

The State *of the* Judiciary 2004

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CHIEF JUDGE OF THE STATE OF NEW YORK



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THE STATE *of the* JUDICIARY 2004

JUDITH S. KAYE

I. INTRODUCTION

THREE WORDS, FOR ME, ENCAPSULATE THIS REPORT on the State of the Judiciary. The first is *pride*—pride in the accomplishments of one of the largest, most complex court systems in the nation, if not the entire universe; pride in the skill of our dedicated judges and staff handling huge dockets of demanding cases; pride in the New York State Judiciary’s resourcefulness in responding to the changing needs of 21st century society, whether by specialized commercial, drug or domestic violence courts, or by jury reform, or by meeting the security, fiscal and budgetary challenges of today’s world. For that I am immensely grateful to my Court of Appeals Colleagues, to the Presiding Justices, to Chief Administrative Judge Jonathan Lippman and to all of the judges and nonjudicial personnel who make up the Unified Court System.

But only a person living on another planet could stop there, oblivious to recent events touching the courts. By that, of course, I have in mind the reports of political influence on the Third Branch. While I am sad that the public does not know more of the solid accomplishments of our courts and the vital role they play every single day in securing rights and punishing wrongs, I recognize that generally the media do not report “safe landings” (to quote a journalist-friend), and I also acknowledge that recently we’ve had a good deal of turbulence in our ranks.

So my second word for today’s report is *perseverance* and—to dispel any curiosity—my third word is *optimism*. Perseverance and optimism go hand-in-hand. I have no thought that we can make our system, or any human system, absolutely perfect, but I also have no doubt that, with perseverance, we can make it better, as we are fully resolved to do. We need, and we deserve, to have the trust and confidence of the public in the independence, impartiality and integrity of the New York State courts. We did not sit idly by when the longstanding system for fiduciary appointments came under fire, but turned a spotlight on ourselves and put meaningful reforms in place, as we are doing now with respect to judicial elections.

Against this backdrop, I’d like to turn first to court operations—essentially, Family, Criminal and Civil Justice—and then conclude with the subject of public trust and confidence. Here, in brief, are plans for the year ahead.

II. FAMILY JUSTICE

BEGIN WITH CHILDREN AND FAMILIES because nowhere is the challenge of societal change greater for us today than with respect to families. Family issues—abuse and neglect, foster care, juvenile delinquency, domestic violence, divorce—account for about a quarter of the State court dockets. And while other segments of our work have declined, family law dockets year after year continue to grow. In 2003, we had more than 800,000 family case filings.

A. MATRIMONIAL LITIGATION

FAMILY ISSUES HAPPEN ALSO TO MARK THE BEGINNING of my own reform efforts as Chief Judge. I refer, of course, to the adoption precisely a decade ago of new rules governing attorney-client relationships and case management in matrimonial matters. That was an unforgettable “baptism by fire.” Indeed, for a long time I called them the Milonas Rules—after Judge Leo Milonas, who chaired the Committee to Examine Lawyer Conduct in Matrimonial Actions. Now, a decade later, I’m prepared to embrace them as the Kaye Rules, and to share the good news, according to the Administrative Judge for Matrimonial Matters, Jacqueline W. Silbermann, that much has changed for the better.

Perhaps the most common complaint was that divorce took too long and cost too much. The emotional toll on litigants, especially their children, was far too high. Today, with the strong, early case management prescribed by the rules, a contested matrimonial is resolved, on average, in less than half the time it took ten years ago—down from 796 days to 319 days. That average, I might add, is below the one-year guideline set by the matrimonial rules—bringing some finality for family members within a year of the start of a case, and enabling them to get on with their lives. Ten years ago as much as a quarter of the pending contested caseload was more than two years old. That figure is now down to four percent.

Given those welcome developments, it is not surprising that over the past decade—despite growth in the actual number of contested matrimonials—the *pending* caseload of contested matters has decreased Statewide by more than a third. An important factor in achieving this dramatic improvement is that, overwhelmingly, preliminary conferences are held, as required by the matrimonial rules, at an early stage of the proceedings, bringing the critical element of aggressive judicial management to these difficult cases.

Welcome as these developments are, the time seems ripe, ten years later, for another comprehensive review of the issues. To that end I have asked Second Department Appellate Division Justice Sondra Miller, herself a former matrimonial lawyer and Milonas Committee member, to head a Task Force to examine every aspect of divorce

litigation with an eye to continuing improvement. This Task Force will have the benefit of the resources of the Judicial Institute and the solid groundwork laid by the Committee on Matrimonial Practice chaired by Judge Silbermann.

Mention of Justice Miller, by the way, allows me to extend special thanks to her, to Presiding Justice Anthony Cardona, Co-Chairs of the Family Violence Task Force, and to each of its members, for ten years of extraordinary programs on family violence issues, assuring that every judge, every staff member confronting these issues has the background necessary to deal with this modern-day scourge. You have the gratitude of all of us, and in addition a special reward for Justice Miller: a new Task Force to chair and new challenges to lead us through.

I need not say, but I will, that our committees, commissions and task forces—from the very first on matrimonials to the newest on judicial elections—have been enormously successful for us in our reform efforts, contributing tremendous talent and expertise, conducting hearings to be certain that the affected public is heard, building consensus and formulating excellent recommendations we have then assiduously implemented. Let's face it: change is hard, particularly in a system like ours that puts a premium on precedent—doing things exactly as we have always done them. These groups have facilitated the constant, very considerable reform our courts have achieved throughout the past decade.

B. PARENT EDUCATION ADVISORY BOARD

I KNOW NO BETTER EXAMPLE than the Parent Education Advisory Board—chaired by Monroe County Supreme Court Justice Evelyn Frazee—which has worked diligently for two years and just handed us a superb report: *Proposed Guidelines, Standards and Requirements for Parent Education Programs*. With nearly half the children in this country experiencing divorce during childhood, with 49 states offering court-referred programs specifically designed for divorcing or separating parents—some programs dating back more than 30 years—the time was ripe for a first-class study in New York. And we sure did get it. We may be among the last states to institutionalize court-connected parent education, but thanks to the commitment of this exceptional Board, we now can advance to the forefront of the field.

C. "ADOPTION NOW" AND "BABIES CAN'T WAIT"

CHILDREN IN DIVORCE ARE A GREAT CONCERN for the courts. So are children languishing unnecessarily in the limbo of foster care. In 2003, the Unified Court System took a decisive step toward addressing the problem with a project we call Adoption Now, a joint effort with the New York State Office of Children and Family Services and the New York City Administration for Children's Services to expedite permanency for a group of children who cannot return to their biological parents. In particular I want to recognize

the caring and effective leadership of Commissioner John Johnson of the State Office of Children and Family Services and Commissioner William Bell of the New York City Administration for Children's Services, who personally lent their support to this endeavor, meeting with us regularly throughout the year so that everything that could be done in fact was done. During 2003, New York finalized a record number of agency adoptions, including, happily, a large percentage of children over the age of nine.

Numbers matter. But what is really important about Adoption Now is that this is a collaborative effort that started small and month by month fanned out across disciplines and across the State. Alongside people and agencies involved in the lives of these children, the courts have worked throughout the year to identify and eliminate hurdles and logjams. No doubt about it: the seeds planted cooperatively during 2003 will continue long into the future to smooth and expedite the process toward early permanency for New York's children.

On that note, I make only brief reference to Babies Can't Wait, an exciting new project of the Permanent Judicial Commission on Justice for Children, an interdisciplinary commission which it is my privilege to chair. Like so many of the Commission's wonderful projects, Babies Can't Wait focuses on infants and young children under the courts' jurisdiction, and it assures both training for the courts and links to services that are so vital to the unique needs of this especially vulnerable population.

D. FAMILY COURT

AS WE KNOW ALL TOO WELL, logjams exist at many points in Family Court, and we will persevere in our efforts to eliminate them. During 2003, we completed Statewide implementation of a Family Court case management system that will help improve efficiency by automating many tasks previously done manually—such as scheduling appearances, preparing calendars, recording courtroom activities, even generating orders right in the courtroom. Today I mention just three of our initiatives for 2004.

1. Family Court E-Petition Project

First, the simple fact is that filing a petition in Family Court, especially in New York City, takes too long. The sheer volume of individuals there to initiate a case, whether in a petition room or before a judge, means that most of a litigant's time is spent waiting, a discouraging start.

A recent study by Deputy Chief Administrative Judge for Justice Initiatives, Juanita Bing Newton, confirms that most Family Court users would in fact find computer and online access to court information and forms helpful. This year we will pilot an "E-Petition Project" in various New York City Family Court petition rooms that will enable

litigants to prepare and file certain simple Family Court petitions at computer terminals at the courthouse. Once the first pilots have been evaluated, including issues of accuracy and confidentiality, we hope to expand this initiative to Family Courts Statewide and ultimately to remote locations other than the courthouse. We speak so often about the potential for modern technology to simplify and expedite court operations. Where better to do this than in Family Court petition rooms, to provide greater access to the courts for litigants with the least resources, reducing travel inconvenience and long waits at the courthouse.

2. New York City Family Court “Blueprint for Change”

Second, we are excited to announce an enhanced effort—aided by the Annie E. Casey Foundation—to improve the handling of abuse and neglect cases in New York City Family Court. After a full year of planning that included interviews with judges, the child welfare community, the bar and Family Court litigants, finally we have a blueprint for building on existing initiatives like our Model Court for permanency planning and “best practices” parts. The blueprint calls for a Resource Center to coordinate reform efforts Citywide, provide comprehensive training and technical assistance for court personnel, and promote better collaboration and communication with Family Court’s institutional partners and the public. I have no doubt that implementing the blueprint will further minimize the time children have to spend in foster care.

3. Expansion of CASA Programs

Third, we appreciate all the help we can get, chief among them the Court Appointed Special Advocates—CASA’s—a national program of trained volunteers who spend time with a child and just about anyone who has contact with that child, and then report their findings to the Family Court Judge who must decide whether the child can safely be returned home. CASA is a wonderful example of how ordinary citizens can contribute to the well-being of their communities by brightening the future, one child at a time. Just the other day, in a newspaper report, Monroe County Family Court Judge Anthony Sciolino summed up how our Family Court Judges feel about CASA: “We couldn’t do our jobs without people like you.”

Terrific as they are, CASA programs serve barely one-third of New York’s 62 counties. I have asked a small group of current and former Family Court judges and administrators to study these programs and by mid-year recommend how we can help expand CASA so that no child waits a minute longer than absolutely necessary before being placed in, or returned to, a safe and loving home.

**E. OPERATIONAL RESTRUCTURING:
EXPANSION OF INTEGRATED DOMESTIC VIOLENCE COURTS**

I CLOSE THIS FAMILY JUSTICE SEGMENT of my report with unqualified good news on a favorite subject I will *never* give up on: court restructuring. Last year I announced that, even as we continued to pursue constitutional reform to simplify our court structure, we would embark on another path toward court unification, doing all we could *operationally* to remove artificial barriers that make our court system so unwieldy.

The first step was a three-year plan for Statewide development of Integrated Domestic Violence Courts. IDV courts bring victims of domestic violence and their families who have multiple proceedings in multiple courts—like an assault case in Criminal or County Court, a custody or family offense proceeding in Family Court and a matrimonial action in Supreme Court—before one judge empowered to hear and decide all their cases. For the courts and for the litigants, this approach promotes informed, effective decisionmaking, eliminates costly inefficiencies, facilitates access to services and enhances victim safety.

Under the direction of Judge Judy Harris Kluger, Deputy Chief Administrative Judge for Court Operations and Planning, the three-year plan is right on target. In 2003, the original six IDV courts in Rensselaer, Westchester, Bronx, Monroe, Suffolk and Onondaga Counties served nearly 1,000 new families with more than 3,900 new cases, and new courts opened in Erie, Queens, Richmond and Tompkins Counties. In addition, responding to the challenge of delivering reform to less densely populated areas of the State, an innovative structure was created for the Fourth Judicial District, where the IDV Judge will sit one day a week in each of Clinton, Essex and Franklin Counties. In 2004, IDV courts will open at five more sites, thus bringing IDV courts to virtually every judicial district.

With this strong and encouraging beginning, we are now poised to take a second step toward operational restructuring, beginning with criminal dockets in New York City.

III. CRIMINAL JUSTICE

OVER THE PAST SEVERAL YEARS, a series of initiatives have helped us adapt to changes in our criminal caseloads resulting from new crime trends—like escalation in arrests for quality-of-life offenses and increased focus on domestic violence cases.

These initiatives—like many in the Family Justice area—have included first piloting new ideas and then carefully building on the results. Our Midtown Community Court is one example, which became a model for similar courts throughout the State and nation to address quality-of-life offenses. Other examples are our drug court pilots—now a Statewide program—and domestic violence courts.

A. MEETING NEW CHALLENGES—*CRIMINAL JUSTICE II*

Criminal Justice I, announced several years ago, was a series of comprehensive operational initiatives, including problem-solving approaches to criminal cases. In last year's State of the Judiciary I announced that there would be a second installment—*Criminal Justice II*—continuing the effort to adapt to the changing nature of our criminal dockets. New York's reduction in the rate of violent crime gives us all much to celebrate. At the same time, however, the State's overloaded misdemeanor dockets and haphazard indigent defense system jeopardize the efficiency and fairness of our criminal justice system. *Criminal Justice II* addresses these challenges head-on.

1. Operational Restructuring

Nowhere is the misdemeanor backlog more apparent than in New York City. In part because of the continuing emphasis on prosecuting quality-of-life offenses, thousands of defendants and crime victims face long delays in our criminal courts. Despite the herculean efforts of our judges and staff, tens of thousands of misdemeanor cases remain pending for months, even years, while felony filings decline.

Common sense alone dictates that we reallocate backlogged cases among available judges to make better use of our resources. But once again, the antiquated structure of New York's court system—here the fragmentation of New York City's trial courts between Criminal Court and Supreme Court—turns common sense on its head. Two trial courts, both with criminal jurisdiction, both operating in the same communities, nevertheless keep distinct trial dockets, follow different procedures and rely on different judges. Separated by needless artificial barriers, the two courts and their hardworking judges and staff are unable to join forces to function more efficiently. Senseless duplication, senseless barriers, senseless waste.

The most direct solution of course would be to consolidate New York's bewildering jumble of trial courts, simplify their operation and make them more accessible. But even as we continue to urge the necessary legislative steps to realize the promise of

court merger, we must do all we can now to eliminate waste and delay.

I therefore announce a major new step on the path to operational realignment of the New York courts. Along with the continued expansion of the Integrated Domestic Violence courts, we will embark on a pilot project in Bronx County to join operations of the Criminal Court of the City of New York with the Criminal Term of Supreme Court, thus creating a single consolidated criminal trial court. With a brand new full-block Bronx County Criminal Courts facility to open in 2006, the plain good sense of this innovation is evidenced even in bricks and mortar.

In this pilot project, under the direction of Judge Kluger, all felonies and nonfelonies in Bronx County not disposed at arraignment—including the backlogged misdemeanors—will be transferred to Supreme Court's new Criminal Division, where judges from both Supreme Court and Criminal Court will preside. This expanded team of judges and non-judicial staff will process criminal cases more efficiently, clearing old backlogs and avoiding new ones. Specialized and innovative parts for drug offenses and domestic violence will continue to serve the community. The result: speedier dispositions, reduced duplication and cost-effective court administration. As with our other initiatives, we will be watching this pilot carefully, with the intention of expanding it incrementally to other courts in the State.

2. Indigent Defense

Last year was a landmark year for indigent defense in New York State, with long-awaited increases in assigned counsel fees, raising the rates to \$75 an hour for representation in felony and Family Court cases and \$60 an hour for misdemeanor cases. And for the first time, compensation for all work, whether in or out of court, will be at the same rate. We are grateful to all those who worked so hard to secure passage of the new legislation. Already significant numbers of attorneys are returning to the depleted assigned counsel panels—a 15 percent increase in the First Department Family Court list alone—signaling what we hope is an end to what had become a crisis in our courts.

While we applaud and celebrate this achievement, staggering indigent defense needs, still often unmet, do not allow anyone to rest on laurels. Under our current system created in 1965, which places the burden primarily on local governments, a patchwork of indigent defense programs of varying size and character has developed around the State. At the same time, we have experienced dramatic changes in the type, complexity and volume of criminal cases, and we continue to face shortages of qualified private lawyers willing to take on criminal assignments. While the new rates will help address some of the problems, a top-to-bottom reexamination of our indigent defense system is long overdue. The bedrock principle of equal justice under law obliges us to ensure meaningful assistance of counsel, to set and meet high

standards for quality representation.

Last fall, under the leadership of Judge Newton, the court system convened a summit on indigent defense to discuss these concerns. As our next step, I announce the formation of a Commission on the Future of Indigent Defense Services, with members to be drawn from the bench and bar, law enforcement, State and local criminal justice agencies and academia, to complement the work of the Task Force created by the Legislature to review the sufficiency of the new rates. This new Commission will examine the effectiveness of indigent criminal defense services across the State, and consider alternative models of assigning, supervising and financing assigned counsel compatible with New York's constitutional responsibilities and fiscal realities.

I am pleased that the Honorable Burton Roberts, former Administrative Judge in Bronx County and previously a District Attorney in that County, has agreed to chair this new Commission, and that Professor William Hellerstein of Brooklyn Law School has agreed to serve as Vice-Chair. Could there possibly be better choices for this key initiative than these two people, tenacious in the pursuit of justice and the defense of individual rights? I think not.

B. DRUG COURTS

THE FIRST DRUG COURT IN NEW YORK STATE opened almost ten years ago. Today, because of Statewide expansion begun in 2000 under the inspired leadership of Deputy Chief Administrative Judge Joseph J. Traficanti, Jr., and his Office of Court Drug Treatment Programs, we have 108 drug treatment courts, more than 6,000 current participants, and 20,000 offenders who have come through these courts since their first days in the City Court of Rochester under Judge John Schwartz. Twenty thousand participants—that's more than four times the size of the entire Village where I grew up. These include adult courts, family treatment courts and juvenile drug courts—all working toward the goal of transforming nonviolent substance-abusing offenders, who recycle through the courts as their lives spiral downward, into law-abiding, productive citizens.

We have long believed that drug courts are effective. Now we also have hard evidence: a comprehensive three-year study funded by the United States Department of Justice. Among its findings is that adult drug courts reduced recidivism by an average of 32 percent when compared with offenders prosecuted in conventional courtrooms. Even more impressive, participants who actually completed the program re-offended at 71 percent less than the comparison group. This shows that, with its combination of judicial monitoring and drug treatment, these courts continue to have beneficial effects well after participants leave the criminal justice system. The benefits, of course, include savings to the State in tens of millions of dollars in incarceration costs, not an insignificant consideration today.

This year, we implemented another recommendation of our Commission on Drugs

in the Courts when, in December, we formally opened the first Screening and Treatment Enhancement Part (STEP). This universal screening part in Brooklyn's Criminal Court, which averages 85,000 arraignments a year, will identify addicted nonviolent offenders as they are brought into the courts, obtaining an early indication of their potential eligibility for drug treatment. This project can ultimately serve as a model for similar centralized screening processes elsewhere in the State, which would move drug screening from discrete, specialized courts, to all criminal courts.

By the way, nothing is more heartening than a word from the judges overseeing these new courts. Most recently, Erie County City Court Judge Joseph J. Cassata, who practiced law in Western New York for thirty years before ascending the bench, wrote me: "I for one single-handedly attest to the revolution in the criminal justice system with the advent of the drug treatment court and domestic violence court. Today, we do it a lot better than it was done yesterday. . . . I am a local judge positively affecting the lives of many people in my community. A great blessing I cherish."

C. FINES AND FEES

AS A FINAL INITIATIVE in the area of Criminal Justice, we continue to improve the collection of court-imposed fines and fees. For a number of years, City and District Courts have allowed payment of vehicle and traffic fines and surcharges by credit card. We recently made this option available for all fines and surcharges in the New York City Criminal Court, and in the coming months will expand credit card payments to other courts across the State. We also are continuing to pursue our legislative proposal authorizing the Department of Motor Vehicles to suspend the drivers' license of those who fail to pay court-imposed fines and fees. We hope the Legislative and Executive Branches will join with us in this effort, because compliance with court-imposed financial sanctions not only promotes respect for judicial orders, but also ensures that State and local governments receive revenues they are owed. None of us is unaware of the condition of our economy today—certainly in the Judiciary, whether in austere budgeting or efficient operations, we are constantly mindful of our part in meeting the fiscal challenges facing the State.

IV. CIVIL JUSTICE

TURN NEXT TO THE SUBJECT OF CIVIL JUSTICE. In our civil cases—close to 40 percent of annual filings—we do not face the same challenges presented by recycling criminal offenders and the need for early permanency for children—challenges that sometimes require us to reach across disciplines in order to achieve truly effective outcomes. But here too we have our work cut out for us. Pressing problems in the civil justice area—personal injuries, property damage, commercial disputes—demand modern, efficient case management. This year, we will be taking a fresh look at what we have accomplished—and what we have yet to accomplish—since we introduced a comprehensive Civil Justice Program four years ago, bringing differentiated case management methods to our highest-volume counties throughout the State.

Rather than simply spotlight that program, we will review all aspects of our civil docket, searching for ways to further expedite case resolution. We will explore how best to meet standards and goals in the huge numbers of cases involving the City of New York as a defendant; whether new case management strategies might further facilitate case resolution; and whether our specialized parts should be continued—even expanded. First Deputy Chief Administrative Judge Ann Pfau will oversee this effort and within the coming months will report recommendations for operational change to further reduce litigation cost and delay.

As we continue examining ways to improve management of our civil dockets, we are proceeding with other justice initiatives. To help increase efficiency for civil litigants and court operations, we will work with the Legislature so that litigants may use credit cards to pay court fees both in person and remotely by computer, especially in connection with e-filing.

We are also proceeding with our FBEM—Filing by Electronic Means—project as a better way to control the paper flow between courts and civil litigants. First authorized by the Legislature in 1999 and recently extended into 2005, the FBEM pilots permit parties to commence their lawsuits electronically and to exchange briefs, motion papers and the like online. To encourage the use of FBEM, we offer training for bench, bar, county clerks and court staff, but the system was designed to be simple and easy to use. We are working on making it even better, and have already introduced an enhancement that allows the creation of a tax certiorari petition using the system. In addition to tax certiorari parts in certain counties, e-filing currently operates in most Commercial Division parts and in specially designated cases in the Court of Claims. And this year, we are proposing legislation to extend e-filing in tax certiorari cases to more venues, including all of New York City, and will work with the bar to identify other types of cases for the program. The ability to file papers from the attorney's office, without the expense and delay of copying, collating and delivery, has been a great advantage to

filing users, who can now access the entire docket from their desktops.

Acting as sites for our e-filing pilots is only one of the ways in which the Commercial Division has been a laboratory for reform in the court system. The Commercial Division's case management software is used throughout the State, and its New York County high-tech "Courtroom for the New Millennium" has already been replicated in Rochester, Syracuse, Nassau and Suffolk, with more sites to come.

Even more significantly, the Commercial Division has won wide support, as evidenced by its growing dockets, helping to re-establish New York State's courts as leaders in the development of commercial law in the United States. Like so many of our reforms, the Commercial Division started small—with five parts in New York County and one in Monroe County. With the enthusiastic support of the bar, the Commercial Division has since expanded to 15 parts in New York, Kings, Nassau, Suffolk, Erie, Monroe, Westchester and Albany Counties—proof positive of its success as a forum of choice for the business community.

V. CONTINUING JURY REFORM

ESSENTIAL TO ALL OUR REFORMS in civil and criminal justice is an up-to-date jury system, vital not only to our system of deciding cases but also to public attitudes about us. More than 600,000 citizens came into our courts for jury service last year. That's more than 600,000 opportunities to show the public—many having their first personal experience with the courts—a system that values their time and works well.

We have made enormous strides in jury improvement over the past ten years. Also undeniable is that change, for us, is a continuing, and demanding, process. With that in mind, I have these further jury initiatives to report.

The Commission on the Jury announced last year, with Mark Zauderer as Chair, began its work, including seven well-attended public hearings around the State. In this area especially, it is important that we hear from, and listen to, the public. In the coming months, the Commission will issue its report and recommendations to help us ensure that optimal numbers of citizens can experience the satisfaction of actually serving on a jury and that their time will be used as productively as possible.

In the meantime, I am tremendously excited by what we call the Jury Trial Project, now under way, with more than 50 judges around the State who have stepped forward to work with the bar in testing out new ideas for helping jurors better understand the trial process. We are watching these efforts closely—asking the judges, lawyers and jurors involved in the project about their experience—and we look forward to a really interesting report later this year.

In the fall, we finally completed a *Jury Guide for Employers and Employees*, with answers to the most commonly asked questions. Since this booklet was posted on our

juror Web site—www.nyjuror.gov, by the way—we have had thousands of hits each week. We are now in the process of mailing the booklet directly to business and citizens groups throughout New York, and know it will be a welcome resource.

This is just one of our many operational initiatives to make it easier for members of the public to serve—like telephone and online acceptance of juror qualifications. We hope this year to perfect our automated follow-up of jury summonses, giving us another means of increasing the jury pool and spreading the benefits and burdens of service more fairly. As always, we will assiduously follow up on suggestions from jurors, and groups like the Citizens Jury Project, for improvements in facilities and services. We know how important these amenities are to the public and therefore, by definition, to us as well.

Encouraging service—and increasing the jury pool—means available jurors will more likely be representative of the community, more likely to provide fair and impartial justice to litigants. So we continue our work in encouraging New Yorkers to serve on juries, with a public relations initiative about our prized system of jury service.

I must admit that here the feedback from the public has been very satisfying and also very energizing. Clearly there is a lot more to be done. I look forward to a firsthand review this summer, when I show up for my own jury service, hopeful that this time I will be selected.

VI. ACCESS TO JUSTICE

OUR CHARGE IS TO DECIDE THE CASES before us fairly and efficiently, in accordance with law. But it includes as well a responsibility to make the courts accessible to the public they serve. Of the many ongoing initiatives in this area, today I highlight just four.

A. NEW COURT RESTRUCTURING LEGISLATION

FIRST, AS WITH JURY REFORM, I WILL PERSEVERE IN MY COURT RESTRUCTURING EFFORTS, and will continue, like the Chief Judges before me, to seek a constitutional amendment to unify the many superior courts in our State into a single, consolidated Supreme Court. Unification would eliminate public confusion about how the courts operate; it would reduce procedural complexity and procedural gamesmanship; and it would enable the court system to reduce its own operating costs—an end much to be desired at a time when our State's ability to fund its public institutions is being so sorely tested. Unification would bring particular relief to families and children.

This year, we will again press for a constitutional amendment to consolidate our nine major trial courts, featuring a Supreme Court that encompasses the current Supreme Court, Court of Claims, County Court, Family Court and, for the first time, the

Civil and Criminal Courts of New York City. Our operational initiatives, however painstakingly considered and planned—and however well executed—depend on the collaboration of so many in addressing the artificial barriers presented by our current structure. A constitutional amendment removes those barriers, and only a constitutionally sanctioned unification most fully and unquestionably realizes the court merger New Yorkers deserve. Today we once again ask the Legislature and the Governor for their support in this key measure.

B. STATEWIDE PRO BONO INITIATIVE

ANOTHER FOCUS OF OUR ACCESS TO JUSTICE INITIATIVES continues to be pro bono work for the poor in civil matters. An upsurge in volunteers following the tragedy of September 11, 2001, encouraged us to hold four Pro Bono Convocations throughout the State to maintain the spirit of volunteerism, and to survey actual pro bono hours in 2002. The results of those efforts are reported in the just-released two-volume publication, *The Future of Pro Bono in New York*, now available at our Web site.

The survey showed that, despite the 1997 Resolution of the Administrative Board urging New York lawyers to perform 20 hours of pro bono services annually, and despite the upsurge in 2001, only 27 percent of the New York bar performed at least 20 hours of pro bono work in 2002, the same percentage preceding the Resolution. More than half of the survey respondents performed no pro bono work at all. On the positive side, the survey also elicited suggestions for expanding pro bono, and high on the list was the need for a structured program to support attorneys furnishing these services. Currently local bar associations, legal services agencies, public interest groups and the courts conduct more than 100 separate pro bono programs in the State. One of the recommendations emerging from the Convocations was a more structured Statewide program—specifically, a Statewide Standing Committee on Pro Bono with local leadership and local implementation. Other recommendations include facilitating court access for pro bono attorneys and testing the efficacy of discrete “task” representation.

Judge Newton—with the benefit of suggestions she hopes to receive during the comment period ending April 15—will translate these recommendations into reality. By responding to the specific concerns raised by the bar, we believe that more attorneys will step forward to volunteer their services.

C. COMMISSION ON PUBLIC ACCESS TO COURT RECORDS

WE HAVE BEEN VIGILANT IN OUR EFFORTS to bring the delivery of justice into the 21st century technologically. Our E.Courts initiative provides free Internet access to court calendars, past and future court appearances, and recent judicial opinions from all appellate courts and some of the trial courts. Our e-filing project is gaining increased

interest and usage among the bar. Our E-Petition pilot is about to begin in New York City Family Court.

As with most things in life, new advances bring new problems. Last year I announced another major advance—making case records available on the Internet to improve access to justice, shine more light on the work of our courts and enhance public confidence in the judicial process. At the same time, the interest in open access must be balanced against the privacy and security concerns that arise if court records contain personal information. To help us strike the right balance, I appointed the Commission on Public Access to Court Records, chaired by Floyd Abrams—one of the country's pre-eminent lawyers on First Amendment and privacy issues—with outstanding members from all sides of the issues.

After holding public hearings around the State in which a broad range of viewpoints on access, privacy and security were presented, the Commission will very soon release its report. I am prepared today to offer a sneak preview. Its core recommendation is that, for the future, case records that are available to the public at the courthouse, whether filed in paper or electronic form, should be available on the Internet. However, the Commission identified four types of personal information meriting protection—Social Security numbers, financial account numbers, names of minor children and full birth dates of individuals. To ensure that this information does not appear on the Internet, the Commission proposes that attorneys and self-represented litigants be responsible for excluding these items from their paper or electronic filings—or including them only in partial form. The Commission also recommends that the court system establish procedures for protecting the home and work telephone numbers or addresses of individuals who may be at risk—such as victims of domestic violence.

The Commission proposes that its recommendations apply prospectively, with Internet access only for case filings made after privacy and security rules conforming to the Commission's recommendations are in force, and the bar and self-represented litigants have been educated about the nature of the Internet program and their roles in it. Because of the newness of both online access and the litigants' responsibilities, the Commission sensibly suggests we begin with a pilot program. A pilot also will enable us not only to develop procedures for education of future litigants but also to determine how this service can be provided most economically and efficiently before Statewide expansion takes place.

I take this occasion to thank Floyd Abrams and all the hardworking Commission members—some present in the courtroom today, most notably my colleagues Judge Victoria Graffeo and Presiding Justice Gail Prudenti—for giving us this excellent start on resolving a very difficult issue.

D. BROWN V. BOARD OF EDUCATION

I CANNOT CONCLUDE A DISCUSSION OF ACCESS TO JUSTICE without reference to one of our nation’s landmarks on the subject. May 17, 2004 marks the 50th anniversary of *Brown v. Board of Education*, the United States Supreme Court’s decision striking down school segregation, ending the “separate but equal” doctrine and paving the way for advances in civil rights. Beginning in March and April, we will conduct local events around the State that involve students, lawyers and judges who represent our rich diversity, culminating in May with a Statewide event reflecting on the legacy of *Brown*. This anniversary reminds us of the central role of the courts in safeguarding the fundamental ideals of this great nation, and it reminds us as well of the distance we have yet to travel as a society seeking freedom and equal opportunity for our citizens.

VII. PROFESSIONALISM

OPERATIONAL INITIATIVES ARE IMPORTANT, to assure that family justice, criminal justice and civil justice are delivered as effectively as humanly possible. We must additionally remain attentive to the promise of justice for all by measures to increase the public’s access to the courts. Yet another responsibility of the Judiciary is maintaining the highest standards of professionalism—my next subject, beginning with the bar, and focusing ultimately on the judiciary.

A. CLE AND ATTORNEY-CLIENT DISPUTE RESOLUTION

THIS REPORT BEGAN WITH THE MATRIMONIAL RULES that grew out of recommendations of the Committee to Examine Lawyer Conduct in Matrimonial Actions. As I remember with crystal-clarity, part of the matrimonial bar’s criticism—fair criticism, I thought—was that the Committee’s focus should have been a broader one, not just matrimonial lawyers but the entire bar. We responded with the Committee on the Profession and the Courts, chaired by Manhattan attorney Lou Craco. Assiduously over the ensuing years we have been implementing the Craco Committee’s excellent recommendations, like establishing a permanent ethics institute, and adopting civility rules, and mandating continuing legal education for all members of the bar.

When we first announced the requirement of continuing legal education in 1997, we weren’t exactly greeted with a ticker-tape parade. But the program is working well, from what I see and hear, helping to assure the public that the legal profession is up to date in its knowledge and skills. And there is a special benefit for newer attorneys practicing alone or in small firms, to keep them in touch with peers and mentors, and prevent needless mistakes that hurt clients. Audits of randomly selected attorneys reveal that well more than 95 percent of the profession is meeting CLE requirements—good news for the profession, good news for the public. Our excellent CLE Board,

chaired by Second Department Associate Justice Barry Cozier, formerly chaired by Second Department Associate Justice Howard Miller, has our thanks for assuring that the quality of programs and providers remains high. Having paused for kudos to the excellent CLE Board, I add a round of applause for our outstanding Lawyer Assistance Program chaired by Rochester attorney James Moore, offering help to fellow lawyers with alcohol or substance abuse—another successful effort to maintain the high quality of the profession and serve the public well.

I would like to report specially on the last recommendation—truly the *very* last Craco Committee recommendation we had yet to put in place—and then to return to the subject of solo and small-firm practitioners.

Ten years ago, the matrimonial rules mandated attorney-client fee arbitration for matrimonial cases. Lawyers pitted in litigation against their own clients seemed a sorry state of affairs, both for the parties involved and for the profession. Years later, when the Craco Committee proposed making fee arbitration by panels of volunteers—two lawyers and one nonlawyer—the rule for virtually all matters, we began working with the bar to implement that recommendation, and our progress has been terrific. Early signs are that attorney-client fee dispute arbitration is quickly becoming a very positive feature of New York’s legal landscape. The program’s Board of Governors, chaired by former Second Department Presiding Justice Guy James Mangano, has already reviewed and certified 13 programs to provide arbitration services in every county of the State, trained more than 500 individuals as arbitrators, and established a Web site for the public and the bar that includes general information, rules and model forms (www.nycourts.gov/admin/feedispute). In the months ahead, the Board will continue its mission of accrediting, evaluating and monitoring all aspects of fee dispute resolution programs so that this service is available Statewide.

Already more than 3,000 clients and attorneys have contacted the Board for information about the program, and hundreds of requests for arbitration have been filed. Anecdotal evidence is that the program—as intended—is helping resolve these disputes not only expeditiously but also satisfactorily for both client and attorney, with many disputes settled before hearing. Available data from the New York and Bronx County program—a partnership of the New York County Lawyers Association, the Association of the Bar of the City of New York and the Bronx Bar Association—shows 113 requests for arbitration since the program’s inception. Out of the 60 hearings already held, only twice did a party exercise the right to sue. The others were content to be bound by the arbitration award.

This program would not be possible without cooperation from numerous bar associations, and I take this occasion to express my gratitude to them for enabling this reform to go forward. This is only one example—but a wonderful one—of the bar’s support and cooperation, which is essential to our operations and valued enormously.

B. SOLO PRACTITIONERS AND SMALL FIRMS

ABOUT EIGHTY PERCENT OF ALL NEW YORK LAWYERS in private practice work in firms with fewer than ten attorneys; of these, close to half work in firms smaller than five or as solo practitioners. Some of these lawyers are general practitioners providing their communities with accessible, lower-cost services. Others have developed sophisticated practices with specialities in a particular field. Still others handle a mix of complex cases and smaller matters.

Solo and small firm practitioners have a different perspective on how best to address changes in the legal profession resulting from globalization, technological change, legal and regulatory complexity, and higher client expectations. Since they do not usually have large support staffs, these lawyers in daily practice also face challenges in meeting schedules and complying with competing court appearance obligations. In some instances, fairly simple changes in administrative requirements could make a big difference for these practitioners and their clients.

With that in mind, I have formed a Task Force chaired by Rochester attorney June Castellano to examine—from the perspective of small firm and solo practitioners—how we might improve access to the courts and enhance attorney professionalism. The Task Force will be composed of active small firm and solo practitioners from across the State and will seek to address both common concerns and local differences. I have every expectation that their recommendations will lead to improvements that benefit all litigants and attorneys Statewide.

VIII. THE JUDICIARY: JUDICIAL INSTITUTE, FACILITIES, TECHNOLOGY AND EMERGENCY RESPONSES

A. JUDICIAL INSTITUTE

AS LIFE AND THE LAW GROW MORE COMPLEX, it is also vital that the judiciary stay abreast of new developments. With the opening in May 2003 of the New York State Judicial Institute in White Plains, now for the first time we have a beautiful state-of-the-art center for high-quality judicial education and research. After barely six months of operations, the Institute has sponsored 75 programs, with more than 7,000 registrations—2,500 judicial and 4,500 nonjudicial.

Along with orientation for new judges that incorporates hands-on interactive workshops, simulated courtroom situations and traditional lectures, courses at the Judicial Institute have ranged from trainings for the Integrated Domestic Violence and drug courts, and for the fee-dispute resolution program; to a workshop on “Ethics for Judicial Candidates”; to a seminar on wrongful convictions; and a program on children’s testimony. The Institute has also hosted programs like the Indigent Defense

Summit, a national conference on prison reform and meetings of the *Jury Trial Project*.

Magnificently overseen by Dean/Judge Robert Keating, the Institute enables us to ensure that the Unified Court System functions at the highest level of quality. We owe the public no less.

B. FACILITIES

IN ADDITION TO OPENING THE JUDICIAL INSTITUTE, 2003 saw continued progress in our commitment to upgrade court facilities. Clean, dignified court facilities bespeak respect for the process and people in them.

The year began with the opening of the beautiful new Queens Family Courthouse, which allowed this busy court to move from its “temporary” headquarters in a former public library—after thirty years. That was followed by new court openings in Onondaga and Yates Counties, and new law libraries in Erie and Oneida Counties.

Work continues in New York City on two of the largest courthouses in the nation. One is a full-block, 47-courtroom Criminal Courthouse in the Bronx. This other is a high-rise, 74-courtroom facility in Brooklyn with more than 800,000 square feet of new space, including 50 Supreme Court Criminal Branch courtrooms, 24 Family courtrooms, and 13 hearing examiner rooms. Outside New York City, major projects proceed in many counties and cities, including Erie, Jefferson and Westchester. The year closed with the start of construction on two courthouses here in Albany—a new Family Courthouse and a new Albany County Criminal Courthouse. And, of course, we are gathered today back where we belong, in Court of Appeals Hall, its restoration and renovation now virtually complete, with a formal rededication later this year.

C. EMERGENCY MANAGEMENT

A SUBJECT INTEGRALLY RELATED TO OUR FACILITIES IS SECURITY—a subject incidentally, that in recent years has challenged our ingenuity and our budget.

Just after 4 o’clock on the afternoon of Thursday, August 14, 2003, the northeastern United States was hit by the largest blackout in the history of North America. Power returned in stages at different times throughout the State. Fortunately for us, the court system coped magnificently, and we were operational Statewide almost immediately.

One reason we responded so well—apart from the invariably outstanding work done by our Statewide and local security staff—is that the tragic events of September 11, 2001, had re-focused our attention, as it did everyone else’s in government, on emergency management. In fact, a year later we co-hosted the nation’s first ever examination of emergency planning and management for the judicial branch, both State and federal, entitled *Nine Eleven Summit: Courts in the Aftermath of September 11th*. Several hundred lawyers, judges and court administrators from across the nation gathered in lower Manhattan with public and private sector representatives to plan for

courts in a world changed by the events of September 11, 2001. All participants—ourselves included—left the Summit with ideas and material about preparing for future emergencies of all types. One seemingly simple idea emphasized again and again at the Summit was the importance of conducting evacuation drills—and making sure that everyone, without exception, participates in them. Our own post-9/11 evacuation drills helped us better respond to the blackout.

Fortunately, we expect to have a detailed report this Spring that will recap Summit activities and make it easier and more efficient for courts nationwide to build upon the knowledge accumulated during the event. We are grateful to the author, Thomas Birkland, Director of the Center for Policy Research at the Nelson A. Rockefeller College of Public Affairs and Policy at the State University of New York at Albany, for undertaking this project. His report also will identify best practices and resources of particular value to courts addressing emergency management issues, and will undoubtedly become an invaluable contribution to this field.

IX. THE JUDICIARY: PUBLIC TRUST AND CONFIDENCE MEASURES

ALL OF OUR PROGRAMS AND INITIATIVES are driven by the fundamental goals of increasing access to the courts, improving the delivery of justice, and promoting public confidence in the courts. I come last to the subject of public trust and confidence. Contrary to my training as a journalist—which taught me to put first things first—I’ve chosen to place this discussion at the end of my report not because it is insignificant but for precisely the opposite reason. The success of all of our initiatives shrivels if the public loses faith that the courts operate free of favoritism and partiality. Journalists have to worry that their audience won’t stay with them all the way to the end. I don’t have that concern. We’ve bolted the door today.

A. FIDUCIARY COMMISSION

Several years ago, public confidence was shaken by allegations about politically motivated court appointments, and abuses by lawyers and other fiduciaries seized the headlines. We responded immediately with a three-pronged approach: appointment of a Special Inspector General for Fiduciary Appointments, direction to every Administrative Judge in the State to oversee fiduciary appointments in their localities, and establishment of yet another blue-ribbon Commission, chaired by Sheila Birnbaum, to examine the fiduciary appointment process and make appropriate recommendations for reform.

With the Commission’s recommendations as our guide, in January 2003 we revamped the fiduciary appointment process and adopted stringent new rules. These rules substantially broaden the qualifications required for appointment, expand the

types of appointments covered, limit the number of appointments individual fiduciaries may receive and implement strict new oversight procedures.

I am pleased to release a report today showing that these reforms are succeeding. As you will see, we now have a vastly improved fiduciary appointment process. Applications to serve as a fiduciary can be filed online, thousands of fiduciaries have completed mandatory training, specialized lists have been created and appointments are being more widely distributed. Perhaps most important, required forms are being filed, so that the public has access to accurate, comprehensive information about fiduciary appointments. And to provide even greater public access, I am pleased to announce that, starting today, up-to-date information about every single fiduciary appointment in the State will be available on the court system's Web site, nycourts.gov. Merely by accessing the Internet, anyone can learn who is receiving fiduciary appointments and to the penny how much they are paid for their work. I have no doubt that the sunshine of public disclosure will itself help to ensure the vigor and health of the fiduciary appointment process.

Yet our job is not complete. The Commission on Fiduciary Appointments, which had declared its intention to remain active even after the new rules were in effect, will be reconvening shortly, under Ms. Birnbaum's capable leadership, specifically to review the effects of the rules and whether any additional problems should be addressed. So we will persevere. Our work in this area will not end until we know with certainty that every fiduciary is fully qualified for appointment and every appointment is based on merit and merit alone. Our progress thus far gives us optimism about our ability to achieve that goal.

B. COMMISSION TO PROMOTE PUBLIC CONFIDENCE IN JUDICIAL ELECTIONS

Turning our attention to the judicial election process, which has recently been under an especially intense public scrutiny, last year we adopted the model that has worked so well for us in the past. I convened another first-rate group, the Commission to Promote Public Confidence in Judicial Elections, chaired by Dean John D. Feerick, to take a hard look at the judicial election process and what can be done to better ensure both the perception and the reality of an independent and impartial elected judiciary. Public confidence in how we elect judges—a system imposed by the New York State Constitution since 1846 for more than three-quarters of the State judiciary—is critical to the mission of the courts. So I challenged the Commission to submit an interim report as soon as possible with recommendations for immediate implementation.

The Commission responded in December, concluding that New York's elected judges are overwhelmingly well qualified, hardworking and dedicated to the highest ethical standards. At the same time, the Commission found strong evidence that public confidence in judicial elections is sagging. The Commission specified weaknesses in

the elective system and proposed a number of solutions, like clarifying the rules governing permissible candidate conduct and speech; requiring education for judicial candidates on how to conduct an ethical election campaign; requiring sitting judges who have accepted more than minimal campaign contributions from lawyers to disqualify themselves from hearing cases when those lawyers appear before them; extending electronic filing of publicly searchable campaign disclosure statements beyond Supreme Court Justices; adopting new rules to curb potential abuses in campaign expenditures; and improving voter education.

Progress in those areas is attainable in the short term, and will go a long way toward maintaining the dignity of judicial elections and reaffirming public confidence in the impartiality of New York's elected judiciary. We are currently soliciting public comment on many of these proposals.

Not all of the Commission's recommendations involve rule changes. The Commission recognized that serious change in the conduct of judicial candidates is best accomplished through prevention—by creating a culture of voluntary compliance and educating candidates about appropriate behavior, instead of relying primarily on punishing transgressions after the fact. Therefore, we will be following the recommendation to set up the New York Judicial Campaign Ethics and Conduct Center, both as a resource for the public and to help judicial candidates learn about their obligations and determine whether anticipated campaign conduct is within the rules.

Over the next few months, the Commission's work will continue, as it concentrates on longer-term fundamental issues, like public financing of judicial campaigns, judicial nominating conventions, non-partisan elections, retention elections, and enforcement of judicial ethics rules and the State Election Law. A final report is expected this Spring. We also look forward to further development of the Commission's proposal for a Statewide system of Independent Judicial Election Qualifications Commissions, and to urging new laws to ensure that all candidates appearing on the general election ballot are well qualified to hold judicial office.

One thing is clear: we will not allow this to languish. The cost of simply going along with the status quo is much too high—to the public that questions the impartiality of the courts, to the dedicated judges laboring in the shadow of these questions, and to everyone who is part of our prized justice system.

X. CONCLUSION

RECENTLY, I READ A LINE IN AN EDITORIAL that stayed with me: “Being a judge should be a source of pride, not patronage.” Every judge, I am confident, would agree. Speaking for myself, I feel proud to be a judge, and I take enormous pride in my colleagues in the New York State Judiciary, meting out justice every day, dealing with so many of society’s most intractable problems, assuring that fundamental rights and ideals are secured. It is indeed a privilege—the greatest privilege imaginable—to sit in judgment on fellow human beings, to review challenged acts of government, to declare justice. Judges, above all, feel it.

With privilege, of course, comes the heavy responsibility to make good decisions in individual cases, to treat people with dignity and sensitivity, and to safeguard the efficacy and integrity of the process. When a colleague strays from the oath of office, we are all diminished. We therefore are committed to assuring that the New York State court system runs as effectively as possible, up to date in every way, fully meeting the needs of society, free of even the perception of bias. To say there is a need for perseverance and optimism in these goals is an understatement—the challenges are so vast. Yet, having now heard this report—replete with initiatives that represent only a fraction of our ongoing programs within the Third Branch—can there be even a shred of a doubt about our commitment and resolve? I conclude with an expression of gratitude in two respects. First, given our ambitious agenda, I am grateful that the year 2004—a leap year—affords us one extra day to complete our work. We will fill it to the brim. And second, I am even more grateful to have so many terrific partners in maintaining the high quality of justice in New York State.