The LWVUS gave LWVNYS permission to lobby the federal District Courts within New York State and has expressed interest in the results. In March 1992 as a direct result of local League response to our Action Alert, the U. S. Northern District Court approved the use of multiple source lists and merged New York driver's license and voter registration information to fill the jury-qualified wheels for the District.

ACTION TAKEN UNDER LWVUS PRINCIPLES

Cameras in the Court

In 1989 the League successfully supported passage of legislation to extend the experiment allowing cameras in the court for a two-year period. The U.S. Constitution guarantees the right to a public trial, and we took action under the National League commitment to individual liberties. Action on this item is also consistent with our continued efforts to enhance public understanding of, and confidence in, the judiciary. In May 1991 the legislation authorizing the experiment expired. The Senate and Assembly could not agree on the issue of non-party witness veto power over audio-visual coverage of themselves while on the stand. The Senate version, supported by the League, mandated that witnesses who are not parties in a case should have this protection. A year later, 1992, the League successfully supported passage of legislation restoring audio visual coverage of court proceedings on an experimental basis through January 1995, with restrictions on the coverage of witnesses in criminal trials. In 1995 the Legislature extended camera access for another 30 months.

In June 1997 the Legislature failed to act on legislation to authorize cameras in the courts on either a permanent or a trial basis. With expiration of the experiment, League has no position on cameras in the courts.

