

JUSTICE, JUSTICE, SHALL YOU PURSUE FOR RICH AND  
POOR, HIGH AND LOW ALIKE

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One of the most enduring aspects of Chief Judge Jonathan Lippman's legacy will be his vision and leadership with regard to expanding access to civil legal services and equal justice for all. Indeed, Jonathan Lippman has dedicated his tenure as Chief Judge of the State of New York "to making the ideal of equal justice a reality in the Empire State."<sup>1</sup> The Chief Judge has many times reminded us of the admonition of the Old Testament, the theme for his substantial and unequivocal Access to Justice Initiative. Indeed, the Chief Judge recognizes that as lawyers and judges "[w]e pursue justice every day, in our respective roles . . . and we cannot do that, unless there is a steady, dependable consistent funding stream for civil legal services . . . ."<sup>2</sup>

The Chief Judge formally launched his plan to gain permanent state funding for civil legal services and justice in New York State with his 2010 Law Day speech, "Law in the 21st Century: Enduring Traditions, Emerging Challenges." In this seminal address, the Chief Judge noted that the Court's docket "reflect[s] the direct legal and human fallout from the recent economic collapse—not just bad debts and bad business deals, but skyrocketing home foreclosures, consumer debt cases, growing family offense and custody petitions, and a rise in matrimonial conflict."<sup>3</sup>

The Chief Judge has built on this theme in many subsequent speeches. At the ABA/NLADA Equal Justice Conference in May 2011, the Chief Judge referred to the Courts as society's "emergency

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<sup>1</sup> Jonathan Lippman, Chief Judge of the State of New York, Equal Justice Conference, Keynote Address 7 (May 20, 2011) (copy of transcript on file with Albany Law Review).

<sup>2</sup> *The Chief Judge's Hearings on Civil Legal Services, Third Department Hearing on Civil Legal Services*, 3d Dep't 11–12 (2011) (Remarks of Chief Judge Jonathan Lippman), available at <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/3dDept2011-Hearing-Transcript.pdf>.

<sup>3</sup> Jonathan Lippman, Chief Judge of the State of New York, Law Day 2010 Address: Law in the 21st Century: Enduring Traditions, Emerging Challenges 1 (May 3, 2010) (transcript available at <http://www.nycourts.gov/whatsnew/pdf/Law%20Day%202010.pdf>).

room,” with dockets filled with “society’s worst ailments.”<sup>4</sup> He frames the issue of funding for civil legal services powerfully:

[It is] every bit as important as other fundamental priorities of a civilized society. We don’t say that there won’t be public schools or hospitals or courts this year to serve our children or treat our sick or deliver justice because the economy is bad, just as we cannot say that we won’t fund civil legal services for the indigent because it is too difficult to afford. Access to justice is not a luxury, affordable only in good times.<sup>5</sup>

A year earlier, the Chief Judge noted that access to justice is “one of the great challenges facing our justice system today. No issue is more fundamental to our constitutional mandate of providing equal justice under law than ensuring adequate legal representation.”<sup>6</sup> That day, the Chief Judge announced his plans to hold public hearings in every department of New York State, together with the Presiding Justice, the Chief Administrative Judge and the President of the New York State Bar Association. He also announced the appointment of the Task Force to Expand Access to Civil Legal Services in New York, to be chaired by Helaine M. Barnett, the recently retired President of the Legal Services Corporation. The Chief Judge charged the Task Force with assisting him in assessing the need for legal assistance and recommending steps to make access to justice in civil cases a priority. Members of the Task Force ultimately included lawyers from throughout the state, bar leaders, civil legal services and pro bono providers, law schools, and labor unions. The Deputy Chief Administrative Judge for New York City Courts and Statewide Director of the Court System’s Access to Justice Programs, the Honorable Fern Fisher, serves as an ex officio member of the Task Force.<sup>7</sup>

At the time the Task Force was launched, each house of the Legislature passed a resolution supporting its work. Indeed, the Chairs of the Senate and Assembly Judiciary Committees are ex officio members of the Task Force. Thus, from its inception, legislative leadership was involved and supportive of the efforts of

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<sup>4</sup> Lippman, *supra* note 1, at 1.

<sup>5</sup> Jonathan Lippman, Chief Judge of the State of New York, American Constitution Society Address at Harvard Law School: A Civil Gideon: The Challenge of Extending the Right to a Lawyer 9 (Oct. 26, 2011) (copy of transcript on file with Albany Law Review).

<sup>6</sup> Lippman, *supra* note 3, at 3.

<sup>7</sup> The author is privileged to serve as a member of the Task Force.

the Task Force.

The Task Force has worked very hard to fulfill its charge, issuing comprehensive reports in November 2010 and November 2011. In both years, the Task Force organized hearings in every department of the state which provided a record of testimony from business leaders, judges, community partners including hospitals, schools and other nonprofits, law schools, labor unions, experts, and, of course, clients, to illustrate both the deep unmet need for and substantial value of civil legal services.

In 2010, in addition to the substantial hearing testimony which unanimously supported the need for additional resources to support access to justice to free civil legal services, the Task Force also undertook a number of separate initiatives including:

- (i) a [s]tatewide civil legal needs study of low income New Yorkers; (ii) a review of court data generated by the Office of Court Administration concerning New Yorkers without civil legal representation; (iii) a survey of front-line Judges across the [s]tate regarding the extent that the lack of legal assistance affects the administrative of justice on a day-to-day basis; (iv) a survey of legal services organizations across the [s]tate about how the continuing severe economic downturn has affected the demand for their services; and (v) an analysis of cost benefit and cost-savings data from IOLA, the independent entity that provides funding to the network of core civil legal services providers throughout New York.<sup>8</sup>

In 2011, Task Force initiatives were as substantial and wide-ranging as the first year. The Task Force's second-year work included reviewing the continuing unmet need for civil legal services through up to date data on poverty and unmet need; pro bono, expert analyses of the cost-savings resulting from providing civil legal aid to both victims of domestic violence and individuals at risk of homelessness; a major assessment regarding the need for simplification of court forms and procedures to improve access to justice for both represented and unrepresented litigants; an assessment of law school involvement efforts including testimony from the Albany Law School; an evaluation of provider initiatives to share costs; an evaluation of alternative conflict resolution efforts; and an assessment of strategic partnerships between New York's

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<sup>8</sup> TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 3 (2010) [hereinafter 2010 REPORT], *available at* <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>.

civil legal services providers and nonlegal social services agencies.

The two Task Force reports have generated a body of powerful data to support the wisdom of funding civil legal services from the public fisc. For example, with respect to the great unmet need, the 2010 Task Force Report contains a Legal Needs Study performed by Lake Research Partners for the Fund for Modern Courts. The Study itself was funded by contributions from law firms and funders represented on the Chief Judge's Task Force. The study was done with no public funding at all, and was New York's first updated Legal Needs Study in two decades. "The key finding was that nearly half of all low income New Yorkers—47%—experienced one or more legal problems in the past year, and many experienced more than one legal problem."<sup>9</sup> The study also showed that the vast majority of legal problems experienced by New Yorkers involved housing, finances, public benefits, domestic and family issues, and health insurance—issues that implicate what the Chief Judge aptly calls "the essentials of life." The 2011 Task Force Report cites Census data that confirms that almost thirty percent of all New Yorkers have incomes below two hundred percent of the poverty guidelines, about 6,328,000 people.<sup>10</sup>

Comparing only the number of low income New Yorkers with the greatest need for representation, those who experienced three or more legal problems per year (about 1.2 million) per Lake Research Partners with the number of cases closed by civil legal services providers, the Task Force again confirmed that "at best, 20 percent of the need for civil legal services is being met."<sup>11</sup> The latest Report confirms that "[m]ore than 2.3 million litigants still try to navigate the complex civil justice system without a lawyer."<sup>12</sup>

Both reports also highlight the fragility of a justice system financed by revenue that is tied to economic conditions. Indeed, New York's civil legal services providers faced a dangerous funding crisis when interest rates fell and revenue to the Interest on Lawyer's Accounts ("IOLA") Fund plummeted. The drop in interest rates dramatically reduced IOLA funds available to civil legal services providers from close to \$32 million in 2008 to only \$6.5

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<sup>9</sup> *Id.* at 27.

<sup>10</sup> TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 15 (2011) [hereinafter 2011 REPORT], available at [http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011TaskForceREPORT\\_web.pdf](http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011TaskForceREPORT_web.pdf).

<sup>11</sup> *Id.* at 15.

<sup>12</sup> *Id.* at 16.

million in 2011. Recognizing that while such funding can be pragmatic, and that its inherent fluctuations mean that it cannot serve as the cornerstone of the justice system for low income New Yorkers the Chief Judge then set out to “create a precedent for our State, and possibly elsewhere, by implementing a systemic annual process to fund civil legal services with state monies, by means of the Judiciary’s budget.”<sup>13</sup> First, the Chief Judge created a \$15 million IOLA rescue fund—with the support of the Legislature and the Governor, this emergency rescue fund has been invaluable to supporting the stability of civil legal services providers throughout the state. Last year, the Chief Judge followed the record and recommendations of the Task Force and also included \$12.5 million for civil legal services in the judiciary budget.

Another key component of the Chief Judge’s strategy was to show how providing attorneys for low income litigants makes sense for the court system, all represented litigants, low income New Yorkers, and the community as a whole. The hearings held before the Task Force around the state provide ample evidence of the need for lawyers. In both 2010 and 2011, the Chief Judge heard testimony at hearings in each Appellate Division from an array of business leaders, judges, local government officials, and community leaders about “the adverse impact on represented parties that results when unrepresented parties require repeated adjournments and cannot present or resolve their cases that otherwise could be resolved by counsel without the need for protracted litigation.”<sup>14</sup> Local government officials testified as to the economic and social benefits generated by the work of civil legal services providers. District attorneys in particular focused on the need for civil assistance for crime victims, especially survivors of domestic violence and victims of elder abuse. Landlords—both private and public—noted the importance of having tenants represented in eviction cases.

Business leaders also spoke of the importance of having access to justice. For example, in 2011 at the hearing in the Third Department, Buckmaster DeWolf, General Counsel of GE Research testified “it’s the stability that is provided by the rule of law, that allows an economy to thrive and individual companies to thrive . . . for us, a culture and a society, that is guided by legal principles and access to justice is really the most important thing.”<sup>15</sup> And echoing

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<sup>13</sup> Lippman, *supra* note 1, at 6.

<sup>14</sup> 2010 REPORT, *supra* note 8, at 9.

<sup>15</sup> *The Chief Judge’s Hearings on Civil Legal Services, Third Department Hearing on Civil Legal Services*, 3d Dep’t 53 (2011) (Testimony of Mr. Buckmaster DeWolf, General Counsel,

testimony offered by other business leaders in 2010, F. Michael Tucker of the Center for Economic Growth testified “[s]tability, efficiencies, and quality of judicial system and fairness, equity and accessibility are important considerations for businesses, when they are considering investing, expanding or locating in any community.”<sup>16</sup>

In both 2010 and 2011, judges from throughout the state testified to the significant problems created for the courts by unrepresented litigants. Their

[u]nfamiliarity with the court proceedings, the court processes, and most importantly, a lack of understanding of the substantive law itself, creates an impediment to these unrepresented individuals, which is impossible to overcome. It is simply not a level playing field. . . . Unrepresented litigants present an ethical dilemma for the judge as well. While the judge must take time to explain the law, and its applicability in the case, there is a fine line that a trial judge must walk to try to be fair and neutral to both sides.<sup>17</sup>

The Chief Judge has advised courts throughout the nation as well as the American Bar Association, Harvard Law School, and his alma mater, NYU Law School, that building a record to show that “expanding civil legal representation at public expense actually pays for itself many times over” is an essential component to building strong public policy to support civil legal services funding.<sup>18</sup> Like the business leaders and judges who testified that increasing access to civil legal services improves their institutional performance, the Task Force’s reports demonstrate that this funding also improves a community’s economic “bottom line.”

The Task Force Reports found that a conservative calculation of the economic benefits generated by legal services providers shows that there is a return of nearly \$5 for every \$1 in New York.<sup>19</sup> As

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GE Global Research), available at <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/3dDept2011-Hearing-Transcript.pdf>.

<sup>16</sup> *The Chief Judge’s Hearings on Civil Legal Services, Third Department Hearing on Civil Legal Services*, 3d Dep’t 57 (2011) (testimony of Mr. F. Michael Tucker, President and CEO, Center for Economic Growth), available at <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/3dDept2011-Hearing-Transcript.pdf>.

<sup>17</sup> *The Chief Judge’s Hearings on Civil Legal Services, Third Department Hearing on Civil Legal Services*, 3d Dep’t 31, 33 (2011) (statement of Hon. Michael V. Cocco, Deputy Chief Administrative Judge for Courts Outside New York), available at <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/3dDept2011-Hearing-Transcript.pdf>.

<sup>18</sup> Lippman, *supra* note 5, at 9.

<sup>19</sup> *Id.*

the Chief Judge has noted, the Task Force “created a public record that justified the funding of civil legal services as making good economic sense for our state.”<sup>20</sup> Indeed, in the 2011 report two pro bono analyses conducted by independent economic experts, Navigant Consulting and Cornerstone, confirmed the cost savings generated by legal services providers. Navigant found that \$85 million from direct and indirect medical and economic costs to victims of domestic violence can be saved as a result of civil legal services representation gaining safety and stability for domestic violence victims.<sup>21</sup>

Similarly, Cornerstone analyzed the 2010 homelessness prevention efforts by New York’s civil legal services providers to prove that over \$116 million in publicly funded shelter costs were saved through preventing evictions and foreclosures.<sup>22</sup> Adding the Cornerstone analysis to a study by the IOLA Fund on the direct economic impact of civil legal services providers (the generation of about \$348.1 million in federal benefits), and applying a standard Department of Commerce economic multiplier indicated that civil legal services providers should generate an overall economic impact in New York State “significantly in excess of \$1 billion.”<sup>23</sup>

Finally, it should be noted that the monetary requests made to support civil legal services are coupled with nonmonetary initiatives that will also improve access to justice for New Yorkers. In the 2011 Task Force Report, the nonmonetary initiatives to streamline and enhance service delivery will ultimately help to limit the cost of providing civil legal services and reduce court expenditures and litigation costs for represented parties. These include Task Force recommendations with respect to simplification efforts including standardization of forms, court instructions, court procedures, improvement of court websites, and expansion of outreach. These nonmonetary initiatives are described more fully in the 2011 Task Force report.<sup>24</sup>

The 2011 Task Force Report also seeks to increase law school involvement in increasing access to civil legal services by targeting law school resources towards areas of unmet need that “are

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<sup>20</sup> Jonathan Lippman, Chief Judge of the State of New York, Philadelphia Bar Association Quarterly Meeting: Keynote Address (June 27, 2011) (transcript available at [http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/Philadelphia\\_Bar\\_Assn\\_6-28-11.pdf](http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/Philadelphia_Bar_Assn_6-28-11.pdf), at 8).

<sup>21</sup> 2011 REPORT, *supra* note 10, at 22–23.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.* at 28.

<sup>24</sup> *Id.* at 30–34.

amenable to law school assistance,” including collaborations with local providers and law school pro bono programs.<sup>25</sup> This year, “the Task Force will convene a first ever ‘Leadership Conversation on the Role of New York’s Law Schools in Meeting the Essential Legal Needs of Low-Income New Yorkers.’”<sup>26</sup>

In addition, the Task Force will encourage the use of cost-sharing initiatives among providers, expanded outreach programs such as the “Attorney for the Day” program operated by the Legal Aid Society of Northeastern New York, the Albany County Bar Association, and the Albany Law School Pro Bono Society. The Task Force will also encourage the use of alternative conflict resolution efforts and continued focus on pro bono efforts.

As a result of the new Task Force Report, the Chief Judge will again seek Judiciary Civil Legal Services funding to support civil legal services along with continued work on the nonmonetary initiatives described above. The Chief Judge’s initiatives have taken place against the backdrop of harsh economic conditions in New York State and enormous demands on the judiciary budget. As the Chief Judge noted, venturing forth to support access to civil legal services in these challenging economic times is a bit like going directly into “the teeth of a hurricane.”<sup>27</sup> The Chief Judge never hesitated to do this because of his commitment to creating access to justice in New York. Yet, his initiatives have always been reasonable in light of our economic realities. The Task Force and the Chief Judge have never sought to provide a lawyer for every litigant. Instead, the focus has been on ensuring that litigants with matters involving “the essentials of life”—housing, safety, and income—should be afforded an attorney. Moreover, initiatives to divert cases from court and to otherwise enhance the efficiency of our justice system are treated as being just as important as funding initiatives. Overall, a gradual move towards doubling available funding in New York State has been the Chief Judge’s goal. Each year, in the face of enormous demands, he has made it a priority to ensure that the judiciary budget will provide funding necessary to ensure that low income New Yorkers can get legal services to help preserve “the essentials of life.” As he has noted, “we critically need a comprehensive, multi-faceted approach that involves the entire

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<sup>25</sup> *Id.* at 35.

<sup>26</sup> *Id.*

<sup>27</sup> Jonathan Lippman, Chief Judge of the State of New York, Connecticut Bar Association Annual Reception: Keynote Address 3 (May 10, 2011) (transcript on file with Albany Law Review).



legal community working together to foster more self-help programs for the unrepresented and more pro bono programs as well as funding for civil legal services.”<sup>28</sup>

The Chief Judge has not only made ensuring access to justice a hallmark of his tenure in New York State, he is also exercising national leadership on this important issue. He has spoken to the American Constitution Society at the Harvard Law School, the Philadelphia Bar Association, the American Bar Association, NYU School of Law, the ABA/NLADA Equal Justice Conference, the Connecticut Bar Foundation, and the ABA’s Task Force on Preservation of the Justice System about the importance of judicial leadership in the fight for funding for civil legal services. He has shared his hope that his work in New York will be a “vital precedent and template” for other states.<sup>29</sup> Indeed, the state of California will soon embark on its first ever hearings on civil legal services.

In his access to justice work, Chief Judge Jonathan Lippman demonstrates the hallmarks of a great Chief Judge. He has given a consistent and eloquent expression to the moral imperative for funding civil legal services, the pragmatic and well supported economic case for doing so, the crisis in the courts created by the flood of unrepresented litigants, and the powerful stories from legal aid clients of the ways in which their lives have changed because of the civil legal services they received. His approach is passionate, politic, and practical. Seeking funding for lawyers in matters involving “the essentials of life” creates a broad platform that many can stand on. All of us in the legal services community salute the Chief Judge. We honor and thank him for all that he has done to promote access to justice in New York and the Nation.

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<sup>28</sup> Jonathan Lippman, Chief Judge of the State of New York, New York University Journal of Legislation and Public Policy Access to Justice Symposium: Keynote Address (October 24, 2011) (video transcript available at [http://www.law.nyu.edu/news/LIPPMAN\\_ACCESS\\_TO\\_JUSTICE](http://www.law.nyu.edu/news/LIPPMAN_ACCESS_TO_JUSTICE)).

<sup>29</sup> *Id.*