

Thank you again for the opportunity to offer testimony to you on this vital issue. The success of the hearings last year which resulted in additional funding must be celebrated. The additional funding will result in more services for low income people at a time when New Yorkers continue to be faced with severe economic challenges. However, our job is not complete. The New York Times reported last week that one in five New Yorkers lives in poverty, the highest number since 2000. The numbers of unrepresented litigants continue to flood our courts with life altering cases. The desperation of litigants has not decreased. Just a few weeks ago a tenant committed suicide when the City Marshal attempted to evict him. You have already heard from our judges on the difficulties that they see in their courtrooms of litigants who are trying to handle their cases, usually poorly without an attorney. You have also heard from clients on the difference an attorney can make. We must now move forward to expanding the success of the funding obtained this year to increasing substantially the amount next year. This year at the request of the Task Force I am focusing my remarks on a topic other than the increase of funding: the simplification of court procedures and processes. Last years' Task Forces report concluded that increased funding alone will not maximize access to justice for New Yorkers, but more funding must be accomplished in tandem with simplifying the Courts. Simplification will assist

those unrepresented litigants who cannot obtain an attorney in navigating the courts. In addition some simplification measures can make it easier for civil legal services attorneys and pro bono attorneys to increase the numbers of clients they can assist and may also ease their ability to provide effective services. The Task Force conducted a survey of judges, non-judicial management personnel and legal services providers which resulted in a long wish list of simplification measures. In light of recognition of fiscal restraints and that it is impossible to accomplish everything overnight, today I speak to you on some of the priorities that the Task Force has determined are starters on the road to simplification of the court system.

Most individuals would not attempt to play a sport, play a game, take an exam, or fill out an important application without knowing the rules and instructions. Indeed, we give people clear rules or instructions on how to complete these tasks. But, we often do not always provide unrepresented litigants the rules, instructions and necessary tools when they are attempting to navigate the courts. In our adversarial system, the information, rules and forms un represented litigants need to be successful on their case are often not available or accessible. We often hide the ball necessary to play the game. It is time to stop hiding the ball, so the game is fair. The Task Force is setting forth for your consideration four proposals to further move forward access to justice: Standardization and simplification of forms and procedures, improvement of the Court's website, expansion of outreach and a study of court scheduling and of the Town and Village Justice Courts. In my

capacity as the Director of the New York State Access to Justice Program, I believe these proposals are well considered, vital and doable.

In order to achieve a major step forward in access to justice, standardization and simplification of forms and procedures is an effort we must embrace and get done. New York is already the national leader in DIY (Do-It-Yourself) computer programs for unrepresented litigants. DIY programs assist litigants in filling out court forms using a computer tutorial program. However, that effort will eventually be stymied unless we standardize and simplify forms and processes statewide. Recently, when preparing a DIY program for minor name changes my staff learned that depending on the county a family resided in, the family may be charged one fee for changing the names of all the children in the family or in other counties a fee will be charged for each child. In some counties the fee depended on who was at the counter at the time. In some counties three copies of the forms were required. In other counties less than three copies are required. Some counties required a petition others did not. We cannot move forward with more DIY programs unless we address these issues. Over 55,000 litigants have used the existing DIY programs. The implications of the lack of uniformity extends beyond DIY programs. Justice should not be more expensive or complicated depending on which county you reside. Moreover justice should not be stymied by obstacles we can remove.

In NYC tenants are given access to a check off list of available defenses in housing cases. In consumer cases in NYC clerks are instructed to require

affidavits from plaintiff debt collections which establish chain of custody of books and records, assignment and compliance with statute of limitations requirements. In the city , the court mails out notices to respondents and defendants of pending cases in housing and consumer credit before default judgments are entered. In Housing Court a large number of tenants come in to answer their cases stating that the only notice they received was the one mailed by the court. In consumer cases, thousands of notices are returned due to bogus, non-existent addresses or addressee unknown. In those cases clerks are instructed not to enter a default judgment parenthetically plaintiffs may move before a judge for the default judgment, but few do. As in housing cases, consumer defendants who answer indicate that the only notice they have received is the notice from the court. These measures do not exist outside NYC. Equal access to justice demands uniformity throughout the state.

The Task Force has set forth some examples of where simplification of forms and processes should be implemented. Any changes should be uniform throughout the state and all forms and instructions should be translated into numerous languages. The following are examples where improvements can be made where they do not exist already:

- ★ streamline and simplify the divorce process
- ★ affidavits of net worth, which request more information than necessary from poor litigants, including information about yachts and maids;
- ★ un-represented litigant housing/consumer court forms which provide

defenses and rights;

contested/uncontested divorce checklists, which are not standardized in the state;

- ★ Article 6 custody/visitation forms for people who are not biological parents; petitions for orders of protection, custody, and child support, as well as summons need to be in simpler language with clearer instructions; and
- ★ Service of process;
- ★ filing deadlines;
- ★ pleading requirements;
- ★ procedures to request an interpreter

Standardization of forms and procedures will assist in increasing limited scope representation. Legal services advocates and pro bono counsel and clinics could provide more limited-scope services by assisting litigants with filling out simplified forms. More volunteers could be trained on a state-wide basis to assist litigants if common forms were used and common procedures were in place. A by-product of simplifying the courts will be the reduction of litigation costs for all, including plaintiffs in bread and butter cases.

Without training of clerks to utilize and embrace new forms and procedures efforts to standardize and simplify will hit brick walls. Another recent inquiry by my office turned up a startling revelation. In one county a clerk indicated that there were no forms to vacate a tenant's default and that she never had a tenant move to vacate a default. In another county the clerk in his long career had only

seen five or less tenants come in to vacate a default. We have far to go in some areas of the State not only to develop forms and procedures but to educate the public and train court personnel.

Judges must be encouraged to accept simplified forms and procedures but also to feel comfortable in explaining procedure and defects in pleadings when rejecting the pleadings. In the absence of sufficient attorneys and Help Centers and the large numbers of unrepresented litigants, Judges must become engaged while remaining neutral. Nationally, the view of the role of a Judge is changing to include setting forth procedure, explaining why a pleading is inadequate and construing pleadings liberally. The concept is beginning to take hold and New York should be at the head of the movement of embracing the changes.

As we move further and further into the internet age, web sites become the conduit of information. Information is one pathway to increased access to justice. The Task Force has proposed various improvements to the website which will be included in the final report. For purposes of today I highlight just a few suggestions:

- ★ Court Help and local court web sites should be linked.
- ★ All court forms should be in a central place on the web sites not scattered as they are now. They should be organized so easily found.
- ★ All local courts should direct users to the central location for forms and legal information. This measure would insure all forms and legal information is uniform, accurate and up to date.

- ★ All local courts sites should be uniform
- ★ Translate the website into more languages
- ★ Improved search engines

Various out reach measures are endorsed by the Task Force, including expanding Volunteer Lawyer For The Day Programs and Volunteer Lawyer Programs in order to attract more pro bono attorneys by offering limited scope representation opportunities. In addition expansion of the Attorney Emeritus Program is encouraged. The Task force also supports developing partnerships of law firms, non-profits and foundations to fund Mobile Help Centers like the New York Lawyers Assistance Group (NYLAG) mobile van.

Other measures to ease the practice of law for civil legal services and pro bono lawyers and to assist unrepresented litigants unable to come to courthouses or in need of minimizing the time they spend in courthouses are proposed by the Task Force. The appropriate use of telephone and or video conferencing would accommodate litigants with disabilities, limited income and geographic challenges. Lawyers would be able to economize their time by the use of remote conferences. Electronic filing as well will make it easier for lawyers to practice. I believe that electronic filing may assist some unrepresented litigants. However, with respect to unrepresented litigants the protocols for them with respect to electronic filing must be carefully considered. Finally, the Task Force urges the Court study the possibility of staggered scheduling of court cases, so neither lawyers or litigants sit around waiting for their cases needlessly,

Finally, a review of the Town and Village Justices and the impediments faced in ensuring access to justice in these courts is necessary. My office receives frequent feedback from across the State on problems in these courts which undermine the delivery of justice. The Task Force endorses a full study of these courts.

A continuation of stable civil legal services is a must. An increase of the funding obtained last year is a must. The court system, as a responsible government partner in providing access to justice, must simplify and make uniform our courts. Change is never easy, but with the backing of Judge Lippman, Judge Pfau, the Presiding Justices, Judge Coccoma, the Deputy Chief Administrative Judge for Courts Outside of New York and all the other Administrative Judges and with the support of bar association such as the New York State Bar, change is not only doable but a certainty. In conclusion, paraphrasing Mohandas Gandhi, each of us in our own way must be the change we wish to see in the world.