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New York Law Journal

State of the Judiciary Address

January 10, 2000
Chief Judge Judith S. Kaye

It's appropriate to start the first State of the Judiciary Address of Y2K with two sets of greetings. Let me first extend actual greetings to those of you seated in this magnificent courtroom -- surrounded by symbols of stability, continuity and tradition in the law. Second, I want to extend virtual greetings to today's plugged-in audience attending via the internet of you focused, no doubt, on that quintessential symbol of innovation and change, a computer screen. Continuity and tradition; innovation and change -- I must say, it's a little dizzying to be at the intersection of these two markedly different cultures.

But isn't that the perfect metaphor for the challenge facing the courts in the 21st century? On the one hand, cherishing traditions, preserving core values that have nourished and sustained our system of justice since this nation's birth. On the other hand, being willing to change, to innovate, to take advantage of new tools, new thinking, new solutions.

Without question, the best way to begin the new millennium is by being honest with the public and with ourselves. Honest in two ways: first, we have to acknowledge the shortcomings in the system and try to correct them. Second, we have to acknowledge the strengths of our system and make sure those aren't overlooked. We hear plenty these days about what's wrong with our courts. It's easy to be a critic, easy to lose sight of the fact that there's still a lot that's right with our courts. One of the key questions as we enter this new century is, how do we build public trust and confidence in our justice system? The short answer: confront our challenges, and spread the word about our strengths.

Clearly, our justice system does not want for challenges as we stand at the crossroads of the centuries. Once again last year, the New York State courts received over three million new cases for resolution. That's not just millions of pieces of paper -- it's millions of human dramas, millions of contests about rights and responsibilities, about rights and wrongs.

Given the size and sweep of our dockets, I could speak about shortcomings and strengths until the next millennium. Above all, I'd enjoy talking about

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successes and advances during 1999 -- not only record dispositions but also our national model Family Courts in Erie and New York Counties, our new domestic violence courts, the expansion of our much-heralded business court, our Ethics Institute for lawyer professionalism, and on and on and on. I'd enjoy describing our new Civil Justice Program, which -- after a long year of fine-tuning in cooperation with bench and bar -- will be launched on January 31, bringing modern management techniques to civil litigation, the largest portion of our caseloads.

The fact is, we have ongoing programs that reach into every single corner of our operations -- reforms for Housing Court, Family Court, Town and Village Justice Courts, matrimonial initiatives, a comprehensive program to computerize the courts and upgrade facilities all across the State. The objective is to assure that always our court system is impartial, fair and effective, yet also modern, efficient and innovative.

For all of the achievements of the New York State Judicial Branch, I am grateful to my Court of Appeals Colleagues, to the Administrative Board -- with a special tip of the hat this year to Presiding Justices Betty Weinberg Ellerin and Dolores Denman for their exemplary service -- to our superb Chief Administrative Judge, Jonathan Lippman, to Deputies Traficanti, Carey, Pfau, Silbermann and Newton, to the entire administrative team, to each and every one of our hard-working judges and nonjudicial personnel, to our partners in government and in the bar.

But instead of covering the waterfront, today I have chosen to isolate three subjects. The first two are highly specific challenges: the persistent nonviolent criminal offender and access to justice. My third subject is more general -- our Year 2000 Program to promote public trust and confidence in the courts.

THE PERSISTENT LOW-LEVEL OFFENDER

We can immediately recognize the challenge presented by my first subject, the persistent low-level nonviolent offender. An individual who is arrested for a relatively minor offense-like possession of a small amount of marijuana, shoplifting, disorderly conduct, fare beating or unlicensed vending too often takes a plea, receives a minimal sanction, and upon release simply starts the process all over again. Make no mistake: today there are thousands of offenders like that in our courts. In the New York City Criminal Court alone, nearly two-thirds of those arrested and prosecuted last year had a prior arrest history. Over 30,000 had 10 or more prior arrests, and over 10,000 had 20 or more prior arrests. And the picture is not appreciably different outside New York City, where more than half of the low-level offenders who are arrested also have a prior arrest history.

Clearly, this sort of behavior is in itself a cause for concern -- it corrodes and degrades our neighborhoods and communities. But even more disturbing is the threat that persistent petty offenders may turn to violent crime, on occasion even to a horrendous, sensational crime. When that happens, the front pages explode. The public understandably is outraged. How in the world could they let that guy manipulate the process like that? What's wrong with our criminal justice system? What's wrong with our courts?

Let's be frank: many institutions, not just courts, have a role in dealing with chronic unlawful behavior -- families, schools, community centers, law enforcement, hospitals, mental health, social services, to name but a few. All of these institutions and many more have important roles to play in preventing, and remedying, the conditions that can lead to persistent

together.

CONCLUSION

I started this address by telling you that, in my view, the best way to begin the new millennium is by being honest with the public and with ourselves-honest about our shortcomings, honest about our strengths. I'd like to conclude by returning to that theme. Unquestionably, we have to do everything in our power to earn the trust and confidence of the public in the integrity, reliability and efficacy of our courts. And there is only one place to begin improving public perceptions about our court system: by improving the realities. The comprehensive measures I've been describing are an effort to do exactly that.

But only days ago another challenge seized the headlines- one that concerns the most basic value of our court system, its integrity. I refer, of course, to the allegations regarding court appointments of lawyers and other fiduciaries made on the basis of political party affiliation and service.

In general, I recognize that the political process is vital to our democratic system and has long served New Yorkers well. And as to last week's events in particular, I recognize that without the facts, we cannot prejudge what improprieties have actually occurred. But it is also absolutely clear to me that public confidence in the courts is put at risk when judicial appointments are based on considerations other than merit. Simply put, the public must have faith that the courts operate free of favoritism and partiality.

I am therefore taking the following steps.

First, I am directing the establishment, within 30 days, of an office of the Special Inspector General for Fiduciary Appointments in the Unified Court System to monitor and enforce existing court rules governing judicial appointments. These rules cover appointments of guardians, guardians ad litem, receivers, referees and others that assist in resolving cases before the court. The rules create procedures designed to avoid favoritism in the making of these appointments-including filing requirements and restrictions on the number of allowable appointments. The new Inspector General will, on an ongoing Statewide basis, examine whether the existing rules are being followed, and will work closely with the Commission on Judicial Conduct, the attorney disciplinary committees of the Appellate Divisions and other appropriate authorities as necessary, to ensure compliance.

Second, Chief Administrative Judge Jonathan Lippman will direct each of the Administrative Judges, Statewide, immediately to examine the practices in their own localities as they relate to fiduciary appointments, and to present recommendations as to any necessary changes. This will ensure that swift corrective action is taken to regulate how these appointments are made and to assure that our rules are working the way they were intended.

Third, the time has come to reexamine these rules. The current system was put in place over the last two decades after examination by members of the bench and bar of how best to structure the fiduciary appointment process to ensure impartiality. We maintain the public's confidence only if this process is effective and beyond reproach. Therefore, I will within the next month appoint a blue ribbon panel to examine the current fiduciary appointment process and make appropriate recommendations for reform.

An independent Judiciary depends on public trust in the integrity of the judicial process. Partiality and favoritism destroy that trust. As Chief Judge, I

will not allow that to happen.

Confronting our challenges and building upon our strengths- those are the two polestars that will guide our Judiciary as we enter the new millennium. I thank you all for the achievements of 1999, and for the prospect that the year ahead again will be a good one for the New York State courts.



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