State of the Judiciary Address 2000

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It's appropriate to start the first State of the Judiciary Address of Y2K with two sets of greetings. Let me first extend actual greetings to those of you seated in this magnificent courtroom--surrounded by symbols of stability, continuity and tradition in the law. Second, I want to extend virtual greetings to today's plugged-in audience attending via the internetall of you focused, no doubt, on that quintessential symbol of innovation and change, a computer screen. Continuity and tradition; innovation and change--I must say, it's a little dizzying to be at the intersection of these two markedly different cultures.

But isn't that the perfect metaphor for the challenge facing the courts in the 21st century? On the one hand, cherishing traditions, preserving core values that have nourished and sustained our system of justice since this nation's birth. On the other hand, being willing to change, to innovate, to take advantage of new tools, new thinking, new solutions.

Without question, the best way to begin the new millennium is by being honest with the public and with ourselves. Honest in two ways: first, we have to acknowledge the shortcomings in the system and try to correct them. Second, we have to acknowledge the strengths of our system and make sure those aren't overlooked. We hear plenty these days about what's wrong with our courts. It's easy to be a critic, easy to lose sight of the fact that there's still a lot that's right with our courts. One of the key questions as we enter this new century is, how do we build public trust and confidence in our justice system? The short answer: confront our challenges, and spread the word about our strengths.

Clearly, our justice system does not want for challenges as we stand at the crossroads of the centuries. Once again last year, the New York State courts received over three million new cases for resolution. That's not just millions of pieces of paper--it's millions of human dramas, millions of contests about rights and responsibilities, about rights and wrongs.

Given the size and sweep of our dockets, I could speak about shortcomings and strengths until the next millennium. Above all, I'd enjoy talking about successes and advances during 1999--not only record dispositions but also our national model Family Courts in Erie and New York Counties, our new domestic violence courts, the expansion of our much-heralded business court, our Ethics Institute for lawyer professionalism, and on and on and on. I'd enjoy describing our new Civil Justice Program, which-- after a long year of fine-tuning in cooperation with bench and bar--will be launched on January 31, bringing modern management techniques to civil litigation, the largest portion of our caseloads.

The fact is, we have ongoing programs that reach into every single corner of our operations--reforms for Housing Court, Family Court, Town and Village Justice Courts, matrimonial initiatives, a comprehensive program to computerize the courts and upgrade facilities all across the State. The objective is to assure that always our court system is impartial, fair and effective, yet also modern, efficient and innovative.

For all of the achievements of the New York State Judicial Branch, I am grateful to my Court of Appeals Colleagues, to the Administrative Board--with a special tip of the hat this year to Presiding Justices Betty Weinberg Ellerin and Dolores Denman for their exemplary service--to our superb Chief Administrative Judge, Jonathan Lippman, to Deputies Traficanti, Carey, Pfau, Silbermann and Newton, to the entire administrative team, to each and every one of our hard-working judges and nonjudicial personnel, to our partners in government and in the bar.

But instead of covering the waterfront, today I have chosen to isolate three subjects. The first two are highly

specific challenges: the persistent nonviolent criminal offender and access to justice. My third subject is more general--our Year 2000 Program to promote public trust and confidence in the courts.

THE PERSISTENT LOW-LEVEL OFFENDER

We can immediately recognize the challenge presented by my first subject, the persistent low-level nonviolent offender. An individual who is arrested for a relatively minor offense-like possession of a small amount of marijuana, shoplifting, disorderly conduct, fare beating or unlicensed vending-too often takes a plea, receives a minimal sanction, and upon release simply starts the process all over again. Make no mistake: today there are thousands of offenders like that in our courts. In the New York City Criminal Court alone, nearly two-thirds of those arrested and prosecuted last year had a prior arrest history. Over 30,000 had 10 or more prior arrests, and over 10,000 had 20 or more prior arrests. And the picture is not appreciably different outside New York City, where more than half of the low-level offenders who are arrested also have a prior arrest history.

Clearly, this sort of behavior is in itself a cause for concern--it corrodes and degrades our neighborhoods and communities. But even more disturbing is the threat that persistent petty offenders may turn to violent crime, on occasion even to a horrendous, sensational crime. When that happens, the front pages explode. The public understandably is outraged. How in the world could they let that guy manipulate the process like that? What's wrong with our criminal justice system? What's wrong with our courts?

Let's be frank: many institutions, not just courts, have a role in dealing with chronic unlawful behavior--families, schools, community centers, law enforcement, hospitals, mental health, social services, to name but a few. All of these institutions and many more have important roles to play in preventing, and remedying, the conditions that can lead to persistent antisocial behavior. The courts are a place of last resort. When other systems fail, the problem arrives on our doorstep, and we are expected to provide a meaningful intervention.

That's an enormous challenge for courts. It's tempting to ignore the challenge both because it is so immense and because our role, as neutral adjudicators, is a limited one. "Let's just dispose of this case, and proceed to the next one. There's no way we're going to conquer this mountain." And of course-whatever else we do-we do first and foremost have to adjudicate each case and impose punishment on the guilty in accordance with the law. But additionally, we can-as we are trying to do-roll up our sleeves and see how we might become part of a more durable solution.

Repeated low-level crime is, after all, not just a problem for society. It swells our dockets and is therefore also a problem for the courts.

I could talk today about the big picture, the causes of persistent antisocial behavior. Common sense tells us that the problem often begins with troubled children and dysfunctional families. Authoritative studies tell us that too. We know, for example, that a high percentage of prisoners have been found to have spent time in foster care. But I'm going to resist the temptation to detail our important foster care and Family Court initiatives--initiatives to speed up permanency for children, to help drug-addicted moms overcome their habit and raise their families, to promote children's basic good health as early as possible, to make every Family Court appearance a valuable one. Instead, I want to focus more narrowly on positive, concrete steps we are taking to address the human recycling in our criminal courts, to try to change the course of petty antisocial behavior before one misdemeanor offense leads to a second or a third or a fourth arrest. Admittedly, these steps are not a cure. They represent a start on a complex, multi-dimensional response to what is unquestionably a complex, multi-dimensional social problem.

Drug Courts and Community Courts

To begin, we know for a fact that drug addiction is a major force fueling this revolving door. Simply put, the courts have a drug problem. Studies show that in urban areas 75 percent of all arrestees test positive for drugs. Close to half of all felony filings involve drug offenses, more if you include crimes resulting from drug abuse. Drug offenses now account for nearly one-half of all prison commitments. Twenty years ago they were only one-tenth of the total. That is precisely why we recently appointed a high-level Commission on Drugs

and the Courts, chaired by Robert Fiske. I am confident that their recommendations will help us craft additional sound approaches for dealing with the courts' drug problem.

For the moment, experience tells us that Drug Courts are a solid step in the right direction. Drug Courts operate on the premise that, for many of the people recycling through the courts, arrest is both a moment of crisis and a moment of opportunity, and that active judicial involvement in monitoring the treatment process is an effective way to stop drug abuse and re-route these offenders to productive lives.

Past experience has shown that, under the traditional criminal case processing approach, as many as half of those arrested for drug offenses are rearrested for drug-related crime. Yet study after study has found that Drug Courts sharply reduce these recidivism rates-and the expense of drug treatment is minimal compared to the more than $30,000 annual cost of incarcerating a single individual. Drug Courts are a good investment. You can measure their dividends in dollars and human lives.

So let's make the investment. Let's establish Drug Courts throughout the State and really integrate them into the infrastructure of our justice system. The court system has made funding for expansion of our Drug Court program a high priority in this year's budget request. Our goal is to have more than 30 Drug Courts operating throughout the State by the end of the fiscal year. We can be the first state in the nation to institutionalize a comprehensive approach to drug-related crime. New Yorkers deserve nothing less.

Drug Courts are one significant step toward breaking the devastating cycle of persistent nonviolent crime. Community Courts are another. Pervasive quality-of-life offenses can drain any neighborhood. They can start a downward spiral where disorder invites more disorder, and eventually law-abiding citizens don't feel safe to walk the streets. Community Courts make the connection between low-level crime and community well-being. They take these offenses seriously, often imposing sentences that include a mix of sanctions and services designed to restore the community and change future behavior. Defendants may be ordered to paint over graffiti or tend community green space. They also may be ordered to drug treatment, health counseling and job training.

Our first experiment was the Midtown Community Court, which focused on quality-of-life crime in midtown Manhattan. Within weeks, we'll be cutting the ribbon for the Red Hook Community Justice Center in Brooklyn. And in the coming months we'll be opening the Harlem Community Justice Center.
Red Hook and Harlem will be the nation's first multi- jurisdictional Community Courts. The Red Hook Court will hear mainly misdemeanor criminal cases, but also selected Housing and Family Court matters. Often, courts treat these legal problems in isolation when in reality they may be linked: a domestic violence offense may impact a child custody matter; a criminal case may be related to a housing dispute. Again, the court's goal is to find durable solutions to problems that recur in the community--to stop the recycling of people and start the process of renewal. I urge all of you to visit these courts to see, firsthand, community-based justice in action.
So one concrete approach for dealing with the problem of the persistent low-level offender is to institutionalize Drug Courts and expand Community Courts.

Enlarging Misdemeanor Trial Capacity

Another step is to enlarge our misdemeanor trial capacity. Last year each judge sitting in the New York City Criminal Court, on average, handled nearly 5,000 cases. With calendars that huge, the system is reduced to a plea bargain mill, with no true trial capability offering balance to the process. It's no secret. Everyone--including the repeat offender--knows this.

Some have called the system McJustice-it's fast, but not necessarily good for anyone. It's not necessarily good for defendants who want a trial to test the charges against them in a swift, certain manner. And it's not necessarily good for the public when the pressure of case volume, not the merits of a case, drives the process.

Without question, we have to increase the size of the New York City Criminal Court bench. In recent years,

this Court has seen a 40 percent-plus increase in its filings. Yet in the past 30 years, only nine new Criminal Court judgeships have been added. After an exhaustive analysis of local criminal court caseloads around the State, we are calling on the Legislature to create 23 additional judgeships in New York City and thereby reduce individual judges' caseloads to somewhat more manageable levels.

As a stopgap measure, we plan to have Criminal Court judges presently sitting by designation in Supreme Court conduct misdemeanor trials. This is by no means an ideal solution, because--obviously--it diminishes our capacity to try felony cases. But by temporarily realigning judicial resources, we can help to address the present avalanche of misdemeanor cases. In the end, however, we have to face the fact that we need more Criminal Court judges to provide true misdemeanor trial capability.

Yet another alternative for increasing trial capacity would be through restoration of some analogue to the former Misdemeanor Trial Law. As a constitutional matter, a defendant's right to a jury trial attaches only when charged with a crime for which the maximum penalty is more than six months' incarceration. From 1984 to 1990, the Misdemeanor Trial Law reduced the maximum penalty for a number of Class A misdemeanors from one year to six months--so that these cases could be tried by a judge instead of a jury. Because bench trials are less time-consuming than jury trials, this law did indeed increase our misdemeanor trial capacity during the years it was in effect.

The court system will propose a revised Misdemeanor Trial Law permitting New York City prosecutors in Class A misdemeanor cases to stipulate that they will not seek a sentence of more than six months, allowing the matter to proceed to a bench trial. This legislation would--for all concerned--be a major improvement over the current plea bargain mill.

And those, in short, are concrete steps we propose as a start on a solution to the problem of the chronic low-level nonviolent offender. We will use our own resources as fully and as creatively as present law allows and we will pursue appropriate statutory reform to enable us to better deal with this frustrating modern-day problem.

ACCESS TO JUSTICE

A second major challenge for the courts is the issue of access to justice. Justice is a cherished public resource. That means it should be available to all citizens regardless of economic status.
But we know that in reality our system makes it more difficult for low income people to obtain equal justice. And that is a shortcoming to which the courts must respond. With the creation this year of the Office of the Deputy Chief Administrative Judge for Justice Initiatives, we now can strengthen our own efforts in this regard. Under the stewardship of Judge Juanita Bing Newton, the court system will work to eliminate barriers and ensure one-tier justice.

Civil Legal Services

In no area is this more vital than the provision of civil legal services. Currently, because of funding cuts and waiting lists, many poorer citizens are forced to go into court on their own to protect the very necessities of life-shelter, income, food and health services. We are doing what we can to assist self-represented litigants, but we still know that the scales of justice balance best when both sides have equal access to legal representation. That means we need a reliable system of civil legal services, including a secure source of funding. We achieve that by establishing a structure that can meet the need.

I propose that New York follow the example of states like Maryland and Washington and create a centralized Access to Justice entity that can serve as a vehicle for enhancing the availability of civil legal services and, most critically, promoting new revenue sources. I hope the Legislature will take the first step by this year providing the necessary seed money to create such an entity.

Assigned Counsel Rates

Next, there is no question that a bedrock component of our State's commitment to equal access to justice is the availability of qualified assigned counsel to represent indigent litigants in criminal and Family Court matters. Unfortunately, our ability to honor that commitment is at risk. And the reason is clear. The fees for this work--$40 an hour for in-court time, $25 an hour for out-of-court time--were barely adequate in 1986 when they were set. They are completely out of line with today's economic realities. The result has been a mass exodus of attorneys from the assigned counsel panels.
Today I release a report that graphically illustrates this crisis. As the report shows, the acute shortage of appointed counsel severely undermines the processing of criminal and Family Court cases, to the great detriment of crime victims, families, prosecutors and defendants, and ultimately the public. This cannot continue.

To address this crisis, we convened members of the bench, bar and law enforcement, as well as representatives of local governments around the State. The result is a bill supported by every interested party, including the localities. The bill, which we will submit this legislative session, would raise the current rates to $75 an hour for felony and Family Court cases, and $60 an hour for nonfelony cases. It also would establish a commission to review the rates periodically and make non-binding recommendations for rate adjustments when needed.

Of course, rate increases will mean additional costs for government. Historically, the great burden of these costs has fallen upon local governments. Last year, I suggested a potential source of State revenue to ease this burden: the mandatory surcharge paid by every person in the State convicted of an offense. Until recently, this money was dedicated to criminal justice programs. Now, most of it--nearly $70 million a year--goes into the State's General Fund. It makes good sense to fund the needed increases in assigned counsel rates from these revenues, which are paid by those who violate the law. Modest increases in the mandatory surcharge could also help to offset the cost of the increase.

I have an additional proposal in this regard. Each year millions of dollars in court fines and mandatory surcharges go unpaid. Not all of this money is collectible, but undoubtedly much of it is. Experience has shown that governmental institutions are not equipped to function as collection agencies and are therefore not particularly successful at this task. But government can put in place effective mechanisms to collect monies due the State. To better serve the public, in the coming months the court system will be contracting on a pilot basis with private firms to collect fines and surcharges in six designated localities, where we estimate that millions of dollars are outstanding. With the help of the Legislature, this program can and should be expanded Statewide, with collections dedicated to increased fees for assigned counsel. A comprehensive, Statewide program to collect outstanding fines and surcharges can greatly ease the fiscal burden of raising assigned counsel fees. And it can also increase the accountability of offenders who might otherwise ignore these judgments.

Promoting Pro Bono

Finally, our efforts to promote equal access to justice cannot be limited to funding issues. The magnitude of unmet needs also requires exploration of alternative sources of legal representation, including the expansion of pro bono programs. While many members of the bar have generously supported pro bono work, a court system report last year found that less than half of New York attorneys provided pro bono services. The most frequently cited reason was a lack of time. To address this concern, and provide even greater incentive, we will amend our Continuing Legal Education rules, becoming the third state in the nation to allow partial CLE credit for pro bono work. Through this amendment, we hope to materially increase pro bono services Statewide without the need for mandatory pro bono.

And that, in short, is our solution-oriented approach to today's second subject: the challenge presented by the need for equal access to justice. Again, the court system is pursuing lasting solutions by better use of existing resources, by thinking innovatively about new approaches and by seeking necessary statutory reform.

YEAR 2000 PROGRAM

My third subject today is the Y2K challenge. Here I refer not to the computer bug we've heard so much about, but to the new century's urgent challenge to promote public trust and confidence in the courts. For the justice system, public trust and confidence is not a luxury, it's a necessity.

It is ironic, isn't it, at a time when our popular culture is drenched with law-based entertainment that we have to work doubly hard to make sure that the public comprehends what courts and lawyers really do, and what a tremendous difference their work really makes in our society. Post-modern couch potatoes can watch Law and Order reruns while taping the latest Divorce Court and skimming the new Grisham novel. But do people understand the significance of the rule of law? Or do they just wonder why real courts get so hung up on technicalities, when on TV they just cut to the chase--with plenty of time left for commercials.

The challenge is clear. We have to make sure that the public understands that courts provide more than just prime time plotlines. Courts protect our fundamental liberties. And lawyers aren't just fodder for punch lines. Lawyers help keep this society orderly and free, a model for the world.
During Year 2000, we will be making a sustained effort throughout the year to reach out to the public in order to communicate the intrinsic worth of our system of justice. Two important elements of that Program are continuing jury reform and community outreach.

Jury Reform

Each year in New York State, we summon more than 600,000 citizens as jurors. Despite hours in front of the tube watching the likes of Judy and Gerry, and Ally and Amy, for many of these citizens jury service will be their first real-life encounter with the courts. That's more than 600,000 opportunities every year to show the public our system at its best. Talk about challenges!

New York can be proud of its record on jury reform. In the last years of the 20th century, we repealed all automatic exemptions from service so that today even Governors, Mayors, legislators and Chief Judges are summoned. We expanded source lists, slashed terms of service, raised juror fees, spiffed up facilities and started a snappy juror newsletter complete with crossword puzzle and court news. And that was just for openers.

And you know, people began to notice a difference. My mail changed. Now I regularly get letters from jurors not only asking for answers to the crossword puzzle, but also telling me how much they enjoyed the experience, how helpful and courteous they found our personnel, how much they learned. I've even received reports of juror romances, and marriage.

All during Year 2000 we plan to continue the momentum, because there's a lot more to be done. Next Fall we will convene a first-of-its-kind national jury summit in New York. Representatives from across the nation will gather here to exchange ideas and experiences, to hear about innovations and possibilities, and to address a broad spectrum of issues ranging from the technological to the constitutional.

During the months leading up to the summit, we plan to accelerate efforts to modernize our own jury system. We've recently designed a more user-friendly summons that is easier to read and understand. When jurors were showing up at the courthouse at 6:30 A.M. instead of 8:30 because they couldn't read the summons, we knew something was wrong. The new summonses contain detachable juror badges with scannable bar codes that will eliminate that annoying tradition of juror roll call, reduce juror waiting time and speed up the compensation process.

We are also modernizing the jury qualification process, using a breakthrough new technology: the telephone. In the very near future, you will be able to answer your qualification questionnaire, not by snail mail, but by touch-tone phone. Again, automation will save time, speed the receipt of data and lower cost.

As a result of a report issued last March by our blue-ribbon Grand Jury Commission, several pilot projects to improve this long-neglected part of the justice system are under way. We are, for example, actively

evaluating less burdensome terms of service in cooperation with the District Attorneys of Albany, Kings, Monroe, Onondaga and Saratoga Counties. We are developing a new standardized charge, investigating the possibility of more frequent payments for lengthy service, and planning a new grand juror handbook and orientation film.

Successes to date with improving the jury experience--from every point of view--are encouraging. These efforts will continue throughout the year.

Outreach and Education Programs

The second major element of the Year 2000 Program that I want to touch on today is our plan for direct outreach to the community to inform and educate people about the courts.

Regrettably, most adults today know little about the American tripartite system of government, and even less about our judicial system, because schools today give scant attention to law and citizenship issues. We are working with educators all across the State to try to change that disappointing picture. As is readily apparent in every day's newspapers, law, the courts, the justice system are a vital part of American life today. It is a time for all of us to learn and know more about American justice. And, as we've discovered, that is an effort we--the justice system insiders--must lead.

So beginning today we have a comprehensive year-long calendar of programs and events designed to educate the public about the courts. We want to forge new partnerships with local governments, schools and community and civic groups throughout New York State.

Our Community Outreach initiative will, for example, include "Justice in the Schools," a grade-appropriate education program to go hand in glove with visiting judges and court employees. A special website for students will be linked to the courts' general website providing information about court operations as well as access to written materials about the courts. Our toll- free telephone line, 1-800-COURTS-NY, will tell you everything you ever wanted to know--and more--about us. You will even be able to take a "virtual tour" of a courthouse on the web. And "Justice for Seniors" days will familiarize an important but sometimes overlooked constituency about legal issues that particularly affect our older population.

Like our other initiatives, no single piece of this program will "solve" our Y2K problem, but together the program is a systematic approach to increasing public understanding of court operations and the fundamental principles of our justice system.

RESTRUCTURING

I cannot close without a word on a subject that is of paramount importance to us: restructuring, or court merger.

A modern, efficient court structure is fundamental to all of our objectives. Here I join with my predecessor Chief Judges, and with dozens of citizen and good-government groups, unanimously urging this reform. I was both heartened and dismayed to learn that court merger continues to be a priority for the League of Women Voters. Heartened because the League sees that court reorganization is absolutely essential for the women, children and families of this State, and has the tenacity to continue to fight for it. Dismayed because court reorganization has been a League priority for nearly half a century.

As we know all too well, our current maze of separate trial courts--nine in all (a national record, I believe)--confuses and frustrates citizens seeking justice. Our proposal would consolidate the nine trial courts into two: a Supreme Court with unlimited jurisdiction and a District Court with limited jurisdiction over civil and criminal matters. It is no exaggeration that perpetuating a fragmented, incomprehensible court structure is, in its own way, a denial of access to justice. We must simplify our court structure if we are to serve the public well.

There is particular urgency to the issue this year: if court restructuring does not pass in the year 2000, the second year of the current Legislature, it will be another two years before we can try again. Governor Pataki, Senator Bruno, Speaker Silver: let's seize the spirit of the new century and streamline New York's antiquated and unwieldy court structure. Let's all get it done together.

CONCLUSION

I started this address by telling you that, in my view, the best way to begin the new millennium is by being honest with the public and with ourselves-honest about our shortcomings, honest about our strengths. I'd like to conclude by returning to that theme. Unquestionably, we have to do everything in our power to earn the trust and confidence of the public in the integrity, reliability and efficacy of our courts. And there is only one place to begin improving public perceptions about our court system: by improving the realities. The comprehensive measures I've been describing are an effort to do exactly that.

But only days ago another challenge seized the headlines- one that concerns the most basic value of our court system, its integrity. I refer, of course, to the allegations regarding court appointments of lawyers and other fiduciaries made on the basis of political party affiliation and service.

In general, I recognize that the political process is vital to our democratic system and has long served New Yorkers well. And as to last week's events in particular, I recognize that without the facts, we cannot prejudge what improprieties have actually occurred. But it is also absolutely clear to me that public confidence in the courts is put at risk when judicial appointments are based on considerations other than merit. Simply put, the public must have faith that the courts operate free of favoritism and partiality.

I am therefore taking the following steps.

First, I am directing the establishment, within 30 days, of an office of the Special Inspector General for Fiduciary Appointments in the Unified Court System to monitor and enforce existing court rules governing judicial appointments. These rules cover appointments of guardians, guardians ad litem, receivers, referees and others that assist in resolving cases before the court. The rules create procedures designed to avoid favoritism in the making of these appointments-including filing requirements and restrictions on the number of allowable appointments. The new Inspector General will, on an ongoing Statewide basis, examine whether the existing rules are being followed, and will work closely with the Commission on Judicial Conduct, the attorney disciplinary committees of the Appellate Divisions and other appropriate authorities as necessary, to ensure compliance.

Second, Chief Administrative Judge Jonathan Lippman will direct each of the Administrative Judges, Statewide, immediately to examine the practices in their own localities as they relate to fiduciary appointments, and to present recommendations as to any necessary changes. This will ensure that swift corrective action is taken to regulate how these appointments are made and to assure that our rules are working the way they were intended.

Third, the time has come to reexamine these rules. The current system was put in place over the last two decades after examination by members of the bench and bar of how best to structure the fiduciary appointment process to ensure impartiality. We maintain the public's confidence only if this process is effective and beyond reproach. Therefore, I will within the next month appoint a blue ribbon panel to examine the current fiduciary appointment process and make appropriate recommendations for reform.

An independent Judiciary depends on public trust in the integrity of the judicial process. Partiality and favoritism destroy that trust. As Chief Judge, I will not allow that to happen.

Confronting our challenges and building upon our strengths- those are the two polestars that will guide our

Judiciary as we enter the new millennium. I thank you all for the achievements of 1999, and for the prospect that the year ahead again will be a good one for the New York State courts.