

Philadelphia Bar Association Quarterly Meeting

Chief Judge Jonathan Lippman -- Keynote Address

June 27, 2011

I am honored and privileged to have been asked to speak at the Quarterly Meeting of the Philadelphia Bar Association -- the oldest association of lawyers in the country and one whose members have an equally long and rich history of serving the public and working for a just society. I would like to share some thoughts with you today about one of the most daunting challenges confronting our justice system -- the crisis in civil legal aid for the poor -- and what the judiciary and the profession, in New York, Pennsylvania and around the country can do to foster equal access to justice, at a time of economic hardship for our nation and for state judiciaries around the country.

Like Pennsylvania and the vast majority of states, New York is dealing with serious fiscal problems. On April 1, New York adopted a new budget, intended to close a \$10 billion deficit, which contains traumatic spending cuts at the state and local levels, including an unprecedented \$170 million dollar or 6.3% reduction in the Judiciary's budget request -- an amount \$70 million dollars above what I had voluntarily cut from the Judiciary budget, with the result being 430 layoffs of court system personnel within the last two months. I know the situation here is equally difficult, with Pennsylvania facing a projected \$4 billion dollar deficit, and with Chief Justice Castille and the judicial branch looking for ways to deal with a large budget reduction that may require 28 much-needed judicial vacancies to remain unfilled into 2012.

The massive cuts in state court funding we are seeing around the country will be felt by the public in the form of justice delayed, with untold economic and non-economic costs, from higher legal expenses for private and public litigants to increased incarceration, foster care and social services costs for state and local governments. And they come at the worst possible time, when the ongoing recession has pushed the highest number of Americans into poverty since the early 1960s, and when our dockets are swelling with cases related to the economic downturn. When families can't pay their mortgages or rent, when people default on credit card payments or child support obligations, when business deals go bad, when frustrations over household finances boil over into domestic violence . . . it all ends up as a matter on a court docket. State courts are truly the emergency room for the ills of society, and our caseloads are the proof of that fact.

Yet our mission transcends these developments -- we must hear and resolve each and every case that is filed with us. In the best economic times and in the worst -- and maybe especially in the worst -- we are constitutionally bound to deliver justice. Our doors must be open to all.

Unfortunately, millions of our neighbors today desperately need the protection of our laws but cannot afford a lawyer to help them deal with life-altering legal problems -- saving their homes from predatory lenders and landlords, recovering back wages from employers, ending abuse by a violent spouse or partner, obtaining custody of a child, and so many more. Last year alone, 2.3 million litigants appeared in the New York courts without a lawyer, including 98% of tenants in eviction cases, 99% of borrowers in hundreds of thousands of consumer credit cases, 95% of parents in child support matters, and two-thirds of homeowners facing foreclosure proceedings.

According to the latest federal poverty data, the number of poor and working poor people in New York increased from 5.6 million to 6.3 million in just one year, from 2008 to 2009. I know that you can relate to these developments here in Philadelphia, which ranks as the most impoverished of the nation's ten largest cities, and where the number of households receiving food stamps increased by 32% in just the short period from 2007 to 2009.

Many of our courtrooms in New York are standing room only, filled with unrepresented litigants -- frightened and vulnerable people -- the elderly on fixed incomes, single parents, the disabled and mentally ill, abuse victims, and so many more. Unfortunately, in New York City, for every one of these persons lucky enough to be represented by a legal services provider another eight to ten are being turned away because of a lack of resources. I understand that the situation in Pennsylvania is not much better, with four out of five persons being turned away in many areas of the state.

Just as the need for free legal services for poor and low-income Americans is at an all-time high, the resources available to provide those services are becoming more limited than ever before. The Legal Services Corporation in Washington is fighting for its life, and in New York, our IOLA Fund, traditionally the leading source of state funding for civil legal services, has seen its revenues plummet to less than a fifth of what they were just a few short years ago -- from \$36 million to \$6.5 million. Again, I know that this is a familiar story to all of you here in Pennsylvania, where IOLTA revenue has plunged from over \$9 million dollars just a few years ago to under \$2 million dollars today.

In response, in New York we redoubled our efforts, both within the Judiciary and in partnership with the Bar, to serve the unrepresented, opening more offices of the self-

represented in our high-volume courthouses; expanding volunteer lawyer-for-a-day programs that provide lawyers for poor litigants when they enter our New York City courthouses; and expanding pro bono programs throughout the state.

All of these creative efforts have been helpful in easing the access to justice problem. But they have not come close to solving the problem. The needs are simply too overwhelming. I have become convinced that the totality of what we are doing in New York, and as far as I can see around the Country, is simply not enough. It is simply not enough to rely on the wonderful good works of the Bar, and on a patchwork of unreliable revenue streams that constantly fluctuate with the ups and downs of the economy and the political winds of the day.

What is needed, I believe, is the unequivocal commitment of state government to fund civil legal services, a commitment backed by the public fisc. And while I recognize that this is a very tall order in these difficult economic times -- like going directly into the teeth of a hurricane -- the bottom line is that access to justice is one of the most fundamental obligations we owe our citizenry, and it must be treated as such.

I also have come to believe that the Judiciary as an institution must take a strong and visible leadership role on this issue, because we cannot properly carry out our constitutional mission of providing equal justice under the law when millions of people are appearing in court without a lawyer to guide them through adversarial proceedings that involve the very necessities of life. As judges and lawyers, we are all witnesses to how the lack of civil legal aid can unbalance the scales of justice and prove devastating to the lives of our fellow citizens and their families. We cannot stand by passively as litigants are often treated like 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.

Here in Pennsylvania, Chief Justice Castille very much understands the necessity of being proactive in support of civil legal services -- urging the Assembly and Governor Corbett to continue to fund these services; supporting the Access to Justice Act and the temporary filing fee surcharge that helped offset the shortfall in IOLTA revenues; writing directly to all 70,000 Pennsylvania attorneys to sensitize them to the "civil legal aid crisis" and to urge them to volunteer more of their time and money to help their neighbors; and increasing the attorney registration fee to direct more monies to legal services programs. It is critical that we embrace the strategies and tactics best calculated to expand access to justice in light of the prevailing political, economic and legal dynamics in our own states.

In New York, the thrust of our efforts has been to develop a systemic approach to this critical problem. I am convinced that without the infrastructure -- the plumbing, if you will -- to ensure stable, consistent ongoing funding for civil legal services, now and for the future, legal services providers will, in large numbers, literally have to shut their doors. To systemically achieve what needed to be accomplished in New York, I began, on Law Day 2010, by forming the Task Force to Expand Access to Civil Legal Services, chaired by former president of the Federal Legal Services Corporation, Helaine Barnett, and including judges, lawyers, business executives, and labor leaders, from all parts of our State. In the Fall, with the Task Force's assistance, I personally presided over four public hearings around the state to assess the extent and nature of the unmet civil legal needs. I was joined at each hearing by the highest leadership of the State Judiciary and the State Bar Association. We all recognized that if the Judiciary and the legal profession didn't stand

up for civil legal services for the poor in a time of crisis, no one else would. If not us, who? We were able to get the State Senate and Assembly to adopt 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 findings of the hearings and the need for resources.

What we learned from the hearings is that New York is at best meeting only 20% of the civil legal services of its low-income residents. The Task Force recommended – and I adopted the recommendation – that the Judiciary include \$25 million for civil legal services in its budget for the 2011-12 fiscal year as part of a four-year phased-in effort to increase annual funding by \$100 million dollars. In New York, treating funding for civil legal services as part and parcel of the Judiciary budget, makes total sense to me. The message is simple -- as far as the Judiciary is concerned, ensuring access to justice goes to the very heart of our constitutional mission. 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. If we don't have that, we might as well close the courthouse doors.

Despite the deep cuts imposed on the Judiciary, the final budget approved by the Governor and the Legislature included \$12.5 in the Judiciary budget for civil legal services, and a \$15 million dollar appropriation to the Judiciary to rescue IOLA, with the end result being \$27.5 million dollars of state funding for civil legal services under the umbrella of the Judiciary's budget. This is an accomplishment that the legal community in New York is proud of, particularly given the economic tsunami that we in New York and around the country, including Pennsylvania, recognize as today's reality.

To me, most importantly, we established a vital precedent and template for our state, and possibly elsewhere, by implementing a systemic annual process to fund civil legal services through state monies that are an integral part of the Judiciary's overall budget. At the legislature's request we hold hearings to assess the gap in civil legal representation for the poor; we recommend the amounts needed by the Judiciary to close or at least narrow that gap; and the Legislature and the Governor act on our request.

It is my firm belief that reliance on revenue streams like IOLA or court fees that fluctuate with the economy, while sometimes necessary and justifiable on a pragmatic level, is not in the end the answer. Access to justice cannot be a pay as you go enterprise, dependant on funding that is unstable by nature and which often serves to make the justice system more available with one hand while erecting new obstacles to access with the other.

Civil legal assistance for poor and vulnerable litigants should come out of state general fund monies – it is a basic responsibility of state government, every bit as important as other fundamental priorities of a civilized society. We don't say that there won't be public schools or hospitals or courts this year to serve our children or treat our sick or deliver justice because the economy is bad, just as we cannot say that we won't fund civil legal services for the indigent because it is too difficult to afford. Access to justice is not a luxury, affordable only in good times.

Beyond the compelling legal and moral justifications, assuring civil legal assistance for the poor and the working poor makes sense on so many other levels. What too many people fail to recognize is that expanding civil legal representation at public expense actually pays for itself many times over. At last year's hearings, business leaders, bankers,

property owners, health care providers, and government and community leaders testified again and again that increasing access to legal assistance benefits their institutional performance and financial bottom lines.

We heard, again and again, that civil legal services save state and local governments hundreds of millions of dollars a year by enabling people to pay their bills, preventing unwarranted evictions and homelessness, avoiding foster care placements and other social services costs, and bringing federal funds into the state. We created a public record that justified the funding of civil legal services as making good economic sense for our state. Our Task Force concluded that there is a total return to New York of close to five dollars for every dollar spent to support civil legal assistance for the poor.

In New York, we are not suggesting that every person with a legal problem must be provided with a lawyer at public expense. It is just not possible. What we are doing 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 we can make immediate and meaningful progress to help the most vulnerable among the poor and working poor, while at the same time laying the foundation for Civil Gideon, where litigants in civil proceedings would receive representation in keeping with the ethos of the Supreme Court’s decision almost 50 years ago in the landmark case of *Gideon v Wainwright* -- a case that was not just about the constitutional right to counsel for criminal defendants but a clarion call to recognize our

societal obligation to give legal assistance to human beings facing life-transforming crises in our courts.

In the end, money for civil legal services is just one part of the equation. We need a comprehensive, multi-faceted approach that involves the entire legal community working together to foster more self-help programs for the unrepresented, and more pro bono programs from law schools, bar associations, law firms, and the courts, such as the court system's new Attorney Emeritus program that I'm very excited about in New York, which targets an underutilized pro bono resource -- retired and senior lawyers, including the baby boomers, so many of whom I'm sure are here today in this room, who are nearing retirement age and want to continue having a meaningful role in the legal world. What we did was amend our attorney registration rules to recognize a new special category of lawyer -- someone who is at least 55 years of age with 10 years of experience, and who is given an elevated "Attorney Emeritus" status in New York in return for pledging to provide at least 30 hours a year of free legal assistance to poor New Yorkers. The response so far has been really encouraging.

Innovative programs like these are important pieces of the puzzle, along with the commitment and energy of bar associations like this one, which has so much history and credibility, and whose members are working on the front lines to ensure that our legal system lives up to the ideal of equal justice for all. I want to recognize what you are doing here at the Philadelphia Bar Association in establishing a Civil Gideon Task Force. By pursuing an education and communications strategy to build public support and consensus within your communities and your political institutions, and by piloting legal representation projects in eviction and mortgage foreclosure proceedings to document the economic and

societal value of providing lawyers in these cases, you are doing the hard and necessary groundwork to make sure that our nation makes good on the promise of Gideon. Clarence Earl Gideon's trumpet, forever memorialized in Tony Lewis's Pulitzer Prize winning book, 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. I salute you for your efforts.

It is critical that the Judiciary and the legal profession join together to foster access to justice in our respective states. The rule of law, which is the bedrock of our profession and our society, loses its meaning when the protection of our laws is available only to those who can afford it. Any civilized society, going back to biblical times, is judged by how it treats its most vulnerable citizens. And the admonition of the Old Testament -- Justice, justice shall you pursue for rich and poor, high and low alike -- is just as relevant today as it was thousands of years ago. The pursuit of justice is what our noble profession is all about, and pursuing justice is what we must do if we are to maintain the ethical core and the very legitimacy of our system of justice.

Thank you.