

New York's Template to Address the Crisis in Civil Legal Services

*Chief Judge Jonathan Lippman**

We are facing a crisis in the delivery of justice in New York State and around the country. There is a growing justice gap between the dire need for civil legal services and the dwindling resources available. In the face of our nation's worst economic downturn since the Great Depression, millions of vulnerable, low-income individuals navigate our state civil justice systems without lawyers. This lack of representation impairs their ability to pursue their rights and remedies, imposes tremendous costs on both litigants and their families, and places an untenable burden on our courts and communities.

In the midst of this gathering storm, it has been my central objective as New York's Chief Judge to confront the acute need for civil legal assistance in our state. Declining and unpredictable funding streams and rising poverty rates have made this effort all the more urgent. It is my belief that New York's Judiciary, with the support of our partners in government and the legal community, has begun to address the justice gap that exists in New York and that the combination of approaches we have taken may serve as a template for action elsewhere.

New York's course of action began with my decision to hold hearings and to create the Task Force to Expand Access to Civil Legal Services in New York State. The results of both the hearings and the Task Force's study illuminated the extent of the need for legal services and enabled the Task Force to develop informed recommendations for action. Principal among these recommendations was a substantial increase in public funding for civil legal services, something New York has been able to achieve in spite of deep cuts to the Judiciary's budget. This fiscal year, our judiciary budget includes \$40 million for civil legal services.¹ New York's approach to addressing the crisis combines public funding with court programs to assist unrepresented litigants, online resources, outreach and education, programs to encourage and support pro bono service by members of the bar, and, most recently, a requirement that all applicants to the New York Bar perform fifty hours of pro bono service before they are admitted to practice. By exercising a leadership role and by engaging with other branches of government, New York's Judiciary has taken significant steps towards meeting the deep need for civil legal services.

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¹ See S.B. 6251, 2012 Leg., 235th Legis. Sess. § 2 (N.Y. 2012) (enacted), *available at* <http://open.nysenate.gov/legislation/bill/s6251b-2011> (including \$25 million in funding for civil legal services and \$15 million for Interest on Lawyer Account Fund (IOLA) support).

New York State is not alone in identifying the critical importance of this issue. Our work is part of a growing movement nationwide that recognizes the vital necessity of civil legal representation for the poor and near poor to a functioning legal system and to the protection of equal justice for all.

I. THE PROBLEM

A. *The Economy and the Crisis in Civil Legal Services*

The state of the economy in New York and around the country has greatly exacerbated the justice gap, the difference between the degree of need for civil legal services for the poor and near poor and the availability of legal assistance to meet that need. As our nation labors to emerge from the economic downturn, states around the country are struggling to ensure access to the courts and equal justice for all in the face of increasing need. Poverty levels in New York and the United States exceed fifteen percent.² The national number continues to climb; the United States Census Bureau reports that the poverty rate for the country rose from 2010 to 2011, with almost 2.3 million more Americans living in poverty in 2011 than in 2010.³ The United States Department of Agriculture (USDA) has found that nearly 2.5 million New Yorkers cannot afford enough food in their homes.⁴ The foreclosure crisis is not yet behind us.⁵ The poor economy of the last years has impacted most heavily the most vulnerable in our society, threatening their futures and those of their families.

Our courts reflect the consequences of these sobering poverty levels. The courts are truly the emergency rooms of society. Our citizens are drawn

² ALEMAYEHU BISHAW, U.S. CENSUS BUREAU, POVERTY: 2010 AND 2011: AMERICAN COMMUNITY SURVEY BRIEFS 3 (2012), available at <http://www.census.gov/prod/2012pubs/ac-sbr11-01.pdf>.

³ *Id.*; see also Hope Yen, *U.S. Poverty on Track to Climb to Highest Rate Since 1960s*, ASSOCIATED PRESS, July 22, 2012.

⁴ See ALISHA COLEMAN-JENSEN ET AL., U.S. DEP'T OF AGRIC., HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2010, at 17 (2011), available at http://www.ers.usda.gov/media/121076/etr125_2_.pdf; ALISHA COLEMAN-JENSEN ET AL., U.S. DEP'T OF AGRIC., HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2010: STATISTICAL SUPPLEMENT (2011), available at <http://www.ers.usda.gov/media/120995/ap057.pdf>.

⁵ See Amanda Fung, *NY-Area's Foreclosures Still Rising*, CRAIN'S N.Y. BUS. (May 9, 2012, 5:59 AM), http://www.craainsnewyork.com/article/20120509/REAL_ESTATE/120509891 (“[The New York metropolitan area’s] serious delinquency rate, defined as the share of loans in foreclosure plus the share of loans delinquent 90 or more days, rose one percentage point to 11.4% in December from year earlier levels, according to Foreclosure-Response.org data compiled by three groups, the Center for Housing Policy, the Urban Institute and Local Initiatives Support. The rate is also above the nation’s serious delinquency rate.”); see also *Metropolitan Delinquency and Foreclosure Data, March 2012*, FORECLOSURE-RESPONSE.ORG, http://www.foreclosure-response.org/maps_and_data/metro_delinquency_data_March2012.html (follow “Full Metropolitan Delinquency and Foreclosure Rate Data [Excel]” hyperlink) (last updated Nov. 7, 2012, 3:12 PM) (reporting a serious delinquency rate of 11.7% in March 2012, compared to 10.7% in March 2011 in the “New York-Northern New Jersey-Long Island, NY-NJ-PA” area).

to the courts by life's most acute difficulties. Each day, our court dockets tell the story of the human cost of our economic woes. The very people who feel the weak economy most keenly—the poor and the working poor—turn to us in greater numbers in these troubled times. People living in poverty are more likely to end up in court than people in the middle class. They are more likely to be overwhelmed by debt and more likely to fall behind in their rent.⁶ The kinds of crises that bring so many people into our courts—foreclosure, consumer credit, family, and personal issues that flare up in times of stress—are all the more common during a downturn.⁷ The statistics on the unmet need for legal services in New York State are staggering. Each year, more than 2.3 million people in New York find themselves in our civil courts as parties to a lawsuit without a lawyer to assist them.⁸ The problem of lack of legal representation is particularly acute in cases involving basic human needs. In foreclosure cases, 63% of homeowners were unrepresented at statutorily required settlement conferences in 2010.⁹ Shift the focus from homeowners to renters and the numbers slip further, with more than 98% of tenants unrepresented in eviction cases.¹⁰ In the hundreds of thousands of consumer credit cases that are filed in New York City each year, 99% of

⁶ See VICTOR BACH & TOM WATERS, CMTY. SERV. SOC'Y, MAKING THE RENT: BEFORE AND AFTER THE RECESSION: RENT-INCOME PRESSURES ON NEW YORK CITY TENANTS, 2005 TO 2011, at 3 (2012), available at http://b.3cdn.net/nycss/852b245452a84929d6_bnm6ibtbd.pdf; JEREMY REISS & KRISTA PLETRANGELO, CMTY. SERV. SOC'Y, THE UNHEARD THIRD 2009: A SURVEY OF LOW-INCOME NEW YORKERS: JOB LOSS, ECONOMIC INSECURITY, AND A DECLINE IN JOB QUALITY 8 (2010), available at http://b.3cdn.net/nycss/3dd129322caf4d333c_aem6bu0pc.pdf; Ann Carins, *The Movement to Put Utility Payments on Credit Reports*, N.Y. TIMES (Oct. 9, 2012, 2:38 PM), <http://bucks.blogs.nytimes.com/2012/10/09/the-movement-to-put-utility-payments-on-credit-reports>; *Comments to the Consumer Financial Protection Bureau Regarding Consumer Financial Products and Services Offered to Service Members Docket No. CFPB-2011-0016* 76 Fed. Reg. 54998 (Sept. 6, 2011), NAT'L CONSUMER L. CENTER (Sept. 20, 2011), http://www.nclc.org/images/pdf/special_projects/military/comments-servicemembers-9-20-2011.pdf.

⁷ See DEBBIE GRUENSTEIN BOCIAN ET AL., CTR. FOR RESPONSIBLE LENDING, LOST GROUND, 2011: DISPARITIES IN MORTGAGE LENDING AND FORECLOSURES 4 (2011), available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/Lost-Ground-2011.pdf>; CLAIRE M. RENZETTI, NAT'L ONLINE RES. CTR. ON VIOLENCE AGAINST WOMEN, ECONOMIC STRESS AND DOMESTIC VIOLENCE 5 (2009), available at http://new.vawnet.org/Assoc_Files_VAWnet/AR_EconomicStress.pdf; Nicolas P. Retsinas & Eric S. Belsky, *Examining the Unexamined Goal*, in LOW-INCOME HOME OWNERSHIP: EXAMINING THE UNEXAMINED, at 1 (Nicolas P. Retsinas & Eric S. Belsky eds., 2002), available at http://www.brookings.edu/~media/press/books/2002/8/low%20income%20homeownership/low_income_homeownership_chapter; Elsa Brenner, *Foreclosures Creep Upmarket*, N.Y. TIMES (Oct. 4, 2008), <http://www.nytimes.com/2008/10/05/realestate/05wco.html?fta=Y>.

⁸ TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., REPORT TO CHIEF JUDGE OF THE STATE OF NEW YORK 1 (2010) [hereinafter 2010 TASK FORCE REPORT], available at <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>.

⁹ ANN PFAU, STATE OF NEW YORK UNIFIED COURT SYSTEM, 2010 REPORT OF THE CHIEF ADMINISTRATOR OF THE COURTS 11 (2010), <http://www.nycourts.gov/publications/pdfs/foreclosurereportnov2010.pdf>; see also TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 16 (2011) [hereinafter 2011 TASK FORCE REPORT], available at http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011TaskForceREPORT_web.pdf.

¹⁰ 2010 TASK FORCE REPORT, *supra* note 8, at 1.

borrowers do not have a lawyer.¹¹ Statewide, more than 95% of parents in child support cases go unrepresented.¹²

All of this is deeply disturbing, to say the least, because underlying these statistics are frightened and vulnerable human beings. They are the elderly on fixed incomes, single parents, the disabled and the mentally ill, abuse victims, and so many more. They are grappling with life-altering legal problems. They are trying to save their homes from predatory lenders, recover back wages from employers, end abuse by a violent spouse or partner, or obtain financial support to give their children the care they need.¹³ But they cannot afford a lawyer to help them. While some are fortunate enough to find their way to a legal services provider who can assist them free of charge, there are not nearly enough providers to go around.¹⁴

The New York State Judiciary bears witness every day to the impact that this crisis in legal services is having on court outcomes, on their role as neutral arbiters, and on the resources of the court system. Judges observe an effect on the disposition of a case when one party is represented and the other is not.¹⁵ One housing court judge in Manhattan notes that unrepresented litigants are “routinely at a disadvantage,” lacking as they do “both the knowledge and the tools to properly assert their rights and assess their claims.”¹⁶ The judge describes a typical scenario:

[U]nrepresented litigants in housing court are pulled aside daily by opposing counsel and offered settlement agreements. Often they are induced into signing such agreements with comments like[:] “Sign this and you will get out quickly,” “This is the best you can do” and “If you don’t agree to this, you will have 5 days to pay or you will be evicted.” These unrepresented litigants, who often do not speak English as their primary language, regularly sign stipulations that they do not fully understand as they tend to be unfamiliar with their rights and overcome by the fear of losing their home. These agreements that they sign are not written in plain language but rather contain terms that an individual without a legal background cannot be expected to understand.¹⁷

Unsophisticated pro se litigants easily fall prey in an adversarial system that they are not equipped to navigate.

Cases with unrepresented parties take more time. To safeguard basic fairness, judges find themselves slowing down to provide explanations to litigants who lack an understanding not just of the law but also of the proce-

¹¹ *Id.*

¹² *Id.*

¹³ *See id.* at 12–13.

¹⁴ *See id.* at 4.

¹⁵ *See, e.g., id.* at 1, 12.

¹⁶ 2011 TASK FORCE REPORT, *supra* note 9, app. 12, available at http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011_Appendices.pdf (quoting written submission from Hon. David Kaplan, Housing Court Judge, New York County).

¹⁷ *Id.*

ture and culture of the courtroom. A family court judge from Orange County has described the challenges that unrepresented litigants face and the challenges that they present to the court as well. A concept as familiar to practicing lawyers as service of process appears “confusing and complex” to unrepresented litigants.¹⁸ In the words of this family court judge, unrepresented litigants “simply do not know and understand what constitutes sufficient service.”¹⁹ Frequently, “as much as ten to fifteen minutes of a court appearance can be spent trying to explain the service of process procedures to unrepresented litigants.”²⁰ Ten or fifteen extra minutes, when multiplied throughout a heavy court calendar, can mean that judges and court staff devote hours of extra time each day to helping unrepresented litigants with the most basic information.

Those delays have an impact on all litigants in a case, not just the litigant who lacks legal representation. According to one prominent litigator and public figure whose firm primarily represents large and medium-sized corporations, his clients are harmed when the other party to a case is pro se:

I can tell you from personal experience that I would much rather have somebody representing on the other side than be faced with a pro se litigant. It costs me much more time, it costs my client much more money to deal with the delays, the disruptions. It also requires the Court to, in effect, step in a little bit as an advocate for their side, which distorts our adversarial process. So, from every aspect, I would much rather have somebody represented on the other side than be with a pro se litigant.²¹

For even one party to go unrepresented impairs a court's ability to deliver justice.

Moreover, when judges take the extra time to explain law and court procedure, they face ethical constraints. According to a top administrative judge from upstate New York, “The judge cannot wear two hats.”²² Judges cannot serve as lawyer and judge simultaneously. In this judge's experience,

[u]nrepresented litigants present an ethical dilemma for judges While the judge must take time to explain the law and its applicability in the case, there is a fine line that a judge must walk

¹⁸ *Id.* app. 11 (quoting written submission from Hon. Lori Currier Woods, Acting Supreme Court Justice and Family Court Judge, Orange County).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *The Chief Judge's Hearing on Civil Legal Services: Hearing Before the Supreme Court of the State of New York, Second Department* 44–45 (2011) (statement of David Boies, Chairman of Boies, Schiller & Flexner LLP).

²² 2011 TASK FORCE REPORT, *supra* note 9, app. 13 (quoting written submission from Hon. Michael V. Cocco, Supreme Court Justice, Otsego County, and Deputy Chief Administrative Judge for Courts Outside the City of New York).

to try to be fair and neutral to both sides, and not give the appearance of favoring the unrepresented litigant.²³

A judge's best effort to walk this line is no substitute for legal representation: "the explanation of the procedural and substantive law that the unrepresented receive is cursory at best."²⁴

These observations and experiences illuminate the deep need for expanded access to legal services and the burden that its absence places on judges, on the unrepresented, and on the efficiency of the system as a whole. Yet, as a judiciary, our mission transcends these burdens. We must hear and resolve each and every case that is filed with us. The Judiciary has a very basic constitutional obligation to try cases, to render decisions, and, in doing so, to deliver justice. That is an unchanging obligation in the best economic times and—even more so—in the worst. This means not only that our doors must be open to everyone but also that we must provide justice that is meaningful, fair, impartial, and equal for all. We cannot fulfill our constitutional mandate when so many unrepresented litigants come into our courts without the benefit of an attorney in cases addressing the basic necessities of life, such as maintaining a roof over their heads, their personal safety, their livelihoods, and the well-being of their families.

B. *Constricted Funding for Civil Legal Services*

At the same time that the need for civil legal services is intensifying, state and federal funding has declined dramatically. The budget of the Legal Services Corporation (LSC) in Washington—the single largest source of funding for civil legal aid—continues to be seriously threatened by congressional cuts.²⁵ These ongoing reductions to the LSC budget have resulted in extensive layoffs by legal services organizations.²⁶ Here in New York, some of our largest legal services organizations depend on LSC for support and are struggling to survive as funding shrinks.

²³ *Id.*

²⁴ *Id.*

²⁵ *Funding Cuts Expected to Result in Nearly 750 Fewer Staff Positions at LSC-Funded Programs*, LEGAL SERVICES CORP. (Aug. 15, 2012), <http://www.lsc.gov/media/press-releases/funding-cuts-expected-result-nearly-750-fewer-staff-positions-lsc-funded>; see also Alan W. Houseman, *The Crisis in Civil Legal Aid*, AM. CONST. SOC'Y BLOG (Sept. 25, 2012), <http://www.acslaw.org/acsblog/the-crisis-in-civil-legal-aid>.

²⁶ See, e.g., Todd Ruger, *Once More, LSC Budget at Risk; Congressional Funding Proposals for Legal Services Corp. Vary Widely*, NAT'L L.J., July 2, 2012, at 15; *Statement by John G. Levi, Chairman, Board of Directors, Legal Services Corporation, November 17, 2011*, LEGAL SERVICES CORP. (Nov. 17, 2011), <http://lsc.gov/media/press-releases/statement-john-g-levi-chairman-board-directors-november-17-2011>; see also Catherine Ho, *Budget Cut Hits Region's Legal Aid Groups*, WASH. POST (Feb. 12, 2012), http://www.washingtonpost.com/business/capitalbusiness/budget-cut-hits-regions-legal-aid-groups/2012/02/07/gIQASdyR9Q_story.html; Molly McDonough, *Legal Aid Providers Expected to Lay Off 350 Lawyers, Scale Back Services*, A.B.A. J. (Aug. 16, 2012, 10:00 AM), http://www.abajournal.com/news/article/legal_aid_providers_expected_to_lay_off_350_lawyers_scale_back_services/.

Another large portion of the funding for civil legal services in New York, as in every state, comes from an Interest on Lawyers' Trust Accounts (IOLTA) program. New York's program, the Interest on Lawyer Account Fund (IOLA),²⁷ has been hit hard by the sluggish economy and historically low interest rates. Its revenues have plummeted, and available IOLA funds are a mere one-fifth of what they used to be. That important source of grants to legal service providers declined rapidly in a very short period of time, from nearly \$32 million in 2008 to only \$6.5 million in 2010 and in 2011.²⁸

New York is not alone in facing these diminishing funding streams. Funding for civil legal services around the country is heavily reliant on this unstable, and now evaporating, combination of federal, state, local, and private grants, contributions and fees subject to the vagaries of politics, the economy, and uncertain revenue streams. This intolerable state of affairs threatens the very fabric of the legal system. Access to justice is not a luxury, affordable only in good times. To the contrary, it is a bedrock value of a society based on the rule of law. For the judiciary and for the legal profession, equal justice for all is our very reason for being. The rule of law itself loses its meaning when legal protection is available only to those who can afford it. This is the most critical challenge facing the justice system today.

II. SOLUTIONS

For a problem so deeply entrenched, there is no single strategy that can be effective in isolation. At first, the Judiciary responded to the crisis in New York by working with the bar to increase pro bono services and intensifying our efforts within the Judiciary to better serve the unrepresented. Those efforts were helpful, but not nearly enough to adequately protect the fundamental rights of so many unrepresented litigants. It became clear to me that what was necessary to confront this problem head on was the unequivocal commitment of state government to fund civil legal services. Government must acknowledge its basic responsibility to provide civil legal representation to the poor. Just as we do not close our schools and shutter our hospitals in bad economic times, we cannot abandon those without the

²⁷ IOLA was created by the state legislature in 1983 with the support of the New York State Bar Association. *About IOLA*, IOLA, <http://www.iola.org/about.html> (last visited Dec. 26, 2012). Under IOLA, attorneys must deposit certain client funds they are holding in trust for future use—namely, those funds that they will be holding for only a short time or are small in amount—into interest-bearing accounts. *Id.* The interest from those accounts goes into IOLA, which in turn provides financial support to civil legal service organizations. *Id.* This arrangement does not deprive clients of any benefit, as the administrative costs of individual non-IOLA funds and tax liability on interest income would offset any benefit. *Id.* Because IOLA funds derive from interest on lawyer accounts, they are sensitive to any changes in interest rates. *Id.*

²⁸ 2010 TASK FORCE REPORT, *supra* note 8, at 34; 2011 TASK FORCE REPORT, *supra* note 9, at 17; *see also* Mirela Iverac, *For More and More Low-Income New Yorkers, Civil Legal Services Are Just Out of Reach*, WNYC NEWS (Sept. 30, 2011), <http://www.wnyc.org/articles/wnyc-news/2011/sep/30/civil-legal-services/>.

legal resources to secure their basic human needs. As a fundamental priority of our society, we must provide the “plumbing,” or infrastructure, to ensure stable, consistent, and ongoing funding for civil legal services, now and for the future. If we fail to do so, legal service providers will, in large numbers, cease to exist, with catastrophic consequences for the most vulnerable in our society.²⁹

It is critical that the Judiciary as an institution takes a strong and visible leadership role in this effort. The judicial branch of government “shoulders primary leadership responsibility to preserve and protect equal justice and take actions necessary to ensure access to the justice system for those who face impediments they are unable to surmount on their own.”³⁰ The Conference of Chief Judges, made up of the highest judicial officer from each of the fifty states in the nation; the District of Columbia; the Commonwealth of Puerto Rico; the Commonwealth of the Northern Mariana Islands; and the territories of American Samoa, Guam, and the Virgin Islands, has spoken out on the judiciary’s role in confronting and tackling this problem. In its 2001 Resolution, the Conference recognized that “judicial leadership and commitment are essential to ensuring equal access to the judicial system and to the achievement through nationwide effort of equal justice for all.”³¹ Judges know firsthand the ways in which the lack of civil legal aid can prove devastating to the lives of our fellow citizens and their families. We as judges cannot stand passively by and consider litigants as faceless numbers on crowded court dockets without regard to whether they are represented, without regard to whether they are able to protect their rights, and without regard to whether justice is really and truly being done.

A. *Focusing the Problem*

To meet this challenge, the judicial branch in New York has focused on those with the most profound needs. To provide every person with a legal problem of any kind with a lawyer at public expense is not feasible. What we are doing in New York is prioritizing our resources, particularly in light of today’s fiscal realities, and focusing, first and foremost, on providing counsel for those people who come to our courthouses seeking the “essentials of life”—a roof over their heads, family stability, personal safety free from domestic violence, access to health care and education, or subsistence income and benefits. That is the best way to begin to make immediate and meaningful progress in addressing the access to justice crisis. This approach is informed by the historic 2006 American Bar Association Resolution urging “federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories

²⁹ See *supra* notes 25–28 and accompanying text.

³⁰ *Resolution 23: Leadership to Promote Equal Justice*, CONF. CHIEF JUSTS. (Jan. 25, 2001), <http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol23Leadership.html>.

³¹ *Id.*

of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.”³²

B. Task Force to Expand Access to Civil Legal Services in New York

A keystone of New York's response has been the Task Force to Expand Access to Civil Legal Services in New York. In May 2010, at the New York Court of Appeals' Law Day commemoration, I announced the formation of the Task Force, chaired by Helaine Barnett, former president of the Legal Services Corporation. The group, consisting of judges, lawyers, business executives, representatives from law schools and nonprofit organizations, legal service providers, and labor leaders from all parts of our state, was given a broad mission: to measure the extent of unmet need; recommend statewide priorities; define the types of legal matters in which civil legal services are most necessary; identify ways to improve the delivery of services; gather and distribute information about programs, strategies, and technological approaches that have proven successful; and issue guidelines and best practices to help providers. In addition, the Task Force was charged with advocating for expanded funding for civil legal services. Finally, I asked the Task Force to prepare an annual report and to make recommendations for immediate steps to ensure that access to justice is a priority in New York.

In 2010 and again in 2011 and 2012, with the Task Force's assistance, I personally presided over four public hearings, one in each of New York's four Judicial Departments. The hearings were intended to gather information and to assist the Task Force and the Chief Judge in assessing the extent and nature of the unmet civil legal needs in New York. I was joined at each hearing by the Chair and individual members of the Task Force and by the highest level of leadership of the State Judiciary and the State Bar Association. We all understood that if the Judiciary and the legal profession did not stand up for civil legal services for the poor in a time of crisis, no one else would. Testimony at the hearings came from judges, legal service providers, legislators, academics, members of the business community, health-care providers and administrators, and litigants themselves. Litigants, in particular, again and again testified that dire personal consequences were averted when they were able to obtain legal counsel.

Our partners in government responded enthusiastically to the hearings undertaken by the Task Force. The two Houses of the New York State Legislature, the Senate and the Assembly, adopted a joint resolution endorsing these hearings and requesting that the Chief Judge report and make recommendations annually to the Governor and the Legislature on the need for

³² AM. BAR ASS'N, RECOMMENDATION 112A (2006) [hereinafter ABA, RECOMMENDATION]. See generally WORKING GRP. ON CIVIL RIGHT TO COUNSEL, AM. BAR ASS'N, AMERICAN BAR ASSOCIATION TOOLKIT FOR A RIGHT TO COUNSEL IN CIVIL PROCEEDINGS (2010), available at http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_toolkit_for_crtc.authcheckdam.pdf.

financial resources.³³ This action in effect institutionalized the hearings and put the Legislature's stamp of approval on the process we proposed and now will follow year after year—a process that has a direct impact on the Judiciary's budget in New York.

C. *Funding for Civil Legal Services*

In November 2010, following the hearings and intensive research, data collection, surveys, and analysis, the Task Force issued its first report.³⁴ Its principal recommendation was that the Judiciary include \$25 million for civil legal services in its budget for the 2011–12 fiscal year.³⁵ This step was part of a four-year phased-in effort to increase annual funding by \$100 million.³⁶ I adopted this recommendation and included a provision for the funding in the Judiciary's proposed budget.³⁷ It makes absolute sense in New York to treat funding for civil legal services, including the legal assistance that helps keep cases out of court, as part and parcel of the Judiciary's budget. The message it sends is simple—as far as the Judiciary is concerned, ensuring access to justice is not tangential to its mission but rather goes to the very heart of our constitutional mandate. Just as important as keeping our courthouse doors open is the substance of what is actually happening behind those doors. Justice, to be meaningful, must be accessible to all, both poor and rich.

Thanks to our partners in the legislative and executive branches, the Judiciary's budget has included substantial funding for civil legal services over the last two years. Despite the deep cuts imposed on the Judiciary in 2011, including over four hundred layoffs of court personnel,³⁸ our final budget approved by the Governor and the Legislature that year included \$12.5 million in new funding for civil legal services.³⁹ These monies were distributed to fifty-six nonprofit, legal services organizations around the state and, in the first three months alone, funded services in more than fifty thousand cases as well as the diversion from court of nearly ten thousand more.⁴⁰ In addition, the Judiciary was able to obtain a \$15 million appropriation to rescue IOLA—the second year of IOLA rescue funding—for a total

³³ S. 6368, 2010 Leg. Reg. Sess. (N.Y. 2010); A. 1621, 2010 Leg., Reg. Sess. (N.Y. 2010).

³⁴ See 2010 TASK FORCE REPORT, *supra* note 8.

³⁵ *Id.* at 4–5, 37–40.

³⁶ *Id.* at 5, 39.

³⁷ See N.Y. STATE UNIFIED COURT SYS., 2011–12 JUDICIARY BUDGET, at v (2010), available at <http://www.nycourts.gov/admin/financialops/BGT11-12/BudSection1.pdf>.

³⁸ See, e.g., William Glaberson, *Cuts Could Stall Sluggish Courts at Every Turn*, N.Y. TIMES (May 15, 2011), <http://www.nytimes.com/2011/05/16/nyregion/budget-cuts-for-new-york-courts-likely-to-mean-delays.html?pagewanted=all>.

³⁹ See DEAN G. SKELOS & JOHN A. DEFRENCISCO, N.Y. STATE SENATE, SFY 2011–12 ENACTED BUDGET SUMMARY 71 (2011), available at <http://www.nysenate.gov/files/pdfs/SFY%202011-12%20Budget%20Summary%20Final.pdf>; see also S.B. 2801, 2011 Leg., 234th Legis. Sess. § 2 (N.Y. 2011) (enacted).

⁴⁰ 2011 TASK FORCE REPORT, *supra* note 9, at 5–8, apps. 4–5.

of \$27.5 million dollars of state funding for civil legal services under the umbrella of the Judiciary's budget.⁴¹ In the 2012–13 budget, the amount appropriated for the Judiciary includes \$40 million to support civil legal services⁴²—by far the highest level of state funding for civil legal services in the country.

Reliance on revenue streams like IOLA or court fees that fluctuate with the economy, while sometimes necessary and justifiable on a pragmatic level, is ultimately not the answer. Access to justice cannot be dependent on funding that is unstable by nature or on court fees that purport to finance access to justice but, by their nature, erect new barriers to equal justice. There is a better way. In New York, with the Chief Judge's hearings, the work of the Task Force to Expand Access to Civil Legal Services in New York, the joint resolution of the Legislature, cooperation with our partners in government, and the addition of funding for legal services in the Judiciary's budget, we have established a systemic process for publicly funded civil legal services for the poor—and have hopefully created a vital precedent for the future.

D. *Additional Work of the Task Force*

Beyond the call for funding, the Task Force to Expand Access to Civil Legal Services in New York has looked broadly at ways to address the justice gap and has pursued creative programs to achieve its recommendations. The Task Force advocates simplification of court forms and procedures and increased availability of forms and instructions on the court system website, recommendations that the courts are working to implement.⁴³ Other areas the Task Force has identified include increased use of alternative conflict resolution efforts; cost-sharing initiatives among providers; and recommendations for providers on early intervention, the use of technology, and education and outreach.⁴⁴

The Task Force also found that law schools had the potential to play a greater role in filling the justice gap.⁴⁵ It convened a national conference at Cardozo Law School in May 2012 on the role of law schools in helping to meet the essential civil legal needs of low-income New Yorkers.⁴⁶ The conference drew together law school professors and administrators, pro bono coordinators, judges, bar leaders, attorneys in private practice, legal service providers, and students to explore how law schools can be helpful through

⁴¹ See N.Y. S.B. 2801 § 2.

⁴² See S.B. 6251, 2012 Leg., 235th Legis. Sess. § 2 (N.Y. 2012) (enacted), *supra* note 1.

⁴³ 2011 TASK FORCE REPORT, *supra* note 9, at 30–34.

⁴⁴ *Id.* at 35–36, 40–42.

⁴⁵ *Id.* at 34–35.

⁴⁶ See Laura Haring, *Panel Is Tasked to Suggest Ways to Enact Pro Bono Requirement*, N.Y. L.J. (May 23, 2012), http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202555571835&Panel_Is_Tasked_to_Suggest_Ways_to_Enact_Pro_Bono_Requirement&slreturn=20121012000534.

pro bono work by students, clinics, externships, changes in curriculum, and other initiatives.⁴⁷

New York State boasts fifteen law schools, fanned across the state from Brooklyn to Buffalo.⁴⁸ All of New York's law schools have pro bono programs with a range of opportunities for students. The work of the Task Force promises to amplify the contribution of law schools and law students.

The Task Force's reports also include analysis of the economic benefits of civil legal services.⁴⁹ Beyond the compelling legal and moral justifications, assuring civil legal assistance for the poor and the working poor actually pays for itself many times over.⁵⁰ At the Task Force hearings, business leaders, bankers, property owners, health-care providers, and government and community leaders all testified that increasing access to legal assistance benefits their institutional performance and financial bottom lines.⁵¹

The Task Force has generated a public record demonstrating that funding civil legal services makes good economic sense for New York. The testimony of numerous sources established that civil legal services save our state and local governments hundreds of millions of dollars a year by enabling people to pay their bills, preventing unwarranted evictions and homelessness, providing assistance to victims of domestic violence, avoiding foster-care placements and other social services costs, and bringing federal funds into the state.⁵² The Task Force calculates that New York's economy benefits to the tune of nearly five dollars for every one dollar spent on civil legal services.⁵³ Conversely, according to the Task Force, New York now loses an estimated \$400 million or more in federal benefits each year due to the inability of unrepresented litigants to access entitlement programming.⁵⁴

E. Assistance From the Bar and Court Programs

New York has taken a comprehensive view that involves the entire legal community working together to generate more self-help programs for the unrepresented and more pro bono programs from law schools, bar associations, law firms, and the courts. Public funding for civil legal services is the central and indispensable component of New York's approach. But it is not the whole picture.

Lawyers in New York deserve great credit for the service they do each year to help those in need. Volunteerism is a strain that runs strongly through the profession. Without the outstanding work of New York's attorneys, the crisis of the unrepresented would be far worse. The New York State Bar Association and the many fine local bar associations in our state

⁴⁷ *Id.*

⁴⁸ 2011 TASK FORCE REPORT, *supra* note 9, at 34–35.

⁴⁹ 2010 TASK FORCE REPORT, *supra* note 8, at 20–26.

⁵⁰ *Id.*

⁵¹ *Id.* at 9–10.

⁵² *Id.*

⁵³ *Id.* at 22.

⁵⁴ *Id.* at 1.

support and encourage pro bono service.⁵⁵ These bar associations have a long history of facilitating and promoting pro bono work through placement services, award and recognition programs, training, guidelines, and events.⁵⁶

The court system, too, has devoted substantial time and resources to supporting pro bono work. In the last several years, the courts have created a range of programs that facilitate placements of volunteer attorneys in order to assist and encourage members of the bar in undertaking pro bono work. Through the Volunteer Attorney Program, lawyers are trained by the courts to provide legal advice and assistance to litigants who represent themselves in court.⁵⁷ Working under the supervision of court staff, these volunteers answer questions, assist with petitions and other court forms, help to interpret court orders, and provide guidance in preparation for court hearings.⁵⁸ Volunteer attorneys select the court where they will serve and the types of cases on which they wish to consult, from consumer debt cases to landlord/tenant cases to family and matrimonial matters.⁵⁹ Participants choose their volunteer schedule and may elect to volunteer as little as a few hours per week.⁶⁰

The Attorney Emeritus Program seeks to access an underutilized segment of the legal community—attorneys in good standing who are at least fifty-five years old and have a minimum of ten years of experience.⁶¹ Under the Attorney Emeritus Program, able and experienced attorneys who previously might have retired can practice law on a pro bono basis, committing to at least thirty hours a year of legal services to low-income clients.⁶² Each Attorney Emeritus works with qualified legal services programs that provide malpractice coverage and access to offices, staff, and any necessary training.⁶³ With nearly fifty organizations already participating,⁶⁴ this program provides a range of opportunities for senior lawyers, mostly baby boomers, who want to use their retirement years in productive ways to promote the public good. And it offers an added benefit to young lawyers at legal service organizations who can learn from working with their more experienced colleagues through this program.

Our court system plays a significant role not simply by enhancing pro bono legal services but also by coordinating access to justice programs that

⁵⁵ See, e.g., *Pro Bono Information for Attorneys*, N.Y. ST. B. ASS'N, http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProBonoInformation/Pro_Bono_Home.htm (last visited Dec. 26, 2012); *City Bar Justice Center*, N.Y. CITY B., <http://www2.nycbar.org/citybarjusticecenter> (last visited Dec. 26, 2012); *Pro Bono*, ALBANY COUNTY B. ASS'N, http://www.albanycountybar.com/pro_bono (last visited Dec. 26, 2012).

⁵⁶ See sources cited *supra* note 55.

⁵⁷ See *Court Sponsored Volunteer Attorney Program*, N.Y. ST. UNIFIED CT. SYS., <http://www.courts.state.ny.us/attorneys/volunteer/vap/index.shtml> (last visited Dec. 26, 2012).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See *Attorney Emeritus Program*, N.Y. ST. UNIFIED CT. SYS., <http://www.courts.state.ny.us/attorneys/volunteer/emeritus/rsaa> (last visited Dec. 26, 2012).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

provide help for unrepresented litigants. Online resources like CourtHelp⁶⁵ offer step-by-step information on navigating the court system and contain extensive FAQs with the answers to many common legal questions. The court system's website offers user-friendly court forms and interactive guides to completing them.⁶⁶ The court system also operates Help Centers throughout the state.⁶⁷ These courthouse-based Help Centers operate on a first-come, first-served basis to any unrepresented litigant, regardless of income.⁶⁸ Staffed by court attorneys and clerks, they provide procedural and legal information as well as referrals to attorneys, legal clinics, and other services.⁶⁹

F. Law Students and Bar Applicants

To ensure that all lawyers who practice in New York understand that a culture of service is a core value of our profession, I announced in May 2012 that applicants to the bar would be required to contribute fifty hours of participation in law-related pro bono work before they would be admitted to practice law in New York. This hands-on experience, gained through helping others, will engender in new lawyers a sense of what it means to be a member of the bar of our state.

While fifty hours amounts to little more than a few days of service, it will undoubtedly help to fill the justice gap. Every year, about ten thousand prospective lawyers pass the New York bar exam.⁷⁰ If each of them completed fifty hours of law-related pro bono work before gaining admission to the bar, the aggregate would be 500,000 pro bono hours completed each year to benefit those in need of legal help, creating a positive impact on persons of limited means, communities, and organizations that would gain from this infusion of pro bono work.

By engaging in work such as assisting a family facing eviction or foreclosure, working with an attorney to draft a contract for a fledgling not-for-profit, helping a victim of domestic violence obtain a divorce, or using their legal talents to help state and local government entities, law students can experience the intrinsic reward that comes from helping others through pro bono service that will stay with them for a lifetime. To participate in legal work, prospective attorneys will work under the supervision of licensed at-

⁶⁵ See *NY CourtHelp—A Website for Unrepresented New Yorkers*, N.Y. ST. UNIFIED CT. SYS., <http://www.courts.state.ny.us/courthelp> (last visited Dec. 26, 2012).

⁶⁶ See *NY CourtHelp—Forms Library*, N.Y. ST. UNIFIED CT. SYS., <http://www.courts.state.ny.us/courthelp/forms.html> (last updated Nov. 21, 2012).

⁶⁷ See *NY CourtHelp—Help Centers and Community Organizations*, N.Y. ST. UNIFIED CT. SYS., <http://www.courts.state.ny.us/courthelp/helpcenters.html> (last updated Oct. 25, 2012).

⁶⁸ See, e.g., *Walk-In Services at the Help Center*, N.Y. ST. UNIFIED CT. SYS., <http://www.nycourts.gov/courts/nyc/housing/resourcecenter.shtml> (last visited Dec. 26, 2012).

⁶⁹ *Id.*

⁷⁰ Editorial, *A New Lawyer's Duty*, N.Y. TIMES, May 2, 2012, at A26; see also *NYS Bar Exam Reports and Press Releases*, N.Y. ST. BOARD L. EXAMINERS, <http://www.nybarexam.org/press/press.htm> (last visited Jan. 14, 2013).

torneys, giving prospective attorneys the opportunity to learn from more experienced mentors.

With the new section 520.16 of the Rules of the New York Court of Appeals for the Admission of Attorneys and Counselors at Law,⁷¹ effective January 1, 2013, New York will become the first state in the nation to require pro bono service for admission to the bar.⁷² The idea has already begun to take root elsewhere. In October 2012, the Chief Justice of the Supreme Court of New Jersey formed a committee to consider implementing a similar rule in his state.⁷³

The new bar admission rule in New York will send the strongest message to those about to enter our profession that assisting in meeting the urgent need for legal services is a necessary and essential qualification to becoming a lawyer. Before you can call yourself an attorney in New York, you will have to demonstrate in a very tangible way your commitment to the ideals of our great profession.

III. TOWARDS A CIVIL *GIDEON*

Our work in New York to expand access to civil legal services is designed to make immediate and meaningful progress in addressing the current crisis. At the same time, it may serve to lay a foundation for the day when litigants will receive civil legal representation in keeping with the ethos of the Supreme Court's decision in the landmark case of *Gideon v. Wainwright*.⁷⁴ *Gideon* stands for the proposition that criminal defendants have a constitutional right to counsel, but it also is a call for our society to give legal assistance to human beings facing life-transforming legal crises.⁷⁵ The title of Anthony Lewis's Pulitzer Prize-winning book about the case, *Gideon's Trumpet*,⁷⁶ resonates with the moral force of the Supreme Court's decision as well as biblical overtones of righteous justice. That trumpet sounds for all those whose basic human needs are at stake in a legal system that must be meaningful for each and every one of us, regardless of means. The issues at stake in civil cases involving the necessities of life can be every bit as critical to one's existence and well-being on this earth as the very loss of liberty itself.

The ideal of a civil *Gideon*, extending legal representation for the poor to all civil cases involving the essentials of life, remains a daunting chal-

⁷¹ N.Y. COMP. CODES R. & REGS. tit. 22, § 520.16 (2012).

⁷² Mosi Secret, *Judge Details a Rule Requiring Pro Bono Work by Aspiring Lawyers*, N.Y. TIMES, Sept. 20, 2012, at A25.

⁷³ Daniel Wiessner, *NJ Court Officials Consider Pro Bono Rule for Aspiring Lawyers*, THOMSON REUTERS NEWS & INSIGHT (Oct. 22, 2012), http://newsandinsight.thomsonreuters.com/Legal/News/2012/10_-_October/NJ_court_officials_consider_pro_bono_rule_for_aspiring_lawyers.

⁷⁴ 372 U.S. 335 (1963).

⁷⁵ *Id.* at 342.

⁷⁶ ANTHONY LEWIS, *GIDEON'S TRUMPET* (1964).

lenge. Yet I believe there is a promising strategy emerging. Consider the *Gideon* case for a moment, in which the Supreme Court famously stated that, “in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.”⁷⁷ But what seemed an obvious truth in *Gideon* had not seemed obvious to the Supreme Court only twenty-one years before in *Betts v. Brady*, where the Court held that the Constitution did not mandate the provision of free counsel to indigent criminal defendants.⁷⁸ What changed over those twenty-one years?

After *Betts*, many states and localities took it upon themselves to provide counsel to the accused through various means, including state and local legislation and the voluntary efforts of bar associations. These efforts changed the legal landscape in America and ultimately were crucial in convincing the Justices in *Gideon* that they were not making an unwarranted constitutional leap that was too far out of step with public opinion. In fact, only two decades after *Betts*, twenty-two states filed amicus briefs in support of Clarence Gideon’s claim that he was entitled to counsel. That groundswell of support from the states had a strong persuasive effect on the Supreme Court. The Justices ultimately concluded that it was time for the law to evolve in recognition of this major shift in public opinion.

The recognition of a right to counsel in criminal cases was a landmark in the fight for equal justice in our country, although to be sure there is still much work to be done. I believe there is a valid analogy to be made with regard to legal representation of the poor in civil cases involving the necessities of life. A diverse and growing coalition of bar associations, judicial leaders, service providers, academics, and others are experimenting on the ground with creative ideas and approaches to expand legal representation through new funding streams, greater lawyer volunteerism, and other programs and initiatives. As discussed, the American Bar Association in its 2006 Resolution called upon the federal and state governments to provide counsel as a matter of right at public expense to low-income persons in adversarial proceedings involving “basic human needs,”⁷⁹ and the Joint Resolution of the Conference of Chief Justices and the Conference of State Court Administrators in 2008 urged the nation’s top judges “to take a leadership role in their respective jurisdictions to prevent denials of access to justice.”⁸⁰ In California, the Sargent Shriver Civil Counsel Act put in place a multiyear pilot program beginning in October 2011 to provide counsel to indigent per-

⁷⁷ 372 U.S. at 344.

⁷⁸ 316 U.S. 455, 471 (1942).

⁷⁹ See ABA, RECOMMENDATION, *supra* note 32.

⁸⁰ See Conference of Chief Justices & Conference of State Court Adm’rs, *Resolution 2: In Support of Efforts to Increase Access to Justice*, CONF. ST. CT. ADMINS. (July 30, 2008), <http://cosca.ncsc.dni.us/Resolutions/AccessToJustice/2Civil%20Gideon%20Proposal.pdf>.

sons in domestic violence, child-custody, and housing cases.⁸¹ In February 2012, San Francisco's Board of Supervisors passed an ordinance declaring San Francisco the "first 'Right to Civil Counsel City' in the United States" and making a firm commitment to the goal of establishing a right to counsel in civil proceedings.⁸² In Texas, tremendous strides have been made in providing legal services for the poor.⁸³ State and local bar associations have taken up the cause elsewhere, including in Philadelphia,⁸⁴ and in Boston, where housing counsel pilot projects have resulted in improved outcomes for litigants in eviction cases.⁸⁵ All these efforts help to measure the extent of the justice gap and draw attention to how absolutely critical civil legal services are to the protection of our fundamental rights.

In New York, we have created the template that I have outlined in this essay to provide a systemic approach to funding civil legal services out of the public fisc. These efforts and so many more around the country reinforce the obvious truth that legal representation in civil cases involving the basic necessities of life is fundamental to the delivery of justice. Civilized societies are ultimately judged by how they treat their most vulnerable citizens. The biblical command from thousands of years ago resonates just as strongly today—"Justice, Justice shall you pursue for rich and poor, high and low alike."⁸⁶ That pursuit of justice defines us and is absolutely critical to the future well-being of our nation and its people.

⁸¹ See *Fact Sheet: Sargent Shriver Civil Counsel Act (AB 590)(Feuer)*, CAL. CTS. (Aug. 2011), <http://www.courts.ca.gov/documents/AB-590.pdf>.

⁸² S.F., Cal., Ordinance 45-12 (Feb. 16, 2012), available at <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances12/o0045-12.pdf>; see also Joshua Sabatini, *Supervisors Create Program to Provide Counsel in Civil Cases*, S.F. EXAMINER (Feb. 28, 2012, 7:42 PM), <http://www.sfexaminer.com/local/2012/02/supervisors-create-program-provide-counsel-civil-cases>.

⁸³ See, e.g., *Civil Legal Services to the Poor in Texas: Executive Summary*, TEX. ACCESS TO JUST. COMMISSION (Sept. 11, 2008), <http://www.texasatj.org/files/file/Executive%20Summary%20SupCt.pdf>.

⁸⁴ See CHANCELLOR'S TASK FORCE ON CIVIL GIDEON, PHILA. BAR ASS'N, PRELIMINARY REPORT, FINDINGS AND RECOMMENDATIONS (2009), available at http://www.philadelphiabar.org/WebObjects/PBARReadOnly.woa/Contents/WebServerResources/CMSResources/11-09-03_Attachment.pdf.

⁸⁵ See BOS. BAR ASS'N TASK FORCE ON THE CIVIL RIGHT TO COUNSEL, THE IMPORTANCE OF REPRESENTATION IN EVICTION CASES AND HOMELESSNESS PREVENTION: A REPORT ON THE BBA CIVIL RIGHT TO COUNSEL HOUSING PILOTS (2012), available at <http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf>.

⁸⁶ *Deuteronomy* 16:18–20.

