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2020

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Thou Shalt Not Ration Justice: The New York Story

Honorable Jonathan Lippman

When I became Chief Judge of New York State in 2009, I was struck by the fact that there was no short- or long-term plan for access to justice in our state. In fact, there was no plan at all. While our most fundamental mission was ensuring equal justice for all, I was taken aback that neither the Judiciary, the profession, nor the government in New York State was sufficiently focused on this fundamental goal for the justice system. I determined that my most important task as Chief Judge would be to seek to ensure that every single person in New York would get their day in court regardless of the amount of money in their pockets, their economic status, or the color of their skin. I took to heart the iconic words of Judge Learned Hand, “Though shalt not ration justice,”¹ and knew that I had my work cut out for me.

During the early stage of my efforts, it was clear that new approaches and decisive action were necessary to shift the landscape on access to justice in New York. Less than 20% of the poor and people of modest means were having their legal needs met. In fact, in the heart of the financial crisis in 2009, eight out of nine people who came to the Legal Aid Society in New York, the oldest legal services organization in the country, were turned away because of a lack of resources. Situations of this kind were totally unacceptable and contrary to the values of the Judiciary and the profession. This article will try to give you a sense of how we proceeded in the face of this challenge and the progress that we made.

STATE AND LOCAL FUNDING

To increase access to justice in New York, we first had to ensure adequate funding. When we initiated the Task Force to Expand Access to Civil Legal Services² in 2009, civil legal services in New York were woefully underfunded. At that time, funding for civil legal assistance consisted of a combination of state funds (mainly from the New York State Interest on Lawyer Account Fund, or “IOLA”), federal funds from the Legal Services Corporation, and private donations. Since the 1990s, federal and IOLA funding had decreased, and our economy had gone through an economic upheaval. The economic downturn presented us with a conundrum—fewer funds were available, yet

more individuals needed service.

To increase funding, we decided to approach the issue by demonstrating the benefits to the New York economy overall. We argued that underserved and unrepresented litigants adversely impacted the economy by increased social services (and incarceration) costs, and demonstrated that providing civil legal services reduced those expenditures. For example, providing legal assistance to the unrepresented would help prevent evictions and homelessness, which are substantial tax expenditures for state and local governments. We proposed a plan that would incrementally result in millions of dollars for civil legal services.³ We recommended that the State provide these funds in a permanent and predictable fashion, and that the monies be placed in the Judiciary’s budget. We also established accountability procedures to ensure that these additional funds would be exclusively used to address the “justice gap.”⁴ Building on this initiative, and to the surprise of the legal and governmental communities in New York, we were able by the end of 2015 to meet our goal of obtaining \$100 million in legal services funding.

A. OBTAINING FUNDING—HOW DID WE DO IT?

We started our mission to increase funds by demonstrating that expanding civil legal services is a good investment. We did not just argue that funding legal services to help the disadvantaged was the moral and right thing to do, which it was. Rather, we argued that increasing legal services also improves the well-being of our economy and our society by reducing the costs of litigation, increasing court efficiency, and saving taxpayers millions of dollars. To prove this, the Task Force held hearings across the state, where a wide variety of individuals representing many different interests testified. We heard from the heads of banks, landlord associations, business associations, the Comptroller of the State of New York, the City Council Speaker, and even New York Cardinal Timothy Dolan—a higher authority! The legislature responded enthusiastically to the hearings—the New York State Senate and Assembly endorsed them, and requested that the Task Force provide an annual report and recommendations on the financial needs for civil legal services in New York.

After the hearings and additional data collection and analysis,

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Footnotes

1. Judge Learned Hand, Speech to the New York Legal Aid Society (Feb. 16, 1951).
2. The Task Force included representatives from the courts, legal service providers, bar associations, law firms and law schools, the government, and the business sector, and was chaired by Helaine M. Barnett, the former President of the federal Legal Services Corpora-

tion. See Report to the Chief Judge of the State of New York, Task Force to Expand Access to Civil Legal Services in New York, 7 (Nov. 2010), <http://ww2.nycourts.gov/sites/default/files/document/files/2018-04/CLS-TaskForceREPORT.pdf>.

3. *Id.*

4. The justice gap is defined by the American Bar Association and the Legal Services Corporation (LSC) as “the difference between the civil legal needs of low-income Americans and the resources available to meet those needs.” See The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans, The Legal Services Corporation (2017), <https://www.lsc.gov/media-center/publications/2017-justice-gap-report>.

the Task Force published its first report in 2010. The report demonstrated that increasing legal services in communities pays for itself many times over. We incorporated data and analysis from sophisticated economic studies, which major accounting firms and fiscal experts had agreed to provide pro bono. These studies showed that for every dollar invested in legal services, five are returned to the state. We showed that increasing legal services would save hundreds of millions of dollars in social services costs in numerous ways, such as through preventing evictions, helping domestic violence victims, and avoiding foster care. We also demonstrated that New York was losing millions of dollars in federal funding each year from lower income individuals being unable to access government programs.

Ultimately, the Task Force was able to obtain \$12.5 million in funding for the Judiciary's 2011 budget, approved by the Legislature and the Governor. We allocated these funds to legal service providers throughout the State, funding more than 50,000 cases and diverting almost 10,000 from the courts. We also obtained an additional \$15 million (for a total of \$27.5 million) in recovery funds for IOLA, where revenues had severely declined as the result of historically low interest rates. By the time the next budget was approved (2012-2013), the Task Force had obtained \$40 million to support civil legal services, by far the highest level of state funding for civil legal services in the country. Over time, our methods continued to be effective—by 2014, New York State saw a return of more than six dollars for every one dollar of funding. By 2015, this figure grew to a return of more than ten dollars for every one dollar of funding—which by that time had reached the sought after goal of \$100 million. Legal services for unrepresented litigants had become a cottage industry in New York, with attorneys being hired at a record pace.⁵ Also in 2015, the Task Force became the New York Permanent Commission on Access to Justice.

B. IMPACT ON THE TRIAL COURT JUDGE

For the trial court judge, increasing state and local funds leads to fewer unrepresented individuals in the courtroom. The playing field is more level, and the Judiciary is better able to fulfill its mission and constitutional mandate of providing fair, impartial, and equal justice for all. The increase in funding also means that disadvantaged litigants have a more extensive array of legal options that results in fewer individuals having to see their legal troubles play out in the courtroom. This lessens the burden on the Judiciary by clearing space on the docket.

PRO BONO SERVICES

While obtaining funding was critical to New York's approach to increasing legal services, it was not the only relevant factor. Pro bono services have long been a crucial component to aiding the unrepresented, not only here in New York, but throughout the country. Both bar associations and courts have contributed to pro bono work by coordinating the placement of services, providing valuable training programs, and recognizing dedicated attorneys by various awards and programs. We realized that we needed to

harness this pro bono spirit to further our goal of expanding legal services. To do so, we tried to instill the value of pro bono services in the younger and older generations of attorneys by creating a mandatory pro bono requirement for New York bar admission and requiring already admitted attorneys to report their pro bono hours. We also implemented other new initiatives and programs and expanded upon those that previously existed.

“[W]e announced a mandatory pro bono requirement for New York State bar applicants.”

A. PRO BONO SERVICE BY LAW STUDENTS, BAR APPLICANTS, AND ADMITTED ATTORNEYS

Pro bono service has been deeply rooted in the lives of attorneys for centuries and is a longstanding tradition in the legal profession. This same dedication to our ethical and social responsibility to volunteer our services has long been part of the law school culture as well. To bridge the gap between the professional responsibility of practicing attorneys to perform pro bono service as well as the experience of law school students, we enacted new requirements for both.

1. The Pro Bono Requirement for New York State Bar Applicants

Emphasizing the importance of service in the legal profession, we announced a mandatory pro bono requirement for New York State bar applicants. In fact, New York is still the only state in the country that has this requirement. Under this initiative, applicants are required to complete 50 hours of law-related pro bono work before being admitted to the New York bar. Fifty hours of pro bono work amounts to little more than a few days of service throughout a student's law school career. However, when these 50 hours are multiplied times 10,000, the number of new attorneys who register to take the New York Bar Exam every year, the aggregate effect is clear. If every state were to enact this type of requirement, this could result in two and a half million hours or more of additional pro bono work.

With this new pro bono requirement, New York signaled that service is a necessary and crucial part of the legal profession—so much so that you must demonstrate your commitment to service before you are able to be admitted to the bar as a practicing attorney. We wanted to make pro bono service a part of the DNA of every new attorney in New York, so that the next generation of lawyers would recognize what members of the bar should do in the normal course—helping people in need and serving others. This requirement not only helps instill the core value of service but also decreases the access to justice gap by vastly increasing the number of hours of pro bono legal work. Applicants are required to work under the supervision of admitted attorneys—therefore, giving these students the ability to gain hands-on experience from their pro bono work while also building relationships with

5. Report to the Chief Judge of the State of New York, Task Force to Expand Access to Civil Legal Services in New York, 3 (Nov. 2014), <http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/CLS%20TaskForce%20Report%202014.pdf>; Report to the Chief

Judge of the State of New York, Task Force to Expand Access to Civil Legal Services in New York, 2 (Nov. 2015), http://ww2.nycourts.gov/sites/default/files/document/files/2018-04/2015_Access_to_Justice-Report-V5.pdf.

"In 2011 alone, we were able to assist 3,557 litigants through this program and provided an estimated value of \$4 million in legal services."

licensed attorneys and supporting important causes.

After some initial unease by students and law schools concerned about the specifics of complying with the 50-hour rule, the program has been embraced by both bar applicants and the academic community. The students often perform far more than the required 50 hours of pro bono work, and have found great personal satisfaction, pride, and joy in using their newly learned skills to help those in need. This is

exactly what we hoped would be the case!

2. Pro Bono Scholars and Poverty Justice Solutions

In addition to the hourly pro bono services requirement, we enacted other programs that were based on the service potential of new attorneys. The Pro Bono Scholars Program, for example, is an initiative that allows students in their final year of law school to devote their last semester of study to performing pro bono legal services for low-income clients under the supervision of a licensed attorney. This program symbolizes the relationship between the Judiciary, law schools, and the legal profession, with the goal of leveraging legal education to address the needs of unrepresented litigants. In exchange for students devoting their last term of law school to pro bono services, these students are able to take the bar exam in February, rather than wait until July after law school is completed. The beneficial results of the Pro Bono Scholars program are clear, and the Pro Bono Scholars almost universally pass the bar exam on the first try.

In addition to the Pro Bono Scholars program, we introduced Poverty Justice Solutions, a partnership between the Robin Hood Foundation, the New York State Unified Court System, and the New York City Human Resources Administration. Through Poverty Justice Solutions, 20 recent law school graduates per year were awarded two-year fellowships with civil legal service organizations. The program funded half of these graduates' salaries, while the legal service entities provided the other half. The fellows worked full-time for the various organizations the program partnered with, reaping all of the training and hands-on experience the various civil legal provider partners had to offer. Poverty Justice Solutions is now the Jonathan Lippman Access to Justice Fellowship Program that provides one-year fellowships focusing on housing and poverty issues. Overall, both the Pro Bono Scholars Program and Poverty Justice Solutions were designed to get younger lawyers to value pro bono work and to consider a career in legal services.

3. Mandatory Reporting

In addition to the pro bono requirement for admission to the bar, we also began requiring lawyers to report their pro bono hours and charitable contributions to legal service entities on

their attorney registration forms. This helped us with data to see which geographic areas, firms, and practice areas were doing the most pro bono work and where we needed to improve.

The reporting requirement generated much opposition from the organized bar at its inception, due to concerns that reporting pro bono hours would ultimately lead to a mandatory pro bono requirement for all lawyers in New York, similar to the 50-hour rule for new attorneys. Whether or not that would ultimately be a good idea, and I believe it merits serious consideration, that was not the intention at that time. In addition to providing helpful data, we hoped mandatory reporting, with heightened sensitivities, would also lead to attorneys being more proactive in performing pro bono work. That had been the experience in other states. In the end, after some refinements, the program has worked well. Peer pressure and professional pride have combined to stimulate volunteerism by the bar on behalf of the less fortunate.

B. SUPPORT FROM PRO BONO PROGRAMS

We implemented a multitude of other new initiatives and programs to achieve our goal of expanding legal services. Some key initiatives included our Volunteer for the Day Program for unrepresented litigants, the Attorney Emeritus Program, which enabled us to leverage the wisdom of veteran attorneys, and CourtHelp, an online platform designed to provide practical information about appearing in court.

1. Volunteer for the Day

One initiative that proved successful was our Volunteer for the Day Consumer Debt Program, which provides unrepresented litigants in consumer debt proceedings with pro bono attorneys who can represent them at hearings. Through this program, attorneys meet clients at the courthouse, appear on the client's behalf during the day, and conclude the representation by the end of the day. These attorneys typically help their clients vacate default judgments and navigate settlement negotiations. In 2011 alone, we were able to assist 3,557 litigants through this program and provided an estimated value of \$4 million in legal services.⁶

We also worked with the NYC Civil Court Consumer Services Advisory Committee to coordinate resources and training programs for attorneys in the Volunteer Lawyers Program. These lawyers do not represent clients in court, but help provide bigger picture advice about case strategy and how to navigate through the court system. We created similar programs to provide pro bono representation in New York Housing Courts, as well as free legal advice and information in the various help centers in New York City Civil Court. Additionally, we provide programs for unrepresented litigants in family and matrimonial matters.⁷

2. Attorney Emeritus Program

Through the Attorney Emeritus Program, we engaged those attorneys who were 55 or older and had a minimum of ten years of legal experience. This program allows this segment of the legal community, who may have retired or been slowing down their

6. Report to the Chief Judge of the State of New York, The Task Force to Expand Access to Civil Legal Services in New York, 6 (2011), https://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2011report.pdf.

7. While "limited representation" rules are common in most jurisdictions, judges and attorneys are well advised to check local provisions to ensure compliance.

practices, to still practice law on a pro bono basis. We require these attorneys to commit to a minimum of 30 hours of legal services a year. We connect them with legal service providers, who were able to contribute malpractice coverage, as well as the use of their offices and any necessary support and training. This program allows older lawyers to continue to use their legal skills advantageously, without requiring them to come out of retirement or commit to the full-time rigors of working in a law firm. It also allows younger attorneys at legal service providers to learn valuable skills through working with their experienced colleagues.

3. CourtHelp

We also collaborated with programs for unrepresented litigants that the court system itself provided. CourtHelp, for example, is an online resource that offers litigants step-by-step information on how to navigate the court process, as well as an exhaustive FAQ section. The resource provides numerous forms and guides to assist these individuals through the process and includes information on various types of proceedings, including those for family disputes, domestic violence, orders of protection, small claims, and eviction.⁸ New York's CourtHelp Centers also provide direct assistance to unrepresented litigants. The Help Centers are located in the courthouse and operate on a first-come, first-served basis to any unrepresented litigant. They do not screen clients based on income and do not require an appointment. Court Attorneys and Court Clerks staff these centers and provide free legal and procedural information as well as referrals to outside organizations that may be able to assist these litigants.

C. IMPACT ON THE TRIAL JUDGE

Increasing pro bono services results in a more well-rounded legal profession as a whole, the result of which is undoubtedly seen in the trial court. The more attorneys do in public service, the more they are exposed to different types of clients and legal issues. These types of experiences allow attorneys access to real-world lessons that are often hard to come by as a practicing attorney. Attorneys steeped in the ethos of our profession elevate the proceedings in our trial courts by demonstrating the nobility of what we do as judges and lawyers. Pro bono attorneys providing legal representation for disadvantaged litigants are a source of great pride for us all.

THE ROLE OF NON-LAWYERS

A. PROGRAMS FOR NON-LAWYERS

In addition to drawing upon the success of pre-existing pro bono programs and creating new opportunities for both future attorneys and seasoned veterans in the field, we tapped into the services non-lawyers could provide. While researching the poten-

tial of non-lawyers, we observed that in places elsewhere in the world, such as the United Kingdom, the use of non-lawyers had already taken hold and had seen a great positive effect.⁹ We realized that for particular niche areas, non-lawyers who were already familiar with these fields might even be able to provide stronger representation than generalist attorneys who were not special-

ists in that particular area of the law. To expand on the potential of non-lawyers, we created the Court Navigator program, where non-lawyers would go into the courtroom with unrepresented litigants to help them find their way through the New York court system. We then took it a step further and opened storefronts called Legal Hand in local communities, which are staffed by non-lawyers who are supervised by attorneys.¹⁰

1. The Court Navigator Program

In February 2014, we began operating three separate Navigator projects in New York City: the Access to Justice Navigators Project, the Housing Court Answers Navigators Project, and the University Settlement Navigators Project.¹¹ All three projects were overseen by a special new task force called the Committee on Non-Lawyers and the Justice Gap.

Through the first of the three Navigator projects, the Access to Justice Navigators Project, Navigators who volunteer “for-the-day” are trained to assist unrepresented litigants with debt or consumer collection actions. These volunteers appear in different courts throughout the boroughs, as well as in New York City Civil Court. Results from this project demonstrated that litigants receiving help from this program were 56% more likely to advocate successfully for themselves in these courts.¹² The second project, the Housing Court Answers Navigators Project, consists of volunteers who are trained to assist unrepresented litigants with court-specific housing issues. These Navigators help unrepresented litigants use the computers in the courthouse to fill out forms for nonpayment and other proceedings, help collect and organize documents, and accompany litigants during negotiations, conferences with judges, and proceedings. Along the same vein, the University Settlement Navigators Project volunteers also appear in housing courts, but are trained caseworkers from nonprofits who agree to assist “for-the-duration” of the litigant’s case, as opposed to volunteering in court “for-the-day.” Having someone who is simply there to help, listen, and accompany these unrepresented litigants makes a world of difference and empowers these litigants to tell their side of the story.

“[L]itigants receiving help from this program were 56% more likely to advocate successfully for themselves in these courts.”

8. See COURTHELP, New York State Unified Court System, <https://www.nycourts.gov/courthelp/>.

9. Judge Jonathan Lippman, State of the Judiciary Speech (Feb. 11, 2014).

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

11. Rebecca Sandefur & Thomas Clarke, *Roles Beyond Lawyers: Summary, Recommendations and Research Report of an Evaluation of the New York City Court Navigators Program and its Three Pilot Projects* (Dec. 2016), http://www.americanbarfoundation.org/uploads/cms/documents/new_york_city_court_navigators_report_final_with_final_links_december_2016.pdf.

12. See *id.*

“[T]he number of foreclosure proceedings in New York decreased dramatically.”

2. Legal Hand

To complement the success of non-lawyers helping unrepresented litigants in the courtroom, we opened storefront centers in some of New York’s neighborhoods where litigants needed help the most. The program called Legal Hand was developed by

Helaine Barnett, the Chair of our Access to Justice Commission. The idea is to train local community members who are willing to volunteer at these centers to provide free legal information and referrals to fellow community members. These storefronts provide a wide array of assistance and help with activities such as completing online legal forms, drafting form letters, and navigating the legal system overall. Legal Hand volunteers provide support for a variety of legal issues, the most common of which are housing, consumer credit, government benefits, and family law.

Although these individuals are not attorneys and cannot provide legal advice, they can provide unrepresented litigants with useful information and resources, and direct them in the right direction. We also work with various nonprofits, such as the Legal Aid Society, which coordinate with legal services attorneys to assist and oversee the Legal Hand volunteers. Currently, there are Legal Hand centers in Brooklyn, Queens, and the Bronx. Through the combination of the Court Navigators program in the court and the Legal Hand centers in the communities, we are able to have a great impact on unrepresented litigants’ lives at a minimal financial cost.

B. IMPACT ON THE TRIAL JUDGE

Programs such as the New York City Court Navigators and Legal Hand storefronts help unrepresented litigants obtain an increased number of productive court experiences. Court employees, such as clerks, court attorneys, and judges, are able to use these programs to their benefit. Court Navigators regularly interact with clerks when they accompany litigants to file paperwork or answer questions, which results in a filing process that is speedier and more efficient for all parties involved. The same is true for court attorneys and judges. Although Court Navigators cannot give legal advice, they are able to accompany unrepresented litigants to meetings with attorneys and judges. They are also able to answer any factual questions that judges direct to them. Further, Legal Hand-type storefront centers are able to serve as a sort of first-line between the litigant and the courtroom, also resulting in a more fair and efficient judicial process.

THE JUDICIARY’S ROLE & THE PATH TO A CIVIL GIDEON

As effective as our programs and policies might be, our ultimate goal of providing access to justice to all unrepresented litigants does not stop there. We designed these policies and programs with the mission of achieving a civil Gideon in mind.¹³ As uneven as the *Gideon* ruling is in application, at least it established the constitutional right of criminal defendants to an appointed attorney if they could not afford one themselves.¹⁴ All of the reforms and initiatives we have been spearheading in New York have the penultimate goal of ensuring that unrepresented civil litigants receive the same right. Such a right can be established through the constitution, public policy, or by statute.

A. CHANGING COURT RULES

To further the rights of the unrepresented, the Judiciary took the initiative on many fronts. One such area was designing new court rules to support unrepresented litigants in foreclosure and consumer credit cases. For example, in foreclosure proceedings, we standardized court forms and revised court rules to ensure that big banks were not able to “robo-sign”¹⁵ foreclosure complaints. Instead, we required lawyers to include their own affidavits that they were personally familiar with the foreclosure proceedings and had first-hand knowledge of the matter. Because of this requirement, the number of foreclosure proceedings in New York decreased dramatically.

Along a similar vein, in consumer credit cases, we changed court rules to require that lending companies put the history of the alleged debt in the complaint. We required that these lenders state exactly how much the debt was and provide a detailed history of the debt and its evolution, as opposed to a vague complaint that was designed simply to obtain a default judgment. Overall, the revised court rules in these two areas demonstrate that the Judiciary can and should be very proactive in terms of helping unrepresented litigants get their day in court. Simply put, the Judiciary should not just count cases in and count cases out, but should take affirmative steps to ensure that justice is being done.

B. THE UNIVERSAL ACCESS TO LEGAL SERVICES LAW

New York was the first city in the country to solidify its commitment to unrepresented civil litigants’ right to an attorney through statute. Building on the state court system’s funding for legal services and prior city efforts, the Universal Access to Legal Services Law was passed, a right-to-counsel law that ensures the city will provide access to legal assistance to anyone facing eviction in housing court. The New York City Council approved the bill on July 20, 2017, and it was signed into law by New York City Mayor Bill de Blasio on August 11, 2017. The law has grown in phases, representing the practical reality of not being able to implement a system overnight that could adequately address the population’s needs. By 2022, the Universal Access to Legal Services Law will be fully implemented and will offer access to representation for every tenant facing eviction in New York City.¹⁶

Under the Universal Access Law, New York City will ensure that by 2022, “all income eligible individuals . . . receive access to

13. A “civil Gideon” refers to the right to counsel, as expanded for civil matters.

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

15. “Robo-signing” refers to the practice where large banks routinely used affidavits and documents from employees who did not personally review the foreclosure proceedings. These employees “robo-

signed” thousands of affidavits a month stating they reviewed the relevant documents when, in reality, they did not.

16. LEGAL SERVICES FOR TENANTS, Universal Access to Legal Services, NYC Human Resources Administration, <https://www1.nyc.gov/site/hra/help/legal-services-for-tenants.page>.

full legal representation no later than their first scheduled court appearance in a [eviction] proceeding in housing court.”¹⁷ Eviction proceedings are indeed life or death matters for unrepresented litigants who are all too frequently confronted with the possibility of becoming homeless. Further, housing courts are notoriously one-sided—landlords typically show up to court with an attorney, while the tenant facing an eviction typically does not. In terms of “income eligibility,” the Universal Access Law will provide an attorney for tenants with incomes below 200% of the federal poverty level facing eviction. Thus far, the results of the Universal Access Law and of increasing tenant representation in housing court overall have been significant. While only 1% of tenants had an attorney in 2013, by the end of 2018, 56% of tenants facing eviction who lived in areas where the Universal Access Law had been implemented had an attorney.¹⁸ There has also been a decline in the number of eviction filings, eviction warrants, and executed evictions, representing the evolution of the landlord-tenant relationship and the increase in tenants’ rights.

C. THE PATH TOWARD A CIVIL GIDEON

While New York was the first city in the United States to pass a right-to-counsel law, other cities have taken notice and followed suit. In June 2018, San Francisco passed its own right-to-counsel law for residential tenants facing eviction, becoming the second municipality in the United States to do so. In early 2019, Newark became the third. Other cities, such as Philadelphia and Washington D.C., have also been inspired—although they have not passed right-to-counsel laws, these cities took action through policy change, appropriating additional millions of dollars for eviction defense into their respective cities’ budgets.

1. How Close Are We?

The initiatives and reforms that have occurred in New York and elsewhere have gotten us closer to a civil Gideon protocol. We are now meeting as much as 40% or more of the legal needs of low-income New Yorkers. Nevertheless, that leaves a daunting challenge ahead, with universal legal representation and/or assistance still the goal rather than the reality. Despite task forces, pilot projects, court and bar-generated initiatives, statutory changes, collaboration between the Judiciary and local governments, and increased discussions surrounding access to justice, unrepresented litigants are still more often than not unable to get the legal help they need. These unrepresented civil litigants include not just the indigent, but those of moderate means as well. Although it may take time to achieve a civil Gideon via court victories or legislation, creative programs and pro bono services like those used in New York and others gaining momentum around the country can play a crucial role in garnering public and political support. Because it is unrealistic that a civil Gideon will be achieved through a United States Supreme Court case in the near future,¹⁹ such support will prove essential to furthering our goals.

D. IMPACT ON THE TRIAL JUDGE

Implementing right-to-counsel laws will have a significant effect on the trial judge. As demonstrated, laws like New York’s Universal Access Law dramatically reduce the number of unrepresented litigants as well as the number of court proceedings overall. Right-to-counsel laws also have the opportunity to inspire and create new generations of attorneys who are hired and trained to provide high-quality legal representation to unrepresented litigants in various areas. Similar to the increased ability of judges to interpret and strengthen critical areas of the law, this new generation of attorneys also has the power to bring transformative and thought-provoking legal arguments into the courtroom.

CONCLUSION

The New York story demonstrates what can be accomplished in access to justice when the Judiciary is proactive in the pursuit of justice, which is our constitutional and, in a real sense, our biblical mission.²⁰ This kind of activism in New York by the Judiciary as an institution is just one example of what is happening around the country, in red and blue states alike.

All of the initiatives and programs discussed in this article redound to the benefit of each and every trial judge in individual courtrooms around the country. They help ensure that equal justice is served and that everyone gets their day in court. An independent Judiciary working with the organized bar, the profession and our governmental partners can contribute greatly to helping the most vulnerable in society gain full and meaningful access to the courts. Our unswerving commitment to access to justice will light the way so that, in the not so distant future, the ideal of equal justice will be a reality in courthouses and courtrooms throughout the nation.



The Honorable Jonathan Lippman, former Chief Judge of New York and Chief Judge of the New York Court of Appeals, the state’s highest court, from 2009 to 2015, is Of Counsel in the New York office of Latham & Watkins LLP.

He has championed equal-access-to-justice issues in New York and around the country, made New York the first state to require 50 hours of law-related pro bono work prior to bar admission, and developed many programs to help alleviate the crisis in civil legal services.

In 2008, Judge Lippman received the William H. Rehnquist Award for Judicial Excellence. In 2013, the American Lawyer named him one of the Top 50 Innovators in Big Law in the Last 50 Years. Judge Lippman was the 2016 American Bar Association’s John Marshall Award recipient.

17. The Universal Access to Justice Law is codified in Title 26, Chapter 13 (titled “Provision of Legal Services in Eviction Proceedings”) of the Administrative Code of the City of New York.

18. Oksana Mironova, NYC Right to Counsel: First Year Results and

Potential for Expansion, Community Service Society (March 25, 2019), <https://www.cssny.org/news/entry/nyc-right-to-counsel>.

19. See *Turner v. Rogers*, 564 U.S. 431 (2011).

20. See Deuteronomy 16:20.