

Moving the Mountains



A Conversation with New York State Chief Judge Jonathan Lippman

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In January of 2015, New York State Chief Judge Jonathan Lippman visited the Center for Court Innovation for a one-on-one conversation with Greg Berman.

Lippman has served as the chief judge of New York State since 2009. As chief judge, Lippman supervises the Court of Appeals, the highest court in the state. He also oversees the New York court system, a sprawling bureaucracy with a budget of more than \$2.5 billion and some 20,000 employees.

During his term as chief judge, Lippman has expanded state funding for civil legal services. He has advocated for bail reform and for raising the age of criminal responsibility. He has created alternatives to incarceration for juvenile defendants and victims of human trafficking. And he has established new rules to encourage *pro bono* work by attorneys.

These are just a few of the reforms that Lippman has advanced over the years. According to Lippman, “being a little bit of a provocateur is a good thing for the judiciary.”

As he enters his final year as chief judge, Lippman visited the Center for Court Innovation for a question-and-answer session with Center Director Greg Berman. What follows is a transcript of their wide-ranging conversation, which took place on January 23, 2015. It has been lightly edited for length and clarity.

GREG BERMAN: You grew up on the Lower East Side. What was the teenage Jonathan Lippman like?

JUDGE JONATHAN LIPPMAN: In those days, the theory was to push you ahead in terms of your education, so I was two years ahead of myself. I was just 16 entering college. I think that I was ready academically, but not necessarily socially. I was very interested in sports and very interested in work, but I wasn't too social.

BERMAN: Speaking of sports, Mets or Yankees?

LIPPMAN: What can I say?

BERMAN: So, who's your favorite Yankee?

LIPPMAN: Well, for my vintage, you know, it was, as Billy Crystal called him, "The Mick." Mickey Mantle was our god.

BERMAN: At what point did you decide you wanted to become a lawyer?

LIPPMAN: I consider myself, to some degree, a policy wonk. Law school was a practical thing to do. I just thought law school made sense. I went to New York University undergraduate and NYU law school. My life was downtown. I used to say that if I got above 14th Street, I got a nosebleed.

BERMAN: Walk me through your career. I know you spent the bulk of it within the Office of Court Administration.

LIPPMAN: I kind of just wandered into the courts. There was a job open. I went to the Law Department in the Supreme Court in Manhattan. I won't go through all the details. I was a supervisor in the Law Department and then made the leap into court administration. And I think during those years I realized that I really love this.

It's meaningful to me, all these people coming in and seeking this intangible thing called justice. So I became a court administrator, the chief clerk at the executive office of the Supreme Court, and then I went to the statewide level. And then I became the chief administrative judge, where I really had a chance to have an impact on what justice means to the average person in New York.

BERMAN: What did you learn from working with [former New York State Chief Judge] Judith Kaye as her chief administrator?

LIPPMAN: She was a person who had a big vision, and she was interested in reforming the court system. During the 12 years that I worked with her, I learned how you moved the mountains of court reform. We took on big projects and succeeded in many of them. Judge Kaye was someone who thought big, and I was kind of the nuts-and-bolts person. So, over the years I learned not only about thinking on a large scale but how to make it happen. To me, you can have the greatest ideas in the world, but if you can't make it happen, I don't know what you're accomplishing.

BERMAN: So, let's fast forward to 2009. Governor David Paterson appoints you chief judge. You were ascending to this role at a moment of financial crisis for the state. And you were also ascending to the role at a moment when judges across the state were in a high level of anxiety and outrage because they had not received a raise for a number of years. How did you approach this challenge?

LIPPMAN: To me, there are going to be highs and lows. Coming in, I didn't feel under some great pressure. I had lived through crises before. And so none of this was new to me. I had the great fortune, very early on, to resolve the salary crisis. I was able to get through the Legislature the salary commission bill, which is now institutionalized. And then Governor Andrew Cuomo comes in during



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the economic crisis and says, "We're going to cut the budget, and the judiciary is no different than everybody else." And during that first year, the judiciary took a \$170 million hit. But I think the basic answer to your question is that in many ways I'm very in-

tense and focus on all of these issues greatly, but none of it really throws me because I've been doing policy within the judiciary framework for many, many years. There's nothing where I say, "Oh my god, what am I going to do?" I know what I'm going to do. To me, the big challenge is how to execute it. Without overstating it, I think that I'm at my best when I'm under a great crisis that has to be thought through. To me, the challenge in government and policy work is making things happen.

BERMAN: Let's spend some time focusing on your role as the chief of the Court of Appeals, the highest court in the state. How would you describe your judicial philosophy?

LIPPMAN: To me, it's all about the pursuit of justice. That's what I do on the bench, and that's what I do in my role as the head of the judiciary. We pursue justice. This goes back to biblical times. The Old Testament tells us: "Justice, justice shall you pursue," rich and poor, high and low alike. To me, that's my judicial philosophy. You follow the law. We're not in a free-form institution, where you get on the bench and you do whatever you want. We have precedents, we follow them. There's the evolution of the common law. But my judicial philosophy is to make sure that justice is done. And that's what I want to do on the policy side as well. I don't consider myself an activist judge, but I consider myself proactive in the pursuit of justice.



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BERMAN: What's the toughest case you've had to decide?

LIPPMAN: Well, I can't talk about the details of individual cases yet, but I would say that there are a couple of cases that stick out in my mind. One is the GPS case, *People v. Weaver*, which is about

whether the police can put a GPS track under someone's car without a warrant. And this was a case that the high court split 4 to 3 and I wrote the majority opinion, saying that the police cannot do it. It caused a little bit of a fire storm. And I guess the case sticks in my mind because the U.S. Supreme Court had a very similar case, and while many in the law enforcement community were not happy with that decision, the Supreme Court effectively affirmed that decision 9 to 0.

And I guess the other one I would mention was another 4-to-3 decision, which was the Hurrell-Harring case, which was a systemic challenge to the indigent defense system in New York. In a 4-to-3 decision, I said you could continue this lawsuit and that representation could be so bad that it constituted a constructive lack of representation. And that case led to the Hurrell-Harring settlement, which brings up the constitutional standards of indigent criminal defense representation in five counties and will ultimately have great implications in terms of criminal defense throughout the state. I mean, there are so many other important cases, but those two stick in my mind.

BERMAN: It's interesting that you choose two cases where there was a split court. A couple of years ago, *The New York Times* did a piece that highlighted a decline in unanimous decisions in the Court of Appeals and a dramatic increase in the number of cases

where you were in the dissent. I wonder what your reaction to that piece was?

LIPPMAN: In that piece, they talked about the difference in philosophy between myself and Judge Kaye as to judicial decision making. Where Judge Kaye believed that the court should speak with one voice, I have the opposite view. My view is that the law is better articulated, and evolves more clearly, if there are strong dissents or responses that sharpen the issues. Because my belief is that if



there's such an emphasis on consensus and unanimity, what you get in a decision is very little. Inevitably, you water things down to achieve unanimity. If the law is ever going to evolve and change, you need those strong dissents that say what's wrong with the direction that the law is going. And the reason why I dissent a lot is to plant a flag in the ground and explain what is wrong with the direction of the law. So, in making these kinds of dissents, you are essentially saying that it may not be today, and it may not be



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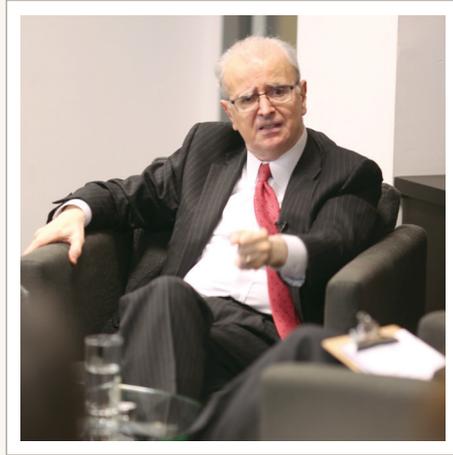
tomorrow, but at some point the law is going to come around with the point of view that you have clearly expressed. If you believe strongly that the law should be changed, you ought to say it. Because judges change

and, especially in a common law system, the law evolves.

I've always said that consensus isn't a bad thing. Unanimity is not a bad thing. In fact, there are some cases where I think it's good when we all speak with one voice. But unanimity as an end in itself is not what I'm all about. I don't believe in it. I believe in saying what you think and being very strong in your views.

BERMAN: I want to turn to the policy side of your job. Over the years, we've seen you take on a number of powerful interests—taking on the bar if you needed to, taking on law schools when you needed to, taking on banks, taking on the governor. How do you choose the issues you're going to invest in?

LIPPMAN: I've been in the justice system my whole professional life. I care about what's just. I care about equal justice. I care about everybody getting their day in court. If you look at all the hard things that we've done, taking on some of the different establishments that we've taken on, they all relate to the foremost mission of the courts, which is equal justice. You talk about taking on the bar, and we've been fighting with them about *pro bono* work. To me, it's the most basic responsibility of a lawyer, to serve others. And that's what we do. To promote justice, we don't just feather our own nests. We're supposed to be doing things to help everybody, whether they have money or not. And you talked about taking on the big commercial establishments, it's about giving people a fair shake in court.



Even the budget battles with the governor or the Legislature are about this fundamental issue. We need to fund the courts. We need to do justice. We talk about keeping the doors of the courthouses open through these difficult funding issues. To me, if they're open but what's inside is not equal justice, you might as well close them. Don't give me the funding. That's why we give millions of dollars from the court budget to legal services for the poor. Because, to me, if I could keep the courtrooms open but it wasn't a level playing field, then I don't want to keep them open. So, when I wake up each day, I think about changing things and having new ideas about making things work better. I don't wake up and say to myself, let's aggravate the Bar Association today or let's aggravate the Legislature or what have you. We don't do that.

BERMAN: Turning to some of the specific issues that the Center for Court Innovation works on, what is your assessment of the current state of play with bail reform right now in New York State?

LIPPMAN: I think there are great opportunities at the moment. We have tried to put together a balanced bail proposal that would

bring New York to the head of the line nationally instead of the back of the line. The first thing we have proposed is that judges should take into consideration public safety in bail decisions. They do it anyway. It's a fiction that they don't. And at the same time, we have sought to radically change the presumptions about pretrial release, saying that if you're not a threat to society, the presumption should be that you're out [of jail] rather than in.

There is no discernible reason why people should be in jail while their case is pending if they're not going to flee and they're not a threat to society. You take them away from their job, you



take them away from their family, and they get a lousy plea as a result. It has been difficult to get folks in Albany to buy into the presumption that people should be out unless there's a reason to keep them in. That being said, around the country the pretrial justice movement is growing. I think the current tensions growing out of the end of stop-and-frisk, "broken windows," the Staten Island incident, the terrible shooting of the two police officers—all these things have made people start to think about criminal



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justice reform. It creates an opportunity to be raising issues like bail reform.

I'm doing a program with the chief justices at their annual meeting about pretrial evi-

dence-based justice and giving some examples of states around the country that have been relatively successful. The three that I'm talking to are Washington, D.C., Arizona, and Indiana. So even very conservative, red states have had some success in changing the dynamic in terms of pretrial justice.

To me, the most powerful argument is that the person who decides whether someone's free or incarcerated is not the judge. It's not the prosecutor. It's not the defense lawyer. It's the bail bondsman. That, to me, is just about the most absurd thing I've ever heard.

BERMAN: Bail reform may not have a great deal of momentum in New York at the moment, but one thing that does is raising the age of criminal responsibility. And you were one of the first major public officials to advocate for this. So, are you feeling optimistic about the prospects at the moment?

LIPPMAN: I am very happy with the governor for doing his task force. I think their report is fine. I have no monopoly on the best way to do this. I don't care whether all the cases are in Family Court. I don't care whether they're in the hybrid court that we suggested. But I don't want to wait another 50 years to raise the age of criminal responsibility. Let's make it happen. And this is not going to be an easy task. We need Governor Cuomo at the front of the parade. I don't get great satisfaction in raising an issue and then seeing it lay there. The game, again, is to get from A to B.

That's a long way of saying that I'm optimistic, but I think we need the governor to roll up his sleeves. He's the one who's going to make this happen.

BERMAN: I'd be remiss if I didn't ask you about the Center for Court Innovation. How has the Center helped you get things done?

LIPPMAN: I think the Center is a great resource for the court system. In the court system, we spend so much time thinking about how to keep our head above the water. We need someone to help us go beyond that. In the court system, there's a tendency to just count cases. We need an entity that thinks about how to change the way we do our business—to think out of the box, to take people on, to take the system on, to try new things, to energize us. The average judge is not thinking about how to change the world. But when you expose that average judge to new ideas, a new way of doing things, they love it. They become a vigorous supporter of the Center and the kinds of ideas you have. So, I think that the Center, or something like the Center, is vital for any court system, and I can't tell you how many state courts around the country who are exposed to the Center say to me, "How do we do that? How do we put together something like what you have?"

BERMAN: It's no secret that you are coming up against mandatory retirement.

LIPPMAN: I'd say that's true.

BERMAN: And so I wonder if you could talk a little bit what you're going to miss the most about your job?

LIPPMAN: What I'll miss is moving the mountains. That's what gives me the buzz: moving the mountains. That's what makes me happy. That's what I want to do. I get a certain amount of satisfaction from

stirring the pot, even if we don't ultimately get what we want to get. But moving this vast justice system, moving it, budging it, pushing it, pushing the envelope—that's what makes me happy.



BERMAN: I did a little research in preparation for this, and in reading past articles about you, I discovered that one of the things you like to do is go to Woodbury Common and not buy anything. Is that possibly true?

LIPPMAN: This comes from a story in *The New York Times*. I told them that I spend most of my weekends drinking chamomile tea and reading briefs. And in the course of it, they said, what do you do outside of work? You know, I've had the kind of jobs for the past 30 years where you are working day and night, traveling, giving speeches. When I was the deputy chief administrator of the courts, I used to come in to work from Westchester, and our offices used to be at 270 Broadway. I'd come in from Westchester and I'd go into the City Hall subway stop, and then walk through



City Hall Park to get to 270 Broadway. And I used to go in early in the morning when it's dark, and I'd come back late at night when it's dark. And one day I was walking through City Hall Park, and I stopped myself in my tracks, and I literally could not figure out whether I was going to or coming from work. So, that's why sometimes you need to walk around Woodbury Common and not buy anything.

BERMAN: What does it mean to be “Lippmanized”? How do you get people to do things that they don't necessarily want to do?

LIPPMAN: I would say this: I think life is about people. You can be the greatest visionary. You can be the greatest policy wonk. You can have these new great ideas. But it all comes down to people. My belief is that if you care about what you do, if you have passion, if you have sincerity, if people understand who you are and what you're all about, sometimes maybe you can get somebody to do what they were not originally inclined to do, or at least feel



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good even if they're doing something they don't want to do. Sometimes you succeed at that and sometimes you don't. A lot of times, it disappoints me that in order to get something done, you have to make people unhappy. And so

I guess that's what drives me to try and not let anyone be unhappy. But I will say this: we're in the justice business. This is really a noble quest that we're on. It's so important that we meet our mission. Your mission here at the Center for Court Innovation and the mission of the courts are one—and that's to make sure that justice is done. That's what we do. And I thank you for going beyond the call of duty to get justice done.

Based in New York City, the Center for Court Innovation is an independent, non-partisan, non-profit organization that seeks to reform the justice system by creating operating programs that test new ideas, by performing original research, and by providing technical assistance to reformers around the world. For more information, please visit www.courtinnovation.org.

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