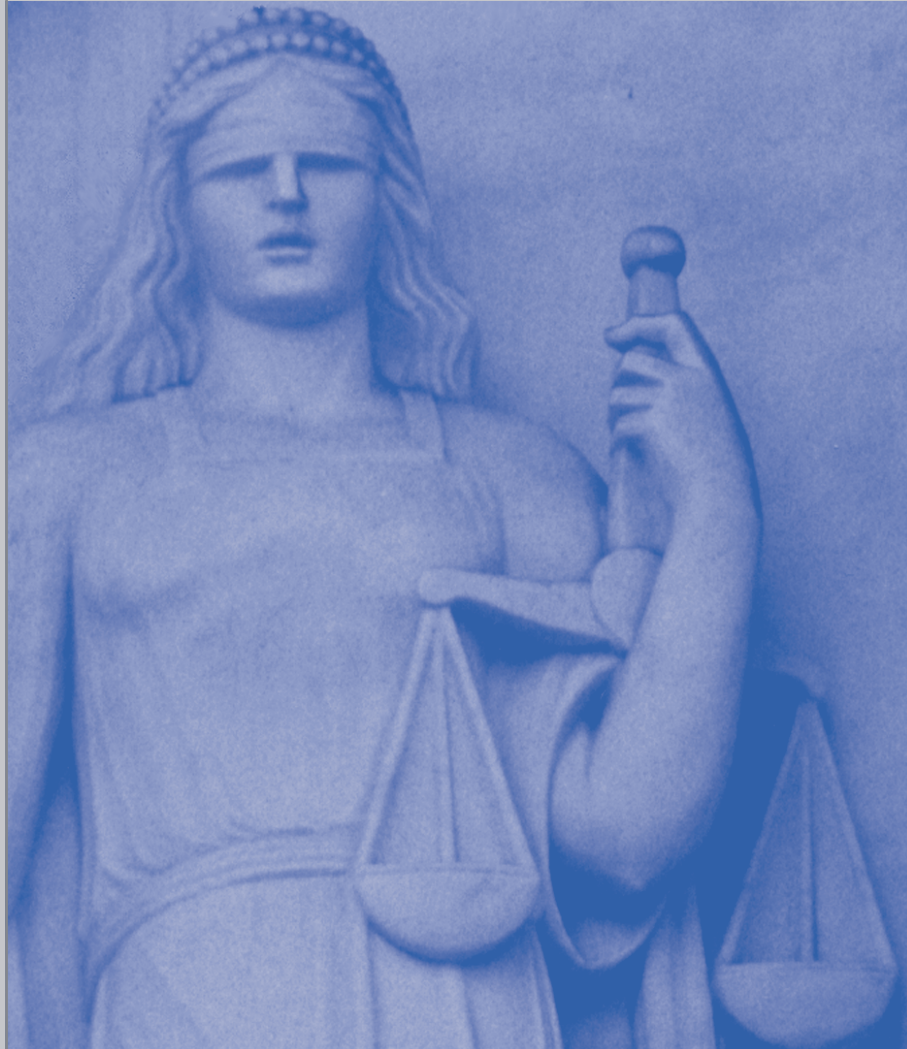


Expanding Access To Justice In New York State



A TEN-YEAR REPORT PREPARED BY THE OFFICE
OF THE DEPUTY CHIEF ADMINISTRATIVE JUDGE
FOR JUSTICE INITIATIVES

March 2009

This report is dedicated to the vision and legacy of
former Chief Judge Judith S. Kaye.

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PREFACE

During the last decade, I have had the honor to serve as the Deputy Chief Administrative Judge for Justice Initiatives – a position created by Chief Judge Judith S. Kaye to address affirmatively the myriad of access-to-justice challenges that face low-income New Yorkers when they have legal matters that must be resolved. In this capacity, my Office of Justice Initiatives and I have been privileged to work on a statewide level with many groups, including judges, court administrators, attorneys, law school administrators and faculty, and faith-based communities. We also have worked on a national level, with organizations such as the Legal Services Corporation and the American Bar Association’s Standing Committee on Legal Aid and Indigent Defense. Each organization has provided invaluable insights and knowledge of the access-to-justice barriers that confront low-income individuals.

It is from these experiences that I reflect upon the unique and extraordinary vision and commitment of Chief Judge Kaye. From her appointment as Chief Judge, she set as one of the court system’s highest priorities to ensure that low-income New Yorkers have equal access to the courts and the legal system. To achieve her goals, she chose to take a direct-action approach in order to achieve tangible results. To this end, she created a high-level, operations-based judicial administrative office and charged it with the requisite responsibility to get the job done.

Since 1999, my staff and I have dedicated ourselves to answering Chief Judge Kaye’s challenges and making the courts and the legal system more accessible. This report summarizes the many initiatives and projects which were undertaken at the Chief Judge’s direction and with her unwavering support. It is a record of which to be proud, demonstrating substantial achievements in expanding access to justice. The work of the Office of Justice Initiatives has brought about a sea change in attitudes toward the role of the courts and legal profession in addressing the unmet legal needs of low-income New Yorkers. It also has produced strong and long-lasting partnerships and collaborations, without which our accomplishments would not have been possible. Most importantly, it has made a real difference in people’s lives, by providing them access to legal and informational resources to address their legal needs.

Chief Judge Kaye’s access to justice legacy will be heralded for decades to come. The New York State court system remains steadfast to her vision and commitment to ensuring equal access to justice for all, regardless of financial means, and will continue this work well into the future.

Juanita Bing Newton
New York, New York

I. INTRODUCTION

During the last decade, a substantial segment of the bench and bar nationally have come to acknowledge their fundamental obligation to provide access to justice for those facing obstacles in utilizing the legal system.¹ Throughout the country, judges, bar associations, private and public-interest lawyers, and law school administrators and faculty are working to develop and enhance programs and policies to expand civil legal services funding, increase pro bono participation and address the needs of the self-represented.²

Due to the commitment and vision of Chief Judge Judith S. Kaye, the New York State Unified Court System has been at the forefront of the access to justice movement, ensuring that those without means have equal access to the courts and legal system. In May 1999, Chief Judge Kaye created the position and office of the Deputy Chief Administrative Judge for Justice Initiatives (“DCAJ-JI”). The creation of a separate high-level judicial administrative office charged with the responsibility to integrate the broad principles of access to justice into the core elements of court operations, was a crucial and unprecedented step that unequivocally reaffirmed the court system’s commitment to eliminating disparities in accessing justice.³ The new position ensured statewide leadership and highly focused coordination of efforts to address access to justice concerns.

The historic nature of this commitment cannot be overstated. It was the first change in the organizational structure of the New York State courts since the court system was unified in 1978.⁴

¹ “Access to justice” can broadly be thought of as having as its goal “to develop, coordinate, and oversee initiatives to respond to the civil legal needs of low-income people.” Russell Engler, *Toward a Context-Based Civil Right to Counsel Through “Access to Justice” Initiatives*, 40 Clearinghouse Rev. J. Poverty L. & Pol. 196, 197 (2006).

² See generally American Bar Association Resource Center for Access to Justice Initiatives, <http://www.abanet.org/legalservices/sclaid/atjresourcecenter/home.html>.

³ As Chief Judge Kaye stated at the time, “Access to the legal system is an inherent right of citizenship, yet far too many New Yorkers are currently denied this right because they lack economic resources. The creation of this new Deputy Chief Administrative Judge position reflects the paramount priority we place on eliminating disparities in access to justice.” See Press Release, *Judge Juanita Bing Newton Appointed Deputy Chief Administrative Judge for Justice Initiatives*, New York State Unified Court System (June 29, 1999).

⁴ In 1978, the court system was unified pursuant to constitutional amendment. NYS Constitution article VI, § 28. The revisions authorized the Chief Judge to delegate administrative responsibilities to a Chief Administrative Judge, who was authorized to create three Deputy Chief Administrative Judge positions, each of which are operational in nature: two Deputy Chief Administrative Judges responsible for, respectively, the courts inside and outside New York City, and a Deputy Chief Administrative Judge responsible for managing the Office of Court Administration. Rules of the Chief Judge, 22 NYCRR § 81.1 (a). This structure remained unchanged until 1999, when the Deputy Chief Administrative Judge for Justice Initiatives position was created.

The DCAJ-JI was directed to develop a statewide focus and consensus regarding access to justice policies, and to bring about specific changes in court operational procedures aimed at improving access to justice for the poor in five critical areas: (1) strengthening the delivery of civil legal services; (2) strengthening the delivery of criminal indigent defense services; (3) increasing the provision of pro bono services; (4) addressing the needs of self-represented litigants; and (5) expanding community education and outreach about the courts and how they operate. Thus, the Chief Judge's charge went beyond the aspirational to direct action on making access to justice an integral part of the court system's administrative and operational structure.

Since mid-1999, the DCAJ-JI has sought to use organizational leverage and resources to expand access to justice throughout the state. The assignment has been made more challenging due to the growing income inequality gap in New York,⁵ which has resulted in massive increases in filings in, among other areas, housing, consumer credit and foreclosure cases, a majority of which involve low-income individuals. At the same time, there have been drastic reductions in funding for civil legal services, resulting in a fraction of the civil legal needs of the poor being met.⁶ This increasing inequality of income, combined with greatly reduced access to legal resources, has threatened the very basis of equal justice under the law. When some citizens have vastly more resources than others, the ability of the courts to act as fair referees is compromised, particularly in our common-law adversary system where litigants are responsible for developing facts and presenting issues and law to the courts.

Despite the challenges, the DCAJ-JI has employed numerous strategies to achieve concrete results, including: (1) focusing on collaborations at the local level; (2) sponsoring meetings, conferences and networking sessions to bring together diverse stakeholders in order to work mutually toward tangible goals; (3) utilizing research tools and strategies to gather relevant information and using the findings to develop sound policies and programs; and (4) establishing an extensive local and national network for sharing information and ideas, and implementing solutions. Major accomplishments include:

⁵ The rise of income inequality is not limited to New York. However, the disparity in incomes is among the greatest here. See Center on Budget and Policy Priorities and the Economic Policy Institute, *Pulling Apart: A State-By-State Analysis of Income Trends* (April 2008). New York ranks number one on the "Greatest Income Inequality Between the Top and the Bottom, Mid-2000s"; number four on the "Greatest Increases in Income Inequality Between the Top and the Bottom, Late 1980s to Mid-2000s"; number four on the "Greatest Income Inequality Between the Top and the Middle, Mid-2000s"; and number six on the "Greatest Increases in Income Inequality Between the Top and the Middle, Late 1980s to Mid-2000s."

⁶ A 1990 study estimated that there were over 3,000,000 unmet legal needs in New York State, resulting in not more than 14% of the poor's overall legal needs being met. New York Bar Association Committee on Legal Aid, *The New York Legal Needs Study* (June 1990, revised 1993), at pp. xiv, 20. See also Legal Services Corporation, *Documenting the Justice Gap in America* (September 2005)(finding that at least 80% of the legal needs of low-income Americans are not being met).

- First-time inclusion of funding for civil legal services in the court system's budget for fiscal year 2007-2008;
- Spearheading the successful legislative effort to increase New York's assigned counsel rates;
- Designing and implementing ProBonoNY, a statewide program to increase pro bono legal representation;
- Successfully advocating for two rule changes to facilitate expansion of pro bono services: (1) amending the continuing legal education ("CLE") rules to permit CLE credit for pro bono work; and (2) amending the disciplinary rules regarding conflict checks in certain situations where an attorney is providing limited-scope representation of the self-represented;
- Expanding courthouse offices, generally known as Offices for the Self-Represented or Resource Centers, which provide informational assistance to the self-represented;
- Creating the CourtHelp Web site, a virtual Office for the Self-Represented, which provides the self-represented litigant with court and legal information in an accessible format;
- Expanding the use of document assembly technology, through collaboration with the civil justice community, to produce customized legal forms and information sheets for use by self-represented litigants and pro bono attorneys;
- Developing and implementing training programs for judges, judicial officers and non-judicial staff on self-represented litigant issues; and
- Developing education and outreach initiatives for the public, including religious leaders and students, to ensure increased awareness of the courts.

This report summarizes the major initiatives of the DCAJ-JI, categorized into the five areas of focus: (1) strengthening the civil legal services delivery system; (2) strengthening the criminal indigent defense delivery system; (3) increasing the provision of pro bono services; (4) improving access for the self-represented; and (5) expanding community education and outreach.

II. STRENGTHENING THE CIVIL LEGAL SERVICES DELIVERY SYSTEM

The complexity of New York law and its court structure make the assistance of an attorney critical for just resolution of legal matters. Yet the large majority of poor and low-income New Yorkers do not have access to an attorney for their civil matters, primarily due to the lack of a recognized constitutional right to counsel in civil cases and the woefully inadequate level of funding for non-profit civil legal services programs. Statewide, legal services programs struggle to meet the overwhelming legal needs of the poor, but given their severely limited budgets, they are only able to serve a small percentage. As studies have demonstrated, an estimated 80% to 85% of low-income New Yorkers' civil legal needs go unmet.⁷

In New York, the three main sources of civil legal services funding are the federal Legal Services Corporation ("LSC"), New York State Interest on Lawyer Account Fund ("IOLA"), and state funding. Since the 1990s, as federal and IOLA funding decreased,⁸ New York increased state funding in the form of discretionary budget appropriations, earmarked grants and a small permanent fund. However, these efforts have never been able to make up for the drastic reductions in resources. The end result is that New York's funding for civil legal services is wholly insufficient to address the legal needs of its poor citizens.⁹

In the late 1990s, the court system began to explore how it could work to strengthen the civil legal services delivery system. In 1997, Chief Judge Kaye appointed the Legal Services Project to develop a funding solution that would ensure permanent, stable funding for civil legal services. In May 1998, the Project's unique bar-business partnership produced a seminal report which recommended amending the Abandoned Property Law in order to increase revenues that could be used as a permanent stable funding stream for civil legal services.¹⁰ While the Project's recommendation failed to win the State Legislature's support, it established a national precedent and

⁷ See *supra* n. 6.

⁸ In a very favorable development for legal services funding, since 2006 New York banks are required to pay interest rates on IOLA accounts that are "comparable" to the rates banks pay on other accounts which are similar in size. See 21 NYCRR 7000.9. This change caused a positive increase in IOLA's grant-giving from \$13 million in 2007 to \$25 million in 2008, a significant increase but one not large enough to resolve the funding problem. This increase may be short-lived, given the current economic situation, particularly the cut in interest rates.

⁹ New York lags dramatically behind other large industrial states in funding for civil legal services. New Jersey and Massachusetts expend state funds of approximately \$23 and \$17 per poor person, respectively, while New York only spends approximately \$6. See Empire Justice Center, *Time for Change, New York Still Ranks Near Bottom in Funding for Civil Legal Services*, available online at <http://www.empirejustice.org/New/CivilLegalServices/State%20Funding%20Advocacy%20Piece%202008.pdf>.

¹⁰ Legal Services Project, *Funding Civil Legal Services for the Poor: Report to the Chief Judge* (May 1998).

model for the way a state judiciary can spearhead efforts to address critical issues related to civil legal services.

A. Creating a Permanent Funding Source for Civil Legal Services

When the DCAJ-JI was established, among its charges was to find a way to establish permanent, stable funding for civil legal services. Civil legal services funding has proven to be the most difficult of the DCAJ-JI's responsibilities. This is due to a number of factors, including: (1) no recognized constitutional right to counsel in civil matters; (2) a lack of action or leadership on the part of the executive and legislative branches to address the situation; and (3) the absence of a powerful constituency to advocate for funding. Also, it is difficult to organize support on this issue because many people do not appreciate its practical importance. For example, a lack of sufficient legal services attorneys does not bring the legal system to a stand-still. Civil courts can continue to operate, albeit not optimally, even when litigants appear without counsel. Thus, for many people, the enormous need for more and better legal services for the poor is inconspicuous.

Despite the challenges, the DCAJ-JI has sought to ensure sufficient and stable funding for civil legal services programs. The office led the court system's legislative efforts to create a permanent funding source, and strongly advocated for legislation proposed by the Legal Services Project to create a permanent funding source through monies recovered under the Abandoned Property Law.¹¹ To this end, the DCAJ-JI met with and testified before governmental bodies, addressed legislators and met with newspaper editorial boards to raise awareness of the importance of civil legal services. While the legislative measure was not enacted, important progress was made in focusing greater attention on the civil legal services needs of the poor. In 2004, the DCAJ-JI advocated for the creation of a small permanent fund for civil legal services. Following enactment of the legislation, known as the Legal Services Assistance Fund ("LSAF"),¹² the DCAJ-JI worked to clarify the legislation in order to ensure that the optimal amount of this new source of funding would be available for civil legal services.

In 2007, at the strong urging of the DCAJ-JI, the court system included a first-time funding of \$5 million for civil legal services in its budget.¹³ This funding, combined with first-time funding of \$3 million from the Executive and funding from the Legislature, resulted in \$15.85 million for civil legal services. While it was anticipated that this funding would grow in subsequent years, since 2007, it has not been possible to include such funding in the court system's budget. Given the state of the economy, there is much uncertainty about funding for civil legal services. Now, as in the past, legal services providers statewide have no stable funding sources and they remain gravely under-

¹¹ A. 6887, S. 3842, 1999-2000 Regular Sessions.

¹² State Finance Law § 98-c. The LSAF was established as a pool of money to be used, in part, to support legal services organizations.

¹³ New York State Unified Court System, *Fiscal Year April 1, 2007 - March 31, 2008 Budget*, at 1313 (November 2006).

funded. The court system remains committed to finding a resolution to the funding issue in order to increase poor New Yorkers' access to legal services.

B. Collaborating with Civil Legal Services Stakeholders

Strengthening the civil legal services delivery system requires collaboration among the many stakeholders involved in the civil justice community. From the outset, the DCAJ-JI has reached out to the numerous stakeholders, developing productive and cooperative relationships in order to work together toward a common goal. Recognizing the essential role that civil legal services providers play in maintaining a fair civil justice system, in 1999 the DCAJ-JI established the Legal Services Working Group, an advisory panel composed of key players from the legal services community. This group meets regularly to devise strategies and organize campaigns to increase funding and strengthen the civil legal services delivery system.

Another vehicle for collaboration between the courts and the civil legal services community has been the DCAJ-JI's membership on the New York State Planning Steering Committee ("Steering Committee"), an IOLA-funded entity formed by New York's legal services community to address, among other things, the restructuring of New York's legal services providers. The DCAJ-JI was active in the development of New York's state plan which was approved by LSC in June 2002,¹⁴ and worked with the Steering Committee to establish a permanent Equal Justice Commission, the activities of which have focused on permanent funding for civil legal services.

Through concerted efforts with the numerous stakeholders – most importantly, the legal services providers – significant strides have been made to heighten awareness of the need for increased high quality civil legal services, as well as to broaden support for more state funding to meet that need. As part of these efforts, in March 2004, the DCAJ-JI co-sponsored statewide open house events with civil legal services providers. Held at nine locations (Albany, Buffalo, Elmira, Geneva, Ithaca, New York City, Olean, Rochester and White Plains), the events provided an opportunity for judges, legislators, lawyers, funders, community leaders and residents to learn about the work of civil legal services providers and the clients they serve.

The DCAJ-JI also has collaborated with stakeholders on the national level. Members of the staff were selected by LSC to serve on two committees to advise LSC in its development and testing of an instrument to evaluate the planning efforts of state justice communities nationwide.

¹⁴ The DCAJ-JI also served as a member of the Planning Committee for Legal Services of New York City. LSC approved LSNY's plan in 2002.

C. Interrelationship of Criminal Convictions and Civil Matters

In its efforts to improve delivery of legal services to the poor, the DCAJ-JI has sought to raise awareness of areas where unmet legal needs result in grave consequences for individuals and society. One such area is that of the civil consequences of criminal convictions.

It is estimated that more than 600,000 prisoners will be released annually from state and federal prisons nationwide. Most, if not all, of these ex-offenders return to society believing that their greatest hurdle is behind them. Unfortunately, what they do not realize is that they will be subject to an extensive list of new penalties that may be far more onerous than the original sentence itself, such as the inability to obtain certain licenses needed for employment in some kinds of jobs. The burden of these additional penalties may so overwhelm the ex-offender that he feels he has no alternative than to re-offend to survive.

To address these issues, it is essential to educate the numerous stakeholders involved in both the civil and criminal justice communities. Based upon the recommendation of the DCAJ-JI, in October 2003, New York City Criminal Court judges participated in a training program on the collateral consequences of criminal convictions. Judges were provided the opportunity to learn about the existence of and harm caused by collateral consequences, and their role, if any, in addressing the issue. Subsequently, the DCAJ-JI worked with Chief Judge Kaye, the Judicial Institute and other stakeholders to develop the Partners in Justice Colloquium, a unique event that brought together judges, lawyers and clinical professors to collaborate on how to address the unmet legal needs of poor and low-income New Yorkers who face civil collateral consequences of criminal convictions.¹⁵

¹⁵ The DCAJ-JI submitted a Working Paper for presentation at the Colloquium. See Barbara Mulé and Michael Yavinsky, *Saving One's Home: Collateral Consequences for Innocent Family Members*, 30 N.Y.U. Rev. L. & Soc. Change 689 (2006).

III. STRENGTHENING THE DELIVERY OF INDIGENT DEFENSE SERVICES

Our federal and state constitutions establish a right to adequate, effective counsel for all criminal defendants who are unable to afford an attorney.¹⁶ New York statutory law also mandates the assignment of counsel in a range of Family Court and Supreme Court proceedings for adults unable to afford an attorney.¹⁷ Despite these statutory and constitutional guarantees, the justice needs of numerous indigent defendants and respondents are not being met.

A. Assigned Counsel Fees

Pursuant to County Law § 722, a county may provide indigent representation through assigned counsel. The attorneys are paid pursuant to fee rates set by the State Legislature.¹⁸ By the mid-1990s, these fees were among the lowest in the country - \$40 per hour for work performed in court and \$25 per hour for work performed out-of-court. The fees, which had not been increased for more than fifteen years, were insufficient to cover the average attorney's hourly overhead in many parts of the state. Few lawyers were seeking appointments, leaving an insufficient number to handle the growing caseloads, and causing a crisis in the courts. Serious criminal prosecutions faced lengthy delays, to the detriment of the parties involved, the public, the health of the court system and the administration of justice.

In 1999, Chief Judge Kaye announced strong support for a significant increase of the 18-B fee rates. To implement the Chief Judge's policy, the DCAJ-JI organized and led a broad statewide coalition to devise a solution in support of increased rates. The coalition included the major bar associations, the District Attorneys Association, the State Attorney General's Office, the City of New York, and the State Association of Counties, among others. The coalition sought to convince the State Legislature and the Governor of the need for legislation to increase rates, by (1) developing a uniform message that all coalition members could communicate about the need for the increase, and (2) using all available avenues of communication to make assigned counsel rates a topic of general discussion.

In January 2000, the court system issued a report documenting the crisis, and proposing a rate increase to \$75 per hour for felony cases and \$60 per hour for non-felony criminal cases.¹⁹ The policy recommendation was accepted by the coalition as well as other interested stakeholders, and became the goal sought to be achieved. Thereafter, greater attention was focused on the issue,

¹⁶ *Gideon v. Wainwright*, 372 U.S. 335 (1972); *People v. Witek*, 15 NY2d 392 (1965).

¹⁷ See Family Court Act § 362; Judiciary Law § 35(8).

¹⁸ County Law § 722-b.

¹⁹ Office of the Deputy Chief Administrative Judge for Justice Initiatives, *Assigned Counsel Compensation in New York: A Growing Crisis* (New York State Unified Court System, 2000).

including holding legislative hearings, public forums and conferences, and publication of newspaper and scholarly articles and op-ed pieces.²⁰

These efforts resulted in the Governor's appointment of a task force of executive and legislative leaders to devise a solution, since a consensus had formed at this point that action had to be taken. After the traumatic events of September 11, 2001, the work of the task force was deferred due to fiscal concerns. Once it was practical and appropriate to resume efforts, the coalition again began undertaking lobbying efforts on behalf of rate increases.

In June 2003, after almost four years of intensive work by the coalition and other stakeholders, the Legislature increased assigned counsel fees, effective January 1, 2004, to the recommended \$60/\$75 levels. The distinction between in-court and out-of-court work was eliminated. Additionally, the new law created a \$64 million Indigent Legal Services Fund to help local government officials offset the cost of the increased rates.

B. Indigent Defense Summit

The 18-B rate increases and the creation of the Indigent Legal Services Fund resolved the immediate crisis of the insufficient number of attorneys available to handle the criminal and family court caseloads. However, new issues arose as a result of the counties being required to provide increased fees without a commensurate increase in state funding. As a means to lower costs, many counties responded by abolishing assigned counsel programs and replacing them with institutional defender offices and conflict offices. This has raised additional concerns about the quality of representation being provided and the impact on the criminal justice system.

To explore these and other significant issues, the DCAJ-JI hosted the New York State Indigent Defense Summit in November 2003. The Summit brought together criminal defense counsel, prosecutors, judges and other stakeholders involved in the criminal justice system to examine the structure, funding and quality of representation provided by the current indigent defense structure. Experts from across New York State and the nation discussed the major problems plaguing New York's indigent defense system and offered possible solutions to improving the system.

Three themes emerged from the Summit:

- the need for parity in funding and resources between the offices of prosecutors and defenders;

²⁰ See, e.g., Hon. Juanita Bing Newton, *Ensuring Equal Justice for All Demands an Increase in Assigned Counsel Rates*, Criminal Justice Journal (NYSBA April 2000).

- the need to establish statewide performance standards for representing indigent defendants; and
- the desirability of providing training, mentoring and supervision for defense counsel.

Based upon the recommendations developed at the Summit, in May 2004, Chief Justice Kaye appointed the Commission on the Future of Indigent Defense Services to examine the effectiveness of criminal defense services for the poor across the state and consider alternative methods of assigning, supervising and funding assigned counsel compatible with New York's constitutional responsibilities and fiscal realities. The Commission's final report, issued in June 2006, included a broad variety of findings and recommendations, including establishing a statewide Defender Office, funded by the legislature, to oversee and be responsible for all indigent defense in the state.²¹ The report has been widely noted and discussed, both in the general and legal communities, and has led to heightened awareness on the part of the executive and legislative branches that change is essential in this crucial area.

²¹ Commission on the Future of Indigent Defense Services, *Final Report to the Chief Judge of the State of New York* (New York State Unified Court System, June 2006).

IV. INCREASING THE PROVISION OF PRO BONO SERVICES

Under Chief Judge Kaye's leadership, the court system has evolved a dynamic, multi-level, statewide effort to greatly expand and support the private bar's commitment to providing free legal services. In May 1997, the Administrative Board of the Courts adopted a resolution urging attorneys to provide at least 20 hours of pro bono legal services to the poor annually and also to contribute financial support to not-for-profit organizations that provide such essential services.

With the establishment of the DCAJ-JI in 1999, the court system renewed its focus on expanding pro bono service. In the ensuing years, the DCAJ-JI has worked with the New York State Bar Association and many other statewide and local bar associations; the Pro Bono Coordinators' Network, a New York State Bar Association-sponsored group of private attorneys and representatives of not-for-profit service providers; and other organizations and individuals concerned with access-to-justice issues.

In light of statistical information suggesting that attorneys' pro bono service has remained static during recent years, despite the escalating legal needs of the poor during those same years,²² the DCAJ-JI has sought to understand the barriers that impede lawyers in various legal settings from engaging in pro bono activities and what would help ease those impediments. This information was used to develop initiatives that aim to increase pro bono services significantly throughout the state.

A. Continuing Legal Education Credit for Pro Bono Work

The DCAJ-JI examined existing court-mandated educational requirements to explore whether, while fully maintaining their intended purposes, the programs could be modified to provide incentives to increase pro bono work. In early 2000, the DCAJ-JI recommended that the CLE rules be amended to allow CLE credits to be earned for the performance of pro bono work. Thereafter, the CLE Board adopted this proposal,²³ making New York only the third state in the country to grant attorneys CLE credit for pro bono service.

Building on this accomplishment and on the DCAJ-JI's commitment to create greater access to justice in the state's rural areas, the office has collaborated with the Rural Law Center to establish a CLE/Pro Bono Program. Known as "Best Practices," it makes CLE-accredited training programs available to attorneys who are interested in performing pro bono service, granting CLE credit without charge in return for attorneys' commitments to accept at least one pro bono case referral.

The Best Practices Program has involved almost 2,000 attorneys, numerous judges and court

²² The court system undertook four surveys of the pro bono activities of New York attorneys (1991, 1992, 1993 and 1998). Each of the surveys found participation rates in the range of 45%-49%. For an overview of these surveys, see New York State Unified Court System, *The Future of Pro Bono in New York, Volume I: Report on the 2002 Pro Bono Activities of the New York State Bar* (January 2004).

²³ See 22 NYCRR § 1500.22 (j).

personnel and extended over many rural counties in upstate New York.

B. Pro Bono Convocations

In 2002, the DCAJ-JI hosted four pro bono convocations throughout the state,²⁴ to bring together all of the stakeholders, including judges, court administrators, attorneys in private practice, public interest lawyers, government attorneys, law school professors, and members of the bar, to develop a concrete plan for increasing pro bono participation. The Convocations produced thoughtful debate and discussion about what is feasible for increasing pro bono in New York State, and led to two groundbreaking recommendations: (1) implementation of a statewide pro bono program, comprised of local pro bono action committees that would assess and devise strategies to meet local unmet legal needs; and (2) development of pilot projects statewide to test the efficacy of discrete task representation as a way to increase pro bono service.²⁵

C. ProBonoNY

The Convocations reached consensus that a statewide committee structure, sponsored by the court system and broadly representative of the legal community, should be developed in order to foster and support voluntary pro bono service. ProBonoNY, which commenced organizational activity in 2005, stems directly from the Convocations' recommendations.

Since its inception, ProBonoNY, through its local pro bono action committees, has directly recruited more than 500 volunteer attorneys to accept pro bono referrals, with a wide variety of matters under assignment; furthermore, the committees are confident that they will continue to increase the number of volunteers through new projects addressing specific types of legal needs.

1. Structure

At the core of ProBonoNY are its local pro bono action committees, of which there will be at least one in each of the State's judicial districts. Dedicated to increasing voluntary free legal services for low-income New Yorkers, the committees are co-chaired by the District Administrative Judge and a prominent member of the Bar. Members include other judges, court personnel, attorneys in private and government practice, attorneys with nonprofit legal service providers, and law school faculty. Local action committees are currently operating under approved plans in the Fifth, Sixth, Seventh, Eighth and Ninth Judicial Districts, with separate committees in Suffolk and Nassau Counties in the Tenth District. A committee currently is being organized in the Third District. In the near future, committee organization is anticipated in the Fourth District, as well as

²⁴ The Convocations were held in Albany, Buffalo, Geneva and New York City.

²⁵ For further details about the Convocations and the recommendations that flowed from them, see New York State Unified Court System, *The Future of Pro Bono in New York, Volume II: Report and Recommendations from the New York State Unified Court System's Pro Bono Convocations* (January 2004).

New York City.

Each local committee is responsible for identifying the legal needs and priorities of low-income individuals within the judicial district, and planning activities to address those needs, in consultation with bar associations, legal service providers, and other community and governmental agencies. Each committee devises its own strategies for recruiting volunteer attorneys and providing support for their pro bono practices. The committees seek to enhance the effectiveness of existing voluntary legal service programs and help develop new programs where needed. The committees do not intend to supersede the many effective existing service programs, but rather to collaborate with them, providing motivation and support to the many attorneys who wish to engage in pro bono work or increase their level of participation. The goal is to increase the extent to which pro bono legal services are an integral part of every attorney's regular practice.

Essential to the expansion of organized pro bono programs is the provision of adequate managerial and coordinating services. Such services include case and client intake procedures; maintaining lists of attorneys willing to accept pro bono case referrals; matching clients and appropriate volunteers and making case assignments; participating in publicity, recruitment and CLE training programs; mentoring volunteer attorneys handling pending matters; and assisting with attorney recognition activities. These services help attorneys to commit to increased levels of pro bono by providing needed support, maintaining focus on specific unmet needs in each area, and generally increasing efficiency and effectiveness. ProBonoNY has been able to provide necessary funding, through service contracts with local nonprofit organizations, for these services. There are now five funded attorney/pro bono coordinators working directly with and for the ProBonoNY Local Action Committees in the Fifth, Sixth, Seventh, Eighth and Ninth Districts, with two additional positions to be added in the near future.

2. Committee Activity

a. Fifth Judicial District Committee

The Fifth District Committee was the first active ProBonoNY Local Action Committee, and it has continued to be a leader in recruiting attorney volunteers and program development.

- In addition to its own specific projects, the Committee has emphasized collaborative activities with other pro bono programs and non-profit service providers in the District, helping to recruit additional volunteers for other programs by promoting and publicizing their projects, helping to provide CLE-accredited training programs, and developing new collaborative projects.
- Beginning with more than 100 volunteers who signed up at the Committee's initial CLE program and reception in April 2006, the Committee now has more than 200 attorneys available for pro bono referrals. Working through its own staff (an attorney/pro bono coordinator and, recently added, two legal assistants), the Committee has directly increased the number of pro bono cases referred through

Legal Services of Central New York, where the Committee's staff is employed.

- The Committee recently activated the first ProBonoNY website at www.nycourts.gov/courts/5jd/probono/index.shtml and its activities have attracted the interest of the American Judges Association, which invited its co-chair, Hon. James C. Tormey, III, J.S.C., Fifth District Administrative Judge, to discuss the Committee's program at the Association's 2008 annual conference.
- Recruiting activities include contacts with local law firms and bar associations, presentations by individual committee members concerning the value of pro bono work and the opportunities available by contacting committee staff, sponsorship of CLE programs, and production of widely-distributed publicity materials.

b. Eighth Judicial District Committee

The Eighth District Committee has been particularly active in program development and establishing working relationships with bar associations and non-profit service providers throughout the district. The Committee held its initial CLE program and reception in Buffalo, attended by approximately 80 people; similar events are planned for the future at other locations throughout the District.

- At the outset, the Committee has focused on pro bono referrals through the Erie County Bar Association Volunteer Lawyers Project, Inc., where the Committee's attorney/pro bono coordinator is employed. In the future, the Committee intends to assist in recruiting volunteer attorneys to accept pro bono referrals through other service providers in the District.
- The Committee has launched a "Large Firm Initiative," which involves commitments from Buffalo's largest law firms for at least five attorneys from each firm to accept pro bono divorce referrals; the Committee and its coordinator will provide training and mentoring for the volunteers.
- The Committee has been active in educating the community about its mission and laying the foundation for the planned projects in general pro bono referrals, matrimonial matters, and housing court proceedings; an attractive and informative brochure and a letter from the Committee's co-chairs have been widely circulated, and the Committee recently activated the second ProBonoNY website, at www.nycourts.gov/courts/8jd/probono/index.shtml.

c. Ninth Judicial District Committee

The Ninth District Committee has been extremely successful in recruiting volunteers and has been very active in planning new pro bono projects addressing specific needs, as well as generally increasing the level of pro bono work on a wide variety of matters via referrals through Legal Services of the Hudson Valley (LSHV), where the Committee's attorney/pro bono coordinator is employed.

- The Ninth District Committee consists of three committees: the original Westchester County Committee and Orange County and Dutchess County Committees. The District's co-chairs, the coordinator, and several members participate in the work of both committees, in order to coordinate activities throughout the district. At least one more committee is planned for the near future.
- The Committee has recruited more than 260 volunteer attorneys and 16 law firms; more than 80 cases, involving a broad range of legal issues, have been placed with these volunteers, and a number of experienced volunteers have agreed to mentor less-experienced attorneys.
- In Westchester County, volunteer recruitment has been so successful that, over the past year, nearly every client referred by LSHV as eligible for pro bono services has been provided with a volunteer attorney; one of the Committee's goals is to reach that level in Orange County during 2008.
- In Westchester, in collaboration with other groups, the Committee has developed and provided CLE-accredited training for projects in child support proceedings in cases involving domestic violence, tenant representation in housing court proceedings, and Violence Against Women Act self-petitions; an unemployment benefit hearing project is in development.
- In Orange County, a "Partners in Pro Bono" project has enlisted 12 law firms committed to handling more than 40 cases; additionally, a kinship/guardianship project is in preparation.

d. Sixth Judicial District Committee

The Sixth District Committee's plan for its first operational year includes enlarging and enhancing existing pro bono divorce, child support, and consumer service projects. The plan for the second year includes establishing new or expanded pro bono divorce programs and debt collection clinics throughout the District, with consideration being given to organizing a landlord-tenant clinic and a senior lawyer pro bono program. The Committee's request for an attorney/pro bono coordinator has recently been approved, and the Committee's first CLE recruitment programs are in active preparation.

e. Seventh Judicial District Committee

The Seventh District Committee's plan recognizes the successful model for pro bono services provided by the Volunteer Legal Services Project of Monroe County, Inc., and seeks to expand that model throughout the District, in collaboration with other existing agencies. The program will include recruiting activities and CLE-accredited training provided by the Committee in support of referrals of individual cases—particularly divorces, custody/visitation matters, child support proceedings, SSI, unemployment insurance, and landlord-tenant matters as well as expanded use of pro bono legal clinics. An attorney/pro bono coordinator has recently been hired and initial public events are being planned.

f. Tenth Judicial District/Suffolk County Committee

The Suffolk County Committee plans an initial focus on recruiting volunteers to accept pro bono referrals of divorce cases and to develop a panel of attorneys to accept assignment as Mental Hygiene Law Article 81 guardians on an ongoing basis, where such an appointment is warranted by the circumstances of an incapacitated individual. The Committee plans to offer CLE-accredited training and a continuing series of educational roundtable discussion forums for judges and volunteer attorneys on various practice areas, including matrimonial practice and guardianship proceedings. Funding arrangements for an attorney/pro bono coordinator are now in progress.

g. Tenth Judicial District/Nassau County Committee

This Committee's initial plans call for special emphasis on Matrimonial and Family Law matters, plus assistance in the area of mortgage foreclosures. Approval has recently been given to proceed with preparation of materials that will lead to funding for an attorney/pro bono coordinator to work with this Committee.

h. Third Judicial District Discussion Group

The Third District Pro Bono Discussion Group held its first public event in Albany in April 2007, a "Pro Bono Expo," which was attended by 90 attorneys. Information tables at the Expo were staffed by representatives of three local legal service providers, and ten judges and attorneys from the Capital Region provided a panel presentation discussing critical issues facing attorneys who do or want to do pro bono work, such as availability of training, time commitments, support by the judiciary, and areas of law of greatest need. CLE credit was provided. The Discussion Group is considering a Judges' Best Practices CLE/Pro Bono Program, possibly to be held in early 2009.

D. Partnerships for Limited-Scope Legal Services

An important recommendation coming out of the 2002 Convocations was that pilot projects should be developed across the state as a means of testing the efficacy of discrete task representation

as a way to increase pro bono service.²⁶ In “discrete task representation,” also known as “limited-scope representation” or “unbundled legal services,” the client and lawyer agree that the lawyer will provide some but not all of the work involved in traditional legal representation, and the client will perform the remaining tasks. Thus, genuine and valuable legal services are provided, including not just consultation and advice but possibly representation as well, but the services are limited to a particular occasion or a particular issue or set of issues. This type of legal service is common and widely accepted in non-litigated matters. In the litigation context, however, limited-scope services have often raised ethical and procedural questions for the bar about professional responsibility, fairness, and liability.²⁷

To ensure that these concerns are adequately addressed, while at the same time encouraging programs to close the justice gap for civil litigants in New York State, the DCAJ-JI has been working with the New York City Civil Court, the New York City Family Court, and a number of law schools, bar associations and the private bar to structure appropriate limited-scope programs to help people who cannot afford to engage a lawyer for traditional full-representation. The partnership strongly recommended amendment of the disciplinary rules regarding the extent of mandatory conflicts checks for attorneys volunteering in such programs.

In November 2007, the Appellate Divisions adopted a new rule which implicitly acknowledges that, in short-term limited scope programs under the auspices of the courts or legal service providers or non-profit agencies, the risk of conflicts is minimal because of the types of litigants seeking assistance and the short-term nature of the tasks.²⁸ In view of the difficulty of requiring full imputed conflicts checks in a walk-in clinic setting where litigants have immediate and pressing needs to be addressed, the rule recognizes that it is prudent to relax some of the unnecessary barriers keeping the professional bar from helping those most in need of free legal services, while still prohibiting attorneys who have actual knowledge of a conflict from undertaking the representation. Following are some of the most noteworthy limited-scope partnership projects which the courts have undertaken.

²⁶ See *supra* at 12.

²⁷ For an informative description of the ethical and procedural problems concerning limited scope representation in New York State, see Fern Fisher-Brandveen and Rochelle Klempner, “Unbundled Legal Services in New York State: Untying the Bundle, 29 Fordham Urb. L.J. 1107 (2002), at 1114-1121; Rochelle Klempner, *Unbundled Legal Services in New York State Litigated Matters: A Proposal to Test the Efficacy Through Law School Clinics*, 30 N.Y.U. Rev. L. & Soc. Change 653 (2006). See also Commission on Providing Access to Legal Services for Middle Income Consumers, *Report and Recommendations on “Unbundled Legal Services”* (New York State Bar Association, December 2002).

²⁸ See Code of Professional Responsibility DR 5-101-a (22 NYCRR 1200.20-a).

1. New York City Civil Court

Since 1998, the Civil Court in New York City has been running a Housing Court Volunteer Lawyers Project. The volunteers, trained in landlord-tenant law and supervised by the Project, serve both landlords and tenants on a walk-in basis, providing limited-scope services, including legal information and advice to litigants who do not have attorneys, helping them complete forms, analyze defenses, plan for their court dates, and seek help from appropriate agencies. A similar program was recently begun for volunteer lawyers to assist self-represented litigants with civil and small claims cases in Manhattan.

In 2006, the DCAJ-JI, in collaboration with the New York City Civil Court, developed a pilot project to test another type of limited scope legal services in Housing Court, coordinating with both Fordham Law School-Feerick Center for Social Justice and Dispute Resolution and the City Bar Association Moderate Means Subcommittee on Unbundled Legal Services. The project, entitled “Volunteer Lawyer for a Day,” provided volunteer lawyers for self-represented litigants in non-payment proceedings in the Housing Court’s Resolution Part. The lawyer first would meet with the client to discuss the limited nature of the representation. Upon the client agreeing to the limited representation and signing a retainer agreement to that end, the lawyer would file a limited notice of appearance to represent the litigant for one day only, whether or not the case continued. In addition to appearing in court, the lawyer represented the litigant during the negotiation discussions and assisted the litigant by providing basic legal information and referrals to legal and community resources. The pilot project ran from November 2006 through March 2007. An evaluation report was published in February 2008.²⁹ The report concluded that the project had demonstrated significant value in providing legal services and helpful representation to tenants who would otherwise have lacked counsel, and recommended that the program be continued and expanded. That recommendation has been followed, with a permanent program now in place.³⁰

2. New York City Family Court

The Family Court Pro Bono Project has been operating since November 2006 in Kings County Family Court. This project recruits and trains volunteer attorneys to provide brief advice consultations to self-represented litigants in matters where assigned counsel would not be available, including support, paternity and guardianship proceedings. The project was created by the DCAJ-JI and the New York City Family Court, in partnership with six major New York City law firms and corporations. Litigants are accepted on a walk-in basis, after being screened for eligibility. Consultations are provided two days each week. The program has been so successful that it has now expanded to Manhattan.

²⁹ Civil Court of the City of New York, the Deputy Chief Administrative Judge for Justice Initiatives and the New York City Bar, *Volunteer Lawyer for a Day Project Report: A Test of Unbundled Legal Services in the New York City Housing Court* (February 2008).

³⁰ For additional information, see http://nycourts.gov/courts/nyc/housing/vlfd_housing.shtml.

3. Community Legal Resource Network

The DCAJ-JI is working with the City University of New York Law School Community Legal Resource Network (CLRN), which supports community-based lawyers with a range of services, to develop pilot assistance projects providing “unbundled legal services” for self-represented litigants in court. These projects use community-based lawyers who are paid a minimal fee rather than pro bono attorneys. One such pilot project operated two days a week during 2007 in Queens Supreme Court. In that project, a CLRN attorney provided brief legal consultations to self-represented litigants in matters such as consumer debt, mortgage foreclosure, and uncontested divorce. The DCAJ-JI is working with CLRN to find funding to continue this project.

V. IMPROVING ACCESS FOR SELF-REPRESENTED LITIGANTS

Central to accomplishing the Unified Court System’s mission of assuring equal access to justice for all New Yorkers is the job of assisting litigants without lawyers to use the courts as effectively as possible. Ideally, all litigants should have the services of a competent lawyer, especially given the scope and complexity of New York law, procedure and court structure. Yet nearly half of New York State’s households cannot afford to hire a lawyer,³¹ and the supply of free lawyers, from public and other funding sources, or pro bono, is entirely inadequate to meet the need.³²

Approximately 1.8 million litigants appear each year without a lawyer in New York State’s courts,³³ and countless others not yet party to a case come to court without a lawyer for information and guidance. In certain types of civil cases, such as housing matters, it is estimated that while up to 90% of litigants are self-represented, the opposing side has a lawyer.³⁴ Thus, in the unfamiliar and often confusing universe of the courts, self-represented litigants attempt to handle legal matters involving the most essential aspects of their, and their families’, well-being.

Working in collaboration, administrative judges, trial court judges, the courts and the DCAJ-JI have designed and implemented a variety of programs and initiatives. These include expanded resources for procedural and substantive information, the widespread use of technology, and comprehensive education programs for judges and court staff. These initiatives have changed the self-represented landscape and made New York a national leader in this area.

A. Direct Services

1. Offices for the Self-Represented

During the last decade, the culture of the court system has undergone significant change in

³¹ Forty-six percent of all New York households have an annual gross income below the New York State median “self-sufficiency” income of approximately \$42,500. “Self-sufficiency” means the ability to pay for taxes, housing, food, clothing, transportation, child care, health care, and miscellaneous household goods and services without public or private assistance. Hiring a lawyer is beyond the self-sufficiency budget. See New York State Self-Sufficiency Steering Committee, *The Self-Sufficiency Standard for New York*, (2000), available online at <http://www.sixstrategies.org/files/Resource-StandardReport-NY.pdf>; U.S. Census Bureau, *American Community Survey 2003 Data Profile*, Table 3: Selected Economic Characteristics.

³² See *supra* n. 6.

³³ Hon. Judith S. Kaye, *The State of the Judiciary 2007* (New York State Unified Court System 2007), at 18, available online at <http://www.courts.state.ny.us/admin/stateofjudiciary/soj2007.pdf>.

³⁴ *The New York Legal Needs Study*, *supra* n. 6, at 39.

its approach to providing services and resources to self-represented litigants. The courts now are much more “hands-on” in helping people who come to the court without a lawyer. In 1997, the New York County Supreme Court opened the first Office for the Self-Represented. The office provides help of various kinds, including procedural and other court information, forms review and assistance with forms completion, and referrals. At about the same time, the New York City Civil Court began operating Resource Centers staffed by attorneys and resource assistants to help self-represented litigants in the court’s Housing Part.

The DCAJ-JI began working in 1999 to replicate and enhance these highly successful local initiatives. In addition to assisting the New York County Supreme Court office in upgrading its space and working environment, accomplished during 2001, the DCAJ-JI performed extensive outreach and gave technical assistance within the court system to encourage the opening of additional sites. As a result of this ambitious collaboration, Offices for the Self-Represented are now operating in the Supreme Court of every borough of New York City and in the public access libraries of some of our largest counties, including Nassau, Rockland, Suffolk, Westchester, Orange and Putnam. In 2008, the Eighth Judicial District opened a multi-court Resource Center serving litigants in Family, Surrogate’s, Supreme and County Courts in Erie County, the first such office in upstate New York.

2. Surrogate’s Court Self-Represented Services

In Fall 2007, Richmond County Surrogate’s Court opened a pilot Office for the Self-Represented, the first such office in New York State to provide procedural and legal information to the public on matters unique to Surrogate’s Court, including uncontested small estates, guardianship applications and accountings, petitions to open safe deposit boxes and residences, as well as other issues. Given the success of the pilot, the program became permanent in Spring 2008. In addition to providing direct services to the public, the office also serves as a clearinghouse for court forms and resources from legal and government organizations.

Surrogate’s Courts across the state are currently working in conjunction with the DCAJ-JI and our legal service partners to develop interactive computer programs³⁵ designed to produce information sheets and pleadings for Surrogate’s Court self-represented litigants, including a small estate program and a guardianship of the person petition program. Onondaga Surrogate’s Court has taken the lead in the development of these programs.

3. New York City Family Court Self-Represented Services

In New York City Family Court, the Self-Represented Divisions provide court staff to assist self-represented litigants in completing and filing their petitions. The DCAJ-JI, in partnership with the Family Court, has expanded the services available in the Self-Represented Divisions in Kings and New York Counties by adding a court attorney who meets with litigants to provide legal and

³⁵ See *infra* at 24.

procedural informational assistance. This attorney also oversees the Family Court Pro Bono Project.³⁶

4. Judicial District Initiatives for the Self-Represented

In the Third, Sixth and Ninth Judicial Districts, district-wide coordinators oversee the development and implementation of initiatives for the self-represented. In Fall 2007, the Sixth Judicial District implemented the “New York State Court Student Ambassador/Access to Justice Program,” which combines the existing New York State Ambassador Program with a student internship program. The District has actively promoted the student ambassador program at local colleges such as the State University of New York at Binghamton. In addition, the District has established self-help centers within its Public Access Libraries. In connection with the self-help centers, a Uniform Forms project was recently started whose goal is to make the most commonly used court forms easier to read and understand, with simplified questions and FAQ sheets.

The Third Judicial District organized a successful pro bono expo, which brought in many participants from the private bar. In addition, it conducted a training on the courts and legal research in December 2007 for public librarians located within the district.

The Ninth Judicial District recently added a court attorney who supervises self-represented litigant services in the five counties located in the district. This attorney oversees the Office for the Self-Represented in Westchester County (which has full-time staff), as well as part-time offices in Orange, Putnam and Rockland Counties. She is working to equip each location with appropriate technology to allow self-represented litigants to communicate with the other Offices for the Self-Represented in the District.

5. Form Packets for the Self-Represented

During 2006, an Uncontested Divorce Packet, designed for self-represented litigants without children, was developed by the Deputy Chief Administrative Judge for Matrimonial Matters, Hon. Jacqueline Silbermann, and made available online as well as in courthouses statewide. The DCAJ-JI assisted in the development by employing both a readability specialist and a low-literacy graphics specialist to ensure usability.

The DCAJ-JI has carried over the skills developed while working on the Uncontested Divorce Packet to other projects involving self-represented litigants where readability is a key factor. Supplemental matrimonial packets are currently being developed, as well as Landlord-Tenant manuals which will soon be available online and in courthouses statewide to assist self-represented tenants and landlords.

³⁶ See *supra* at 18.

B. Use of Technology to Serve the Self-Represented

Another key change in the court system has been the innovative and extensive use of technology to help disseminate information and provide services to the self-represented.

1. CourtHelp

CourtHelp (www.courthelp.gov) is a one-stop location on the Internet, available in English and Spanish, offering information about courthouse locations, telephone numbers and other basic court data, free court forms, information about procedural and substantive law, and access to lawyer referrals. The information is organized in four easy-to-understand categories and presented in a user-friendly format in plain language and with simple, straightforward graphics.

Following a statewide study, the DCAJ-JI issued a report in 2001 describing programs and services then available to the self-represented throughout the Unified Court System.³⁷ The study found that development of a Web site, with forms and other court information and legal resources, would be beneficial to the self-represented.

In response to that finding, a decision was made to create CourtHelp to assist the self-represented in finding and using New York's courts more easily and effectively. In February 2003, the DCAJ-JI partnered with the Law and Technology Clinic of Columbia Law School for assistance in developing and organizing the content for the Web site. The students' insights were quite useful and were incorporated in the final design. The Web site launched in September 2003.

A sign of the great success of CourtHelp is its popularity. From its inception to the end of 2007, the Web site had a total of more than 1,000,000 visits made by nearly a half-million visitors. Public computer terminals providing access to CourtHelp have been installed in courthouse locations throughout the state. Approximately 220 such terminals have been installed through October 31, 2008.

2. Court Channel

In 2003, the DCAJ-JI partnered with the LawHelp Consortium, pursuant to a State Justice Institute grant, to integrate CourtHelp information into LawHelp's Web site (www.lawhelp/ny.org), which provides legal referral and client education for the public. The Consortium is a group of public interest legal organizations within New York State working to enhance the availability of legal resource materials for low and moderate-income individuals. CourtHelp information is now available on the LawHelp Web site in a section called "Going to Court."

³⁷ Office of the Deputy Chief Administrative Judge for Justice Initiatives, *A Report on Programs and Services for Self-Represented Litigants in the New York Courts* (New York State Unified Court System, 2001).

Enhancements to CourtHelp and to the “Going to Court” section of the LawHelp Web site are currently being studied. Such enhancements will provide more substantive information and access to online forms for self-represented litigants.

3. A2J Technology

Technology provides a means to disseminate information and services to the self-represented. However, many litigants have limited technical knowledge and low-literacy levels which impede accessibility to information on the Internet. To address these concerns, A2J (Access to Justice) Author was developed by the Chicago-Kent College of Law in cooperation with the State Justice Institute, the Center for Access to the Courts through Technology, the Center for Computer-Assisted Legal Instruction, and the Legal Services Corporation to help self-represented and low-income litigants access the legal system by means of “user-friendly” web-based document assembly.

The technology accomplishes this goal by creating interactive interviews designed to gently guide users through a series of questions. A simple interface determines initial eligibility, answers questions about unknown terms and the legal process with the help of audio and visual aids, and produces customized legal forms and information sheets. The technology also is designed to allow a wide group of developers from the courts and the legal services community to create interactive interviews without the sophisticated computer technology skills necessary for most other document assembly programs. The interviews can be posted online and can be made available anywhere there is a computer with Internet access.³⁸

A partnership between the court system’s Department of Technology, the DCAJ-JI and legal service providers led by Legal Services of Western New York, with funding from the Legal Services Corporation and the State Justice Institute, is using the A2J Author to create interactive interviews and document assembly projects to assist both self-represented litigants and the pro bono attorneys who assist the poor. The technology is expected to greatly enhance the services available in New York State for self-represented litigants, while at the same time facilitating involvement of pro bono attorneys. The project is designed to help meet the enormous unmet needs of those in our society who cannot access civil legal services, especially the rural poor of New York.

C. Partnerships for Services to the Self-Represented

Recognizing that the courts cannot meet all the needs of the self-represented, the court system has developed ways to provide assistance to self-represented litigants through collaborations and partnerships with the legal services community, bar associations, law schools and public libraries. The following describes some noteworthy projects.

³⁸ Examples of A2J technology that have been developed for litigants in the Housing Part of the New York City Civil Court can be found at <http://www.nycourts.gov/courts/nyc/housing/interactive.shtml>.

1. Community Resource Centers

One avenue for providing information to the self-represented litigant is through Community Resource Centers – places where staff and volunteers are available to provide information about court services and procedures to the public. The DCAJ-JI has developed partnerships with various community-based organizations to establish Resource Centers within their facilities, with training and technical support for staff and volunteers provided by the DCAJ-JI. Each center houses a small library of resource and referral materials for distribution to the public. Currently, there are seven Community Resource Centers in New York City: the Bronx Institute for Mediation and Conflict Resolution, the Brooklyn Mediation Center, the Crown Heights Mediation Center (Brooklyn), the Harlem Justice Center (Manhattan), the Manhattan Mediation Center, the Queens Mediation Center, and the Red Hook Community Justice Center (Brooklyn). There are eight such centers located outside of New York City: one in each of six public libraries in Clinton, Essex, and Franklin Counties in the Fourth Judicial District, and one in each of two transitional housing shelters in Westchester County in the Ninth Judicial District.

2. Public Libraries/Court Libraries

Public libraries in communities and public access libraries in the courts serve an important function for self-represented litigants by either supplementing information gained from the court-based offices and programs that provide resource information to self-represented litigants, or being the initial point of information for the self-represented. Recognizing the importance of the relationship between the courts and the libraries, the DCAJ-JI has undertaken two initiatives.

In March 2002, a seminar was held for representatives from the offices that provide direct services to the self-represented and the public access law libraries to discuss how, working together, they can facilitate the self-represented litigants' information-gathering efforts. A directory was prepared to expedite the referral of self-represented litigants from service providers to the various offices. On-going dialogue continues between the libraries and other assistance offices on how they jointly can improve services for self-represented litigants.

In 2006, the DCAJ-JI began working with the Unified Court System's Library Advisory Committee to study new initiatives to help the self-represented. Two presentations have been made for the public access law librarians on how best to offer assistance. Subsequently, a Self-Represented Litigants Subcommittee of the Library Advisory Committee was formed with representatives from DCAJ-JI to meet periodically to discuss ways to improve the quality of service in the public access libraries for the self-represented.

In addition to the court libraries, public libraries provide another valuable forum for distributing information to assist self-represented litigants. In March 2002, in partnership with the Administrative Judge of the Tenth Judicial District (Suffolk County), a meeting was held with representatives from the Suffolk Library System to discuss how the libraries could be used to distribute information about the courts and the legal system to the public. The Suffolk Library System received a grant in the fall of 2002, under the New York State Library Services and

Technology Act, to create a CourtHelp Information Resource Center. The DCAJ-JI worked with the Suffolk Library System to identify paper and electronic legal resources for the center. The DCAJ-JI has also partnered with the Fourth Judicial District and the Clinton Essex Franklin Library System to open Community Resource Centers in six public library branches.³⁹ Training also was arranged for public librarians in the Third Judicial District in December 2007.

D. Education and Training of Judges and Non-Judicial Court Staff

1. Facilitating Access Training Program for Non-Judicial Staff

The role of court staff in helping the self-represented is critical. The nature and quality of treatment and assistance the public receives while at the courthouse substantially determines their opinion regarding the fairness of the courts.

The Facilitating Access Training Program (“FATP”) was designed to give court staff the necessary tools and resources to address the public’s informational needs. The training provides highly relevant principles and examples of what constitutes legal information, as distinct from legal advice. The full-day training educates staff and increases their confidence that they are helping the public appropriately.⁴⁰ Development of the training program was a recommendation of a 2001 report of the Unified Court System’s statewide Facilitating Access Committee.⁴¹ More than 3,000 non-judicial staff statewide, including clerks, interpreters, librarians and court attorneys, have participated in the training since its inception.

2. Training of Judges, Support Magistrates and Court Attorney-Referees

Self-represented litigants present special issues and challenges in the courtroom. During 2004, the DCAJ-JI developed and sponsored two full-day training programs on how to best handle the self-represented without departing from the role of neutral, impartial fact-finders and decision-makers. One program was held for New York City Civil Court judges and another for Family Court judges, support magistrates, and court attorney-referees. The training sessions examined courtroom dynamics and ethical issues, and reviewed practical strategies for dealing with self-represented litigants. In 2007, the DCAJ-JI sponsored a similar training for court attorney-referees from all court types.

3. 2008 Judicial Seminars

³⁹ See *supra* at 25.

⁴⁰ See Facilitating Access Training Program Reference Manuals, available online at <http://www.nycourts.gov/ip/justiceinitiatives/pdfs/FATPVol1.pdf> (Volume 1) and <http://www.nycourts.gov/ip/justiceinitiatives/pdfs/FATPVol2.pdf> (Volume 2).

⁴¹ Office of the Deputy Chief Administrative Judge for Justice Initiatives, *Facilitating Access Committee Final Report and Recommendations* (New York State Unified Court System 2001).

The DCAJ-JI presented three day-long programs at the 2008 Judicial Seminars. These programs were designed to provide motivational, practical and ethical guidance to judges on their obligation to ensure equal access to the courts for the self-represented. The program's components included: a plenary with a nationally-recognized keynote speaker; a moderated panel discussion on what individual judges and courts can do to meet their obligations; an overview of the ethical issues presented by self-represented litigants in the courtroom; and interactive workshops focusing on communication skills, trial and evidentiary issues, and clear decision-writing.

A draft New York Bench Book on Handling Cases Involving Self-Represented Litigants was developed and distributed at the program, as well as a detailed bibliography with suggested reading and practical resources for judges. A final version of the Bench Book will be forthcoming shortly.

E. Participation in Working Groups and Conferences

The work of providing adequate assistance to litigants without lawyers requires constant outreach and education of judges, clerks and personnel. In that regard, the courts have been participating in this effort from a teaching and a learning aspect by participating in numerous working groups and conferences.

1. Self-Represented Working Group

A representative statewide group of court clerks, court librarians, and other types of non-judicial staff from every district in the Unified Court System meets periodically with the DCAJ-JI to review programs in progress, identify new issues and trends emerging in the New York State courts that impact the self-represented, and to discuss future work that might productively be undertaken for the benefit of self-represented litigants. The group met several times in 2007 and 2008 to devise a better data collection form for use in the Offices of the Self-Represented. With the help of the United Court System's Personnel Department staff, an improved and revised online data collection form has been developed.

2. Self-Represented Litigants Conferences and Networks

In 1999, the DCAJ-JI led a state team, including representatives from the bench, the bar and the legal services community, to the National Conference on Pro Se Litigants. This collaboration led to a commitment from all segments of the legal community to work together to provide information and assistance to self-represented litigants in New York. In the ensuing years, the collaboration has strengthened and additional ones have developed, by attendance at the Summit on the Future of Self-Represented Litigants, hosting the Eastern Regional Conference on Self-Represented Litigants, participation in the National Self-Represented Litigant Conference in San Francisco and participation in the Self-Represented Litigants Network. At the San Francisco event, the Administrative Judge of the Eighth Judicial District and other high level court administrators gained valuable insights into the various models and effective strategies for assisting self-represented litigants.

In 2008, a state team also attended the national judicial conference on Leadership, Education

and Courtroom Best Practices, sponsored by the American Judicature Society, Harvard Law School Bellows-Sacks Access to Legal Services Project, the National Center for State Courts and the National Judicial College. Hon. Fern Fisher, Administrative Judge of the New York City Civil Court, and Peter Passidomo, Assistant Dean of the Judicial Institute, both presented on behalf of the New York court system, sharing the Facilitating Access Training Program materials and other information.

F. Research and Policy Development

1. Trial Court Survey of Programs and Services for the Self-Represented

To assist in developing statewide programs and policies, in 2001, the DCAJ-JI conducted a survey of the trial courts⁴² to determine the extent to which self-represented litigants are using the courts and the nature and scope of assistance currently being provided to them. The results, contained in a September 2001 report,⁴³ highlighted the programs and services that currently existed, as well as those that should be developed or improved by the courts.

The results demonstrated a need for better operational responses to self-represented litigants in four principal areas: (1) training of court personnel; (2) availability of resources; (3) collaboration with non-court entities; and (4) data collection, and have been instrumental in guiding the court system's work in addressing the challenges of expanding services for the self-represented.

In 2003, the survey was expanded to include programs and services available in the Town and Village Courts. These courts, also referred to as Justice Courts, exist in every county outside New York City and have authority to hear both criminal and civil matters. There are approximately 1,300 courts statewide. The survey results were published in November 2005.⁴⁴ Results showed that approximately 69% of Town and Village annual caseloads involve self-represented litigants. Litigants are self-represented in approximately 78% of vehicle and traffic cases and small claims matters, and approximately 47% of the time in housing matters. The Report recommended that public access terminals with access to CourtHelp be installed in the Town and Village Courts and that materials about the Town and Village Courts be available in Community Resource Centers and Offices for the Self-Represented as a means of providing information to the public. The Report also recommended that ProBonoNY local pro bono committees consider programs to assist litigants appearing in the Town and Village Courts.

⁴² All trial courts except Surrogate's and Town and Village were surveyed. Town and Village Courts were surveyed at a later date.

⁴³ See *supra* n. 37.

⁴⁴ Office of the Deputy Chief Administrative Judge for Justice Initiatives, *Self-Represented Litigants: Characteristics, Needs, Services, The Results of Two Surveys: Self-Represented Litigants in the New York City Family Court and New York City Housing Court and Services for the Self-Represented in the Town and Village Courts* (New York State Unified Court System, December 2005).

2. Self-Represented Litigant Survey

To better understand the self-represented litigant and ensure that the services being provided meet their needs, in 2002-03 the DCAJ-JI undertook a survey of the self-represented in the New York City Family and Housing Courts. In both these courts, the majority of the litigants appear without lawyers in complex cases involving evictions, domestic violence, child custody, guardianship, visitation, support and paternity. Key findings of the survey include:⁴⁵

- The majority of self-represented litigants have low incomes, feel they cannot afford a lawyer for their case, do not consult with a lawyer and have relatively low levels of formal education;
- The survey respondents had less education and lower income than New York City residents as a whole;
- Survey respondents who completed the survey in Spanish reported lower income and education levels than those who completed the survey in English;
- Eighty-three percent of survey respondents reported themselves as Black, Asian or Hispanic;
- The percentage of self-represented litigants who felt they could not afford an attorney (approximately 60%) was similar throughout the entire range of reported annual incomes (less than \$15,000 to more than \$45,000);
- Relatively few self-represented litigants are aware that the courts have public access law libraries that can be used for research, and even fewer reported using the library for research;
- Most self-represented litigants want written materials to be available in courthouses and court staff available to explain procedures; and
- Approximately one-third of self-represented litigants would like courthouse and case information, including court forms, available on the Internet.

3. New York City Administrative Law Judge Ethics Code Advisory Group

The DCAJ-JI served on the New York City Mayor's Advisory Group to develop uniform rules of professional conduct for New York City Administrative Law Judges and hearing officers. The Advisory Group proposed inclusion of a provision that explicitly states the obligation of these judicial officers to ensure that self-represented litigants have their cases fully heard on all relevant

⁴⁵ *Id.*

points.⁴⁶ The provision requires that New York City Administrative Law Judges and hearing officers liberally construe and allow amendment of papers prepared by self-represented litigants, be attentive to language barriers, and question witnesses themselves to elicit information and obtain clarification. The new rules were adopted with this provision in early 2007.

⁴⁶ See Rules of Conduct for Administrative Law Judges and Hearing Officers of the City of New York (48 RCNY) Appendix, Rule 8.

VI. EXPANDING COMMUNITY EDUCATION AND OUTREACH

In November 1998, Chief Judge Kaye appointed the Committee to Promote Public Trust and Confidence in the Legal System to study and propose strategies to address public trust concerns and the courts.⁴⁷ After extensive fact-finding and consideration, the Committee issued its report in May 1999.⁴⁸ A major finding was that public unhappiness with the court system stems partially from a lack of understanding of its structure and procedures as well as of the substantive law. The Committee further concluded that the key to overall improvement in these perceptions was educating the public about the courts, especially the roles of different courts, as well as the restraints and limitations placed upon them. To facilitate implementation of initiatives to address these findings, the DCAJ-JI partnered with the Committee to develop and coordinate community education initiatives aimed at educating the public and exploring ways to increase the court system's response to public needs.

Two of the most interesting initiatives have involved, respectively, religious leaders and students. The network of relationships built from these programs has been invaluable in creating the types of change in court culture that Chief Judge Kaye has dedicated herself to bringing about. It has involved a broad-based approach to disseminating information, while at the same time listening to the public, and has therefore been a key to increasing communication within and about the court system.

A. Year 2000 Program

A significant finding of the Committee to Promote Public Trust and Confidence in the Legal System was that the public's ability to use the courts effectively is diminished by perceptions that result from a lack of knowledge about the courts and the justice system. The Year 2000 Initiative was developed as a response to this finding. Working with the Office of Public Affairs and the strong commitment of the Administrative Judges, numerous initiatives were developed and implemented aimed at increasing public understanding and knowledge of the courts. In 2001, many of the individual programs continued, with additional programs added at the local level. Initiatives and programs included:

- **Media Days in the Courts.** These programs, designed to broaden the lines of communication between the media and the Judiciary, brought together radio, television, and newspaper reporters with judges and court administrators to discuss

⁴⁷ The Committee's mission was to enhance the public's trust and confidence in the legal system, with a twofold focus: (1) to assure that there is a fair and just system by which people who have contact with the legal system are treated with respect and equality; and (2) to bring about a greater understanding of and respect for the legal system. See Committee to Promote Public Trust and Confidence in the Legal System, *Report to the Chief Judge and Administrative Judge* (New York State Unified Court System, 1999).

⁴⁸ *Id.*

topics such as press access to the courts, accuracy in reporting, and the role of judges and the ethical restrictions placed upon them. The programs provided a rare opportunity for candid exchanges between the media and the courts.

- **Local Courts Appreciation Month.** Courts throughout the state opened their doors to the public for special events that included Law Day ceremonies and Court Open House Days. In conjunction with these events, the court system designed and distributed Court User Guides that provide valuable information to help people navigate their local courts.⁴⁹
- **Town Hall Meetings.** These meetings were held in various parts of the state and New York City to provide an opportunity for the public to have discussions with court system administrators and staff on issues of concern to them and their communities.
- **Senior Law Days.** Developed through partnerships with local bar associations, law schools, county governments, and community groups, these programs consisted of local educational workshops on topics of interest to seniors and their caregivers. Programs were held in Albany (in conjunction with Albany Law School), White Plains (in conjunction with the County Executive and the Department of the Aging), and throughout New York City (in cooperation with local senior citizens centers).

B. Religious Leaders and the New York State Courts Program

As part of the effort to expand education and outreach, an initiative involving religious leaders was undertaken in 2001. This initiative, an outgrowth of meetings with Queens religious leaders who expressed a need to know more about the courts in order to better serve their congregations, aimed to provide an overview of the courts but, as important, to allow for dialogue between the judges and the religious leaders on topics of particular interest. Since that program, the initiative has grown and strengthened itself through a partnership with the Interfaith Center of New York. Five substantial programs have now been held in four of the five boroughs, supplemented by periodic roundtable meetings. In addition, the Eighth Judicial District Administrative Judge hosted a program in Buffalo in 2005.

The programs are day-long and feature panels and presentation by judges and legal experts. For instance, the 2007 Manhattan program included two panels, entitled “Overview of Legal Issues Impacting the Community” and “The Role of Religious Leaders in the Court System.” Additionally, a comprehensive handbook is distributed to participants which explains the court system in detail, including its mission, a summary of salient facts about the individual courts, law libraries and jury service, a criminal justice handbook, and a useful glossary of legal terms.

⁴⁹ These Guides are available on-line at <http://nycourts.gov/litigants/courtguides/index.shtml>.

The initiative was recognized for its innovative approach to court-community collaboration when, in 2005, United States Supreme Court Associate Justice Stephen G. Breyer accepted an invitation to participate in a roundtable held at the Red Hook Community Justice Center. Afterwards, he requested materials to share with his colleagues at the Supreme Court regarding this important program.

The excellent response to the religious leader initiative has led to other programs, including a full-day mediation training for religious leaders in September 2005. Held at the New York County Lawyer's Association, there were approximately 25 religious leaders from around New York City who participated.

Several positive benefits have accrued from the various programs. These include:

- Religious leaders gain a better and deeper understanding of the court system and the role of courts and judges. They can explore the boundaries of a judge's role, and learn what she can and cannot do.
- The programs bring information about the courts directly into the communities. Religious leaders have shared distributed materials with their congregants, thus increasing overall understanding of the court system.
- Administrative and trial judges have become more aware of clergy and community concerns. This, in turn, fosters partnerships between the clergy and other justice system stakeholders to acknowledge and resolve some of the issues raised.⁵⁰

C. Law-Related Education Programs

There have been many law-related education programs held in partnership with Bar Associations, good-government groups and educational institutions. The DCAJ-JI has developed and implemented numerous programs which aim to increase the involvement and understanding of young people in the functioning of the courts.

Working in collaboration with the Association of the Bar of the City of New York and the After School Corporation, a program bringing judges into elementary and middle schools was developed. High school programs included a "Law in the Classroom Day" at Humanities High School, a "Lunch with Judges" involving the Urban Assembly Academy of Government and Law, and a conflict-resolution training at the Eagle Academy in the Bronx. In the latter, the Office of Alternative Dispute Resolution partnered with DCAJ-JI to provide a half-day training for the young male students and their parents, teachers and mentors. At the college level, a partnership was

⁵⁰ For a more comprehensive discussion of the clergy initiative, see Hon. Juanita Bing Newton, Moise Waltner and Matthew Weiner, *A Model for How Court Systems Can Work with Religious Communities*, ABA Judges' Journal at 28 (Fall 2007).

established in conjunction with the Office of Court Administration, the Fund for Modern Courts and the City University of New York to develop a pilot law program at John Jay College.

Another important educational program is the Court Tours and Community Outreach Program. This Program operates in the courts in the five boroughs of New York City and Westchester County, and gives students the opportunity to participate in mock trials, tour the courthouse and learn about court proceedings and the roles of various court personnel. Court Tours has been very successful, winning recognition from bar associations. Representatives from the program additionally participate in projects as diverse as Career Day, Adopt-a-Class, the New York City Department of Education Speakers Classroom Program and the Summer Youth Program.

VII. COMPREHENSIVE INITIATIVES TO EXPAND ACCESS TO JUSTICE

A. Local Access to Justice Plans and Teams

The DCAJ-JI has focused on a statewide perspective for ensuring access to justice for all New Yorkers. Despite this broad outlook, there is a recognition that justice needs vary around the state depending on factors such as geography and demographics. To address this diversity yet ensure that access to justice ideals are incorporated into the courts' day-to-day activities, the Administrative Judges were asked to devise Access to Justice Action Plans for their courts and judicial districts. In late 2000, the Administrative Judges enthusiastically took on the task, drafting plans that critically assessed the access to justice needs of court users, and proposing programs and initiatives that would ensure greater access. In connection with these plans, Judicial District Access to Justice Teams were subsequently established to ensure that local expertise and initiative were brought to bear upon access to justice issues. These committees operated at different levels throughout the state. With the development and implementation of ProBonoNY, the work of the Access to Justice teams was successfully merged into the work of the ProBonoNY Action Committees.

B. Access to Justice Conferences

With an abiding interest to educate as well as to be educated, the DCAJ-JI has held two major conferences in New York State. The first was the Access to Justice Conference, which was held on September 11, 2001 in Albany, New York,⁵¹ and the second a series of conferences on rural justice issues held in Geneva and Saratoga, New York in Fall 2007.⁵² The collaborative outreach model was employed for both, reaching out to judges, court personnel, academia, law schools and the bar. Both events proved exceedingly successful in raising awareness of issues relating to access to justice.

⁵¹ For an in-depth discussion of the conference, see Margaret Martin Barry, *Access to Justice Conference September 11, 2001: On Dialogues with the Judiciary*, 29 Fordham Urb. L.J. 1089 (2002). Additional remarks and articles resulting from the conference are contained within a special edition of the Fordham Urban Law Journal, see 29 Fordham Urb. L.J. 1081 *et seq.* (2002).

⁵² Details about the conferences, entitled "A Conversation About Justice Issues in Rural New York: Planting the Seeds for Collaborations and Partnerships" is available online at http://www.nycourts.gov/ip/justiceinitiatives/rural_justice.shtml.

VIII. CONCLUSION

In the last decade, and as a result of the vision of Chief Judge Judith S. Kaye, there has been a dramatic change in the court and legal culture regarding access to justice. Statewide, there is greater awareness of the legal needs of poor and low-income New Yorkers, and the severe consequences for the justice system and society as a whole if these needs go unmet. Concomitant with that awareness is a growing recognition and a move to action by the bench and bar with respect to their fundamental obligation to ensure access to justice for all citizens. At the Chief Judge's direction, the DCAJ-JI has led the court system's efforts to create this change, serving as the go-to person within the court system and the broader access-to-justice community for practical and cutting-edge strategies and initiatives that seek to eliminate barriers to, and disparities in, accessing justice.

While much has been accomplished through the supported and encouraged focus on expanding access to justice, more must be done. Chief Judge Kaye has set the standard and marked the course. As we continue on the path, we move closer each day to the ideal of "equal justice for all."

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