NEW YORK STATE UNIFIED COURT SYSTEM

THE STATE *of the* JUDICIARY

2013

"Let Justice Be Done"

JONATHAN LIPPMAN
CHIEF JUDGE OF THE STATE OF NEW YORK

THE STATE *of the* JUDICIARY *2013*

Fiat Justitia, Ruat Caelum

"LET JUSTICE BE DONE, THOUGH THE HEAVENS FALL"

JONATHAN LIPPMAN

CHIEF JUDGE OF THE STATE OF NEW YORK

COURT OF APPEALS HALL • ALBANY, NEW YORK

FEBRUARY 5, 2013

JONATHAN LIPPMAN
CHIEF JUDGE OF THE STATE OF NEW YORK • CHIEF JUDGE OF THE COURT OF APPEALS

A. GAIL PRUDENTI
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

ASSOCIATE JUDGES OF THE COURT OF APPEALS

VICTORIA A. GRAFFEO

SUSAN PHILLIPS READ

ROBERT S. SMITH

EUGENE F. PIGOTT, JR.

PRESIDING JUSTICES OF THE APPELLATE DIVISION*

LUIS A. GONZALEZ
FIRST DEPARTMENT

RANDALL T. ENG
SECOND DEPARTMENT

KAREN K. PETERS
THIRD DEPARTMENT

HENRY J. SCUDDER
FOURTH DEPARTMENT

* The Chief Judge of the State and the Presiding Justices constitute the Administrative Board of the Courts.

TABLE OF CONTENTS

INTRODUCTION

"LET JUSTICE BE DONE, THOUGH THE HEAVENS FALL." This timeless maxim resonates as powerfully today as it did centuries ago and captures our Judiciary's steadfast commitment to deliver justice no matter what challenges and obstacles arise. Faced with budget constraints, a growing workload and reduced staffing at levels last seen a decade ago, our court system is nonetheless strong, resilient and above all, determined to fulfill its constitutional mission to serve the people of our state.

Only a few years ago, when the economic crisis impacted all of us in state government, we *literally* felt as though the "heavens were falling." It was a truly difficult time for the Judiciary, but we persevered and re-engineered court operations to ensure that our doors would remain open to all those seeking justice. And only a few months ago, when Superstorm Sandy closed key courthouses and wreaked havoc on our region and the lives of millions of New Yorkers, including many members of our own court family, it seemed again as though the heavens were falling. But we pulled together and, with the hard work and commitment of our judges and our non-judicial staff, managed to keep our courts running with only the slightest interruption. And finally, only three months ago, when we suffered the loss of our beloved colleague at the Court of Appeals, the very Honorable Theodore T. Jones, Jr., we felt again as though the heavens might fall. Although we are still heart-broken, we continue to draw strength from his memory and are inspired by the leadership, intelligence and compassion he brought to the bench and to his daily life. We celebrate his accomplishments, as we do those of our recently retired colleague, Carmen Beauchamp Ciparick, a trailblazer in the court system and at the Court of Appeals, and we look forward to warmly welcoming the Governor's nominee to fill her seat, Professor Jenny Rivera.

We faced many challenges this past year, but we remained determined to find better ways to deliver justice, ensure access for the most vulnerable among us and uphold the core values of our noble profession. And through this determination, we achieved significant milestones. I am so proud that New York became the first state in the nation to require *pro bono* service as a prerequisite for admission to the bar. Our state is once again leading the nation, this time serving as a model for how to help meet the enor-

mous legal needs of low-income populations, while at the same time preparing new members of the profession for entry into the legal world and instilling in these newest lawyers a commitment to service.

Meanwhile, in a year when we celebrated the 50th anniversary of the New York State Family Court, our Adolescent Diversion Parts have been demonstrating the success of a new approach to juvenile justice that combines age-appropriate services with interventions and penalties tailored to non-violent 16- and 17- year-old offenders. And this past year, with Governor Andrew M. Cuomo's leadership, strong legislative action and the wisdom of the court system's own Justice Task Force, New York also took a significant step to protect against the conviction of the innocent by enacting legislation to expand the state's DNA data bank and to ensure defendants' access to DNA testing. I am pleased and encouraged that the Governor is continuing his leadership in this critical area by making further legislation to prevent wrongful convictions a top priority in 2013.

In the year ahead, we must again rise above the storm to let justice be done. Our state's difficult financial situation not only persists but has been recently compounded by Sandy's devastating impact. Ever aware of these realities, the Judiciary has submitted a budget for 2013-2014 that carefully balances the need to fulfill our constitutional obligations while also being sensitive to our role as a responsible partner in government. In preparing this budget, we worked hard to cut costs wherever possible by carefully controlling hiring, maintaining strict limits on overtime and continuing to expand e-filing to streamline court operations.

But in addition to seeking greater efficiencies in these austere fiscal times, we are also pursuing innovative new approaches to fulfill our core mission and serve the people of our state. In the year ahead, we will do even more to meet the growing need of those most vulnerable in these challenging times and foster a culture of service in all members of the legal profession. We will strive to ensure transparency and access in our courts, while also promoting long-awaited juvenile justice reform and keeping New York a national leader in the field of criminal justice. We look forward to celebrating further milestones, including the 40th anniversary of an institution that has become the face of the justice system for countless New Yorkers — the New York City Housing Court.

With the dedication of our exceptional judges and non-judicial staff, I have every confidence that 2013 will be another year of great progress, as our court system once again rises to the occasion and continues to "let justice be done."

I.

BAIL INITIATIVE:

Ensuring a Rational Approach to Pre-Trial Justice

I BEGIN BY ADDRESSING A CRITICALLY IMPORTANT CONCERN in criminal justice, an area in which New York has seen so much progress. For the past twenty years, the state has confounded expectations by managing to reduce both crime *and* incarceration. Many have played a key role in this success — from the police departments that have instituted new management techniques, to the mayors and governors who have embraced new approaches to enforcement, to the judges who with great wisdom and skill interpret and apply our laws and offer meaningful alternatives to incarceration to thousands of offenders in our drug courts, mental health courts and community courts. Amidst all of this good news, however, there is still one vitally important area of the criminal justice system that has been untouched by reform: the process of making bail determinations while a case is pending in our criminal courts.

A. REVAMPING OUR BAIL STATUTES

New York offers special challenges in achieving bail reform. In almost every other state, judges are required by statute to consider public safety when making a bail determination. In New York, they are not required, or even permitted, to do so. Because of this, defendants in New York are screened for their risk of failure to appear in court — using a range of factors such as ties to the community, criminal record and past failure to appear — but not for their risk of committing a new crime. As a result, defendants may be put back on the street with insufficient regard to public safety, with possibly catastrophic consequences. Few, if any, would seriously argue that judges should not consider the safety and well-being of people on our streets or in our homes when making bail decisions. This makes no sense and certainly does not serve the best interests of our communities and our citizens.

The time has come to join 46 other states and the District of Columbia by changing New York's bail laws to require judges to take into account public safety considerations. Fixing this glaring deficiency must be the top priority of any revision to our bail statutes. Judges must be authorized to consider public safety as well as the risk of failure to appear for court when making bail decisions. To allow the present situation to continue is bad public policy at a time when we need to do everything we can to be smart, effective and principled in combating crime and violence in our society.

But this should be just the start of a top-to-bottom revamping of the rules governing bail in our state — a new vision of pre-trial justice in New York. Back in 1964, Robert F. Kennedy made a powerful case for bail reform, saying: "Usually only one factor determines whether a defendant stays in jail before he comes to trial. That factor is not guilt or innocence. It is not the nature of the crime. It is not the character of the defendant. That factor is, simply, money." While, thanks to the efforts of reformers like Herb Sturz and others, much has improved in our criminal justice system in New York since Kennedy spoke these words, the reality is that we still have a long way to go before we can claim that we have established a coherent, rational approach to pre-trial justice.

Our overriding goal must be to ensure that pre-trial detention is reserved only for those defendants who cannot safely be released or who cannot be relied upon to return to court — and to do all we can to eliminate the risk that New Yorkers are incarcerated simply because they lack the financial means to make bail. More than simply being unfair, incarcerating indigent defendants for no other reason than that they cannot meet even a minimum bail amount strips our justice system of its credibility and distorts its operation. Jailing defendants before trial can subject them to economic and psychological hardship, limit their ability to assist in their defense and place them at a serious disadvantage in the plea bargaining process.

To avoid these results, our bail statutes must be reformed to make clear that, where defendants are charged with non-violent offenses, there is a statutory presumption that they will be released with the least restrictive conditions possible unless prosecutors demonstrate that the defendant poses a threat to public safety or a legitimate risk of failure to appear in court. At the same time, to support judges when they make determinations to release defendants pre-trial, we need to ensure that they have authority to impose a range of release conditions when necessary, such as curfews, drug testing and substance abuse treatment.

Finally, we also need to ensure that judges have accurate and complete information before them when they make these important, and often difficult, decisions. For example, in some instances, primarily in rural parts of the state, judges do not always have the defendant's criminal history record (the 'rap sheet') at the arraignment. This is not only contrary to law but it also defies common sense, and we need to do everything we can to rectify this problem.

B. EXPANDING SUPERVISED RELEASE

New York's present approach to bail is not cheap. It costs a lot of money to jail thousands of New Yorkers each year before even determining whether they are in fact

guilty as charged. At a time when our governments are under pressure to reduce spending, we should be taking a hard look at these expenditures. The research suggests that an evidence-based approach called "supervised release" — which monitors defendants who are released pre-trial and also provides them with access to needed services — can, in a carefully structured program, both guarantee that defendants appear in court and save substantial money by avoiding incarceration costs.

Nationally, the average cost of pre-trial detention is $19,000 per defendant. The average cost to put a defendant in a supervised release program that keeps him or her in the community but monitors his or her whereabouts and provides access to social services, is between $3,100 and $4,600. Nearly 30,000 people are held in local jails in New York State at any given moment. You do the math — there is enormous potential savings if we can figure out how to safely and responsibly keep non-violent defendants in the community while their cases are pending. For example, a supervised release program in Kentucky has saved the state approximately $31 million dollars since 2005, with nearly 90 percent of participants reliably appearing for trial without having committed any new crimes during release.

Given these results, New York should be making a deeper investment in supervised release. In Queens, Mayor Michael Bloomberg and the City of New York have successfully tested one model — focusing on felony cases — with the help of the Criminal Justice Agency and the active support of local judges. I applaud Mayor Bloomberg for his vision and his commitment to change and I encourage counties across the state to consider such supervised release programs.

We should be mindful, however, that the vast majority of the cases in our criminal justice system are misdemeanors, not felonies. While misdemeanor defendants are typically detained for shorter periods of time than their felony counterparts, the sheer volume of misdemeanor cases and the frequency with which such defendants are detained on minor bail amounts demand that we look at reforming bail practices for this population as well. I am pleased to announce that the court system and the Center for Court Innovation will be developing a supervised release program in New York City that will target misdemeanor defendants who are currently being detained pre-trial because they are unable to make even low bail amounts.

C. REFORMING THE BAIL BOND INDUSTRY

Bail reform is further complicated by the role of the bail bond industry. Bail bondsmen, who typically receive a fee equal to 10 percent of the bond amount, almost never write bail bonds for $1,000 or less, because there is only a small profit to be made in

such bonds. They are far more likely to underwrite high bail amounts, which means, ironically, that defendants charged with serious offenses are more likely to obtain bail bonds than those accused of minor crimes.

Studies reveal that, in recent years, the use of bail bonds has increased across the nation. Along with this trend, pre-trial release rates have fallen and the role of commercial bail-bonding companies has expanded. With precious little public accountability, bail bondsmen exercise enormous influence over who is released pending trial and who stays in jail. The fact is that, in many cases, bail bondsmen, not judges and not prosecutors, ultimately make the most critical decisions affecting the liberty of those accused of crimes in our criminal justice system.

How can that be? Are there other options that can take the place of bail bonds? In fact, several alternatives are already authorized by statute, including partially secured and unsecured bonds. We should be encouraging judges to make greater use of these options, when appropriate, instead of relying so heavily on traditional bail bonds.

At the same time, we should also be testing whether we can take the profit motive out of bond making. State legislation passed last year allows not-for-profit organizations to act as bail bond agents, provided they are licensed by the State Insurance Department. This legislation was prompted by the work of The Bronx Defenders, an institutional defender office, that created a special fund to help low-income offenders post minor bail amounts. The fund reports a 93 percent appearance rate for participating defendants. In the days ahead, we should be considering approaches like this in other parts of the state and with larger bail amounts.

Just last week, the U.S. Conference of Chief Justices unanimously adopted a resolution urging court leaders across the nation to promote evidence-based practices that limit the use of pre-trial detention to those defendants who present a risk to public safety or of failure to return to court. The three-pronged strategy that I announce today — revamping our bail statutes to require public safety considerations and a presumption of release for non-violent offenders, investing in supervised release programs with great cost savings for New York's taxpayers and exploring alternatives to traditional bail bonds — will overhaul our approach to pre-trial justice in New York and place us in the front ranks of bail reform in the United States. I will shortly submit legislation to make these changes a reality and to bring us a step closer to achieving the fundamental promise of our justice system: to protect public safety and ensure fairness for all. Nothing could be more important!

II.

WRONGFUL CONVICTIONS:

Preventing the Ultimate Injustice

IF WE TRULY ARE TO FULFILL OUR DUTY to let justice be done, we must do more to prevent wrongful convictions in our state. Convicting an innocent person of a crime he or she did not commit is a profound miscarriage of justice and a blow to the justice system in the most fundamental sense. Since 2009, the Judiciary's Justice Task Force has been dedicated to addressing this disturbing problem. By examining the causes of known wrongful convictions, the Task Force has identified patterns and practices that increase their likelihood and has developed recommendations for action throughout the criminal justice system to prevent their occurrence.

Last year, New York took a major step forward in the prevention of wrongful convictions when Governor Cuomo signed into law an expansion of the state's DNA data bank, a measure urged by the Justice Task Force. By expanding the data bank and allowing greater defense access, our state has simultaneously improved the ability of law enforcement to identify perpetrators of crimes and enhanced the ability of the innocent to attain exoneration, all while promoting public safety.

But there is still much to be done, and I commend the Governor for his commitment to addressing two remaining areas that the Justice Task Force has identified as fundamental to preventing wrongful convictions. The first is mandatory videotaping of interrogations by law enforcement. I applaud Commissioner Raymond W. Kelly and the New York City Police Department for recently requiring videotaped interrogations in homicide, sex offense and felony assault cases to help reduce the instances of "false" confessions. The NYPD joins a number of police departments in New York that have voluntarily adopted this protective measure. This vitally important safeguard has helped to bring out the truth and increase transparency and public confidence in the criminal justice system. We must now pass legislation to make this mandatory in serious felony cases throughout New York State. If videotaped interrogations can work in a big city like New York to increase the integrity of interrogations and improve outcomes, it can work across the state.

Second, we must also reform our eyewitness identification procedures. According to the Innocence Project, eyewitness misidentification is the single greatest cause of

wrongful convictions nationwide, playing a role in nearly 75 percent of convictions overturned through DNA testing. To begin addressing this vexing problem, we have proposed legislation providing that evidence of a pre-trial line-up or photo identification would be admissible at trial only if the procedure was administered by a person who did not know the identity of the suspect, or did not know where the suspect was positioned in the lineup or in the photo array. By shielding the administrator of the procedure from the identity of the suspect, this new policy removes any question of suggestion to the eyewitness and further promotes accurate identifications.

As members of the Judiciary, we have a responsibility to do all we can to ensure that our system protects the innocent. To this end, we have identified straightforward, sensible safeguards that can prevent the ultimate injustice that occurs when a person is punished — even for one day — for a crime he or she did not commit. As we move forward with these proposals, I would be remiss if I did not thank the members of the Justice Task Force and its two wonderful Co-Chairs, Westchester County District Attorney Janet DiFiore and my dear colleague, the late Judge Theodore T. Jones Jr., along with Barry C. Scheck and Peter J. Neufeld of the Innocence Project at Cardozo Law School, the State Bar Association and our partners in government for all of their tremendous work and strong leadership in this critical area over the past year. I have every confidence that, with Governor Cuomo leading the way, we will have another major breakthrough this year in eliminating the scourge of wrongful convictions in our state.

III.

JUVENILE JUSTICE:

Establishing an Age-Appropriate Response

OVER 50 YEARS AGO, New York established 16 as the age of criminal responsibility. Even then, there was strong support for a higher age and, today, New York remains one of only two states in the country that continues to prosecute 16- and 17-year-olds as adult criminals. With over 40,000 young people ages 16 and 17 arrested annually in New York and prosecuted as adults in our criminal courts — most for minor crimes — it is high time that we join the rest of the nation in recognizing that adolescents cannot be judged the same way as adults.

Scientific evidence tells us that adolescent brains are not fully matured. In a string of recent cases, the United States Supreme Court has recognized that the parts of their brains that govern reasoning, impulse control and judgment are still developing and, as a result, most adolescents lack the capacity to fully appreciate the consequences of their actions. Moreover, studies indicate that older adolescents, 16- and 17- year-olds whom we now prosecute and sentence in criminal courts, are not only more likely to re-offend and to re-offend sooner, but also go on to commit violent crimes and serious property crimes at a far higher rate than those young people who go through the family court system. Simply put, public safety is not enhanced when we prosecute and punish 16- and 17- year-olds as adults. By doing so, we miss a vital opportunity to improve their chances of growing into productive, law-abiding adults and we burden them with the stigma of a criminal record that will forever stand in the way of opportunities for education, housing and employment.

There is a better way. With a tailored, age-appropriate approach, we can provide them with the services they need to break the cycle and get their lives back on track. With all of this in mind, last spring, I proposed legislation establishing a new "Youth Division" in our state's superior courts to adjudicate cases in which 16- and 17- year-olds are charged with non-violent criminal conduct. The proposed Youth Division combines the best features of the Family Court and of the criminal courts: appropriate cases "adjusted" by probation before they come to court; full procedural protections for youths whose cases are not adjusted but instead proceed to court; no criminal records resulting from adjudications of guilt; and, most importantly, enhanced services and

alternative-to-incarceration community programs. The proposed Youth Division can provide the tailored, age-appropriate approach that New York needs to prevent recidivism and effectively deliver justice to this critical age group.

The 2012 legislative session ended before this legislation was enacted. Nevertheless, within the limits of current law, we have been testing the principles embodied in the legislation over the past several months with encouraging results. Adolescent Diversion Pilot Parts, established in nine jurisdictions, have already adjudicated nearly 3,000 cases. Preliminary research by the Center for Court Innovation indicates that the Adolescent Diversion program is achieving its goals. The pilot program has resolved the overwhelming majority of cases without imposing jail time or criminal records. Most importantly, young people coming through these pilot programs were significantly less likely than comparison groups to be re-arrested for felonies. By addressing the defendants' underlying problems while still holding them accountable for their actions, this approach is achieving results without having a negative impact on public safety or imposing lifelong stigma on our youth.

We have learned two valuable lessons from these parts over the past year. First, they are not a substitute for legislation. Without legislation that decriminalizes certain offenses committed by 16- and 17- year-olds and broadens sentencing options, judges are limited as to what types of dispositions and sentences they can impose. Moreover, adjustment, resolving the charges before they become a pending court case — such a critical tool for keeping adolescents accused of minor offenses out of the criminal justice system — is not available without legislation. Second, and most importantly, we have learned that adjudicating adolescents in a way that utilizes age-appropriate services, interventions and penalties works — for our young people, for our families, and for the people of our state.

Accordingly, I will re-submit the Judiciary's legislation, but with some important changes that take into account the serious fiscal challenges currently facing state and local governments and alleviate the potential financial impact of the proposed Youth Division. Our proposal will require the court system to reimburse local probation departments for their costs in adjusting these cases, thereby relieving local government of any new fiscal burden. In addition, at the present time,16- and 17- year-olds who are now incarcerated, either pre-trial or post-conviction, are housed in adult facilities, but separate from adult offenders. By maintaining the current statutory arrangement rather than proposing that these 16- and 17- year-olds be housed in extremely expensive juvenile facilities that we know have their own risks, the legislation will relieve local

governments of any new detention costs. At the same time, we will work with localities to develop better ways to handle detained youths. In that regard, we will continue our discussions with Mayor Bloomberg's Office about the best way to house 16- and 17-year-olds in the City of New York.

I am truly heartened by the success of our pilot parts to date and I look forward to working with the Legislature and the Governor — and many others, including former Judge Michael A. Corriero, Richard M. Aborn of the Citizens Crime Commission and Stephen J. Acquario of the New York State Association of Counties — to build upon these successes, to enact meaningful legislation and to usher in fundamental reform to the juvenile justice system. Let us stop ruining the lives of our young people before they even get the chance to be a part of the American Dream. New York's current approach to 16- and 17- year-olds must be changed — and changed now — for the sake of our children and the future of our state.

IV.

CIVIL LEGAL SERVICES:

Fostering a Culture of Service

TURNING NOW TO CIVIL JUSTICE, so many have worked tirelessly towards making the ideal of equal justice a reality in New York. The recent report issued by the Task Force to Expand Access to Civil Legal Services in New York once again brought to light the enormity of the unmet need for civil legal services in our state. Their analysis also revealed, however, that individual lawyers are doing their part and that bar associations across our state have been working diligently to help deliver *pro bono* assistance to low-income New Yorkers. A new American Bar Association survey indicates that in 2012, almost three-quarters of New York attorneys performed at least some *pro bono* work, with the average attorney completing 66 *pro bono* hours last year. While these trends are certainly in the right direction, they unfortunately are not keeping pace with the growing need of the unrepresented poor, which has been compounded by economic uncertainty and the recent devastation of Superstorm Sandy. The gap in legal access has been widened further by the significant reductions in funding for the federal Legal Services Corporation and in the revenues of the Interest on Lawyer Account Fund (IOLA). The net result is that literally millions of litigants each year are left to confront critical legal problems without the help of a lawyer.

With this enormous need in mind, we are taking action on many fronts. The Judiciary's budget submission for the upcoming fiscal year incorporates the Task Force's recommendation for an increase in the current allocation for civil legal services to assist low-income New Yorkers in cases involving basic human needs. And on Law Day last year, I announced a new 50-hour *pro bono* service requirement for admission to the New York State Bar — the first of its kind in the nation. This bold step serves the dual purpose of helping to meet the growing civil legal needs of low income populations while allowing prospective attorneys to build valuable skills and embrace our profession's core value of service to others. It is absolutely vital that the new generations of lawyers in our state are committed to doing their part to meet the justice needs of *all* New Yorkers.

Since the requirement went into effect, law students from around the country, and indeed around the world, have answered the call and embarked on a wide variety

of law-related projects to simultaneously fill their requirements and the justice gap. I want to thank my colleague, the Hon. Victoria A. Graffeo, and Alan Levine, Esq. and the Advisory Committee they chaired for their invaluable assistance in developing our new *pro bono* rule. As we continue to implement this new rule, I am truly delighted to have the distinguished former Dean of Touro Law Center on Long Island, Lawrence Raful, leading our efforts. I have every confidence that New York's *pro bono* bar admission requirement will soon become a model for states across the nation.

To address the unmet need for civil legal services more effectively, we must promote the importance of *pro bono* work not only in the men and women who enter our profession as lawyers each year, but also in our current practitioners, as the Task Force recognized in its recent report. The legal profession in our state selflessly provides millions of hours of *pro bono* work to help people of limited means, and I do not intend to mandate that all New York attorneys perform *pro bono* work — a better course is to adopt the Task Force's recommendation to amend the Rules of Professional Conduct to increase the aspirational goal for *pro bono* service per attorney from 20 to 50 hours annually. This change not only will help narrow the justice gap, but also will further our efforts to foster a culture of service in all members of our profession. I am pleased to announce today that the Administrative Board of the Courts, our policy-making body, has approved this new amendment.

To provide admitted attorneys with further encouragement to participate in *pro bono* work, the Administrative Board has also approved the Task Force's recommendation to require attorneys to report the number of *pro bono* hours they performed and the amount of monetary contributions they made to legal services providers as part of their biennial attorney registration process. In taking this step, New York joins seven other states that have instituted *pro bono* reporting requirements to promote and encourage *pro bono* participation. These states have seen significant increases in the number of volunteer *pro bono* hours contributed by lawyers since instituting mandatory reporting. The reporting requirement will also enable us to identify and honor those attorneys whose dedication to *pro bono* service goes above and beyond the aspirational goal. We greatly look forward to celebrating their achievements and to welcoming the positive impact of this new requirement in our state.

We are committed to exploring all possible avenues to expand access to justice in our state. This includes the Task Force's proposal to examine the role that appropriately trained and regulated non-lawyer advocates can play in providing out-of-court assistance in discrete areas such as housing, consumer credit and foreclosures. I am today appoint-

ing a Committee, headed by Roger Maldonado, of the law firm Balber Pickard Maldonado and the Chair of the New York City Bar Association's Council on Judicial Administration, and Fern Schair, Chair of the Feerick Center for Social Justice at Fordham Law School, to develop a pilot program in New York that will allow those who cannot afford an attorney to receive low-cost guidance in simpler legal matters by qualified non-lawyers.

I want to thank the Task Force to Expand Access to Civil Legal Services, its terrific Chair, Helaine M. Barnett, and all the members of its *pro bono* working group for their dedicated efforts to find innovative ways to increase *pro bono* assistance and help fill the gap between available legal services and the rising needs of low income New Yorkers. Since 2010, the Task Force's work has been extraordinary, and I am so grateful for their dedicated study, creative ideas and invaluable insights. The Task Force's groundbreaking work makes clear at this critical time more than ever that each and every attorney in this state has a responsibility to use his or her skills to give real meaning to the phrase "justice for all."

V.

MORTGAGE FORECLOSURES:

Promoting Fairness and Integrity in the Process

RECOGNIZING THE GREAT NEED to address the foreclosure crisis in our state, last year at this time, I made it a top priority to improve the quality and effectiveness of the settlement conference process mandated in foreclosure actions by the Legislature. I am proud to report that, by working together with legal service providers, bar associations, housing counselors and law schools throughout this past year, we have significantly increased the availability of attorneys for individuals and families on the brink of losing their homes. In addition, we established a special pilot part in which bank officials with full authority to negotiate mortgage modifications are required to be present at designated conferences. Providing representation to homeowners and coordinating with bank officials at this critical stage has fostered meaningful discussion and enhanced cooperation and will ultimately lead to a more efficient and effective process for all parties involved.

Despite this progress, we continue to face challenges, in particular with the large number of foreclosure actions that are caught in what we call the "shadow docket." There are thousands of residential foreclosure cases that have been commenced with the filing of a summons and complaint but are not before the court because the lender has not sought court intervention. As a result, thousands of homeowners around the state with cases on these "shadow dockets" have not yet had their day in court.

We are addressing this problematic situation through a program in which these homeowners meet with legal service attorneys and housing counselors to discuss their case. If a homeowner wishes to proceed, the court then schedules a settlement conference with the lender present. Conferences have been held in more than 1,300 foreclosure cases, leading to settlements earlier on in the process and often resulting in agreements that keep homeowners in their homes.

While we continue our efforts on this front, we must also pursue statutory reform to address the residential foreclosure crisis on both a broader scale and a more permanent basis. We are therefore submitting legislation that would require the lender's attorney to file a certificate declaring that there is a reasonable basis to commence the action at the initial filing of the summons and complaint, rather than with the filing of a Request

for Judicial Intervention. Under the proposed legislation, the plaintiff will also be required to attach copies of the instruments of indebtedness to the complaint and file proof of service within 20 days of service, rather than the current 120 days. These measures together will supply the necessary ingredients to ensure timely participation by the parties in a mandatory foreclosure conference.

I greatly look forward to continue working with the Governor and Superintendent Benjamin M. Lawsky on foreclosure issues, and to jointly promoting this legislation with New York State Attorney General Eric T. Schneiderman, our justice partner and a pioneer in this field. By expanding our pilot parts and furthering this critical legislation, we will work throughout the year ahead to ensure the integrity of the foreclosure process, to prevent foreclosure cases from languishing in legal limbo and to provide all homeowners the day in court they deserve.

VI.

COMMERCIAL DIVISION:

Renewing a Commitment to Excellence

LAST YEAR AT THIS TIME, I announced that we were going to take a fresh look at New York's Commercial Division. Despite 17 years of tremendous success in providing an efficient and effective forum for resolving business disputes and serving as a model for other states, it was time for the Commercial Division to adapt to an ever-changing world and the challenges of an increasing workload. With this in mind, I created the Task Force on Commercial Litigation in the 21st Century, led by my predecessor, former Chief Judge Judith S. Kaye, and Martin Lipton, Esq., the co-founder of the Wachtell Lipton law firm. The Task Force has delivered a comprehensive report, outlining over 20 recommendations to better serve the litigation needs of the business community and our state's economy in the coming years.

To advise me on an ongoing basis about all matters involving the Commercial Division, I am establishing a permanent Commercial Division Advisory Council. I have asked attorney Robert L. Haig, Esq. of Kelley Drye and Warren LLP, who has been intricately involved with the Commercial Division since it was created and who also served on the Task Force, to chair the Advisory Council. The Council will be charged with helping to implement the Task Force's sound and insightful recommendations, keeping apprised of developments in the business world and working to enable our Commercial Division to better understand and respond to the needs of the business community — all of this to ensure that New York remains the premier venue for commercial litigation in the country.

VII.

CAMERAS IN THE COURTROOM:
Enhancing Transparency and Access

IT HAS BEEN SOME 25 YEARS since legislation was first enacted permitting camera coverage of New York state court proceedings on an experimental basis. Despite numerous studies declaring the experiment a success, the legislation, regrettably, was allowed to sunset ten years later. In the years since, we have witnessed dramatic technological advances that have transformed the ways in which we communicate and share information.

When the cameras legislation lapsed, the computer age was largely in its infancy and the Internet as we know it — much less smart phones or even digital cameras — did not exist. What a far cry from today's world. These days, news travels faster and wider than we could have imagined even a few years ago, with the public coming to expect greater transparency and accountability from government institutions.

An overwhelming number of states allow cameras in their courtrooms on some level. And while New York's court system has long been a national leader in so many ways, we remain woefully behind the times on this vital issue. Though our state judges now permit still photographers and video cameras into the courtroom on a limited, case-by-case basis, the process by which such access is granted is a cumbersome one that requires judges to navigate the complexities of an obscure and outdated statute, Section 52 of the Civil Rights Law.

Section 52, which prohibits audiovisual coverage of any public proceedings that include compulsory witness testimony, was passed 60 years ago, when flash bulbs and film were still state-of-the-art tools of the news-gathering trade. Surely, we can and must do better if we truly aim to integrate the New York State courts into 21st-century life.

A fair, open and transparent Judiciary is one of the most fundamental and treasured pillars of our democracy. The public has a right to observe the critical work that our courts do each and every day to see how our laws are being interpreted, how our rights are being adjudicated and how criminals are being punished, as well as how our taxpayer dollars are being spent. This cuts to the very core of the Judiciary's ongoing efforts to familiarize New Yorkers with their courts and legal system, build stronger bridges between our courts and the communities they serve and gain the public's trust

and confidence in our justice system. It is vital that concerned citizens, bombarded with crime shows and court dramas that do not provide a reliable representation of the justice system, have the fullest access to the real thing.

Today, we clearly possess the tools to provide that access. That is why I announce today a legislative proposal to expand camera coverage of courtroom proceedings. Under this proposal, all court proceedings — including the testimony of witnesses at hearings and trial — will be open to cameras at the discretion of the judge presiding over the case. As we strive to increase transparency and public access, however, we must also remain mindful of concerns of witnesses or parties that may arise in certain circumstances. Therefore, the new proposal provides that if a party or witness objects, that testimony may be broadcast with the witness's facial features obscured.

Under this new initiative, the process for permitting broadcast of court proceedings will be open and consistent. Importantly, the privacy of jurors and vulnerable witnesses will be protected, and courts can assure the conduct of fair and dignified proceedings. With this change, the prevailing standard will be: if you can see something as a spectator in a courtroom, you should be able to see it as a public viewer outside the courtroom as well. It is as simple as that!

I look forward to re-opening a robust public dialogue on camera coverage of court proceedings and to working with our partners in government to achieve enactment of cameras in the courts legislation. In the year 2013, with all the wonders of modern technology, there is no excuse for not making court proceedings fully accessible to the public.

CONCLUSION

THE RECENT MONTHS have presented many difficult challenges for us all as members of the Unified Court System, as New Yorkers and as citizens. But, in each of these roles, we have demonstrated our resiliency and an ability to overcome obstacles and emerge even stronger and more determined to fulfill our core mission. Whether it was coordinating the operations of the courts through Superstorm Sandy or continuing to streamline our court structure in order to be fiscally responsive, we have again proven that even in times of crisis, our courts will fulfill their constitutional mission.

As we continue to persevere in the year ahead, we are indeed fortunate to be guided by our spectacular Chief Administrative Judge, the Hon. A. Gail Prudenti, whose compassion and strength have been a true beacon during the most challenging times. Together with the high standards set by my wonderful colleagues on the Court of Appeals, the support of our four stellar Presiding Justices, Hon. Luis A. Gonzalez, Randall T. Eng, Karen K. Peters and Henry J. Scudder and all of our dedicated judges and court staff, I have every confidence that Judge Prudenti will continue to successfully navigate the courts throughout this next year and beyond.

Whether the issue is bail reform, wrongful convictions, the age of criminal responsibility, civil legal services, commercial litigation or opening our courtrooms to public scrutiny, rest assured that the New York Judiciary will never tire in its pursuit of justice.

We understand above all that our mission is justice — equal justice for each and every New Yorker. "Let justice be done" is, and will continue to be, our guiding principle in New York, and as a result, the State of the Judiciary will remain strong, vibrant and ready to meet the challenges ahead. Thank you.

JONATHAN LIPPMAN
CHIEF JUDGE OF THE STATE OF NEW YORK

Printed on recycled paper