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## *BRENNAN LECTURE*

### THE JUDICIARY AS THE LEADER OF THE ACCESS-TO-JUSTICE REVOLUTION

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The subject of my remarks this evening is how the judiciary, conceptually and in practice, should be and is in fact the leader of the access-to-justice revolution that is taking place in our state and in our country. It is no secret that our nation faces a crisis in access to justice. The distressing lack of civil legal aid for the poor is one of the most daunting challenges facing the justice system today, but all of the players—the providers, the academy, the profession as a whole, and in particular the judiciary—are increasingly and dramatically confronting this crisis and taking action to balance the scales of justice, to guarantee the rights and liberties of all, and to preserve the rule of law.

As I will discuss in detail tonight, New York's judiciary has taken a leadership role in the access-to-justice reform—securing substantial funding in the judiciary budget for civil legal services; encouraging pro bono work by the bar; asking aspiring lawyers to provide legal assistance to those most in need; harnessing the legal talents of baby boomers and corporate counsel; and exploring novel methods of delivering legal services, including the use of nonlawyers to provide assistance inside and outside the courtroom. The judiciary's leadership role is an analytical, multifaceted, incremental approach to closing the justice gap in our state, built around the leverage and credibility of the

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judiciary and its leadership. This approach utilizes all of the financial and programmatic resources available to the judicial branch, along with the great talent and energy of our partners in the legal profession, academia, and legal services communities.

## I

### THE SCOPE OF THE CRISIS IN ACCESS TO JUSTICE

Let me set the stage, at least from my experience since becoming Chief Judge in New York. In 2009, it was clear to me that for far too long, far too many litigants in civil cases concerning the most basic necessities of life had no access to legal assistance. More than 2.3 million litigants come into New York courts each year without legal representation.<sup>1</sup> These are individuals and their families who are unable to pay for a lawyer or to access free legal assistance—people facing the loss of their homes, suffering persecution by predatory lenders, seeking to keep custody of their children or escape the abuse of a family member, or looking to protect their very subsistence. These vulnerable litigants must have greater access to legal representation if we are to achieve our constitutional mission of fostering equal justice for all, rich and poor alike.

Access to justice is particularly challenging during a time of economic hardship for our state and the country at large. New York is still in the midst of an economic recovery. More than one-third of New York residents are living at or below two hundred percent of the poverty level,<sup>2</sup> with 38% living at that level in New York City.<sup>3</sup> Meanwhile, federal, state, and local budget cuts have shrunk the social safety net for the poor.<sup>4</sup> Our most vulnerable constituents have fewer and fewer places to turn.

On top of this sobering economic reality, the Legal Services Corporation in Washington, D.C., the largest funding stream for civil

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<sup>1</sup> TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1 (2010), available at <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf> [hereinafter 2010 TASK FORCE REPORT].

<sup>2</sup> *Distribution of the Total Population by Federal Poverty Level (Above and Below 200% FPL)*, HENRY J. KAISER FAM. FOUND., <http://kff.org/other/state-indicator/population-up-to-200-fpl/> (last visited Aug. 5, 2014).

<sup>3</sup> *Contributors to Food Poverty*, FOOD BANK OF N.Y.C., <http://www.foodbanknyc.org/food-poverty-in-nyc/contributors-to-food-poverty> (last visited July 30, 2014).

<sup>4</sup> See, e.g., Steven Greenhouse, *Will the Safety Net Catch the Economy's Casualties?*, N.Y. TIMES, Nov. 16, 2008, at WK3 (discussing cuts to social programs since the Reagan administration and the estimated impact of these cuts during the 2008 economic downturn); Michael Powell, *What Washington Gives New York: Added Strain on the Social Safety Net*, N.Y. TIMES, Dec. 10, 2013, at A22 (discussing the difficulty of maintaining New York City's social programs due to federal budget cuts).

legal service providers in the country for over the last forty years, has seen its funding cut again and again by a Congress that too often fails to place a priority on social or economic programs to help the poor.<sup>5</sup> State funding through Interest on Lawyer Trust Accounts (IOLTA) has been another mainstay for legal service providers.<sup>6</sup> But IOLTA's revenues are generated through interest on the accounts that lawyers use for short-term maintenance of client money.<sup>7</sup> With interest rates at a historic low,<sup>8</sup> the interest payments funneling into IOLTA accounts have slowed to a trickle. In New York, IOLA's funding dropped from \$32 million a year to \$8 million almost overnight.<sup>9</sup> The troubled economy and the fragility of the existing sources of funding have exacerbated the problem of unrepresented litigants in our courts.

From Buffalo to Brooklyn, legal service organizations in New York are filled with lawyers dedicated to ensuring that the poorest New Yorkers can vindicate their rights through our legal system. But for all their inspiring and tireless work, there are just too few lawyers to go around. In recent years, the Legal Aid Society in New York City has had to turn away as many as eight out of nine people who come to them seeking help relating to civil matters.<sup>10</sup> They simply do not have

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<sup>5</sup> See, e.g., *Slashing Civil Legal Aid*, N.Y. TIMES, Mar. 9, 2011, at A26 ("House Republicans voted to cut \$83 million from President Obama's request for the Legal Services Corporation . . ."); Press Release, Legal Servs. Corp., House-Senate Agreement Cuts LSC Funding (Nov. 15, 2011), <http://lsc.gov/media/press-releases/house-senate-agreement-cuts-lsc-funding> (announcing a House-Senate conference agreement to cut [Legal Service Corporation]'s overall funding by 13.9%).

<sup>6</sup> New York's program of this kind, Interest on Lawyer Account Fund ("IOLA") was created by the New York State legislature in 1983, N.Y. JUD. LAW § 497 (McKinney 1983), with the support of the New York State Bar Association. For additional details, see *About IOLA*, IOLA FUND OF THE STATE OF N.Y., <http://www.iola.org/about.html> (last visited July 30, 2014). As with most IOLTA programs, under New York's IOLA program, attorneys must deposit certain client funds they are holding in trust for future use—namely, those funds that they will be holding for only a short time or are small in amount—into interest-bearing accounts. *Id.* The interest from those accounts goes into IOLA, which in turn provides financial support to civil legal service organizations. *Id.* This arrangement does not deprive lawyers or their clients of any benefit, because the administrative costs of individual non-IOLA funds and the tax liability on interest income would offset any economic benefit. *Id.* Because IOLA funds derive from interest calculated on lawyers' accounts, they are sensitive to any changes in interest rates. See *id.*

<sup>7</sup> *About IOLA*, *supra* note 6.

<sup>8</sup> See, e.g., *A World of Cheap Money: Six Years of Low Interest Rates in Search of Some Growth*, ECONOMIST, Apr. 6, 2013, <http://www.economist.com/news/briefing/21575773-central-banks-have-cushioned-developed-worlds-economy-difficult-period-they-have-yet> ("Never in recent economic history have interest rates been so low for so many for so long.").

<sup>9</sup> 2010 TASK FORCE REPORT, *supra* note 1, at 1. For further information, see IOLA FUND N.Y., <http://www.iola.org> (last visited July 30, 2014).

<sup>10</sup> *The Chief Judge's Hearing on Civil Legal Services*, Second Dep't 3–4 (Oct. 1, 2013) (statement of the Legal Aid Society), available at <http://www.nycourts.gov/IP/access-civil-legal-services/PDF/2013CLS-Appendices.pdf>.

enough money or staff to meet the pressing needs of New York City residents. While the pro bono efforts of the bar have been significant—with estimates of over two million hours of volunteer pro bono work<sup>11</sup>—we are at best meeting twenty percent of the need for civil legal services<sup>12</sup> for poor people who are fighting for the necessities of life: a roof over their heads, their physical safety, their livelihood, and the well-being of their families.

## II

### THE ROLE OF STATE JUDICIARIES IN CONFRONTING THE CRISIS IN ACCESS TO JUSTICE

In the face of such challenges, beacons of hope are emerging, fueled in large measure by state judiciaries who, on access issues, are uniquely suited to initiate discussion, deliver the message, and generate large-scale change and innovation. Given our pivotal role in government, society, and the legal profession, the judiciary can and should build the agenda and push the envelope for the entire legal community when it comes to the pursuit of justice, our historical task and duty since biblical times.

Having grown up in New York, with its progressive social and governmental tradition and ethos, it was second nature for me, upon becoming Chief Judge, to see the judiciary as the leader in pursuing equal justice in New York. It was clear to me that if the judiciary and the legal profession would not stand up for the most vulnerable among us, no one else would. The first step was to measure the extent of the problem. To that end, joined by the leaders of the legal profession in our state, I began by holding annual hearings in each of New York's four judicial departments. Those hearings built a record of support for civil legal services and the vital role they play in the life of our communities.<sup>13</sup> We also formed the Task Force to Expand Access to Civil Legal Services in New York chaired by the incomparable Helaine M. Barnett, former head of the Legal Services Corporation in Washington, D.C., to help organize the hearings, create the infrastructure to examine the problem, gather information, and propose specific solutions. Many of the initiatives launched by New York

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<sup>11</sup> 2010 TASK FORCE REPORT, *supra* note 1, at 4.

<sup>12</sup> *Id.*

<sup>13</sup> Hearing transcripts can be found in the 2013 Task Force Report, available at TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK, at Appendices (2013), available at <http://www.nycourts.gov/ip/access-civil-legal-services> [hereinafter 2013 TASK FORCE REPORT].

had their origins in the civil legal service hearings and the work of the Task Force.<sup>14</sup>

*A. Securing Funding for Civil Legal Services in New York*

The most important of the Task Force's recommendations was to secure funding for civil legal services as part of the judiciary budget. The previous patchwork of revenue sources was unreliable and insufficient to address the need; federal revenue streams, private contributions that fluctuate with the economy, legislative member items, and pay-as-you-go court fees left a trail of disappointment and unpredictability for legal service providers. Steady and substantial funding by state governments is fundamental to providing civil legal services for the poor. Through the hearing testimony and the work of the Task Force, we were able to demonstrate to the New York State Legislature and the Governor that providing funding in the judiciary budget was critical and that civil legal services for the poor was as much a priority for our state and society as housing, schools, education, and the other essentials of life.

Not only that, we were also able to show that investing in civil legal services made good economic sense and returned money to our state through increased federal support and reduced shelter and social services costs.<sup>15</sup> Testimony by community leaders, bankers, hospitals, and businesses bolstered our arguments and made a counter-intuitive case for civil legal services funding as an antidote for the poor economy. For every dollar invested in legal services for the poor, we were able to demonstrate that five-to-six dollars were returned to the state, meaning hundreds of millions of dollars for the state economy.<sup>16</sup>

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<sup>14</sup> See, e.g., TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO CHIEF JUDGE OF THE STATE OF NEW YORK 34–35, 36–39 (2012), available at [http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT\\_Nov-2012.pdf](http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT_Nov-2012.pdf) [hereinafter 2012 TASK FORCE REPORT] (recommending an increase in aspirational pro bono hours from twenty to fifty in the New York Rule of Professional Responsibility 6.1; mandatory reporting of pro bono hours and monetary contributions; permitting in-house counsel licensed to practice law outside of New York to perform pro bono work in New York; and use of nonlawyers to provide certain services); TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO CHIEF JUDGE OF THE STATE OF NEW YORK 34–35 (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) [hereinafter 2011 TASK FORCE REPORT] (recommending greater law school involvement); 2010 TASK FORCE REPORT, *supra* note 1, at 37–38 (recommending funding in the judiciary budget, a recommendation reiterated in successive years).

<sup>15</sup> See 2013 TASK FORCE REPORT, *supra* note 13, at 23–27 (detailing the economic benefits of investing in civil legal services); 2012 TASK FORCE REPORT, *supra* note 14, at 18–25 (same); 2011 TASK FORCE REPORT, *supra* note 14, at 23–29 (same).

<sup>16</sup> 2013 TASK FORCE REPORT, *supra* note 13, at 23.

Securing that funding in our budget, however, was not easy. At the same time that we received \$27.5 million in legal services funding by the state in the judiciary budget, in 2011, we saw our overall court operating budget reduced by \$170 million, forcing the courts to lay off hundreds of employees, institute court closing times of 4:30 p.m., and drastically reduce or eliminate a range of important programs.<sup>17</sup> Yet, legislators understood that it was not enough to keep our courthouse doors open if we did not provide equal justice to all persons who entered them. It was important to us to make clear to our partners in government that the New York courts stood for something—equal justice and meaningful access to the courts for all—and that those were paramount considerations for our branch of government.

Since that time, funding for civil legal services has continued to grow. The second year we requested funding for civil legal services, the judiciary budget included a total of \$40 million for those services.<sup>18</sup> The year after that, it increased to \$55 million, and this year, \$70 million—a momentous accomplishment, given that we started from zero.<sup>19</sup> Public funding for legal services has been critical in our efforts to close what we call the justice gap—the gulf between the finite legal resources available and the dire need of legal services for the poor and people of limited means.

Public funding is and must be a fundamental pillar of any state's efforts to promote access to justice. It has been a catalyst for us in New York, sparking numerous other new approaches to the problem, to which I will turn shortly.

### *B. Leadership by State Judiciaries Outside of New York*

New York's judicial leadership has by no means been alone in working to address the crisis in civil legal services for the poor. Momentum has been building around the country. The Conference of Chief Justices and the Conference of State Court Administrators have

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<sup>17</sup> See John Eligon, *State's Judges Told to Shut Courtrooms Earlier to Cut Costs*, N.Y. TIMES, Apr. 7, 2011, at A20 (reporting the \$170 million reduced budget and that "all court proceedings generally should end no later than 4:30 p.m. rather than the current 5 p.m." (internal quotation marks omitted)); Joel Stashenko, *Children's Centers at Courts are Hit Hard by Budget Cuts*, N.Y. L.J. (Apr. 13, 2011), <http://www.law.com/jsp/nylj/PubArticleNY.jsp?id=1202489751855>. Programs affected by the cuts to the New York State Judiciary budget included children's centers at courthouses that provide temporary child care while parents/caregivers attend court appearances and the Judicial Hearing Officer program, through which retired judges receive modest payments to adjudicate certain kinds of cases. See *id.*

<sup>18</sup> N.Y. UNIFIED COURT SYS., BUDGET ix, 137–39 (2012–2013 ed.).

<sup>19</sup> N.Y. UNIFIED COURT SYS., BUDGET vi, 132–34 (2014–2015 ed.); N.Y. UNIFIED COURT SYS., BUDGET v, 136–38 (2013–2014 ed.).

urged the nation's top judges "to take a leadership role in their respective jurisdictions to prevent denials of access to justice."<sup>20</sup>

To be sure, some may not view the role of Chief Justices so expansively and may instead see their primary responsibility as limited to the adjudication of legal issues that come before our state high courts. But, as indispensable as that role is, being proactive in ensuring access to justice for all is foundational to the judicial role. Without strong judicial leadership on fundamental issues of fairness in the courts and a forceful explanation of the rationale for that strong leadership, the public cannot and will not understand that the justice system is critical to each and every one of them in their daily lives. An ever-increasing number of my colleagues around the country know this to be the case, and are moving equal justice forward each and every day.

Texas, under the leadership of its Chief Justice Wallace B. Jefferson, negotiated an increase in IOLTA interest rates from banks to rescue financing for legal service providers in the state.<sup>21</sup> Last year, Connecticut's Chief Judge Chase T. Rogers brokered an agreement with large corporate sponsors to hire recent law school graduates as fellows to do pro bono work through the LawyerCorps Connecticut program.<sup>22</sup> The State of Washington's Supreme Court has approved a new category of "low bono" legal technicians to help close the justice gap.<sup>23</sup> Chief Justice Stuart Rabner in New Jersey boldly addressed the

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<sup>20</sup> Conference of Chief Justices & Conference of State Court Administrators, Resolution 13, Reaffirming Commitment to Access to Justice Leadership and Expressing Appreciation for Access to Justice Progress and Collaboration, adopted as proposed by the CCJ/COSCA Access, Fairness and Public Trust Committee at the 2013 Annual Meeting (July 31, 2013), available at <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/07312013-Reaffirming-Commitment-Justice-Leadership-Expressing-ATJ-Collaboration-CCJ-COSCA.ashx>; see also Conference of Chief Justices & Conference of State Court Administrators, Resolution 7, In Support of State Supreme Court Leadership in Increasing Funding for Civil Legal Assistance, adopted as proposed by the CCJ/COSCA Access, Fairness and Public Trust Committee at the 2010 Annual Meeting (July 28, 2010), available at <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/07282010-In-Support-of-State-Supreme-Court-Leadership-in-Increasing-Funding-for-Civil-Legal.ashx> (encouraging chief justices and state court administrators to take a leadership role in raising funds for civil legal assistance).

<sup>21</sup> See Rules of the Texas Supreme Court 7, Governing the Operation of the Texas Access to Justice Foundation ("Accounts to Be Maintained at Eligible Institutions") (as amended Jan. 13, 2009) (detailing the operation of the IOLTA program); see also *Prime Partners*, TEX. ACCESS TO JUSTICE FOUND., [http://www.teajf.org/financial\\_institutions/prime\\_partners.aspx](http://www.teajf.org/financial_institutions/prime_partners.aspx) (last visited July 30, 2014) (listing banks that "go above and beyond" IOLTA eligibility requirements).

<sup>22</sup> *Welcome to LawyerCorps Connecticut*, LAWYERCORPS CONN., <http://lawyercorpset.org> (last visited July 30, 2014).

<sup>23</sup> Washington Rules of Court Admission to Practice Rules (APR) 28; Debra Cassens Weiss, *In Washington State, "Legal Technicians" Will Be Allowed to Help Civil Litigants*,

foreclosure crisis in his state, which has greatly impacted people of limited means,<sup>24</sup> while the Delaware judiciary has focused heavily on addressing language interpretation issues that have barred access to the courts for so many.<sup>25</sup> Montana is seeking to adopt a variation of New York's fifty-hour law student pro bono rule,<sup>26</sup> and California is experimenting with civil *Gideon*<sup>27</sup> pilots funded with state monies.<sup>28</sup> And in the federal courts, Chief Judge Robert A. Katzmann has put together a wonderful program to provide legal representation to those most in need in immigration cases.<sup>29</sup> Examples abound of judicial leadership in addressing the crisis in legal services for the poor. Access to the courts is a central ethical and constitutional responsibility of the judiciary. If not us, who? But the judiciary and the legal service providers that we support financially and otherwise need the support of the broader legal community if we are ever to close the justice gap.

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ABA JOURNAL.COM (June 19, 2012, 7:36 AM), [http://www.abajournal.com/news/article/in\\_washington\\_state\\_legal\\_technicians\\_will\\_be\\_allowed\\_to\\_help\\_civil\\_litigant](http://www.abajournal.com/news/article/in_washington_state_legal_technicians_will_be_allowed_to_help_civil_litigant).

<sup>24</sup> E.g., Zachary A. Goldfarb, *New Jersey Orders Court Appearance for 6 Mortgage Lenders*, WASH. POST (Dec. 20, 2010, 7:39 PM), <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/20/AR2010122005012.html>; *New Jersey Courts Take Steps to Ensure Integrity of Residential Mortgage Foreclosure Process*, N.J. JUDICIARY, Dec. 10, 2010, [http://www.judiciary.state.nj.us/superior/press\\_release.htm](http://www.judiciary.state.nj.us/superior/press_release.htm).

<sup>25</sup> See MARIA PEREZ-CHAMBERS & ASHLEY TUCKER, NAT'L CTR. FOR STATE COURTS, *DELAWARE'S SUCCESSFUL STRIDES TOWARD LANGUAGE ACCESS IN THE COURTS* 34, available at <http://www.ncsc.org/sitecore/content/microsites/future-trends-2012/home/Courts-and-the-Community/3-4-Delawares-Successful-Strides.aspx> (discussing steps Delaware has taken to address language interpretation issues in courts).

<sup>26</sup> In re *The Recommendation Regarding a Pro Bono Requirement for Admission to the Montana Bar*, No. AF 11-0765 (Dec. 3, 2013), available at <http://supremecourt.docket.mt.gov/view/AF%2011-0765%20Comments-Request%20—%20Order?id={61D8D787-25FC-4D55-8782-0861E4C5B9BA}>.

<sup>27</sup> The term “civil *Gideon*” invokes the right to counsel in criminal cases recognized by the United States Supreme Court in *Gideon v. Wainwright*, 372 U.S. 335 (1963), and suggests that a right to counsel should be recognized in civil cases as well, at least where the basic necessities of life are at stake.

<sup>28</sup> See Assemb. 590, 2009 Reg. Sess., at 2–5 (Cal. 2009) (funding pilot projects to provide legal representation to low-income Californians); see also Carol J. Williams, *California Gives the Poor a New Legal Right*, L.A. TIMES, Oct. 17, 2009, <http://articles.latimes.com/2009/oct/17/local/me-civil-gideon17> (discussing the California program and its public reception).

<sup>29</sup> As described on the organization's website, “[t]he Immigrant Justice Corps (IJC) is the country's first fellowship program dedicated to meeting the need for high-quality legal assistance for immigrants seeking citizenship and fighting deportation.” IMMIGRANT JUSTICE CORPS, <http://justicecorps.org> (last visited Aug. 4, 2014); see also, e.g., Kirk Semple, *Seeking Better Legal Help for Immigrants*, N.Y. TIMES, Jan. 29, 2014, at A19 (describing the initiative as one designed to “create a new paradigm in immigration representation”).



### C. *Pro Bono Service by the Bar and Pro Bono Reporting*

It is the responsibility of the legal profession to play a central role in the struggle for equal justice. Historically, lawyers in this country have placed a commitment to clients and to public service above their own financial self-interest. Our canons of ethics and our licensing requirements reflect the idea that the legal profession is a noble one, where the protection of the rule of law and the good of society must matter more than profit. I have nothing against the profit motive in business and law. That motive is the powerful engine of economic growth in our state and our nation. But we ask more of lawyers, and we should. The American Bar Association (ABA) has long maintained that regardless of professional prominence or professional workload, “[e]very lawyer has a professional responsibility to provide legal services to those unable to pay.”<sup>30</sup> New York’s Rules of Professional Responsibility echo the ABA’s. Under New York’s rule, “[l]awyers are strongly encouraged to provide pro bono legal services to benefit poor persons.”<sup>31</sup> The rules further comment on the necessity of such services, “as our society has become one in which rights and responsibilities are increasingly defined in legal terms.”<sup>32</sup>

While we know that many lawyers in New York generously give their time to help the less fortunate, we have not been able to measure reliably the magnitude of their efforts. Until recently, we had no way to assess with any confidence the efficacy of past and future policy prescriptions. However, last year, the Administrative Board of the Courts, the court system’s policy-making body, enacted a mandatory reporting requirement for pro bono service.<sup>33</sup> Seven other states have also instituted the mandatory reporting of pro bono hours.<sup>34</sup> Those states have seen significant increases in the number of volunteer pro bono hours contributed by lawyers following the institution of

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<sup>30</sup> MODEL RULES OF PROF’L CONDUCT R. 6.1 & cmt. 1 (2013).

<sup>31</sup> N.Y. RULES OF PROF’L CONDUCT R. 6.1 (2012), *available at* <https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26646>.

<sup>32</sup> *Id.* at cmt.1.

<sup>33</sup> See N.Y. ADMIN. RULES OF THE UNIFIED COURT SYS. & UNIFORM RULES OF THE TRIAL COURTS, RULES OF THE CHIEF ADMIN. JUDGE § 118.1(e)(14) (2012) [hereinafter RULES OF THE CHIEF ADMIN. JUDGE], *available at* <http://www.nycourts.gov/rules/chiefadmin/118.shtml> (requiring all attorneys admitted to practice in New York State to file a registration statement including “voluntary unpaid pro bono services” and financial contributions made to legal service providers).

<sup>34</sup> See ABA STANDING COMM. ON PRO BONO & PUB. SERV., REPORTING OF PRO BONO SERV. (2014), *available at* <http://apps.americanbar.org/legalservices/probono/reporting/pbreporting.html> (listing Florida, Hawaii, Illinois, Maryland, Mississippi, Nevada, New Mexico, and New York as requiring pro bono hours to be reported).

mandatory reporting.<sup>35</sup> In New York, the new rule requires attorneys to report the number of pro bono hours they have performed and the total amount of monetary contributions they have made to legal services providers as part of their biennial attorney registration process.<sup>36</sup> The demands of the rule are modest and relatively nonintrusive. The rule calls only for approximate hours of service and financial contributions by broad categories. It focuses solely on services and contributions that benefit poor and underserved clients. The rule does not require disclosure of particular clients, entities served, or the targets of aid.

Despite the common sense value of the rule in providing much needed data that will help shape our strategies going forward with respect to access to justice, not all members of the bar have embraced it. Many fear that mandatory reporting is a prelude to mandatory pro bono for all lawyers, which would essentially be the imposition of a public service requirement for members of the bar—a much-dreaded contingency for many lawyers, given the demands of the modern-day practice of law.

The means and ends of pro bono service by lawyers has been a topic of sharp debate for decades. This is all part of any robust debate over a challenging issue. I recently re-read the 1990 Final Report of the Committee to Improve the Availability of Legal Services in New York, established by Chief Judge Sol Wachtler and skillfully led by the Honorable Victor Marrero, with its recitation of the dire consequences of unmet legal needs of the poor and its recommendation of a public service requirement for good standing in the New York bar of forty hours of pro bono work every two years.<sup>37</sup> After the New York State Bar Association strongly committed to mobilizing attorneys to meet that need, that recommendation was held in abeyance. Despite the Association's dedicated efforts, the results of that campaign were disappointing. More than half of the members of the New York bar indicated in the subsequent years that they did not engage in providing pro bono legal services of any kind,<sup>38</sup> while less than thirty

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<sup>35</sup> See, e.g., *Pro Bono Publico*, FLA. B., (June 15, 2014), <https://www.floridabar.org/DIVCOM/PI/BIPS2001.nsf/1119bd38ae090a748525676f0053b606/a8e811c59073e9f68525669e004d21f6!OpenDocument> (detailing the increase in pro bono hours donated in Florida since the enactment of mandatory reporting in 1993).

<sup>36</sup> RULES OF THE CHIEF ADMIN. JUDGE, *supra* note 33, at § 118.1(e)(14).

<sup>37</sup> VICTOR MARRERO ET AL., COMM. TO IMPROVE THE AVAILABILITY OF LEGAL SERVS., FINAL REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK (1990), reprinted in 19 HOFSTRA L. REV. 755, 756 (1991).

<sup>38</sup> See N.Y. STATE UNIFIED COURT SYS., THE FUTURE OF PRO BONO IN NEW YORK, VOLUME ONE: REPORT ON THE 2002 PRO BONO ACTIVITIES OF THE NEW YORK STATE BAR 8 (2004), available at [https://www.nycourts.gov/reports/probono/proBono\\_Vol1\\_re](https://www.nycourts.gov/reports/probono/proBono_Vol1_re)

percent of members of the bar met or exceeded the twenty-hour annual standard proposed by the Committee.<sup>39</sup>

The urgent need for pro bono legal services has not diminished in the last two decades. The recent reports of the Chief Judge's Task Force on Civil Legal Services, as well as the public hearings on the subject that the Unified Court System and the State Bar have conducted since 2011, testify to the fact that millions of New Yorkers continue to face legal process without an attorney.<sup>40</sup> This is especially true following the 2008 recession<sup>41</sup> and has led to renewed calls, both within and outside the legal community, for the implementation of a public service requirement.

Although a public service requirement is viscerally attractive for me and others focused on the justice gap, its imposition is in no way a given. In fact, as I have often said, my own inclination for New York has been not to impose a mandatory rule. Living up to the ideals of our profession should be a matter of principle, not a mandatory requirement, and there are logistical, economic, and geographic issues that raise warning signs that have informed our more incremental, deliberative approach to a crisis we know the entire legal profession must address. But I believe that a public service requirement for lawyers as one of a host of other options is worth discussing as a way to help close the gap that deprives the most disadvantaged of meaningful access to justice. To state the obvious, we need to understand the success or failure of the efforts we are presently pursuing before we foreclose the option of a mandatory pro bono requirement. And how can we not at least ponder this idea? Let me frame it this way: There are over 160,000 admitted attorneys in New York.<sup>42</sup> If we had a fifty-hour public service requirement, the ABA and New York's current

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port.pdf (reporting that only 47.0% and 45.6% of attorneys reported performing any qualifying pro bono work in 1997 and 2002, respectively).

<sup>39</sup> See *id.* (reporting that 27.2% and 26.5% of attorneys reported spending the required twenty hours or more performing qualifying pro bono work in 1997 and 2002, respectively).

<sup>40</sup> See 2010 TASK FORCE REPORT, *supra* note 1, at 1 ("Each year, more than 2.3 million New Yorkers try to navigate the State's complex civil justice system without a lawyer.").

<sup>41</sup> See *id.* at 7 (describing the increased need for civil legal services in wake of 2008's "deep economic downturn"); see also Press Release, Brennan Ctr. for Justice, Cuts Threaten Civil Legal Aid (Apr. 22, 2011), <http://www.brennancenter.org/analysis/cuts-threaten-civil-legal-aid> ("The recession continues to exacerbate the legal needs that low income families face, straining the capacity of court systems to adequately address needs.").

<sup>42</sup> As of the end of calendar year 2013, there were a total of 288,965 registered New York attorneys. N.Y. STATE UNIFIED COURT SYS. OFFICE OF COURT ADMIN., ATTORNEY REGISTRATION UNIT, LOCATION OF REGISTERED NY ATTORNEYS AS OF THE END OF CALENDAR YEAR 2013, at 1 (2014) (on file with the *New York University Law Review*). Of that total, 169,756 reported a business address, or if no business their home address, within

aspirational goal, we could generate over eight million hours of pro bono legal work for the most vulnerable people in New York. Such a massive level of assistance would be nothing less than a spectacular accomplishment for our profession and our state, even if it inconveniences us or marginally hurts our bottom lines.

The judiciary's role as a legal regulator is to protect the public interest, the integrity of our profession, and public trust and confidence in what we do, rather than our own parochial or economic interest. The bar has nothing to fear from a discussion of how we best meet our responsibilities as members of a noble profession. Certainly, the judiciary cannot and will not shrink from its responsibility to lead that dialogue as to where we go from here in addressing the crisis in access to justice that the legal community so critically faces today.

Let us gather the data we need to chart our future course, recognizing that the feedback we receive will reveal whether our present voluntary approach is sufficient. I do not believe we have yet even imagined, let alone fully explored, the full scope and impact of volunteerism in the provision of civil legal services to the poor. That being said, we have some wonderful programs in New York of which I am very proud, including the New York State Bar Association's Empire State Counsel Program and pro bono initiatives by local bar associations around the state;<sup>43</sup> the court system's Attorney Emeritus program, now almost 1000 lawyers strong, focusing on baby boomers looking to do meaningful pro bono work to help the poor;<sup>44</sup> the Volunteer Lawyer for a Day Program in Housing Court, developed by Deputy Chief Administrative Judge Fern Fisher as an alternative pro bono opportunity for lawyers;<sup>45</sup> our volunteer programs in consumer debt, family, landlord-tenant, and matrimonial and uncontested

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New York State. *Id.* The balance reported their addresses as either out-of-state or outside of the USA. *Id.*

<sup>43</sup> See *History of the Empire State Counsel Program*, N.Y. ST. B. ASS'N, <http://www.nysba.org/ESC> (last visited Aug. 6, 2014) (describing the program as one which "recognizes NYSBA members who, during the calendar year, performed 50 hours or more of pro bono legal services").

<sup>44</sup> See *Attorney Emeritus Program*, N.Y. ST. UNIFIED COURT SYS., <http://www.nycourts.gov/attorneys/volunteer/emeritus/rsaa/> (last visited Aug. 6, 2014) (describing the program as one for "attorneys in good standing, who are at least 55 years old, with a minimum of 10 years experience" who then "volunteer with approved pro bono legal service programs and assist, in myriad ways, to help meet the needs of growing numbers of New Yorkers who cannot afford counsel").

<sup>45</sup> See *Court-Sponsored Volunteer Attorney Program*, N.Y. ST. UNIFIED CT. SYS., <https://www.nycourts.gov/attorneys/volunteer/vap/index.shtml> (last visited Aug. 6, 2014) (allowing participating attorneys to choose "the court they wish to serve and the types of cases on which they wish to consult," including family law, consumer debt, and landlord/tenant cases).

divorce cases; and numerous court help programs to provide information, technology, and assistance to self-represented litigants.<sup>46</sup>

#### *D. Pro Bono Work by In-House Counsel*

We have accomplished much, and we can do so much more in the future. Looking to that future, there are untapped resources that we must pursue. Earlier this year, the New York State Court of Appeals amended our rules to allow pro bono work in New York by in-house counsel headquartered in New York but licensed out-of-state. Before this amendment, out-of-state lawyers were permitted to do legal work only for their employers and could not appear in court unless admitted to the New York bar or admitted pro hac vice.<sup>47</sup> While their colleagues, who were members of the New York bar, could engage in company-sponsored pro bono activities, they remained on the sidelines. Out-of-state in-house attorneys often have decades of relevant experience and an array of applicable legal skills. The top lawyers at many corporations including Randy Milch at Verizon, Ellen J. Rosenthal, and many others were supportive of the change. The resulting rule is extremely expansive, allowing in-house attorneys to maximize their potential contributions. In-house attorneys no longer require supervision by a New York attorney or an approved legal provider, and they need not seek pro hac vice admission when pro bono service requires appearance before a New York tribunal.

There is national recognition that this makes sense. In 2012, the Conference of Chief Judges passed a resolution that supported allowing “non-locally licensed in-house counsel who are permitted to work for their employer to also provide pro bono legal services.”<sup>48</sup> New York and other states that allow in-house counsel to do pro bono work recognize the tremendous reservoir of talent and experience in the corporate community that can and should be mobilized to address the justice gap. I would also note the wonderful work in this regard

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<sup>46</sup> See *id.* (describing the Volunteer Attorney Program “as a free service designed to ensure that these litigants have access to competent legal advice to guide them as they represent themselves”).

<sup>47</sup> ADVISORY COMMITTEE ON PRO BONO SERVICE BY IN-HOUSE COUNSEL IN NEW YORK STATE, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 5 (2013), available at <http://www.nycourts.gov/attorneys/in-house-counsel/IHC-ProBonoReport.pdf>.

<sup>48</sup> Conference of Chief Justices & Conference of State Court Admins., Resolution 11, In Support of Practice Rules Enabling In-House Counsel to Provide Pro Bono Legal Services, adopted as proposed by the CCJ Professionalism and Competence of the Bar Committee and the CCJ/COSCA Access, Fairness and Public Trust Committee (July 25, 2012), available at <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/07252012-In-Support-of-Practice-Rules-Enabling-In-House-Counsel-to-Provide-Pro-Bono-Legal-Services.ashx>.

done by Esther F. Lardent and the Pro Bono Institute in Washington, D.C., who have been very creative in developing pro bono initiatives with the D.C. corporate sector.<sup>49</sup> Armed with the new rule, we in New York plan to bring our corporate partners together to explore joint pro bono projects among corporate powerhouses headquartered in our state, with all the synergistic benefits that would flow from such partnerships. Our community of corporations and other business entities—almost 2 million strong—is the envy of the world. We need to harness their legal talents and capacity to serve the urgent legal needs of our citizens, and the new rule is a step toward realizing this goal.

### *E. Fifty-Hour Pro Bono Bar Admission Requirement*

Whether you are an in-house attorney, a commercial practitioner, or a tort lawyer, in a big or small firm, in the public or private sector, your training and your values are shaped in law school. Building a culture of service in new generations of lawyers has the potential to change our profession for decades to come. With that in mind, New York became the first state in the nation to promulgate a rule requiring law students to complete fifty hours of pro bono service before gaining admission to the New York bar. Performing fifty hours of legal service at the dawn of their legal careers helps to imbue new lawyers with life-long work habits, and performing legal work for the poor will give law students a window into the real world, building empathy and understanding for the less fortunate. That is why New Jersey, California, and Montana, among others, are considering rules similar to the one developed in New York with the guidance of a committee headed by my colleague, Senior Associate Judge Victoria A. Graffeo and Alan Levine of Cooley, LLP.<sup>50</sup>

The fifty-hour service requirement for law students is an example of the important role that state judiciaries can have not just in closing the justice gap but also in shaping the future of legal education as the legal profession evolves. The courts are the gatekeepers for bar admission and set the criteria for licensing. That authority gives the judiciary the potential to effect important changes in legal education. And there is a need for further change. The job market for lawyers has con-

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<sup>49</sup> Corporate Pro Bono, a partnership of the Pro Bono Institute and the Association of Corporate Counsel, has initiated several programs to increase pro bono service by in-house counsel, including the Corporate Pro Bono Challenge and the Clinic-in-a-Box Program. *Corporate Pro Bono*, PRO BONO INST., <http://www.probonoinst.org/projects/corporate-pro-bono/> (last visited Aug. 6, 2014).

<sup>50</sup> ABA STANDING COMM. ON PRO BONO AND PUB. SERVICE, *New York's 50-hour Preadmission Pro Bono Rule: Weighing the Potential Pros and Cons*, 9–11 (Oct. 2013), [www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/ls\\_pb\\_pre\\_admission\\_pro\\_bono\\_requirement\\_white\\_paper.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_pre_admission_pro_bono_requirement_white_paper.authcheckdam.pdf).

stricted while the cost of a legal education has soared.<sup>51</sup> Around the country, the legal profession is grappling with an oversupply of new attorneys, many of whom are not prepared to practice law.<sup>52</sup> Our college graduates are increasingly turning away from a legal education that may mean crushing debt with dubious job prospects after graduation.<sup>53</sup> First-year enrollment at U.S. law schools is at its lowest level since 1977.<sup>54</sup> Many in the legal community predict that in the next decade, we will see law schools go out of business in the United States, particularly law schools not affiliated with a university.<sup>55</sup> Something has to give!

Here at New York University, Professor Samuel Estreicher,<sup>56</sup> along with others in New York and the rest of the country, even including President Barack Obama,<sup>57</sup> have suggested doing away

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<sup>51</sup> See Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES, Jan. 31, 2013, at A1 (“Law school applications are headed for a 30-year low, reflecting increased concern over soaring tuition, crushing student debt and diminishing prospects of lucrative employment upon graduation.”).

<sup>52</sup> See, e.g., WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 188 (2007) (ascribing the “two major limitations of legal education”—“lack of attention to practice and [inadequate] concern with professional responsibility”—to “reliance upon a single, heavily academic pedagogy”); Ethan Bronner, *A Call for Drastic Changes in Educating New Lawyers*, N.Y. TIMES, Feb. 11, 2013, at A11 (describing contemplated changes to legal education as the “result of numerous factors, including a sharp drop in law school applications, the outsourcing of research over the Internet, a glut of underemployed and indebted law school graduates and a high percentage of the legal needs of Americans going unmet”); Adam Cohen, *Just How Bad Off Are Law School Graduates?*, TIME (Mar. 11, 2013), <http://ideas.time.com/2013/03/11/just-how-bad-off-are-law-school-graduates> (describing the “current bad times in the legal profession”).

<sup>53</sup> See Bronner, *supra* note 51, at A1.

<sup>54</sup> *Id.* at A14.

<sup>55</sup> See, e.g., Bronner, *supra* note 51, at A1, A14 (one expert expects “as many as 10 schools to close over the coming decade, and half to three-quarters of all schools to reduce class size, faculty and staff”).

<sup>56</sup> See Dylan Matthews, *Obama Thinks Law School Should Be Two Years. The British Think It Should Be One.*, WASH. POST (Aug. 27, 2013), <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/08/27/obama-thinks-law-school-should-be-two-years-the-british-think-it-should-be-one> (describing Professor Estreicher as “probably the most vocal advocate” of restructuring the law school curriculum); Daniel B. Rodriguez & Samuel Estreicher, Op-Ed., *Make Law Schools Earn a Third Year*, N.Y. TIMES, Jan. 18, 2013, at A27 (describing a gathering of “leaders of the New York bar, judges and law school faculty members” to discuss a proposal to allow students to take the state bar exam after two years of law school).

<sup>57</sup> See Barack Obama, *Remarks by the President in Town Hall at Binghamton University*, WHITE HOUSE (Aug. 23, 2013, 12:48 PM), available at <http://www.whitehouse.gov/the-press-office/2013/08/23/remarks-president-town-hall-binghamton-university> (“I believe . . . that law schools would probably be wise to think about being two years instead of three years . . . .”); Matthews, *supra* note 56 (enumerating various proponents and iterations of the suggestion, as well as alternatives, and comparing the plan to the British legal education system).

entirely with the third year of law school. It is an intriguing idea that we may of necessity turn to if we cannot solve the disconnect between declining enrollments, unnecessary debt burdens, and fewer jobs, as measured against the dire need for practice-ready, values-driven lawyers who can serve the many needs of New York's diverse constituencies. I suggest, however, that we have far too much invested in the current three-year structure to decapitate legal education as we know it overnight. Our law schools, and the in-depth three-year legal education they provide, have produced generations in the legal profession that have been instrumental in the most dramatic advances in our society. Let us brainstorm together and rethink all three years of law school to ensure their relevance and responsiveness to the legal profession and the needs of our communities in the year 2014. Let us not throw the baby out with the bath water.

#### *F. Pro Bono Scholars Program*

The idea for New York's new Pro Bono Scholars Program that I introduced in New York last month arises in large measure from the intersection of the need to re-imagine the third year in law school on the one hand and the need for civil legal services to the poor on the other. The program gives law students an incentive to devote their last semester of law school to pro bono work, making a significant contribution to addressing the access-to-justice gap. During the second semester of their third year, Pro Bono Scholars will do full-time legal work for underserved individuals and communities under the supervision of a legal service provider, law firm, or corporation in partnership with their law school.

In return, Pro Bono Scholars will be permitted, for the first time, to sit for the February bar exam while they are in their third year of law school. Until now, law students in New York could first take the bar exam in July after graduation and in the normal course would not be admitted until the following calendar year. With the Pro Bono Scholars program, law students will be able to radically accelerate the pace by which they enter the legal profession as licensed attorneys, being admitted essentially upon graduation.

By placing students under the supervision of practicing lawyers, as well as their law schools, we provide practical experience for law students, address their debt burdens earlier, and give them a leg up on job opportunities by getting them into the job market more quickly. Moreover, the Pro Bono Scholars Program will promote a culture of service and put law schools exactly where they should be—in the access-to-justice business! All attorneys are in the business of



providing access to justice. No matter our practice area, pursuing justice is the ultimate goal. The Pro Bono Scholars Program foregrounds law schools in this critical endeavor and will substantially buttress the value of a three-year legal education.

Beyond the law school years and the pro bono slots we find for participants in the program, we are now working to ensure that a significant number of our scholars continue on as full-time employees after graduation and admission to the bar, by using philanthropic dollars to build the capacity of legal service providers to expand and broaden their workforce. We have attacked the first part of the problem by giving students practical experience and hopefully a life-long interest in serving the unmet legal needs of the poor; now we need to start new lawyers on a career path that furthers the public good, ensuring that there are meaningful jobs for them when they graduate.

### *G. The Use of Nonlawyers to Meet the Need for Legal Services*

The Pro Bono Scholars Program has been met with a generally positive reception. But not every new idea receives a universally warm welcome. Controversy is especially common when we venture into areas that previously seemed off limits. One such area for the New York judiciary is the work of nonlawyer advocates to support unrepresented litigants in our courtrooms. We know that there are many functions that only a lawyer is qualified to perform. Only lawyers have the education, training, met examination standards, and ethical mandate that go hand in hand with full legal representation. But there are people without a law degree who nonetheless are more than capable of assisting unrepresented litigants. At a time when millions of litigants can neither afford to pay a lawyer nor are fortunate enough to have the services of a legal services provider, we need to marshal other resources on their behalf. This is already done in the medical profession. There is no substitute for a medical degree, but that community has recognized for many years that people with health care needs can be served in some measure by practitioners without a medical degree, like midwives or home health care aides, providing specified services at lower rates.

While the concept of nonlawyer assistance in legal matters is not yet widespread in the United States, there is extensive precedent for it in the common-law world. Nonlawyer advisers have an important role in England and Wales. They can accompany litigants to court, provide moral support, help to organize papers, take notes, and quietly give

advice on any aspect of the conduct of the case that is being heard.<sup>58</sup> Outside of court, Citizens Advice Bureaus in the United Kingdom, staffed largely by volunteers, provide free, independent, confidential, and impartial advice and information on housing, immigration, debt problems, issues with benefits and tax credits, and employment problems. These are issues that we in the United States typically identify as legal ones.

Here at home, nonlawyers who work daily in a particular area often develop expertise and knowledge that equip them to assist unrepresented litigants very effectively. Housing Counselors are a perfect example of how people with strong knowledge and skill in a narrow subject area can provide real help. Housing Counselors are funded and regulated by the United States Department of Housing and Urban Development.<sup>59</sup> They provide tools for making informed housing choices to current and prospective homeowners and renters—including those involved in foreclosure proceedings or in Housing Court.<sup>60</sup> They have been invaluable to litigants in New York. It is time to capitalize on and expand the valuable support that nonlawyer professionals can provide to safeguard due process and access to justice, a practice the U.S. Supreme Court recognized in the 2011 case of *Turner v. Rogers*.<sup>61</sup>

Beginning this year, specially trained and supervised nonlawyers, called Navigators, will begin providing ancillary, pro bono assistance to pro se litigants in Housing Court cases in Brooklyn and consumer debt cases in the Bronx. They will provide one-on-one assistance and give information, help litigants access and complete court do-it-yourself forms and assemble documents, and furnish moral support in settlement negotiations outside the courtroom. The Navigators will accompany pro se litigants into the courtroom and respond to factual questions directed to them from the judge, though they may not vol-

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<sup>58</sup> These nonlawyers are called McKenzie Friends. See generally LORD NEUBERGER OF ABBOTSBURY & NICHOLAS WALL, PRACTICE GUIDANCE: MCKENZIE FRIENDS (CIVIL AND FAMILY COURTS) (2010), available at <http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/mckenzie-friends-practice-guidance-july-2010.pdf>.

<sup>59</sup> For a comprehensive treatment of current legislative and programmatic requirements for the implementation of HUD's Housing Counseling Program, see U.S. DEP'T OF HOUS. & URBAN DEV., HOUSING COUNSELING PROGRAM HANDBOOK (2010), available at <http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/7610.1/76101HSGH.pdf>.

<sup>60</sup> See *id.* at 26 (listing “[r]esolving or preventing mortgage delinquency” as a permissible fair housing counseling, education, and outreach topic).

<sup>61</sup> 131 S. Ct. 2507, 2517–19 (2011) (finding the availability of nonlawyers, such as social workers, who provide “substitute procedural safeguards” in civil contempt proceedings in child support cases to be constitutionally sufficient for purposes of the Due Process Clause).

unteer information. For unrepresented litigants overwhelmed and intimidated by the process, the help of Navigators is crucial—especially considering that virtually all defendants in these cases are unrepresented. This is shameful!

I am proud to sponsor these incubator projects because I hope they will help demonstrate how much nonlawyers can accomplish without crossing the line into practicing law. They can serve a population who cannot pay even modest legal fees. And provide that help we must—even if it means relaxing our professional mantra that only licensed lawyers can facilitate the legal process. New York’s poor are in dire need of help and providing that help through trained nonlawyers in no way takes business away from practicing lawyers. That thinking is outdated and must be changed to reflect contemporary demands.

Building on the use of nonlawyers who do not, in a real sense, practice law, we must look at our legal regulatory framework: first to see if our unauthorized-practice-of-law rules should be modified in view of the crisis in civil legal services and the changing nature of legal assistance needs in society, and second, to determine if, short of full admission to the bar, there are additional skill sets, separate in concept from our incubator projects, that can be licensed to provide “low bono” or less costly services to help those in need of legal assistance. The high cost of legal services is a real barrier to realizing equal access to justice for a growing number of our citizens. If laypersons with training in discrete subject areas can dispense legal information or assistance expertly and more cheaply, we should explore how best to accomplish that without diminishing the great legal profession in our state. Fern Schair and Roger Maldonado, the heads of our Committee on Nonlawyers and the Justice Gap, are taking just this step by investigating whether the legal regulatory framework in our state should be adjusted in order to enhance our access-to-justice efforts.

### III

#### THE JUDICIARY AS THE LEADER OF THE ACCESS-TO-JUSTICE REVOLUTION

With all of these changes that I have talked about tonight, we are shifting the landscape for access to justice in New York and around the country. The cumulative effect truly amounts to a revolution, and the judiciary is and should be at its vanguard as we incrementally move closer to a civil *Gideon*, where we as a society demand that people be represented when the basic necessities of life are at stake. This is what we as judges and attorneys are supposed to be doing:

making equal justice a reality for everyone, regardless of his or her status in life. We are experiencing that revolution in the way we think about the need for legal services, about society's obligation to the poor, and about the ways in which we can fulfill that obligation. State judiciaries are uniquely positioned by our constitutional and societal role to advocate for access to justice and to meet the challenges ahead. We cannot be limited or narrow in defining our role, nor can we underestimate the impact we can have. By using the judiciary's authority to regulate the courts and the profession and shape legal education, by developing a record, adopting rules, and focusing on the noble values of our profession in order to promote innovation and change, we can and should have a dramatic impact on the equal-justice paradigm. We in the judiciary are duty bound to change the public dialogue as it relates to legal services for the neediest among us, so that access to justice will no longer be an afterthought, but rather will be recognized throughout the country as a fundamental right of every individual in a civilized society. I look forward to working with all of you toward that end.

Thank you.