

NEW YORK

Problem-solving Courts, Jury Reform, Public Trust and Confidence

This state's summary includes reports from the following:

[Association of the Bar of the City of New York](#)

[New York County Lawyers' Association](#)

[New York State Bar Association](#)

[Rockland County Bar Association](#)

[State of New York Unified Court System](#)

[State of New York Unified Court System](#). In her 2001 State of the Judiciary address, <http://www.courts.state.ny.us/ctapps/webcast2.htm> New York Chief Judge Judith Kaye noted that her state's courts deal with 3.5 million new filings a year. "[R]esort to the courts to resolve every dispute--well, virtually every dispute--" she said "reflects a paradox about us as a people. We are on the one hand negative and cynical, especially about government. Yet, on the other hand, the public has a certain reserve of respect for the rule of law and the courts that administer and safeguard it with integrity and impartiality, outside the political fray. Undeniably, sadly, that public respect--vital to the effectiveness of the Third Branch--has in recent years suffered seriously."

Chief Judge Kaye's speech focused on four broad areas of activities to win back that respect:

1. Problem-solving approaches aimed at halting the recycling of people through the courts, including domestic violence court pilots, model family courts, parental education under a new Advisory Board with non-lawyer members, drug courts and community courts.
2. Operational initiatives to streamline dockets, including a call for better facilities, the piloting of electronic filing, a Judicial Institute for the training of judges, and landmark jury system reforms.
3. Efforts to improve public trust and confidence, including various public outreach activities such as a new public affairs website http://www.courts.state.ny.us/Community_Outreach/, reform in the appointment of fiduciaries, audits of mandatory CLE, and a new attorney fee dispute resolution program.
4. Court restructuring and assigned counsel rates.

Recent initiatives include integrated domestic violence courts, statewide institutionalization of drug treatment/family treatment courts, ongoing jury reform, a comprehensive public outreach program, community courts, commercial courts, improving access to justice, attorney fee dispute resolution and a State Judicial Institute. A brief overview of the court system's major initiatives is provided below.

1. Public Trust and Confidence. Following through on the issues addressed at the 1999 National Conference on Building Trust and Confidence in the Justice System and on the recommendations of the New York committee established in conjunction with the conference, the court system during 2000 completed a year-long calendar of programs and events designed to increase public understanding of court operations and the principles of our justice system. Initiatives included Senior Citizen Law Days, Court Appreciation Month, Media Days, mentoring programs, internships, mock trials, law-related education and court tours and visits. In the current year, the court system will unveil a new Public Affairs Web site www.courts.state.ny.us/Community_Outreach/ with interactive "Justice in Schools" programs for teachers and students.

2. Family Justice. To meet the ever-growing needs of New York's children and families, the court system recently launched an innovative program to address the family justice issues of today and tomorrow. New initiatives include: creation of integrated domestic violence court pilots, in which a single judge will hear all related matters involving domestic violence victims and their families and ensure that appropriate services are promptly provided; statewide expansion of model family courts; and statewide implementation of parental education programs for divorce cases.

In addition to these new initiatives, the court system is continuing and expanding a number of other reforms, including: reorganization of the Family Court in New York City into four function-based divisions; Family Night Court and Family Court satellite offices; and fast track adoptions.

3. Drug Treatment/Family Treatment Courts. Recognizing that traditional criminal sanctions are often ineffective in reducing the recidivism of substance-abusing offenders, and following through on the report and recommendations of a blue-ribbon Commission on Drugs and the Courts, the court system has embarked on a three-year program to institutionalize the drug treatment/family treatment court approach in every county of the state. The components of this comprehensive program include a universal screening process to identify eligible addicts, a system for matching them with appropriate treatment slots and tools to facilitate ongoing judicial monitoring, including on-site drug testing.

4. Jury Reform. In 1993, the Jury Project was convened to examine the New York state jury system, and in 1998 the Grand Jury Project was convened to examine the state's grand jury system. Comprehensive reports with specific recommendations to improve the petit and grand jury systems were released, and major improvements have been made as a result, including:

- replacement of the "permanent qualified list" system of summoning jurors with new methods to ensure that the benefits and burdens of jury service are more fairly distributed
- elimination of all statutory exemptions from jury service
- expansion of the master source list to include unemployment and public assistance rosters
- reduction of average terms of petit service by 50%, with 60 of the state's 62 counties now operating a "one day/one trial" system
- a series of pilot projects to reduce the lengthy grand jury term of service
- less frequent summoning for jury service, with all of the state's counties now on a four-year (or longer) summoning schedule
- increased juror compensation
- elimination of mandatory sequestration in all but the most serious criminal trials
- statewide standards for postponement of jury service, including one guaranteed postponement by telephone
- reduction of the statewide average time for petit jury selection in civil cases by over 25%
- upgraded juror accommodations and commitment to providing cleaner, more comfortable facilities
- a "juror hotline" and exit questionnaires to collect feedback
- an extended disqualification period for long-serving jurors
- promulgation of new administrative rules governing juror note-taking, submission of written legal instructions to the jury and the use of non-designated alternate jurors
- a grand juror orientation film, and plans for a grand jury handbook

In February 2001, the court system hosted a first-of-its-kind **jury summit** in New York City. The three-day summit was attended by officials from across the nation who discussed jury innovations, exchanged ideas and learned from New York's jury reform experience.

5. Community Courts. In October 1993, the court system opened its award-winning Midtown Community Court, which combines punishment and community service to address “quality of life” crimes in midtown Manhattan. Building on the Midtown Court’s example, the Red Hook Community Justice Center opened in 2000, handling family and civil matters as well as criminal arraignments and misdemeanor proceedings, all under one roof with one judge presiding. Opening in 2001 will be a new justice center in Harlem, and plans are underway for new community courts in other locations across the state.

6. Civil Justice. The court system has implemented a comprehensive Civil Justice Program. The highlight of this multi-faceted program is the introduction of a new judicial case management system based on the “one case, one judge” approach and the principles of differentiated case management.

Among the other components of this program are:

- expansion of alternative dispute resolution programs around the state
- expansion of specialized Commercial Divisions to other counties with extensive commercial case inventories
- a series of technological innovations to support the processing of civil cases, including electronic and fax filing of court papers
- plans for a new centralized approach to processing the thousands of cases in which New York City is a defendant

Along with the Civil Justice Program, the court system has introduced a series of comprehensive reforms for matrimonial cases. The reforms include: parental education programs; compulsory training and certification for law guardians and mental health professionals; use of social workers to assist families in resolving custody, visitation and relocation disputes; expansion of neutral evaluation programs; expansion of “screening parts” to encourage early resolution of cases; and a series of legislative proposals to reduce cost and delay in matrimonial actions.

7. Housing Court Program. To ensure dignity, efficiency and justice in a court that so critically impacts on the daily lives of New Yorkers, the Housing Court Program consists of extensive reforms that focus on administrative and operational innovations. The program includes the establishment of specialized resolution and trial-ready parts such as a cooperative/condominium resolution part, the opening of Night Housing Court, the creation of resource centers within the courthouses and the placement of state-of-the-art informational monitors in lobbies and courtrooms.

8. Criminal Justice Program. In response to shifting patterns of crime in New York, a multi-faceted Criminal Justice Program was developed to provide judges with flexibility in addressing varied types of cases in new and creative ways. The program incorporates techniques such as facilitated case processing, community-based adjudication, specialized processing of cases, alternative criminal sanctions and technological innovations such as video court appearances and summons part automation.

9. Court Restructuring. Efforts continue on a proposed constitutional restructuring of the New York State Courts. The proposal would reconfigure the nine state-funded trial courts into a more streamlined structure. This would increase the court system’s capacity to resolve legal issues effectively and efficiently, and make the system more accessible and easier to understand. The proposal also would authorize creation of a fifth Appellate Department.

10. Access to Justice. The court system is aggressively continuing its efforts to achieve statutory increases in assigned counsel fees, which the state Legislature has not increased since 1986. The court system has also implemented a series of initiatives to enhance access to civil justice. These include: creating a statewide Access to Justice entity to identify sources of public and private funding for legal

services programs; enhancing *pro bono* service; expanding community resource centers and court services for the self-represented; and organizing an access to justice conference.

11. Attorney Fee Dispute Resolution. Beginning in 2001, a party to an attorney fee dispute arising out of a civil case will be able to opt for a quick resolution through arbitration or, where available, mediation. For clients, this will offer a simplified forum without the need to hire yet another lawyer; for attorneys, the procedure offers the prospect of more expeditiously recovering fees that are justly due. The court system and the bar are jointly developing this program, which will be overseen and monitored by a statewide Board of Governors.

12. Court Facilities. In 2000, new courthouses opened in several locations around the state. Construction is underway or near completion at a number of other locations. Overall, nearly 100 construction and design plans have been substantially completed and more than 30 are in various stages of implementation.

13. New York State Judicial Institute. In affiliation with Pace University School of Law, the court system has begun development of a Judicial Institute. This will provide a year-round, state of the art education and training center for the state judiciary.

14. Fiduciary Appointments. A new oversight process has been implemented to ensure that all appointments of guardians, guardians ad litem, receivers and other fiduciaries, and all amounts paid to these appointees, are properly recorded and filed, so that the public has full access to complete and accurate information about these court assignments. In addition, reports on existing fiduciary appointment practices and recommendations for improvement are expected this year.

Contact: Lawrence K. Marks, Special Counsel, State of New York Unified Court System, 25 Beaver Street, New York, NY 10004; 212/428-2100; fax 212/428/2188; e-mail: lmarks@courts.state.ny.us; www.courts.state.ny.us

In the past year, the [New York State Bar Association](#) prepared a number of reports and recommendations on court-related issues. Each of these projects was funded through the particular Association Committee's budget. Legislative proposals are being advanced through the Association's legislative action agenda; proposals concerning court procedures are the subject of discussion with Court System officials. Each of the reports is being publicized to the membership, profession, and public. In summary, these initiatives include:

Public trust and confidence in the legal system: On January 26, 2001, the NYSBA House approved with several modifications the numerous other proposals of the Special Committee on Public Trust and Confidence in the Legal System. The report provided its perspective on strategies proposed by the Chief Judge's Committee to Promote Public Trust and Confidence in the Legal System and added proposals on issues not addressed by the Chief Judge's Committee. A segment of the report on public access to attorney disciplinary proceedings was deferred by the Committee to allow additional time for review.

Recommendations to build public confidence were made to combat bias and prejudice in the legal system, ensure opportunities for full participation in the profession, promote access to legal services in criminal and civil matters for those in need, provide legal services to persons of modest means, avoid delays in justice and promote a comprehensible court system, improve the jury process, provide adequate court facilities, address ethical concerns involving the bench and bar, expand law-related teacher training and other youth education initiatives, and enhance public understanding and media coverage of the legal system.

A recommendation was added to support having public access law libraries available across the state to make the legal system more user-friendly and promote public understanding. The position on retainer agreements was modified at the House meeting to recommend use, but not call for a requirement, of such agreements regardless of the amount involved. The proposal is intended to help ensure that the client understands the services and

arrangements. Concerning prejudgment interest on personal injury awards, it was clarified that this proposal to amend CPLR 5001 to expedite settlement and reduce costs was favored to the extent previously approved by the Association. Clarification also was made that the proposal to amend Rule 3221 "offer to compromise" would add an interest element.

The Committee expressed support for the Chief Judge's Committee's proposal to open the disciplinary proceedings to the public once a *prima facie* case has been established, but with the provision that (1) the Appellate Divisions have uniform provisions for the establishment of a *prima facie* case and public access and (2) that a judge makes such determinations. This portion of the report was deferred for consideration at the June 2001 meeting of the House.

Cameras in the courtroom: On March 31, 2001, the New York State Bar Association House of Delegates approved the report and recommendations of the NYSBA Special Committee on Cameras in the Courtroom which called for legislation authorizing a two-year experiment for audio-visual coverage of courtroom proceedings, with certain restrictions and safeguards. Legislation providing for a 10-year experimental period of audio-visual coverage with certain safeguards sunsetted in 1997. Since then, several judges have permitted cameras in certain trials.

Unlike the Association's 1994 position, the Special Committee did not favor requiring consent of the parties. The report recommended that: applications for coverage be made to the assigned trial judge no later than 30 days in advance of jury selection, with the trial judge to consider a number of factors and protections in determining whether a particular trial should be televised, including, among others, the importance of maintaining public trust and promoting public access to the legal system, the nature of the case, privacy rights of the participants, the effect on the ability to select a fair and unbiased jury, the parties' support or opposition to the request for coverage, and the impact on the willingness of witnesses to cooperate.

The report also urged that: no presumption be given in favor or against coverage; that the trial judge's ruling be appealable to the Appellate Division *de novo* with an automatic stay; that broadcasters granted coverage be required to tape the trials in their entirety; that the coverage be limited to those parts presented to the jury; that non-party witnesses have opportunity to have their voices distorted and faces obscured upon request, without need for showing of good cause, and to object to televising their testimony, upon a good cause showing; and that defendants have the opportunity to object to such televising upon a showing of good cause.

The Committee further recommended a presumption against coverage of all sex offense and domestic violence cases; an absolute prohibition on coverage of any child; a bar on coverage of all cases involving children unless special findings are made; and a presumption against coverage of matrimonial proceedings. The report also called for inclusion of the limitations on coverage in the sunsetted Judiciary Law, Section 218, including the right of the trial court to revoke, approve or limit coverage throughout the proceedings and prohibitions on coverage of arraignments or suppression hearings without consent.

Capital punishment: On March 31, 2001, the NYSBA House approved the resolution of the Criminal Justice Section and New York County Lawyers' Association (NYCLA) calling for a moratorium on executions pending further study of the death penalty system. The proposals, which referenced recent studies of the federal system and other states, recommended a moratorium until New York State undertakes studies and deliberations to ensure that death penalty cases are administered fairly and impartially in accordance with due process and to minimize the risk that innocent persons may be executed. Additional deliberations of these processes across the country also were sought.

Judicial certification, appointment procedures: The report of the NYSBA Committee on Judicial Administration concerning Office of Court Administration (OCA) judicial appointment and certification procedures was endorsed

by the Executive Committee, as clarified, for positive action by the House. The House is scheduled to consider the report in June 2001.

The report contains recommendations to address anomalies and enhance bar and public input in the appointment of Acting Supreme Court Justices and Judicial Hearing Officers (JHOs) and the certification of judges to continue on the bench beyond age 70. The recommendations concerning Acting Supreme Court Justices focus on longer-term appointments--not those made on a short-term basis or for handling of a particular case.

The Committee urged institutionalization of public participation, including notice and comment periods prior to appointments; promotion of bar involvement by requiring that the state and county/city bar associations be requested to submit recommendations and providing for bar representation on the advisory board for Acting Supreme Court Justices, as there is for JHOs; a requirement that OCA maintain data on applicants for such judicial positions, including the number applying and accepted and related demographic information; provision of weight to productivity numbers that would allow for the additional time necessary for more complex or sensitive cases; and implementation of a formal application process for Acting Supreme Court Justices, with notice of vacancies to eligible judges and submission of applications directly to OCA.

EDUCATIONAL PROGRAMS

Among 2000-2001 programs for the profession specifically focusing on court-related concerns:

- Committee on Alternative Dispute Resolution - Mediation Ethics: What an Attorney Needs to Know
- Special Committee on Unlawful Practice of Law - Symposium on Unlawful Practice: Toward a Definition of the Practice of Law - preparation of report and recommendations under way
- Council of Judicial Associations/Judicial Section and Committee on Judicial Administration - Why Can't We All Just Get Along: Continuing the Conversation Among Judges and Lawyers

LEGAL SERVICES

Federal funding for civil legal services: Continuing efforts of Association officers and the NYSBA President's Committee on Access to Justice to preserve the Legal Services Corporation and secure adequate federal funding. Steps included meetings with lawmakers and communications with local bar associations for a grassroots initiative in communicating with government officials, the media and others about the need for legal services in their communities.

State funding for civil legal services: Pursuing a regularized funding source for civil legal services at the state level.

Assigned counsel rates: Seeking increased rates for assigned counsel for the indigent in criminal matters. The rates, which have not been raised since 1986, are \$40 per hour in court and \$25 outside. The Association urges elimination of the distinction between services in and outside the courtroom and recommends basing the rate on the level of the charge. Increased fees also are sought in Family Court. Given concern about the impact on municipalities, the Association called on the state to fund the program in total or assist the local governments with respect to increases in compensation. Working with Court System officials who also are pressing for increased funding.

Pro bono service: Supports and encourages voluntary *pro bono* service. Maintains a Committee and staff department which provides forums, materials and resources to assist organizations in developing and conducting volunteer programs and to aid attorneys in identifying and participating in such programs.

Legal assistance partnership conference: Conducted a conference of public and private sector attorneys, through the NYSBA Committee on Legal Aid, on providing civil legal assistance to low-income persons in June 2000. Drawing more than 400 participants, the conference featured 50 workshops providing substantive and procedural information, opportunities to exchange ideas and develop cooperative efforts to maximize resources. The conference supplements ongoing communications through publications, a network of *pro bono* coordinators, and other means.

Middle-income consumers: Proposing legislation to provide litigants in civil cases for money damages up to \$75,000 to have the option of using a simplified case resolution process. The proposal, among recommendations of the Association's Commission on Providing Access to Legal Services for Middle-Income Consumers, is intended to enhance access to the courts and reduce delays and costs in cases that might otherwise be considered economically impractical to litigate. The affirmative legislative proposal, approved by the House of Delegates has been introduced in both houses of the legislature.

PUBLIC INFORMATION

Persons with disabilities: New topics were added to the public information videotape series on disabilities and the law, shown on cable television and available for educational settings. Topics in the series include hearing impairments, special education, health care decisions, transportation, involuntary commitment, technology, AIDS, and supported employment. Assisted by a grant from The New York Bar Foundation.

Senior citizens and their families: In May 2001, volunteer attorneys will be conducting free "Your legal checkup" presentations at senior centers, libraries and other facilities across the state to inform senior citizens and their families about health care proxies, powers of attorney, other advance directives, organ donation procedures and other provisions for health and financial well being. Project assisted by The New York Bar Foundation and another foundation.

The pamphlet, "17 Benefits for Older New Yorkers" was expanded and updated and a new booklet providing "Guidelines for Guardians" was produced.

Youth education: Provides resources, forums and activities to promote law-related education in elementary and secondary schools through the Law, Youth & Citizenship Program, conducted in cooperation with the State Education Department. Projects include annual Statewide High School Mock Trial Tournament involving approximately 500 schools; presentation of community service awards to high school students; presentation of a statewide conference for educators and attorneys involved in law-related education; teacher training workshops; publication of books for students and teachers; presentations by lawyers in the classroom. Mock trial local tournaments are conducted with assistance from local bars, culminating in statewide finals. The mock trial and awards program are produced with assistance by The New York Bar Foundation.

Contact: L. Beth Krueger, Director of Administrative Services, New York State Bar Association, One Elk Street, Albany NY 12207; 518/487-5560; fax: 518/463-8527; e-mail: bkrueger@nysba.org; www.nysba.org

Justice improvement activities of the [Association of the Bar of the City of New York](#) include the Committee on Alternative Dispute Resolution and the Robert B. McKay Community Outreach Law Program--working with the Office of Court Administration to conduct court-related dispute resolution programs for child custody and visitation, housing court matters, and recruitment, training and monitoring of other court-based ADR programs.

The Association, in conjunction with the court, has developed programs in the Supreme Court to provide assistance to *pro se* litigants, particularly with regard to filing for uncontested divorces. The Community Outreach Program has placed videos in New York City's five housing courts to explain the process to

unrepresented litigants, and worked with the Office of Court Administration to install informational videos in the small claims court and an interactive video system in New York County Supreme Court.

Other activities include programs to address lawyer-client disputes, numerous programs to provide legal service to poor and moderate income New Yorkers, monitoring of ethnic and gender bias issues in the justice system, and analysis of, and advocacy for, improvements in court operation and structures. A new Committee on Bench-Bar relations grew out of an Association proposal. The group meets regularly and is pursuing a full agenda. With the help of an ABA Office of Justice Initiatives model/demo grant, the Association developed the SHIELD Access Project, which will expand the intake and referral database for legal services and was developed with the cooperation of legal services providers and their clients. In addition, the Association is coordinating the development of LAW HELP, which will provide Internet access to legal information for social services providers and persons who cannot afford legal services.

Contact: Alan Rothstein, General Counsel, The Association of the Bar of the City of New York, 42 W. 44th Street, New York, NY 10036-6689; 212/382-6623; fax 212/398-6634; www.abcnyc.org

The [New York County Lawyers' Association](http://www.nycla.org) (NYCLA) continues to play a visible role addressing critical issues, preparing reports and commenting on current issues such as court re-organization, case management in the courts, jury service, and court budgets as well as advocating for a moratorium on the death penalty. In February 1999, NYCLA brought suit against Governor Pataki and the State of New York with respect to compensation paid to 18-B attorneys who are assigned to represent indigent adults in the Family Court. The compensation rates, the second lowest in the nation, have not been adjusted since 1986. In a recent decision on a motion to dismiss, the court dismissed the Governor's but affirmed NYCLA's standing to sue on behalf of third-party children and indigent adults. NYCLA will now proceed on the merits of the its lawsuit, which raises eight constitutional claims.

In 1998, NYCLA established the Parental Education and Custody Effectiveness (PEACE) program in partnership with the Office of Court Administration and the New York Society for the Prevention of Cruelty to Children. PEACE is a program in which volunteer lawyers and mental health professionals counsel parents about the effects of divorce and separation of their children. In 1999-2000, the first full year of operation, NYCLA trained 118 lawyers and mental health professionals and served 170 parents. With the support of Chief Judge Judith Kaye, the program has now been expanded around the state.

In addition to providing speakers in schools and sponsoring seminars for students engaged in law-related curricula in high schools, NYCLA adopted an inner-city high school where our members now teach classes on a regular basis. Also, the Law-Related Education Committee has prepared the second edition of our *Youth Law Manual* and expects to distribute 10,000 copies of it to students, teachers and parents.

NYCLA's committees participate in a number of alternative dispute resolution programs in the court and sponsor programs such as the Special Masters who assist judges by reviewing motions or conferencing cases. NYCLA also runs a tri-bar program, the Joint Committee on Fee Disputes and Conciliation, which attempts to settle fee disputes between lawyers and their clients. Now voluntary, the program will become mandatory for attorneys by order of the Administrative Board of the Courts on June 1, 2001.

NYCLA also continues to coordinate the Joint Committee for the Independence of the Judiciary, a non-partisan amalgam of 30 leading bar associations and law school deans that responds to attacks on the judiciary by the press and elected officials.

Contact: Marilyn J. Flood, Executive Director, New York County Lawyers' Association, 14 Vesey St., New York, NY 10007; 212/267-6646; fax: 212/406-9252; e-mail: mflood@mindspring.com; www.nycla.org

In May 2001, the [Rockland County Bar Association](#) held an Assigned Counsel Seminar for attorneys representing 18B clients. The Bar proposed a drug court seminar in 2002.

Contact: Sandria Israel, Executive director, Rockland County Bar Association, 120 N. Main St., New City, NY 10956; 845/634-2149; fax: 845/634-1055; e-mail: office@rocklandbar.org;

www.rocklandbar.org