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# Justice, Justice Shall Ye Pursue

Honorable Jonathan Lippman

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**JUSTICE, JUSTICE SHALL YE PURSUE**

Honorable Jonathan Lippman

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# Justice, Justice Shall Ye Pursue

Honorable Jonathan Lippman<sup>1</sup>

In New York State and across the country, millions of people every year confront legal problems that threaten their fundamental interests and the basic necessities of their lives. Yet many of them cannot afford to hire a lawyer to help them make sense of our legal system and advocate their positions effectively. Whether they face the loss of their homes or their children, are the victims of unscrupulous lenders, or need protection for their physical safety, these vulnerable people find themselves adrift in a sea they cannot hope to navigate without assistance. The scales of justice are not balanced for those without the resources for a lawyer. This crisis in access to justice is – and must be – of the highest priority to our government and our society, as it has been for me in my seven years as Chief Judge of New York State.

It is a core value of the judiciary and the legal profession to ensure a fair system of laws and equal justice for all. That imperative is reflected in the words of our founding fathers. Thomas Jefferson, the drafter of our Declaration of Independence and the third President of the United States, tells us that “the most sacred of the duties of government” is “to do equal and impartial justice to all its citizens.”<sup>2</sup> Alexander Hamilton, the first Secretary of the Treasury and one of the architects of our U.S. Constitution, wrote that “the first duty of society is justice.”<sup>3</sup> Repeatedly, our Supreme Court Justices have reaffirmed this basic principle. Justice Learned Hand, for example, commanded us that “thou shalt not ration justice.”<sup>4</sup> And Justice Lewis Powell wrote that “Equal justice under law is not merely a caption on the facade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists...it is fundamental that justice should be the same, in substance and availability, without regard to economic status.”<sup>5</sup> Looking back even further to biblical times, this mandate is forcefully stated as “Justice, Justice shall ye pursue” and “You shall not be partial in judgment: hear out low and high alike.”<sup>6</sup> There can be no doubt that we must confront the crisis in legal services for the poor and ensure justice for all if we are to be true to our founding ideals.

Our government and our legal community have recognized the need for civil legal aid. The United States Congress established the Legal Services Corporation in 1974 to support high-quality civil legal assistance to low-income Americans around the country.<sup>7</sup> States fund civil

<sup>1</sup> The Honorable Jonathan Lippman served as Chief Judge of the New York State Court of Appeals from 2009 until 2015.

<sup>2</sup> Thomas Jefferson, Note for Destutt de Tracy’s *Treatise on Political Economy*, in *THE PAPERS OF THOMAS JEFFERSON: RETIREMENT SERIES*, VOL. 9, at 633 (J. Jefferson Looney ed., 2012).

<sup>3</sup> Alexander Hamilton, *quoted in THE QUOTABLE LAWYER* 172 (Tony Lyons ed., 2010).

<sup>4</sup> The Honorable Learned Hand, Chief Justice, United States Court of Appeals for the Second Circuit, Keynote Address at the Legal Aid Society’s 75th Anniversary Celebration (Feb. 16, 1951), *available at* <http://www.legal-aid.org/en/las/thoushaltnotationjustice.aspx>.

<sup>5</sup> The Honorable Lewis Powell, Justice, United States Supreme Court, Address at the ABA Legal Services Program Annual Meeting (Aug. 10, 1976), *available at* [http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/atjresourcecenter/downloads/gideons\\_new\\_trumpet\\_9\\_08.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/atjresourcecenter/downloads/gideons_new_trumpet_9_08.authcheckdam.pdf).

<sup>6</sup> *Deuteronomy* 16:20, 1:17.

<sup>7</sup> *See* Legal Services Corporation Act of 1974, Pub. L. No. 93–355, 88 Stat 378.

legal services through government-mandated Interest on Lawyer Trust Accounts, or IOLTA.<sup>8</sup> Civil legal service providers attract some additional private and public money.<sup>9</sup> In 2015, the New York State Senate and Assembly passed a joint resolution reaffirming their commitment to access to justice and the state's obligation to ensure that all New York residents have adequate and effective legal representation for matters pertaining to the essentials of life. Recently, members of the U.S. Congress from the two major parties came together to launch an Access to Justice Caucus, recognizing that access to justice is a bipartisan issue.<sup>10</sup> And judges, lawyers, academics, and elected officials in states around the country have individually and in groups spoken out on the importance of this issue. But, in the best of times, the funding for civil legal services cannot meet the vast demand. Moreover, current funding streams are vulnerable to congressional cuts, the vagaries of interest rates, and times of recession and budget constraints.<sup>11</sup>

At the same time, the demand continues to be great. Our lives are shaped by laws. Legal problems arise for people regardless of their station in life. While those with means can afford help, many cannot. We in the court system see this first hand. In New York alone, as recently as 2010, 2.3 million unrepresented people passed through our courts.<sup>12</sup> Legal service providers turn away many more litigants in civil cases than they are able to represent.<sup>13</sup>

In spite of the scale of the problem there is much that can be done to help unrepresented litigants and increase access to civil legal services. As Chief Judge, I made access to justice a central mission of my tenure. I believe that judicial leadership is critical to closing the justice gap. The judiciary is in the unique position to articulate the pressing need for legal assistance and to bring people together to confront that need. There is no institution for whom equal justice is more important than the judiciary. If we do not speak up, how can we expect others to do so? Yet the judiciary cannot succeed on its own. Legal service providers, the private bar, academia, the executive and legislative branches of government, social service providers, and the business community are all essential to productive solutions. New York has benefitted greatly from collaboration among people and organizations with a shared concern for the welfare of our justice system.

Over the past seven years, we in New York have implemented a wide array of programs and initiatives aimed at increasing access to justice in our state. First, and most importantly, we

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<sup>8</sup> See National Association of IOLTA Programs & ABA Commission on IOLTA, *What is IOLTA?*, IOLTA.ORG, <http://www.iolta.org/>.

<sup>9</sup> See *Civil Legal Aid Funding*, NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, <http://www.nlada.org/tools-and-technical-assistance/civil-resources/civil-legal-aid-funding>.

<sup>10</sup> Press Release, Congressman Joe Kennedy III, Kennedy and Brook Launch Congressional Access to Legal Services Caucus (Dec. 1, 2015), [available at https://kenedy.house.gov/media/press-releases/kennedy-brooks-launch-congressional-access-to-civil-legal-services-caucus](https://kenedy.house.gov/media/press-releases/kennedy-brooks-launch-congressional-access-to-civil-legal-services-caucus).

<sup>11</sup> See Robert J. Derocher, *The IOLTA crash: Fallout for Foundations*, BAR LEADER, Vol. 37 No. 1 (Sep.-Oct. 2012), [http://www.americanbar.org/publications/bar\\_leader/2012\\_13/september\\_october/iolta\\_crash\\_fallout\\_foundations.html](http://www.americanbar.org/publications/bar_leader/2012_13/september_october/iolta_crash_fallout_foundations.html); Editorial, *Penny and Pound Foolish; Slashing Civil Legal Aid*, N.Y. TIMES, Mar. 11, 2011, <http://query.nytimes.com/gst/fullpage.html?res=9C00E0DA1F3FF93AA35750C0A9679D8B63>; Stephen Labaton, *Back From the Brink, the Legal Services Corporation Discovers It's in Danger Again*, N.Y. TIMES, Mar. 31, 1995, <http://www.nytimes.com/1995/03/31/us/back-brink-legal-services-corporation-discovers-it-s-danger-again.html?pagewanted=all>.

<sup>12</sup> TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 4 (2010), [available at https://www.nycourts.gov/accesstojusticecommission/PDF/CLS-TaskForceREPORT.pdf](https://www.nycourts.gov/accesstojusticecommission/PDF/CLS-TaskForceREPORT.pdf).

<sup>13</sup> See Anne Barnard, *Top Judge Makes Free Legal Work Mandatory for Joining State Bar*, NEW YORK TIMES, May 1, 2012, [http://www.nytimes.com/2012/05/02/nyregion/new-lawYers-in-new-york-to-be-required-to-do-some-work-free.html?\\_r=0](http://www.nytimes.com/2012/05/02/nyregion/new-lawYers-in-new-york-to-be-required-to-do-some-work-free.html?_r=0); LEGAL SERVICES CORPORATION, DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2009), [available at http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/JusticeGainAmerica2009.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/JusticeGainAmerica2009.authcheckdam.pdf).

included substantial funding for civil legal services in the judiciary's budget, beginning in 2010. That funding has increased steadily from \$27.5 million in the first year to \$85 million this year, with a goal of \$100 million annually. Our partners in government, the New York State Legislature and the Governor, recognized that providing funding in the judiciary budget was critical, and that civil legal services for the poor were as much a priority for our state and society as housing, schools, education, and the other essentials of life. Moreover, funding for civil legal services makes good economic sense: studies show that investing in civil legal services returns money to our State through increased federal support, reduced shelter and social services costs, and other effects at a rate of \$10 for every \$1 invested.<sup>14</sup>

In obtaining this government funding – and in all our innovations – the Task Force to Expand Access to Civil Legal Services in New York made tremendous contributions. Establishing the Task Force, now the Permanent Commission on Access to Justice, was one of my first acts as Chief Judge. The Task Force, led by Helaine Barnett, a former head of the Legal Services Corporation, includes judges, legal service providers, lawyers in private practice, and representatives of corporations, labor unions, and social service organizations. Their combined expertise and hard work has made an immeasurable impact on New York's success by measuring the problem, amassing research, and identifying recommendations for action. In addition, I have held annual public hearings in each of the four Judicial Departments to assess the extent and nature of the unmet civil legal needs of low-income New Yorkers throughout the state, to identify the level of public resources necessary to meet that need, and to evaluate the impact of increased civil legal services. Since beginning in 2010, we have heard testimony from New York City Mayor Bill de Blasio, Speaker of the City Council Melissa Mark Viverito and her predecessor in that office Christine Quinn, Timothy Cardinal Dolan of the Archdiocese of New York, three successive Presidents of the New York City Bar Association, judges, legal service providers, law school deans, economists, district attorneys, business leaders, educators, healthcare providers, labor and community leaders, government officials from around the state, and many litigants whose lives were turned around when they found a lawyer to help them. Their testimony made clear over and over again the deep need for legal help in cases involving the basic necessities of life, the myriad ways that help can be provided, and the clear social and economic benefits of legal assistance for people in need.

Some of the initiatives that emerged from the hearings and Task Force reports include technology tools like interactive do-it-yourself forms and online legal resources, increased use of mediation and alternative dispute resolution, an annual law school conference along with enhanced education and pre- and post-graduate opportunities for law students relating to access to justice. We have explored ways that non-lawyers can provide support and information to poor and near-poor people who are facing legal problems, both in our courthouses through the Navigator program<sup>15</sup> and in our neighborhoods through Legal Hand.<sup>16</sup> While there is no substitute for

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<sup>14</sup> PERMANENT COMMISSION ON ACCESS TO JUSTICE, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 5 (2015), available at [http://www.nycourts.gov/accessjusticecommission/PDF/2015\\_Access\\_to\\_Justice-Report-V5.pdf](http://www.nycourts.gov/accessjusticecommission/PDF/2015_Access_to_Justice-Report-V5.pdf).

<sup>15</sup> The Navigator program trains non-lawyers to provide legal information, accompaniment, and support to litigants in New York City Housing Court and in consumer debt cases in New York City Civil Court. See *Court Navigator Program*, NYCOURTS.GOV, <http://www.courts.state.ny.us/courts/nyc/housing/rap.shtml>; and NEW YORK STATE COURT NAVIGATOR PROGRAM, COMMITTEE ON NONLAWYERS AND THE JUSTICE GAP, NAVIGATOR SNAPSHOT REPORT: DECEMBER 2014, available at <http://nylawyer.nylj.com/adgifs/decisions15/022415report.pdf>.

<sup>16</sup> Legal Hand staffs storefront offices with trained non-lawyer volunteers to provide information, support, and referrals to low-income people facing legal problems. See Press Release, New York State Unified Court System, Chief Judge Lippman Announces Launch of Legal Hand: Neighborhood Legal Information Centers to Help Close New York's Justice Gap (Nov. 23, 2015), [https://www.nycourts.gov/press/PDFs/PR15\\_17.pdf](https://www.nycourts.gov/press/PDFs/PR15_17.pdf).

a lawyer, the help of a well-trained non-lawyer standing by a litigant's side – providing guidance and support, forms, and assistance in assembling documents and identifying possible sources of funding – is far preferable than no help at all.

Even with all these efforts, more is needed. The private bar in New York has a long tradition of pro bono. Many lawyers in our state understand that giving of our time and skill to those in need is a core value of the legal profession. But with more lawyers volunteering to help, we could make a bigger difference. In order to encourage and support pro bono work, we have undertaken an array of programs designed to reach groups within the profession. The Attorney Emeritus Program seeks to increase pro bono by retired lawyers or those reaching the end of their legal careers. For many experienced lawyers, pro bono service is a deeply satisfying way to continue to use their knowledge. Looking to newly-minted lawyers, the 50-hour rule requires applicants to the New York bar to perform 50 hours of pro bono work before they can be admitted to practice law in our state. The 50-hour requirement both increases available legal services for the poor and teaches prospective lawyers that service to others is an integral part of what it means to be a lawyer. The Pro Bono Scholars program allows law students to sit for the bar exam in February of their third year in exchange for devoting their last semester in law school to pro bono work. By participating in this program, students gain valuable real-world experience, help people in need, and can be admitted to the Bar immediately upon graduating from law school. Growing out of that program, Poverty Justice Solutions places Pro Bono Scholars in legal service jobs immediately following law school for a two-year period, establishing them in public service careers and providing much needed assistance to institutional providers. For in-house lawyers who are admitted out of state but working in New York, we instituted a rule permitting them to litigate in New York in pro bono cases, increasing the pool of eligible pro bono attorneys and making it possible for companies to promote department-wide pro bono projects. Finally, to better measure current pro bono efforts by the Bar, we instituted mandatory reporting of pro bono hours and charitable contributions as part of the biennial attorney registration. This will serve to clarify how much and where work is being done, will periodically focus lawyers on their level of volunteerism, and will inform efforts to encourage pro bono service in the future.

These measures have gone a long way towards providing the assistance we need to ensure equal justice in our state. With all that we have accomplished in the last seven years, we must not and cannot lessen our efforts. As much progress as we have made and as many voices have been raised in this cause, our work is not near complete. There continues to be a dire need for legal services by the most vulnerable in our society. In the coming years, all of us who care about fairness must re-commit ourselves to the ideal of equal justice. It is up to judges, lawyers, our elected officials, and our communities to make that ideal a reality for all. •