

## LAW DAY CEREMONY

### LAW IN THE 21ST CENTURY: ENDURING TRADITIONS, EMERGING CHALLENGES

#### COURT OF APPEALS ALBANY, NEW YORK

**CHIEF JUDGE JONATHAN LIPPMAN:** It's a delight to see you all today for Law Day, to have this beautiful, majestic courtroom packed with all of the people who should be here really: members of the legal community, the judiciary, the legislature, the executive and the citizens of Albany. It is a privilege to preside over this wonderful Court of Appeals' tradition. I am joined today by my six terrific colleagues on the Court and before I introduce them to you, I want to express on behalf of the entire Court of Appeals family how very grateful and honored we are that we will shortly have with us today his excellency, the Governor of the State of New York, David A. Paterson, as well as Solicitor-General Barbara D. Underwood, New York Bar President Michael Getnick, and so many others, leaders of state government and the great legal community in this state. I particularly mention our senate conference leader, John Sampson, who we're so pleased to have with us today; Sam Bolee, Judiciary Chair; Helene Weinstein; and the mayor of this great city, Mayor Jennings. Great to see you all and terrific to have you. I'd also note that the former judge of the Court of Appeals, Howard Levine, is with us and we're so happy to see him home at the Court of Appeals with all of us.

I want to recognize each of my colleagues, Carmen Beauchamp-Ciparick, the senior judge of the Court of Appeals; Victoria A. Graffeo, Susan Phillips Read, Robert S.

Smith, Eugene F. Piggot, Jr., and of course, Theodore T. Jones, Jr., who during last year's ceremony so graciously accepted my invitation to serve as the co-chair, along with Westchester County District Attorney Janet DiFiore, who is also here today to head the Justice Task Force, whose mission on an ongoing basis is to examine and help prevent the causes of wrongful convictions. One year later I am pleased to report that Judge Jones, DA DiFiore, and all the members of the Justice Task Force have wasted no time in getting down to business. The members have met over two dozen times to review the latest exonerations, interview experts, conduct field trips, and examine the key issues in this area including witness identifications, use of DNA evidence, oversight of forensic science petitioners, confessions, judicial training and many others. I am excited by their energy and commitment, and I very much look forward to their initial reform recommendations so that all of us working together can do everything possible to eliminate the scourge of wrongful convictions which perpetuate the dual injustice of incarcerating the innocent and allowing the guilty to go free. So thank you, Judge Jones and District Attorney DiFiore.

And now to turn to today's Law Day program. Law Day first started in 1958 as an occasion to celebrate our democratic society's commitment to the rule of law. Each year since, the American Bar Association has selected a theme to set the agenda for events across the country. The Law Day theme for 2010 is "Law in the 21st Century: Enduring Traditions, Emerging Challenges". This year we will hear remarks from the Governor, myself, the Solicitor-General, and the State Bar President, and two wonderful Law Day traditions: Presentation of the Merit Performance Awards and the Garfinkel Essay Contest prizes. The program may be a little different than you see because the

Governor is going to be a little late because of the weather, so we'll adjust as we go along. But what still stays as scheduled is that senior court attendant Michelle Perry Belches will now sing the "Star-Spangled Banner".

It's certainly worth the price of admission to hear Michelle every year sing the Star-Spangled Banner. Our first speaker is someone that the Court of Appeals has the pleasure of seeing appear before us regularly, our greatly respected and talented Solicitor General Barbara D. Underwood.

**SOLICITOR-GENERAL BARBARA UNDERWOOD:** Chief Judge Lippman, associate judges of the Court of Appeals, State Bar President Getnick, Chief Administrative Judge Pfau, and distinguished members of the bench and bar, and friends all. This year on Law Day we are asked to consider the challenge of law in the 21st century. Well, of course, this century has already presented us with many challenges ranging from economic crisis to international terrorism, but the one I'd like to talk about today is the challenge of moving from token representation of minorities and women in the leadership of our major institutions -- we've got that now in many places -- to genuine inclusiveness from one to more than one. This court has already made that move with respect to women. We've gone from having the first woman judge, our beloved former Chief Judge Kaye, to a court that for a time had four women judges and still now has three. And the U.S. Supreme Court seems to be moving in the same direction from first woman Justice Sandra Day O'Connor to two women now and a third seems actually possible. In that, the Supreme Court is following the lead of our Court of Appeals.

In the 21st century that move will surely come for African Americans and others as well. We need to move past token representation, one voice for the group, to hearing many voices, not only on the courts but in all our major institutions in and out of government, the leadership of our law firms and banks, and major corporations and universities and foundations as well as government at every level. Why is this important? Because when there's one woman or one African American in the room, that person is inevitably seen as a representative and no one can possibly represent all women or all African Americans or all of anything. But when there's more than one, each is heard as an individual and in that way the experience of the group and the individuals in it can truly be heard. Thurgood Marshall, for whom I had the privilege of working as a law clerk, understood that very well. He knew, as many did not, that two things could be true at the same time:

(1) If there are no blacks in the room, a distinct experience or insight is missing from the conversation; and

(2) there is no single black point of view. In writing about race discrimination in jury selection he said, "When a group is excluded from jury service the effect is to remove from the jury room qualities of human nature and varieties of human experience the range of which is unknown and perhaps unknowable, a perspective on human events that may have unsuspected importance in any case that may be presented."

That was *Peters v. Kiff* in 1972. I was his law clerk at the time. Justice Frankfurter, also a bit of an outsider, had said something similar in 1946 in *Ballard v. United States*. Writing about sex discrimination he said, "A flavor, a distinct quality is lost if either sex is excluded from the jury." Justice Marshall was explaining in *Peters* why the exclusion of

blacks from juries was harmful not only to black defendants but to all defendants and indeed to everyone. It was the distinctive experience and the distinctive perspective that mattered, not some predictable outcome. Others have mocked the idea of special flavors or unknowable varieties of experience.

Sometimes they say that nothing is lost because there is no black or female point of view and sometimes they say that something is lost but it hurts only the side that would be favored by the black or female point of view. Justice Marshall knew it was more complicated than that and I think we're starting to see that he was right. Now that some of our important courts have two or more women judges we see that the women do not always vote together, they certainly don't always favor the woman litigant, but even in their differences they reflect and bring to bear a shared and distinctive life experience, and that experience can shed new light on decisions in unexpected ways.

An interesting possible example came to my attention some years ago when the federal courts in New York overturned the state murder conviction of a woman, a retired police officer, who had been convicted of murdering a man she met in a bar and accompanied to a motel. Sometime after they went to the motel he was shot to death in his van. She and her lawyer -- this all came out in the habeas afterwards -- she and her lawyer discussed the possibility of claiming self-defense, but in the end she decided to rely on the argument that the prosecution had failed to prove she was the shooter rather than another person who was arguably also present. The federal court set aside her conviction, finding she had been denied effective assistance of counsel because her lawyer didn't advise her to choose yet a third strategy, to claim that she killed the man

under the influence of extreme emotional disturbance, which would have reduced the charge for murder to first degree manslaughter.

Now the decision whether to raise that defense is generally regarded as a difficult strategic decision that can't easily be second-guessed by the courts because raising it is something like a plea bargain. It amounts to giving up any hope of acquittal in exchange for a better chance of avoiding a conviction for murder. But here the federal courts decided that the lawyer should have counseled the woman to raise the defense, and they set aside her conviction.

A very interesting thing about this case is that the five federal judges who considered this matter split on gender lines. The male district judge and the two men on the Court of Appeals panel saw her as a defenseless and ignorant woman, inadequately advised by her attorney, and making an irrational choice. But the woman magistrate judge who first heard her claim and the woman judge on the appeals panel both flatly rejected the idea that this retired police officer was denied effective assistance of counsel. In their view she made an informed and reasonable strategic choice which simply worked out badly for her.

Why this difference? Well, the facts of the case are complex and the explanation for different views of the case may lie in the particularities of the facts, but it's at least possible that the men and the women on the bench came to the case with different ideas about women and their ability to make reasonable decisions.

In any case, I have no doubt that the quality of judicial decision-making in the case was better because the prevailing judges had to hear and contend with the views of their dissenting sisters. Women bring to decision-making a distinctive life experience

and then they each use it differently. Part of that shared experience is specifically female and part of it is the experience of being different, of being the only woman in a room of men, like being the only African American in a room of white people and struggling to be taken seriously. I'm going to invoke Thurgood Marshall again. When I was clerking for him, I received an offer of a teaching position at the Yale Law School. I told the Judge about it with great excitement and he said with a smile, "Oh, I know why you got that job. It's the same reason I'm on this court." Now that story has many meanings, but the one I like is he understood.

Long before there were women on the Supreme Court, Justice Marshall was the one who understood about sex discrimination. He was one of the first justices to hire a woman law clerk and he insisted on writing his anti-discrimination opinions in a way that condemned not only race discrimination, but sex discrimination as well. In fact, he said it was racist to think that blacks were the only people who needed the protection of the anti-discrimination laws. So it seems fitting that it was the first woman Supreme Court justice who made the point about perspectives rather than outcomes in her tribute to the first African-American justice.

Justice Sandra Day O'Connor wrote that she would miss Justice Thurgood Marshall at conferences because he brought a perspective shaped by his life experiences, and he was constantly pushing and prodding the others to see what he saw. He not only changed the conferences he attended but even the conferences that took place after he was gone. Justice O'Connor wrote, that "Even now I still catch myself looking expectantly for his raised brow and his twinkling eye, hoping to hear just once more another story that would by and by perhaps change the way I see the world."

That's one of the most important challenges of the 21st century: to bring into the courts and the boardrooms, the executive suites in business and in government, and the academies and all the institutions of our society, all the voices, not just token representatives, to hear the voices of the people who are present and those who are not and to build the bridges that are needed to unite rather than divide our large and diverse State and our even larger and more diverse nation. Thank you.

**CHIEF JUDGE LIPPMAN:** Next we're going to have a little bit out of order on the program, the presentation of the Merit Performance Awards by our spectacular Chief Administrative Judge, Ann Pfau.

**CHIEF ADMINISTRATIVE JUDGE ANN PFAU:** Thank you. Thank you, Judge Lippman. It is my great pleasure on behalf of the entire court system to be included in this Law Day celebration here at the spectacular Court of Appeals, and my part of today's program, to my great delight, is the awards portion. It is my real honor to give out the 2010 Merit Performance Awards for outstanding court employees. The four employees we honor today truly deserve your recognition for the spirit of professionalism and justice that they bring to their positions. Every year we use this wonderful occasion at the Court to honor the men and women who support the judges and provide such outstanding service to the litigants who come to our courts.

This year's Merit Performance Award recognized four members of our court family literally from across the state: Sandy Petrella from the Rochester City Court; Sheldon Charles from the Brooklyn Supreme Court; Monique Cruz from the courts in Washington County; and Donna Johnson from the Suffolk County Supreme Court. They

represent the very best among us, and as they come up to receive their awards I am proud to be able to introduce you to them and tell you a little bit about why they were selected this year. So as I call your name, please come up. Sandy Petrella.

Ms. Petrella has worked in the Rochester City Court since 1969, rising up through the ranks and quickly assuming increasing responsibilities. City courts are very busy places, and it takes a very special kind of person to stay in that court and take on new challenges as the court's caseloads continue to grow. Fortunately for us, Sandy did just that. She enthusiastically embraced the work for the court, streamlining the criminal division and automating the identification of defendants. She's now the chief clerk, a job she clearly loves and deserves. And even when her health was at risk, her first thoughts were for the continued and smooth functioning of the court that she has devoted her career to. For her outstanding dedication and her extraordinary service, it is my honor on behalf of the court system to give Sandy Petrella the 2010 Merit Performance Award for Superior Work Performance. (Applause)

Court Officer Sheldon Charles is aptly referred to as the ambassador of the Kings County Supreme Court, professional yet warm, a calming voice when needed to assure jurors and litigants alike. Officer Charles brings out the best in everyone, court staff, visitors, judges. No one escapes the charm of his good humor, his enthusiasm for his job or his friendly approach. Indeed, Officer Charles is a local legend in Brooklyn. He manages his security responsibilities with grace, repeatedly called on to de-escalate difficult situations, and he also has the time and energy to give court tours. I am very

proud to recognize Officer Charles for his remarkable professionalism and to give him the 2010 Merit Performance Award for Superior Work Performance. (Applause)

In 2006 Court Officer Monique Cruz took her incredible energy and her love of her community from the Bronx, where she served as an officer, to the other end of the state, to Washington County. Officer Cruz has embraced her new home, fitting right in and continuing to give back to her new adopted community. As she had done in the Bronx, Officer Cruz donates her time and talent to help those in need, from organizing an inner-city Little League to helping colleagues during difficult times. It is the good fortune of Washington County Combined Courts as well as all of us that Officer Cruz has maintained her incredible commitment to those whom she serves. Because of her dedication to others, it is my pleasure to give the 2010 Merit Performance Award for Community Service and Humanitarian Pursuits to Officer Monique Cruz. (Applause)

Most years the Heroism Award goes to a court officer, someone whose job includes helping those in distress. This year it is Senior Court Clerk Donna Johnson who has earned this prestigious award for her selfless act of heroism. Ms. Johnson, who also is the chief of Riverhead Volunteer Ambulance Corps, responded immediately when an attorney went into cardiac arrest in the Suffolk County Supreme Court. Ms. Johnson radioed an ambulance and then took up the defibrillator to shock the attorney's heart. She had to do this not once but twice as the attorney went into cardiac arrest a second time before she oversaw his safe arrival at the hospital. I am pleased to report that the attorney is back appearing in court and grateful to Ms. Johnson and for the officers who responded. And I would like to acknowledge those officers, who are here:

Senior Court Officer Todd Kosinski; Senior Court Officer Rodney Richardson; and Lieutenant Frank Dautzenberg. For this true act of heroism I am proud to give the 2010 Merit Performance Award for Heroism to Donna Johnson. Thank you, Judge Lippman.

**JUDGE LIPPMAN:** It is my great pleasure to introduce to you the Governor of the State of New York, David A. Paterson, who with all of the tremendous responsibilities, the travails, and some might say the adventures of being the Governor of this great State, he has graced us with his presence on Law Day for the last two years and by so doing honors this court and our legal profession. Mr. Governor, as always, with great respect and affection we very much look forward to hearing from you, particularly so on this Law Day 2010. Governor Patterson.

**NEW YORK STATE GOVERNOR DAVID PATERSON:** Thank you, Judge Lippman and to all of the judges of the Court of Appeals and all in the legal profession, and those who admire the legal profession and observe Law Day 2010 here at the Court of Appeals, and it is my high honor to be among you all today. Please excuse my tardiness. I wasn't flying the plane, but I'm sure if I had it would have been more exciting. This is my last opportunity as governor to present remarks at Law Day and I would like to on this occasion reflect on the power and pace of the law as it has affected legal change and the enduring impacts of this change on legal decisions, both those made in the vortex of contemporary forces and those that emanate from years of contest. I would also like to discuss how the law can address a circumstance that I think strikes at the hearts of what it means for all of us to be New Yorkers. How can we

achieve justice for our immigrants, especially amid the -- what appears to be certainly lack of flexibility and lack of equity in so many statutes all around us.

The law is a majestic river that moves us to a higher place of civilized conduct. Its beauty lies in its reliance on history and, in my view, its transcendence from politics so as to serve the public good. Its confluence may be where order and justice may co-exist, but only if those very vigilant oarsmen and women are able to navigate the obstacles and to direct the currents. The philosopher Parmenides once advised us that one can only step into the same river once. And so I am aware that at the end of this year my watch will come to a pause, but the resolution of law is all of our watch. It is all of us who participate in this process. And so I am aware that no law is immutable and the awareness of time as it impinges upon the concept of justice. I am just one man who has briefly stepped into the waters trying to direct their bend towards justice. Martin Luther King once said that the arc of change moves slowly but it does bend toward justice, but the rivers have not been easy for many, especially those who were convicted under Rockefeller drug laws.

For 35 years we imposed harsh penalties, 30 percent higher than the second harshest state, crippling a generation of dreams and in part sextupling our prison population. This was a political solution to crime, and political solutions too often err by moving in a direction opposite from that of justice. In 2009, after years of consummate struggle and effort, we were able to repeal these Rockefeller drug laws very much in part because the attitudes of the public had evolved when it comes to nonviolent drug abuse-related crimes. Finally the river had bent. And now there is a new view that drug

abuse is a public health hazard, one that the criminal justice system cannot adequately address.

For the past year, since the laws have been passed, judges now have the discretion to sentence nonviolent drug offenders to treatment rather than to incarceration and so there was a triumph in what is the pursuit of justice, a pursuit we hope will never end. And in New York we hope that that pursuit will lead to a vast and greater opportunity to provide criminal legal services to indigent defendants. The Chief Judge, as I am aware, is also concerned about this issue and we are working together to try and find a solution. We both agree that the current system is a disgrace.

A new bill that would enact fundamental change, a new bill that would shift the priorities to the quality of assistance away from the quantity of cases lies before the legislature as we speak. I think that it embodies a notion that most of us share, that the true measure of one's self worth is the ability for the imprint of the downtrodden to move our collective souls. I may not be governor when we are finally able to provide justice for indigent defendants but I certainly hope that when that time occurs that I will be happy that I stepped into the swirling waters trying to create change. And now all of us need to wade into a new river and bend it toward justice. And this relates to the imprint on our national soul and the way we open our arms to those who seek its shelter, for we are the nation that asked the world to give us your tired, your poor and the huddled masses yearning to be free.

This country was founded by immigrants and yet our immigration policies, particularly those related to deportation, are embarrassingly and wrongfully inflexible. And so as we look at these policies, I learned in March just what the devastating effect

of our nation's harsh immigration policies could be. A gentleman by the name of Qing Wu -- Qing Wu is a 29-year-old Chinese-American permanent resident who was convicted of robbery as a teenager. He acknowledged his crime and served three years. Ten years later, after completing his sentence, re-engaging in society, becoming a productive member of society and holding a job for that entire time, he decided to seek citizenship. Because of his conviction he was detained for months and then set for deportation back to China, a country he hadn't seen since he was five years old, a region of the world to which he has no connection. In the interest of justice I pardoned Qing Wu.

It is my desire that we make it very clear on this point that there are those who have committed egregious crimes and are a definite threat to public safety -- and just this weekend in New York City we found that we must remain vigilant over public safety as its scope may be wider than we think. And yet, those individuals are justly removed from the United States of America, but there are other cases which delineation is not as clear and in those cases our national immigration laws do not provide for any redress or mitigating circumstances but in New York we think differently.

In New York we believe in renewal. In New York we believe in rehabilitation. In New York we give second chances. And so to make those ideals a part of action, and with Mr. Wu firmly in mind, today I am announcing the formation of a special Immigrant Pardoning Board, and this board will examine and conduct a systematic review of all legal immigrant cases in which there is a potential for deportation or other consequences as a result of a minor crime or an old conviction. This board will only pardon those who are considered to be contributing members to the society of New

York and have earned the right to redress from deportation or indefinite detention. We take this action, which we see as unprecedented, in the hope that it will preserve the benefits and the good that immigration has offered to New York and will stand as a symbol of the justice and humanity that has captured the spirit of New York.

We hope that it will serve as a small example of how we can lessen the blow to those who have been caught up in the web of our national immigration laws, which are seriously in need of reform. And we hope also that it can demonstrate that justice can always find a way. I believe that it can. It has been that pursuit of that illusive path that has been my career. And no matter what it takes and no matter what office I hold and regardless of where the rivers take me or what river I will jump into next, justice will always be my aim, justice will always be my beacon, and justice will always be the watch word for all of us who love the law and live to see it grow. Thank you very much.

**JUDGE LIPPMAN:** Thank you, Mr. Governor, for those wonderful remarks and, again, thank you for gracing us with your presence today. We so greatly appreciate it. I have chosen to focus my remarks today on a longstanding challenge that has grown even more difficult and urgent for our State in these dire financial times--a challenge representing one of the most essential elements of the rule of law and one of the foundations of our democracy--equal access to justice.

I begin by noting that the meaning of "justice" and of "equal justice" has been studied and debated for literally thousands of years, going back to biblical times. Our own Declaration of Independence states the self-evident truth that "all men are created equal." Schoolchildren reciting the Pledge of Allegiance know that our nation promises

"justice for all." And our federal and state constitutions give further meaning to those words. Yet, in the 21st century, we often fall short of these ideals in America, and here in New York as well.

The court system is seeing this firsthand, now more than ever. Over the last few years, a noticeably larger share of our new case filings reflect the direct legal and human fallout from the recent economic collapse--not just bad debts and bad business deals, but skyrocketing home foreclosures, consumer debt cases, growing family offense and custody petitions, and a rise in matrimonial conflict. All of these cases in one way or another involve the very basic necessities of life for New Yorkers, so many of whom no longer have the means to hire an attorney.

If they are very fortunate, a small number of these litigants may be represented by one of the civil legal services programs that provide free representation to low-income New Yorkers. But, because of lack of resources, more and more of these programs must turn away potential clients. Some who are turned away may find representation from pro bono programs, but our State's lawyers, who already donate an estimated two million hours of pro bono work a year, cannot by themselves possibly fill the huge gap that still exists.

This means that a rapidly growing number of litigants--two million at last count--have no choice but to go to court without the help of a trained professional who knows the law and how to navigate the court system. Our court-sponsored volunteer attorney programs provide limited legal assistance to many of these people. This is extremely helpful, and we are so grateful to the volunteers, but there is no substitute for full legal

representation, especially for the most vulnerable litigants in our society--the elderly, children, struggling families, people with disabilities and abuse victims.

How then do we as a profession and as a society fulfill our moral and ethical obligations to assure equal access to justice? How then do courts and judges fulfill their mission of delivering equal justice under the trying circumstances I just described?

Forty-seven years ago, the United States Supreme Court, in *Gideon v. Wainwright*, said in regard to criminal case representation that:

In our adversary system of justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.

Nearly half a century later, it is an equally obvious truth that in civil proceedings involving fundamental human needs, it is extremely difficult, if not impossible, for a person to be assured a fair outcome without a lawyer's help. As Chief Judge, I see this as one of the great challenges facing our justice system today. No issue is more fundamental to our constitutional mandate of providing equal justice under law than ensuring adequate legal representation.

In 2006 the American Bar Association promulgated a resolution urging governments to provide legal counsel as a matter of right at public expense to low-income persons in cases where basic human needs are at stake--shelter, sustenance, personal safety, health or child custody. While New York provides for a limited statutory right to counsel in certain family proceedings, there generally is no right to counsel in civil cases in New York, or for that matter around the country, even where the most

basic necessities of life are at risk. For all of these reasons, and to meet our constitutional and ethical mandates, the Judiciary of this State is determined to bring us closer to the ideal of equal access to civil justice. I am not talking about a single initiative, pilot project or temporary program, but what I believe must be a comprehensive, multi-faceted, systemic approach to providing counsel to the indigent in civil cases.

It begins with a new way of looking at funding. New York already has the dubious distinction of being one of only seven states that do not provide stable funding for civil legal services. Our reliance on undependable revenue streams is highly problematic. A stark illustration is this year's crisis in IOLA, our Interest on Lawyers Accounts program, which funds many civil legal services providers around the State. IOLA revenues declined from \$31 million to less than \$8 million because of the economic downturn, which led us to allocate \$15 million for IOLA in the Judiciary Budget request for the 2010-2011 fiscal year. While we are hopeful that this request will be granted, it represents only a small portion of the funding needs--more is needed on a going-forward, permanent basis.

To jump-start this effort to provide civil legal services funding in the years ahead, as Chief Judge and the head of the Judicial Branch of government, beginning this fall I will preside over annual public hearings to assess the extent and nature of unmet civil legal services needs in all parts of the State, in order to recommend to the Legislature and the Executive, publicly and transparently, the level of public resources necessary to meet those needs. I will conduct one hearing in each of the four Appellate Division

Departments, together with the Presiding Justice of that Judicial Department, the Chief Administrative Judge and the President of the New York State Bar Association.

By doing so New York will be the first state in the nation to have the entire leadership of the Judicial Branch of government and the leadership of the state's bar, in our case 150,000 strong, make such a singular and unequivocal commitment to providing civil legal representation to the poor in matters where they need it most, where their well being as human beings and that of their families is at stake. I want to thank my fellow members of the Administrative Board of the Courts, the policy-making body of the court system, Presiding Justice Luis A. Gonzalez of the First Department, Presiding Justice A. Gail Prudenti of the Second Department, and Presiding Justice Anthony V. Cardona of the Third Department, all of whom are here today, as well as Presiding Justice Henry J. Scudder of the Fourth Department, for their unswerving support, and Ann Pfau, our terrific Chief Administrative Judge, and State Bar President Mike Getnick and President-Elect Steve Younger, all of them for their enthusiastic participation in this effort and their total dedication to the ideal of equal justice for all in New York.

To help prepare for these public hearings around the state, and as a centerpiece of our efforts in this regard, I am appointing The Task Force to Expand Access to Civil Legal Services in New York, made up of distinguished New Yorkers, headed by Helaine M. Barnett, Esq., who retired recently as the longest-serving president of the Legal Services Corporation in Washington, D.C., the nation's single largest funding source for civil legal services for low-income individuals. Previously Ms. Barnett headed the Civil Division of the Legal Aid Society in New York City, where she practiced for 37 years. We could not have a better Chair, and I am so delighted that she has agreed to serve in

that capacity. The composition of the Task Force will be announced in the coming weeks, but it will include statewide representatives from the courts, civil legal services and pro bono providers, bar associations and bar foundations, government, law schools, business groups, consumer advocates and the not-for-profit community.

In addition to helping set the agenda for the annual hearings that I will be holding, the Task Force will have a broad mission--recommending statewide priorities, defining the types of legal matters in which civil legal services are most needed, and proposing standards, such as income levels for determining which litigants should be eligible. The Task Force will also advocate for support for expanded civil legal services and help improve the efficiency and effectiveness of the delivery of legal services. It will gather and distribute information about programs, strategies, and technological approaches that have proven successful, and issue guidelines or best practices to help providers.

The Task Force will work closely with civil legal services groups, grant-making organizations, foundations, pro bono programs, and law school clinics, and with Judge Fern A. Fisher, who is our stellar Deputy Chief Administrative Judge for New York City Courts and Statewide Director of the court system's Access to Justice Program. Under Judge Fisher's direction, the court system will continue its ongoing work on the broad range of access to justice issues, which includes providing help for unrepresented litigants as well as enhancing pro bono legal services, using vehicles like the newly established Attorney Emeritus program that taps into an underutilized segment of the legal community--retired lawyers.

Effective at the beginning of this year under amended attorney registration rules,

qualified attorneys who previously would have retired can now practice law on a pro bono basis if they commit to at least 30 hours a year of legal services to low-income clients. The Attorney Emeritus works with a qualified volunteer program, which provides malpractice coverage and access to offices and staff as well as any necessary training. With 49 qualified organizations already participating and an enthusiastic response from attorneys, this idea clearly has struck a chord with senior lawyers, mostly baby boomers, who want to use their retirement years in productive ways that promote the public good.

To help us capitalize on this early momentum and develop a blueprint for increased senior lawyer pro bono in New York, I am forming the Attorney Emeritus Advisory Council to be co-chaired by a distinguished lawyer, academic and public servant who really needs no introduction in this state, John D. Feerick, former Dean of Fordham Law School; and by Fern A. Schair, Chair of the Feerick Center for Social Justice at Fordham. The Advisory Council will consist of statewide representatives whose mission will be to advise us and provide support and guidance for the Attorney Emeritus Program. I believe that with these new structures in place--annual hearings by the Chief Judge and state court and bar leadership on civil legal services, leading to a recommendation to the Legislature and the Executive for civil legal services funding; The Task Force to Expand Access to Civil Legal Services headed by Helaine Barnett; the expansion of pro bono and self-help resources around the State; and the Attorney Emeritus Advisory Council led by John Ferrick and Fern Schair--New York will be in the forefront in this country in expanding civil legal services to the poor in these challenging times.

In March 2013, we will reach the 50th anniversary of the Supreme Court's decision in *Gideon v. Wainwright*. By then, it is my fervent hope, first, that it will be an obvious truth to all that those litigants faced with losing the roof over their heads, suffering the breakup of their families or having their very livelihood threatened cannot meaningfully pursue their rights in the courts of New York without legal counsel; and second, that it will be equally obvious that we together will have taken major steps forward in providing such representation to those who need it most, making equal justice for all not just an ideal, but truly a reality in our great State. Thank you.

Our next speaker is New York State Bar President Michael E. Getnick, our terrific president of the State Bar. We have worked so closely with him over the past year, and the judiciary so greatly values his efforts on behalf of the courts and the profession.

**NEW YORK STATE BAR PRESIDENT MICHAEL E. GETNICK:** Chief Judge Lippman, Governor Paterson, Solicitor-General Underwood, distinguished members of the Court of Appeals, Justices Pfau and Fisher, presiding judges of the Appellate Division, it's a great honor to be here. It's also very interesting for a lawyer to be sitting or speaking over here and looking out, and I notice two things right off the bat. The lamp says "Appellant" so we're on the appellant side over here and there's a red light on and a white light on and I promised that would not come on during my remarks.

In 1958, President Eisenhower established the first Law Day emphasizing our nations and I quote, "Great heritage of liberty, justice and equality under the law," and as Judge Lippman pointed out - if you look at the pamphlets that you have the key

words they're using this year are "Enduring Traditions, Emerging Challenges" - and that's what my remarks are going to direct. I also found out at the annual meeting it's dangerous to speak after the Chief Judge because he and I are simpatico on so many things that I said to him, "Gee, it's better when I speak before you rather than after because the audience may hear some of the same themes," but I'm going to take that chance. What President Eisenhower did was to underscore the traditions which are at the foundation of our justice system, the rule of law and guaranteed fundamental rights of individuals, but he stressed our moral as well as our civil obligation to preserve and strengthen these rights. We are a nation of rights but we are also a nation of responsibilities. The Ten Commandments are all about responsibilities, and as a nation which cherishes the law it is the responsibility of our government to not only promote but to assure access to justice.

I started my career as a Legal Aid attorney in Oneida County in 1970. Later I became the president of the nine - county Legal Aid Society of Mid New York. From personal experience I know how significant are the needs of those citizens unable to afford legal counsel - mothers and fathers, children, the disabled, those who by circumstances are down and out, who look to the state and federal governments to make access to justice a reality. But what is access to justice without a court system and judges who are respected and supported by the executive and legislative branches of government? Yes, there are three branches of government -- the Executive, Legislature and Judiciary -- and there is the doctrine of separation of powers; however, there should not be and there cannot be a separation of commitment to the rule of law,

access to justice, and a strong and independent judiciary to oversee and administer the same. This is my message on Law Day.

As a point of commentary, not criticism, frankly I am tired of hearing that this is not the time to consider raising judicial salaries. If it is a matter of timing everyone in this great room, the Court of Appeals, knows that the time for such consideration is long overdue. For a member of the judiciary to be without a cost of living increase for 12 years, to be making two-thirds of the salary she had 12 years ago sends the wrong message. That is not how you retain or attract the best and the brightest to the bench. It is incredible that our Judges and courts are able to function at the high level they continue to do. Thanks to the efforts and leadership of former Chief Judge Kaye and present Chief Judge Jonathan Lippman and the Office of Court of Administration our courts are still providing justice to an ever-increasing number of cases and pro se litigants who cannot afford to find, who cannot find and cannot afford attorneys to represent them. What can we afford? What can we not afford? We cannot afford to have our courts slowed down, let alone shut down even one day, even one hour.

Whatever the needs of the citizens of this state, justice must be at the top of the list, justice for all. There are parallel needs for funding an independent judiciary and civil legal services. We need permanent independent state commissions to oversee and administer to the same to avoid the crises we are now in. As you all know, the State Bar fully supports the judiciary budget in all respects. We thank Judge Jonathan Lippman for putting 15 million into the budget for funding of civil legal services earmarked for the same. To see the sweeping of funds originally designated for indigent defense and civil legal services for the poor into the general fund points to the path not to be taken. The

same for raising court fees and filing fees which in any way make access to justice more expensive and more difficult. We urge the Governor and the Legislature to work with the Judiciary in addressing these concerns. "Pay to play" was never a slogan and cannot become a slogan to be able to open the door to our system of justice.

Finally, I want to thank the attorneys throughout New York State and particularly the thousands and thousands of members of the State Bar who give so generously of their time to provide free legal services to those unable to afford the same. Our legal services offices are doing a great job but they cannot go it alone. The slogan, "the good we do" is not just some sound bite. It's our call to service. Last year alone, those members of our association who qualified for the designation of Empire State counsel, which requires 50 hours or more of pro bono service, led the way. Fourteen hundred attorneys who were Empire State counsel donated just under 250,000 hours of free legal services, hundreds of thousands of additional hours provided by attorneys and law firms who did not seek that title Empire Counsel. How much money did that save the state?

More importantly, how many poor persons were able to avoid foreclosure, the loss of their homes, the loss of custody rights? How much financial cost did the state avoid by the benefit of civil legal service and pro bono programs? Just as importantly, if not more so, how much social cost was avoided and how much justice was provided to those otherwise unable to afford the same? That is my message on Law Day. Let us leave this hallowed courtroom all the more determined to work together to do our best to fulfill Alexander Hamilton's pledge, "The first duty of society is justice." The economy is tough and times have changed, but not the need for justice for all. Thank you.

**JUDGE LIPPMAN:** The last item on our program today will be Judge Fern Fisher -- the wonderful Judge Fern Fisher giving our Garfinkel Essay Contest Award. Judge Fisher.

**JUDGE FISHER:** Chief Judge Jonathan Lippman, Governor David Paterson, other distinguished guests, one and all, good afternoon. It is my pleasure to do this segment of the program. The Historical Society of the Courts of the State of New York annually sponsors the David A. Garfinkel Essay competition. SUNY and CUNY community college students from around the state are invited to write an original essay on a specified topic of legal history. This year the topic is the "Evolution of Justice Along the Erie Canal". Forty-two students entered the contest this year. Six students were awarded an honorable mention for their work and they are: Christina Basdeo from Queensboro Community College; Kristen Kasper from Genesee Community College; Shannon Kilner from North Country Community College; Genevieve Oliveira from Genesee Community College; John Sambucci from Queensborough Community College; and Cheuk W. Shum from Queensborough Community College. Four essays were selected to be submitted to the former Chief Judge Judith S. Kaye who chose the prize winner. The four finalists are: Ese Peter Abohwo from Queensborough Community College; Phyllis Washburn from Genesee Community College; Kerri Pickard-DePriest from Onondaga Community College; and Leah Reino from Genesee Community College. Two were selected under the scrutiny of our former Chief Judge Kaye, who we all know is a tough scrutinizer, and Judge Kaye, selected the essay written by Kerri Pickard-DePriest as the winner of the second prize and Leah Reino as the winner of the

first prize. I am now asking that Leah and Kerri come forward to accept their prizes, which are cash, checks. I tried to keep them, but they wouldn't let me. And as they're coming up I want to congratulate their family and friends that supported them to this point, and also their two professors from their schools are here, and congratulations to their professors for being the kind of teachers that we want in the State of New York. Our future stars, Leah Reino and Kerri Pickard-DePriest. Congratulations.

**JUDGE LIPPMAN:** Thank you, Judge Fisher, and thank you, prize winners. And now as every Law Day should end, we have Michelle Perry Belches singing "America the Beautiful".

Thank you all for being here. Have a happy Law Day.