

# THE STATE OF THE JUDICIARY 2012

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JONATHAN LIPPMAN

CHIEF JUDGE OF THE STATE OF NEW YORK

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*Balancing the Scales of Justice*



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**FEBRUARY 14, 2012**

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## INTRODUCTION

**T**HE ICONIC IMAGE OF LADY JUSTICE, blindfolded and holding scales in her hand, appears on the walls of our Court of Appeals Hall, on the Great Seal of the State of New York, and in courthouses across our state and our nation. The prominent depiction of Lady Justice reminds us that justice is even-handed, balanced, and fair — and that our core mission is not just about statutes, case law, and precedents. The pursuit of justice, equal justice for all, is the very reason the Judiciary exists and is a bedrock of our society.

In this country, we have a singular dedication to the rule of law, which applies equally to each and every person regardless of their background or standing in life. We have an unwavering commitment to a system of justice that protects our basic liberties, nurtures the tolerance that is fundamental to a just and open society, and enhances our capacity to grow and to excel. New York always has been and must remain at the forefront of efforts to ensure that Lady Justice's scales, symbolizing equality and due process, are exquisitely balanced in our great state.

The theme of balance permeates the work of the Judiciary: balancing the scales of justice so that every litigant who enters our courts receives equal treatment; balancing efficiency in the operation of our vast court system with attention to each and every case that comes before us; and balancing the great demands of a system that sees more than four million new cases each year against the fiscal constraints that the Judiciary and our partners in government face in these difficult economic times.

Make no mistake, the past year has presented undeniable and unprecedented challenges to our court system. But with those challenges come opportunity — the opportunity to look closely at our system and re-engineer our operations while exploring innovative ways to fulfill our ultimate duty of delivering justice for the people of New York. We view this as an opportunity to change our court system for the better. As Governor Cuomo has said, now is the time to reinvent government and to work smarter. Now is the time, not just to find ways to reduce costs, but more importantly, to rethink and fundamentally transform the way we do business. And we will do just that with the assistance of our partners in government and their leaders, the Governor, Senator Skelos, and Speaker Silver.

As a Judiciary, we are committed to finding ways to better serve the public as we work to fulfill our constitutional obligation of delivering justice with fairness, speed, and wisdom. We have been proactive in addressing recidivism by expanding problem-solving courts and implementing the latest scientific and social research in areas such as juvenile justice. We are committed to minimizing the risk of wrongful convictions and to expanding and improving access to legal services. Especially given the economic downturn, the Judiciary is particularly sensitive to those most vulnerable among us, including homeowners facing foreclosure and families in crisis, and we are taking steps to address more effectively the delivery of justice in these cases. Coupled with these efforts are measures to increase efficiency throughout the court system. In the upcoming year, the Judiciary will continue to balance the need for increased efficiency in light of fiscal realities with its central duty and core mission to provide fair, impartial, and quality justice for all.

Without a doubt, there were tangible consequences that flowed from this year's budget restraints. Strict controls on overtime and 4:30 p.m. court closings meant delays to hearings and trials. Changes in arraignment part schedules affected arrest-to-arraignment times. The cancellation of evening hours for small claims courts delayed the hearing and resolution of cases, and deep reductions in court personnel have made the delivery of justice more difficult.

But we are entering a new year. Moving forward with the fiscally-responsible budget the Judiciary has submitted, and through increased efficiency and innovation, we can and will alleviate the strain on our courts and emerge stronger and more effective than ever. That is our pledge in the service of the people of this state — our ultimate constituents.

I am immensely proud of the judges and staff in our courts. And I believe that the dedication and expertise of our judges will soon be recognized by the first adjustment to their salaries in more than 13 years. Our judges are now on a path to receiving a more adequate level of compensation, commensurate with their critical duties and responsibilities that are so fundamental to our system of government. It is the judges, along with our terrific court personnel, whose hard work and commitment have made it possible to meet great challenges and yet continue to deliver justice for all. I thank each and every one of them for the work they do day in and day out. Their efforts are critical to balancing the competing demands on our justice system while ensuring that we continue to fulfill our constitutional mandate.

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## RETHINKING JUVENILE JUSTICE

**W**ITH THAT IN MIND, I BEGIN TODAY with the topic of juvenile justice. It is high time that we change the way the justice system responds to 16- and 17-year-olds accused of non-violent crimes. Every year, as many as 50,000 youths aged 16 and 17 are arrested in New York and prosecuted in our criminal courts, overwhelmingly for minor crimes. We are one of only two states in the nation that prosecutes 16- and 17-year-olds as adults. Our statute is a relic, the product of disagreement in the Legislature when the Family Court was created in 1962. The intent was always to study and revisit the issue. But here we are, 50 years later, with the “temporary” fix still in place — to the great detriment of our most precious asset, our children.

Treating 16- and 17-year-olds as adults flies in the face of what science tells us about adolescent development. The adolescent brain is not fully matured. Even older adolescents have a more limited ability to make reasoned judgments and engage in the kind of thinking that weighs risks and consequences in a mature fashion. The adult criminal justice system is simply not designed to address the special problems and needs of 16- and 17-year-olds. Study after study has confirmed that older adolescents who are prosecuted and convicted in criminal courts are more likely to re-offend, re-offend sooner, and go on to commit serious crimes at a higher rate than youths who go through the family court system. Prosecuting adolescents charged with non-violent conduct in the criminal courts does not improve public safety or the quality of life in our communities.

Accordingly, last fall I asked our Sentencing Commission, co-chaired by New York County District Attorney Cyrus R. Vance, Jr. and Judge Barry Kamins, Administrative Judge of the New York City Criminal Court and for Criminal Matters in the Second Judicial District, to work through the complex issues involved and recommend a better approach. The Commission concluded that simply moving the tens of thousands of cases each year in which 16- and 17-year-olds are charged with criminal conduct to the already overburdened Family Court would be costly and impractical, yet leaving these cases in the adult criminal courts would be counter-productive and unacceptable.

Informed by the Commission’s invaluable input, I am today announcing a proposed legislative solution to this dilemma. Later this month, we will be sending to the Legislature a proposed “Youth Court Act,” which will establish a new “Youth Court” to adjudicate cases in which 16- and 17-year-olds are charged with non-violent criminal conduct. The new Youth Court would be established in our superior courts — Supreme Court within New York City and County Court outside New York City. The Youth Court would combine the best features of the Family Court and the criminal courts. It would offer the kinds of alternative options available in Family Court: an adjustment process would be utilized, where a youth would be placed under probation supervision in lieu of a court proceeding. If a case was not adjusted, it would be assigned to the Youth Court, where a specially-trained judge would handle the case essentially in accordance with the existing Criminal Procedure Law — which in many regards will provide greater procedural protections than the Family Court would. If an adjudication of guilt resulted, Family Court protocols would then apply. For example: the adjudication would not be deemed a criminal conviction resulting in a criminal record; the broader dispositional options available in Family Court and the principle of “least restrictive alternative available” would govern; and court record sealing provisions would be modeled on the Family Court Act. Most importantly, enhanced services and alternative-to-incarceration community programs would be available as part of the case disposition.

Although ultimately Family Court is the best fit for these cases — and we will continue to work toward the long-term goal of placing them under the Family Court’s jurisdiction — the plan I have outlined offers a practical approach that will immediately address the underlying problems of the current system, which treats 16- and 17-year-olds charged with criminal conduct as adults. The plan can also be implemented with a minimum of disruption and in a cost-effective way, not just for the courts but for prosecutors, defense organizations, police and our hard-pressed counties and local government agencies. While costs may shift slightly overall, the plan’s cost-effectiveness stems from the increase in adjustments and fewer cases entering the system, coupled with a decreased reliance on expensive incarcerations that, in many instances, serve no useful purpose for adolescents accused of low-level offenses. Although probation departments might see some additional workload due to an increase in “adjusted” cases, this would be offset by savings from the reduced need to appoint counsel in those cases, which would not proceed to court.



To demonstrate that this approach makes sense and is a vast improvement over the existing system, we have established pilot adolescent diversion courts across the state. These courts handle 16- and 17-year-old defendants who would benefit from a criminal justice response that includes age-appropriate services, interventions, and penalties. The pilot courts began operating last month in criminal courts in Buffalo, Syracuse, Nassau County, Westchester County, and the five boroughs of New York City. Each one is the product of close collaboration with prosecutors, defense attorneys, probation officials, service providers, and law enforcement agencies. They take into account the age and circumstances of the defendants and emphasize accountability, treatment, and supervision in crafting outcomes. Although the pilot courts do not have the full benefit of the broad range of options offered under our proposed legislation, they will serve as a valuable testing ground for a more holistic approach to 16- and 17-year-olds charged with criminal conduct.

This approach puts first and foremost an emphasis on rehabilitation for adolescents, rather than incarceration. The present punitive approach turns children into hardened criminals and must be changed if we are to ensure a meaningful future for kids who find themselves in the throes of the justice system. Our children deserve nothing less, and there is across the political spectrum a growing consensus that now is the time to rethink juvenile justice in our state to improve the lives of adolescents who deserve a chance to be useful members of our society. I am grateful for the work of all involved in this effort and would particularly like to thank the Hon. Michael A. Corriero, Executive Director and Founder of the New York Center for Juvenile Justice, and Richard M. Aborn, President of the Citizens Crime Commission, for their invaluable assistance to the Sentencing Commission. The legislation will be submitted by the end of February as a first major step toward juvenile justice reform. We will be working with the Governor's office, the Chairs of the Codes Committees, Senator Stephen M. Saland and Assemblyman Joseph R. Lentol, and the other members of the Legislature to achieve action in this legislative session. We have waited a half a century to again make New York a leader in this area that is so critical to our future. We can afford to wait no longer.

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## II.

# PREVENTING WRONGFUL CONVICTIONS

**I**N ADDITION TO **RETHINKING JUVENILE JUSTICE**, we must tackle the scourge of wrongful convictions — innocent people convicted of crimes they did not commit. When an innocent person is convicted of a crime, the individual's liberty is irretrievably and unjustly taken, while the real perpetrator remains free to continue to prey on the public. Even one wrongfully convicted person is one too many. With that very much in mind, on behalf of the Judiciary, in 2009, I created the New York State Justice Task Force, a permanent, independent group of defense attorneys, prosecutors, lawmakers, police officials, scientists, judges, academics, and others. Their mission is to eradicate the systemic and individual harms caused by wrongful convictions, and to promote public safety by examining the causes of wrongful convictions and recommending reforms to guard against any such errors in the future. New York's Task Force is the only judicially-created permanent body in the country devoted to addressing the problem of wrongful convictions. The focus has not been solely on the courts; the Task Force's mandate is to examine all facets of the system to find areas for improvement. The purpose is not to point fingers, but rather to foster solutions in a criminal justice system that is by its very nature interdependent.

The work of the Task Force over the past two years is paying off. After extensive academic and scientific research; review of practices of police, prosecutors, and courts; tours of crime laboratories; legal analysis; and robust debate, the fruits of its efforts are emerging. Recommendations of the Task Force are already being incorporated into practices of both prosecutors and law enforcement agencies. And I am pleased to announce today a comprehensive package of legislative proposals that, if enacted, will significantly reduce the risk of wrongful convictions in New York.

First, New York is one of only a few states in which evidence of an eyewitness' pre-trial identification of a defendant's photograph is not admissible at trial. The legislation we recommend will allow admissibility of photo identifications, but with an important safeguard — the photo identification procedure must be administered by a person who

does not know the identity of the suspect or, where that is not practical, does not know where the suspect's photo is in the photo array.

Second, a number of jurisdictions require that interrogations of suspects be videotaped; and a number of police departments in New York have voluntarily adopted this protective measure. The proposed amendment will mandate videotaping of interrogations, when the suspect is in police custody at a place of detention and is being questioned concerning a specified serious felony offense. Absent a showing of good cause, the court would be required to consider a failure to videotape the interrogation as a factor in determining the admissibility of the defendant's statements. This approach ensures the integrity of the interrogation process, makes sense for police, prosecution, and defendants alike, and can be accomplished without additional financial burdens on local police departments.

The new legislation also proposes expansion of the state's DNA data bank, an idea that has broad support across all three branches of government, and that was mentioned prominently in Governor Cuomo's State of the State address last month. I applaud the Governor's initiative. Under current law, DNA samples are collected from persons convicted of a Penal Law felony or one of 35 Penal Law misdemeanors. The DNA data bank has proven to be a powerful tool for law enforcement, not only in identifying perpetrators but also in exonerating the innocent. The proposed legislation would fully maximize the benefits of the data bank by requiring defendants convicted of any felony, including non-Penal Law felonies, and any Penal Law misdemeanor to provide a DNA sample upon conviction.

Building on the proposal to expand the DNA data bank, the legislation further proposes that a convicted defendant's access to DNA testing be enlarged. Current law authorizes certain defendants who have been convicted following a trial to conduct a DNA test of physical evidence recovered from the crime scene to show that it does not match their own DNA. Experience has shown, however, that wrongful convictions have resulted not only from cases that go to trial, but also from cases in which defendants have pleaded guilty. Accordingly, we propose that post-conviction access to DNA testing be extended to include defendants who pleaded guilty to specified serious felony offenses, but upon a somewhat stricter showing than that required for defendants convicted after a trial. Finally, the legislation would make clear that courts may order a comparison of DNA evidence recovered from the crime scene against DNA contained in a federal, state, or local data bank.

We are indebted to the Justice Task Force and its co-Chairs, my Court of Appeals colleague, Theodore T. Jones, and Westchester County District Attorney Janet DiFiore, for their outstanding and ongoing work. I would also like to thank the New York State Bar Association and its president Vincent E. Doyle, III and the Innocence Project at Cardozo Law School for the invaluable assistance they have provided to the Task Force. The work of the Task Force and the Governor's strong leadership in this area create a prime opportunity this legislative session to enact an expansion of the DNA data bank and a broad package of additional measures to protect against wrongful convictions. We will work closely with the Governor's Office, the Legislature, the District Attorneys, and the law enforcement and defense communities toward that goal.

## ENHANCING INDIGENT LEGAL DEFENSE

**A** LONG WITH ADOPTING MEASURES TO PROTECT AGAINST wrongful convictions, we should not forget that an accused person's greatest protections lie in the right to be represented by counsel, regardless of wealth or social status. As we all know, the United States Constitution guarantees that criminal defendants receive the assistance of counsel, and that counsel be provided to them free of charge if they cannot afford to pay. In 1963, in the landmark case of *Gideon v. Wainwright*, the Supreme Court boldly declared that it is an "obvious truth" that a defendant in a criminal matter cannot get a fair trial without a lawyer — thus declaring a fundamental right for every American, regardless of means.

Despite this constitutional guarantee, the basic fairness of our criminal justice system is threatened by the reality of chronically overburdened public defenders who all too often have very little time to investigate the facts, get to know a client, or build a fully competent legal defense. This problem demands attention if we are to truly balance the scales and ensure the fairness and integrity of our criminal justice system in New York.

To address this critical issue, in 2010, the Legislature created the Statewide Office of Indigent Legal Services, whose Board I am proud to chair — because I recognize as fundamental to my own responsibilities as Chief Judge the duty to ensure that there be a level playing field in courtrooms around this state. Under the leadership of Director William Leahy, we have been evaluating how criminal defense is delivered across the state, improving the quality of services, and supporting providers where the need is most acute. By encouraging county officials, indigent defense, and Family Court providers to collaborate in identifying ways to improve legal representation for the poor, we have been able to target the available state funding to areas that most benefit clients in need of quality legal representation. I am greatly encouraged by the progress we have made in cooperation with our partners in government, counties across the state, and the entire justice community.

In its first full year of existence, the Office of Indigent Legal Services has identified and addressed major deficiencies in representation around the state, such as excessive caseloads, inadequate or non-existent investigatory capacities, lack of attorney qualifi-

cation standards, insufficient training and supervision, lack of oversight for appellate representation, as well as the arraignment of accused persons without assistance of counsel. I am pleased to report that through evaluation, identification of best practices, and targeted grant funding, we are making progress.

Let me share with you some specific areas of focus. We have begun a three-year effort to allocate funding to support counsel at the first court appearance of defendants in City and Town and Village Justice Courts. It is greatly troubling and entirely unacceptable that newly-arrested defendants can be arraigned before a judge, have bail set, and be incarcerated — all without a lawyer present. This is changing, as it must, by putting a spotlight on this disturbing practice and by providing grants to our most hard-pressed counties from the Indigent Legal Services Fund. It is so basic to fundamental fairness that criminal defendants are represented, at every critical stage of the process, by qualified counsel.

But, make no mistake, we cannot fix these problems by simply dumping more work and responsibilities on the same overburdened lawyers. They are already carrying too heavy a load. Pursuant to legislation enacted in 2009, the Judiciary has taken the very important steps of adopting caseload limits for attorneys in New York City who represent indigent criminal defendants and of allocating funding to support compliance with those limits. The resources of the Indigent Legal Services Fund should be used to provide a similar measure of caseload relief for the lawyers who, with few resources, represent indigent defendants outside New York City. We are very pleased to be working with Senator John A. DeFrancisco and others in the Legislature to achieve this end.

We are also working to support regional Immigration Resource Centers in strategic locations throughout New York. Conviction of a crime — and sometimes just the accusation of one — can carry with it life-altering consequences, including deportation. The Immigration Resource Centers aim to ensure that all lawyers who represent people charged with crimes anywhere in the state have access to the training, expert legal advice, and support needed to comply with the standard established by the United States Supreme Court in *Padilla v. Kentucky*, so that they can provide their clients with accurate legal advice concerning the collateral consequences of criminal convictions.

The reforms we are undertaking in the area of criminal indigent defense in New York reinforce the ideals of due process and equal justice that are guaranteed by our Constitution when life and liberty are at stake.

## GUARANTEEING CIVIL LEGAL SERVICES

**T**HE CURRENT ECONOMIC CLIMATE HAS LED to an increase in the number of poor and unrepresented defendants in civil matters. Poverty levels in New York State are unlike any we have seen in decades — 20% of the population in New York City and 15% across the State live below the poverty level — and these figures do not include the working poor or what has recently been described as the “near poor.” People living in poverty are more likely to end up in court than people in the middle class. They are more likely to be overwhelmed by debt and to fall behind in their rent. The kinds of crises that bring so many people into our courts — foreclosure, consumer credit, family, and personal issues that flare up in times of stress — are all the more common during a downturn. And in the best economic times and in the worst — and maybe especially in the worst — we are constitutionally bound to deliver justice. This means not only that our doors must be open to all, but that we provide justice that is meaningful, fair and impartial, and equal for all. But that constitutional mandate becomes impossible to fulfill when so many unrepresented litigants come into our courts without the benefit of an attorney in cases addressing the basic necessities of life, such as maintaining a roof over their heads, their personal safety, their livelihoods, and the well-being of their families.

At my State of the Judiciary address last year, I reported that 2.3 million litigants annually appear in New York’s courts without a lawyer. Who are these 2.3 million people? They include persons suffering from tragic disabilities, parents in child support matters, homeowners facing foreclosure, the vast majority of tenants in eviction cases, and borrowers in consumer credit cases. The Task Force to Expand Access to Civil Legal Services in New York, led by Helaine M. Barnett, former head of the Legal Services Corporation, has documented that we are still barely meeting 20% of the need for civil legal services for the poor and working poor in these cases. This dire situation results in grave economic consequences for our state and the individuals involved — increased evictions, greater need for social services, more foster care placements, and many federal dollars lost. But we are beginning to address this critical situation.

Through the efforts of the Task Force and our partners in government, fifty-six organizations have received grants to provide civil legal services to low-income families and individuals in every county of the state; and the IOLA funding system, devastated by the economic downturn, has been rescued through an infusion of state funding. The Judiciary's Civil Legal Services grants have focused on foreclosure, eviction, domestic violence, children, access to health care and education, disability, and other benefits, as well as consumer debt. In the first three months of funding, more than 50,000 clients received legal services. And through prevention and early intervention, thousands more avoided ever getting caught up in litigation.

The Judiciary's budget submission for the upcoming fiscal year continues our support of legal services for the poor in cases involving basic human needs. Why does the court system invest monies in civil legal services at a time of great financial strain? The answer is crystal clear — the Judiciary has a special responsibility and a constitutional mission to foster equal justice. It is our very reason for being. We might as well close the courthouse doors if what happens in our courtrooms does not translate to equal justice for every New Yorker. The pursuit of justice is what drives us as judges and lawyers. We are all very proud that New York is leading the country in working to ensure that individuals and families, dealing with the very essentials of life, are represented by legal counsel. The need is so great and there is so much still to do, but this state, this Judiciary, and this profession can stand tall knowing that we are providing a template to address the legal needs of the most vulnerable members in society.



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## RESPONDING TO THE FORECLOSURE CRISIS

**O**NE OF THE AREAS MOST IN NEED of the expansion of civil legal services has been home foreclosures. Among the worst consequences of the recession has been the foreclosure crisis, which has resulted in a record number of foreclosure filings in the courts, fueled by lenders who “robo-signed” thousands and thousands of foreclosure documents without reading them. This has prompted investigations by attorney generals around the country, with a leading voice being New York’s own Attorney General, Eric T. Schneiderman. New York’s courts were the first in the nation to take immediate action to ensure the integrity of the documents that lenders file in these cases. Under our new rules, attorneys for banks and servicers in mortgage foreclosure cases are now required to affirm in writing that they have spoken with their clients and that the paperwork they file has been properly reviewed and notarized. Other states have since followed suit and adopted the New York approach. It is our responsibility as an institution to act strongly and quickly when the integrity of the court process is at stake. Rest assured we will stay vigilant in that regard.

Now, as we enter into the fourth year of the foreclosure crisis, we are concentrating our efforts on improving the quality and effectiveness of the settlement conference process wisely mandated by our state legislature. Individuals and families on the brink of losing their homes are at a grave disadvantage without legal assistance. That is why we have put together a statewide network of representation for those people who are facing the trauma of losing their homes, often as a result of deceptive lending practices. The efforts of the Judiciary, bar associations, and legal services providers are now making a difference.

But we must do more. With the assistance of the New York City Bar Association — and soon to be followed by bar associations around the state — we are fostering an unprecedented partnership between legal service organizations and a number of large banks, which will afford homeowners greater opportunities to work out loan modifications in order to keep them in their homes. Beginning first in New York City, we are

establishing special court parts, presided over by some of our most talented and hard-working judges, where settlement conferences will be calendared based upon the identity of the plaintiff lender. The first week of the month will be dedicated to a specific bank's cases; the next week to a second bank's cases; the third and fourth to two more banks. Each bank will assign a representative to the court part for the entire week, a representative who has all the necessary paperwork and documentation, and, very importantly, who has full authority to negotiate mortgage modifications — a factor critical to achieving positive outcomes. Legal service providers will represent all homeowners who are without counsel, receive a full set of papers and meet with their clients in advance of the court conference. When the case is called in the part, there will be no more excuses, no more delays. Real negotiations will take place, and homeowners will leave the table with the best available offer. I look forward to working with the New York State Department of Financial Services and its Superintendent, Benjamin M. Lawskey, on behalf of the Governor's office, as well as the Attorney General, to achieve these reforms that will keep more New Yorkers in their homes and improve outcomes for lenders as well as borrowers.

## REINVIGORATING THE COMMERCIAL DIVISION

**S**INCE ITS FOUNDING, New York has been a center of commerce for this country and the world. The New York Judiciary has played no small part in that prominence. As far back as the early 1800's, New York has been known for the quality of its laws and jurisprudence and the reliability of its courts as a forum for resolving business disputes. That reputation was critical in attracting commerce and enabling New York to continue its role as the world's pre-eminent financial and commercial center.

By the early 1990's, however, commercial filings were in decline, as litigants in commercial disputes were choosing to go to Federal Court, to Delaware, or to private dispute resolution more and more often. In response, my predecessor Judith Kaye, with great insight garnered from her prior experience as a commercial litigator, launched the Commercial Division of our Supreme Court in 1995. The goal in creating the Commercial Division was to increase efficiency in case processing and improve the quality and consistency of judicial decision-making in commercial litigation. And did we ever succeed. We went from a court system that could provoke frustration among the business community to one that serves as a model for other states.

Now, 17 years on, with states like Delaware, California and Texas competing with New York for commercial business and the resulting economic growth for their states, it is time to take a fresh look at ways to enhance our stellar Commercial Division. We must seek to create an even more hospitable environment for business. Now that many other states, encouraged by New York's experience, have established their own business courts, we must ask ourselves anew whether business leaders in New York and around the country know they can rely on our courts for the most efficient and expert resolution of business disputes. We must make sure that New York remains at the cutting edge of how commercial disputes are resolved. It is time to set a new vision for how we in the New York State court system might better serve the needs of the business community and our state's economy.

I am announcing today the creation of the Chief Judge’s Task Force on Commercial Litigation in the 21st Century. I could not be more pleased that the co-chairs at the Task Force’s helm are my spectacular predecessor as Chief Judge, Judith S. Kaye, and Martin Lipton, of the law firm of Wachtell, Lipton, Rosen & Katz. Judge Kaye was the longest serving Chief Judge in New York’s history, totaling nearly 16 years. She brought countless innovations to our courts, including the creation of the Commercial Division and its expansion to ten counties across the state. I cannot think of anyone more qualified to co-lead this effort. Marty Lipton, who I am so pleased is here with us today, is a founding partner of Wachtell, Lipton, Rosen & Katz. He has been practicing law for over 50 years, is a pre-eminent authority on mergers and acquisitions and on matters affecting corporate policy and strategy, and is one of the most respected lawyers in the nation. With their combined expertise in commercial law, the court system, and the corporate community, these co-chairs are uniquely positioned to spearhead this important challenge. Beyond our two terrific chairs, the Task Force is made up of current and retired judges, commercial litigators, business leaders, and corporate academics — representing the absolute best and most prominent members of the legal and business community.

Over the next six to twelve months, this distinguished group will examine such areas as how judges are selected for the Commercial Division, how to better control dockets to benefit users and the business community, how to manage the flow of cases and decisions more effectively using non-judicial personnel and alternative dispute resolution within the courts, and how to engage more closely with the corporate academic community and the Bar to ensure that judges and court staff benefit from the most up-to-date information and concepts. Among other things, the Task Force will consider how to increase the number of judges within the Commercial Division throughout the state, including attracting outstanding commercial litigators to the Bench. A proposal for immediate action from the Task Force will be new legislation to amend the Court of Claims Act to establish a new class of Court of Claims judges that the Governor could appoint specifically to sit in the Commercial Division. This would enable direct designation of seasoned commercial practitioners to supplement the court’s roster. New York has the best commercial lawyers in the world. They are a resource for our state, and it would be of great benefit if we could attract more of them to the New York Bench. We will shortly be sending legislation to the Legislature and the Governor to

create these judgeships that would be financed from within the Judiciary's budget and will lead to very direct tangible economic results for our state.

We are committed to ensuring the continued high standing and prestige of the Commercial Division, which plays such a crucial role in promoting the economic vitality of our state. I look forward to sharing the details of the legislative proposal with our partners in government and to reviewing the Task Force's recommendations.

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## VII.

### EXPANDING E-FILING

**I**N RESPONSE TO THE STATE'S FISCAL CRISIS, we have undertaken a comprehensive reassessment of court operations to learn what is working well, where we can improve, where resources can best be deployed, and how we can become more efficient without compromising results or our ability to fulfill our core constitutional mission. Technology plays a key role in this reassessment and reform of the way we do business. Over the past several years, technological innovation and automation have come to play an increasing role in improving both internal court operations and our interface with litigants and the public. Attorneys can now complete their biennial registration online, many courthouses are equipped for digital presentation of evidence, a growing number of courthouses have wireless internet access, and a wealth of information and forms are available on the court system's website.

But to harness the full power of technology and all it has to offer, the key is to automate our primary business — the filing, management, and resolution of cases. Every year, the attorneys and litigants in our courts purchase hundreds of millions of pieces of paper, serve a mountain of paper on opposing parties, and file it with the courts. All this paper has to be transported, stored, retrieved as needed, and, ultimately, disposed. The waste, inefficiencies, and cost are enormous.

Incrementally, we have been introducing e-filing to a system that has been based on paper for centuries. And we have made great progress — more than one million documents have been e-filed with our courts, and there are now more than 23,000 registered users of our e-system. With the recent legislative authorization of mandatory e-filing in certain case types in additional counties in the state, the transition to the world of paperless litigation is accelerating. There is now mandatory e-filing for some case types in New York, Westchester, and Rockland counties, and we will soon initiate mandatory e-filing in a number of new counties, including Chautauqua, Erie, and Monroe, where e-filing of surrogate court matters will be mandatory beginning in March 2012.

To accomplish the goal of moving to a paperless system, we must go further. We will continue to work with our legislative partners, including Senator John J. Bonacic and Assemblywoman Helene E. Weinstein, to make e-filing mandatory statewide, in all case types, including criminal and family court matters. Lawyers in New York State are ready, and the technology has proven itself to be reliable, efficient, convenient, and secure. As we move toward this digital future, we will work closely with all segments of the bar, as well as all other partners in this endeavor, including the County Clerks.

Universal e-filing will increase the efficiency and productivity of our courts, while also reducing costs and saving time for lawyers and litigants. We estimate that the total overall savings, to the courts, litigants, the bar, and county clerks, will exceed \$300 million a year. The travel and expense of filing papers with the court and of serving an opposing party will become obsolete. The greatest beneficiaries of this system will be solo and small-firm practitioners, who lack the support services and resources of large law firms. The benefits will also be especially dramatic in rural counties and other locations where there are large distances between attorney offices and the courts. And, of course, the positive environmental impact of this transformation cannot be overstated.

It has now been nine years since the federal courts of this state mandated e-filing in all cases, both civil and criminal. It is time for us to do the same. In the year 2012, this is not a pipe-dream; it is the very least that we should do to move the courts boldly and efficiently into the 21st Century.

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## CONCLUSION

**A**S WE LOOK BACK on an extraordinarily challenging year, I believe New York can be proud of its Judiciary and its ability to adapt, modernize, and innovate. But this is just the beginning — there are so many frontiers still to cross — streamlining our court structure as a part of our Governor’s creative and determined efforts to re-engineer state government, finally securing the long awaited salary adjustment that judges so richly deserve, continuing to devise innovative and yet cost-efficient ways to ensure that all New Yorkers — especially the most vulnerable in our society — get a fair shake and their day in court in a modern and technologically advanced court system, and so many more.

I have complete confidence that with the continued strong leadership of Chief Administrative Judge A. Gail Prudenti, and the herculean efforts of our exceptional judges and court staff, we will continue to turn the challenges we face into opportunities to transform the court system now and for the future. We are resilient, we are strong, and we have a common bond with our partners in government to ensure that the New York Courts continue to be a national leader in delivering equal justice to each and every member of the public that we serve. We will continue to balance the scales so that we can adapt to fiscal realities and yet never, never, never stray from our constitutional mission. The pursuit of justice is what this court system is all about — from its inception centuries ago to this very day and in all the years to come.

JONATHAN LIPPMAN  
CHIEF JUDGE OF THE STATE OF NEW YORK