

# A NATIONAL PERSPECTIVE ON NEW YORK STATE CHIEF JUDGE JONATHAN LIPPMAN'S INITIATIVE

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Let me begin by thanking the Honorable Jonathan Lippman, chief judge of the state of New York and chief judge of the New York State Court of Appeals, for his passionate leadership and unequivocal commitment to the need to provide civil legal assistance to the most vulnerable New Yorkers in matters that involve the very basic necessities of life, and for his determination to bring us closer to the ideal of ensuring equal access to justice. The chief judge's remarks are clearly a clarion call to chief judges across this country and to all.

Of course, I must tell you at the outset how thrilled I am with what is taking place in New York. Going back some seven years, when I had the honor to be appointed president of the Legal Services Corporation (LSC), we identified very quickly that our number one priority was to highlight the problem in our country of fulfilling our obligation to provide equal access to the civil justice system to the less advantaged in our society. Through our ground-breaking report "Doc-

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umenting the Justice Gap in America,” closing the justice gap became our national call to action.<sup>1</sup> As I look now at the incredible effort Chief Judge Jonathan Lippman has initiated, and how his leadership is influencing action throughout the country, he deserves all of our admiration and acclaim.

Let me share with you why his leadership is so important today. Funding for civil legal services nationally is shrinking at a time when legal services programs across the country are reporting huge increases in the numbers of people seeking their help, as a direct result of the economic downturn, whom they cannot assist and must turn away.<sup>2</sup> Federal funding for civil legal assistance to the poor is provided by the LSC, which distributes funding appropriated by Congress each year to legal services organizations in every state. It remains the biggest single source of funding for civil legal services.<sup>3</sup>

LSC programs provide free civil legal assistance to eligible Americans, defined as those below 125 percent of the poverty line.<sup>4</sup> Recent Census figures show that sixty million Americans, or nearly one in five, had income at or below 125 percent of the poverty line.<sup>5</sup> Our concern is more than mere numbers. Legal aid offices are handling matters that go to the essentials of life; the very heart of health, safety, and security.

In fiscal year 2011, the amount of federal funding for legal services was \$405 million.<sup>6</sup> The federal government is running on a continuing resolution until November 18, and annual appropriation bills have not been passed, but for 2012, the Senate is recommending a cut to the LSC budget of about two percent—reducing the appropri-

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1. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2009), available at [http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf).

2. D.C. ACCESS TO JUSTICE COMM’N. & D.C. CONSORTIUM OF LEGAL SERVS. PROVIDERS, RATIONING JUSTICE: THE EFFECT OF THE RECESSION ON ACCESS TO JUSTICE IN THE DISTRICT OF COLUMBIA 1–2 (2009), available at <http://www.legalaiddc.org/documents/RationingJusticeReport.pdf>.

3. *What is LSC?*, LEGAL SERVS. CORP. (last visited Feb. 8, 2012), <http://www.lsc.gov/about/what-is-lsc>.

4. LSC Financial Eligibility, 45 C.F.R. § 1611.3 (2011).

5. *People with Income Below Specified Ratios of their Poverty Threshold by Selected Characteristics: 2010*, U.S. CENSUS BUREAU, <http://www.census.gov/hhes/www/poverty/data/incpovhlth/2010/table6.pdf> (last visited Feb. 3, 2012).

6. Department of Defense and Full-Year Continuing Appropriations Act of 2011, Pub. L. No. 112-10, § 1341, 125 Stat. 38, 123 (2011).

ation to \$396 million—and the House proposes a much more drastic cut of about 26 percent to \$300 million.<sup>7</sup>

At the same time, the other major source of funding for legal services across the country, Interest on Lawyer Trust Accounts (IOLTA), has been hard hit by the recession as well. They have seen dramatic decreases in funding, as the chief judge pointed out in New York, due to the continuing historically low interest rates and the drop in economic activity.<sup>8</sup> For the first time in fifteen years, nationwide income from IOLTA has dropped below \$100 million from a high of \$371 million in 2007.<sup>9</sup> The Federal Reserve has been explicit about the fact that interest rates are not expected to rise in the next two years.<sup>10</sup>

State funding of civil legal assistance has also suffered because state budgets are facing huge deficits. Chief Judge Lippman's allocation of \$27.5 million in the Judiciary budget—\$15 million to be allocated to IOLA to partially off-set the losses and \$12.5 million in new money for civil legal services—have not only been heroic but precedent setting.<sup>11</sup> Because of his actions, New York has the highest dollar amount of state funding for civil legal services of any state in this country.<sup>12</sup>

What the chief judge has established is a process—a structured solution—around hearings to demonstrate the current unmet need and identify the resources necessary to meet that need. It is significant to note that California is following New York's lead and has scheduled

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7. S. REP. NO. 112-78, at 111 (2011); H.R. REP. NO. 112-169, at 88 (2011). Subsequent to the delivery of these remarks, Congress passed the Consolidated and Further Continuing Appropriation Act of 2012, which provided \$348 million in funding for LSC for fiscal year 2012. Pub. L. No. 112-55, 125 Stat. 552, 629 (2011).

8. See Karen Sloan, *Perfect Storm Hits Legal Aid*, NAT'L L. J. (Jan. 3, 2011), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202476843961>.

9. E-mail from Bev Groudine, Staff Counsel, Comm'n on IOLTA, Am. Bar Assoc., to author (Oct. 6, 2011, 11:56 EDT) (on file with author).

10. Subsequent to the delivery of these remarks, the Federal Reserve stated that interest rates are likely to remain "exceptionally low" until at least late 2014. Press Release, Bd. of Governors of the Fed. Reserve Sys., (Jan. 25, 2012), *available at* <http://www.federalreserve.gov/newsevents/press/monetary/20120125a.htm>.

11. TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 5 (2011), *available at* [http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011TaskForceREPORT\\_web.pdf](http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011TaskForceREPORT_web.pdf).

12. Based on data collected by the American Bar Association's Resource Center for Access to Justice Initiatives, a project of the Standing Committee on Legal Aid and Indigent Defendants.

four public hearings in November and December throughout the state, based on the New York model.<sup>13</sup>

From a national perspective, Chief Judge Jonathan Lippman is a trailblazer in new funding models for the civil justice system, and he is in the vanguard of chief judges trying to fulfill our pledge of equal access to justice.

We hope the Task Force Report to the chief judge this year will also serve as a national model. While we again will make the case that the continuing unmet need for civil legal assistance has a negative impact on the functioning of the courts, businesses, and government, as well as a profound impact on vulnerable families and individuals, new cost saving analyses will demonstrate that the provision of civil legal services can save state and local government significant dollars by preventing continued domestic violence and by preventing evictions and homelessness. With the continuing crises in both state and federal government budgets, we need to continue to stress the cost-effectiveness of legal services.<sup>14</sup>

Funding is not a stand-alone solution. The Task Force Report this year will also recommend initiatives that can simplify proceedings, enhance client service delivery, and help limit the cost of providing civil legal services. These include suggestions to simplify court forms and procedures so as to improve access to the courts.<sup>15</sup> New prevention initiatives and use of mediation in appropriate circumstances and other alternative conflict resolution can help reduce the number of problems that end up in court. In addition, efficiencies can be achieved through collaborations among providers to reduce costs, strategic partnerships with non-legal entities, such as medical-legal partnerships, and technology solutions, as well as greater law school involvement, and pro bono and pro se initiatives. Additional work in all of these areas will have to be part of our effort as we go forward.<sup>16</sup>

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13. In December, four hearings co-sponsored by the California Chamber of Commerce, the California Commission on Access to Justice, and the State Bar of California on the fundamental impact of legal services were held in San Francisco, Los Angeles, Irvine, and Sacramento. For more information about the hearings, see *HEARINGS ON CALIFORNIA'S CIVIL JUSTICE CRISIS* (Feb. 12, 2012), <http://californiahearings.org>.

14. Subsequent to the delivery of these remarks, the 2011 Report of the Task Force to Expand Access to Civil Legal Services in New York was issued. See *TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN N.Y.*, *supra* note 11, at 23–29. In addition, the fiscal year 2012–13 judiciary budget was approved, which included \$40 million in civil legal services funding, \$15 million for IOLA replacement funding, and \$25 million in judiciary civil legal services funding.

15. *Id.* at 40.

16. *Id.* at 41.

There must be a partnership between federal, state, and local government, private funders, the organized bar, pro bono efforts, law schools, the courts, and the providers all working together to try to make some semblance of reality to our commitment to equal justice for all. As Supreme Court Justice Lewis Powell stated:

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 fundamental that justice should be the same in substance and availability without regard to economic status.<sup>17</sup>

Leaders like Chief Judge Jonathan Lippman bring us closer to that ideal, ensuring that justice is not just for some but truly for all.

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17. Francis J. Larkin, *The Legal Services Corporation Must Be Saved*, 34 JUDGES' J. 1, 1 (1995) (quoting Justice Powell's comments made when Justice Powell was the President of the ABA).

