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## Introduction - "Vision and Action in Our Modern Courts"

In the words of the great Nelson Mandela, who was released from prison in South Africa twenty-four years ago on this very day, February 11, 1990: "Vision without action is just a dream, action without vision just passes the time, and vision with action can change the world." With those resonant words very much in mind, I begin the 2014 State of the Judiciary Address resolute in my belief that modern court systems must bring both vision and action to the pursuit of justice. In a changing world in which we are regularly confronted with new and increasingly challenging problems, that is our ethical responsibility and our constitutional mission, and it is the thread that ties together my remarks today.

There will always be obstacles and challenges for our court system, and we must face them head on, for our mandate is far too important to sacrifice. *Justice* is far too important. Guided by this principle, the court system has been dedicated to improvement, innovation, and action. In the year ahead, we will build upon our past successes and continue to explore ways to improve the delivery of justice to the people of New York, to pursue new initiatives to improve the quality of justice in criminal cases, to lessen the burdens facing our Family Courts, and to address the dire need for legal assistance for the poor and those of limited means.

## **I. The Pro Bono Scholars Program**

In confronting the crisis in our country in delivering legal services to the poor and the disadvantaged, New

York has been a singular presence in sharply increasing public funding for legal services and taking innovative steps to promote pro bono legal services by lawyers and law students. Nevertheless, there is still a gaping disconnect today between the oversupply of new attorneys who are unable to secure jobs and the tremendous need for legal assistance among the poor and people of limited means. We know that the landscape for legal education and legal employment is undergoing major structural change across the nation. First year enrollment at U.S. law schools is at its lowest level since 1977. This statistic reflects a growing realization among our nation's young people that it may no longer make economic sense to pursue a legal career, with the crushing weight of law school debt, the constricting market for legal jobs, and insufficient opportunities to receive necessary training in

practical legal skills.

In fact, last summer, President Obama commented that it might well be wise to eliminate the third year of law school in response to these challenges. But rather than discarding the third year of law school, why not give law students choices that can make all three years of law school more meaningful and worthwhile? In New York, we are so fortunate to have stellar law schools, with innovative clinical programs and well-crafted curricula. These schools have trained some of the greatest legal minds in our country's history and fostered dramatic societal advances that are directly related to the unmatched quality of legal representation in our state. In the complex world we live in, where the breadth and depth of legal skills and knowledge are so vital to our society's well-being, why can't we retain the immense benefits of a

three-year legal education and, at the same time, allow law students the opportunity to gain better practice skills and to more fully understand their responsibilities as members of the legal profession?

To that end, today I announce the Pro Bono Scholars Program, through which law students will have the opportunity to dedicate their last semester of law school to doing pro bono service for the poor. Pro Bono Scholars will receive law school credit for their work and remain under their law school's educational umbrella and stewardship while gaining practical experience in the real world and helping those who cannot afford legal services. Simultaneously, the law schools will oversee a rigorous academic component to ensure that students are learning vital practice skills.

In order to participate in the Program, students must agree to devote the entire final semester of their third year to full-time pro bono service under the supervision of a legal service provider, law firm, or corporation in partnership with their law school. As a result, Pro Bono Scholars will receive a critical additional benefit; for the first time, they may elect to sit for the February bar exam in their third year of law school. Until now, law students could first take the bar exam in July after graduation and in the normal course would not be admitted until the following calendar year. Pro Bono Scholars will radically accelerate the pace by which they enter the legal market as licensed attorneys. The Program is the first of its kind in the country and builds upon New York's 50 hour pro bono bar admission requirement. Pro Bono Scholars will each contribute 500 or more hours of pro bono in their last

semester of law school and will easily satisfy the 50 hour admission requirement with their participation in the Program. The overarching goal for the Pro Bono Scholars Program is to instill in future members of the New York bar the value of public service to the poor and to provide them with the opportunity to acquire valuable legal skills that will prepare them for the practice of law.

Due to the challenging economic environment and legal job market, our newest law grads often find it difficult to develop quality mentoring relationships and adequate practical training in their first job after law school, if they are fortunate enough to have one. The Program will facilitate mentoring as students provide essential legal services to people in need under the direct supervision of a practicing lawyer. This supervision will take place through educational programs developed by law schools

and their clinics, and in partnerships with legal service providers, corporations, and law firms. These programs will enable Pro Bono Scholars to earn the academic credit necessary for graduation. With an accelerated character and fitness review process, we anticipate that Pro Bono Scholars will be admitted to practice very soon after graduation. This schedule will put them in the position to begin working earlier as licensed attorneys and it may help them be in a position to start repaying any outstanding education loans.

The Board of Law Examiners has already approved the Pro Bono Scholars Program. In the inaugural year, the option of participating in the Pro Bono Scholars initiative will be offered to all of New York's 15 law schools, as well as other schools that wish to participate. Participation by students will be subject to requirements set by individual

law schools under a framework established by the Program. The outlines of the Program are simple. Applications will be submitted by students at the end of their second year, in the spring, and there will need to be some limits on the capacity of the Program in the initial years as it is developed and implemented. Bar preparation will begin shortly after the conclusion of the third-year fall semester exams and continue until the February bar exam at the end of the month. Pro Bono Scholars will then begin their full-time pro bono work the first week of March and work through the end of May. Throughout their participation in the Program, the law students will continue to have the support and resources of their law school faculty and staff, and the law schools will create a strong academic component to complement their practical experience, in the form of seminars or

tutorials.

In order to address the logistics of an expanded February bar exam, ensure compliance with ABA standards, and develop a more precise timetable for the implementation of the various aspects of the Program, I have asked my colleague, Senior Associate Judge Victoria A. Graffeo, to head an Advisory Committee composed of law school deans from around the state. As she did for the 50 hour pro bono requirement, I have every confidence that Judge Graffeo will use her tremendous expertise and formidable organizational and managerial skills to collaboratively and expeditiously resolve any outstanding issues related to program implementation and evaluation and ensure a smooth transition for the new protocols. The success of the Program will depend on the cooperation and support of the many law school deans

and administrators, and we will be working very closely with our law school partners in the implementation process. Later today, Judge Graffeo will be sending out letters to the deans of every New York law school, detailing the next steps, agenda items, and goals for the Advisory Committee. Furthermore, and critically important, I have asked Chief Administrative Judge A. Gail Prudenti to utilize her incomparable knowledge of the legal world and great leadership skills to spearhead a Task Force with representatives from legal service providers, law firms, and corporations to partner with the law schools in identifying pro bono placement programs and securing their availability for Pro Bono Scholars. In the coming days, Judge Prudenti will be reaching out to the legal community throughout the state to ensure broad-based representation on the Task Force. I have also asked

David Schraver, President of the New York State Bar Association, and Carey Dunne, President of the New York City Bar, along with other local bar associations, to work closely with Judge Prudenti on this effort. The Advisory Committee and the Task Force will be instrumental in filling out the contours of the Pro Bono Scholars Program and in laying the groundwork for its day-to-day operation.

The benefits of the Program could not be more apparent. We offer this new option of coupling early bar admission, practical experience, and service to the poor as part of what must be a partnership of the academy, the Judiciary, and the profession to help close the justice gap and ensure the nobility and relevance of the legal profession in the challenging years ahead. Together, we can lay a cornerstone for the future of legal education, for lawyers, and for the vital services they provide in New

York and around the nation -- to rich and poor, high and low alike.

It is my fervent hope that in the future, every law student who is a prospective applicant to the New York bar will consider enrolling in the Pro Bono Scholars Program and devoting one-sixth of his or her law school education to pro bono work for the poor -- generating countless hours of pro bono work each year on behalf of our most vulnerable citizens. The impact on closing the justice gap would be dramatic and, if replicated around the country, multiplied many times over, ushering in a new era in the legal profession and revitalizing and reforming legal education to adapt to society's changing needs.

## **II. Role of Non-Lawyers in Closing the Justice Gap**

Beyond that, we must also be creative and embrace

new ideas about the very manner in which we deliver services to the poor as they seek to navigate our legal system. With this in mind, I tasked the Committee on Non-Lawyers and the Justice Gap to examine the role that non-lawyers can play to help New Yorkers in need. The Committee, so ably chaired by Manhattan lawyer Roger Maldonado and Fern Schair, Chair of the Feerick Center for Social Justice at Fordham, and fortified by the support and involvement of many of New York's largest civil legal service organizations, has devised a series of court-sponsored incubator projects to expand the role of non-lawyers in assisting unrepresented litigants. This idea of finding ways for non-lawyers to help pro se litigants is one that has only just begun to emerge in the United States. But it has taken hold elsewhere in the common-law world, including the United Kingdom, to great positive effect.

Clearly, there are many tasks that only a lawyer is authorized to do in New York, and there is no substitute for legal representation. Lawyers are subject to education, examination, and licensing requirements that ensure a high level of expertise and competence -- and rightly so. Only a lawyer is in a position to analyze the law, advise clients on their legal rights, and represent them in court.

Nonetheless, we must acknowledge that there is a vast pool of poor people with legal problems who cannot afford a lawyer to represent them. They cannot hope to pay even modest legal fees. And New York's excellent civil legal service providers do not have sufficient resources to serve the majority of them. Many in our society -- particularly the elderly, the disabled, and immigrants with limited English skills -- find themselves isolated and entirely cut off from legal assistance.

Perhaps we need to take a leaf from the medical profession, which has long recognized that people with health problems can be helped by a range of assistance providers with far less training than licensed physicians. We all accept that. Why not the same in the law?

Our efforts to find ways for non-lawyers to be of assistance begin in the courthouse. As of this month, specially trained and supervised non-lawyers will begin providing ancillary, pro bono assistance to unrepresented litigants in Housing Court cases in Brooklyn and consumer debt cases in the Bronx and Brooklyn. These are courts and case types in which virtually all defendants are unrepresented and are facing serious personal consequences as a result of litigation. It is shocking that in this day and age, over 95% of defendants in these critical cases are currently unrepresented. The new court-

sponsored projects will offer an array of assistance to eligible pro se litigants ranging from general information provided at help desks and written material to one-on-one assistance, depending on the needs and interests of the litigants. This kind of one-on-one assistance will include providing informational resources to litigants and helping them access and complete court do-it-yourself forms and assemble documents, as well as assisting in settlement negotiations outside the courtroom.

Most significantly, for the first time, the trained non-lawyers, called Navigators, will be permitted to accompany unrepresented litigants into the courtroom in specific locations in Brooklyn Housing Court and Bronx Civil Court. They will not be permitted to address the court on their own, but if the judge directs factual questions to them, they will be able to respond. They will also provide moral

support and information to litigants, help them keep paperwork in order, assist them in accessing interpreters and other services, and, before they even enter the courtroom, explain what to expect and what the roles are of each person in the courtroom.

In addition to these courthouse-based projects, we are also beginning projects to reach people outside of the courtroom in a collaboration between Albany Law School and the SUNY-Albany School of Social Welfare to serve the elderly population in the Albany area and in programs that utilize non-lawyers to provide legal information and access to homebound individuals.

All these efforts will help us address the crisis in civil legal services for the poor in ways that will supplement the services provided by the legal profession, which has

nothing to fear from these new projects. These efforts are aimed at groups who cannot afford to pay a lawyer under any circumstances and are unable to access free legal services. And they seek to provide information and help that fall outside the practice of law. I am confident that the projects that we now put into effect will begin to change the very contours of how we deliver civil legal services in our state.

### **III. Indigent Criminal Defense – Fulfilling the Promise of *Gideon***

Turning from civil legal services to our critically important criminal justice system, another on-going priority that commands our attention is the status of indigent defense services. In every criminal case in our courts, the quality of legal representation is vitally important. New

York is committed to fulfilling the promise of Gideon v. Wainwright by making certain that all persons accused of a crime in our state, regardless of means, receive competent legal representation. We have made important strides in recent years in ensuring the quality of indigent criminal defense. For example, pursuant to State legislation passed in 2009, the State began a program of progressively increasing funding to indigent defense providers in New York City to ensure compliance with nationally recognized caseload limits.

The same type of relief is desperately needed for upstate attorneys and their clients, who face similarly daunting challenges. Outside of New York City, where the level of funding of indigent defense services can vary from county to county, these providers in many regions throughout the state are laboring under considerable

stresses and bearing unsustainable caseloads. This has led to a patchwork system in which the quality of legal representation in these cases can vary greatly from jurisdiction to jurisdiction – creating many problems relating to a criminal defendant's right to meaningful and effective assistance of counsel.

Last November, the State Office of Indigent Legal Services, whose board I am proud to chair, issued a report detailing more than \$100 million in funding needed to bring the counties outside of New York City into compliance with the nationally recognized caseload standards. While implementation will likely require a multi-year phase in approach, the report provides a blueprint for a comprehensive plan leading to effective and consistent caseload standards for indigent defense providers.

The ultimate solution to ensuring consistent and high quality representation in our indigent defense system may well be a full State takeover of the cost and regulation of the representation. However, adopting and funding caseload limits in all of the state's 62 counties would be a major breakthrough in guaranteeing equal justice for all New Yorkers - - and make our state a national leader in providing this vitally important service. Just as we did in New York City, we will work with the Governor's Office and the Legislature to achieve these critical steps and make the promise of Gideon a reality in all of New York.

#### **IV. Hope for a New Beginning: Expunging Criminal History Records**

While we must address the quality of legal representation, it is also apparent that New York needs to focus more closely on the consequences of criminal

convictions. For those with a prior criminal conviction – even if stemming from a low-level, non-violent transgression committed ten or fifteen years ago or longer – the stigma of a criminal record continues long after a sentence has been served. From both a legal and practical standpoint, a criminal record can have profound negative consequences to an individual's future, whether in pursuing employment, applying for a professional license, or seeking government benefits such as housing, welfare, food stamps, or financial assistance. There is no doubt that criminal conduct should have consequences, but individual, often isolated, mistakes that result in criminal convictions for low-level, non-violent offenses should not permanently hinder a person's ability to become a productive, law-abiding member of society, particularly when he or she has gone years without being

re-arrested.

Widely accepted research has shown that the risk of recidivism drops steadily with time. Indeed, individuals convicted of crimes, even those convicted of violent crimes, are no more likely to be re-arrested after going a decade or so without an arrest than are people who have never been arrested.

Accordingly, building on the work of the New York State Bar Association and the Legal Action Center, I will shortly be submitting legislation to make New York's criminal history record policies fairer and more rational. First, the proposed legislation will expunge, by operation of law, a misdemeanor conviction of an individual who has not been re-arrested within 7 years from the date of such conviction. Second, it will permit a court, upon application

and in the interest of justice, to expunge a non-violent felony conviction if the applicant has no previous felony convictions and has not been re-arrested within 10 years of the date of the felony conviction or release from incarceration, whichever is later. Sex offenses, public corruption cases, and DWI-related offenses will not be eligible for expungement.

In addition, along with the submission of the proposed legislation, the court system will be implementing a new policy regarding the sale of criminal history information. Beginning April 1st of this year, when the Office of Court Administration responds to requests for electronic searches of criminal record information, it will no longer list misdemeanor convictions of individuals who have no other previous criminal convictions and who have not been re-arrested within 10 years of the date of the conviction.

Under this new policy, individuals who have led a law-abiding lifestyle will not permanently be burdened by a single misdemeanor conviction, giving them a second chance for a promising future.

## **V. DWI (Driving While Intoxicated) Initiative**

I would also note that far too many promising futures have been destroyed in one devastating moment by drunk drivers. In 2012, New York had 344 DWI-related fatalities – nearly a third of the state’s total traffic fatalities. That amounts to almost one fatality due to alcohol-impaired driving for every day of the year.

To make matters worse, DWI recidivism remains a persistent and serious problem. The National Highway and Transportation Safety Administration estimates that 30% of all drivers adjudicated for a DWI offense are repeat offenders. DWI recidivists carry a higher risk not only of

future DWI arrests but also involvement in alcohol-related crashes.

Although the court system has experimented with different approaches to DWI cases, we have never had a uniform, statewide plan. Today, I am announcing a comprehensive plan to address this problem.

We will establish dedicated DWI parts in the superior court in every county, so that a single judge will preside over all felony DWI cases. The judges will receive special training and provide more consistency in the handling of these difficult cases. As experts have recognized, a key component of achieving deterrence in DWI cases is certain, consistent and coordinated sentencing. Consolidating these cases into one court part, with a dedicated judge, will lead to consistency in sentencing. It

will also enable the judge to develop expertise in this complicated and technical area of law, as well as an understanding of the effectiveness of the statutory tools at his or her disposal, such as license suspensions, alcohol monitoring systems, and ignition interlock devices.

As for misdemeanor DWI cases, in most parts of the state the cases are mixed in with the overall case inventory. As with felonies, isolating DWI cases in a single court part before a single judge will allow the judge to develop an expertise in this area and will send the message that these cases are different. Treatment will be mandatory for offenders who have an alcohol or substance abuse dependency and who therefore present a high risk of recidivism. The new parts will be in place by June 1.

Drunk driving kills! We must ensure that these cases

are treated in a more orderly, consistent, and timely fashion in the courts of the state of New York. Action is required now to save lives and assure public safety.

## **VI. Ongoing Legislative Priorities**

As we enter this new year, we will also be renewing our commitment to important legislative efforts.

### *Juvenile Justice*

New York remains one of only two states in the country that is woefully behind the times on the important issue of juvenile justice. The bill we have proposed and continue strongly to support calls for significant reform in the way the State handles 16- and 17- year olds charged with nonviolent crimes. These reforms combine the best features of the Family Court and of the criminal courts, including: permitting local probation departments to divert

appropriate cases before they even reach court; creating Youth Division parts in superior courts, presided over by judges specially trained in adolescent development; freeing young offenders from the stigma of a criminal record; and assuring the availability of services and alternative-to-incarceration community programs to help these youth get their lives back on track.

I was greatly encouraged last month to hear Governor Cuomo highlight this vital issue in his State of the State address. The time is long overdue for New York to rethink juvenile justice and give the children of this state the chance that they deserve to have a meaningful and productive future.

### *Bail Initiative*

Last year, I called for an overhaul of New York's

system of pre-trial justice and proposed a plan designed to ensure a fair, coherent, and rational approach to decisions affecting the liberty of those accused of crimes in our state. This year, we will continue to promote all three prongs of our “bail reform” strategy – revamping our bail statutes to require public safety considerations and a presumption of release for non-violent offenders, investing in supervised release programs that will save money for taxpayers, and exploring alternatives to traditional bail bonds. Overall, we must work to ensure that pretrial detention is reserved only for those defendants who cannot safely be released or who cannot be relied upon to return to court, and guard against those unfair and unacceptable instances in which indigent defendants are incarcerated merely because they cannot meet a minimum bail amount, often as low as \$500 or less. This situation is

shameful and must be changed.

### *Wrongful Convictions*

Convicting even one innocent person of a crime is a miscarriage of justice that cannot be tolerated. New York must continue to take steps to ensure that our system protects the innocent. Expanding the state's DNA data bank two years ago was a critical first step, but we must do more. We have introduced legislation mandating the videotaping of interrogations in serious felony cases to help reduce the instances of "false" confessions and ensure the accuracy and fairness of convictions. Additionally, we must enact sensible safeguards to protect against eyewitness misidentification, the single greatest cause of wrongful convictions nationwide. The legislation we propose will permit the introduction of photo

identifications into evidence and require that pretrial line-ups and photo identifications be administered in a fair manner.

And, critically important, our Justice Task Force is now recommending groundbreaking statutory reforms relating to the pre-trial disclosure of evidence and other relevant information. Under current law, prosecutors are required to disclose, but not until the eve of trial, any prior statements of witnesses it intends to call. The Task Force is recommending that the prosecution disclose -- well in advance of the scheduled trial date -- the identity and any prior statements of all witnesses who have relevant information, whether the prosecution intends to call those witnesses at trial or not. Where witness safety or tampering is a concern, a procedure would be established for the prosecution to withhold or redact information until

the start of trial. In addition, the Task Force is recommending that, in cases in which expert witnesses will be called to testify, both the prosecution and the defense must exchange before trial written reports or summaries of their anticipated testimony. Criminal discovery reform is essential to protect the integrity of our system of justice, and we will be shortly be submitting legislation proposing these and other significant changes.

## **VII. Addressing the Crisis in New York State's Family**

### **Courts**

#### *Additional Family Court Judgeships*

One additional area requiring legislative action deserves special attention. Our courts play a critically important role in protecting children and families in our state. Over the past three decades, the caseload of the

Family Court has nearly doubled, and, remarkably, only a very few new Family Court judgeships have been established to meet this growing demand. No new Family Court judgeships have been created in New York City in the last 23 years, and only one was created elsewhere in the State over the last decade.

It is time to do right by the children and families of New York. It is time to ensure that these cases involving the very safety and well-being of children receive the time and resources they deserve. To rectify this dire situation, our budget provides funding for 20 additional Family Court judgeships, to be established effective January 1, 2015, through a supplemental appropriation. The severity of the current situation cannot be overstated. We call on our partners in government to make establishing additional Family Court judgeships a top priority in the present

Legislative session.

## **VIII. The Judiciary's 2014-2015 Budget: The Road to Recovery**

With all of the issues that I have discussed today, it should be crystal clear to all that the Judiciary has an enormous and gravely important responsibility – delivering justice. Nothing could be more fundamental to our system of government and our society than this constitutional mandate. Yet, fulfilling our mission has become an ever-growing challenge for the New York courts due to the severe fiscal constraints of the past several years. For the preceding five years, the Judiciary's operating budget has essentially been flat. In fact, in the current fiscal year, our budget has \$22 million less cash to support court operations than it did in Fiscal Year 2009-2010. On top of this steady decline in funding, the Judiciary has absorbed

over \$300 million in increased costs over the same time period.

The Judiciary has not sat idly by in the face of these challenges. We are fully aware of the times in which we are living. As a consequence, we have embraced our role as a good partner in government and confronted the fiscal crisis head-on – determined to re-evaluate and transform the way we do business. But make no mistake, the cumulative effect of years of austerity budgets has taken a substantial toll on our courts. Back-office staff in our courthouses have been depleted, resulting in delays in processing court documents, while the loss of court officers and courtroom staff has made it increasingly difficult to adequately staff all court parts. This reduced staffing coupled with increased workloads and necessary overtime control measures such as the 4:30 p.m.

courtroom closing time have led to significant delays in deciding motions and conducting trials.

While remaining sensitive to the State's fiscal situation, the budget we have submitted for Fiscal Year 2014-2015 seeks a modest two and a half percent increase in cash funding that will put the court system on the road to economic recovery and success in the years ahead. It will allow us to cover significant cost increases and begin to mitigate some of the negative impacts of successive no-growth budgets.

Equally important, the budget will also provide additional funding for civil legal services. These monies are essential to ensure equal justice for the millions of litigants who appear each year without counsel in eviction, domestic violence, consumer debt, and other cases

involving the essentials of life. The recent report of The Task Force to Expand Access to Civil Legal Services in New York makes abundantly clear that for every one dollar invested in Judiciary civil legal services funding, more than six dollars are returned to the New York State economy, resulting through 2012 in \$679 million in economic stimulus for New York State. In addition, there are savings to the state of over \$200 million in averted social services and shelter costs.

The people of New York, who so often come to us at their most vulnerable moments, cannot afford to see courtrooms close, or court hours reduced, or the wheels of justice come to a halt. I urge Governor Cuomo and the Legislature to approve our budget in full in the best interest of our state. Without their enthusiastic support, public confidence in the justice system and public safety

will surely be put at risk. Positioned at the front line of justice and hearing 95 percent of the nation's judicial business, state courts like New York's are absolutely essential to our system of government and our way of life. I am confident that, if approved, the budget we have submitted, representing only 1.9% of the total State budget, will provide a solid foundation for the future of our state court system in New York.

## **Conclusion**

As we continue to build upon the successes of last year, we are re-invigorated by the new promise and potential that lie ahead. Our fabulous Chief Administrative Judge A. Gail Prudenti and I salute the wise and able leadership of Presiding Justices Luis A. Gonzalez, Randall T. Eng, Karen K. Peters, and Henry J. Scudder and the

dedication and perseverance of all our judges and court staff. With their support, I have absolute confidence that Judge Prudenti will continue to achieve great success in shepherding our budget through to legislative approval and in promoting our other legislative priorities.

The programs and priorities I have shared with you today reflect a vision for the upcoming year to pursue justice for all New Yorkers with energy and innovation. Rest assured that vision and action will remain the hallmarks of the New York State court system in 2014 and that the state of the judiciary is strong and vibrant, and poised to meet the challenges ahead in our great state.

Thank you.