



The Newsletter of the NYSBA Committee
on Courts of Appellate Jurisdiction

The opinions expressed herein are those of the author(s) only and do not reflect the official position of the Committee on Courts of Appellate Jurisdiction or the New York State Bar Association.

Chair:

Alan J. Pierce

Editorial Staff:

William B. Stock, Editor-in-Chief

John A. Cirando

Warren S. Hecht

Timothy P. Murphy

Sharyn M. Rootenberg

A reminder to our readers: your contributions regarding cases, articles, interesting events and the like will all be considered for publication in future issues. Submissions can be sent to appcourts@nysba.org.

Welcome

Recently, Chief Judge Jonathan Lippman of the Court of Appeals granted *Leaveworthy* an exclusive interview. It follows below. Introductions should be as brief as the subject matter is important, but I would like to thank two people among many who were especially helpful in making this happen: Mr. Gary Spencer of the Court of Appeals and Ms. Alexis Hatzis, J.D.

William B. Stock

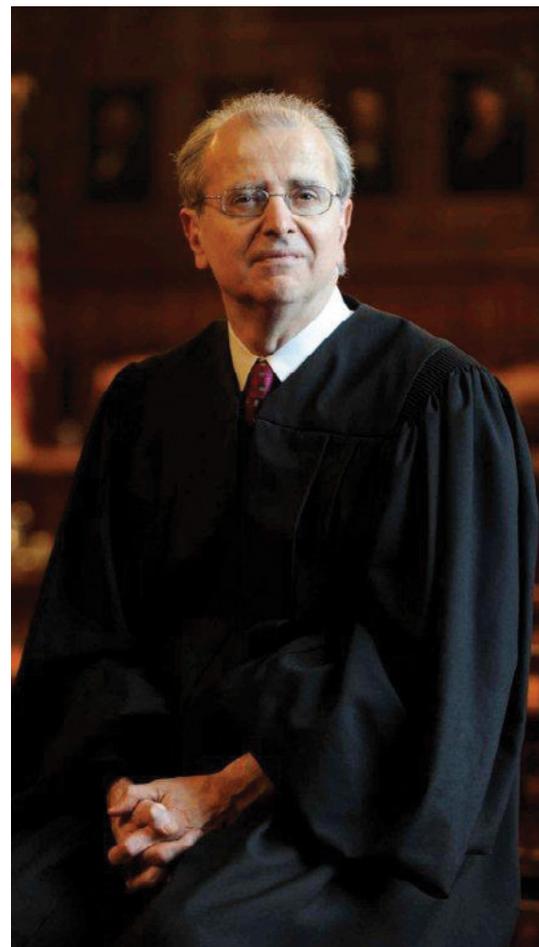
Leaveworthy C.J. Lippman Interview

By: William B. Stock

Leaveworthy: Your Honor, your biography on the Court of Appeals website traces over four decades of service in the judicial system. Can you tell us something about your career and what led you into the law and then into public service?

C.J. Lippman: I didn't necessarily come out of law school saying that the one thing I wanted to do was to have a career in the New York State judiciary. But, like anything else, I wandered into the public sector, really starting as an entry-level court attorney. We used to call them law assistants in those days. I never envisioned being in the court system for four decades.

So I started at entry level in what was a very different court system than it is today. My office was in a converted elevator shaft,



CHIEF JUDGE JONATHAN LIPPMAN OF THE COURT OF APPEALS

where I wondered whether we would go up or down at any given time during the day! The courts in those days had no well-defined protocols and no time records and were without the trappings of a bureaucracy in a large organization like we have today.

I became a law clerk to a judge at one point. The judge died when I was working for him, and I had to figure out what to do next. I came back to the law department as the principal court attorney. I was the person in the law department responsible for overseeing many other court attorneys. I did that for a while, then I became the Chief Clerk of the court in Supreme Court, New York County. People told me that it was a dead end job, as I was going from the legal series to an administrative role - - as the non-judicial executive officer of the court. Eventually, under Chief Judge Wachtler's leadership, I became the Deputy Chief Administrator for the court system, responsible for running the nuts and bolts of the court system statewide. From there I went on to become the Chief Administrative Judge under Judge Kaye. Prior to becoming Chief Administrative Judge, I was appointed a judge of the Court of Claims by Governor Pataki. Eventually, I ran for the Supreme Court in the 9th Judicial District and became a Supreme Court Justice.

In 2007, Governor Spitzer appointed me to be the Presiding Justice of the Appellate Division, First Department. Governor Paterson then made me the Chief Judge. Coming to the middle seat at the Appellate Division and the Court of Appeals from outside the court gave me a fresh perspective in leading those courts.

So as you can see, I started out doing straight legal work for many years, and then segued into the administration of the court system for a long period of time. I was the Chief Administrative Judge alone for almost twelve years under Judge Kaye. Then, with the appointments to be Presiding Justice and Chief Judge, I took on roles where I really had the best of both worlds, doing the critical

adjudicative work on legal issues that affect all New Yorkers and the administrative work that I have done for so many years. So, now I have returned to where I started with this great emphasis on the law, yet combining it with very great administrative responsibilities.

Leaveworthy: In a speech you gave in March of this year, you said "Having grown up in New York with its progressive social and governmental traditional ethos, it was second nature for me upon becoming Chief Judge to see the judiciary as the leader in pursuing the ideal of equal justice in New York." As a native of New York City myself, that is high praise for our hometown. Could you elaborate?

C.J. Lippman: This is the state of the two Roosevelts, Teddy and Franklin, Benjamin Nathan Cardozo, and the Lehmans-- it is a very forward-looking, progressive state. I think some of the great lawyers in our country's history have come out of New York. Some of the great cases in legal history have to do with New York. We've had great leaders, great judges. So I do believe New York has a history unlike any other state, certainly in terms of social progress and new ideas. To not see that the fundamental role as Chief Judge is to foster equal justice would be to overlook a rich history. New York is so formative for those of us who have been fortunate to grow up here.

Leaveworthy: In your capacity as Chief Judge of the State of New York, you have a great deal of influence over how the law is practiced. The quotation from your speech reflects your interest in seeing every citizen gets equal justice. What are some of the initiatives you've undertaken in this area that you are most proud of?

C.J. Lippman: Well, I certainly am very proud of our efforts to get public funding for civil legal services which the past year includes \$70 million; \$55 million of that the court gives out in direct grants to legal service providers and another \$15 million, we give to the Interest on Lawyer Accounts (IOLA) to make grants. We have been very active

in this whole idea of reprioritizing what's important in New York. Legal representation for the poor is such a fundamental part of the well-being of our society. I'm proud of that, and I'm proud of our efforts in the pro bono area. Consider our Attorney Emeritus program, our corporate counsel program, and that we are the first state in the country to require law students to provide fifty hours of pro bono work before they can be admitted to the bar. There's the Pro Bono Scholars Program, which permits law students to take the bar exam in February of their third year in law school in return for giving their last term to full-time pro bono work. I'm also proud of being the head of the Indigent Legal Services Board in our state that has provided funding around the state to make sure that we have representation at arraignments for criminal defendants who cannot afford a lawyer and that public defenders have manageable caseloads.

So I think in the equal justice arena, we've really created a template for New York that includes public funding for civil legal services, pro bono work by the bar, and living up to the promise of quality representation on the criminal side. There are also a lot of other initiatives in relation to legislation that we have submitted related to wrongful convictions and juvenile justice and bail reform. All of these things play into what I see as the Chief Judge's role in being the leader in access to justice in our state, as well as the leadership role of the judiciary in the area of equal justice for all. Judges and lawyers have a responsibility in that area, and I think the Chief Judge, as the steward of the justice system in New York, has a special responsibility.

Leaveworthy: Taking a national perspective, do you see any type of crisis in the nation in terms of providing justice?

C.J. Lippman: I think the greatest challenge to the very legitimacy of our justice system is the crisis in access to civil legal services for the poor. I think that it is a crisis, to say the least, when legal service providers turn

away three out of four people who are coming to them seeking help. It's a crisis when in New York, 2.3 million people come into the courts unrepresented. It's a crisis all around the country. And that's why New York has tried to take a leadership role in this area, working with others around the nation who have risen to this task and tried to do new and interesting things to promote equal justice.

To me, the crisis is grave. Let's look at the criminal side where even 50 years after *Gideon v. Wainwright*, criminal defense representation is very uneven around the country. Whether we've really lived up to the promise of *Gideon* is an issue but at the very least, there is a constitutional floor -- when your liberty is at stake, you get representation. When the necessities of life are at stake, the roof over your head, your physical safety, the well-being of your family, your livelihood, there is no such constitutional requirement. I think that has created very serious injustices that we're all trying to deal with. It manifests itself in a justice gap between the finite legal resources available and the desperate need for legal services by the poor and people of limited means.

Leaveworthy: Other than what you've already alluded to, is there anything else you feel could be done at the national level?

C.J. Lippman: At the national level, to get more funding for the Legal Services Corporation would certainly be a very good thing. And there are interesting things that are happening in different states that are laying the foundation for, whether it be by policy, by statute, or by court rule, some kind of a requirement for effective representation of people in civil cases who are battling for the essentials of life. We should again look the criminal side. Twenty years before *Gideon* in *Betts v. Brady*, the United States Supreme Court said there was no right to representation in state criminal cases. And in the 20 years between then and *Gideon* there was a change in the public's view as to the importance of representation in criminal cases. And I think that's what's happening now in

the civil part of the equation. New and interesting ideas are taking hold around the country, changing attitudes as to the need for better representation for people of limited means in civil cases. We're going to get there, and for now we need to continue to push the envelope in terms of public funding and pro bono representation.

Leaveworthy: In your role as Chief Judge of the state, have you had any expectations not met? In particular, do the financial cutbacks create a damper on your goals?

C.J. Lippman: Well, they certainly don't help. I think that we have had budgetary cutbacks, which has limited our ability to deliver justice to the people who come into the court seeking just that. It's not that we're telling our friends in the legislative and

executive branches that we want to be treated differently than anybody else when the state runs into these difficult times. But I think we have to get across that the consequences of treating the judiciary the same as everybody else are grave in terms of the delivery of justice. And I think we've been able to get that message across. Certainly the cutbacks that we had four years ago hurt. Our message is that cutting back too far on the judiciary is a dangerous thing for our society and our communities. Our partners in governments know that the judiciary stands for something: equal justice for every single citizen; and that we must have the resources to do our work.

I'm pleased to say that our budget this year is much better than in previous years. We certainly have held our own, and this



THE NEW YORK STATE COURT OF APPEALS, ALBANY, NEW YORK

year there is much improvement. People are beginning to understand how vital the judicial branch is. You can't just say, 'Oh, let's have some formula where everyone's going to be cut by such and such amount, and that's fine and dandy.' Well, that's fine if you're not worried about what it does to the people who live in our state and our society. The bar is our constituency in so many ways, as are the people who come to our courts seeking justice. We must stand together and recognize that the judiciary has to be supported. Otherwise, it has grave implications for our citizens.

An independent, impartial judiciary is pivotal to the well-being of our system of justice here and in the entire country. Financial support for the courts is such a serious issue that the A.B.A. formed a commission to deal with this critical issue. Justice is not some amorphous term. It affects people concretely in their everyday lives. And this should be of paramount importance to our government and to the public.

Leaveworthy: Excluding the fifty hour pro bono requirement for new attorneys, do you want to see mandatory pro bono for New York State attorneys as a requirement? Also, given the pace of the average attorney's working life, do you believe it is possible to inculcate the spirit of public service?

C.J. Lippman: Well, the answer to the last question is yes, I think we can. We have been doing a good job of that, and so many lawyers do very well on their own. But my job is to make sure that everyone understands their obligations and responsibilities as lawyers, to serve others and to help people. It's a noble profession; this is what we do. This is what's most important to lawyers, no matter what kind of law you practice. So I think that the New York bar has done a terrific job.

As to mandatory pro bono, that's a different issue. The 50 hour program is a licensing requirement for law students. As to lawyers already admitted, there are logistical and economic reasons why one would hesitate to do it - - although for

those of us who are very concerned by the justice gap, there is certainly a visceral attraction to it. I think that the answer is to make sure that all of us in the bar in our state, which to me is absolutely the best bar in the country, meet our pro bono responsibilities.

And while I can say that certainly I have no intention at the present time of doing mandatory pro bono for all lawyers, I do think it would be a good idea if every lawyer in the state did fifty hours or a hundred hours of pro bono work. Whether it is done on a mandatory basis is a different issue. There are many considerations. We can't chart the future course unless we know how we're doing. So we're working with the New York State Bar and its president, Glenn Lau-Kee, to make sure that the system that we have in place works for the collective well-being of the profession and of our state. And I've been very pleased with the cooperation and collaboration that we've had with the bar on this issue. Through the reporting of pro bono hours and contributions, we're going to know better how we're doing in meeting our special responsibility.

Leaveworthy: Turning now to your position as Chief Judge of the Court of Appeals. It is a given that very few people have occupied that chair. Was there a mentor or predecessor in your past that influences or inspires you today?

C.J. Lippman: Well, I've had a lot of mentors and influences, including two stellar trial court justices from my formative years - Sam Spiegel and "Ricci" Riccobono; former First Department Presiding Justice Betty Weinberg Ellerin, a great mentor and role model to me and instrumental in my career from the days when I was a law assistant and she was a law clerk to this very day; Sol Wachtler, who appointed me to be Deputy Chief Administrator of the courts, my breakthrough on a statewide level; Leo Milonas, who gave me a first-hand course in what being a strong leader is about when he was Chief Administrative Judge; and, of course, Judith Kaye, who wrote the script for me and with whom I had so much fun moving the mountains of

court reform. So I've had great mentors and role models over the years that have helped me at the trial court and appellate levels, and in court administration. They and so many others played such an important part in how I see my role today as the Chief Judge.

Leaveworthy: I believe that Chief Justice Roberts of the Supreme Court at his confirmation hearing described the job of a judge as being akin to an umpire, limited to calling balls and strikes. How would you describe the job of the Chief Judge of the highest appellate court of this jurisdiction?

C.J. Lippman: Well, I certainly don't see myself as an umpire calling balls and strikes. I see the Chief Judge as being a leader, both on the court and as the Chief Judge of the state. I think what plays into the remark that Chief Justice Roberts made on being an umpire is all this controversy at the federal level about activist judges: that judges should not make policy, and they should just apply the law as it's given. And, of course, that's true in such large measure. As a state high court judge and as the Chief Judge of New York, I don't see myself as being an activist judge, but I do see myself as being proactive in the pursuit of justice. And to me, that's the role of the Chief Judge, certainly in our state, not as an umpire who just calls balls and strikes.

Leaveworthy: Do you strive for unanimity on the court's decisions, or do you favor a variety of judicial ideas?

C.J. Lippman: I do not favor unanimity as an all-embracing concept. We always seek consensus on particular cases, but I happen to believe that the law is better articulated and evolves better by having strong majorities, strong dissents, and concurrences. There's a tendency when a court's overarching goal is to achieve unanimity to run the risk of rounding the edges so much that the law is not as clearly articulated as it should be. I understand the other approach of the court speaking with one voice. But I think there are two appropriate ways of looking at it. I just believe that the law is better served by letting judges speak their minds. It is

a good thing to have different opinions and different views on the law. My predecessor, Judge Kaye, was a big believer in consensus, and it worked so well. But judges, and certainly chief judges, have different views on that. The court, since I've been the Chief Judge, has not been afraid to disagree, although we're never disagreeable with each other. I think the law benefits by that approach. Certainly if we can get consensus, we're happy to get it. But unanimity or consensus is not an end in itself for me.

Leaveworthy: What do you see as the value of oral argument in reaching a decision, and how do you see your role as moderator of oral argument at the Court of Appeals?

C.J. Lippman: I think that oral argument is important. I think writing a good brief is also important. I think that oral argument sharpens the issues. It sometimes, but not overwhelmingly, can change a judge's opinion. If not your opinion, it can change the issues that you see as important. So I think it's a very important part of the process. I think my role as the Chief Judge in overseeing argument is to make sure that everyone gets his or her day in court, including all of the litigants and the judges who are sometimes competing with each other to ask a question or to get across their viewpoint. My role is to keep the argument moving along with everyone getting an opportunity to be heard, yet recognizing that there isn't unlimited time. It's making sure that we're hearing the right points, getting to the issues and, again, giving everybody a fair chance.

Leaveworthy: How would you evaluate the general level of advocacy before the Court of Appeals, and what can an attorney appealing before the court do to be at his or her best?

C.J. Lippman: Well, I think the level of advocacy is very, very strong. I think we get a great quality of lawyer who comes up to argue cases at the Court of Appeals. I've been fortunate to also serve as the Presiding Justice of the Appellate Division, First Department. We had a very high level of advocacy there, too.

The most important thing an attorney can do at oral argument is to listen to the judges' questions. Attorneys come in and have made up their minds that they want to argue certain issues or to get certain points across, but I think they have to keep in mind that the judges have read their papers and are very much aware of the issues. It's a very hot bench, and the judges want to know certain things. Where lawyers make a mistake is when they talk about what they want to talk about, rather than understanding that the judges comprehend the case and may want to hear about other points or aspects of the case. There are certain things they want clarified or they want a good answer to. So answer the judges' questions. Don't go your own way based on what you think the issues are. We've looked at the issues. We need you to give answers to certain questions that are important to the bench and may ultimately be dispositive of the case.

Leaveworthy: Are there any changes in Court of Appeals procedures you would like to see, and are there any technical innovations in the works?

C.J. Lippman: The Court of Appeals is based on tradition, and our procedures are pretty well established. I think they work well; they've been proven over time. The only thing I could think of right this second that we might want to expand upon down the road is e-filing. The court process needs to be as efficient as possible, and yet we will not ignore the history, tradition, the feeling, the ambience of the court. We've got to be in the modern age, and yet be true to the history of the great court. I think we're doing okay in that regard. The process works, and the decisions come out like clockwork by the next term. I think we can do more with technology, and we're working on that.

Leaveworthy: In your tenure, the number of criminal appeals has gone up significantly. . . .

C.J. Lippman: It has, and I'm proud of it. In criminal cases, it is very important that not only in reality everybody has their day in court, but that there also must be a perception that

everyone has their day in court. When I came on, in my opinion, there were not enough grants of criminal leave applications to convey the idea that everyone gets a fair shake. So that's something that I spoke to the judges about privately and talked about publicly, and I think we're doing a better job of that. I think everyone knows when you file a criminal leave application with the high court, we will be taking a good look at your case. If you have an issue or issues that deserve to be heard, you will have leave granted. That's something I feel very strongly about.

Leaveworthy: Are there any opinions or dissents of yours of which you are particularly proud?

C.J. Lippman: I'm very proud of my body of work. At this point, it is probably not the time to be talking about particular opinions or dissents. There will come a time when I'll talk about particular decisions of which I'm most proud. Every case is important and critical. I think the decisions speak for themselves. There will be many more cases to add. To have the opportunity to sit on the court with the level of litigation that comes before us (and cases of such importance to our citizenry) is truly an honor. To be able to be a part of that and to opine on important and critical cases is something I look forward to doing a lot more of.

Leaveworthy: Given your busy professional schedule, do you have any free time and, if so, how do you spend it?

C.J. Lippman: Well, I don't have that much free time. I view the two jobs that I have as the Chief Judge of the state and the Chief Judge of the high court as being both twenty-four-hour/seven-day-a-week jobs. The time that I have I like to devote to my wife and to my family. My children live here in the city. I'm an avid New York Yankees fan, although they've fallen on to a little bit of hard times in the last few years. But I'm optimistic about the future! I'm also a New York Knicks fan. We live in New York City, and I certainly like to enjoy all the wonders of this great city. I grew up and was born and bred here. I take the time to enjoy life, and it certainly doesn't

in any way diminish the demands on me as the Chief Judge. It's a singular part of my life. I think it's a privilege to be in the role that I have. I feel fortunate to have those responsibilities; I take them very seriously. And so it takes up the great bulk of my time, but I certainly strive to recognize and put it in its role as part of a larger life.

Leaveworthy: Do you have any thoughts about your eventual retirement, and what will be seen as your legacy?

C.J. Lippman: January 1st, 2016 will come, and I think I will start thinking about that a little more seriously as time goes by. I can do a lot in the next fifteen months, and I intend to do just that. I'll worry about what happens in 2016 once we get a little closer. As to legacy, I hope that I would be viewed as someone who, above all else, put equal justice first in terms of my priorities, both on the adjudicative side and on the policy side as the chief judge. To me this is the judiciary's constitutional mission, to foster

equal justice. This is what we should be doing, and as the leader of the judiciary, this is my first priority, whatever role I am performing, either on the cases or administratively. I hope that I'll be remembered as someone who, not only as the chief judge, but in forty years plus service in the courts, understood the priority of the judicial branch of government - - and was someone who worked day and night with certainly every ounce of energy and every fiber of my body towards that goal of making the ideal of equal justice a reality for each and every person in our state. That certainly would be for me a great legacy and one that I would be very proud of. I hope that people view me in that context as someone who has focused intensely on equal justice in our state and society.

Leaveworthy: Thank you very much, Your Honor.

It has been a great pleasure meeting with you and spending this time with you.

C.J. Lippman: Thanks so much.

Afterword:

The undersigned has been editor of *Leaveworthy* since its inception five years ago. That is a long time by any measure. The editorship has been one of the high points of my legal career but all good things must come to an end for one reason or another. I am glad that the editorship will pass to my friend and colleague, Ms. Cynthia Feathers, Esq., who, I have every confidence, will move *Leaveworthy* to new heights.

I dedicate this issue to two scholars who have influenced me: Dr. Louis Feldman and Dr. Shimon Shetreet. Vale!

William B. Stock, outgoing editor-in-chief



NEW YORK STATE BAR ASSOCIATION
COMMITTEE ON COURTS OF APPELLATE JURISDICTION

One Elk Street, Albany, NY 12207
518.463.3200
www.nysba.org