THE STATE *of the* JUDICIARY 2003

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NEW YORK STATE UNIFIED COURT SYSTEM

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* *The Chief Judge of the State and the Presiding Justices constitute the Administrative Board of the Courts.*

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CONFRONTING TODAY'S CHALLENGES

INTRODUCTION 5

ACCESS TO JUSTICE 6

COURT MERGER 6

ASSIGNED COUNSEL RATES 8

FAMILY JUSTICE INITIATIVES 9

MATRIMONIALS 9

FAMILY COURT 10

CRIMINAL JUSTICE 12

CRIMINAL JUSTICE II 12

SUMMONS INITIATIVE 13

FINES AND FEES 14

CIVIL JUSTICE 15

CONTINUING JURY REFORM 16

PUBLIC TRUST AND CONFIDENCE MEASURES 17

JUDICIAL ELECTIONS 17

THE FIDUCIARY RULES 19

DISCIPLINARY PROCEEDINGS 20

PROFESSIONALISM 21

TOWN AND VILLAGE JUSTICE COURT RESOURCES 21

PRIVACY AND COURT RECORDS 22

COURT FACILITIES 22

CONCLUSION 23

THE STATE *of the* JUDICIARY 2003

CONFRONTING TODAY'S CHALLENGES

INTRODUCTION

In searching for themes that unify this State of the Judiciary message, three thoughts come to mind.

First, unquestionably we live in a new environment, facing fresh challenges to our State and nation, including threats to security and a distressed economy. In the courts, we have stepped up security and emergency preparedness, and we are wholly committed to continued fiscal prudence, as reflected in our budget submission as well as our earlier steps to contain spending.

Second, we are today physically as well as figuratively in a new environment, and thank our hosts—the Board of Regents and Commissioner Richard Mills—for accommodating us in this splendid facility while renovations proceed at Court of Appeals Hall, so that we may be assured of an up-to-date courthouse equal to tomorrow's challenges. In good times and bad, the fair and effective administration of justice remains crucial to our way of life.

My third theme is an entirely personal one. This year, I celebrate my twentieth anniversary as a judge of the Court of Appeals and my tenth anniversary as Chief Judge. It is the greatest life imaginable, with the greatest opportunity and colleagues imaginable, beginning with my fabulous Court of Appeals colleagues; extraordinary Presiding Justices and Administrative Judges, who are terrific partners in court administration; a stupendous Chief Administrative Judge, Jonathan Lippman; and dedicated jurists and staff across the State of New York committed to serving the public well. Whatever criticisms and discontents there may be from time to time, it is not by accident or magic that every year the New York State courts handle roughly four million cases—among the heaviest, most demanding dockets in the entire nation—and overwhelmingly do so with skill and efficiency, a fact I believe deserves public commendation. It certainly has mine.

Having now spent nearly ten years at the helm of the New York State court system, I feel pride in our many accomplishments—and there truly have been many accomplishments. But I also feel a sense of frustration and urgency about unfinished business that impairs effectiveness, especially in hard times. So let me turn immediately to that. And I'll start with what might loosely be categorized as Access to Justice issues, because even the best operational initiatives are meaningless unless the courts are accessible to the public. Increasing access, improving the delivery of justice and promoting public confidence in the courts—those have been and remain the goals of my administrative tenure as Chief Judge of the State of New York.

ACCESS TO JUSTICE

COURT MERGER

WHILE WE HAVE MANY ONGOING ACCESS TO JUSTICE INITIATIVES, one persistent message has particular resonance today. We need to simplify our byzantine court structure—a maze of eleven separate trial courts, each its own separate jurisdictional universe. We need to eliminate the costly, incomprehensible barriers and inefficiencies. We need to make our courts more readily accessible, especially for families and children, who are before us in constantly increasing numbers.

Every year the court system submits thoughtful proposals for merging the trial courts, and works unsuccessfully to secure passage of this essential reform. Today I am pleased to do more than simply sound yet another call to bring New York's court structure into the modern age.

Faced with a recognition of the difficulty of achieving such major constitutional reform, and the reality that even if passed this legislative session an amendment could not take effect until at least 2006, we have returned to the drawing board to see what we might do on our own, operationally. We now take a significant step toward creating within Supreme Court a division that will hear domestic violence cases and all related proceedings. There could be no better place or time for this initiative, as the New York State Domestic Violence Registry will this year receive its one-millionth filing. Imagine that: at least one million orders of protection entered

in New York State since October 1995. Clearly we all need to find better ways to address the scourge of domestic violence.

The court system's new initiative builds on our pilot Integrated Domestic Violence (IDV) courts. IDV courts allow victims of domestic violence, who typically have multiple proceedings in multiple courts—like an assault case in Criminal or County Court, a custody proceeding in Family Court and a matrimonial in Supreme Court—to litigate all their matters in one court before one judge, thereby promoting informed, effective decisionmaking. Our pilot IDV courts have thus far served approximately 900 families who otherwise would have had more than 3,000 cases scattered among our different courts.

For victims of domestic violence, bringing all related cases before one judge eliminates the potential for conflicting orders, reduces the number of court appearances and maximizes available resources. And for the courts, dealing with 900 families instead of more than 3,000 cases in various courts obviously reduces delay and duplication, and fosters effective, cost-efficient case management.

Under a comprehensive three-year plan, we will develop the IDV concept across the State, beginning this year with an IDV court in each Judicial District. For the past several months, planning for this initiative has been spearheaded by Judy Harris Kluger, Administrative Judge of the New York City Criminal Court and Co-Chair of the Local Courts Advisory Committee. I am delighted to announce that Judge Kluger will assume the new position of Statewide Deputy Chief Administrative Judge for Court Operations and Planning, and will lead this effort, working with the Presiding Justices, Administrative Judges and Supervising Judges, as well as with institutional and community representatives in each jurisdiction.

We do not take this step lightly. It is an enormous undertaking, but we are convinced that—especially in today's environment—it is a challenge we must confront.

Although enthusiastic about our operational initiative, we will again urge the necessary legislative action to achieve court unification—and we especially appreciate the Governor's announced support of court reform in his State of the State message last Wednesday. This year, we especially underscore that merger would yield significant tangible benefits for New York at a time when the State desperately

needs it. We already have documented the $131 million restructuring would save for the courts just in the initial years. But given the courts' relationships to other agencies and institutions, it is apparent that even these substantial savings are vastly understated. Plainly, the tangible benefits of court merger go far beyond the boundaries of the Third Branch.

To give just one example, Family Court delays obviously mean longer stays in costly foster care, longer stays on welfare as child support issues are resolved, longer instability and emotional damage as custody and visitation issues are resolved. A fragmented approach to a family's legal problems, moreover, feeds recidivism and multiplies the need for court time, assigned counsel and social services. A unified trial court system would enable us to achieve more effective resolution of the types of cases that now flood our courts and tax our health and social welfare systems—like those involving dysfunctional families, drugs and mental illness.

We have asked the Nelson A. Rockefeller Institute of Government to help quantify all of the benefits and savings, and look forward to having its report. Hopefully, this study will provide impetus for the necessary legislative relief that has so long eluded us.

ASSIGNED COUNSEL RATES

AS LONG AS I AM ON THE SUBJECT OF URGENT UNFINISHED BUSINESS, what next comes to mind are assigned counsel rates. Seventeen years have now passed since the Legislature last approved an increase in assigned counsel fees—$40 an hour for in-court work, $25 an hour for out-of-court work. Just think of it: over the past seventeen years that these rates have been static, the cost of living in our region has risen seventy percent.

As with court merger, here, too, we have gone back over the terrain several times searching for some way short of legislative action to ameliorate the crisis. Sad to say, we find no alternative, only a greater crisis.

Indeed, over the years two things have changed dramatically. First, with lawyers leaving the assigned counsel panels, and family and criminal court dockets growing, delays are naturally proliferating. A report three years ago documented that the number of attorneys willing to take these assignments had plummeted over

the decade. Now matters are even worse. This dwindling supply of legal services is causing enormous disruption—criminal cases repeatedly delayed, attorneys unavailable to staff the Family Court's intake parts, lawyers chronically absent, late or unprepared. Terrible for the clients; terrible for the courts; terrible for society.

The second new phenomenon is that, as the crisis escalates, litigation challenging the rates continues its way through the State and Federal courts. In all candor, the solution should not lie with piecemeal litigation decided by the Judiciary. Crafting appropriate across-the-board rate increases, together with the procedures to implement them and sources to pay for them, are tasks far better accomplished by the policymaking branches of government. Even in today's fiscal straits, this must remain a priority for legislative action.

FAMILY JUSTICE INITIATIVES

I'VE TOUCHED ON THE INTEGRATED DOMESTIC VIOLENCE COURTS and the need to raise assigned counsel rates, which particularly impact needy family litigants. I want to linger a moment longer on the subject of families. Frankly, nothing has been a greater challenge for me these past ten years as Chief Judge than the court system's efforts to streamline family justice.

MATRIMONIALS

THE VERY FIRST NEW INITIATIVE ANNOUNCED BACK IN 1993 was a set of rules designed to improve matrimonial litigation, a traditional source of complaint. For a brand new Chief Judge, it was truly a baptism by fire.

We have continued over the past ten years to keep a close eye on these vexing cases, establishing the Statewide post of Administrative Judge for Matrimonial Matters, occupied, happily for us, by Judge Jacqueline Silbermann. Working with judges around the State, we now have dedicated matrimonial parts and innovative programs to emphasize early and active case management, including dispute resolution programs. We have fine-tuned the matrimonial rules and promulgated user-friendly forms for the more than 50,000 uncontested matrimonials filed annually. Thanks to the special efforts of Judge Evelyn Frazee and her committee,

we've advanced parental education programs for divorcing parents; we've enhanced education and training through the Family Violence Task Force co-chaired by Presiding Justice Anthony Cardona and Appellate Division Justice Sondra Miller; and much, much more.

From a judge's first involvement in a case, the average length of a contested matrimonial in New York State since 1993 has been reduced by more than half. That is a significant achievement for any case type, but particularly so for matrimonials—often the bitterest, most protracted cases in our courts.

I believe it is fitting, on the tenth anniversary of the matrimonial rules, for the court system to undertake another comprehensive review, to assure that all of these measures are achieving the best possible results for matrimonial litigants. We expect to have this report in hand before the year is out.

FAMILY COURT

I BEGAN THIS ADDRESS WITH OPERATIONAL REFORM AFFECTING FAMILY COURT. Next I'd like to turn to the substance of Family Court dockets.

Matrimonial litigation is, of course, only a small part of the huge family law dockets of the New York State courts. Most family matters—like child abuse and neglect, parental rights termination, child custody, child support, juvenile delinquency—are in Family Court, likely the most overburdened of all our courts, with the most heart-rending cases that have the severest long-term consequences for the litigants. Children need and deserve to grow up in permanent, loving homes, not in courts or State agencies.

The problems of Family Court, indeed of the child welfare system, are not unique to New York. Endless reports, Federal mandates, articles, books, now even a touching new film, remind us that, all across the nation, these cases are emotionally the hardest, and systemic solutions the most elusive.

I don't know about Ohio, or California, or other States. I do know that in New York any perceived "failures" in managing these extremely difficult dockets are surely not for want of effort—with 170 judges, Family Court in 2002 handled an astronomical total of 716,000 cases. And it's not for want of new initiatives over the last decade, which also have been plentiful.

Apart from efforts to upgrade Family Court facilities throughout the State, we've established specialized dockets, Model Courts and "best practices" parts, all creative efforts to expedite permanency planning. We are embarked on a "Babies Can't Wait" project focused on infants' special needs, and are working to assure that basic health care needs of children in foster care are met; we've established Family Drug Treatment Courts to treat drug-addicted parents and minimize foster care stays; and we've instituted teenage diversion programs. We've expanded mediation and case conferencing for a variety of cases, and worked with our partners in government to upgrade child support collection procedures.

Through the Permanent Judicial Commission on Justice for Children, the court system helped secure legislation to improve New York's early intervention efforts for young children with developmental delays, and established the nation's first Statewide system of Children's Centers in the courts—now thirty-two centers—that provide quality drop-in child care for litigants, as well as a literacy program and links to vital services like Head Start, WIC and Child Health Plus.

We have computerized the courts, and are constantly seeking ways to assure the availability of information, which of course is key to good decisionmaking. We have taken various steps to ease the burdens for litigants, who are often self-represented, such as providing evening hours and more convenient satellite locations. And these are just a few of the many recent Family Court initiatives—not to mention that, several years ago, we opened Family Court to the public, convinced that "sunshine" would be healthy for the court and for the public we serve.

All of these measures—including the sunshine, and including the new Integrated Domestic Violence courts—certainly help. But problems persist. I can only say that we will continue to focus like a laser beam on Family Court, looking for every opportunity to do better. Today we offer two specific new initiatives.

The first goes to the number of judges. Every single year since 1993, with a relatively stable number of judges, Family Court filings have grown. Indeed, over the past decade Family Court filings have grown twenty-one percent. How can a judge deal effectively with such huge caseloads, virtually every case a complex, compelling human drama?

Today I am announcing a joint effort with Mayor Bloomberg to benefit families in the most fundamental way—by adding eight judges to the Family Court in New York City. To accomplish this, the Mayor will fill several "interim" Civil Court vacancies with individuals qualified for Family Court, and we will make up the balance with judges currently assigned elsewhere who have an appropriate background for Family Court. Increasing New York City's Family Court bench in this manner will greatly reduce existing caseloads and promote expedited resolution of newly filed matters. In human terms, that means improving the quality of justice for families and children.

The first new initiative goes to adding judges where independent decisionmaking is needed, the second goes to strengthening ties with other agencies where that is needed. I am pleased to announce that we are joining with Commissioner John Johnson and the New York State Office of Children and Family Services, and with Commissioner William Bell and the New York City Administration for Children's Services, in a project to expedite permanency. The program zeroes in on the children for whom parental rights have been terminated but adoption has not yet taken place. Working together with both agencies, we hope not only to speed up adoption for these thousands of children, but also to identify gaps and logjams that more generally delay a child's movement to permanency.

CRIMINAL JUSTICE

CRIMINAL JUSTICE II

SIX YEARS AGO, THE COURT SYSTEM RELEASED CRIMINAL JUSTICE I, the first of a series of comprehensive programs addressing a discrete category of our dockets. With dockets in a sense a mirror of society, the primary impetus for Criminal Justice I was the dramatic shift in crime trends and law enforcement strategies at that time—particularly the decline in violent crime and the heightened focus on "quality of life" offenses.

Once again, dramatic shifts in crime trends have occurred in New York State. Most notably, and thankfully, violent crime has continued to fall. At the same time, however, misdemeanor dockets have mushroomed over recent years. Additionally,

there has been a sea change in the courts as we have continued to develop problem-solving courts— community courts, domestic violence courts, mental health courts, drug treatment courts.

We now have seventy-one Drug Treatment Courts throughout the State. These courts represent an effort to deal decisively with low-level nonviolent crime by monitoring treatment of eligible offenders and stopping cold the revolving door of recidivism. Under the leadership of Deputy Chief Administrative Judge Joseph Traficanti, thus far more than 16,000 offenders have participated in Drug Treatment Court. By focusing on treatment for nonviolent drug-addicted offenders, these courts have likely also contributed to a declining violent crime rate, in addition to saving State and local governments millions of dollars annually in incarceration costs. And in that connection, I take this opportunity once again to urge reform of the Rockefeller drug laws to give judges much-needed sentencing discretion in these cases, as well as to make the Drug Treatment Court option available to an even greater number of nonviolent offenders.

Over the next several months, we will study the impact of all of these dramatic changes on our criminal courts, anticipating the release of Criminal Justice II by Summer. For now, we are pleased immediately to announce the following two initiatives.

SUMMONS INITIATIVE

First, we are developing a program to allow people issued summonses for the lowest-level offenses to plead guilty and pay fines by mail. This may sound "ho-hum" in the year 2003, but I assure you it's a step forward for New York State.

More than 534,000 people in New York City last year received summonses for offenses such as carrying an open beer can in public or fishing off a bridge. Although these may at times be analogous to routine traffic cases, these offenders, unlike traffic offenders, are required to appear personally in Criminal Court on the date designated in the summons. They are not permitted to plead guilty and pay their fines by mail. The administrative burden of processing more than a half-million personal appearances obviously is staggering—as is the number of summonses that are simply ignored.

Working with the Mayor's Office and the Police Department, we will now be able to accept pleas—and fines—by mail, which promises a triple benefit. Plainly, the new procedure will improve compliance by providing the public with a convenient way to respond. Plainly, the new procedure will significantly reduce workload burdens, and consequent cost, for Criminal Court. And plainly, the new procedures will result in greater payment of fines, hardly a trivial matter in these hard economic times. While this initiative begins in New York City, where caseloads are the heaviest, we are hopeful that this will prove successful and become standard operating procedure Statewide.

FINES AND FEES

NEXT, WE WILL STEP UP OUR FOCUS ON THE COLLECTION OF FINES AND FEES. A large number of individuals fail to pay fines, mandatory surcharges and related money sanctions. We have previously taken steps to address it. Now we will do more.

Today, I announce a comprehensive program to improve the payment of court-imposed sanctions by implementing measures that make it easier for individuals to pay. A number of courts outside New York City successfully permit payment of vehicle and traffic fines and surcharges by credit card. This option should be available in every court in the State. And it should be available in all cases, not just vehicle and traffic proceedings. We will work closely with the Executive Branch to make this happen.

We will also be enlarging our use of private firms to collect fines and surcharges, which we began on a pilot basis two years ago. The pilot has had modest success, but it could generate additional revenue if court records had more information about the identity of the debtors. We are working to improve the quality of that information, and will expand the use of private collection firms to additional counties.

Along with these steps, I believe it is time to consider sterner measures against those who simply ignore court orders to pay. Current law permits interception of New York State income tax refunds for individuals who have failed to pay a debt owed to the State. We will begin providing the State Department of Taxation and Finance with periodic lists of those who have failed to pay court-imposed fines and

surcharges. We also will join with State judiciaries across the nation in urging Congress to enact legislation requiring the Internal Revenue Service to intercept the Federal income tax refunds of individuals who have failed to pay sanctions imposed by State courts. Finally, we will submit a bill to the Legislature this session authorizing the Department of Motor Vehicles to suspend the New York driver's license of persons who fail to pay financial sanctions imposed by our courts.

All of these measures are important for the court system. Court orders should not be ignored; they should be respected and enforced. But additionally, these measures hold significant promise for the State in collecting revenues it is owed, again a matter of particular importance today.

CIVIL JUSTICE

I TURN BRIEFLY TO OUR CIVIL DOCKETS, which cover the universe, from a failed rent payment to catastrophic mass torts and global business collapses. Here too, there are innumerable initiatives. I mention only two.

Our Commercial Division, now seven years old, continues to offer a first-rate forum equal to the needs of this State's business litigants. What a joy it is to hear that the Commercial Division of New York State is a forum of choice for national and international litigants. And what a joy it is to read the impressive compilation of Commercial Division decisions issued five times yearly that makes clear why this court has become a forum of choice for business litigants. As further evidence of its success, the Commercial Division in 2002 added branches in Albany and Suffolk Counties, and this month will establish two parts in Kings County, joining Erie, Monroe, Westchester, Nassau and New York Counties.

We are also pleased, now in the twenty-first century, that the Legislature has extended and expanded electronic and fax filing—with the consent of the parties—so that these pilots can continue to July 2003. Filing by Electronic Means is now available in four additional Commercial Division locations (Albany, Westchester, Nassau and Suffolk), in tax certiorari cases in Monroe, New York and Suffolk Counties, and in Court of Claims cases requested by the Attorney General. Fax filing

has similarly been extended to certain tax certiorari cases and mental hygiene and guardianship proceedings. We will continue to monitor these experiments, confident that modern-day technology so commonplace in our daily lives can also be put to good use in court proceedings.

Continuing Jury Reform

No account of administrative efforts to improve the delivery of justice in New York would be complete without a few words about jury reform. Jury reform over the past decade has rested on two simple but complementary objectives: fairness for litigants without undue burden for jurors.

Every improvement made to broaden jury representativeness—such as eliminating automatic exemptions and disqualifications, widening the source lists, eliminating the permanent qualified list and aggressively pursuing "no shows"—has also made jury service fairer and less burdensome for everyone. Every improvement made to ease the burden on jurors—such as increased compensation, automatic first-time postponements, shorter and less frequent terms of service, and elimination of mandatory sequestration—has also enabled more people to serve, thus making the jury system more inclusive and more democratic.

Always in describing the Jury Reform program, we are careful to place the accent on the word *Continuing*. In a court system as large as New York's, I doubt that any change can be declared complete—certainly not jury reform. In that spirit we now launch a new decade of jury improvement with lots of very promising initiatives.

Few things in life give me more pleasure than a citizen's glowing report of jury service. I am especially delighted to hear from jurors who served years ago when the average term was two weeks, every two years, like clockwork. Now the average term of service is one or two days, with callbacks every four years or longer. The downside of all this happy news, however, is that too many people called are, for one reason or another, excused at the voir dire stage. They never get to sit on a jury at all. In fact, we have found that a stunning eighty-two percent—eighty-two percent—of those citizens called for jury service are never selected to hear a case. What a waste of time! What a waste of dollars!

To address this complex problem, I am pleased to announce the formation of a new Commission—yes, another Commission—I call "The Eighty-Two Percent Project," which will be headed by Mark Zauderer. The question before the Commission will be how can we better utilize the time of citizens who come into our courts to serve on juries? Why are so many people excused without ever being empaneled to sit on a jury, and what can be done about it?

In addition, the New York State Judicial Institute—a soon-to-open, year-round center for court-related training and education in Westchester, under the leadership of Judge Robert Keating—will conduct jury innovations training. Here in New York, the jurors' role has in actual practice changed little over the last century—jurors generally remain a passive body until the very end of a case, when a judge sends them to deliberate. At the Judicial Institute, New York judges will explore ways of more actively engaging today's jurors—like allowing them to take notes and ask questions, and permitting the court to give preliminary and interim instructions during trial.

These initiatives join a long list of jury improvement efforts already in progress, like a Grand Juror Handbook, a Guide for Employers and Employees about jury service, and language screening guidelines to assist Jury Commissioners in better assessing potential jurors' ability to comprehend the English language. We will make it even easier for jurors Statewide to get and give information about their service by permitting them to qualify for and to postpone jury service automatically over the telephone and on the Web. And, as always, we are attending to the upkeep and improvement of jury facilities, which can deteriorate quickly due to heavy usage.

PUBLIC TRUST AND CONFIDENCE MEASURES

JUDICIAL ELECTIONS

HOW WE SELECT JUDGES NATURALLY HAS A GREAT IMPACT on public trust and confidence in the Judiciary. Approximately three-quarters of New York's judges are chosen in partisan elections, a tradition that dates back to the State Constitution of 1846. While the elective process is far from perfect, by and large it has served us well, producing some of the finest judges in the nation's history.

Recently observers of judicial elections around the country have grown concerned about several disturbing trends. In December 2000, the National Center for State Courts and the Conference of Chief Justices sponsored the National Summit on Improving Judicial Selection, attended by judicial, legislative and bar leaders from the seventeen most populous states with judicial elections. The Summit proceedings culminated in a Call to Action, observing that judicial campaigns are being conducted in ways that threaten judicial independence and impartiality, and undermine public trust in the judicial system. The Call to Action included twenty recommendations for reform.

Especially now that I am President of the Conference of Chief Justices, I am pleased to have the opportunity to open a Statewide dialogue here at home on how we can promote public confidence in judicial elections.

Already we have taken two significant steps toward this objective. With the assistance of the New York State Bar Association, we have created judicial campaign conduct committees throughout the State to reduce negative campaigning, monitor the fairness of campaign statements and resolve campaign disputes between candidates. We have also revamped the fiduciary appointment system to ensure that court appointments are made on the basis of merit, not political favoritism.

But public confidence in the judiciary is tarnished by election contests that appear inconsistent with what we value most in our judges—independence, fairness, impartiality. To address these challenges, I am appointing a Commission headed by John Feerick, former Dean of Fordham Law School and Chair of the New York State Commission on Government Integrity, to provide us with a blueprint for fostering dignified judicial campaigns and improving voter participation. Our Commissions, by the way—from the first Jury Project to the recent Commission on Fiduciary Appointments—are all composed of busy professionals with diverse points of view, from every part of the State, volunteering their time and talents to the court system. They have been absolutely outstanding, leading to marked improvement in civil, criminal and family justice. I am confident that this Commission will be as well.

This Commission will explore the possibility of public financing of judicial campaigns, along with appropriate funding options in the present fiscal climate. It

also will consider the need for additional ethics protocols and disclosure requirements regarding campaign contributions and expenditures. Public opinion surveys repeatedly show that most voters believe there is a link between campaign contributions and judicial decisionmaking. Even some State court judges agree—an astounding twenty-six percent of them in one recent national poll.

The Commission also will seek ways to promote meaningful voter participation through nonpartisan Voter Guides that provide the public with useful information about the background and qualifications of all judicial candidates. The National Summit on Judicial Selection concluded that Voter Guides are an effective tool for addressing low voter interest and turnout in judicial races. Similar guides are currently distributed to all registered voters by New York City's Campaign Finance Board for nonjudicial candidates in primary and general elections. This government-sponsored measure can be implemented at minimal cost, and is an effective alternative to candidates raising and spending campaign funds for media advertising.

While the Commission determines how we can best realize the benefits of public financing and Voter Guides in the year ahead, we will work with the National Center for State Courts and the Conference of Chief Justices to explore other measures that have proven effective in reinvigorating judicial elections around the country.

THE FIDUCIARY RULES

I HAVE MENTIONED REVAMPING THE FIDUCIARY APPOINTMENT SYSTEM as a step toward improving public trust and confidence in the judicial elective system. Court-appointed fiduciaries are entrusted with control of the personal and financial interests of some of society's most vulnerable members—including young orphans, incapacitated persons and the elderly—and should be chosen solely on the basis of merit. Appointees must be scrupulous and conscientious individuals, with adequate training and experience to perform this important work.

Beginning this month, stringent new rules governing fiduciary appointments will go into effect. These rules substantially broaden the qualifications for appointment, expand the types of appointments covered and limit the number of

appointments that fiduciaries may receive. In implementing the new rules, we are, for the first time, requiring all candidates for fiduciary appointment to complete a certified training program. With the assistance of the Bar, which will play a key role in this training effort, new fiduciary eligibility lists will be in place by June 1.

As with jury reform, we know that our work is far from complete, and we will closely monitor the new rules as they go into operation. Indeed, we will continue the superb Commission on Fiduciary Appointments, chaired by Sheila Birnbaum, to help assure that the rules in fact meet the high expectations we all have for them.

DISCIPLINARY PROCEEDINGS

ANOTHER MAJOR STEP WE CAN TAKE to enhance public perception of the courts is to open up the disciplinary process.

Under current law, disciplinary charges against judges are handled with minimal public access and scrutiny. This shield of confidentiality is essential to protect against wholly unfounded allegations, but it sacrifices the public's need for information when the secrecy continues even after investigation, a finding of probable cause and the filing of formal charges. I will propose legislation this year to correct this imbalance. Under our proposal, once formal charges were lodged, hearings on those charges would be open to the public unless the Appellate Division found good cause for closing them. If misconduct charges were not sustained, all records would be sealed.

At the same time, we reaffirm our longstanding commitment to open up the attorney disciplinary process once probable cause is found. Existing law seals records in these proceedings unless and until the Appellate Division sustains charges of misconduct or on the rare occasion that the Appellate Division finds good cause to make a record public. We will again urge enactment of legislation that ensures public access to records and hearings once formal charges are lodged, following the recommendation of the Committee on the Profession and the Courts, chaired by Louis Craco. Opening the attorney disciplinary process at that stage will promote community confidence in the Bar and foster the rights of clients who seek to learn whether their attorneys are subject to disciplinary proceedings.

PROFESSIONALISM

THE COURTS ARE, OF COURSE, VITALLY LINKED WITH THE BAR. The New York Bar is among the most prestigious in the nation, and rightfully so.

In addition to suggesting open attorney disciplinary proceedings, the Committee on the Profession and the Courts made several recommendations we have implemented, including mandatory continuing legal education for New York State's nearly 200,000 lawyers.

The Committee also recommended the creation of a permanent entity to study and speak to issues pertaining to professionalism. We followed that recommendation with the appointment of an Institute on Professionalism in the Law, which has an active agenda, including sponsorship of a biennial Convocation on the Face of the Profession. The first convocation, in 2000, centered on law school admissions and placement, and how law students are indoctrinated into the legal profession. The second, in 2002, focused attention on the challenges newly admitted lawyers face in the years immediately following law school graduation. These events have helped build bridges between law school training and the practicalities of law practice and—focused as they are on the early years, when lifetime habits are learned—thereby helped strengthen the foundations of the legal profession in New York State.

Last year also, our Lawyer Assistance Trust—under the leadership of James Moore—became fully operational, offering assistance to members of the profession with substance and alcohol abuse problems, another measure designed to strengthen our profession and assure its continued high level of service to the public.

TOWN AND VILLAGE JUSTICE COURT RESOURCES

OUTSIDE THE CITY OF NEW YORK, many New Yorkers have their firsthand contact with the court system through the locally funded Town and Village Justice Courts. These courts have jurisdiction over a wide range of civil and criminal cases, and are often the gateway to the court system for serious felony cases.

Given the volume and importance of Justice Court business, as well as the fact that many of the 2,000-plus Justices of these courts are nonlawyers, over the past decade we have concentrated on improved education and training for these courts.

In addition, we now have a Court Resource Center with a staff of attorneys available to answer questions, and we are making good use of the Internet for training, including a virtual Town and Village Resource Center on the Web.

I am also pleased with our success last year in obtaining legislation that will provide annual increases in fees for jurors who serve in these courts, so that by the spring of 2006 jurors in these courts will be entitled to the same per diem fee as jurors in all other State courts.

PRIVACY AND COURT RECORDS

LAST YEAR AT THIS TIME, we announced the formation of a Commission on Public Access to Court Records, chaired by Floyd Abrams, to address critical policy concerns as we consider making case records available electronically. Its work under way, the Commission expects to begin public hearings shortly and issue a report later this year, with recommendations on how the court system can best balance open access, protection of privacy, security, fairness and the effective administration of justice.

COURT FACILITIES

MY FINAL FOCUS IS ON BUILDINGS, and I mean this in two ways. First, I refer to the rising buildings that house our courts throughout New York State. Clean, up-to-date court facilities always will remain a top priority, reflecting (as they do) the dignity of both the process and the people who are in the courts. From the two largest courthouse construction projects in the State—one in Brooklyn, a second in the Bronx—up through Westchester, Rensselaer, Albany, Onondaga, Monroe, Yates and Orleans Counties, I am pleased to report that court facilities are being completed, restored and renovated to meet justice system needs of the new century.

But I also have in mind buildings that fell on September 11, 2001. Their shadow forever lingers over us. That tragic day united our nation as never before around the American values of liberty and justice for all. And I think of what was for the court system a major event of the year 2002—a Summit called "Courts in the Aftermath

of September 11"—when 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 changed world.

The September 11 Summit enlarged everyone's insights, and pointed us to sound, practical measures to enhance emergency preparedness. It was especially heartening to see the esteem of our out-of-State colleagues for New York's response to the tragedy that struck here. The fact is that New York—its people and its institutions, including its courts—was a beacon of solidarity and strength for the nation and the world. That same spirit will guide us through the year ahead.

CONCLUSION

AND THAT SENTIMENT BRINGS ME TO THE CONCLUSION OF THIS ADDRESS. Looking back ten years, or twenty, or more, I know that our dedicated judicial and nonjudicial personnel, working collaboratively with the Bar and with our partners in government, will meet the challenges of 2003. And, as we meet and move beyond these challenges, I know that the New York State courts will remain strong and vibrant, delivering justice and protecting values that are fundamental to this great land of freedom and opportunity. ■

JUDITH S. KAYE
CHIEF JUDGE OF THE STATE OF NEW YORK

JANUARY 13, 2003