

Law Day 2010
Law in the 21st Century:
Enduring Traditions, Emerging Challenges
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I have chosen to focus my remarks today on a longstanding challenge that has grown even more difficult and urgent for our State in these dire financial times--a challenge representing one of the most essential elements of the rule of law and one of the foundations of our democracy--equal access to justice.

But first, I would be remiss if I did not say just a few words about another justice issue that occupies my agenda as Chief Judge: justice for judges. Under increasingly difficult conditions, judges are working tirelessly to meet the justice needs of New Yorkers. They are confronting burgeoning dockets, with cases that are

more complex and demanding than ever before, and an escalating number of litigants who are appearing without counsel.

What I want to say briefly on this Law Day is that it is precisely in times like these, when New York's economy is at risk and New Yorkers' ability to live the American dream is in question, that the Judiciary more than ever plays a unique and critical role in holding together the fabric of society and our way of life--fostering the rule of law, protecting individual liberties, and meeting the constitutional mandate to provide equal justice for all.

If judges are to perform this indispensable role, we must attract and retain the very best to our Bench--and that frankly cannot be done at the present level of compensation for judges, which is next to last in the

country! With Law Day 2010 as the backdrop, let us all resolve that this will be the last Law Day that we celebrate without an increase in judicial compensation and the establishment of an independent commission to provide a permanent solution to this problem. Judges deserve no less-- for the societal value of the work they perform and for their incredible dedication to the rule of law and the well-being of the citizens of New York.

As for my topic for today's remarks, equal access to justice, I begin by noting that the meaning of "justice" and of "equal justice" has been studied and debated for literally thousands of years, going back to biblical times. Our own Declaration of Independence states the self-evident truth that "all men are created equal." Schoolchildren reciting the Pledge of Allegiance know that our nation promises

"justice for all." And our federal and state constitutions give further meaning to those words. Yet, in the 21st century, we often fall short of these ideals in America, and here in New York as well.

The court system is seeing this firsthand, now more than ever. Over the last few years, a noticeably larger share of our new case filings reflect the direct legal and human fallout from the recent economic collapse--not just bad debts and bad business deals, but skyrocketing home foreclosures, consumer debt cases, growing family offense and custody petitions, and a rise in matrimonial conflict. All of these cases in one way or another involve the very basic necessities of life for New Yorkers, so many of whom no longer have the means to hire an attorney.

If they are very fortunate, a small number of these litigants may be represented by one of the civil legal services programs that provide free representation to low-income New Yorkers. But, because of lack of resources, more and more of these programs must turn away potential clients. Some who are turned away may find representation from pro bono programs, but our State's lawyers, who already donate an estimated two million hours of pro bono work a year, cannot by themselves possibly fill the huge gap that still exists.

This means that a rapidly growing number of litigants--two million at last count--have no choice but to go to court without the help of a trained professional who knows the law and how to navigate the court system. Our court-sponsored volunteer attorney programs provide

limited legal assistance to many of these people. This is extremely helpful, and we are so grateful to the volunteers, but there is no substitute for full legal representation, especially for the most vulnerable litigants in our society-- the elderly, children, struggling families, people with disabilities and abuse victims.

How then do we as a profession and as a society fulfill our moral and ethical obligations to assure equal access to justice? How then do courts and judges fulfill their mission of delivering equal justice under the trying circumstances I just described?

Forty-seven years ago, the United States Supreme Court in *Gideon v. Wainwright*, said in regard to criminal case representation that:

In our adversary system of 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.

Nearly half a century later, it is an equally obvious truth that in civil proceedings involving fundamental human needs, it is extremely difficult, if not impossible, for a person to be assured a fair outcome without a lawyer's help.

As Chief Judge, I see this as one of the great challenges facing our justice system today. No issue is more fundamental to our constitutional mandate of providing equal justice under law than ensuring adequate legal representation.

In 2006, the American Bar Association promulgated a resolution urging governments to provide legal counsel as a matter of right at public expense to low-income

persons in cases where basic human needs are at stake-- shelter, sustenance, personal safety, health, or child custody. While New York provides for a limited statutory right to counsel in certain family proceedings, there generally is no right to counsel in civil cases in New York, or for that matter around the country, even where the most basic necessities of life are at risk.

For all of these reasons, and to meet our constitutional and ethical mandates, the Judiciary of this State is determined to bring us closer to the ideal of equal access to civil justice. I am not talking about a single initiative, pilot project, or temporary program, but what I believe must be a comprehensive, multi-faceted, systemic approach to providing counsel to the indigent in civil cases.

It begins with a new way of looking at funding. New York already has the dubious distinction of being one of only seven states that do not provide stable funding for civil legal services. Our reliance on undependable revenue streams is highly problematic. A stark illustration is this year's crisis in IOLA, our Interest on Lawyers Accounts program, which funds many civil legal services providers around the State. IOLA revenues declined from \$31 million to less than \$8 million because of the economic downturn, which led us to allocate \$15 million for IOLA in the Judiciary Budget request for the 2010-2011 fiscal year. While we are hopeful that this request will be granted, it represents only a small portion of the funding needs--more is needed on a going-forward, permanent basis.

To jump-start this effort to provide civil legal services funding in the years ahead, as Chief Judge and the head of the Judicial Branch of government, beginning this fall, I will preside over annual public hearings, to assess the extent and nature of unmet civil legal services needs in all parts of the State, in order to recommend to the Legislature and the Executive, publicly and transparently, the level of public resources necessary to meet those needs. I will conduct one hearing in each of the four Appellate Division Departments, together with the Presiding Justice of that Judicial Department, the Chief Administrative Judge, and, the President of the New York State Bar Association.

By doing so, New York will be the first state in the nation to have the entire leadership of the Judicial branch of government, and the leadership of the state's bar, in our case 150,000 strong, make such a singular and unequivocal commitment to providing civil legal representation to the poor in matters where they need it most, where their well being as human beings, and that of their families, is at stake. I want to thank my fellow members of the Administrative Board of the Courts, the policy-making body of the court system, Presiding Justice Luis A. Gonzalez of the First Department, Presiding Justice A. Gail Prudenti of the Second Department, and Presiding Justice Anthony V. Cardona of the Third Department, all of whom are here today, as well as Presiding Justice Henry J. Scudder of the Fourth

Department for their unswerving support, and Ann Pfau, our terrific Chief Administrative Judge, and State Bar President Mike Getnick and President-Elect Steve Younger, all of them for their enthusiastic participation in this effort and their total dedication to the ideal of equal justice for all in New York.

To help prepare for these public hearings around the State, and as a centerpiece of our efforts in this regard, I am appointing *The Task Force to Expand Access to Civil Legal Services in New York*, made up of distinguished New Yorkers, headed by Helaine M. Barnett, Esq., who retired recently as the longest-serving president of the Legal Services Corporation in Washington, D.C., the nation's single largest funding source for civil legal services for low-income individuals. Previously, Ms.

Barnett headed the Civil Division of the Legal Aid Society in New York City, where she practiced for 37 years. We could not have a better Chair, and I am so delighted that she has agreed to serve in that capacity. The composition of the Task Force will be announced in the coming weeks, but it will include statewide representatives from the courts, civil legal services and pro bono providers, bar associations and bar foundations, government, law schools, business groups, consumer advocates, and the not-for-profit community.

In addition to helping set the agenda for the annual hearings that I will be holding, the Task Force will have a broad mission--recommending statewide priorities, defining the types of legal matters in which civil legal services are most needed, and proposing standards, such

as income levels for determining which litigants should be eligible. The Task Force will also advocate for support for expanded civil legal services and help improve the efficiency and effectiveness of the delivery of legal services. It will gather and distribute information about programs, strategies, and technological approaches that have proven successful and issue guidelines or best practices to help providers.

The Task Force will work closely with civil legal services groups, grant-making organizations, foundations, pro bono programs, and law school clinics, and with Judge Fern A. Fisher, who is our stellar Deputy Chief Administrative Judge for New York City Courts and Statewide Director of the court system's Access to Justice Program.

Under Judge Fisher's direction, the court system will continue its ongoing work on the broad range of access to justice issues, which includes providing help for unrepresented litigants, as well as enhancing pro bono legal services, using vehicles like the newly established Attorney Emeritus program that taps into an underutilized segment of the legal community--retired lawyers.

Effective at the beginning of this year under amended attorney registration rules, qualified attorneys who previously would have retired can now practice law on a pro bono basis if they commit to at least 30 hours a year of legal services to low-income clients. The Attorney Emeritus works with a qualified volunteer program, which provides malpractice coverage and access to offices and staff, as well as any necessary training. With 49 qualified

organizations already participating and an enthusiastic response from attorneys, this idea clearly has struck a chord with senior lawyers, mostly baby boomers, who want to use their retirement years in productive ways that promote the public good.

To help us capitalize on this early momentum and develop a blueprint for increased senior lawyer pro bono in New York, I am forming the Attorney Emeritus Advisory Council to be co-chaired by a distinguished lawyer, academic, and public servant who really needs no introduction in this state, John D. Feerick, former Dean of Fordham Law School; and by Fern A. Schair, Chair of the Feerick Center for Social Justice at Fordham. The Advisory Council will consist of statewide representatives

whose mission will be to advise us and provide support and guidance for the Attorney Emeritus Program.

I believe that with these new structures in place-- annual hearings by the Chief Judge and state court and bar leadership on civil legal services, leading to a recommendation to the Legislature and the Executive for civil legal services funding; The Task Force to Expand Access to Civil Legal Services headed by Helaine Barnett; the expansion of pro bono and self-help resources around the State; and the Attorney Emeritus Advisory Council led by John Ferrick and Fern Shair--New York will be in the forefront in this country in expanding civil legal services to the poor in these challenging times.

In March 2013, we will reach the 50th anniversary of the Supreme Court's decision in *Gideon v. Wainwright*. By

then, it is my fervent hope, first, that it will be an obvious truth to all that those litigants faced with losing the roof over their heads, suffering the breakup of their families, or having their very livelihood threatened cannot meaningfully pursue their rights in the courts of New York without legal counsel--and second, that it will be equally obvious that we together will have taken major steps forward in providing such representation to those who need it most, making equal justice for all not just an ideal, but truly a reality in our great State.

Thank you.