State of the Judiciary 1998
Chief Judge Judith S. Kaye, New York Court of Appeals
Message to audience of judges and lawmakers
March 23, 1998, at Court of Appeals Hall, Albany, NY

Given the recent State of the Union, State of the State, State of the City of Albany, City of Kingston, City of New York—Manhattan, Bronx and Staten Island too—I approach today's task of delivering the State of the Judiciary with some trepidation. In much the same vein, we are this year marking the Court of Appeals' 150th anniversary. Recently also, there have been celebrations of the 60th anniversary of Spam, the 30th of the Chevy Camaro and the 20th of Elvis's alleged death.

Today being the fifth anniversary of my own swearing-in as Chief Judge, I could think of no better way to celebrate the occasion than by delivering a State of the Judiciary address. The coincidence of the two sometimes tired, overworked ideas—stating states and marking anniversaries—made my choice irresistible. What a challenge!

In point of fact, the Chief Judge year after year issues a State of the Judiciary message, but it's in the form of a written report. Does anyone actually read it, I often wonder. I shudder to think what we would learn from a few short answer questions put to recipients of the document. Justice may be "the greatest interest of man upon earth," to quote Daniel Webster, but you'd never know it from reports on the justice system. My effort last year to product The State of the Judiciary in tabloid form earned only one Pulitzer Price nomination, and that was in a highly suspect category—Best Annual Newspaper—leaving me considerably less than eager to repeat the experience.

So instead, in this banner year in the life of the Court of Appeals and its Chief Judge, I have decided to physically capture an audience, in the hope of insuring—at least for the captives—that our message is heard. My intention today is to highlight four themes that reflect the goals of the New York State Unified Court System: first, fair and effective case resolution, always our topmost priority; second, modern efficiency in every area of operations; third, collaboration and innovation to promote these objectives; and finally, assuring always that we maintain public trust and confidence, which are essential to everything we do. Before getting to specifics, it is important to note that the New York State Court system is among the busiest in the nation, with well over three million new filings every year. Just to put that staggering figure into some context, our dockets alone are more than ten times the annual federal filings nationwide. Whether or not you happen to agree with every ruling, I think you would have to agree that overwhelmingly the judges and non-judicial personnel of the New York State Court system do an outstanding job, often in less-than-ideal circumstances.

And while I'm on the subject of expressing appreciation, I'd like to add a special note of thanks to my Court of Appeals colleagues, our Chief Administrative Judge Jonathan Lippman, the Presiding Justices and our administrators throughout the state. No one could have better partners or a greater cause than the delivery of justice.

Our cases run the gamut. Every problem you can imagine is likely litigated somewhere in our State court system – from slip-and-falls to industrial disasters; from crimes of the heart to crimes on the street; from decedents' estates to embryos still in petri dishes; from an individual lease, to a worldwide financial transaction, to a far-reaching constitutional question.

When I became chief judge on March 23, 1993, State court dockets hovered at around 2.7 million new filings annually. Those state of the union – type speeches typically point with pride to rising numbers as signs of the success of the speaker – Public Safety up, jobs up, the economy up – I can't claim credit for the fact that during my tenure as chief judge our annual filings have grown more than 20%. Actually, even if I could claim credit I wouldn't want to.

In a sense our growing numbers should come as no surprise to anyone. Always Americans have been litigious. And as life becomes more complex, people increasingly turn to the courts to settle vexing private and public problems. Growing dockets tell us, too, that despite criticism and negativism about most everything today, still our citizens look to the courts when it comes to resolving matters of importance to them.

Growing dockets, of course, our significant in additional ways. Unlike the private sector, the court system can't lop off segments of its operations in order to achieve economies. We can't, for example, divest landlord–tenant cases, or downsize our divorce operations, or spin off misdemeanors. We can't gridlock over tough issues, refusing to decide them. Every single case brought to the courts must be resolved, and reasonably promptly. Every single case is important to the litigants, often beyond the litigants.

But that is not to say that we deserve a ticker tape Parade for every 20% increase in filings. Growing dockets challenges to be more efficient, to put 20th Century advances to work. And we are doing exactly that. Five years ago, incredibly, we still had rotary telephones in some New York City courts. Today I am pleased to say, the court system is well on its way to top- to-bottom automation and modern case management.

Clearly, our first priority must be to deal fairly and effectively with the cases that fill, and overfill, court calendars. We will continue to seek statutory reforms for litigation in the electronic age – like service of process by fax and email. We will continue to turn the spotlight on every aspect of our own operations, as evidenced this past year by our critical self-examination of criminal, family and housing litigation. We will continue to pursue every modern efficiency consonant with the delivery of justice—ADR, DCM, video conferencing, user-friendly processes, every alphabetic and programmatic combination that enables us to do what we do more efficiently.

The growing numbers present another challenge—not simply to do what we do more efficiently but also to find ways to do what we do differently. We know just from counting cases that our largest increases are in Criminal Court and Family Court. Over the past five years those dockets alone have nearly doubled, last year approaching two million new filings. It can't be that one in every nine New Yorkers is litigating in Family Court or Criminal Court. So we also know just from counting cases that we must be recycling many of the same people through those courts.

And we know that many of those cases are driven by substance abuse: drugs, crime, jail; drugs, crime, jail—a deadly but familiar drumbeat.

The challenge, then, is for the courts not just to count cases but to make sure that every case counts, to take a leadership role in bringing together other parts of the criminal justice system and the child welfare system in an effort not merely to briefly interrupt but to permanently end the human recycling.

Already we have benefitted from efforts to bring together other justice system participants. Last year, for example, we together reduced arrest-to-arraignment times in the New York City Criminal Court to their lowest level in years despite record-breaking "quality of life" arrests. And through another collaborative effort, last Spring the New York Family Court completed 2,100 adoptions, again a record—in both instances forging permanent alliances that assure success like these will continue.

This sort of collaboration is at the core of highly innovative programs like the Midtown Community Court in Manhattan, working with the community to address the impact of low-level crime on neighborhoods; and Domestic Violence Courts, now expanding throughout New York City and upstate, courts which serve as the hub for a coordinated response to the scourge of family violence.

We currently have eight cutting-edge Drug Treatment Courts all across the State that, instead of short, successive jail sentences, offer a fresh approach to the problem of drug-addicted, nonviolent offenders—not at all soft on crime but very smart on crime. We even now have Family Drug Treatment Courts in New York and Suffolk Counties, which offer substance-abusing parents charged with neglect intensive treatment services and enable judges to make earlier, better-informed decisions about children's best interests.

All of these programs represent a collaborative effort to use the coercive power of the courts—like the power to incarcerate and the power to remove children from the home—to stop the deadly drumbeat, to change outcomes, to help end the recycling of human beings through the courts. At our last Drug Court graduation, Judge Traficanti told me that would either have to stop attending these events or learn how to cry in front of 200 people. I know the feeling. It is a moving and gratifying experience to attend these graduations and hear long-time substance abusers say "I wasn't just arrested, I was saved." Moving and gratifying especially as Chief Judge of a court system spearheading creative new approaches to our growing dockets.

But make no mistake. Initiatives like the Midtown court, the Domestic Violence Courts and the drug treatment courts don't just benefit the participants in the courts. They benefit society in general. Our programs, fully open for viewing to the public, offered tangible proof that justice can and does have a positive impact on the families and communities throughout New York.

As these programs flourish, we continue to seek a new framework for our growing criminal caseloads. I am more than ever convinced that the time has come to begin a comprehensive review of our criminal statutes. More than three decades of passed since New York last undertook a wholesale recodification of its criminal laws. During that period, there have been

major shifts in the criminal justice landscape, including spiraling case filings, and far-reaching developments in law enforcement strategy and technology. At the same time, statutes have piecemeal been interpreted by the courts and amended by successive legislatures.

Consequently. Outdated procedures – our current speedy trial and discovery provisions, to name just two – are no longer promoting, and are perhaps even sorting, the efficient disposition of an ever-increasing docket of criminal cases. Similarly, many of our sentencing laws, particularly are tough, mandatory drug sentencing laws applied to nonviolent offenders, have proven less than effective in achieving their objective, and the cost has been very great.

To address compelling concerns such as these, I urge that we again convene a Temporary State Commission to undertake a thorough review of our procedural and substantive criminal statutes in light of modern realities.

But recodification is a long-term project, and should not determine needed reforms today. For our part, we will immediately take steps to ensure more effective processing of criminal matters beginning with the "culture of unreadiness" that grips a number of our criminal courts, particularly in New York City. Date set for hearings and trials frequently are not taken seriously by the participants, with attorneys unprepared to proceed and successive adjournments routinely granted.

Shortly we will join with the New York City District Attorneys, the City Criminal Justice Coordinator, the Legal Aid Society, the private defense bar and others to announce the results of our trial readiness project. Established in the past year to evaluate how felony prosecutions in New York City can proceed to trial more expeditiously, the task force will create pilot programs including earlier discovery by prosecutors, prompt pretrial motions by defense counsel, strict deadlines for please, and fixed dates for hearings and trials. These measures are yet another example of an effective collaboration to resolve criminal justice problems.

And while all of these efforts continue, there is even more we can do, more we should do, cooperatively, collaboratively, all three branches of government together, in the area of Alternatives to Incarceration for the nonviolent juvenile and adult offenders who today flood the courts and fill the jails. By bringing together leaders and all three branches of government to focus on alternatives to incarceration, we can be a potent partnership for change, changed outcomes, change behavior. We've shown that in so many other ways.

Perhaps nowhere in the court system as our effectiveness in achieving change been better demonstrated than in my next subject: jury reform.

I rarely go anywhere these days without someone mentioning jury service: why should today be different? As I've discovered, jury experiences make far better dinner party conversation then great golf shots or gall bladder surgery.

Our jury program officially began in September 1993, with the appointment of The Jury Project. Amazingly, they delivered a blueprint for reform only six months later, in March 1994. So in a

sense we are making another anniversary today: four years during which a cultural revolution has gotten seriously underway in New York State. Many other states of sin started similar programs.

I don't think the term "cultural revolution" is too strong to describe jury reform. In New York State, we call about 500,000 people a year for jury service. But an actual fact the jury system – working as it should end in some way touches everyone – every public and private employer, every employee, every family. Long-standing tradition in this state insulated huge numbers from jury service, either because they were automatically exempted by statute or because they could, with little effort, simply exempt themselves and avoid the ordeal. No, "cultural Revolution" is not too strong a term to describe jury reform. Meaningful reform requires changing practices but, even more, it requires changing attitudes – court attitudes, lawyer attitudes, public attitudes.

I'm pleased that the Judiciary led the way, but in truth no change could even have begun without Governor Pataki and the Legislature, most especially Senate Majority Leader Bruno and Speaker Silver. The court system could, and did, streamline procedures, spruce up facilities, put our personnel through public awareness training, and on and on – none of it easy. But it took the courageous legislative/executive act of removing the boulder of automatic statutory exemptions to start the mountain moving.

Within the courts, we have been working feverishly, with the bar, to capitalize on that courageous act, which has brought tens of thousands of first-time jurors into court. That's hardly an unselfish act on our part: we can't afford to miss 500,000 opportunities a year to build bridges to the public, to show the public firsthand that our courts really do function well.

The addition of so many "first-timers" has enabled us to spread the burden of jury service more equitably—it's now one day/one trial most everywhere throughout the State. We can better serve peoples convenience with adjournments, even telephone adjournments. At the courthouse, facilities are cleaner, orientation is better, more is explained, jury selection is swifter, pay is higher. And always with the juror's perspective in mind, we have at least two dozen brand new ideas on the table – altogether a thoroughly creditable start on a cultural revolution.

But we need more courageous acts on the part of all three branches of government and the bar, working cooperatively, to realize the full promise of jury reform. Of the many called, too few are chosen.

On the criminal side, we need to reduce peremptory challenges by half. New York automatically, in every criminal case, by statute allows each party up to 20 peremptory challenges, meaning that for no reason at all, many more people end up as rejects than his jurors. With so many peremptory challenges, obviously a lot more people have to be called and questioned. And mischief occurs. With that many challenges, people can be struck simply because they are educated. They can be struck for illegitimate reasons, like race or gender. Many criminal convictions have been overturned because of that sort of manipulation. We need to end the manipulation, and we need to get more of the people onto juries. Reducing peremptory challenges would go a long way toward those objectives.

Similarly, on the civil side, we need to take some of the financial profit out of long delays before settlement. Right now it pays to drag a personal injury case slowly through the courts. Even if the ultimate intention is to settle, no interest accrues until the date of judgment. We need a statute moving up the date when interest starts to run. On a recent tour of the Civil Court in Manhattan, I met a pair of young lawyers – one for the plaintiff, one for the defendant – who had five jurors closeted in a windowless room and told me, quite matter of factly, that they were waiting only to choose the sixth, and then they would settle the case. Wrong! Terrible! An insult to jurors! An embarrassment to the system! Again, taking some of the profit out of this widespread practice wouldn't end the abuse. But it sure would help.

This year we also are concentrating on a group of yours who service, until now, has been largely ignored – grand jurors. Grand jurors usually are required to serve four weeks at a time, often in inadequate facilities, often waiting around to hear evidence. The newly appointed Grand Jury Project – Statewide judges, prosecutors, defense attorneys in court officials – will propose concrete recommendations for improving the grand jury experience.

But, again, we don't need to wait to make the system fairer for all jurors who end up serving long terms. Current law provides the same two- to four-year exemption from being recalled, whether a juror has actually served two days or two months. Fairness supports new legislation, originally suggested by a juror and now proposed by the court system, that would provide significantly longer periods of exemption after lengthy jury service.

I feel proud of New York's leader ship and distinction in the area of jury reform, and then so many others as well. Visitors from around the country want to replicate our Midtown Community Court, which has helped to turn back the erosive tired of low level quality of life crime in Midtown Manhattan. Frequently we welcome out-of-state visitors to study our exemplary Commercial Division of the Supreme Court, now and its third year of operation in New York and Monroe Counties – a model business court appropriately situated in this world commercial capital. We are proud of New York's Children's Centers—a unique Statewide network of 22 centers offering litigants drop-in child care as well as vital connections to Head Start and other services. In so many ways the New York court system's distinctions are a point of pride.

One distinction, however, is most definitely not a point of pride – quite the reverse. We have the distinction of having the most cumbersome, complicated trial court structure in the entire country that we have the nerve to call the unified court system. The disunified court system at least would be truth in naming. We have the distinction of offering New York litigants a maze of nine separate trial courts: City Courts, Civil Courts, County Courts, Courts of Claims, Criminal Courts, District Courts, Family Courts, Supreme Courts, Surrogate's Courts—eleven if you count the Town and Village Justice Courts, twelve if you count the Housing Courts—each with its own boundaries and hurdles, each with its own personnel structures and back offices. That costs New York tax payers a lot of dollars and causes New York litigants a lot of frustration.

A single family, already in distress, could be litigating divorce in Supreme Court in child custody in Family Court, with duplicative, even inconsistent results. Worse yet, a litigant could be entirely in the wrong court, or only a little bit in the wrong court. Even worse yet, a litigant could

be litigating the right trial court to be in, and have to start all over again. Does this make a bit of sense? Of course not. Every Chief Judge before me, every good government group, every study commission, every editorial board and bar association, has supported simplification of our trial court system.

This year we have an opportunity to bid ourselves of New York's dubious distinction, by consolidating our trial courts into just two-- a Supreme Court and a District Court. For the first time we can make Family Court into a front-rank court, at the Supreme Court level, hearing all family matters. And Housing Court, which annually decides hundreds of thousands of cases profoundly affecting New Yorkers, cannot last become a real, constitutional court.

But we can't do this alone. Because the structure of the courts is set by the State Constitution, court simplification requires passage by two successive Legislatures and approval by the voters. Passage this year could enable us to enter the 21st century with a court structure that will make sense to manage, and even more importantly, will make sense to the public.

Just four years ago, we joined together to initiate long-needed jury reforms. Quite frankly, no political realist ever dreamed that possible. But we did it. Let's do it again! Let's give New York's taxpayers, New York's business community, New York's families, New York's litigants, New York's citizens a court structure that is as simple and understandable as we can make it.

Chief Judge Breitel, a staunch advocate of trial court simplification, some years ago said that "court reform is for the long-winded." I believe I have amply demonstrated today – if not over the last five years – that I am well suited to the task. So I've given you the long-winded version of The State of the Judiciary, centered on fair and effective case resolution, modern efficiency throughout our operations, collaboration and innovation, and perhaps most important of all – the insight that drives our reforms – putting ourselves in the shoes of the citizenry, viewing what we do from the perspective of the public we serve. So many of our initiatives – like jury reform, court simplification, efficient user-friendly procedures, civility standards and other lawyer measures, efforts to ensure the availability of legal services and broaden access to the courts – reflect this most basic truth: that even a modern, innovative court system can't succeed without the respect of the public. We want to be sure we continue to earn and enjoy it.

Having given you the long version, I'd now like to conclude by giving you the short version of The State of the Judiciary. The State of the Judiciary in the State of New York is good. Very good, and definitely getting better.