Citizens Crime Commission
March 16, 2010

Good morning. It's a great delight to be here today. Before I begin, I want to thank Richard Aborn for inviting me to deliver remarks today – it is really an honor to appear before such a distinguished group.

What I hope to do this morning is offer the insight of a lawyer and judge who has labored in the New York state courts for my entire professional life – relishing every minute of it. From my point of view, the state courts are a passion . . . where more than 95 percent of the nation's judicial business is conducted, and where the worst problems ailing society manifest themselves on a day-to-day basis.

Because our criminal courts function in many respects like an emergency room, judges must deal with some of the most sensitive, heart-wrenching cases imaginable – whether it be cases involving child victims or acts of unspeakable violence or defendants with tragic life stories.

In the criminal context, the state courts have played, and continue to play, a significant role in achieving a goal that I know we all share: reducing both crime and incarceration in New York. This is not a contradiction. We really can do both. And, in fact, that's exactly what we've all been doing together for the past decade.

Just last summer, Attorney General Eric Holder spoke at the American Bar Association's annual meeting in Chicago. When he turned his attention to innovative approaches to fighting crime, he had this to say:

> New York has been a leader…. diverting some non-violent offenders into drug court programs and away from prison, and extending early release to other non-violent offenders who participate in treatment programs. And while national prison populations have consistently increased, in New York the state prison population has dropped steadily in the past decade, and has 12,000 fewer inmates now than it did in 1999. And since 1999, the overall crime rate in New York has dropped 27 percent.

Attorney General Holder's observations are especially timely these days,

as states desperately seek ways to cut spending in the face of a major fiscal crisis. I think it is critical that we try to understand, as best we can, what some are calling a miracle – New York's ability to simultaneously reduce crime and incarceration.

The financial costs of incarceration are astronomical. Suffice it to say that across the nation over the past 20 years, spending on corrections has grown at a faster rate than every other state expenditure except Medicaid. In 2008, states collectively spent more than $50 billion on corrections. It is fair for policymakers to ask: "What is the return on this investment?"

Of course, incarceration is effective in one respect – it incapacitates the offender. And make no mistake, many offenders – particularly violent offenders -- need to be incapacitated . . . to be put away behind bars for a long time for the sake of public safety. To believe otherwise is naïve.

My point here is not to re-open the age-old debate about whether incarceration reduces crime. Rather, I want to suggest that there are other ways to achieve that same goal . . . to reduce crime in ways that are less destructive to the well-being of individual families, to the health of distressed neighborhoods, and to the bottom line of cash-strapped state and local governments.

Franklin Zimring, author of The Great American Crime Decline, has described New York as "one of the most remarkable stories in the history of urban crime." Murders down 79% since 1990, robbery 82%, burglary 84%, car thefts 93%.

Today, I want to first take a look back and then a look forward in order to highlight the role that the courts have played in the New York miracle of reduced crime and reduced incarceration. It has been my good fortune to have been involved with so many of you in this effort – first, from 1996 to 2007, as the Chief Administrative Judge of the New York State courts, in charge of court operations throughout the entire state; and, now, as Chief Judge of the state. And I want to offer some thoughts and concrete ideas about how we might apply some of the lessons we've learned to a new problem that has dominated headlines for the past several months: the challenge of reforming the juvenile justice system.

But first, a look back at why crime went down in New York. We know that it wouldn't have been possible without the innovative NYPD programs or the sustained collaboration of a broad range of partners in government and the

private sector, many of whom are in this room today.

But I'm not here to repeat what you already know about the work of the police and of business and civic groups – that story is well known, and it's a great one. What is less well known is the role that the courts have played in this remarkable story.

When the police department made the decision to focus on broken windows and low-level law enforcement, the impact on the courts was profound. Over the course of the 1990s, criminal filings in New York City doubled, from 495,000 in 1990 to 989,000 in 2000. It didn't take long before the flood of cases threatened to overwhelm us. Faced with this reality, we had a choice to make. We could continue with business as usual or we could look for new ways to respond to our changing dockets.

In fairness, we did not start from scratch. New York has long been blessed with a vibrant network of alternative-to-incarceration programs like the Women's Prison Association and the Fortune Society. These and other nonprofits had been working with offenders and formerly incarcerated people for years, providing substance abuse treatment, counseling, and other services, so that they could rebuild their lives and avoid further criminal behavior.

While this was a limited example, it still suggested to the court community that alternatives to incarceration, if done correctly, were not just get-out-of-jail-free cards – they were good policy. But the consensus among judges and prosecutors in the early 1990s was that we could not do it effectively on the massive scale that was required.

Fortunately, some of us believed otherwise. We began with a handful of small, targeted investments. The first was the Midtown Community Court in New York City, located just blocks from Times Square, back then the symbolic heart of New York's quality of life crime problem, and miles away from the main criminal court complex in downtown Manhattan. The Midtown Court focused exclusively on the same low-level offenders that the NYPD had recently decided were a top priority. Rather than relying on jail as an outcome, Midtown sought to combine punishment and help, sentencing offenders to perform visible community restitution and to receive social services such as drug treatment, job training and counseling. The results of this experiment were unambiguous: independent evaluators documented reductions in crime and significant improvements in local

attitudes toward justice.

At this point, I would recognize the crucial role played by the Center for Court Innovation, the non-profit that helped us to design and implement the Midtown Community Court. The Center essentially functions as our independent research and development arm, creating demonstration projects and testing new ideas. Starting with Midtown, the criminal justice researchers and planners at the Center have helped keep the New York courts at the cutting edge nationally in terms of testing alternatives to incarceration.

Our next key investment after Midtown was made in upstate Rochester, where we created a special court devoted to linking non-violent, felony-level defendants to drug treatment as an alternative to incarceration. The judge adopted a hands-on, tough love approach, using the threat of prison and the discipline of regular court appearances to promote success in treatment. Here again, the results were impressive on three fronts: reducing substance abuse, incarceration and recidivism.

These early experiments led to others -- a community court in Red Hook that helped turn around one of the most drug-infested neighborhoods in the country; mental health courts; family treatment courts; veterans' courts; and on and on. Today, we have hundreds of such courts in New York, including 180 drug courts -- more than any other state. They have given more than 56,000 offenders the opportunity to get clean and avoid prison time. Research has shown that these drug court participants are almost one-third less likely to commit another crime than similar defendants whose cases went through the traditional court process.

The reductions in addiction and recidivism have had far-reaching effects in human terms, and in financial terms, the savings of nearly 2 million days of incarceration. When you consider that it costs an estimated $35,000 annually to keep someone in prison, New York's drug courts have conservatively saved the state more than $200 million dollars in prison costs.

The success of judicially-monitored drug treatment hasn't been lost on the federal government or the rest of state government. On the campaign trail, Barack Obama voiced strong support for drug courts and pointed specifically to the New York experience. It was a rare point of agreement between the President and Senator John McCain, who also endorsed drug courts as part of

the Republican Party platform. Congress seems to agree with the two candidates: last year, it allocated more than $63 million to support drug courts nationally. Here in New York, legislators from every part of the state and every part of the political spectrum, right and left, actively vie for new treatment courts in their districts.

When Governor Paterson and the legislature reformed the Rockefeller Drug Laws last year, they explicitly relied on the success of our drug courts. As a result, the number of defendants linked to judicially-monitored drug treatment in the last three months of 2009 was up by 45 percent over the same three-month period the year before.

The bottom line is that New York now has a statewide architecture of meaningful alternatives to incarceration that both criminal justice officials and the public can rely on. And I'm proud to say that the judiciary has been responsible for creating much of this infrastructure.

This required a change in the judicial mindset that began back in the 1990s and has its roots in the massive influx of new cases that I described earlier. In those days, judges confronting drug possession, prostitution, shoplifting and vandalism didn't have many tools at their disposal. Take the case of the typical offender arrested for drug possession – not the kingpin with the violent history, but the nonviolent drug addict who repeatedly engages in low level crime to feed an addiction. The standard choices used to be jail, probation or dismissal, none of which tackled the underlying cause of the criminal behavior – the offender's habit. We began to look with fresh eyes at court processes that focused solely on punishing <u>past</u> behavior while doing little or nothing to change <u>future</u> behavior. We began to ask ourselves if we had a responsibility to do more than operate a revolving door between the streets and the jailhouse.

The bottom line is that over time we changed how judges and even some lawyers measure success – no longer by the number of dispositions, convictions and acquittals . . . no longer by which side wins or loses the case . . . but by whether we are able to break the cycle of addiction and crime . . . and improve public safety. When that happens, everyone wins.

So that's the good news. We can all be proud of what we have accomplished over the past two decades when it comes to innovative approaches to fighting crime, each in our own way.

But we cannot rest on our laurels. Reducing both crime and incarceration is a project that requires constant vigilance. We must respond to new problems as they emerge. And we must take care of unfinished business.

In recent months, it has become crystal clear that there is a pressing need for reform of New York's juvenile justice system. Not a day seems to go by without someone shining a harsh spotlight on some aspect of the system, whether it be the US Department of Justice uncovering abuse in several upstate facilities, or a blue ribbon Governor's task force that called the entire system a failure, or the New York Times reporting on the lack of psychiatrists to address the problems of mentally-ill young people and how judges will look to any other possible solution before sending a young person to a state facility.

The story gets more depressing the deeper you go. It is estimated that 89 percent of the boys incarcerated in New York youth prisons go on to commit further crimes. You really can't get much worse than that.

Failure on this scale doesn't come cheap, unfortunately. It costs about $210,000 per year to confine a youth in a state residential facility. This is roughly 10 times the cost of the most expensive community-based alternative to incarceration.

As the sense of crisis in New York has deepened, it might be tempting for those of us in the courts to survey the wreckage and say "not my problem." After all, we don't run the youth prisons. We don't patrol the streets. We don't provide social services.

But this kind of mentality is one reason why New York got in trouble in the first place. Indeed, the Citizens Crime Commission was talking about a smarter approach to juvenile justice four years ago, when it wrote:

> "the fight against juvenile crime [must be] more than just a police function. Home- and community- based interventions are powerful deterrents to youths committing crimes. Governmental "silo-busting," that is breaking down barriers between agencies, is required so that coordinated and comprehensive strategies can root out potentially troubling behaviors."

All of the recent critiques of the juvenile justice system point in the same direction: incarceration should be used only as a last resort, and only for young people who are truly a threat to public safety.

But alternatives to incarceration must be meaningful. If we are going to keep troubled young people in their home communities, we need to provide them with the four "S's": the structure, the support, the services and the supervision they need to get back on course.

We need to re-think the entire juvenile justice process from start to finish. And we need to focus not just on what to do after a young person gets into trouble, but how to help them avoid coming to court in the first place.

It is sometimes said that an early contact with police, even for something as minor as farebeating or truancy, can put a child on a fast track to a host of negative life outcomes, including incarceration, educational failure, joblessness and family dysfunction. Instead of putting young people on a highway to oblivion, we need to build as many off-ramps as possible. At every point in the juvenile justice process, we need to give them an opportunity to make better life choices.

What do I mean by this? There are three crucial moments to intervene in a troubled young person's life: before he gets in trouble, while his case is pending in Family Court, and after the case has been adjudicated.

Experience tells us that there are numerous early warning signs. Schools know who the chronic truants are. Foster care agencies know which kids are disruptive. Police can identify the teenagers who are hanging out on the street at all hours of the night. Rather than ignore these early signs of trouble, we need to figure out how to make meaningful interventions.

This kind of prevention work is to a significant degree beyond the scope of the court system, but there are ways we can be supportive. For example, through our community courts, in recent months we have helped to spark the creation of pilot courts in schools in Red Hook and Harlem that emphasize adherence to school attendance requirements as an alternative to the filing of a petition of educational neglect in cases of chronic truancy. Participating students are linked to needed services, be it mentoring, counseling or tutoring. They must also participate in regular hearings, with their parent or guardian, to ensure that they are following through. Several retired judges have signed on to serve as hearing officers in these courts, which highlights the seriousness of the process and the importance of regular school attendance. The numbers suggest this approach is making a difference, with participants in the program seeing their attendance rise by an average of a full 20 days per student, per school year.

The next key window of opportunity opens when a young person is arrested for delinquency and has a case in New York City Family Court. Under Mayor Bloomberg's leadership, and with a major assist from John Feinblatt, the City has made a concerted effort to provide judges with detailed information about the risks – high, medium or low – that a young person poses to public safety. Armed with this data, judges can make more informed decisions about who needs to be held in custody and who can remain at home while a case is pending. Just as important, the City has also invested in a series of after-school alternative-to-detention programs so that young people can get the services and supervision they need to honor their obligations to the court. I applaud the Mayor and his staff for their interest and leadership in this area.

Of course, the ultimate moment of intervention occurs at the end of the juvenile justice process, when we are faced with this basic question: What should we be doing with children, some as young as 10 or 11 years old, who have been found responsible for criminal behavior? For the sake of this discussion, let's leave aside those who have committed the worst offenses, like murder and rape – thankfully, these are still rare occurrences. But what about those who have been found guilty of petty crimes, or criminal mischief or low-level drug possession? What should happen to them?

I started this discussion by saying that there is a broad consensus that we should reduce the use of incarceration in these cases. But for that to happen, we need to focus on the role of judges. At the end of the day, judges are the ultimate gatekeepers who decide whether a juvenile should be sent to a youth prison or an alternative program. If we want judges to send fewer kids to youth prisons that are in a real sense high schools for crime, incubators for hardened criminals, we must make sure they have meaningful options that protect both the safety of the public and the long-term interests of young people.

Yes, we have to give judges more options. But that's not enough. In the end, it comes down to judges having confidence that available alternatives to incarceration are rigorous and effective. That's why I want to announce, this morning, three new concrete steps the court system will be taking to address this critical issue.

First, I am submitting a legislative proposal in Albany today that will enable the Judiciary to assume statewide oversight of juvenile probation – a function that

currently resides in the executive branch.

Each year, family court judges in New York sentence about 4,500 young people to probation. These sentences are administered by local juvenile probation departments, which tend to be the stepchildren of the justice system. Routinely overburdened and underfinanced, probation departments struggle to provide meaningful oversight and services. Two decades ago, state funding made up about half of county probation budgets, but today that figure is down below 20 percent. There are many reasons for this situation, but the chief reason is that probation lacks a strong advocate in Albany.

If our goal is to reduce the number of young people behind bars, we will inevitably increase the number of young people on juvenile probation. But financially-strapped counties understandably find it difficult to fund juvenile probation adequately, which in turn makes it hard for probation officers to manage their current caseloads and be truly responsive to judicial concerns. How will they respond when hundreds and hundreds of additional cases are added to their dockets?

Our bill would give the judiciary authority to set statewide standards governing service delivery, and it would give us budgetary responsibility for state reimbursement to local juvenile probation systems. Over time, and as the economy improves, the court system can help ensure that county probation departments are given the resources they need to deal with increased caseloads and to provide the kind of intensive services – and rigorous monitoring – that teens need. Our bill also proposes a supplemental grant program that would allow localities to apply for additional state assistance in return for a greater commitment to their juvenile probation systems, particularly in establishing more alternative to incarceration programs as well as mental health, educational and other essential services.

If the objective in New York, again, is to limit the number of young people we send to expensive and self-defeating youth prisons, then the judiciary of this state has proven that we know how to accomplish that goal in a way that can improve public safety and save the state money. New York has become a national model for how to reduce incarceration and recidivism through our efforts to link nonviolent adult offenders to community-based drug and mental health treatment. Court system oversight of juvenile probation would allow us to put

those same lessons to work in the context of juvenile offenders.

Even while we make the case for this important reform in Albany – which, I might add, is being urged and supported by Probation Commissioners around the state – we are also working to create new options for frontline judges, so they don't feel like they have to rely on incarceration as a default setting. Which brings me to the second new step to be taken by the court system.

We know that there is a major gap in services for young people with serious and persistent mental illness. Exasperated judges often end up placing these youths in custody simply because there are no resources in the community to deal with their problems. But it turns out that this choice is based on a false assumption. Just a few weeks ago the New York Times reported that there is a critical shortage of psychiatrists at state facilities, despite the fact that it is estimated that more than half of detainees are diagnosed with mental health disorders. Apparently, there are no good choices for judges in these cases.

In response, we are launching a new pilot program in Queens that will provide mentally-ill young people with treatment in the community as an alternative to incarceration. Young people who are having problems functioning because of mental illness will be assessed by a trained clinical team, who will provide judges in Queens Family Court with detailed psycho-social assessments as well as individualized treatment recommendations.

If a judge so orders, a participating young person will be referred to community-based services as a condition of probation, including both individual therapy and family therapy. Compliance will be rigorously monitored to ensure accountability. And judges will receive detailed updates so that they can respond quickly if things take a turn for the worse. This kind of common sense approach -- intensive services married to strict monitoring – is what has worked so well for us with addicted adult offenders. I'm optimistic that this new juvenile program will serve as a model for similar programs across the city and state.

Queens is not the only place struggling with juvenile delinquency. Brownsville, Brooklyn has long suffered from high drop-out and youth violence rates, compounded by a disturbing rise in gang activity.

In the days ahead, as a third important initiative, we plan to work closely with the City and Brooklyn District Attorney Joe Hynes to forge a new response to youth offending in Brownsville. Our plan is to create a community justice

center that would be the first of its kind in the nation: it would focus exclusively on young people, ages 12 and older, and seek to reduce both crime and incarceration while at the same time restoring local faith in the justice system.

In Brownsville, we will make sure that troubled young people are provided with the educational, social and health services they need at every stage of the juvenile justice process, from arrest to prosecution to sentencing to aftercare. One of the goals will be to test new ideas and strategies at every one of those stages. And no matter how a young person comes to the court – whether it's a case diverted from prosecution or a mandate from the judge or an individual returning from placement upstate – the goal will be the same: to help young people become productive, law-abiding members of the community.

Is it possible to change the trajectory of a neighborhood like Brownsville? Yes. We've done it before. We did it in Red Hook, which just a decade ago was a community much like Brownsville -- a place Life Magazine labeled one of the most crack-infested neighborhoods in the country. Today, Red Hook is home to the safest police precinct in Brooklyn. There are many reasons for this, but one direct, contributing factor has been our community court, which emphasizes prevention and has made strategic investments to help prevent young people from coming to court in the first place.

While pessimists might hear the grim drumbeat of news coming out of the juvenile justice system and conclude that the system is broken beyond repair, those of us who have been involved in justice reform in New York over the past several decades know that the current moment is one to be seized. I am optimistic that we can turn crisis into opportunity. If we apply the same approach to juvenile justice that we applied to the adult courts over the past twenty years – a deeper investment in alternatives to incarceration and a changed judicial orientation – I have every reason to believe that we will help produce another New York miracle. I know that you will join us in this vital endeavor. If we have learned anything over the last two decades, it is that Miracles are possible – but only if we all work together.

Thank you.