

SHIFTING THE LANDSCAPE ON ACCESS TO JUSTICE

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A few years ago, the *New York Times* credited me with the national quote of the day, when I said that state courts are the “emergency room[s] for society[’s]” ailments.¹ All of the societal issues of the day ultimately find their way into the courts and, as an institution, the judiciary must be engaged in removing the barriers that confront those who seek access to our courts to resolve their most pressing problems.

For too long, access was limited to those with the financial resources to afford quality legal representation, while those without money in their pockets were left to fend for themselves. From the perspective not of an activist judge, but as a judge who is proactive in the pursuit of justice, it has been my focus to shift the landscape on access to justice to better serve the disadvantaged, the vulnerable, and those who just need a helping hand. Shifting the landscape is about ensuring that the scales of lady justice are exquisitely balanced regardless of one’s wealth or station in life. The pursuit of justice for all should and must be our mission, and the judiciary, the profession, and the academy are the essential players in this endeavor.

The greatest threat to the pursuit of justice today—and to the very legitimacy of the justice system—is the desperate need for legal services by the poor and people of modest means. People who are fighting for the necessities of life—the roof over their heads, their physical safety, their livelihoods, and the well-being of their families—literally are falling off the proverbial cliff because they cannot afford legal representation.²

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¹ Jonathan Lippman, *Quotation of the Day*, N.Y. TIMES, Dec. 28, 2009, at A3.

² See, e.g., MAGDALENA SEPÚLVEDA CARMONA & KATE DONALD, ACCESS TO JUSTICE FOR PERSONS LIVING IN POVERTY: A HUMAN RIGHTS APPROACH 7 (2014); Hanna Kozłowska, *There’s a Devastating Shortage of Lawyers in the US Who Can Help the Poor with Eviction or Child Custody Cases*, QUARTZ (May 12, 2016), <http://qz.com/681971/for-every-10000-poor-people-in-the-united-states-theres-less-than-1-lawyer-who-can-help-them-with-an-eviction-or-child-custody-case>; *Poverty Journal Symposium Highlights Access to Justice*, GEO. L. (Mar. 9,

There is a huge justice gap that exists between the desperate need for legal services by the poor and people of modest means, and the finite legal resources that are available. In the heart of the fiscal crisis, the Legal Aid Society in New York City, the oldest legal services entity in the country, turned away eight of nine people who came to them seeking legal assistance.³ We have made great strides over the last years. Nevertheless, the justice gap still manifests itself in so many different ways, as witnessed by the fact that in New York there are 1.8 million people who came into the courts last year who were unrepresented by a lawyer,⁴ and legal services organizations around the country still turn away more people than they can help.⁵ The poverty rate hovers at around fifteen percent in much of the United States,⁶ including New York.⁷ The Legal Services Corporation (LSC) in Washington, D.C. is under attack, and very lucky to keep the limited funding that it has.⁸ Interest on Lawyer Trust Accounts (IOLTA), or Interest on Lawyer Account Fund (IOLA), as we call it in New York, which gives money to legal services based on lawyers' fiduciary accounts, has seen its revenues drop dramatically because of low interest rates.⁹

What is required to meet this kind of crisis and the issues that we face today is leadership, partnerships, and innovation, none of which was in evidence when I first became Chief Judge in 2009. That spring, I

2015), <http://www.law.georgetown.edu/news/web-stories/poverty-journal-symposium-highlights-access-to-justice.cfm>.

³ See *The Legal Aid Society—2012 Fact Sheet*, LEGAL AID SOC'Y, http://www.legal-aid.org/media/153742/las_fact_sheet_2012.pdf (last visited Oct. 4, 2016).

⁴ Joel Stashenko, *NY's Chief Judge Urges Continued Focus on Civil Legal Services*, N.Y. L.J. (Sept. 27, 2016), <http://www.newyorklawjournal.com/home/id=1202768680170/NYS-Chief-Judge-Urges-Continued-Focus-on-Civil-Legal-Services?mcode=1202617075062&curindex=1&slreturn=20160904194937>.

⁵ See LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA 13, 16 (2009), http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf; see also Karen Sloan, *An Access to Justice Scorebook Report: Even the Best States Post So-So Grades*, NAT'L L.J. (Mar. 3, 2014), <http://www.nationallawjournal.com/id=1202644985075/An-Access-To-Justice-Scorebook>.

⁶ Max Van Zile, *The New Faces of U.S. Poverty*, U.S. NEWS (July 6, 2016, 6:00 AM), <http://www.usnews.com/news/articles/2016-07-06/the-new-faces-of-us-poverty>; Gillian B. White, *America's Poverty Problem Hasn't Changed*, ATLANTIC (Sept. 16, 2015), <http://www.theatlantic.com/business/archive/2015/09/americas-poverty-problem/405700>.

⁷ N.Y. STATE CMTY. ACTION ASS'N, NEW YORK STATE POVERTY REPORT 5 (2016), <http://nyscommunityaction.org/PovReport/2015/FINAL%202016%20Poverty%20Report.pdf>.

⁸ See *Funding for the Legal Services Corporation*, A.B.A., http://www.americanbar.org/content/dam/aba/events/aba-day/2016apr7_lsconepager_fauthcheckdam.pdf (last visited Dec. 30, 2016) ("LSC's funding is down. The current Fiscal Year 2016 LSC appropriation is still 15.7% lower than it was in 2010 (inflation adjusted) . . . Compare LSC's \$385 million in Fiscal Year 2016 to LSC's average \$664 million (inflation adjusted) in the 1980s.").

⁹ See Robert J. Derocher, *The IOLTA Crash: Fallout for Foundations*, B. LEADER (Sept.–Oct. 2012), http://www.americanbar.org/publications/bar_leader/2012_13/september_october/iolta_crash_fallout_foundations.html (attributing the reduction of IOLTA grants to bank interest rates "hover[ing] just above zero for many IOLTA accounts").

went to testify at a hearing before a joint legislative committee on the long-range plan for civil legal services in New York.¹⁰ What became clear to me in the course of that testimony was that there not only was no long-range plan for legal services in our state, but no short-range plan and, in reality, no plan at all. In my role as the steward of the justice system in New York, I decided to attack this issue head on as the centerpiece and focus of my years as Chief Judge. This Essay will focus on the lessons we learned in New York in seeking to close the justice gap, what is happening on access to justice issues around the country, and what we have to do to make the ideal of equal justice a reality each and every day in New York and across the nation.

My belief is that the judiciary should be at the center of all of these efforts, because it is our constitutional mission to foster equal justice. That is what the judiciary does, above everything else. The New York Bar (Bar) joins us, without reservation, as helping other fellow human beings goes to the very core of the legal profession.

The first thing that we did in New York, to try to change the equation on access to justice, was to put together a task force to enhance civil legal services that we now call the New York State Permanent Commission on Access to Justice (Commission).¹¹ The one rule that I set out to the task force and to our chair, Helaine Barnett, the former president of the LSC in Washington, was that this was not going to be an arm's length relationship. Rather, we had a partnership with a single basic understanding. We would collaborate from day one before any reports or suggestions were issued and, based on our discussions, I would do absolutely everything that the Commission recommended. Access to justice commissions around the country cannot be divorced from the judiciary and the leadership of the profession if they are to be effective.

We decided that we would focus on two pillars in our efforts to support civil legal services in our state. The first of the pillars was public funding for legal services which, when I started as the Chief Judge, was essentially zero, with no systemic public funding. So, we committed to

¹⁰ See Ruth Hassell-Thompson, *Chief Judge Lippman to Testify at Joint Public Hearing to Address Civil Legal Service Funding Crisis*, N.Y. ST. SENATE (Jan. 6, 2010), <https://www.nysenate.gov/newsroom/press-releases/ruth-hassell-thompson/chief-judge-lippman-testify-joint-public-hearing>; see also Catharine Young, *Joint Legislative Public Hearing on 2016–2017 Executive Budget Proposal: Topic “Public Protection”—Testimonies*, N.Y. ST. SENATE (Feb. 10, 2016), <https://www.nysenate.gov/newsroom/articles/catharine-young/joint-legislative-public-hearing-2016-2017-executive-budget-9>.

¹¹ See Press Release, N.Y. State Unified Court Sys., Chief Judge Announces Creation of Permanent Commission on Access to Justice (July 22, 2015) [hereinafter Press Release], https://www.nycourts.gov/PRESS/PDFs/PR15_07.pdf; see also *Permanent Commission on Access to Justice*, NYCOURTS.GOV, <http://www.nycourts.gov/accesstojusticecommission/index.shtml> (last updated Dec. 8, 2016).

focusing on public monies to support legal services. We also determined that the other pillar of our program would be, and remains, increasing pro bono work by the Bar.

At the outset, we reached out to the public and to our constituencies to get their support, through public hearings over which the leadership of the judiciary and the profession would preside. Each year, I personally presided over four hearings throughout the state to promote legal services, to get the facts, and to make a record. We also, at the very beginning, obtained a joint resolution from the legislature asking the Chief Judge to hold these hearings and to report back on what resources were needed to support civil legal services for the poor in our state.¹²

We very much realized that because of the gridlock in Washington, we could not depend on the federal government for further funding or to provide the ultimate solutions to access to justice issues. We decided to look to state government as a means to fund legal services for the poor and supplement the LSC grants New York was getting for legal services. To me, funding at the state level is the new horizon for public funding for legal services. The average citizen comes in contact with the justice system in state courts, and legal services should, in significant measure, be funded accordingly.

The LSC has \$385 million annually, for the entire country, to provide grants to legal services providers.¹³ It is fair to say that this is a relatively small amount in the big scheme of things. In asking for state funding, we had to answer why state government should fund civil legal services for the poor. The approach in one respect was obvious, emphasizing that it was the right thing to do. From time immemorial, as long as there have been judges and lawyers, we talk about the moral imperative for equal justice. The Old Testament, in Deuteronomy, gives us the mandate to pursue justice for rich and poor, high and low alike.¹⁴

The answer we got from our partners in state government, however, was that there are lots of right and moral things that are important—get in line! As a consequence, we took a little different approach. We argued that it is good for the economic bottom line of our state and our communities to support legal services for the poor. By investing money in civil legal services, more money is returned to the state with reduced social services costs, reduced incarceration costs, and

¹² See TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., N.Y. STATE UNIFIED COURT SYS., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK app. 3 (2010), <http://www.nycourts.gov/accesstojusticecommission/PDF/CLS-Appendices.pdf>; Press Release, *supra* note 11.

¹³ *FY 2017 Budget Request*, LSC, <http://www.lsc.gov/media-center/publications/fy-2017-budget-request> (last visited Nov. 24, 2016).

¹⁴ *Deuteronomy* 16:20.

more federal dollars flowing to the state. We delivered highly sophisticated economic studies done pro bono by major accounting firms and fiscal experts that showed that for every dollar invested in civil legal services, five to six dollars are returned to the state.¹⁵ Our newest studies show that, in fact, ten dollars are returned to the state for every dollar invested.¹⁶ We now tell our partners in government that they should fund legal services, not only to help those in need, but also to help the bottom line of our economy and our society. Everyone loses if people fall off the cliff, go on public welfare, and do not have money to put into local banks and local stores.

This is an unconventional approach, a counterintuitive approach, and you also need unconventional messengers to deliver it. At our hearings, we had testify the heads of the largest banks, the landlord associations, the business associations, the Comptroller of the State of New York, the City Council Speaker, and even Cardinal Dolan. We did not see it as particularly effective, or desirable, to have legal service organizations come to testify with their hands outstretched. Rather, we were making a very pointed dollar-and-cents argument that would benefit the well-being of our state.

As we developed our arguments for the public funding of legal services, we were confronted with what seemed like an insurmountable roadblock to our efforts. The legislature and the Governor came to an agreement in 2010 to cut \$170 million from the judiciary budget¹⁷—a great deal of money, even in a state as large as New York. A budget cut of that size necessarily required layoffs of court personnel. At the same time, I had pledged to give millions of dollars to legal services for the poor in the judiciary budget. The other branches asked how we could lay people off and possibly close the doors of the courthouses, when we were giving millions to legal service organizations that were representing poor people. The answer I gave was that if we keep the courthouse doors open, and do not have equal justice inside, then we might as well close the doors. In those circumstances, justice does not mean anything. We gave the monies to legal service providers, and we did what we had to do. We laid off court personnel, most of whom I am pleased to say were able to return to the court system within a

¹⁵ TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., N.Y. STATE UNIFIED COURT SYS., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 18 (2012), https://www.nycourts.gov/accesstojusticecommission/PDF/CLS-TaskForceREPORT_Nov-2012.pdf.

¹⁶ PERMANENT COMM'N ON ACCESS TO JUSTICE, N.Y. STATE UNIFIED COURT SYS., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 7 (2016), https://www.nycourts.gov/accesstojusticecommission/PDF/2016_Access_to_Justice-Report.pdf.

¹⁷ See Thomas Kaplan, *Chief Judge Says Deal Will Require Hundreds of Layoffs in Court System*, N.Y. TIMES (Mar. 28, 2011), <http://www.nytimes.com/2011/03/29/nyregion/29cuts.html>.

reasonable period of time. We agonized over this choice, and, in the end, I believe we made our point—that the judiciary and the profession believe that access to justice for all is the very foundation of our court system.

From that moment on, we did not have a day's trouble in funding legal services for the poor in the judiciary budget. We went from \$12.5 million, to \$27.5 million, to \$40 million, to \$55 million, to \$70 million, to \$85 million, and then with this year's budget, to \$100 million¹⁸—which was the goal we had originally set. We believe that we have now institutionalized this kind of funding at the state level, beyond what New York legal service providers receive from Federal or other sources. In New York today, between state and local funding—including funds that New York City provides—we had \$138 million in 2016, and in 2017 we are projected to have over \$180 million, almost half the funding that the LSC has for the entire country, to support legal services for the poor.¹⁹

That being said, there is not enough public money in the world to meet the need. More has to be done, and it has to come from the voluntary, pro bono efforts of the Bar to fill that gap. We appealed, first and foremost, to the nobility of the Bar—performing pro bono work being the epitome of what defines a selfless, service-oriented profession. We needed to get more soldiers in the field to help the legal service providers by doing pro bono work. We first looked to parts of the Bar that were relatively untapped when it came to pro bono work. We focused on the “baby boomers,” who were slowing down their practices. We told them that if they did pro bono work for the poor, we would honor them with the title of Lawyer Emeritus. We have approximately 2000 of these “baby boomer” lawyers who are now doing pro bono work in the Emeritus Program.²⁰

We also looked to corporate counsel who come from other states and work for big corporations in New York. We changed our rules to allow them to work pro bono here, even if they were not admitted to the

¹⁸ N.Y. STATE UNIFIED COURT SYS., FISCAL YEAR 2016–2017: BUDGET, at iv (2015), <https://www.nycourts.gov/admin/financialops/BGT16-17/2016-17-UCS-Budget.pdf>.

¹⁹ N.Y.C. DEP'T OF SOC. SERVS., N.Y.C. OFFICE OF CIVIL JUSTICE: 2016 ANNUAL REPORT 4 fig. 1 (2016), https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf (describing the “Public Funding for Civil Legal Services in New York City” by fiscal year).

²⁰ See Jeff Storey, *Lippman Boosts Efforts to Tap Retired Lawyers for Pro Bono*, N.Y. L.J. (May 25, 2010), <http://www.newyorklawjournal.com/id=1202458708691/Lippman-Boosts-Efforts-to-Tap-Retired-Lawyers-for-Pro-Bono> (“Judge Lippman said that ‘it would not be overly optimistic’ to project a corps of volunteers ‘in the thousands.’”); see also William Glaberson, *Courts Seek More Lawyers to Help the Poor*, N.Y. TIMES (Jan. 6, 2010), <http://www.nytimes.com/2010/01/07/nyregion/07lawyers.html>; Robin Sparkman, *The Am Law 200's Secret Pro Bono Weapon*, AM. LAW. (July 26, 2013), http://www.americanlawyer.com/id=1202607832909&The_Am_Law_200s_Secret_Pro_Bono_Weapon.

Bar in our state.²¹ The bottom line is that if you are representing someone for no fee, you can practice in the courts of the State of New York, whether admitted or not!

We then set our sights on aspiring lawyers, and imposed a fifty-hour pro bono requirement on all law students who wanted to become lawyers admitted in New York.²² The theory is that if you are not going to embrace the core values of our profession, which are about helping others, then you are not going to be a lawyer in New York. If we require law students to learn about torts, and contracts, and property, we should also require them to learn about values. It is not enough to teach the different disciplines that you learn about in law school. All admitted lawyers, no matter what they do, should know that lawyering in a real sense is a public service. When we announced this new requirement, you would have thought that the world was coming to an end. The main opposition came from members of the Bar who felt that this was the nose under the tent for mandatory pro bono for all lawyers. To the contrary, we were putting a licensing requirement into place, without seeing it necessarily as a harbinger of things to come for the already practicing bar. While mandatory pro bono may ultimately be necessary and desirable, that was not the impetus for the fifty-hour rule. The students embraced the requirement immediately, and they have not stopped at the fifty-hour requirement.²³

Later, there came another crisis in shifting the landscape on access to justice in New York. We mandated that lawyers report on their attorney registration how many hours of pro bono work they performed and how much they financially contributed to legal services providers.²⁴ We did this to help us chart our future course on access to justice. We cannot know what to do, unless we know how we are doing. Our rationale was that the judiciary not only is the gatekeeper for Bar admission, but is also the legal regulator with a responsibility to

²¹ N.Y. COMP. CODES R. & REGS. tit. 22, § 522.8 (2016); *see also* ADVISORY COMM. ON PRO BONO SERV. BY IN-HOUSE COUNSEL IN N.Y. STATE, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK & THE PRESIDING JUSTICES OF THE FOUR APPELLATE DIVISION DEPARTMENTS 1 (2013), <http://www.nycourts.gov/attorneys/in-house-counsel/IHC-ProBonoReport.pdf>.

²² N.Y. COMP. CODES R. & REGS. tit. 22, § 520.16(a) (2016); *see also* *Pro Bono Bar Admission Requirements*, NYCOURTS.GOV, <https://www.nycourts.gov/attorneys/probono/baradmissionreqs.shtml> (last updated Nov. 6, 2015).

²³ Law schools and legal service organizations have partnered to provide ample opportunities for students to meet and surpass the fifty-hour requirement. *See* Tania Karas, *Courts, Law Schools Gear Up for Pro Bono Scholar Program*, N.Y. L.J. (July 9, 2014), <http://www.newyorklawjournal.com/id=1202662401781/Courts-Law-Schools-Gear-Up-for-Pro-Bono-Scholar-Program> (discussing New York's Pro Bono Scholars program, which takes the fifty-hour requirement a step further by enabling students to complete five hundred hours of pro bono work in one semester).

²⁴ *Administrative Rules of the Unified Court System & Uniform Rules of the Trial Courts*, NYCOURTS.GOV, <http://nycourts.gov/rules/chiefadmin/118.shtml> (last updated June 8, 2015).

promote public trust and confidence in the profession. I did not take a vote and ask lawyers if they thought it was a good idea that we require them to tell us how many hours of pro bono work they do. Rather, I believed that this was a critical, ethical issue for our profession that required leadership by the judiciary as the legal regulator. The end result of that was that we were able to get the best system of pro bono reporting in the country. After we exercised moral leadership on this issue, we talked with the Bar and came to an understanding to develop a much more expansive, but somewhat less intrusive, mandatory pro bono reporting system. We now have the information we need by geographic area, big firm, small firm, and specialties. We are going to know where we need to do more, and where lawyers are doing their part.

What other things should we be thinking about to change the landscape on access to justice? One area of interest is to identify in the everyday practices and protocols of the courts and the profession what needs to be accomplished to even the playing field for all litigants. In this regard, the judiciary put out new rules for foreclosure and consumer credit cases. In foreclosures, we tried to end robo-signings, where lawyers often really had no idea what the case was about.²⁵ We required the lawyers to submit affidavits attesting that they were personally familiar with the particular mortgage and its history. And, surprise of surprise, foreclosures dropped over fifty percent in New York!²⁶

We did the same thing with consumer credit cases. Consumer credit entities were buying up credit card bills for pennies on the dollar and then putting in some broad-brush affidavit saying that a defendant owes \$5000 or \$20,000 or more.²⁷ The new court rules required an affidavit indicating the trail of the debt—who owned it, who owns it now, what is its history, what is the exact amount.²⁸ That information must be provided before a judge will sign a default judgment against a person of modest means who may or may not even have gotten notice.²⁹

²⁵ See CHIEF JUDGE JONATHAN LIPPMAN, *THE STATE OF THE JUDICIARY 2012*, at 13 (2012), <https://www.nycourts.gov/admin/stateofjudiciary/SOJ-2012.pdf>.

²⁶ See David Streitfeld, *Backlog of Cases Gives a Reprieve on Foreclosures*, N.Y. TIMES (June 19, 2011), <http://www.nytimes.com/2011/06/19/business/19foreclosure.html> (tying the dramatic decrease in New York's foreclosure rate to the affidavit requirement).

²⁷ See James C. McKinley Jr., *Top State Judge Tightens Rules on Debt Collection*, N.Y. TIMES (Apr. 30, 2014), <http://www.nytimes.com/2014/05/01/nyregion/top-state-judge-tightens-rules-on-debt-collection.html>.

²⁸ Press Release, N.Y. State Unified Court Sys., *NY Court System Adopts New Rules to Ensure a Fair Legal Process in Consumer Debt Cases* (Sept. 16, 2014), https://www.nycourts.gov/PRESS/PDFs/pr14_06.pdf.

²⁹ *Id.*

Although these new court rules did help our access to justice efforts, we were determined to continue to think out of the box and be innovative in finding new ways to deliver legal services to disadvantaged New Yorkers. One seemingly insoluble problem confronted us. There were just not enough lawyers doing pro bono work to make sure that people get legal representation. What to do?

We did our due diligence and found that many civil legal services in Great Britain are provided by non-lawyers.³⁰ This was intriguing to us. We concluded that a non-lawyer trained in a particular niche might even be more effective than a generalist lawyer who is not familiar with the particular area. In that vein, we started the Navigator Program, where trained non-lawyers go into the courtroom with the litigant in housing and consumer credit cases.³¹ They can answer questions from the judge and provide moral support to the litigant. Then, we took it a step further to the street level. We opened storefronts staffed by non-lawyers, called Legal Hand, supervised by legal service attorneys.³² These storefronts are in communities that are changing, and non-lawyers provide legal assistance and information to local residents. The Bar thought it was a good idea because we were not taking the bread out of any lawyer's mouth. In these kinds of cases, over ninety percent of the people are unrepresented.³³

I have tried to give you an overview of some of the things we have done to change the paradigm on access to justice—the funding, increasing pro bono, stressing values and the nobility of what we do, new rules, new ideas, and the use of non-lawyers. There are also many other things to be done with technology, unbundling of legal services, lawyers for a day programs, court help websites, and do-it-yourself forms.

None of us has a monopoly on innovative ideas on access to justice. California has a pilot Civil Gideon program.³⁴ Connecticut has a

³⁰ See N.Y.C. BAR ASS'N, NARROWING THE "JUSTICE GAP": ROLES FOR NONLAWYER PRACTITIONERS 21–24 (2013), <http://www2.nycbar.org/pdf/report/uploads/20072450-RolesforNonlawyerPractitioners.pdf>.

³¹ See Andrew Keshner, *'Navigator' Program Launches; Skeptics 'Wait and See'*, N.Y. L.J. (Apr. 9, 2014), <http://www.newyorklawjournal.com/id=1202650236530/Navigator-Program-Launches-Skeptics-Wait-and-See>.

³² See Andrew Denney, *Program Brings Free Legal Information to Neighborhoods*, N.Y. L.J. (Nov. 24, 2015), <http://www.newyorklawjournal.com/id=1202743233464/Program-Brings-Free-Legal-Information-to-Neighborhoods>.

³³ See TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., N.Y. STATE UNIFIED COURT SYS., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1 (2010), <http://www.nycourts.gov/accesstojusticecommission/PDF/CLS-TaskForceREPORT.pdf>; Gillian Hadfield, *Lawyers, Make Room for Nonlawyers*, CNN (Nov. 25, 2012, 12:25 PM), <http://www.cnn.com/2012/11/23/opinion/hadfield-legal-profession>.

³⁴ See Carol J. Williams, *California Gives the Poor a New Legal Right*, L.A. TIMES (Oct. 17, 2009), <http://articles.latimes.com/2009/oct/17/local/me-civil-gideon17>.

LawyerCorps program where the large corporations fund fellows to provide civil legal services.³⁵ The State of Washington has a new low-bono legal technician program.³⁶ New Jersey has helped litigants with foreclosures.³⁷ Texas has line items in the executive budget supporting legal services for the poor.³⁸

There are lots of interesting, innovative things happening here in New York and around the United States. How do they fit together? To me, in one fashion or another, we are going toward some kind of a right to counsel, or a Civil Gideon—meaning legal representation, or at the very least effective legal assistance, for every person in need. There are three obvious ways to get there: by Constitution, by statute, or by policy. In looking at the most recent U.S. Supreme Court cases on a constitutional right to counsel in civil matters—*Turner v. Rogers*, for example—I would not count on a constitutional right in the near future.³⁹ What about by statute? There are right to counsel bills in cities around the country, particularly in housing matters, that are gaining support.⁴⁰ However, momentum has been slow to build. The real new frontier, for the time being, is on the policy side. In New York, our legislature passed a joint resolution declaring that it is the public policy of our state to provide legal representation or effective legal assistance to

³⁵ LAWYERCORPS CONN., <http://lawyercorpst.org> (last visited Aug. 25, 2016).

³⁶ See Robert Ambrogi, *Washington State Moves Around UPL, Using Legal Technicians to Help Close the Justice Gap*, A.B.A. J. (Jan. 1, 2015, 5:50 AM), http://www.abajournal.com/magazine/article/washington_state_moves_around_upl_using_legal_technicians_to_help_close_the.

³⁷ See Press Release, N.J. Courts, Judiciary Announces Foreclosure Mediation Program to Assist Homeowners at Risk of Losing Their Homes (Oct. 16, 2008), <http://www.njcourts.gov/pressrel/2008/pr081016c.html>. In July 2016, Senator Bob Menendez of New Jersey introduced a bill intended to combat the issue of “zombie foreclosures” throughout the state. See Preventing Abandoned Foreclosures and Preserving Communities Act of 2016, S. 3146, 114th Cong. (2016); see also Matt Gray, *5 Ways New Federal Bill Targets Zombie Foreclosures*, NJ.COM (July 1, 2016, 9:15 AM), http://www.nj.com/gloucester-county/index.ssf/2016/07/5_ways_new_federal_bill_targets_zombie_foreclosure.html.

³⁸ See News Release, Tex. Access to Justice Found., Texas Legislature Provides Funding for the State’s Legal Aid System (June 3, 2015), <http://www.teajf.org/news/releases/End%20of%2084th%20Session.aspx>.

³⁹ See *Turner v. Rogers*, 564 U.S. 431, 448 (2011) (“[T]he due process clause does not automatically require the provision of counsel at civil contempt proceedings to an indigent individual . . . even if that individual faces incarceration . . .”).

⁴⁰ For a list of bills filed this year throughout the country seeking to establish or expand rights to counsel, see *2016 Civil Right to Counsel Bills*, NAT’L COALITION FOR A CIV. RIGHT TO COUNS., http://civilrighttocounsel.org/highlighted_work/legislative_developments/2016_civil_right_to_counsel_bills (last visited Dec. 31, 2016). New York City’s recently proposed bill, Providing Legal Counsel for Low-Income Eligible Tenants Who Are Subject to Eviction, Ejection or Foreclosure Proceedings, is also gaining traction. See Editorial, *A Right to a Lawyer to Save Your Home*, N.Y. TIMES (Sept. 23, 2016), <http://www.nytimes.com/2016/09/23/opinion/a-right-to-a-lawyer-to-save-your-home.html>.

those in need, fighting for the necessities of life.⁴¹ The initiatives being undertaken by access to justice commissions around the country are mostly on the policy side.⁴² In my opinion, a thousand flowers are blooming, and we are literally changing the dialogue on civil legal services.

That change is what has already happened on the criminal side. In the seminal case of *Gideon v. Wainwright*, a defendant whose liberty is at stake is entitled to a lawyer.⁴³ Although criminal indigent defense representation is very uneven in the country, at least there is a constitutional floor. *Gideon* was issued over fifty years ago. Twenty years before that, in *Betts v. Brady*, the U.S. Supreme Court (just like in *Turner v. Rogers* in civil cases) held that even if you are going to go to jail, you have no right to a lawyer.⁴⁴

What happened in the twenty years between *Betts* and *Gideon*? What happened was that the dialogue changed, and lots of interesting things were taking place in different states to promote criminal indigent defense representation. Innovation and change were the order of the day around the country. That is why by the time of *Gideon*, twenty-three attorneys general in different states submitted amicus briefs to the U.S. Supreme Court supporting a constitutional right to a lawyer when a defendant's liberty is at stake.⁴⁵

That is what happens when people are proactive in the pursuit of justice. That is what is happening on the civil side today. I really believe that we are changing the priorities, and that people are starting to understand that civil legal services for the poor are as important as schools, hospitals, and housing, and all the things that we hold dear in our society.

We are at the tipping point. I believe there is a revolution today in access to justice that the public is starting to understand. The person on the street has known for many years, since *Gideon*, that if your liberty is at stake, you get a lawyer. They watch television, they know about Miranda rights. They know that everyone is provided with a lawyer if you are going to go to jail.

⁴¹ See Joel Stashenko, *Legislature's Resolution Supports Civil Gideon*, N.Y. L.J. (June 29, 2015), <http://www.newyorklawjournal.com/id=1202730718872/Legislatures-Resolution-Supports-Civil-Gideon?slreturn=20161131102445>.

⁴² See April Faith-Slaker, *Access to Justice Commissions—Accomplishments, Challenges, and Opportunities*, MGMT. INFO. EXCHANGE J., Fall 2015, at 13, http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/2015_atj_commissions_mie.authcheckdam.pdf.

⁴³ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁴⁴ *Betts v. Brady*, 316 U.S. 455 (1942), *overruled by Gideon*, 372 U.S. 335.

⁴⁵ See Brief for the State Government Amici Curiae, *Gideon*, 372 U.S. 335 (No. 155), 1962 WL 115122.

But what if you asked, just a few years ago, what would happen if your home was being foreclosed, or you were being evicted? Should you get a lawyer? Until recently, a very small percentage would have said yes. Today, after the foreclosure crisis and the economic crisis in the country, and all of our efforts on access to justice in civil matters, you are going to have eighty to ninety percent say, absolutely!

We really are getting to the point where we can have a right to counsel. We are building the foundation. We are shifting the landscape. Can we really close the justice gap? We can and we will! Again, it requires innovation, it requires leadership, and it requires partnerships. Together, if we continue to be proactive in the pursuit of justice, we will make the ideal of equal justice a reality here in New York and across this great country.