

Law Day
Remarks by Chief Judge Jonathan Lippman
May 1, 2013

We gather here today at a truly historic moment. This year marks anniversaries of three events that have helped define and shape our country, our system of justice, and who we are as Americans.

One hundred and fifty years ago during the American Civil War, President Abraham Lincoln issued the most controversial document in his presidency, the Emancipation Proclamation, setting free all slaves within the rebellious states. Although he knew that it was a temporary measure and that only Congress could abolish slavery, the President stated that he never felt more certain that he was doing right.

One hundred years later, the Reverend Doctor Martin Luther King Junior passionately called upon America to live up to the grand promises made in the Constitution and the Declaration of Independence and ensure that all Americans would be guaranteed the inalienable rights of life, liberty and the pursuit of happiness – regardless of color. That same year, a unanimous Supreme Court in the landmark case of Gideon v. Wainwright found it to be an “obvious truth” that a defendant in a criminal matter cannot get a fair trial without a lawyer, and held that states are required under the Constitution to provide representation in criminal cases for defendants who are unable to afford their own attorneys.

All three of these events were critical steps forward in our nation’s constant pursuit of equal justice for all. This year’s Law Day theme, “Realizing the Dream: Equality for All,” calls upon us to reflect on the underlying significance of these events and to think about what we can do to help realize the dreams that drove pioneers of justice throughout our

history and continue to drive us to this day.

Dreams and grand declarations are often an essential first step on the path to change and reform, but the real challenge truly lies in translating those ideals into practice – in taking action to give them real meaning. Agreeing on principles to strive towards – even as fundamental as liberty, justice or equality – can be difficult and nuanced, but taking the steps to make them tangible and give them weight is often even harder and does not happen overnight.

Yet making the dream of equality for all a reality is precisely what we are called upon to do and what we must do to fulfill our obligations as a people, as a state and as a Judiciary. The pursuit of justice that is equal and fair for all is our very reason for being, it is what drives us in everything we do. Justice, to be meaningful, must be accessible to all, both rich and poor alike. If we cannot live up to this most basic of principles, we might as well close our courthouse doors. That is why, on this Law Day and this 50th anniversary of Gideon, we must resolve to build upon the progress we have made to ensure that all persons accused of a crime in New York, regardless of means, receive competent legal representation.

Two years ago on Law Day, I called upon New York to focus on the national challenge presented by Gideon. I am proud to say that since that time, we have made significant strides upon that long road toward our goal of providing uniform high quality representation throughout this state. While there is a pending constitutional challenge to our county-based indigent defense system that will be determined on its legal merits, we can and we must address this issue from a policy perspective now if we are to ensure the fairness and integrity of our system of justice. For the past two years, the Statewide

Indigent Legal Services Board, which I am privileged to chair, aided by the Indigent Legal Services Office, headed by its wonderful Executive Director, Bill Leahy and his outstanding staff, have taken up this great challenge -- and I believe the wisdom of the Legislative and Executive branches in creating this first of a kind tripartite Board to guide indigent defense efforts in our state has been thoroughly demonstrated by the results achieved and the critical steps we are taking on this Law Day 2013.

We have issued standards and criteria for indigent defense lawyers to help ensure quality, uniform, and conflict-free representation at the trial court level, and successfully opened lines of communication with public officials in all three branches of government, as well as with bar associations and the New York State Association of Counties, bringing all players together to forge positive policy solutions.

I made clear the context for these policy solutions in my 2011 speech when I talked about the shocking fact that in so many parts of the state defendants were not represented at arraignment, the first, critical stage of a criminal proceeding. The goal I stated at that time was to make representation at arraignment the norm in New York as it is in many parts of the country. While that may have seemed unrealistic or a dream at the time, today that dream is fast becoming the reality in New York -- across our entire state. Counsel at arraignment programs are underway in Chautauqua, Erie, Westchester, Tompkins, Ontario, Albany and Onondaga counties, and have made a substantial impact, with well over 5,000 clients receiving representation through these programs.

Most importantly, I am announcing today \$12 million in grants from the Indigent Legal Services Fund to deliver indigent defense services to defendants at arraignments. Up to twenty-five counties will be recipients of these grants in urban, rural and suburban

communities throughout our state. The grant funds will allow these counties to find the most efficient and effective ways of reforming the system throughout the state so that each and every person who is arraigned in New York is represented by competent counsel and receives fair, meaningful and equal justice in our courts. Clarence Earl Gideon proved that every one is entitled to such representation – and that's exactly what we are trying to accomplish here in New York. I want to thank Governor Cuomo and both houses of the Legislature for their support in ensuring that New York meets this basic milestone of criminal defense representation at the first appearance before a judge. Nothing could be more important and these \$12 million in grants will dramatically change the landscape in this state.

While addressing this critical priority, if New York is to truly make good on the promise of Gideon and provide counsel that is effective and meaningful, we must also address the problem of chronically overburdened public defenders. New York had a major breakthrough in this area four years ago following the passage of landmark legislation in 2009 – calling for caseload limits for defense lawyers. Pursuant to the statute, the State Judiciary adopted new court rules to establish appropriate caseload standards for attorneys who represent indigent criminal defendants in New York City. Notably, unique in this country, the Judiciary (supported by the Legislature and Executive branches) has funded this vital effort which has dramatically eased crippling burdens on public defenders and markedly improved the quality of representation for low-income defendants in the City. As a result of the new case cap limits, hundreds of additional lawyers, investigators and support staff have been hired. Illustrative of the impact is that the annual average weighted caseload of The Legal Aid Society's criminal defense lawyers in New York City

has been reduced from 682 at the time of the law's implementation to 517 as of November 2012. In practice, the change is even more dramatic as assigned lawyers have far more face-to-face interaction with clients and far more time and resources to investigate and prepare a competent defense. With more manageable caseloads, lawyers are in a much better position to secure just outcomes for their clients, which is in the best interests of defendants, the courts and the entire criminal justice system.

This is a great accomplishment, and we are proud of it. But we need to afford the same type of relief to upstate attorneys and their clients who face similarly daunting workloads and resource shortages – it is simply a matter of fundamental fairness. To assist with caseload reduction, the Indigent Legal Services Office has made funding available to hire over 50 additional attorneys in counties outside New York City, and distributed \$1.3 million in additional resources to fund additional investigative and expert services, over \$600,000 to support training and research, and over \$900,000 to fund technology and other office upgrades. The ILS Board has now approved a competitive grant totaling another \$12 million over three years to support local initiatives aimed at substantially reducing excessive caseloads and improving the quality of representation in upstate New York. Significantly, the 2013-2014 budget that was enacted into law, effective April 1, includes additional funding that enables a multi-year program and constitutes a major breakthrough. This grant program is critical to bringing upstate caseloads and the quality of representation to a level consistent with the ethos of Gideon. It will allow upstate counties to parallel the enormous progress made in New York City under the 2009 legislation.

The steps we are taking to ensure meaningful criminal defense representation in all

parts of our state are what the promise of Gideon is all about – the basic fairness of our criminal justice system. This goes to the very heart of our constitutional mission – to foster equal justice for all New Yorkers, regardless of means. The lack of effective legal assistance can unbalance the scales of justice and devastate the lives of real human beings and their families. As those responsible for the fair and equal administration of justice, it is incumbent upon us to make sure that justice is truly being done in our courthouses and that the playing field is leveled for all New Yorkers – a fundamental premise that all of us in the justice system fervently believe in.

One need only scan the national commentary this past March on the progress made in the 50 years after Gideon to be reminded that there is still much work to be done in this critical area. Indeed, just yesterday, a *New York Times* editorial reported on the deeply troubling situation in Louisiana, where that state's Public Defender Board has acknowledged that financing of indigent defense is at only 80 percent of the minimum amount needed, and as a result the provision of qualified counsel to every eligible defendant "is simply unattainable." This cannot be allowed to happen in New York. As we strive to achieve uniformity in the provision and quality of indigent defense services statewide, we must develop sound public policies to ensure a vision for the future of indigent defense in our state that builds upon the advances that we have made and is sustainable in the long-run.

We have reason to be greatly encouraged. We cannot and will not allow Gideon – arguably the greatest achievement in the history of our nation's criminal justice system – to become an empty promise. Speaking at the Justice Department's 50th Anniversary Celebration of Gideon, United States Attorney General Eric Holder perhaps put it best

when he said: “In the end, this may be the single most important legacy of Gideon: that it serves as a reminder of the obligation entrusted to every legal professional – not merely to serve clients or win cases, but to do justice.” On this Law Day, we renew our commitment to pursue justice under the rule of law for all New Yorkers – and make no mistake, by doing so, we will realize the dream, equality for all.

Thank you.