

The State of Our Judiciary 2018  
Chief Judge Janet M. DiFiore, New York Court of Appeals  
Message to judges and lawmakers  
February 6, 2018, at Court of Appeals Hall, Albany, NY

## **I. Introduction**

Welcome to Court of Appeals Hall and the 2018 State of Our Judiciary.

For more than 30 years, my predecessors in this office – Chief Judges Jonathan Lippman, Judith Kaye and Sol Wachtler – have used this annual address to update the public and our partners in government on the priorities of the Judiciary and the challenges we face in administering justice.

In this State of Our Judiciary Address, I will have the pleasure of summarizing for you the considerable progress we have made to improve our court system; the identified areas of concern where we are working hard to overcome difficult challenges; and the many reforms we have implemented to address what I believe to be a most important goal for us: building a dynamic and flexible court system capable of responding promptly and effectively to the changing dynamics of our caseloads.

Indeed, the delivery of justice must keep pace with the needs of our modern society if we are to maintain public trust in the rule of law and the people’s confidence that our courts remain, in the words of our first President, “the firmest pillar of good government.”

## **II. The Excellence Initiative: A Progress Report**

At my investiture as Chief Judge in February of 2016, I announced the Excellence Initiative. By now, you are all aware of – and many of you are actively engaged in – our systemwide campaign to promote efficient court operations and support high quality judicial decision-making and court services. Our overarching goal is simple, and it goes to the very heart of our constitutional obligation – to fairly and promptly adjudicate every case that comes before us.

As you will hear today, we are making real progress to improve promptness and productivity and the overall quality of justice in every corner of our State. Our court leaders, our trial and appellate judges and our court staff are working hard, and with a strong sense of purpose, to carry out their responsibilities and build a foundation of excellence to support our ability to deliver fair and effective justice outcomes to the litigants who appear before us. Thanks to their individual and collective efforts, the state of our Judiciary continues to grow stronger with each passing day.

So after almost two years of sustained, intensely-focused attention on court operations, I am pleased to report the following: outside New York City our caseloads are being resolved more efficiently and promptly, and our backlogs are shrinking rapidly; in New York City, we have made significant progress in many of our highest volume courts, and our leadership team has made operational changes to set the stage for further improvement in those courts where we need to do better. More broadly, we are poised to introduce important systemic reforms to make our entire court system fairer, more efficient and more accessible.

Let me begin with our criminal courts, where justice delayed harms everyone – crime victims waiting for justice to be done, prosecutors who watch cases grow stale as witnesses move away and memories fade, and defendants, presumed innocent under the law, who far too often languish in jail because they can't make bail, while their families suffer the consequences and society bears the heavy costs of their incarceration.

### **A. MISDEMEANORS**

Last year, the lead item in the State of Our Judiciary was the problem of delays in adjudicating misdemeanor cases in the New York City Criminal Court. I pledged that we would move aggressively to change this dynamic by managing cases more actively, eliminating unproductive appearances and wasteful adjournments, and increasing trial capacity.

Our focus has been trained on resolving the oldest cases in our inventory by re-working court processes and reassigning judges to expand our trial capacity. I am pleased to report that we have made excellent progress in reducing the misdemeanor inventory throughout the City. Since the Excellence Initiative was launched, we have reduced the number of our oldest misdemeanor cases by 80% in Manhattan; 71% in Bronx County; and 61% Citywide.

And we have made meaningful progress outside the City as well, with a 28% reduction in the number of misdemeanors pending over standards and goals in our City and District Courts statewide.

Thank you to Supervising Judge George Grasso in Bronx County, and Judge Tamiko Amaker – the Supervising Judge in New York County until last December – now our Administrative Judge of the New York City Criminal Court, and to the many District and City Court Judges who have dedicated themselves to clearing backlogs in their courts outside the City.

### **B. FELONY CASES**

We have also made noteworthy progress in reducing backlogs in our felony cases. Outside New York City, the number of felony cases over standards and goals has been reduced by 53% overall since we started the Excellence Initiative, with the 9th Judicial District achieving an extraordinary 91% reduction, together with impressive reductions of 77% in the 7th; 65% in Suffolk County; and 56% in the 4th – all but eliminating the backlogs in those areas.

Thank you to our leadership team: Judge Alan Scheinkman in the 9th – our new Presiding Justice of the Appellate Division, Second Department; Judge Craig Doran in the 7th; Judge Randy Hinrichs in Suffolk; and Judge Vito Caruso in the 4th.

In New York City, eliminating our felony backlogs has been more challenging, due largely to the sheer volume of cases in those courts. Nonetheless, we are making encouraging inroads. In Bronx County, the number of felony cases pending over standards and goals is down by 28% since the start of the Excellence Initiative; Queens County is down by 15%; and in Kings County that number is down by 16% in just the last year. Thank you to Administrative Judges Robert Torres, Joseph Zayas and Matthew D'Emic.

In 2018, we are determined to aggressively build on this progress, change what has become a culture of delay in too many jurisdictions, and accelerate our momentum Citywide, including in

Richmond County, under our newest Administrative Judge, Desmond Green, and in Manhattan, where Administrative Judge Ellen Biben has been reorganizing operations and working with District Attorney Cyrus Vance and the defense bar to foster earlier case dispositions – more on that topic later.

### **C. SUPREME COURT CIVIL CASES**

On the civil side, court congestion and delay make litigation more expensive, which limits access to justice for working families, people of modest means and small business owners. Delay harms people seeking redress for their injuries in tort actions (the largest segment of our civil caseload), matrimonial litigants, and so many others who often feel compelled to forego meritorious claims, accept lower settlements or even enter into disadvantageous settlements just to avoid or put an end to the personal and financial burdens of litigation. Delay in the civil courts harms our economy as well, adding to the costs and uncertainty of doing business in our State, and creating an unwelcome climate for investment, economic growth and job creation.

For these reasons, we have made it a very high priority to speed the civil litigation process and eliminate backlogs and delays. I am pleased to report that we are making progress.

Outside New York City, the number of cases pending over standards and goals has been reduced by 69% in Nassau, by 57% in the 3rd Judicial District, 49% in the 5th, and 37% for foreclosures alone in the 8th. This has been accomplished largely because our Administrative Judges in those Districts – Judges Thomas Adams, Thomas Breslin, James Tormey and Paula Feroletto, and their trial judges – are focused on proactive case management and using their authority and skills to move cases through the system with speed and purpose. This same approach has enabled the New York State Court of Claims, under the leadership of Presiding Judge Richard Sise, to substantially reduce the backlog of prisoner claims.

We have also made strides in much of the City, with reductions of 36% and 30% respectively in Kings and Queens Counties under the leadership of Administrative Judges Lawrence Knipel and Jeremy Weinstein. And in Queens, a county with 2.3 million residents, when we separate our foreclosure docket, only 6% of the civil cases are over standards and goals. That is among the very best in the State, and proof positive that high case volume and court efficiency are not mutually exclusive terms. Kudos to Judge Weinstein and the judges and their staffs in Queens County.

As you will hear later, Judge George Silver, our new Deputy Chief Administrative Judge for the New York City Courts, has brought with his appointment energetic leadership and smart, creative ideas designed to move our enormous New York City civil caseloads with more speed, less expense and, above all, enhanced quality.

### **D. FAMILY COURT**

The Family Court is one of the most impactful courts in our system given the nature of the work done there to assist children and families in crisis. The Family Court outside New York City continues to keep its eye on the ball, with less than 5% of its total pending caseload over standards and goals. That is extraordinary.

In New York City, following a number of highly publicized tragedies, we have experienced an increase of over 50% in the filing of neglect and abuse cases over the last two years. These are

among the most serious and complex cases adjudicated in the Family Court. Notwithstanding this dramatic jump in child protective filings, the overall number of cases pending over standards and goals is down 4% from the start of the Excellence Initiative.

That is not happenstance, but a reflection of the capacity we are developing to respond and adapt to changing conditions and trends through innovative leadership that is focused, proactive and willing to “change it up” when necessary, and of front line judges who understand and feel the sense of urgency which attends their work.

Thank you to Administrative Judge Jeannette Ruiz and our Family Court Judges and staff for responding to difficult challenges in thoughtful, prompt and effective ways.

Across the board, in every court, we are determined to develop a management culture that spots emerging trends and responds to changing dynamics in smart, flexible, appropriate and efficient ways. Simply repeating the same process, year after year, decade after decade, is not acceptable. We have the experience, the talent and the skill to do better – to be proactive in our management; bold in our approach to problems; and untethered to past practices and structures that no longer serve us well in meeting the needs of our litigants.

As you have just heard, the numbers are encouraging. The progress achieved to date proves that smart, agile operational and management support for our Judges is the key to their ability to perform their constitutional responsibilities effectively, efficiently, and in ways every New Yorker would expect.

We know we have a lot more work to do, and a long way to go, and as I said last year, we will not be dancing in the end zone until we achieve all of our goals. But I am supremely confident that our sustained commitment to a more muscular, proactive management philosophy will lead us to operational and decisional excellence.

Today, I am also pleased to inform you of some of the forward-looking initiatives we have introduced under the banner of our Excellence Initiative.

### **III. Criminal Justice**

Criminal justice reform is an absolute imperative for our courts on every level – from the quality of our decision-making, to the fairness and accuracy of the processes by which we do our work, to the elimination of an unacceptable culture of delay and procrastination that has evolved in some of our jurisdictions.

Let’s begin with the process, because any substantive reforms adopted in New York must be supported by a system that operates with maximum effectiveness and efficiency.

Outside New York City, our criminal court operations, as I noted earlier, are performing well. Inside the City, we face severe challenges given the enormous size of our caseloads. We know we have to think differently about how to balance our obligation to ensure speedy justice while achieving fair and just dispositions consistent with due process of law. And every player in the system – judges, prosecutors, members of the defense bar, institutional defense providers, and every City agency key to efficiency – must do better.

On any given day, almost 9,000 men and women are being held on Rikers Island. Too many of them are being held on low-level felony or misdemeanor charges, unable to make bail. Many pose no real threat to public safety. This is fundamentally contrary to the original design of our American criminal justice system – in which liberty is supposed to be the norm and pretrial detention a carefully limited exception. Moreover, the cost of incarcerating all these people strains the public fisc, to say nothing of the enormous indirect costs to our society when people lose jobs, homes and custody of children.

Clearly, we cannot continue down the same path we have followed for decades – not if we believe in the ideal of a criminal justice system where every person accused of a crime, whether rich or poor, is presumed innocent and guaranteed a fair and speedy process leading to a just outcome.

And so we welcome the proposed reforms recently announced by Governor Andrew Cuomo to overhaul our antiquated bail and speedy trial laws, and we look forward to working with the Governor, the Legislature and the entire criminal justice community to devise common sense solutions that will produce a more equitable and effective criminal justice system for our State.

The time for proactive change has come. We cannot simply stand by – content in the false confidence that we are doing all we can – processing case-by-case. We have to rethink and reorganize the way we are doing business. And there are ways to responsibly do that, without compromising either defendants' rights or public safety.

#### **A. SUPERIOR COURT INFORMATION (SCIS)**

When I spoke earlier about the greater success we have had in processing criminal cases outside New York City, some of you may have been wondering why that is. Volume, of course, is a major factor, with the City hearing 43% of the State's criminal cases, but another factor is the very smart and responsible way in which felony cases are resolved on a regular basis outside the City through the use of Superior Court Informations or "SCIs," whereby defendants waive their right to prosecution by indictment, as allowed by our Constitution. With SCIs, prosecutors engage in early case assessment and, critically, provide defendants with early, expanded discovery, giving them the opportunity to make intelligent, informed decisions about whether to plead guilty or put the People to their proof at trial.

There are a great many cases which, by the nature of their facts, can be resolved expeditiously, without the need for numerous appearances stretching out over many months and sometimes years. And the benefits of SCIs are obvious, allowing prosecutors, defenders and courts to conserve limited resources while giving defendants – who should be the focus of the process – the opportunity to obtain fair dispositions that enable them to pay their debt to society and start the rehabilitation process.

SCIs are significantly underutilized in New York City. The average time to dispose of a case by indictment in the City is 277 days, while the average time to dispose of a case by SCI is 120 days. In Westchester County, which I am very familiar with, the use of SCIs has been an enormous factor in reducing the total number of felony cases pending over standards and goals to a single-digit number.

I am pleased to report that this past December we boosted our judicial capacity in New York County – and in recent days in Kings and Bronx Counties as well – in order to pilot the increased use of SCIs. We are encouraged by the fact that the number of SCI dispositions in New York County rose by 50% in the pilot’s first month.

We are grateful for the support and thoughtful commitment of District Attorneys Darcel Clark, Eric Gonzalez and Cyrus Vance, each of whom has pledged to identify cases in which prosecution by SCI, and early discovery, are appropriate. We are grateful for the support and participation of the defense bar and our judges and staff, all of whom have committed to earnestly support the pilot in order to promote the imperatives of speedier justice, a fairer process for the accused, more efficient use of limited resources, and fewer defendants in pretrial detention in Rikers and local jail facilities.

Criminal justice reform has many moving parts, and this is an important one.

## B. ATTORNEY SCHEDULING CONFLICT SOFTWARE

Unproductive and wasteful court appearances are a source of frustration for every judge and participant in the criminal justice process. We are reducing the frequency with which hearings and trials must be adjourned and rescheduled due to scheduling conflicts on the part of defense counsel, whose heavy caseloads often require them to be in three places at once. Earlier this year, we installed new software in New York City that automatically displays when and where individual attorneys are scheduled to appear in court. This new case management tool will allow judges and court staff to schedule future trials and court dates without running into conflicts that create frustrating delays.

## C. CENTRALIZED ARRAIGNMENTS

In the last year, we have succeeded in implementing a significant legislative reform that will ensure that the right to counsel, one of our most cherished constitutional guarantees, extends to the arraignment of defendants on criminal charges.

To facilitate the presence of counsel at off-hour and weekend arraignments, we have piloted four new programs upstate – in Broome, Oneida, Onondaga and Washington Counties – counties where counsel at first appearance has in the past been difficult to ensure. By reworking our processes, we are making sure that the State is in compliance with its constitutional obligation to provide effective assistance of counsel while at the same time striving to accommodate legitimate concerns over the financial and logistical burdens that compliance creates for Town and Village Courts, prosecutors, public defenders and county governments.

Deputy Chief Administrative Judge Michael Cocomma and our Administrative Judges in the 4th, 5th and 6th Judicial Districts – Vito Caruso, James Tormey, who has been especially helpful, and Molly Fitzgerald – deserve credit and thanks for the plans they put together to optimize countywide resources and ensure that judges, defense attorneys and law enforcement personnel are all available and present at arraignment proceedings – evenings and weekends, in one central location – so that defendants can receive constitutionally guaranteed legal representation.

The most satisfying aspect of this initiative is that the presence of counsel at arraignment is reducing the number of cases in which bail is set. Again, in appropriate cases, responsibly releasing defendants back to their communities is less disruptive to defendants and their families, and in the end saves taxpayer dollars.

In light of our success with these four pilots, we have requested funding in our Budget to support our plan to establish additional Centralized Arraignment Parts this year – in Ontario, Warren, Otsego and Livingston Counties.

#### **D. INDIGENT CRIMINAL DEFENSE**

A fair criminal justice system requires a strong adversarial system, and I am proud that all three branches of government in New York State are working together to support our State Office of Indigent Legal Services as it seeks to extend the key terms of the Hurrell-Harring settlement – counsel at arraignment, caseload caps for attorneys, and improvements in the quality of representation – to each of our 62 counties. As Chair of the Board of Indigent Legal Services, I can assure you that Bill Leahy, our Executive Director, and his dedicated staff, are well on their way to ensuring that the funding authorized by Governor Cuomo and the Legislature is used as envisioned – to set the national standard for a properly-funded, high-quality public defense system.

#### **E. THE JUSTICE TASK FORCE**

Continuing with the theme of improving the fairness, effectiveness and accuracy of our criminal justice system, I want to focus on the work of the New York State Justice Task Force, which is dedicated to criminal justice reform and led by former Court of Appeals Judge Carmen Beauchamp Ciparick and Acting Supreme Court Justice Mark Dwyer. The Task Force has already generated an extraordinary body of reforms addressing the systemic causes of wrongful convictions, including expansion of the DNA Databank, greater access to post-conviction DNA testing by defendants, legislation requiring videotaping of custodial interrogations, improvement of identification procedures used by police and prosecutors, and admission of photographic identifications into evidence.

This past November, the Administrative Board of the Courts adopted a new rule that requires judges presiding over criminal trials to issue standing orders advising prosecutors and defense counsel of their professional responsibilities. The order addresses the prosecution's obligation to disclose exculpatory information, and defense counsel's obligation to provide constitutionally effective assistance of counsel, including what that obligation actually entails.

The order, colloquially referred to as the "Brady Order," addresses two identified causes of wrongful convictions: Brady violations and ineffective assistance of counsel. It is the first of its kind in any criminal court in the nation, and I want to thank Barry Scheck and Peter Neufeld of the Innocence Project for their wise counsel and support in helping us to achieve this significant reform.

Additional recommendations recently made by the Task Force – regarding attorney discipline and the proper use and understanding of the term "misconduct" to distinguish between good faith error and intentional wrongdoing, the circumstances under which lawyers and judges have an

ethical duty to report attorney misconduct, and implementation of enhanced training of disciplinary authorities to properly investigate attorney misconduct in the criminal context – are now under review and, where appropriate, will be converted into practice.

I want to thank the Task Force’s Co-Chairs; the highly-skilled and dedicated Task Force members; Counsel Angela Burgess, a busy partner at Davis Polk & Wardwell who always, at every turn, provides sound advice to the Task Force; and, of course, Davis Polk & Wardwell for its outstanding and generous pro bono and administrative support.

#### **IV. The Opioid Crisis**

I think everyone assembled here would agree that justice must be tempered by compassion and a thoughtful approach to the societal problems reflected in our court dockets. This is especially true for the many New Yorkers who have fallen victim to the tragic and frightening consequences of the opioid epidemic. Here in New York State we are adjusting our court processes to reflect our belief that justice without compassion can be unacceptably cruel.

According to the latest numbers from the Centers for Disease Control and Prevention, over 64,000 people died from drug overdoses in the United States in 2016, more than the number of American lives lost during the entirety of the Vietnam War.

#### **A. BUFFALO OPIOID INTERVENTION COURT**

In response, we have opened our first Opioid Intervention Court – the first of its kind in the nation – in the City of Buffalo, a City hit hard by this national public health crisis.

In this court, charged offenders identified as high risk for opioid overdose are immediately linked to intensive treatment. Within 24 hours of arrest, consenting participants represented by counsel are placed in a medication-assisted treatment program. That treatment regimen is followed by up to 90 days of daily court monitoring, with the legal process held in abeyance. What makes the Opioid Intervention Court so unique, in addition to its treatment protocol, is that the treatment plan is prioritized above prosecution, even more so than in other problem solving courts, with the legal process being flipped in order to save lives.

I want to publicly acknowledge the work and commitment of the Presiding Judge of the Buffalo Court, Craig Hannah, a remarkable individual, perfectly suited to lead this Court, the Erie County District Attorney, John Flynn, who agreed to suspend prosecution during treatment to achieve the end result we all hope for – a disposition that supports sobriety, public safety and the well being of our communities, and Project Director Jeff Smith, who took the lead role in developing the Opioid Court model and has worked tirelessly to foster its effectiveness.

Since opening last May 1st in a jurisdiction that experienced the overdose deaths of dozens of defendants over the course of several years, the Court has experienced just a single overdose death among its 204 participants. Extraordinary.

While the Court’s original mandate was to treat 225 people over a three-year period, it is now on track to triple its original goal, overseeing anywhere between 45 and 60 active participants at any given time.



Recognizing that this Court holds great promise for the rest of the State, we asked the New York State District Attorneys Association to reach out to the defense bar and the treatment community to formulate a Statewide Opioid Action Plan that incorporates the latest knowledge and best practices in this field to guide our courts, the broader justice system and the treatment community in fashioning more effective responses for defendants caught up in the deadly cycle of opioid abuse.

## **B. BRONX CRIMINAL COURT OVERDOSE AVOIDANCE AND RECOVERY TRACK (OAR)**

Inside New York City, in Bronx County, where 261 people died from opioid overdose in 2016 – with the final numbers likely to be higher for 2017 – District Attorney Darcel Clark, in partnership with Bronx County Criminal Court Supervising Judge George Grasso, Bronx Community Solutions, the defense bar, and treatment providers have adopted the Bronx version of an Opioid Treatment Court – a specialized case track called OAR – the Overdose Avoidance and Recovery Track – for misdemeanor offenders at high risk of opioid overdose.

District Attorney Clark, like District Attorney Flynn in Buffalo, has wisely determined to suspend prosecution of cases at arraignment for accused persons who enter treatment immediately and agree to waive speedy trial and motion practice. The protocol adopted in Bronx County highly incentivizes treatment as the District Attorney has agreed, where no new arrests occur while the case is pending, and upon completion of treatment, to dismiss the case and have the record sealed.

We look forward to expanding the OAR approach to the rest of New York City. I have asked Judge Grasso to coordinate this effort and to work with our Administrative Judges, District Attorneys, defense bar and the treatment community to institutionalize the OAR approach Citywide. Judge Grasso has already begun his work, and we look forward to reporting on our efforts to stem the rising tide of opioid cases.

## **C. STATEWIDE NARCAN TRAINING FOR COURT OFFICERS**

The final piece of our Opioid initiative rests on the shoulders of our well-trained, highly-skilled and compassionate New York State Court Officers who last year received the training required to administer “Narcan,” the critical antidote drug that miraculously -- and instantaneously -- reverses an opioid overdose.

Our training investment has already paid off. In just a few months, Court Officers have saved the lives of four people overdosing on opioids in and around our courthouses. Thank you, Chief Michael Magliano, Chief Joseph Baccellieri, and all our uniformed Court Officers who do an outstanding job, day in and day out, serving and protecting the millions of people who enter our courthouses every year. You make us all proud, and we are grateful for the safe environment you provide.

I take great pride in leading a court system that is responding to the complex societal problems reflected in our caseloads through innovative approaches like the Buffalo and Bronx Opioid Courts. And I want to thank Judge Sherry Klein Heitler, our Chief of Policy and Planning, and

her staff, for the work they are doing statewide to make sure we are a court system capable of meeting the unique needs of every class of litigant.

## **V. The Future of the New York City Housing Court**

High on our list of reform priorities is the future of the New York City Housing Court. Last year, mindful of the fact that New York City is experiencing its highest levels of homelessness since the Great Depression, and that the City has enacted the Universal Access to Legal Services Law to provide legal assistance to low-income tenants facing eviction, I announced at the State of Our Judiciary the formation of the Commission on the Future of the New York City Housing Court, co-chaired by Appellate Division Justice Peter Tom and Supreme Court Justice Joan Lobis. As fate would have it -- and somewhat ironically -- after delivering that State of Our Judiciary Address, as we were driving away from the Bronx Hall of Justice up the Grand Concourse past 166th Street, I saw a large crowd of people standing in the cold on the sidewalk outside of a building. I asked Officer Sam Torres, who was accompanying me that day, if he knew what was going on. He quietly said to me: "Judge, that's your Bronx Housing Court."

Needless to say, that sobering image is the very reason why I am so grateful to Justices Tom and Lobis and the Commission members for promptly getting to work and providing us with recommendations that are insightful, practical and meaningful.

Not surprisingly, the Commission found that the New York City Housing Court is one of the busiest, most overburdened courts in the nation. And as you might imagine, the litigants in this court are overwhelmingly people of modest means, frightened of losing their homes, or frustrated by living conditions that threaten the health and well being of their families. Landlords, too, come to Housing Court with legitimate issues and concerns about losing their properties and livelihoods, and falling into financial difficulty.

The Commission's report comes at a critical time in the Housing Court's history, with the new legislation expected to greatly reduce the enormous volume of unrepresented tenants who appear in that court every day -- in person -- to respond to notices of eviction and other petitions. This welcome change simultaneously presents us with the opportunity to improve the delivery of justice, and the challenge of making sure our already overcrowded dockets do not become more unwieldy and slow moving in the future.

Fortunately, the Commission's recommendations provide the roadmap we need to strengthen Housing Court operations and improve the efficiency and quality of the litigation experience. And we are wasting no time in implementing the Commission's excellent recommendations. Chief Administrative Judge Marks will personally lead a group of high-level judges and court managers responsible for implementing the recommended changes, including Judge Anthony Cannataro, our new Administrative Judge of the New York City Civil Court (who will also undertake a broader review of Civil Court operations). This implementation group will follow through on major operational changes, adoption of court rules and legal forms, relocation and redesign of facilities, access to justice enhancements, and expanded technology, ADR and court security.

I want to thank the Commission for providing a strong vision and excellent direction for the future of the New York City Housing Court.

\* \* \*

The Excellence Initiative is about much more than standards and goals. Ultimately, it is about decisional excellence – supporting the ability of judges to make fair, timely and wise decisions, and the ability of our courts to deliver high quality, cost-effective justice services.

The state of our society is reflected in our court dockets. And whether it is criminal justice reform, Rikers Island, homelessness, foreclosures, opioid abuse, or an alarming increase in child abuse and neglect cases – it is our responsibility to respond.

I know first-hand that our judges and court personnel are highly motivated to respond. That is the energy, commitment and vision that fuels our Excellence Initiative as we work at every level of the justice system to meet the challenges of delivering justice in a complex, fast-changing society.

## **VI. Families and Children**

### **A. IMPLEMENTATION OF RAISE THE AGE LEGISLATION**

We have trained our focus on children whose lives intersect with the justice system as we implement the new “Raise the Age” legislation. Going forward, we anticipate that approximately 18,000 16- and 17-year olds will be diverted from the criminal courts to our family courts. We are pleased and excited that New York is finally putting the focus where it should be – on helping young people stay on track for productive lives.

We will be ready and prepared for a smooth transition from criminal to family court, mindful of the complex operational and legal hurdles we must address around the provision of legal counsel, appropriate housing of children who must be detained, training of judges and court staff, as well as new data delivery protocols essential to managing this sensitive caseload.

All of these issues are being carefully examined by our Administrative Judges and nonjudicial managers across the State. We are relying on the implementation plan and protocols being developed by our committee of Criminal and Family Court Judges and managers, under the leadership of Deputy Chief Administrative Judges Edwina Mendelson and Michael Coccoma, who have been working closely with judges; staff; the State Office of Children and Family Services; the State Division of Criminal Justice Services; State and local departments of social services; the Mayor’s Office of Criminal Justice; corrections and probation; District Attorneys; counties and their county attorneys; the defense bar; and attorneys for children.

### **B. MENTORING PROGRAM IN THE NEW YORK CITY FAMILY COURT**

For every child – rich or poor; a child lucky to live in a stable environment; or a child, by chance, living in a less than desirable environment – a meaningful relationship with a strong mentor can make all the difference in the world.

I am so pleased and proud to announce that we have partnered with the New York State Mentoring Program to match young people aging out of the foster care system with inspirational adult mentors who can help them develop the confidence and self-esteem they need to make positive life choices and succeed in the adult world. Experience has shown that committed and

competent role models can help children overcome enormous personal, economic and social disadvantages. Under the unique New York State Mentoring Program model, vetted mentors meet one-on-one with their mentees on a weekly basis in a supervised environment to establish that special bond and interest that can make the great difference in a child's life.

I want to thank the founder of the New York State Mentoring Program, Matilda Raffa Cuomo, for recognizing and promoting the power and value of mentoring in the lives of children, and for her commitment to providing safe mentoring services to children in our Family Courts. Thank you, Mrs. Cuomo, New York State Mentoring, Judge Jeannette Ruiz – for getting this program off the ground, and Judge Andra Ackerman, for planting the seed.

### **C. COMMISSION ON PARENTAL LEGAL REPRESENTATION**

We are also focused on supporting the well being of children by supporting the legal needs of their parents. New York's parental representation system has suffered from many of the same systemic deficiencies that once afflicted our indigent criminal defense system, including excessive attorney caseloads, inadequate training, and insufficient funding for support staff and services.

I have asked the former Presiding Justice of the Appellate Division, Third Department – Karen Peters – to lead a new Commission on Parental Legal Representation to examine the current state of mandated Family Court representation and determine how best to ensure the future delivery of quality, cost-effective parental representation.

Judge Peters' broad experience, including as a former Family Court Judge, will be invaluable to leading the work of the Commission. She and the judges, legal service providers, child welfare experts, and county and state officials on the Commission will work with the Office of Indigent Legal Services – particularly Director of Quality Enhancement, Angela Burton – to build upon the groundwork being done across the State to improve the quality of parental legal representation.

### **D. FAMILY COURT – PAPERLESS FAMILY COURT**

It is imperative that our courts make smarter use of technology to support the complex, substantive work they perform. I am pleased to say that our New York City Family Court – with over 200,000 new case filings each year – is leading the way in this regard, having recently become the largest paperless court in the State, and one of the largest in the country.

The benefits of going all digital in newly-filed cases are obvious. It improves efficiency and accessibility, streamlines case commencement, allows parties to view and print signed orders and petitions remotely, and facilitates efficient management of the court's staggering caseloads.

Thank you to Chief Clerk George Cafasso; Deputy Chief Clerk Michael McLoughlin; and Chip Mount and Sheng Guo from our Division of Technology.

I, too, sat as a Judge in the Family Court, and I know personally what an important difference we can make in the lives of so many families and young people who come before us. To all our hard working judges and staff in the Family Courts – thank you.

## **E. BILINGUAL ORDERS OF PROTECTION**

In recognition of the amazing diversity of our communities throughout the State, and our responsibility to ensure access to justice for all, we launched a pilot program enabling judges to issue orders of protection in both English and the language of the petitioner. Last year, the Legislature endorsed and codified our pilot program and authorized its expansion. Since its start in March 2015, judges have issued about 25,000 bilingual orders of protection, in Spanish, Russian, Chinese and Arabic, in our Family, Criminal, Integrated Domestic Violence and Matrimonial courts. By the end of 2020, orders of protection will be available, statewide, in the ten languages most frequently spoken here in New York.

I want to thank Judge Deborah Kaplan, recently appointed to serve as the Administrative Judge of the New York County Supreme Court, Civil Term, and who was our Statewide Coordinating Judge for Family Violence Cases, for the excellent job she did leading the work of that office.

## **VII. Civil Justice**

### **A. NEW CIVIL PRACTICE RULES**

Our Commercial Division of State Supreme Court has built a reputation for excellence and earned the respect of court and business leaders around the globe. The Commercial Division has led the way in adopting innovative reforms to streamline civil litigation, improve efficiency, and reduce litigation costs, including: limits on interrogatories and depositions, quicker resolutions of discovery disputes, time limits on trials, and direct testimony by affidavit.

There is no reason to keep our successes confined to the Commercial Division. I have asked our Advisory Committee on Civil Practice to evaluate the Commercial Division rules and amendments, and recommend which of them should be adopted broadly throughout our civil courts. The process is underway and the Committee will submit its report and recommendations to us by May 1st.

### **B. PILOT PROGRAM: FAST-TRACKING INSURANCE CASES**

Anyone reviewing our civil docket would immediately recognize the high percentage of cases involving major insurance company defendants. For many reasons, these cases have taken an inordinate amount of time to resolve. The litigants in these cases need their matters resolved promptly, and our Deputy Chief Administrative Judge for the Courts inside New York City has responded by setting up four pilot programs that have been a smashing success, consistently settling between 60% and 100% of calendared cases in New York, Kings, Bronx and Richmond Counties.

The program differs from prior efforts involving major insurance carriers because the assigned judges are intervening at an earlier stage, before significant time and resources have been expended on discovery and trial preparation. Cases that ordinarily would drag through our system for years are now being resolved within a year of filing. The pilot has been so successful that additional carriers and high-volume litigants have asked to participate. As you would expect, we are expanding the program.

I think Judge Silver would be the first to agree that this is not about rewriting the code. It's about understanding the charge, and thinking outside the limitations and constraints of past, dated protocols and practices. Thank you, Judge Silver, the judges and staff in the pilot parts, and all of the participants.

Thoughtful approaches like this one, and our demonstrated willingness to try new ideas and implement new practices, reflect our commitment to deliver high-quality services to the people who come to our courthouses in search of justice.

### **C. NEW YORK CITY SMALL CLAIMS COURT.**

The New York City Small Claims Court is where tens of thousands of individuals and small business owners appear each year – typically without a lawyer – to resolve disputes under \$5000. It is truly the “People’s Court.” While the issues may not be as complex as those heard in our other civil courts, they are critical to the people who appear in Small Claims Court every day. By making some fundamental adjustments to our operations, including expanding our staffing levels and hours of operation, we have reduced the average time between the filing of a claim and the first court appearance by more than half, resulting in timely and improved services for the litigants in this court.

### **VIII. Access to Justice**

Our commitment to the prompt adjudication of cases and controversies goes hand in hand with our commitment to meaningful access to justice. Our Permanent Commission on Access to Justice, led by Helaine Barnett, has been a catalyst behind New York’s status as a national leader in addressing the civil legal needs of low-income people.

### **A. A STRATEGIC ACTION PLAN FOR NEW YORK**

This year, thanks to the wisdom and commitment of Governor Cuomo and the Legislature, we anticipate that \$100 million dollars will again be included in our Budget for civil legal services funding. This funding is absolutely critical to our efforts, but we have learned that money alone – without a plan – cannot close the justice gap.

We have been careful, strategic and smart in our approach to legal services funding. Going forward, I want to assure the Governor, the Legislature, New York State taxpayers, members of the legal services community, and every New York lawyer, general counsel, law student and law school that has demonstrated the moral vision and generosity necessary to help close the justice gap, that we are well on our way to devising a Strategic Action Plan for our State that will integrate all of the resources and services at our disposal into an efficient and effective delivery system that avoids duplication and potential waste and fills existing gaps in services.

My role is to lead us to the place where we are leveraging, to the maximum extent, every private and taxpayer dollar and every hour of lawyer pro bono service that has been dedicated to our civil legal service efforts.

Our Strategic Action Plan for New York State, led by Chair Barnett and the Commission, and funded by a grant from the National Center for State Courts, is underway – featuring the launch of a pilot project in Suffolk County focused on developing a technology platform and community

resource model that together will significantly enhance access to justice at the local level. The Suffolk Pilot will spawn local strategic plans around the State, with the goal of knitting those plans together into an overall statewide network that makes the most effective use of all available resources. This is a high priority for us, and we look forward to working with our partners throughout the State to implement the Action Plan.

Thank you to Helaine Barnett, members of the Commission, Judge Hinrichs and all the stakeholders from Suffolk County who are providing the blueprint for us to take statewide.

## B. Statewide Office for Justice Initiatives

Access to justice is advanced in many different ways and through countless worthy initiatives across the justice system. And, here, I would like to acknowledge our Deputy Chief Administrative Judge in charge of Justice Initiatives, Judge Edwina Mendelson. Judge Mendelson and her staff have a broad portfolio of initiatives to promote access to justice from within the court system, including court-based programs that provide pro bono legal and informational assistance to litigants as well as a wealth of web-based resources that reach well over a million people a year.

Judge Mendelson's mission crosses every court – criminal, civil, family and housing – as she works to eliminate access to justice barriers and ensure that the two million New Yorkers who are fluent in 150 different languages are able to participate meaningfully in court proceedings, and that no person is denied meaningful access to the courts because of a disability.

## **IX. Pursuing Excellence**

### A. Bringing the Excellence Initiative to Surrogate's Court

Timeliness and efficiency are priorities in all of our courts, and especially so in our Surrogate's Courts, where surviving family members or minors and the developmentally disabled in need of guardianship should not be exposed to unnecessary delay.

As we undertook to examine the way we have been conducting business in the Surrogate's Court, our first challenge was to identify the number and types of cases pending, and the ages of those cases. The Surrogate's Court Clerks and our IT staff got to work and started the process of collecting detailed caseload data. They are now preparing the statistical reports necessary to track caseloads, measure court performance, and implement the operational changes and adjustments necessary to expedite and thereby improve our services.

Effective this Spring, for the first time, standards and goals will be in place for Surrogate's Court proceedings. And thanks to new case management software and dashboards, we are tracking our caseloads, measuring our performance, and better managing our work in every area of this important court's services.

I want to thank the Surrogate's Court Judges Association, led by Oneida County Surrogate Louis P. Gigliotti, for being so helpful and receptive to this effort.

## **B. APPELLATE JUSTICE**

This address would not be complete without recognizing our terrific Appellate Division, led by Presiding Justices Rolando Acosta, Alan Scheinkman, Elizabeth Garry and Gerald Whelan – all of whom are constantly striving to achieve excellence in their courts.

Last year, we began the effort to develop a uniform set of rules to harmonize appellate practice across the State in key areas such as service and filing procedures, general motion practice, and methods of perfecting an appeal. Under the direction of the Presiding Justices, the Chief Clerks of each of the four Departments – Susanna Rojas, April Agostino, Robert Mayberger, and Mark Bennett, who was preceded by Fran Cafarell – worked closely with OCA Counsel, John McConnell, to draft joint rules. The rules were issued for public comment over the Summer, amended to incorporate the excellent commentary received, and I am pleased to inform you today, have been approved by the Administrative Board. They will take effect on September 15, 2018. There is no question in my mind that the new uniform rules will have a positive impact on New York appellate practice.

The four Departments have also adopted joint e-filing rules, to take effect shortly, on March 1st. Kudos to the Presiding Justices, including the recently retired Presiding Justices in the Second and Third Departments – Randall Eng and Karen Peters and their excellent staffs – for bringing the convenience and savings of e-filing to our appellate courts.

And since we all recognize that transparency is a most important step in building public confidence and respect for our courts, we are proud to showcase the live streaming of oral arguments from each of the four Departments and the Court of Appeals. Enabling the public to watch our work from internet-connected devices, and digitally archiving our proceedings, is a wonderful way for everyone to see our appellate process at work.

## **C. GUIDE TO NEW YORK STATE EVIDENCE**

In July 2016, I established the New York Evidence Committee, co-chaired by former Court of Appeals Judge Susan Read and retired Nassau County Supreme Court Justice William Donnino, with Albany Law Professor, Michael Hutter, serving as Counsel. I charged the Committee with developing a definitive Guide to New York Evidence in response to the fact that New York is one of the very few states in the nation not to have a statutory code of evidence. In fact, our law of evidence is scattered in many different statutes, judicial decisions and court rules.

The Committee has already published three installments of the Guide, – General Provisions, Relevance, Hearsay, and later this month, Impeachment and Other Witness Rules. While several more chapters remain to be completed, there is no doubt that the ultimate product – a single, accessible guide to New York’s law of evidence – will be of enormous value to the Bench and Bar in our State. It is also an important component of our Excellence Initiative, reflecting our commitment to provide a strong foundation for decisional excellence.

Along with my judicial colleagues and the entire legal profession, I look forward to future chapters and the eventual completion of the Guide to New York Evidence. I want to thank the Co-Chairs and Committee members for their commitment to this important effort.

## **D. TRAINING FOR EXCELLENCE**



Judicial education and training lie at the core of excellence and productivity, enabling judges to stay current on developments in the law, science and technology, and countless other fields affecting the delivery of justice. This is why we have re-introduced our annual Summer Judicial Seminars, enhanced the curriculum at our annual New Judges program, convened new Appellate Training Seminars for both judges and court attorneys, and integrated principles of effective case management into the training curriculum for judges and nonjudicial managers.

I want to thank the Dean of the Judicial Institute, Judge Juanita Bing Newton, and her staff, for the extraordinary job they do to ensure a modern and robust training regimen for judges, court attorneys and court clerks.

#### **E. JUDICIAL TASK FORCE ON THE NEW YORK STATE CONSTITUTION**

In our pursuit of excellence, we have often experienced frustration with barriers that hinder our progress. We are supposed to be a “unified” court system, but the reality is that we have eleven separate trial courts with many outdated jurisdictional restrictions that prevent us from properly and efficiently managing our people and resources.

Neither the federal courts nor any other state court system labor under the same kinds of archaic restrictions. In fact, Article III of the United States Constitution, which totals fewer than 400 words, states very simply: “The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.” By contrast, Article VI – our Judiciary Article in the New York State Constitution – contains over 16,000 words spread over 37 sections, and dictates details of our existence best decided by the Legislature or Court Administration.

Amending the Judiciary Article to modernize our organizational structure is a top concern for us, as it should be for every elected official who cares about court efficiency and the considerable savings which can be achieved. We are not deterred by last year’s “thumbs down” vote on a Con Con. Yes, I saw all the lawn signs and bumper stickers and heard the radio ads, but it was crystal clear that the voters were not at all focused on the Judiciary Article of the Constitution. We are determined to continue moving forward and working with the members of our Judicial Task Force to develop and propose practical constitutional amendments that can be achieved through the legislative and referendum process.

I want to thank the Task Force members, a uniquely qualified group of individuals, for their service. I encourage those of you who have reached out to our members to continue to do so and inform them of your views, ideas and experiences. We look forward to developing our plan, informed by the Task Force’s recommendations, and presenting it to the Legislature for action.

#### **F. TASK FORCE ON LEGAL ASSISTANCE RELATED TO HURRICANES HARVEY, IRMA AND MARIA**

In bringing this State of Our Judiciary address to a close, I want to turn, for a moment, to matters external to our courts yet integral to who we are as a caring legal profession.

Last Summer, as we watched the news coverage of Hurricanes Harvey, Irma and Maria in Texas, Florida and Puerto Rico, we all grieved for our fellow Americans. Not surprisingly, one could literally feel the sense of urgency developing in our New York legal community to respond to these disasters and assist in every way in which our training and experience as lawyers and court administrators would allow.

In very short order – literally over the course of a morning and a few simple phone calls – the New York State Task Force on Legal Assistance Related to Hurricanes was established, and as events unfolded, it quickly expanded from Harvey to encompass Irma and Maria. Under the leadership of John Kiernan, President of the New York City Bar Association and a partner at Debevoise & Plimpton, and Sharon Katz, Special Counsel for Pro Bono at Davis Polk & Wardwell, the lawyers and court officials on the Task Force moved with lightning speed to mobilize and coordinate pro bono efforts to assist the victims of these natural disasters with a staggering number of legal matters, especially FEMA applications and appeals.

On behalf of the Judiciary and the entire legal profession, I want to publicly thank the Task Force and the many lawyers, bar associations, legal service providers and law schools – too numerous to mention here, though the New York City and Puerto Rican Bar Associations deserve special mention – who responded so quickly and selflessly to alleviate the suffering of their fellow Americans by establishing clinics for displaced victims; arranging for placements of pro bono representation; training volunteer lawyers; marshaling support from legal service providers and law firms outside the affected areas; raising and donating charitable funds to disaster relief groups; and providing expert consultation on FEMA and other legal disaster relief issues.

This is what we do as lawyers. And, I can assure you, the assistance we are all providing is critical and very much appreciated. I recently received a letter from the Chief Judge of Puerto Rico, Maite Oronoz Rodriguez, thanking us for our assistance and donation of needed technology equipment installed in courthouses throughout the Island – essential, in her words, “not only to reestablish judicial activity, but to help the community with legal aid and hurricane relief.”

## **X. Conclusion**

Last year, I concluded the State of Our Judiciary with a story about the beautiful clock hanging in the lobby of the Manhattan Criminal Court building at 100 Centre Street.

Our experience with repairing that clock – after years of being frozen in time – has come to symbolize who we are as a court system. As you have heard today, the judges and staff of the New York State courts have been working diligently over the last year to fix what’s broken and to build and maintain a well-functioning court system. To them I say – the road to excellence is long and arduous, but the destination is worth the hardest effort.

I am grateful to all of my colleagues here at the Court of Appeals; our trial and appellate judges, and staff, for your hard work on the front lines; Chief Administrative Judge Marks; the Presiding Justices of the Appellate Division; Deputy Chief Administrative Judges Mendelson, Coccoma and Silver; our team of Administrative and Supervising Judges; Executive Director Ron Younkins and our non-judicial court managers; and our Public Safety leadership and Uniformed

Court Officers – thank you all for leading the way as we work together to build a system that supports both operational and decisional excellence in every court throughout the State.

We can look back on the last two years with great pride and a sense of accomplishment. And while there is more to do, we look to the future with confidence and optimism, because we are poised and positioned to build upon everything we have achieved to date.

I look forward to working together with all of you as we strive for excellence.

Congratulations to you all. We have every good reason to be excited about the future of our Judiciary.

Thank you for your kind attention.