State of the Judiciary
Chief Judge Judith S. Kaye, New York Court of Appeals
Message to judges and lawmakers
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THE STATE OF THE JUDICIARY 2002: WE ARE STRONG TOGETHER

INTRODUCTION

I have never before given this annual message a theme or title, but this time one leaped off the page: We Are Strong Together. And indeed we are.

This year my State of the Judiciary address takes place in a courthouse in transition, located in a world in transition. I'd like to start with our courthouse renovation, which is easier for me to explain than the world situation.

This magnificent structure, built in 1842 for State offices, was first renovated in 1916 to house the Court of Appeals, and in the early 1950's was again remodeled to meet the Court's needs. Now, close to 50 years later, we begin another process of preservation, restoration and modernization – not of this handsome courtroom, which will remain essentially unchanged, but of other parts of the facility that have aged less gracefully. It's something we think about once every half-century or so.

And in a sense this renovation, which will pose the Court of Appeals to meet the challenges of the future, brings us back to the world situation, particularly the tragedy of September 11, a brutal attack on the City and State of New York, on all our people, our institutions and our values. Now more than ever, with the world in turmoil, there is a special resolve to go forward with plans, not to capitulate to terrorists but to build for the future of America, to keep our nation strong, a beacon of freedom, opportunity and justice. Now more than ever, it is important that we reaffirm our faith in the future of America and American justice.

No one feels this more deeply than our honorees today, heroes every single one of them – the valiant court officers who raced to Ground Zero to evacuate the Court of Claims and to save lives, and the families of three beloved officers who did not return – Captain William Harry Thompson, Senior Court Officer Thomas Jurgens and Senior Court Officer Mitchel Wallace. We mourn with them, with all our court family, and with people the world over who also lost loved ones.

It remains remarkable to this day that despite personal dislocation and devastation, despite the lack of public transportation and telephone service, and despite the smoke and smell of Ground Zero that day and night hovered over lower Manhattan, our courts there reopened immediately, a tribute to the sheer determination of our people, many of them here today. Their hearts could be broken, but never their spirit.

I extend thanks to the court officers, to all of the court personnel, and to the entire Judiciary of the State of New York, beginning with the Presiding Justices, our tireless Chief Administrative Judge Jonathan Lippman, his Deputies and the Administrative Judges, for their extraordinary efforts all year long. Despite the horrors of September 11, still the courts of the State of New York, with among the heaviest dockets in the entire nation, resolved more than three million

cases in the year 2001 – a phenomenal achievement. And I add a special tip of the hat to my superb Court of Appeals colleagues – Judges Smith, Levine, Ciparick, Wesley, Rosenblatt and Graffeo – for what in my own experience has been a banner year for this Court, promptly and prudently settling law and protecting rights. The dedication and productivity of the New York State courts, in good times and in bad, are truly amazing.

This has also been a shining hour for the New York Bar, whose outpouring of volunteer services since September 11 reflects the highest standards of the legal profession. Together with the Bar, from Day One the court system focused like a laser beam on ways to keep our Houses of Justice functioning, as well as to help others afflicted by the disaster, like families in need of special court services, and displaced lawyers – 1400 of them with offices in the World Trade Center, 17,000 with offices in the Frozen Zone, their records destroyed or inaccessible. Tribute is due as well to the indomitable spirit of New Yorkers who in those dark days showed up to serve as jurors, determined to keep our courts functioning, undaunted by fear, uncertainty or the difficulty of reaching the courthouse. What a display of cooperation and commitment to our system of justice we saw in the weeks following September 11.

COURTS IN THE AFTERMATH OF SEPTEMBER 11

While our patriotism and commitment to American justice are undiminished, we know that we live in a different world today. Already there is visible change at our courthouses, with stepped-up security, even new routines for opening the daily mail. We hear of a decline in the economy, and a rise in unemployment, business failures, substance abuse, homelessness. We hear of civil rights concerns and environmental impacts of September 11. The need for sacrifice and belt-tightening is on everyone's mind – and surely on ours. I pledge the Judiciary to fiscal austerity as we all work together to eliminate inefficiencies, to renew and rebuild.

The challenges ahead may be uncertain in this changed world, but one thing we know for sure: what is in the news today inevitably is in the courts tomorrow. So, as a court system, how do we best prepare ourselves for tomorrow? How do we translate the painful lessons of September 11 into sound court management for the future?

A National Summit

Early last year the court system convened what we billed as the world's first-ever Jury Summit, bringing together approximately 400 jury experts from around the nation to focus on improving this vital facet of our justice system. One lesson we learned from the Jury Summit is that a national conference not only advances the national dialogue and is helpful to others, but also is enormously useful to us here in New York.

I therefore lead off my list of initiatives for the new year by announcing our plans for another summit in New York City: "Courts in the Aftermath of September 11." And while I will take great pride in showcasing for the nation what the New York courts accomplished, I have every confidence that once again we will be a major beneficiary of our summit conference.

Volunteers in the Courts

Already we know that the courts can benefit from one September 11 response: volunteerism. Everyone was eager to help – giving time, services, food, money, even

blood. Across the nation, we witnessed an extraordinary sense of giving. Especially now we need to foster that spirit in the courts, for lawyers and nonlawyers.

We have long had isolated volunteer programs in the courts, like mediation services and Court Appointed Special Advocates for children. We are proud this year to launch a promising new program to provide volunteer budget counselors to tenants facing eviction in the New York City Housing Court, an idea applauded by both landlord and tenant organizations. And we have enjoyed the volunteer assistance of organizations such as the Fund for Modern Courts and the Vera Institute.

But September 11 showed us that much more is possible. To make the most of what we already have, and to tap the vast potential in this area, we will establish an Office of Volunteers in the Courts to coordinate and expand existing programs, and identify new opportunities for lawyer and nonlawyer volunteers. I can think of no better time for this initiative.

IMPROVING ACCESS TO THE COURTS

So many of our efforts focus on increasing access to the courts, and access to justice. Greater access means many things, like providing more interpreters, assisting self-represented litigants, enlarging the jury pool. Greater access also means that individuals can more readily pursue their legal rights, that their entitlement to equal justice is not thwarted

by lack of money, and surely not by barriers erected by the courts themselves.

In this most fundamental sense, I think we continue to fail the public. The very structure of our court system – a tangle of at least nine separate entry courts – is an obstacle we place in the path of litigants. Especially at a time when all government must find ways to streamline, we can no longer cling to this cumbersome court structure.

Court Restructuring

We took a major step toward simplification last year with Integrated Domestic Violence (IDV) courts, a pilot program based on the concept of one family/one judge. Victims of domestic violence, already in distress, face the added burden in New York State of litigating in several separate trial courts – typically, Family Court for child custody or visitation, a criminal court for an assault, Supreme Court for a matrimonial matter. The IDV court sensibly puts the problems of one family before one judge, who is then better able to deal with all the issues.

After months of hard work, three IDV courts are now up and running – in Rensselaer, Westchester and Bronx Counties – with three more to open this year. That more than 110 families are already before the Bronx IDV court – barely three months after its opening – is ample evidence that the idea is sound in practice as well as principle. Imagine: 110 consolidated cases before one judge, instead of 220 or 330 or more separate cases splintered among several courts, multiplying and duplicating the work of judges and court personnel. Plainly better for the families, plainly better for the courts, plainly better for the taxpayers.

The IDV courts are an important step toward improving the quality of justice that we provide to families victimized by domestic violence. But let's face it. We are working within the constraints of an outdated court structure that is confusing, frustrating and inefficient for our

citizens seeking access to justice and impedes our ability to modernize the courts. Back-dooring critical reform is no way to proceed. We need constitutional reform to simplify the system.

Today, I am announcing a new proposal, which brings within Supreme Court jurisdiction domestic violence matters that are now scattered among multiple trial courts. Not only felony domestic violence cases, but also virtually all domestic violence cases now handled in New York City Criminal Court and City, District and Justice Courts around the State, would be heard in Supreme Court – elevating these cases that threaten the safety and well-being of New Yorkers to the highest level of attention and resources.

Building on the concept underlying the IDV pilots, the reconstituted Supreme Court would have a special division to hear proceedings involving families and children, including domestic violence cases, matrimonial proceedings and matters now adjudicated in Family Court, so that cases involving the same parties are handled by a single judge, expert in domestic violence and family issues. From orders of protection to child custody determinations to divorce decrees, related matters would be handled in one courtroom, promoting not just informed decision making but also efficient case management, finally and forever changing the way we treat families and children in our justice system.

The constitutional amendment we will propose is the single most tangible action that can be taken to protect New York's families from the scourge of domestic violence. Our proposal also will result in significant, verifiable cost savings. The simple truth is that we can't afford to ignore a proposal that minimizes distress, duplication and dollars.

Public Access to Court Records

I next turn to another kind of access to courts – access to records, today a hot, hot issue in court circles.

With rare exception, our courtrooms are wide open to the public, and records of court proceedings are public records. Until recently, access to court records was limited by the need to physically visit the courthouse and patiently plod through voluminous files, often in dusty basements. With today's technology, however, it becomes possible to access information at home, 24/7, from a personal computer.

The benefits are obvious: the public can easily learn about courts from our Website; teachers can download instructional materials; lawyers and litigants can retrieve court calendars and decisions without traveling to the courthouse; in some places around New York State, papers can be filed electronically. In the 21st century, this is as it should be. But consider the next step: within the coming years we also will be making case records available electronically. Given the personal information routinely kept in court files – information like social security and home telephone numbers, medical reports, tax returns, even signatures – the ease of electronic access from home or office, day or night, also presents gut-grinding confidentiality issues. Clearly, as we computerize these records, privacy considerations will have to be weighed against the right of access.

To help us find the correct balance, I am appointing a Commission on Public Access to Court Records. The Chair of our new Commission will be one of the country's preeminent lawyers on First Amendment and privacy issues, Floyd Abrams, a member of the New York City law firm

of Cahill, Gordon & Reindel and William J. Brennan Jr. Professor at the Columbia Journalism School. Our past Commissions, from the first Jury Project chaired by Colleen McMahon to the most recent Commission on Fiduciary Appointments chaired by Sheila Birnbaum, have been absolutely sensational. Under Mr. Abrams' leadership, and with Commission members reflecting all sides of the access issue, I am confident that once again our Commission will give us a definitive blueprint to guide us in critical decision making.

Access to Justice Initiatives

Yet another aspect of access to courts and access to justice concerns the poor. As we together prepare for the challenges of a new world, we don't need a summit, or a commission, or a crystal ball to know that this group is especially hard hit by economic downturns and rising unemployment.

It remains appalling to me as Chief Judge to know that study after study has found we are meeting only a small percentage of the civil legal needs of the poor, and to think that available services now may dwindle even further. It is appalling that New York's funding for civil legal services lags dramatically behind other States like New Jersey, Massachusetts, Maryland, Michigan, Ohio and Florida. To provide meaningful access to justice for all civil litigants, Deputy Chief Administrative Judge Juanita Bing Newton has already spearheaded a wide range of initiatives, like clinics for the self-represented; satellite offices, night courts, mobile self-help offices; and expanded alternative dispute resolution.

This year, to further these efforts, we will establish an Access to Justice Center, whose mission will be to take a fresh look at today's needs and identify new ways to meet them. Following a critical assessment of how civil legal needs of the poor are being met in New York, the Center will concentrate on promoting innovative ideas for the delivery of services, identifying permanent funding sources, developing related legislative proposals, and serving as a clearinghouse for ideas and information.

Even as this work proceeds, however, we simply must staunch the bleeding and raise assigned counsel fees. It has now been 16 years since these fees – $40 for in-court work and $25 for out-of-court work – were last increased. They are just about the lowest fees paid by any State in the nation. Governor Pataki, legislators, prosecutors and editorial boards, among others, have all recognized that this is an intolerable situation – but no one feels the daily impact more than the judges searching in vain for counsel to assign and the litigants desperately needing lawyers. The continuing failure to resolve this crisis has now generated significant litigation, with a federal court only weeks ago ordering that a substantially higher hourly fee be paid to attorneys assigned in certain Family Court matters.

Piecemeal resolution in the courts is plainly not the ideal way to proceed. Appropriate rate levels, procedures for implementing the increases and the means of paying for them are issues that should be comprehensively resolved by the policymakers. So let's deal with this now. Even in today's climate of austerity, raising these rates must be a priority. The assigned counsel crisis is undermining our capacity to function as a court system and, even worse, is threatening the very foundation of our justice system – our commitment to equal justice under the law.

PROBLEM-SOLVING COURTS

We depend so much on bringing people together to help us solve court problems, whether the post-September 11 challenges or access to court records in the computer age. My next subject again involves bringing people together to achieve better outcomes, but in an entirely different way: "problem-solving courts," or more precisely, a problem-solving approach to certain cases.

Cases in our system traditionally proceed by the adversary method – two sides represented by able counsel put evidence before a judge or jury, the judge declares the winner and the case ends. This process works well in the overwhelming number of cases in our court system – personal injuries, property losses, commercial disputes, constitutional issues. But where we know that the conduct that brings people into courts in the first place will likely just repeat itself as soon as the case ends – a drug addict, for example, committing crimes to support a drug habit – we've been asking ourselves: Isn't there a better way to do this? And our answer has been a problem-solving approach that seeks to change defendants' behavior, to turn their lives around, rather than simply recycle the same people through the courts again and again. Problem-solving courts bring together prosecution and defense, criminal justice agencies, treatment providers and the like, all working with the judge toward a more effective outcome than the costly revolving door.

In 2001, both the national Conference of Chief Justices and the American Bar Association endorsed the concept of problem-solving courts that New York has successfully modeled for nearly a decade, first with community courts – now in Midtown Manhattan, Harlem, Red Hook, Hempstead, soon in Syracuse and being replicated around the country – and more recently with drug courts.

Statewide Expansion of Drug Courts

Participants in our drug courts, unlike addicts in voluntary programs, tend to stay in treatment, and are far less likely to commit new crimes than defendants released from incarceration or on probation. This experience led our Commission on Drugs and the Courts, chaired by Robert Fiske, to recommend Statewide expansion, which is now being implemented under the able, impassioned leadership of our Director of Court Drug Treatment Programs, Deputy Chief Administrative Judge Joseph J. Traficanti, Jr.

In the first year of implementation, we made substantial progress building infrastructure. We created a Drug Treatment Institute, the first of its kind in the country, to ensure ongoing training; launched an Enhanced Drug Screening Project that will be a Statewide model for early identification of eligible offenders; and extended to more than half of our drug courts a system for rapid access to comprehensive information, the key to an offender's success in drug treatment.

We expanded to 43 drug courts, in 27 counties, and added more than 3200 participants – which brings to nearly 13,000 the number of participants since 1995. By 2003, we will have at least one drug court in every county, 40 of them family treatment courts, reducing the time children have to spend in foster care limbo, and nine of them juvenile treatment courts, zeroing in on the highly vulnerable teen population.

This was a good year for New York's drug courts, and we anticipate even better years ahead. But continued success would be advanced immeasurably if the draconian Rockefeller

drug laws were reformed. Aside from failing in their objectives, these outdated laws also hamper the drug court program. The unreasonably strict limitations on judicial sentencing discretion mean that many nonviolent offenders who are otherwise good candidates are not eligible for court-supervised drug treatment. I remain hopeful that people of good will and good sense will at long last resolve their differences and conclude this necessary reform.

MENTAL HEALTH COURT

This year we will apply the problem-solving approach to yet another area in which traditional methods of case resolution fail to offer effective resolutions for defendants or for society. In March, we will open our first Mental Health Court in Brooklyn for criminal defendants with mental illness. This will be the first such court in the country to handle both felonies and misdemeanors, and it will be developed as a joint project of the courts and the New York State Office of Mental Health.

Addressing both the treatment needs of defendants and the safety concerns of the community, the Brooklyn Mental Health Court will link defendants with persistent mental illness to long-term treatment as an alternative to incarceration. The court will apply the same operating principles that have proven successful in our drug courts, like early screening, close judicial monitoring and graduated sanctions and rewards to promote defendant accountability. Perhaps most significantly, we know that defendants with mental illness, like drug defendants, can face a range of problems that impede their success in treatment, including substance abuse, homelessness, joblessness and health problems, and our new Mental Health Court will therefore bring together the necessary service providers to deal decisively, and lastingly, with those problems.

THE COURTS AND THE LEGAL PROFESSION

I would like to turn from court programs to the subject of courts and lawyers. Over the last few years, the Bar and the judiciary, working together as partners, have made important strides toward strengthening professionalism in New York State.

We will continue along that path this year with several new initiatives.

Letters of Engagement and Fee Disputes

In its 1995 report, the Committee on the Profession and the Courts – the Craco Committee – found that disputes about fees were a major source of lawyer-client tension, and that most could have been avoided altogether if the parties at the outset had a clear agreement about their relationship. The Craco Committee urged that New York require the use of engagement letters to clarify expectations and obligations.

I am pleased to announce that, after a public comment period and with extensive input from the Bar, the Administrative Board of the Courts has promulgated a rule, effective March 1, 2002, requiring lawyers in New York, with few exceptions, to provide clients with written letters of engagement. The engagement letter will explain the scope of the legal services; the applicable fees, expenses and billing practices; and, where appropriate, the client's right to fee arbitration.

For attorney-client fee disputes that cannot be prevented, a Statewide fee dispute resolution program took effect on January 1. This program provides a fair, speedy alternative to

litigation. Hopefully, the combination of engagement letters and fee arbitration will reduce misunderstandings that benefit neither client nor lawyer, but simply tarnish the image of the profession.

Fair Campaign Committees

Concerned with the public image of the profession and the courts, last October the State Bar Association and the court system – as part of a nationwide effort – jointly convened Bar leaders from across the State to address the disturbing incidence of inappropriate judicial campaign conduct. I am especially grateful to Judge Rosenblatt for spearheading this effort.

The response from local Bar associations has been terrific. More than a dozen County Bar associations are now forming Fair Campaign Practices Committees that will secure candidates' pledges to campaign in a dignified and ethical manner. These Committees also stand ready to resolve campaign disputes, thus reducing the acrimony and negativity that can erode the dignity of the judicial system.

Fiduciary Appointments

On the subject of tarnished images and diminished dignity, two years ago my State of the Judiciary address ended on a low note. A letter written by two Brooklyn attorneys had just become public, detailing the influence of politics on judicial appointments of guardians, receivers and the like. This year the news is better.

We now have two comprehensive reports. First, the investigative report of our Special Inspector General, Sherrill Spatz, documents widespread violations of the fiduciary rules and a host of other problems that undermine public trust in the process. The second report, prepared by our Commission on Fiduciary Appointments – far more heartening – makes wide-ranging recommendations to address these problems, including proposals to ratchet up qualifications for appointments and oversight of them.

Even before receiving the Commission's report, we had put a new system in place to ensure greater disclosure of information on appointments and compensation of fiduciaries. We are also moving ahead immediately on the Commission's operational recommendations, including administrative support offices to assist judges handling guardianship matters. Other Commission recommendations that require rule changes are being circulated for public comment.

While fiduciary appointments are only a small part of the business of the New York State courts, and while thousands of fiduciaries have performed honorably and admirably, often with little or no pay, abuses hurt people and they damage public confidence in the courts. As we implement the Commission's recommendations, I have every hope that we will end the abuses and restore public confidence.

OPERATIONAL INITIATIVES

Even as we redouble our efforts to achieve court restructuring and to succeed in reforms I have highlighted, our central focus remains on the daily business of the courts: resolving cases. Always our first priority is to find new and better ways to manage our massive caseloads within the constraints of our current system.

Case Management Initiatives

In family, civil and criminal courts across the State, 2002 promises new and expanded initiatives to promote timely and effective case resolution. I mention just a few. In Family Court, we will within the coming weeks offer night court sessions throughout New York City to accommodate working litigants. Additionally, because our Model Courts in New York and Erie Counties have significantly expedited permanency for children – reducing time spent in foster care – we will this year add Model Courts in Queens, Bronx and Kings Counties.

On the criminal side, our arrest-to-arraignment program in the Criminal Court is a continuing success, enabling the court to meet its rigorous obligation to arraign defendants within 24 hours. We will shortly announce a comprehensive video-conferencing initiative to expedite criminal proceedings.

Building on a successful Kings County pilot, defendants with cases pending in Supreme Court anywhere in New York City will soon have the option of appearing for routine court proceedings by teleconference. This will go a long way toward eliminating the delays and other difficulties that have plagued us for years.

On the civil side, the Commercial Division will be expanded to Albany County, and we continue to implement and monitor the Civil Justice Program, which was briefly slowed by the impact of September 11. Even with this setback, our Statewide Differentiated Case Management program continues to bring cases to trial in a more timely fashion than ever before, and we expect shortly to move to the next phase of the Civil Justice Program by addressing the large number of cases involving the City of New York. In the matrimonial area, reforms continue with a newly revised, simplified uncontested divorce form packet, and a comprehensive training program for judges and court personnel newly assigned to dedicated matrimonial parts.

Jury Reform

Talk about bringing people together to solve problems – I know of no better subject than jury reform. Remember the old days? The norm for jury service was two weeks at least, with callbacks every two years like clockwork. What a stark difference today, thanks to our many collaborators in reform. With the abolition of all automatic exemptions, vastly expanding the jury pool, today the typical term of jury service Statewide is one day or one trial, and the minimum period between callbacks is four years.

Unquestionably much has been accomplished – more every year. Topping our list in 2001 was the end of automatic sequestration in criminal cases. Deliberating jurors no longer will have their lives disrupted by becoming automatic overnight guests of the State. New York now joins every other State – and the rest of the civilized world – in giving the trial judge the discretion to decide whether sequestration is necessary. We celebrate as well the dawn of automated call-in systems in New York, Kings and Bronx Counties, joining many other counties in allowing jurors to telephone ahead to find out whether they are needed in court the next day, or can go about their business. Redesign of our jury summons now permits wider use of automated attendance scanning to replace those annoying roll calls for jurors.

But as we applaud all of the many advances, we know that there is still a great deal to be done. Perhaps what rankles most is that 82 percent – 82 percent! – of jurors summoned to our

courthouses each year are dismissed during voir dire without being empaneled. And of the jurors actually sworn in civil cases, only a small percentage actually serve to verdict, because cases are settled soon after the jury is sworn. What a waste of time and resources. In the coming months we will be taking a good hard look at why so few citizens called, and paid, to serve actually get to participate as jurors, and what can be done to promote better juror utilization.

CONCLUSION

I now come to four of the most beautiful words in the English language: "finally and in conclusion."

I began this report on the Judiciary with reference to our courthouse renovation, and I come full circle, back to bricks and mortar, with mention of new courthouses in Orange, Rockland and Erie Counties, as well as welcome groundbreakings in New York City, Westchester, Onondaga and Albany Counties. Given the dilapidated condition of some of our courthouses, we rejoice in this news, because both the public and the judicial process deserve decent court facilities. We were delighted, earlier this year, to break ground with Governor Pataki for a Judicial Institute at Pace University Law School in Westchester. This will be a facility where, year round, in cooperation with the Law School, we can offer training and education to our judicial and nonjudicial personnel to meet the heady challenges of tomorrow.

Welcome and important as new facilities are, our most precious resource by far are the people who make justice a daily reality in the State of New York, none more dedicated than the exceptional people we honor today. In one sense I apologize to them for so long delaying this moment. In another sense I know they too celebrate the good news and hope for the success of every initiative that improves our service to the public. And I know that they share with me deep down pride in the New York courts, a commitment to building together for the future, and a resolve to make our justice system as secure as humanly possible.

I know this because of their performance at our courthouses every single day. I know this because, in the days and weeks following September 11, I saw them, red-eyed and somber, racked with worry and grief for Harry, Tommy and Mitch and their families, but nonetheless on the job, securing the Manhattan courts so that our justice system would not miss a beat. And I know this because of their performance on September 11 when, instinctively and with no thought of themselves, they rushed from places of safety to 5 World Trade Center and into a burning building to evacuate the Court of Claims and to save lives. On September 11, the very worst of humanity came together with the very best of humanity – firefighters, police officers, court officers, the bravest, the finest, the smartest, the truest. I have heard and read so many of our court officers' heartrending stories about that day, stories of their face-to-face encounters with death, stories of lives saved and lives lost. For them those stories will remain unforgettable forever, as for us their bravery and loyalty will remain unforgettable forever.

We honor our heroes with words of praise and gratitude, but we are grateful, and proud of them, beyond words. Above all, we honor our heroes, and the memory of Harry, Mitch and Tommy, by remaining true to the values for which they risked, and gave, their lives.

The attack that so savagely wounded America on September 11 has in another sense united us as never before. God bless America, land that we love. And we are incredibly strong together,

aren't we? Strong as a nation, strong as a court family, strong as a court system. We cannot know what challenges lie ahead in this changed world, but September 11 has shown us beyond a shadow of a doubt that, together, we can surmount them.