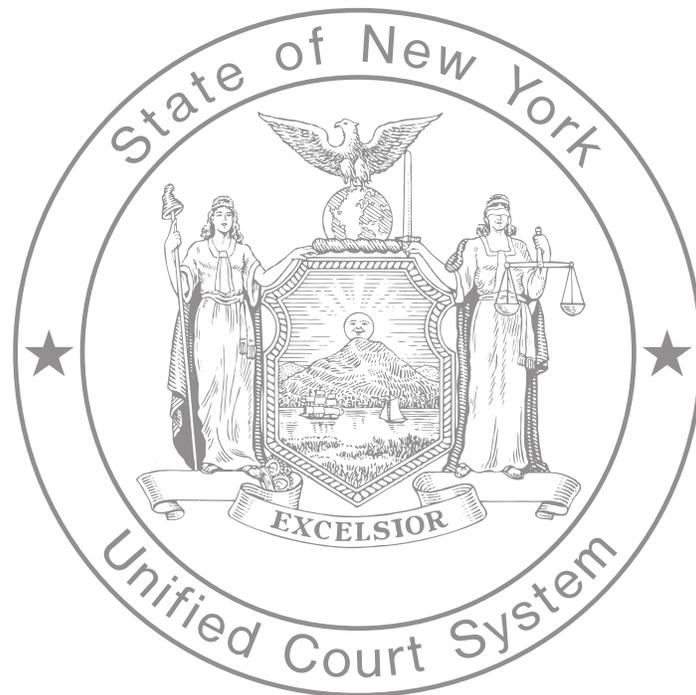


APPENDICES

PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK



NOVEMBER 2016

PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK

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PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK

APPENDIX 1:

**Acknowledgment of Law Firms that Provided Pro Bono
Assistance to the Permanent Commission**

NOVEMBER 2016

Acknowledgement of Law Firm Pro Bono Assistance to the Permanent Commission

Sullivan & Cromwell LLP

Robert J. Giuffra, Jr. (Partner, Permanent Commission Member)
Jessica Klein (Pro Bono Counsel)
Julie Krosnicki (Associate)
Lara J. Loyd (Associate)
Chiansan Ma (Associate)
Madeline B. Jenks (Legal Assistant)
Grace M. Son (Legal Assistant)

Skadden, Arps, Slate, Meagher & Flom LLP

Robert C. Sheehan (Of Counsel, Permanent Commission Member)
Ronald J. Tabak (Special Counsel)
Brittany Dorman (Associate)
Carolyn Stoner (Associate)

Simpson Thacher & Bartlett LLP

Mark G. Cunha (Partner, Permanent Commission Member)
Harlene Katzman (Pro Bono Counsel)
Michael Donnelly (Chief Information Officer)
Carola Beeney (Pro Bono Coordinator)

Proskauer Rose LLP

Betsy B. Plevan (Partner, Permanent Commission Member)
David A. Picon (Partner)
Katrina E. McCann (Associate)
Tara B. Mulrooney (Associate)
Laura Stafford (Associate)
Rachel C. Foster (Project Assistant)
Deborah J. Yeoh-Wang (Project Assistant)

PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK

APPENDIX 2:

Request for Proposals from Oversight Board for 2016-2017

NOVEMBER 2016

Judiciary Civil Legal Services in New York

Request for Proposals

Issued May 5, 2016

Due June 15, 2016 at 2PM

APPLICATION FORMS AND INSTRUCTIONS

Contents

- I. Background Information and Instructions
- II. Application Cover Sheet
- III. Executive Summary and Application Summary Table
- IV. Narrative Proposal
 - Organizational Responses
 - County Responses
- V. Budget
(Download form separately: <http://www.nycourts.gov/admin/bids/currentsolicitations.shtml>)
- VI. Attachments Checklist
 - A. Audited Financial Statement from the Most Recently Ended Fiscal Year
 - B. Most Recent Annual Report
 - C. Mission Statement
 - D. Organizational chart
 - E. Board of Directors Roster
 - F. Minutes of the Last Four Meetings of the Board of Directors
 - G. Resumes and job descriptions of senior management and project staff.
 - H. Photocopy of correspondence issued by the Internal Revenue Service that indicates the applicant's status as a tax-exempt organization
 - I. Client Financial Eligibility Guidelines
 - J. Client Grievance Procedures
 - K. Cultural Diversity/Inclusion Policies
 - L. Language Access Policies
 - M. Case Acceptance Policy and Procedures
 - N. Insurance Certificates (see Exhibit 1)
 - O. Affirmative Action/EEO Policy
 - P. Documentation of Current NY Charities Registration
 - Q. Documentation of Taxpayer Identification Number (TIN)
 - R. Vendor Responsibility: Acknowledgment Form and VR Questionnaire if applicable and submitting on paper
 - S. Internal Controls Policy

Exhibits/Appendices:

- Exhibit 1: Insurance Requirements
- Exhibit 2: Vendor Responsibility Requirements/Instructions
- Exhibit 3: Maximum Available Funding by County
- Exhibit 4: Evaluation Tool

I. Background Information and Instructions

The New York State Unified Court System’s Permanent Commission on Access to Justice has found that there is an unacceptable crisis of the unrepresented in the courts of New York State. Each year, close to 1.8 million low-income New Yorkers must navigate the complexities of the State’s civil justice system without the assistance of counsel in disputes over the most basic necessities of life. This crisis burdens our courts and represented parties by requiring Judges and other court personnel to devote greater time to cases involving unrepresented New Yorkers than would be necessary if currently unrepresented parties were assisted by counsel. It prevents unrepresented parties from receiving full access to justice and hurts our State by reducing the amount of federal assistance for New Yorkers and by increasing other costs arising from poverty.

In its initial 2010 Report the Commission proposed a multi-year plan to allocate funding within the Judiciary’s budget for civil legal services for New Yorkers in all areas of the State living at or below 200 percent of the federal poverty level (\$46,100 in annual income for a family of four in 2012).¹ The Commission has prioritized civil legal problems involving the “essentials of life”— housing, family matters, access to health care and education, and subsistence income. During State fiscal year 2012-13, the Judiciary awarded \$25 million for this critical initiative to civil legal service providers throughout the state. During fiscal years 2013-14, 2014-15, and 2015-16, \$15 million in additional funds were awarded each year, providing a total of \$70 million to service providers. As a result of those grants, more low-income New Yorkers have received civil legal assistance. Although there have been some gains, the Commission finds that there is still a substantial gap to be bridged in access to justice in core civil legal matters involving the “essentials of life.” In keeping with its multi-year plan, the Commission recommended that the current allocation for civil legal services in the Judiciary budget once again be increased. The 2016-17 State fiscal year budget allocated an additional \$15 million for this critical initiative, with funding to begin at the \$85 million annual level effective January 1, 2017.

The parameters for the funding and the mechanism for distributing funds were adopted by the Chief Judge in response to the Commission’s recommendations. The Chief Judge established an Oversight Board, consisting of the Chief Administrative Judge of the Courts, the Chair of the Commission, and the Chair of the IOLA Board, to oversee the process for the allocation of this funding.

Funds are allocated to each county based on the proportion of the population living at or below 200% of the poverty line. The \$85,000,000 available will be awarded pursuant to this competitive procurement. The purpose of competitively bidding the funds is to continue to promote a broad array of quality civil legal services that directly address each of the “essentials of life” and improve access to such services in each county. An additional goal is to further encourage cooperative agreements that promote collaboration among legal service providers, bar associations and law schools.

¹ <http://www.nycourts.gov/accesstojusticecommission/PDF/CLS-TaskForceREPORT.pdf>

It is the intent of this Request for Proposals (RFP) to award contracts for Judiciary Civil Legal Services in the counties for which funding is available as listed in Exhibit 3. The Unified Court System (UCS) is soliciting proposals for the purpose of establishing one or more contracts to provide the services herein. Applicants must have staff with the requisite training, knowledge and experience to resolve client problems effectively and efficiently.

A. Applicant Eligibility

Awards will be made to qualified organizations which are non-profit entities, tax-exempt under the Internal Revenue Code.

Applicants seeking funding for joint projects between two or more funding-eligible organizations should have only one of the organizations submit an application for the project. The participating organizations should decide which organization will submit the application. The application should be submitted in the name of the organization, not in the name of the proposed project, unless the project is a separate legal entity. The application should contain one budget which allocates the expenditures among the participating organizations. Joint project applications are considered separately and have no effect on any application for a different project that is submitted individually by any of the participants in a proposed joint project.

B. Funding

Available funding for the Judiciary Civil Legal Services program is allocated by county based on the proportion of the population living at or below 200% of the poverty line. The amount allocated by county under this procurement was determined by allocating the total 2016-17 fiscal year appropriation of \$85,000,000 by the proportion of the population living at or below 200% of the poverty line. See Exhibit 3, Maximum Available Funding by County.

Applicants may submit a single proposal to serve a single county or multiple counties. Proposals must articulate the specific counties to be served and the “essentials of life” service types to be provided in each county in the Application Summary Table.

C. Award Selection Criteria and Method of Award

Proposals will be reviewed and rated by the Oversight Board to Distribute Judiciary Civil Legal Services Funds in New York to ensure that the “essentials of life” – housing, family matters, access to health care and education, and subsistence income – are provided for throughout the state.

Proposals will be evaluated and points awarded in the following categories:

Organizational Capacity:	15 points maximum
Overall Program Plan	50 points maximum
Reasonableness of Cost (Overall Budget):	15 points maximum
County-Specific Program Plan:	15 points maximum ²
County-Specific Reasonableness of Cost:	5 points maximum ³
TOTAL POSSIBLE POINTS	100

A minimum total score of 85 is required for a contract to be awarded. A separate score will be calculated for each county for which services are proposed. Funding will be awarded to each responsible applicant that proposes to provide services in a given county and that receives a score of 85 or more. Responsibility is determined in accordance with the criteria articulated in paragraph I(G) below.

Reviewers will consider the following factors in awarding points in each category:

Organizational Capacity (15 Points Maximum)

1. The extent to which the applicant demonstrates that the organization’s mission aligns with the provision of civil legal services to low income clients and has experience providing civil legal services to low income clients. (5 points). Reviewers will consider the following source(s) of information: Mission Statement; Narrative Proposal, Organizational Capacity, questions 1, 2 and 5.
2. The extent to which the applicant demonstrates that the organization has instituted mechanisms and internal controls likely to result in high quality provision of civil legal services and appropriate management of funds, taking into account significant developments which may have impacted the ability to institute such mechanisms or internal controls. (5 points). Reviewers will

² A separate score will be calculated for each county for which services are proposed.

³ A separate score will be calculated for each county for which services are proposed.

consider the following source(s) of information: Narrative Proposal, Organizational Capacity, questions 3, 4, 6, 7, 8 and 9 and Attachment R.

3. The extent to which the applicant demonstrates effective or innovative use of technology to enhance access to and quality of civil legal services. (3 points). Reviewers will consider the following source(s) of information: Narrative Proposal, Organizational Capacity, question 10.
4. The ability of the organization to respond to victims of natural disasters (2 Points). Reviewers will consider the following source(s) of information: Narrative Proposal, Organizational Capacity, question 11

Overall Program Plan (50 Points Maximum)

1. The extent to which the application proposes to address essentials of life issues as defined in RFP Section I: Background Information and Instructions (9 points). Reviewers will consider the following source(s) of information: Narrative Proposal, Program Description, question 1.
2. The extent to which the applicant proposes provision of direct legal services. (8 points). Reviewers will consider the following source(s) of information: Narrative Proposal, Program Description, questions 2, 3 and 4.
3. The extent to which the applicant proposes provision of services that enhance access to justice. (6 points). Reviewers will consider the following source(s) of information: Narrative Proposal, Program Description, questions 2, 3 and 4.
4. The accessibility of the proposed program (8 points). Reviewers will consider the following source(s) of information: Narrative Proposal, Program Description, questions 5 and 6, Attachments K and L.
5. The proposed caseload in context of catchment area and funding requested. (14 points). Reviewers will consider the following source(s) of information: Narrative Proposal, Program Description, questions 7, 8 and 9.
6. The collaborative nature of the proposed program (5 points) Reviewers will consider the following source(s) of information: Narrative Proposal, Program Description, questions 10 and 11.

Reasonableness of Cost: Overall Budget (15 Points Maximum)

1. The extent to which the proposed program will effectively use state dollars for the delivery of quality services. (5 points). Reviewers will consider the following source(s) of information: Budget, Budget Narrative.

2. The extent to which the salaries and fringe benefits for the proposed program are appropriate for the positions listed in the proposal. (4 points). Reviewers will consider the following source(s) of information: Budget, Budget Narrative.
3. The extent to which the percentage of UCS funds that support administrative costs (including salaries and fringe benefits of non-program staff, real estate expenses that are not used for the direct delivery of services, and related costs) is comparable to the percentage found in the budgets of similarly sized agencies. (4 points). Reviewers will consider the following source(s) of information: Budget, Budget Narrative.
4. The extent to which the non-personnel service costs included in the budget are reasonable for the operation of the proposed program. (2 points). Reviewers will consider the following source(s) of information: Budget, Budget Narrative.

County Specific Program Plan (15 Points Maximum)

1. The extent to which the proposed program provides accessible, quality services within the county served (10 points). Reviewers will consider the following source(s) of information: Narrative Proposal, County Specific Questions 1, 2, 3, 4, 6.
2. The proposed caseload in context of catchment area and funding requested. (3 points). Reviewers will consider the following source(s) of information: Narrative Proposal, County Specific Question 5.
3. The extent to which the proposed program avoids redundant services (2 points). Reviewers will consider the following source(s) of information: Narrative Proposal, County Specific Question 8.

County Specific Reasonableness of Cost (5 Points Maximum)

1. The extent to which the proposed program will effectively utilize state dollars for the delivery of quality services in the county. (5 points). Reviewers will consider the following source(s) of information: Application Summary Table, Budget, Budget Narrative.

Once applications are received, a list of all applicants will be circulated to the Oversight Board with Conflict of Interest Disclosure Forms, which must be filed prior to Oversight Board review of applications. Oversight Board members are required to disclose affiliations with applicants. Board Members are precluded from reviewing and being involved in decisions on grants involving any organization with which they have an affiliation that creates a conflict of interest.

The funding amount awarded to each qualified applicant will be based on the following criteria:

- The funds available in each county.
- The total application score.

- A preference will be given for applications that address essentials of life needs not currently met within the catchment area.
- The nature and scope of the services to be provided.
- The estimated number of clients to be served.
- The estimated number of cases to be handled.
- Expertise in providing services to a specific sub-population or sub-populations within the catchment area (i.e. ability to provide services in languages other than English, or in a culturally appropriate manner to specific sub-groups).
- Accessibility of the proposed services to eligible clients in the catchment area as demonstrated by:
 - Maintenance of physical offices in the catchment area
 - Linkage agreements with other departments of the applicant’s organization or other organizations in the community that provide social services to the target population and that might result in greater client access to civil legal services.
 - Capacity to provide accessible services to a specific sub-catchment area (i.e. a particular municipality or neighborhood within a given county)

UCS reserves the right to award multiple contracts for the same county. When more than one qualified proposal is received for the same county, UCS shall award a proportion of the total amount allocated for the particular county to each qualified applicant with the intent of providing a broad array of services to address the legal needs of clients in each of the four high priority “essentials of life” areas is available and accessible.

If no awards are made for a particular county or the awards in a given county do not exhaust available funds, UCS reserves the right to reallocate the funds allocated to that catchment area to proportionally increase the amounts available to other awarded contracts providing services within the same Judicial Department.

D. Grant Contract

Grant recipients will enter into a contract with UCS. Contracts awarded pursuant to this Request for Proposals will have a five (5) year multi year term of January 1, 2017 - December 31, 2021. The initial period of the contract will be for three (3) months, January-March 2017. Funds available during the initial period will be 25% of the amounts articulated in Exhibit 3.

E. Reporting Requirements

Grant recipients will be required to report on the use of the awarded funds. The due dates, format and specific information to be contained in the reports will be determined by UCS.

F. Insurance Requirements

Grant recipients will be required to maintain during the term of the contract: (i) workers' compensation and disability benefits insurance; (ii) commercial general liability insurance; and (iii) professional liability insurance. See Exhibit 1 for specific coverage requirements and documentation that must be submitted with application.

G. Vendor Responsibility

UCS is required to conduct a review of every organization with which it enters into a contract in order to provide reasonable assurances that the organization is responsible. Vendor responsibility is determined by a review of each prospective contractor's legal authority to do business in New York State, business integrity, financial and organizational resources, and performance history. Organizations applying for funding which, if awarded, would result in a new or amended contract with a total amount of \$100,000 or more are required to submit a Vendor Responsibility Questionnaire. See Exhibit 2 for detailed instructions on completion of the Vendor Responsibility Questionnaire.

H. Questions

Applicants may submit questions concerning this RFP by email only to:

Amelia Hershberger: ahershbe@nycourts.gov

Please indicate in "Subject" field: Judiciary CLS RFP Question(s)

The deadline to submit questions is Wednesday, May 25, 2016, before 1:00 pm. A Questions & Answers (Q&A) sheet will be posted on the UCS website a few days after the deadline for submission of questions.

IMPORTANT: All questions regarding this RFP must be in writing and directed solely to the attention of the above-designated person.

Application Submission Procedures/Deadline

Step One: Complete the Grant Application

Please follow the formatting instructions and page limits. Applications must be single-spaced with one inch page margins (not including attachments, financial forms and data tables) using a 12 point font. In order to facilitate photocopying, please do not permanently bind applications.

An Application includes:
Application Cover Sheet;
Executive Summary and Application Summary Table;
Narrative Proposal;
Budget;
Budget Narrative; and
Attachments.

All application elements are due on June 15, 2016 at 2pm. No addenda to applications will be accepted after that deadline, and all applications will be considered complete on June 15, 2016 at 2pm.

Step Two: Assemble the Following Attachments:

- A. Audited Financial Statement from the Most Recently Ended Fiscal Year
- B. Most Recent Annual Report. If the applicant does not publish an annual report, please explain.
- C. Mission Statement
- D. Organizational chart
- E. Board of Directors Roster. For each board member include name, address, length of current term, total years of service on the board, and number of meetings attended in state fiscal year 2015-2016
- F. Minutes of the Last Four Meetings of the Board of Directors
- G. Resumes and job descriptions of senior management and project staff.
- H. Photocopy of correspondence issued by the Internal Revenue Service that indicates the applicant's status as a tax-exempt organization
- I. Client Financial Eligibility Guidelines
- J. Client Grievance Procedures
- K. Cultural Diversity/Inclusion policies
- L. Language Access policies
- M. Case Acceptance Policy and Procedures
- N. Insurance Certificates (see Exhibit 1)
- O. Affirmative Action/EEO Policy
- P. Documentation of Current NY Charities Registration
- Q. Documentation of Taxpayer Identification Number (TIN)
- R. Vendor Responsibility: Acknowledgment Form and VR Questionnaire if applicable and submitting on paper
- S. Internal Controls Policy⁴

⁴ Internal controls procedures are systematic methods such as reviews, checks and balances instituted by an organization to conduct its business in an orderly and efficient manner; safeguard its assets and resources; deter and detect errors, fraud and theft; ensure accuracy and completeness of accounting data; produce reliable and timely financial and management information; and ensure adherence to agency policies and plans.

Step Three: Deliver the Application with all Required Attachments via either electronic format or paper format as instructed below:

Submission via electronic format

Prior to submitting electronically, applicants must request and receive a User Name and Password for the UCS SharePoint Web Service. Currently funded Judiciary Civil Legal Services providers will be able to use their existing login credentials (user ID and password) to log into SharePoint but **still must request access to the site set up to receive Judiciary Civil Legal Services applications.**

Applicants may submit requests for a User Name and Password by email only to:

Amelia Hershberger: ahershbe@nycourts.gov

Please indicate in “Subject” field: Judiciary CLS RFP SharePoint User Name/Password Request

The deadline to requests a User Name and Password is Wednesday, June 8, 2016, before 1:00 pm.

User Names, Passwords, the SharePoint URL and instructions for uploading files will be provided via an e-mail reply.

Application documents must be uploaded no later than Wednesday, June 15, 2016, before 2:00 pm.

Applications must be submitted in portable document format (PDF).

In paper format

Applications must arrive at the address below no later than Wednesday, June 15, 2016, before 2:00 pm.

Deliver ONE signed, hard copy original and ONE additional copy (two complete sets) of the Application to:

Amelia Hershberger
New York State Office of Court Administration
Division of Professional and Court Services
Grants and Contracts
2500 Pond View, Suite 104
Castleton-on-Hudson, New York 12033

All envelopes/cartons must also be labeled with the following information on two sides:

“Deliver immediately to Amelia Hershberger”
“Sealed Application - Do not open”
“JUDICIARY CIVIL LEGAL SERVICES #005 – Due June 15, 2016 before 2pm”

II. Application Cover Sheet and Executive Summary

Legal Name of Applicant Organization	
Executive Director/CEO	
Proposal Contact Information (Phone & Email)	
Total Budget of Organization	
Total FTE Staff Employed in Organization	
Number of FTE Staff Funded Under This Proposal	
Total Funding Requested	
Address	
Phone	
Fax	
Email	
Website Address	
Federal Tax Identification No. (TIN)	
New York State Charities Registration Number (If exempt, please explain.)	
Executive Director or Chief Executive Officer Signature	
Board Chair Signature	

III. Executive Summary and Application Summary Table

Executive Summary: Provide a brief (1-2 paragraph) summary of each of the following narrative elements described in detail in your proposal.	
Organizational Capacity:	
Program Plan:	
Reasonableness of Cost:	

IV. Narrative Proposal

PAGE LIMIT: Ten single-spaced pages for Organizational Capacity and Program Description responses combined. Two single-spaced pages for each response to County Specific Questions.

Organizational Capacity. The answers to the questions in this section should describe current programs and activities and demonstrate the existing capacity of the organization to provide civil legal services and to effectively and efficiently manage government-funded programming.

1. Briefly describe all of the organization's current principal activities.
2. Describe the organization's prior experience providing civil legal services to low-income persons.
3. Summarize in 100 words or less the organization's most significant achievements in providing civil legal services during the period April 1, 2015 – March 31, 2016 including number of clients who benefitted, dollar benefits obtained for clients, etc.
4. Discuss significant developments that affected the organization's capacity to deliver civil legal services.
5. Describe how the additional funding requested in this RFP will enhance the overall mission and services that the organization currently provides.
6. How are case assignments made?
7. What are the agency's supervisory policies and procedures?
8. Describe the agency's mechanisms for assuring quality of service for:
 - client intake
 - case assignment
 - case management and supervision
 - training of staff and volunteers
9. Describe the policies and procedures in place to ensure client confidentiality.
10. Describe the organization's use of technology to enhance access and quality of civil legal services.
11. Describe the organization's plans to quickly respond to the civil legal service needs of victims of natural disasters (e.g. Super-storm Sandy and Hurricane Irene).

Program Description. The answers to the questions in this section should describe the new, enhanced or expanded programming to be provided if awarded funding under this RFP.

1. Provide a description of the problems to be addressed by the proposed services, including which essentials of life priorities will be addressed.
2. Indicate the service delivery method(s) the program will employ by placing a check in the appropriate box(es) below:
 - Direct legal services: provided by staff attorneys
 - Direct legal services: provided through referral to pro bono attorneys
 - Direct services: provided by non-attorney staff (i.e. paralegals), supervised by attorneys
 - Direct legal services: provided by law students or recent law school graduates supervised by attorneys
 - Other access to justice services: Training or education to support pro se representation
 - Other access to justice services: Provision of legal information
 - Other access to justice services: Referral to other civil legal service providers
 - Other access to justice services: Referral to other social services
 - Other access to justice services: Mediation / alternative dispute resolution
 - Other [explain in question 4 below]
3. Indicate the level of service the program will provide by placing a check in the appropriate box(es) below
 - Comprehensive representation
 - Representation in Appeals or Other Complex Matters
 - Representation in Court and/or Administrative Proceedings
 - Limited advice and counsel
 - Assistance in Completing Forms or Applications
 - Brief Advice and/or Information
 - Efforts to divert cases from court
 - Legal Education
 - Other [explain in question 4 below]

4. Provide additional information regarding the service delivery method(s) and level of service.
5. How will potential clients become aware of the availability of the proposed services?
Indicate how the proposed outreach methods address special needs, for example, language barriers, physical disabilities, etc.
6. Describe the intake process for potential clients seeking to access the organization's services. Include information on points of access (web, phone, in person). Describe each step in the process and indicate the staff or other professionals involved in each step (e.g., receptionists, paralegals, lawyers, etc.)
7. Does the applicant use the following definition of a case for the purpose of statistical reporting?: "A case is defined as the provision of legal assistance to an eligible client with a legal problem, or set of closely-related legal problems accepted for assistance" If no, describe the applicant's definition of a case.
8. Based on the definition articulated in question 7 above, what is the estimated number of cases to be handled by the program during 2017?
9. Estimate the number of clients to be served by the program during 2017.
10. Does the program plan involve collaboration with other legal services providers, bar organizations and/or law schools? If so, identify the organizations involved in the project and explain how the collaboration enhances the quality of and access to legal services. Attach letters of support from the partner organization(s).
11. Identify other partnerships and collaborations with social services agencies, medical providers, schools, community-based organizations or other entities that will participate as partners in the proposed program. Attach letters of support from the partner organization(s).

County-Specific Questions. The applicant must answer these questions once for each county for which funding is applied.

1. Describe the specific geographic catchment area to be served (i.e. county-wide vs. a particular municipality or neighborhood within a given county)
2. Will the organization maintain a physical office in the catchment area?
3. Discuss the organization's capacity to provide accessible services to citizens in the catchment area.
4. If the services to be provided in this county differ from the overall programmatic description articulated in the Program Description section above, describe the significant differences.
5. Estimate the number of cases to be handled in the county during 2017.
6. Estimate the number of clients to be served in the county during 2017.
7. Describe any particular expertise the organization has or policies the organization has in place that relate to providing services to a specific sub-population or sub-populations within the catchment area (i.e. ability to provide services in languages other than English, or in a culturally appropriate manner to specific sub-groups)
8. Describe any arrangements with other legal service providers in the catchment area designed to avoid duplication of efforts.

V. Budget Submissions

a. Budget.

Complete the budget using the required file available for download at www.nycourts.gov/admin/bids/currentsolicitations.shtml.

b. Budget Narrative

Budget Category	Narrative summary of expenses budgeted (i.e., a justification for the amounts budgeted in the RFP Budget submitted)
Salaries Detail rationale for salary costs budgeted by position category.	
Fringe Benefits Detail fringe benefits available to staff.	
Equipment Detail equipment purchases planned.	
Other Non-Personal Services Include brief explanations for all sub-categories in which expenses are budgeted.	
Indirect Costs Attach or explain the indirect cost allocation methodology used to calculate indirect costs.	

VI. Attachments Checklist

Please place an X in each box for the document that is submitted.

<input type="checkbox"/>	A. Audited Financial Statement from the Most Recently Ended Fiscal Year
<input type="checkbox"/>	B. Most Recent Annual Report. If the applicant does not publish an annual report, please explain
<input type="checkbox"/>	C. Mission Statement
<input type="checkbox"/>	D. Organizational Chart
<input type="checkbox"/>	E. Board of Directors Roster (use form supplied on the next page)
<input type="checkbox"/>	F. Minutes of the Last Four Meetings of the Board of Directors
<input type="checkbox"/>	G. Resumes and job descriptions of senior management and project staff.
<input type="checkbox"/>	H. Photocopy of correspondence issued by the Internal Revenue Service that indicates the applicant's status as a tax-exempt organization.
<input type="checkbox"/>	I. Client Financial Eligibility Guidelines
<input type="checkbox"/>	J. Client Grievance Procedures
<input type="checkbox"/>	K. Cultural Diversity/Inclusion policies. If none, explain (a) how these issues are currently addressed and (b) what plans are in place to develop such policies.
<input type="checkbox"/>	L. Language Access policies. If none, (a) explain how these issues are currently addressed and (b) what plans are in place to develop such policies.
<input type="checkbox"/>	K. Case Acceptance Policy and Procedures
<input type="checkbox"/>	M. Insurance Certificates: (1) Workers' Compensation; (2) Disability Benefits; (3) Commercial General Liability; and (4) Professional Liability
<input type="checkbox"/>	N. Affirmative Action/EEO Policy
<input type="checkbox"/>	O. Documentation of Current NY Charities Registration
<input type="checkbox"/>	P. Documentation of Taxpayer Identification Number (TIN)
<input type="checkbox"/>	Q. Vendor Responsibility: Acknowledgment Form and VR Questionnaire if applicable and submitting on paper
<input type="checkbox"/>	R. Internal Controls Policy

Exhibit 1

INSURANCE REQUIREMENTS

Grant recipients will be required to maintain, during the term of the contract, the following insurance coverage:

1. Workers' compensation and disability benefits insurance coverage as required under NYS law. Proof of workers' compensation insurance and disability benefits insurance must be provided with the grant application. If applicant is legally exempt from such coverage, proof of exemption must be provided. The only forms acceptable as evidence of these insurance requirements are:

Proof of Workers' Compensation Coverage

- Form C-105.2 - Certificate of Workers' Compensation Insurance issued by private insurance carriers; or
- Form U-26.3 issued by the State Insurance Fund; or
- Form SI-12 - Certificate of Workers' Compensation Self-Insurance; or
- Form GSI-105.2 - Certificate of Participation in Workers' Compensation Group Self-Insurance; or
- Form CE-200 - Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage.

Proof of Disability Benefits Coverage

- Form DB-120.1 - Certificate of Disability Benefits Insurance, or
- Form DB-155 - Certificate of Disability Benefits Self-Insurance; or
- Form CE-200 - Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage.

Please note that an ACORD Certificate of Insurance is NOT acceptable proof of New York State workers' compensation or disability benefits insurance coverage. Applicants should obtain the appropriate Workers' Compensation Board forms from their insurance carrier or licensed agent, or follow the procedures set forth by the Workers' Compensation Board for obtaining an exemption from coverage. Required forms and procedures may be obtained on the Workers' Compensation Board website at www.wcb.ny.gov/ and click on 'Employers/Businesses' and/or 'Forms'. Any questions regarding workers' compensation coverage requirements should be directed to:

Workers' Compensation Board
Bureau of Compliance
(518) 462-8882
(866) 298-7830

Applicants awarded funding (whether through a new or amended contract) will be required to provide updated certificates of workers' compensation and disability benefits coverage that name the Unified

Court System as the certificate holder if the applicable form has a space for a certificate holder to be listed. The carrier must enter:

NYS Unified Court System
Office of Court Administration
2500 Pond View, Suite 104
Castleton-on-Hudson, New York 12033

The insurance carrier will notify the certificate holder if a policy is canceled.

2. Commercial General Liability Insurance (bodily injury and property damage on an occurrence basis), contractual and products/completed operations liability coverage, and auto liability with minimum limits as follows:

Bodily Injury and Property Damage	\$1 million, per occurrence, \$2 million, aggregate
Personal Injury and Advertising	\$1 million aggregate
Contractual and Products/ Completed Operations Liability	\$2 million aggregate
Auto Liability, Combined single limits	\$1 million

Commercial general liability insurance coverage must be obtained from commercial insurance carriers licensed to do business in the State of New York. Proof of applicant’s commercial general liability insurance coverage must be submitted with the grant application. Applicants awarded funding will be required to submit an updated certificate naming UCS as an additional insured or loss payee as appropriate and providing for at least thirty (30) days advance written notice to UCS of cancellation or non-renewal. The updated certificate must be submitted prior to finalization of the contract.

Products completed operations insurance coverage is not required if applicant provides written documentation prior to finalization of an awarded contract that the organization’s commercial general insurance policy does not include coverage for products-completed operations. Automobile liability insurance is not required if applicant does not use vehicles in its operations.

3. Professional liability insurance in the amount of \$1,000,000 for all of applicant’s professional employees that will perform with grant funding. Proof of applicant’s professional liability insurance coverage must be submitted with the grant application. Organizations awarded funding will be required to contractually agree to obtain tail coverage for a minimum of two years in the event that the organization’s professional liability coverage policy is terminated and either: (i) there is no replacement policy; or (ii) the replacement policy does not cover claims made against the organization based on events that occurred prior to the effective date of the new policy.

Exhibit 2

VENDOR RESPONSIBILITY REQUIREMENTS

The New York State Unified Court System (UCS) is required to conduct a review of a prospective contractor to provide reasonable assurances that the vendor is responsible. The Vendor Responsibility Questionnaire, a required component of all UCS solicitations, is designed to provide information to assist the UCS in assessing a vendor’s responsibility prior to entering into a contract with the vendor. Vendor responsibility is determined by a review of each prospective contractor’s legal authority to do business in NYS, business integrity, financial and organizational resources, and performance history (including references).

UCS recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep system maintained by the Office of the State Comptroller.

If you are already enrolled, go directly to the VendRep System online at: <https://portal.osc.state.ny.us>. To enroll, see the VendRep System Instructions available at: http://www.osc.state.ny.us/vendrep/vendor_index.htm. Vendors must provide their NYS Vendor Identification Number when enrolling.

Alternatively, vendors may choose to complete and submit a paper questionnaire. Vendors opting to complete and submit a paper questionnaire can obtain the appropriate form from the VendRep website: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

To request assignment of a Vendor Identification Number or for VendRep System assistance, contact the Office of the State Comptroller’s Help Desk at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us.

VENDOR RESPONSIBILITY ACKNOWLEDGMENT

Please complete either option 1 or option 2 below:

OPTION 1: ___ Vendor Responsibility Questionnaire filed online via the VendRep System

If you have selected Option 1, please complete the following. The required signature is an acknowledgment that the questionnaire has been filed and certified directly on the OSC VendRep system.

ORGANIZATION NAME: _____

NAME/TITLE: _____

SIGNATURE: _____

OPTION 2: ___ Paper Vendor Responsibility Questionnaire Form Attached

Exhibit 3: Maximum Available Funds by County

County	Estimated Available Funds, 12 month period
Bronx	\$ 10,216,007.00
New York	\$ 7,551,854.00
1st Department Total	\$ 17,767,861.00
Dutchess	\$ 807,892.00
Kings	\$ 15,620,994.00
Nassau	\$ 2,697,706.00
Orange	\$ 1,291,358.00
Putnam	\$ 218,698.00
Queens	\$ 10,409,060.00
Richmond	\$ 1,537,945.00
Rockland	\$ 1,062,417.00
Suffolk	\$ 3,441,317.00
Westchester	\$ 2,722,414.00
2nd Department Total	\$ 39,809,801.00
Albany	\$ 1,101,516.00
Broome	\$ 970,425.00
Chemung	\$ 437,202.00
Chenango	\$ 262,464.00
Clinton	\$ 347,484.00
Columbia	\$ 227,127.00
Cortland	\$ 220,437.00
Delaware	\$ 234,352.00
Essex	\$ 173,370.00
Franklin	\$ 240,878.00
Fulton	\$ 299,585.00

County	Estimated Available Funds, 12 month period
Greene	\$ 211,681.00
Hamilton	\$ 18,523.00
Madison	\$ 281,017.00
Montgomery	\$ 267,191.00
Otsego	\$ 305,115.00
Rensselaer	\$ 602,322.00
Saratoga	\$ 587,143.00
Schenectady	\$ 583,114.00
Schoharie	\$ 126,988.00
Schuyler	\$ 82,017.00
St. Lawrence	\$ 553,694.00
Sullivan	\$ 402,281.00
Tioga	\$ 213,613.00
Tompkins	\$ 448,381.00
Ulster	\$ 676,162.00
Warren	\$ 246,943.00
Washington	\$ 272,395.00
3rd Department Total	\$ 10,393,420.00
Allegany	\$ 259,684.00
Cattaraugus	\$ 441,439.00
Cayuga	\$ 345,507.00
Chautauqua	\$ 730,290.00
Erie	\$ 4,032,801.00
Genesee	\$ 251,255.00
Herkimer	\$ 334,387.00
Jefferson	\$ 583,412.00
Lewis	\$ 145,199.00

County	Estimated Available Funds, 12 month period
Livingston	\$ 242,320.00
Monroe	\$ 3,142,728.00
Niagara	\$ 930,747.00
Oneida	\$ 1,101,991.00
Onondaga	\$ 1,969,230.00
Ontario	\$ 367,776.00
Orleans	\$ 187,761.00
Oswego	\$ 608,223.00
Seneca	\$ 166,026.00
Steuben	\$ 501,707.00
Wayne	\$ 390,418.00
Wyoming	\$ 171,155.00
Yates	\$ 124,862.00
4th Department Total	\$ 17,028,918.00
Grand Total	\$ 85,000,000.00

*The amount allocated by county under this procurement was determined by allocating the total appropriation of \$85,000,000 by the proportion of the population living at or below 200% of the poverty line.

EXHIBIT 4
EVALUATION TOOL
SUMMARY RATING SHEET

APPLICANT: _____

COUNTY TO BE SERVED: _____

- | | |
|---|-----------------|
| A. ORGANIZATIONAL CAPACITY (15 POINTS) | A. _____ |
| B. OVERALL PROGRAM PLAN (50 POINTS) | B. _____ |
| C. REASONABLENESS OF COST (OVERALL BUDGET) (15 POINTS) | C. _____ |
| D. COUNTY SPECIFIC PROGRAM PLAN (15 POINTS) | D. _____ |
| E. COUNTY SPECIFIC REASONABLENESS OF COST (5 POINTS) | E. _____ |

A minimum score of 85 is required for a contract to be awarded.

TOTAL _____

EVALUATOR (Print) _____

(Signature) _____

DATE / /

PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK

APPENDIX 3:

**Notification of the Issuance of the Request for
Proposals**

NOVEMBER 2016



NYS' official source of contracting opportunities
Bringing business and government together

Contracting Opportunity

* * * This ad is closed and is in the archives * * *

Title: Judiciary Civil Legal Services
Agency: Unified Court System, NYS
Court Administration, NYS Office of
Contract Number: TBD
Contract Term: January 1, 2017 - December 31, 2021
Date of Issue: 05/05/2016
Due Date/Time: 06/15/2016 2:00 PM
County(ies): All NYS counties
Classification: Legal & Investigative Services - *Consulting & Other Services*
Opportunity Type: General
Entered By: Amelia Hershberger
Description: The New York State Unified Court System's Permanent Commission on Access to Justice has found that there is an unacceptable crisis of the unrepresented in the courts of New York State. Each year, close to 1.8 million low-income New Yorkers must navigate the complexities of the State's civil justice system without the assistance of counsel in disputes over the most basic necessities of life. This crisis burdens our courts and represented parties by requiring Judges and other court personnel to devote greater time to cases involving unrepresented New Yorkers than would be necessary if currently unrepresented parties were assisted by counsel. It prevents unrepresented parties from receiving full access to justice and hurts our State by reducing the amount of federal assistance for New Yorkers and by increasing other costs arising from poverty.

In its initial 2010 [Report](#) the Commission proposed a multi-year plan to allocate funding within the Judiciary's budget for civil legal services for New Yorkers in all areas of the State living at or below 200 percent of the federal poverty level (\$46,100 in annual income for a family of four in 2012). The Commission has prioritized civil legal problems involving the "essentials of life" – housing, family matters, access to health care and education, and subsistence income. During State fiscal year 2012-13, the Judiciary awarded \$25 million for this critical initiative to civil legal service providers throughout the state. During fiscal years 2013-14, 2014-15, and 2015-16, \$15 million in additional funds were awarded each year, providing a total of \$70 million to service providers. As a result of those grants, more low-income New Yorkers have received civil legal assistance. Although there have been some gains, the Commission finds that there is still a substantial gap to

be bridged in access to justice in core civil legal matters involving the “essentials of life.” In keeping with its multi-year plan, the Commission recommended that the current allocation for civil legal services in the Judiciary budget once again be increased. The 2016-17 State fiscal year budget allocated an additional \$15 million for this critical initiative, with funding to begin at the \$85 million annual level effective January 1, 2017.

The parameters for the funding and the mechanism for distributing funds were adopted by the Chief Judge in response to the Commission’s recommendations. The Chief Judge established an Oversight Board, consisting of the Chief Administrative Judge of the Courts, the Chair of the Commission, and the Chair of the IOLA Board, to oversee the process for the allocation of this funding.

Funds are allocated to each county based on the proportion of the population living at or below 200% of the poverty line. The \$85,000,000 available will be awarded pursuant to this competitive procurement. The purpose of competitively bidding the funds is to continue to promote a broad array of quality civil legal services that directly address each of the “essentials of life” and improve access to such services in each county. An additional goal is to further encourage cooperative agreements that promote collaboration among legal service providers, bar associations and law schools.

It is the intent of this Request for Proposals (RFP) to award contracts for Judiciary Civil Legal Services in the counties for which funding is available as listed in Exhibit 3. The Unified Court System (UCS) is soliciting proposals for the purpose of establishing one or more contracts to provide the services herein. Applicants must have staff with the requisite training, knowledge and experience to resolve client problems effectively and efficiently.

Questions regarding this procurement must be submitted by email to ahershbe@nycourts.gov by Wednesday, May 25, 2016, at 1:00 pm with the subject line "Judiciary CLS RFP Question(s)"

For details regarding submission of the application, see the Documents section or visit <http://www.nycourts.gov/admin/bids/currentsolicitations.shtml>.

Contact Information

Primary contact: Unified Court System, NYS
Court Administration, NYS Office of
Office of Grants and Contracts
Amelia Hershberger
Management Analyst
2500 Pond View, Suite 104
Castleton-on-Hudson, NY 12033
United States
Ph: 518-238-4357
ahershbe@nycourts.gov

Submit to contact: Unified Court System, NYS
Court Administration, NYS Office of
Office of Grants and Contracts
Amelia Hershberger
Management Analyst
2500 Pond View, Suite 104
Castleton-on-Hudson, NY 12033
United States
Ph: 518-238-4357
ahershbe@nycourts.gov

Supporting document(s) shown below:

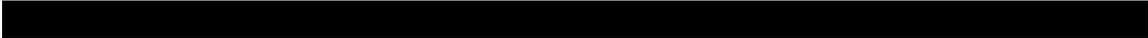
The following supporting documents are available for download:

Document title	Description	Type
Application Form (Word Document)		docx
Budget File (Required Document)		xlsx
Request for Proposals - Full Document		pdf

To download these documents, please visit the New York State Contract Reporter website: <http://www.nyscr.ny.gov>

Bid Results

Bid Results have not been entered



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PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK

APPENDIX 4:

**Announcement of Chief Judge of Recipients Awarded
Grants by the Oversight Board for 2016-2017**

NOVEMBER 2016



PRESS RELEASE

**New York State
Unified Court System**

**Hon. Lawrence K. Marks
Chief Administrative Judge**

**Contact:
David Bookstaver, Communications Director
Lucian Chalfen, Public Information Director
Arlene Hackel, Deputy Director
(212) 428-2500**

www.nycourts.gov/press

Date: September 19, 2016

Chief Judge Announces Judiciary's 2016-2017 Civil Legal Services Grants

NEW YORK — Chief Judge Janet DiFiore today announced the recipients of the Judiciary's Civil Legal Services Program grants for the 2016-17 fiscal year. This year's grants total an unprecedented \$100 million – including a \$15 million allocation to the New York State Interest on Lawyer Account Fund (IOLA) – meeting the goal proposed by the Permanent Commission on Access to Justice in New York State, chaired by Helaine Barnett and established in 2010 as part of a comprehensive effort to provide counsel to low-income New Yorkers in civil cases. The remaining \$85 million in grants will be distributed among 83 civil legal services providers throughout the state. The program, now in its fifth year, has provided hundreds of thousands of low-income New Yorkers with effective legal assistance on critical matters involving the essentials of life.

Funds are allocated based on the proportion of the population in a county living at or below 200 percent of the poverty line. The parameters for the funding and the mechanism for distributing the funds were adopted in response to the Commission's recommendations. An oversight board, consisting of the Chief Administrative Judge, the Chair of the Commission and the Chair of the Board of Trustees of the IOLA Fund, conducts the funding allocation process.

“I am ecstatic that we were able to meet the funding goal recommended by the Permanent Commission on Access to Justice in New York State, and grateful to the Governor and the

Legislature for their support of the Judiciary’s Civil Legal Services Program. The grants announced today will enable civil legal services providers across the state to reach more New Yorkers, offering much-needed legal assistance to individuals and families struggling to avert homelessness, escape domestic violence or who grapple with other dire problems affecting their daily needs – helping to bring the ideal of equal justice closer to reality in New York,” said Chief Judge Janet DiFiore.

Attached is a list of this year’s recipients, including the amount of their respective grants.

#

OVERSIGHT BOARD FOR JUDICIARY CIVIL LEGAL SERVICES FUNDS IN NEW YORK

HELAINÉ M. BARNETT, ESQ.
Chair
Permanent Commission on Access to Justice

HON. LAWRENCE K. MARKS
Chief Administrative Judge
New York State Unified Court System

MARY ROTHWELL DAVIS, ESQ.
Chair, Board of Trustees
Interest on Lawyers Trust Account Funds

2016-17 JUDICIARY CIVIL LEGAL SERVICES AWARDS

On September 19, 2016, The Oversight Board for Judiciary Civil Legal Services in New York announced its intent to award contracts, pursuant to Judiciary Civil Legal Services Request for Proposals (RFP) #005, to the following organizations for the 2016-17 period:

Vendor	Award
Advocates for Children of New York	\$20,000.00
Albany County Bar Association	\$160,000.00
Asian American Legal Defense and Education Fund	\$57,500.00
Association of the Bar of the City of New York Fund Inc	\$736,418.00
Bronx Defenders	\$603,768.00
Brooklyn Bar Association Volunteer Lawyers Project	\$340,000.00
Brooklyn Defender Services	\$1,314,668.00
Brooklyn Legal Services Corporation A	\$492,065.00
CAMBA	\$1,375,094.00
Capital District Women's Bar Association Legal Project	\$473,086.00
Catholic Charities Community Services, Diocese of New York	\$179,136.00
Catholic Charities of the Diocese of Albany	\$68,545.00
Catholic Migration Services	\$186,250.00
Center for Family Representation	\$730,075.00
Central American Legal Assistance	\$75,388.00
Central American Refugee Center	\$70,000.00
Child and Family Services	\$78,001.00
Children's Rights Society	\$174,687.00
Community Service Society of New York	\$93,500.00
Empire Justice Center	\$1,275,935.00
Erie County Bar Association Volunteer Lawyers Project	\$797,916.00
Family Center, Inc.	\$66,388.00
Frank H. Hiscock Legal Aid Society	\$1,215,349.00
Her Justice	\$505,907.00
Hofstra University	\$131,888.00
Housing Conservation Coordinators	\$216,609.00
Hudson Valley Justice Center	\$130,575.00
Jewish Association of Services for the Aged	\$310,063.00
Journey's End Refugee Services	\$174,838.00
Latino Justice PRLDEF	\$105,500.00
Legal Action Center	\$166,408.00
Legal Aid Bureau of Buffalo	\$1,367,913.00
Legal Aid Society of Northeastern New York	\$4,446,629.00
Legal Aid Society of Rochester	\$1,587,339.00
Legal Aid Society of Rockland County	\$565,883.00
Legal Assistance of Western New York	\$4,371,467.00
Legal Information for Families Today	\$306,574.00
Legal Services for the Elderly, Disabled or Disadvantaged of Western NY	\$1,431,142.00
Legal Services NYC	\$9,786,789.00
Legal Services of Central New York	\$5,391,921.00
Legal Services of the Hudson Valley	\$4,952,006.00
Lenox Hill Neighborhood House	\$283,812.00
Long Island Advocacy Center	\$85,500.00

*All contracts are subject to Office of the State Comptroller approval.

OVERSIGHT BOARD FOR JUDICIARY CIVIL LEGAL SERVICES FUNDS IN NEW YORK

HELAINÉ M. BARNETT, ESQ.
Chair
Permanent Commission on Access to Justice

HON. LAWRENCE K. MARKS
Chief Administrative Judge
New York State Unified Court System

MARY ROTHWELL DAVIS, ESQ.
Chair, Board of Trustees
Interest on Lawyers Trust Account Funds

2016-17 JUDICIARY CIVIL LEGAL SERVICES AWARDS

Vendor	Award
Make the Road New York	\$587,199.00
Mediation Matters	\$52,595.00
Mental Health Association of Erie County	\$174,024.00
MFY Legal Services	\$3,001,487.00
My Sister's Place	\$291,141.00
Nassau / Suffolk Law Services Committee	\$3,761,990.00
Neighborhood Defender Services	\$472,721.00
Neighborhood Legal Services	\$1,098,067.00
New York Center for Law and Justice	\$28,380.00
New York Lawyers for the Public Interest	\$403,400.00
New York Lawyers for the Public Interest (Joint Project)	\$155,500.00
New York Legal Assistance Group	\$4,286,151.00
New York Legal Assistance Group (VLFD)	\$356,425.00
Northern Manhattan Improvement Corporation	\$1,269,858.00
Pace University	\$259,598.00
Part of the Solution	\$50,433.00
Partnership for Children's Rights	\$167,773.00
Prisoners' Legal Services of New York	\$70,561.00
Pro Bono Net	\$173,754.00
Queens Volunteer Lawyers Project	\$340,000.00
Richmond County Bar Association Volunteer Lawyers Project	\$60,000.00
Ridgewood Bushwick Senior Citizens Council	\$364,120.00
Rural Law Center of New York	\$523,826.00
Safe Horizon	\$592,521.00
Safe Passage Project Corporation	\$58,019.00
Sanctuary for Families	\$1,698,922.00
The Door A Center for Alternatives	\$176,186.00
The Legal Aid Society	\$9,786,789.00
The Safe Center LI	\$393,167.00
Touro College	\$334,130.00
Unity House of Troy	\$76,835.00
Urban Justice Center	\$2,779,741.00
Vera Institute of Justice	\$1,900,156.00
Volunteer Lawyers Project of Onondaga County	\$373,160.00
Volunteer Legal Services of Monroe County	\$303,000.00
Volunteers of Legal Service	\$50,713.00
Westchester Hispanic Coalition	\$73,936.00
Western New York Law Center	\$783,319.00
Worker Justice Center of New York	\$654,390.00
Youth Represent	\$113,481.00
Total Awards	\$85,000,000.00

*All contracts are subject to Office of the State Comptroller approval.

PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK

APPENDIX 5:

**Public Notice of the Chief Judge's Hearing Published on the
Unified Court System's Website**

NOVEMBER 2016

The Chief Judge's 2016 Hearing on Civil Legal Services in New York

The Hon. Janet DiFiore, Chief Judge of the State of New York, announces a statewide public hearing to evaluate the continuing unmet civil legal services needs in New York. The Chief Judge will preside over the hearing, where witnesses from all regions of the State will testify about the significance of accessible, publicly funded civil legal services. The Chief Judge will report to the Legislature, as requested in the June 2010 Joint Resolution, on the information obtained at the hearing and on the continuing work of the New York State Permanent Commission on Access to Justice. It is anticipated that the hearing testimony will inform future efforts by the Permanent Commission to enhance access to justice and ensure the fair administration of justice for all New Yorkers.

Chief Judge DiFiore will hold the statewide hearing at the New York Court of Appeals. The Chief Judge will be joined on the hearing panel by all four Presiding Justices of the Appellate Divisions: Acting Presiding Justice Peter Tom of the First Department, Presiding Justice Randall T. Eng of the Second Department, Presiding Justice Karen K. Peters of the Third Department and Presiding Justice Gerald J. Whalen of the Fourth Department, as well as New York State's Chief Administrative Judge, Lawrence K. Marks, and the President of the New York State Bar Association, Claire Gutekunst.

THE HEARING WILL TAKE PLACE AS FOLLOWS:

Tuesday, September 27, 2016, 1:00 p.m. – 4:00 p.m., Court of Appeals, 20 Eagle Street, Albany

THE PURPOSE OF THE PUBLIC HEARING is to receive the views of interested individuals, organizations and entities on the following issues:

- The impact of Judiciary Civil Legal Services funding on the delivery of civil legal services, in particular in enhancing the fair and efficient administration of justice in the state courts.
- The current state and scope of the unmet need for civil legal services by low-income New Yorkers confronting legal problems involving the "essentials of life," including housing, family stability and personal safety in domestic relations, access to health care or education, or subsistence income and benefits.
- The economic and social consequences due to the lack of sufficient civil legal services in communities, including the impact on the elderly, veterans, and children.
- The benefits to individuals, communities, the courts and the State, from the provision of civil legal services in matters involving the "essentials of life."
- The particular problems affecting the availability of legal services in rural communities and how to address them.
- The unique issues presented to state courts, particularly family court, in proceedings related to immigration issues.
- The potential for reduction in the unmet need through:
 - Preventative- and early-intervention services.
 - Enhanced use of technology, including identifying areas where improvements in technology access and utilization can increase the delivery and efficacy of legal services.
 - Expansion of the availability of pro bono legal services by private attorneys.
 - Innovations in law school and law student involvement in serving communities in need through clinical, experiential and fellowship options for students, including the Pro Bono Scholars Program and Poverty Justice Solutions.
 - Programs using volunteers who are not lawyers, including the Court Navigator Program and Legal Hand neighborhood storefront centers.
 - New and/or expanded community collaborations between legal services providers and law schools, colleges and universities, public libraries and hospitals.

THE CHIEF JUDGE'S HEARING PANEL WILL CONSIDER BOTH ORAL TESTIMONY (BY INVITATION ONLY) AND WRITTEN SUBMISSIONS.

Individuals interested in presenting oral testimony or providing a written submission are asked to follow the procedures and to adhere to the deadlines described below. Please note that the Hearing Panel cannot accept any comments, written or spoken, addressing details of individual litigation or comments about individual judges or attorneys.

Because of the limited time available for the hearing, oral testimony is by invitation only. If you are interested in being invited to testify at the hearing, you should send an email to acesstojusticecommission@nycourts.gov no later than **September 13, 2016**. **Proposed testimony should be no more than 10 minutes in length.** When requesting an invitation, please (1) identify yourself and your affiliation (and if you are requesting an invitation for someone else to testify, that individual's name and affiliation); and (2) attach a prepared statement or a detailed outline of the proposed testimony, specifying which of the topics described above will be addressed. In advance of the hearing, invitations to testify will be issued and will include an approximate time for each presenter's testimony. For those not invited to present oral testimony, your proposed testimony will be deemed a written submission.

Individuals unable to attend the hearing, or those only interested in providing a written submission, may send their remarks, no later than September 13, 2016, to the Permanent Commission on Access to Justice, which is assisting the Chief Judge in preparing for the hearing and in reporting on its results. See below for information for submitting remarks by email or US mail.

Email: acesstojusticecommission@nycourts.gov

Mail: New York State Permanent Commission
on Access to Justice
c/o Jessica Klein, Esq.
Sullivan & Cromwell LLP
125 Broad Street, 32nd Floor
New York, NY 10004-2498

PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK

APPENDIX 6:

Witness List for the Chief Judge's Hearing

NOVEMBER 2016

The Chief Judge's 2016 Hearing on Civil Legal Services in New York

Tuesday, September 27, 2016 • Court of Appeals, Albany

WITNESS LIST

PANEL I

Hon. Jonathan Lippman (*former Chief Judge of New York; Of Counsel, Latham & Watkins, LLP*)

Stephen M. Cutler, Esq. (*Vice Chairman, JP Morgan Chase & Co.*)

Suzanne B. Goldberg, Esq. (*Herbert and Doris Wechsler Clinical Professor of Law, Director, Center for Gender & Sexuality Law and Sexuality & Gender Law Clinic, Columbia Law School; Executive Vice President for University Life, Columbia University*)

David A. Heiner, Esq. (*Vice President, Regulatory Affairs, Microsoft Corporation*)

Edward P. Swyer (*President, The Swyer Companies & Stuyvesant Plaza, Inc.*)

PANEL II - CLIENTS

Jorge ("Billy") Torres (*client of Legal Assistance of Western New York, Inc., accompanied by C. Jake Hamann, Esq.*)

Glenn Rice (*client of Legal Services of the Hudson Valley, accompanied by Shara J. Abraham, Esq.*)

Donna Spinner (*client of Legal Aid Society of Northeastern New York, accompanied by Gerry A. Schafer, Esq.*)

PANEL III

Neil Steinkamp (*Managing Director, Dispute Advisory & Forensic Services Group, Stout Risius Ross, Inc.*)

Commissioner Steven Banks (*New York City Human Resources Administration, Department of Social Services*) (*Testimony presented by Jordan M. Dressler, Coordinator, New York City Human Resources Administration, Office of Civil Justice*)

John S. Kiernan, Esq. (*President, New York City Bar Association; Partner, Debevoise & Plimpton LLP*)

Hon. Douglas E. Hoffman (*Acting Justice, Supreme Court, New York County; Family Court Judge, New York County*)

PANEL IV - CLIENTS

Susan McParland-Leisen (*client of Nassau Suffolk Law Services Committee, Inc., accompanied by Melissa Zeidler, Esq., Urban Justice Center*)

Harry Michel (*client of The Legal Aid Society, Queens Neighborhood Office, accompanied by Sateesh Nori, Esq.*)

Ady Escobar (*client of Legal Services NYC [Bronx Legal Services], accompanied by Kathleen Dennin, Esq.*)

For additional information on the unmet needs for civil legal services, see the Annual Reports of the New York State Permanent Commission on Access to Justice, available at www.nycourts.gov/accessjusticecommission.

PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK

APPENDIX 7:

**Transcript of the Chief Judge's Hearing Held on
September 27, 2016**

NOVEMBER 2016

In The Matter Of:

*Chief Judge's Hearing on Civil Legal Services -
September 27, 2016*

*Hon. Jonathan Lippman, et.al.
September 27, 2016*

*Court of Appeals
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Albany, New York
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SUPREME COURT OF THE STATE OF NEW YORK
--- COURT OF APPEALS ---

THE CHIEF JUDGE'S HEARINGS
ON CIVIL LEGAL SERVICES,

Court of Appeals
Albany, New York
September 27, 2016

BEFORE:

HONORABLE JANET DIFIORE
Chief Judge

HONORABLE LAWRENCE K. MARKS
Chief Administrative Judge

HONORABLE PETER TOM
Acting Presiding Justice of the First Department

HONORABLE RANDALL T. ENG
Presiding Justice of the Second Department

HONORABLE KAREN K. PETERS
Presiding Justice of the Third Department

HONORABLE GERALD J. WHALEN
Presiding Justice of the Fourth Department

CLAIRE GUTEKUNST
President of the New York State Bar Association

BARBARA BENNETT-CALKINS
Official Court Reporter

1 P R O C E E D I N G S

2 OPENING REMARKS OF

3 CHIEF JUDGE DIFIORE: Good afternoon, everyone.
4 Please be seated. Welcome to beautiful historic Court of
5 Appeals Hall, and welcome to the 2016 hearing on Civil
6 Legal Services in New York.

7 I am joined this afternoon by the leadership of
8 the Judiciary and the Bar in the State of New York. And
9 I'd like to take a moment to introduce each of them to
10 you, starting with the members of our panel.

11 To my far right is our Chief Administrative
12 Judge of the State of New York, Lawrence K. Marks,
13 Presiding Justice of the Third Department Karen K.
14 Peters, next to me is Acting Presiding Justice Peter Tom
15 of the Appellate Division, First Department.

16 To my immediate left is Presiding Justice Randy
17 Eng of the Second Department. To his left is Presiding
18 Justice Gerald J. Whalen of the Fourth Department, and to
19 Judge Whalen's immediate left is the president of the New
20 York State Bar Association, Claire Gutekunst.

21 Thank you. I would also like to take a moment
22 to acknowledge the presence of two of our Court of Appeals
23 judges who are here today joining us; Judge Leslie Stein.
24 Where are you, Judge Stein? And Judge Michael Garcia.
25 Thank you for being here, Judges, and thank you for your

1 interest in the issues we are about to talk about.

2 I'd also like to take a moment to acknowledge
3 Helaine Barnett, who is the chair of the Permanent
4 Commission on Access to Justice, and whose absolutely
5 outstanding leadership has made an extraordinary
6 difference in the lives of so many people seeking justice
7 across our state.

8 On behalf of all New Yorkers, we thank her, the
9 members of the commission and the commission counsel for
10 their dedicated and hard work. And a number of our
11 commission members are present with us this afternoon, and
12 I would like to acknowledge them as well.

13 The Honorable Fern Fisher, the Honorable Camille
14 Siano Enders, the Honorable George Lowe, Anne Erickson,
15 Sheila Gaddis, Adriene Holder, Lillian Moy, Christopher
16 O'Malley, and Barbara Finkelstein.

17 Members of the commission staff are with us
18 today, and of course the staff is the engine that makes us
19 run. We'd like to thank them as well; Lauren Kanfer,
20 Barbara Mule, Barbara Zahler-Gringer, Jessica Klein, Julie
21 Krosnicki, Lara Loyd, and Grace Son. Thank you all.
22 Thank you for your work.

23 So this is the sixth year, my first as Chief
24 Judge in which we have convened publically to hear from
25 witnesses about the extent and nature of the unmet civil

1 needs of low income New Yorkers, and the impact that the
2 provision of Civil Legal Services makes across our state.

3 And today's hearing and the commission's ongoing
4 work throughout the year will form the basis for the Chief
5 Judge's annual report to the legislature and the governor
6 submitted each December 1st.

7 That report will make recommendations concerning
8 the monetary and nonmonetary resources necessary to close
9 what remains a very significant Access to Justice gap in
10 New York Civil Justice System.

11 Former Chief Judge Jonathan Lippman - one of our
12 witnesses today -- in fact our leadoff witness, started
13 these annual hearings in 2010, and, as you know, appointed
14 the Task Force to Expand Access to Civil Legal Services -
15 now known as the Permanent Commission - which has
16 thoroughly and comprehensively documented the unmet civil
17 legal needs in our State.

18 The Commission has irrefutably demonstrated
19 through its work that investing public dollars in Civil
20 Legal Services makes sense economically, and as a matter
21 of public policy, by reducing social services costs down
22 the road, bringing federal dollars into our State economy,
23 and strengthening the fabric of our communities.

24 With Judge Lippman's leadership and the critical
25 support of our partners in the Legislative and Executive

1 Branches of government, the \$100 million dollars that is
2 now sited in the Court system's budget represents the
3 largest amount of state funding for Civil Legal Services
4 in the country - an absolutely extraordinary achievement.
5 Kudos to Judge Lippman, to the Governor, and to the
6 Legislature.

7 New York's lawyers and law schools also deserve
8 great credit for stepping up to the plate in what has been
9 a multifaceted strategy to close the justice gap through
10 innovative programming like the 50-hour law school pro
11 bono program, Pro Bono Scholars, the Attorney Emeritus
12 Program, and so many other important initiatives.

13 Thanks to these combined efforts, we have made
14 notable progress. The number of unrepresented litigants
15 in our civil Courts has dropped from 2.3 million to 1.8
16 million in only a few years.

17 Earlier this month, the New York City Office of
18 Civil Justice reported that 27.3% of tenants in the City's
19 Housing Courts appeared with counsel in almost 2,200 cases
20 over a two-day period in April. Only a few years ago,
21 that number would have been much closer to 2 percent, an
22 incredible and most worthy step forward.

23 Importantly, we have also experienced a change
24 in perceptions and attitudes in New York and around the
25 country. Policymakers at all levels of government have

1 come to recognize that legal services for the
2 poor is not just the right thing to do, which of course it
3 is, but it's the wise thing to do as well.

4 Today, funding for Civil Legal Services in New
5 York is at an all time high. But this is of course not a
6 time to rest on our achievements. Legal services
7 providers are still turning away far more people than they
8 can serve, And far too many New Yorkers are forced to
9 pursue the basic necessities of life - saving a home from
10 a predatory lender or landlord; recovering back wages from
11 a dishonest employer; ending abuse by a violent spouse or
12 partner -- without the aid of a lawyer.

13 We are challenged to continue to work together
14 to build upon the multifaceted approach to closing the
15 justice gap through public and private funding, creative
16 new strategies to eliminate access barriers, and by
17 leveraging technology and existing pro bono
18 resources.

19 And I hope by now you have all heard about the
20 Excellence Initiative, my commitment to achieving
21 operational and decisional excellence at every level of
22 our Court system, to speeding the process of justice for
23 all litigants, civil and criminal, rich and poor.

24 That effort cannot succeed if our Courts are
25 filled with unrepresented litigants who are legally

1 disadvantaged, who require extra time and attention from
2 judges and Court staff in order to understand and navigate
3 the most basic aspects of the legal process.

4 That is why today's hearing is so important, and
5 why all of us, together, must continue to do everything in
6 our power to make our civil justice system accessible and
7 efficient for the benefit of every New Yorker, regardless
8 of class or income.

9 As Chief Judge and steward of our Court system,
10 I take to heart the words of the 2010 Joint Legislative
11 Resolution of the New York State Senate and Assembly: The
12 fair administration of justice requires that every person
13 who must use the Courts have access to adequate legal
14 representation, and that every New Yorker in need should
15 have effective legal assistance in matters involving the
16 essentials of life.

17 Let this be our collective mission, and our
18 total devotion.

19 And now, before we begin the testimony, I have
20 one housekeeping matter that I would like to describe for
21 all of you. In an effort to be respectful of everyone's
22 time and commitment to being present here today, we will
23 be using the Court of Appeals famous timekeeping system --
24 Judge, I'm sure you remember that.

25 Each of our witnesses today has been allotted

1 10 minutes to present. At minute 8, you will see the
2 white light, which is right here next to me, activated,
3 and that will indicate to you that you have two minutes
4 remaining in your allotted 10-minute time.

5 So thank you very much. And now without further
6 delay, I would like to introduce Panel I's first and
7 leadoff witness, the Honorable Jonathan Lippman, former
8 Chief Judge, as you all know, of the State of New York,
9 now of counsel to the law firm of Latham and Watkins,
10 where he not only practices law, but still finds time to
11 continue his many, many good works.

12 Chief Judge Lippman made access to justice the
13 central mission of his tenure. With his passionate
14 leadership style, political and people skills, common
15 sense and compassion, he increased public awareness and
16 support for Civil Legal Services and is truly the
17 architect of so much of the progress that we have made in
18 New York in promoting equal access to justice.

19 If Judge Lippman has taught us anything, it is
20 that our Courts cannot operate effectively, cannot operate
21 as intended by the Constitution, unless the scales of
22 justice are balanced for all litigants, rich and poor
23 alike.

24 Judge Lippman, we are so very pleased and
25 privileged to have you join us today. And thank you for

1 And I congratulate you on your stewardship of
2 the Judiciary budget this last year through the
3 legislature with the help of your terrific, spectacular
4 Chief Administrative Judge, Judge Marks, a budget that
5 included not only so many important things for the
6 Judiciary, but a really milestone, \$100 million, for legal
7 services for the poor in this state. I mean, what an
8 accomplishment.

9 And I know from being a veteran of going through
10 these, I wouldn't call them budget wars, but this endeavor
11 of getting the Judiciary budget through. What a terrific
12 accomplishment that is, and this amount of money I think
13 does signal what the priorities of our state really are.

14 So I congratulate you on that. And I wanted to
15 note that you have the eternal gratitude of everybody who
16 believes that justice shouldn't be about the amount of
17 money in your pocket, and that everybody, I mean
18 everybody, gets their day in Court.

19 So thank you. And thank you for your dedication
20 and commitment to the vulnerable and people who really
21 can't do it on their own, the disadvantaged people who
22 really need just a helping hand.

23 So through that leadership, yours, Judge Marks,
24 our wonderful presiding justices, our terrific state Bar
25 association, we really have come a long way.

1 We've reached a goal again that I for one, as
2 much as we set that as our goal, really at various times
3 thought was unattainable; to be able to get \$100 million
4 that I know -- and I know I speak for our colleagues who
5 are doing God's work out in the legal services community,
6 that money has been a life line to legal services
7 organizations around the state.

8 And I think that I don't know where we would be
9 if those legal services each and every day were not out
10 there doing this critically important work for the people
11 of New York.

12 So we have \$100 million. We raised the amount
13 of representation from, we said when we first started that
14 maybe we were up to 20 percent representation, and now, we
15 are probably above a third in New York State, probably
16 double where we were to start.

17 We know that we have greatly reduced the number
18 of unrepresented people in our Courts from `2.3 million
19 dollars -- 2.3 million people -- to 1.8 million people and
20 going further down as we speak.

21 Chief Judge, you mentioned the 27 percent
22 representation in New York City Housing Court; we started
23 as you indicated from 99 percent of the people being
24 unrepresented -- and that is a demonstration, I'll talk a
25 little bit about that further, of where you parlayed the

1 state monies that we have been able to receive, more than
2 half of which go to New York City, and much of it going to
3 the housing area, and \$62 million dollars from New York
4 City going to housing representation alone.

5 I put this in the context to you of the crisis
6 of access to justice in our country where the Legal
7 Services Corporation has \$375 million dollars for the
8 entire country.

9 So what an accomplishment to be able to have
10 that much money, state and local funds, and I take my hat
11 off to Mayor de Blasio, Commissioner Steve Banks, for
12 using that money in a very focused and wonderful way.

13 And state and local funding is where we should
14 be, because 95 percent of the people in this country come
15 into contact with the justice system in the state and
16 local Courts, not in our wonderful federal Courts with our
17 terrific colleagues, this is -- we are the Courts closest
18 to the people.

19 We have, as you referred to, a legislative
20 resolution saying that the public policy of this state is
21 that everyone that needs gets legal representation or
22 effective legal assistance.

23 We have, as we talked about, these different
24 programs, the requirement of 50 hours of pro bono, which
25 basically means that if you're going to be a lawyer in New

1 York, you understand what being a lawyer is about, helping
2 people serving others; the Pro Bono Scholars program, the
3 Poverty Justice Solutions, the Lawyer Emeritus Program,
4 all of which demonstrate the pro bono nobility in our
5 state, programs that the state Bar has, President
6 Gutekunst, and all of our predecessors have supported, The
7 Empire State Counsel Program, and so many others, which
8 demonstrate what our Bar is all about.

9 We have a very increased representation in
10 foreclosure cases. We have changed the rules of
11 foreclosures and consumer credit to level the playing
12 field. And we have the use of non-lawyers, the Navigator
13 Program and the Legal Hand Program, which now brings
14 non-lawyers to the storefront level.

15 And I want to commend your wonderful commission,
16 Chief Judge, and our spectacular chair, Helaine Barnett,
17 for so many, all of those initiatives in one way or
18 another came out of the hard work of Helaine Barnett, the
19 former president of the Legal Services Corporation in
20 Washington, and a spectacular commission that has been at
21 the heart of our efforts.

22 And the law schools have risen to the occasion,
23 and recognized their role in the access to justice puzzle,
24 and that our aspiring lawyers, what they're like as being
25 part of a noble profession comes from what they learn in

1 law school.

2 We have unbundled legal services, help centers,
3 lawyers-for-a-day, do-it-yourself forms, the use of
4 technology, and on and on.

5 But so much more remains to be done. Where do
6 we go from here? And that's briefly what I want to talk
7 to you about. We cannot rest on our laurels as you
8 mentioned.

9 Legal service providers turn away, even today,
10 more people than they can help. That means more than
11 50 percent of the people that come to our wonderful
12 providers are turned away because of lack of resources.

13 The Legal Services Corporation is under attack
14 in Washington. The poverty level in New York and around
15 the country remains at 20 percent or more.

16 People are literally still falling off a cliff
17 because of the lack of legal representation when they are
18 fighting for the necessities of life; the roof over their
19 heads, their physical safety, the well-being of their
20 families, and their livelihoods.

21 We are going towards -- we know where we want to
22 go, either by Constitution, by statute, or by policy, and
23 that's whatever you want to call it, a civil gideon, a
24 hundred percent representation model for all people in
25 need. We know we have to get there. We know that there

1 are different ways that that can be done.

2 But to do that, whether by policy, by statute,
3 we need to generate public support for legal services. We
4 need to change the dialogue to get people to understand
5 that there is a revolution in access to justice going on.
6 There are a thousand flowers blooming here in New York and
7 around the country. And we have to continue to embrace
8 and focus on new ideas, and new thinking.

9 So, a couple of things I want to address: One,
10 and you talked about it, you alluded to it, Chief Judge,
11 in terms of the Housing Court, yesterday I had the
12 pleasure in New York City of testifying at a hearing
13 before City Council, on a right to counsel bill, which
14 basically lays out that there are at 200 percent of the
15 poverty level or less, everybody is entitled to counsel in
16 a case that involves an eviction or foreclosure.

17 It is a monumental milestone in the right to
18 counsel movement in this country. And I believe -- and it
19 was great enthusiasm in City Council chambers, I had the
20 pleasure of being the lead witness in that hearing too,
21 overwhelming support in the Council -- I believe the
22 passage of that bill, the first right to counsel bill, for
23 all practical purposes in the United States of America,
24 even though you have your liberties in state to get a
25 lawyer in a criminal charge, Gideon versus Wainwright --

1 in a very narrow area in the family cases, if the custody
2 of your children is being taken away from you, you have a
3 right to an attorney.

4 But there's been no real right to counsel bill
5 in the United States. And New York City is at the verge
6 of passing that kind of legislation that would reverberate
7 in every single part of this country and the access to
8 justice community around the country and the world.

9 So I believe that that bill is essential, and
10 that we need to embrace it, and I am very optimistic. We
11 have been in touch with the Mayor and the Mayor's people,
12 including Commissioner Banks, and we are working where to
13 go from there.

14 I might say that the ways to deliver,
15 unconventional ways to deliver legal services are things
16 that we have to continue to embrace including the Legal
17 Hands Program and the Navigator program.

18 I think it would be a really positive
19 development to expand those programs further throughout
20 the city and around the state. Because we know that the
21 best possible option is to have a lawyer, but if you can't
22 have a lawyer, then the next best is a non-lawyer trained
23 in a particular niche to help people.

24 And I know people around the country are
25 watching what we are doing in that area, and I think it's

1 far more important -- or far not more important, but a far
2 better system than is going on in the state of Washington,
3 I know we have the support of the State Bar in this
4 regard, that they are doing a second kind of lawyer, a
5 lawyer light, who basically just charges less than a
6 regular lawyer would do.

7 I don't think we need different kinds of lawyers
8 in this country. I think we need new, unusual ways to
9 deliver legal services. And I think that this idea of
10 having non-lawyers, not practicing law, but helping
11 people, is very, very important.

12 Technology is extremely important, particularly
13 in rural areas in our state, where technology can fill the
14 gap in these large districts that we have in New York,
15 that people cannot get to legal services, and technology
16 can again bridge that gap.

17 The single portal initiative by the Legal
18 Services Corporation using technology where you come into
19 one electronic portal, and then you go out and you get
20 sent to where you need help, either electronically or in
21 person is very important.

22 The National Conference of State Courts and the
23 Public Welfare Foundations; a hundred percent
24 representation initiative is very, very important, and I
25 have spoken to Chairperson Barnett, and I know our

1 commission is very interested in it, as are commissions
2 around the country. And the idea is, everyone gets
3 representation. But as wonderful as we are doing, it is
4 not enough.

5 New York has led the way, with the 50 hours and
6 the experiential learning -- experiential learning with
7 our law schools, and thanks to the good work of Judge
8 Graffio and Judge Rivera, we have done -- I think it's a
9 wonderful program, and the people understand that better
10 than anybody; the aspiring lawyers who have embraced those
11 programs, and love to do pro bono, and it makes their
12 souls better, and they feel good about what they do.

13 But I think that program and those programs have
14 to be followed around the country. Our friends in
15 California have had that pending before them for about
16 three years now. The governor just vetoed, which I cannot
17 understand, Governor Brown in California, a bill to
18 require 50 hours of pro bono before admission.

19 But it's now being considered again by the high
20 Court there. And I think that's the direction that New
21 York leads, and we should continue to talk to people
22 around the country to see that that same embracing of the
23 core values of our profession goes around the country and
24 not just in New York.

25 I talked a little bit about local funding, the

1 example of New York City, and to me the new frontier in
2 funding is at the state and local level. We are lucky if
3 we can keep what the Legal Services Corporation has now.

4 Literally every year there's a bill to defund
5 them all together. But, again, the state and local Courts
6 are where people come in contact with the justice system,
7 and we have to have that synergy of the state funding.
8 The state has been terrific. I commend, as you do, the
9 Chief Judge, the Governor, and the Legislature, but it's
10 just as important in big cities around the state as it is
11 in New York City, and it is an example and a model for the
12 rest of the state, for the rest of the country, that the
13 local level has to step up to the plate. And I think it's
14 extremely important.

15 Another area that I mentioned it is extremely
16 important is that judges understand their role in the
17 courtroom. And you know we just passed rules I believe
18 last year, to encourage judges to facilitate access to
19 justice.

20 It doesn't mean that they change their
21 neutrality. As judges we are impartial. But what we do
22 do is we deal with justice.

23 A Judge shouldn't be presiding over a courtroom
24 when justice isn't done. There should be a level playing
25 field. And judges can be so important, I think it's a

1 question of legal education, judicial education, so judges
2 can get at what they have to do in the courtroom, and yet
3 not violate that neutral, impartial role.

4 And it's a tough road to walk, but I think it's
5 critical, in each and every courtroom in the state,
6 critical that justice is done, because at the end of the
7 day, that's what matters.

8 All our protocols and rules pale beside the fact
9 that justice is what we are all about.

10 Another area that I would focus on is low bono
11 assistance. And things like the Incubator programs, which
12 some of the bars have, some of the law schools, where you
13 have young lawyers coming out of law school, learn what it
14 is to practice law and earn a living, but yet they charge
15 prices which the average person can maybe afford better
16 and certainly people of modest means.

17 I think the Incubator programs, low bono
18 efforts, and, again, at least in my view, I don't believe
19 that the answer to this is to create a second tier of
20 lawyers. I think the answer is within the legal
21 profession, to have affordable legal services.

22 There are people of different economic means,
23 and I think we have to have one, the greater part of the
24 profession, which, you know, has such learning and
25 expertise, and is entitled to charge prices comparable to

1 the work that they do.

2 But we also need for the people of modest means
3 to figure out some low bono alternatives, and again, these
4 Incubator programs certainly caught my attention. And
5 they are very, they do very well around the country. They
6 teach young people about what it is to practice law, and
7 that you could serve people, that you don't have to, you
8 know, charge very high prices to make a living.

9 There are lots of different, you know, price
10 schemes within the legal profession, and part of that has
11 to be the people that are just scraping by, what do they
12 do? When they can't afford legal services, free legal
13 services? And yet, you know, they have a desperate
14 problem.

15 It's all about their life, their families, the
16 roof over their heads. What are they, they can't get free
17 legal services, and yet can't afford maybe the going rate
18 from a lawyer. Some of these young people, again,
19 perfectly suited to learn about practice and to do a good
20 deed.

21 The only other piece that I mention to you that
22 to me I think is very, very important, is the
23 prioritization that we have in this society as to legal
24 services for the poor.

25 It really goes to everything we have been trying

1 to do all these years and the wonderful achievement, Chief
2 Judge, in getting \$100 million from the legislature.
3 Things are being done in the city and in places around the
4 country. There are terrific things being done from Texas
5 to Hawaii, to New Jersey, to Connecticut, to every place
6 you can imagine.

7 We need to change the priorities in society.
8 What I mean by that is, we know the things that society
9 holds dear; schools, hospitals, housing. We know how
10 important those things are. I truly believe that legal
11 representation for the poor is every bit as important as
12 each of those areas and everything that we hold so dear in
13 this democracy.

14 These things are so important. We don't say
15 that, gee, money's tight this year, we can't educate our
16 children. We don't say, gee, money's tight this year, we
17 can't tend to our sick. And we can't say, gee, money's
18 tight this year, we can't provide legal representation to
19 those in need.

20 This is a basic human element. This is about
21 human beings who are entitled to essentials of life. And
22 I think our overarching goal has to be in everything that
23 we are doing that the leadership of the Court system, the
24 profession is doing, this great commission is doing,
25 everything should be with that in mind, that raising the

1 profile of people in need, who just need a helping hand in
2 an area that they don't know how to navigate. When you
3 talk about, for instance, the housing issues; people come
4 in without a lawyer, it's so lopsided.

5 And the landlord doesn't want to be in a
6 situation where the other side has no lawyer. They want
7 to talk and work something out. We have had at this
8 table, we have had the head of the Landlord's Association,
9 of the Rent Stabilization Association of New York come in
10 and say, we want people to have lawyers.

11 So I think it's a priority. How do we get
12 across that this is at the very top of what we do. And I
13 do feel that the state judiciary, the legislature, and the
14 executive, in our state have demonstrated the priority
15 that we have for legal services for the poor, both in the
16 money that they, you know, provided, and in the public
17 policy revolution that they pass.

18 So those are the areas that I would focus on in
19 the coming days and years, and there are so many things to
20 do. And I think to accomplish this, to embrace new ideas,
21 new thinking, to continue where we are going towards a
22 civil gideon, hundred percent representation, however you
23 want to frame it, requires innovation. It requires
24 leadership. And it requires partnerships.

25 And I am absolutely confident, with you, Chief

1 Judge, at the helm, with your spectacular leadership in
2 this state, that we have all of those things; leadership,
3 innovation, partnerships, many times over.

4 And with all of that, I believe I am truly
5 confident that the day is not very far off in the State of
6 New York, and in this country, where the ideal of equal
7 justice is a reality for each and every person in each and
8 every courtroom in this state.

9 I think that's where we're going. I'm very
10 proud of where we have been. And I am very, very proud,
11 Chief Judge, of where you are taking us, along with your
12 colleagues and the wonderful leadership in this state and
13 the Judiciary and the Bar. And I thank you so much for
14 allowing me to come back to this beautiful majestic
15 courtroom to have my say, and also, in extending the clock
16 for me, even though that red light is on.

17 Thank you for your courtesy. It's a delight to
18 be with you. Thank you.

19 CHIEF JUDGE DIFIORE: You're welcome. You had a
20 special Chief Judge waiver.

21 HONORABLE JONATHAN LIPPMAN: I know.

22 CHIEF JUDGE DIFIORE: Judge, I have a question
23 for you.

24 HONORABLE JONATHAN LIPPMAN: Sure.

25 CHIEF JUDGE DIFIORE: As you know, next year,

1 the voting public will have the opportunity to vote as to
2 whether or not there should be a state Constitutional
3 convention. Do you think there are opportunities there
4 for access to justice reforms?

5 HONORABLE JONATHAN LIPPMAN: You know, I'm so
6 glad you asked, because to tell you the truth, I should
7 have listed that. One of the things that are going on --
8 and I commend you, Chief Judge, for appointing a really
9 high level group to take a look at this -- one of the
10 things being talked about, and I've also been involved in
11 some of these movements towards the constitutional
12 convention, and my own belief by the way, not that anyone
13 is asking, is that, that it's a good thing to have a
14 constitutional convention.

15 I think that the feeling has always been there
16 is a danger too, because if you open the door, you don't
17 know what comes through. And I think that's an argument
18 that we have to, you know, be conscious of. But I believe
19 a constitutional convention provides great opportunities,
20 and one in particular that's meaningful to me; to actually
21 insert into the Constitution of the State of New York the
22 idea that people have a constitutional right here in New
23 York to Civil Legal Services.

24 And, you know, remember I talked about
25 Constitution policy statute; to me, it would be such a

1 milestone, if we could put that into the Constitution.
2 And, Chief Judge, I would mention that I will send the
3 members of the panel and the commission -- there are ideas
4 as to if we were able to do that, where exactly it should
5 be placed and what it should look like, you know, what
6 should be the verbiage in the Constitution.

7 But I think it would be -- I can't tell you how
8 wonderful. And as an example, I think in a broader
9 context of the kinds of things that might be able to be
10 accomplished in terms of a constitutional convention, and
11 I would say too, and I know that's why you appointed the
12 commission, Chief Judge, to take a look, is that there are
13 so many things from the way the Courts are structured to,
14 you know, age limits, to this, that, and the other thing,
15 that I think a constitutional convention could take up,
16 you know, in the judicial article, or in other articles
17 that related to the Judiciary. So I think it's really a
18 tremendous opportunity.

19 CHIEF JUDGE DIFIORE: Any questions?

20 HONORABLE KAREN PETERS: I have one. Were we to
21 have the dream of the Civil Legal Services, do you think
22 it would be reasonable to consider having individuals who
23 have the opportunity to have counsel appointed to
24 represent them, pay for that service on the basis of their
25 income, have a sliding scale for legal representation?

1 HONORABLE JONATHAN LIPPMAN: I think it's a
2 nuanced question. And I always respect nuanced questions
3 from our fabulous presiding justices from the Third
4 Department. I think like anything else you have to set
5 the criteria. What this commission is starting to do is
6 to generally set it at 200 percent poverty level, and by
7 the way that's the bill in New York City, 200 percent, so
8 I think free legal services for the poor is a very
9 important concept, almost inviolate.

10 By the same token, is it sort of, is it another
11 way of looking at it, you know, I was talking about low
12 bono services. I think you could make a good argument
13 that there are other people who maybe can't pay, again,
14 whatever the going rate is, but can pay something. Need
15 help, can and should pay something.

16 And, you know, if you're establishing a right,
17 again, what does that look like? And the short answer to
18 your question is, you could look at something like a
19 sliding scale in providing assistance. But it's not
20 necessarily totally free above a certain level.

21 So I think there's lots of different ways to
22 attack that issue. One is the idea of getting the private
23 Bar to do low bono services, and another way is to have
24 some kind of sliding scale; you are entitled to legal
25 services, but, gee, it costs a lot of money, and the

1 answer yesterday by the way, you talk about the amount of
2 money just to get the scale into everyone's head, between
3 what we give with \$100 million, what the city gives, and
4 what comes from LSC and other sources, you probably, we
5 probably have in housing cases, maybe \$125 million that
6 goes to housing representation in New York City.

7 To represent everybody else, let's say beyond
8 that 27 percent and get up to a hundred percent, would
9 probably cost another \$200 million. But when I testified
10 yesterday, and there are individual studies, and, Chief
11 Judge, this is the argument you made to the legislature
12 for every dollar that you invest in legal services for the
13 poor, five, six ten dollars are returned to the state.

14 In the city, the argument that was made based on
15 independent studies, through savings from shelter costs,
16 from replacing affordable housing for these people who
17 lose their housing and then the rents are raised, through
18 health and other services, social services, the estimates
19 were that the city would far exceed the 200 million or
20 thereabouts commitment that they would have to make by
21 hundreds of millions of dollars.

22 Because the cost savings by keeping people in
23 meaningful roles in society in housing, putting money into
24 stores, banks in the local community, rather than having
25 their, not only their roof over their head gone, but their

1 family life is fractured, the kids can't go to the same
2 school anymore, they lose their jobs, all of those social
3 consequences, aside from the faith of the particular human
4 being, costs money.

5 So, I think for a relatively modest investment,
6 society, the economic bottom line in society, aside from,
7 as the Chief says, doing the right thing, because if you
8 just make the argument we are doing the right thing, the
9 moral thing, the answer is, well, get in line. There are
10 lots of right things.

11 But if we make the argument that the economics,
12 which I think is a totally valid argument, that the
13 economic benefits to the bottom line far exceed what you
14 you're going to put into it. I think that is very
15 effective.

16 I remind you that the state comptroller sat in
17 this chair a couple of years ago and testified that the
18 absolute best investment for government is to invest in
19 Civil Legal Services for the poor.

20 CHIEF JUDGE DIFIORE: Thank you, sir.

21 HONORABLE JONATHAN LIPPMAN: Thank you, Chief
22 Judge.

23 HONORABLE PETER TOM: Justice Lippman, I just
24 have a suggestion; regarding your statement concerning
25 training judges to assure that the proceeding, etcetera,

1 is fair, I think we should extend that not just training
2 judges, but training the Court attorney, because my
3 experience in the Housing Court where there is a
4 tremendous volume of cases, the Judge conferences cases,
5 Court attorneys also conference cases, and they should be
6 taught to make sure the conference and the resolution is
7 fair, and to insure that the, you know, the Court stays in
8 a neutral position, and not to advocate one side over the
9 other. So I think the training should also be given to
10 the Court staff, Court attorneys.

11 HONORABLE JONATHAN LIPPMAN: I agree, Justice
12 Tom, you were always wise, and that is a very good
13 suggestion. I would even extend it to all Court
14 personnel, because there are other things going on when
15 not even conferencing cases; what happens in the courtroom
16 has to be fair, even for everybody, when people come out
17 saying, 'I've had my day in Court,' and they know they
18 were treated with dignity and respect.

19 CHIEF JUDGE DIFIORE: Thank you so much, Judge
20 Lippman.

21 HONORABLE JONATHAN LIPPMAN: Thank you, Chief
22 Justice.

23 CHIEF JUDGE DIFIORE: Our next witness is Steven
24 Cutler, who will be appearing remotely in a moment. Good
25 afternoon, Mr. Cutler.

1 TESTIMONY OF STEVEN CUTLER

2 MR. CUTLER: Good afternoon, Chief Judge.

3 CHIEF JUDGE DIFIORE: Steven Cutler currently
4 serves as vice chair of JP Morgan Chase and Company. And
5 Mr. Cutler has had a very long and distinguished career in
6 public service, including his year serving as the director
7 of the SEC's Enforcement Division, as well as his valued
8 service on the boards of the Legal Action Center, the
9 National Women's Law Center, and the Metropolitan Museum
10 of Art.

11 Mr. Cutler, thank you for taking the time to
12 join us today, remotely, from our beautiful chambers at
13 230 Park Avenue. Thank you, sir.

14 MR. CUTLER: Thank you, Chief Judge,
15 distinguished judges and members of the jury panel, I am
16 delighted to be here.

17 For nearly a decade I served as JP Morgan's
18 general counsel and as a member of its operating
19 committee. I'm honored to be here today in my personal
20 capacity to offer my support for the work of the Permanent
21 Commission on access to justice led by its extraordinarily
22 dedicated Chair Helaine Barnett, and the important
23 initiatives of yourself, Chief Judge, as well as before
24 you Former Chief Judge Lippman, to expand the provision of
25 the Civil Legal Services to those who can't afford them in

1 New York State.

2 Every day JP Morgan Chase is in the middle of
3 many thousands of financial matters involving the
4 essentials of life. From mortgages to home loans, from
5 credit cards to debit cards, from payment processing to
6 deposit accounts.

7 Unfortunately not every one of those
8 transactions and relationships is problem free. Disputes
9 and lawsuits do arise. And when they do, we want a
10 resolution that's fair both to the customer and to us.
11 And we want to reach that resolution expeditiously.

12 We frequently find that the best way to achieve
13 those twin goals is for our customers to be able to turn
14 to counsel who can explain why his or her claim makes
15 sense, or doesn't, and why a settlement offer from us is
16 fair or isn't.

17 Indeed, we have been involved in a number of
18 matters where a customer's lack of legal representation
19 resulted in the customer's failure to appreciate the
20 strengths and weaknesses of his or her claim and the
21 merits of a proposed resolution of that claim.

22 In some cases, that's meant substantial delay
23 for the customer and more litigation expense for us. And
24 in others, it's meant the customer's refusal to consider
25 an offer of settlement substantially more favorable than

1 the ultimate judgment rendered by the Court, again with
2 more litigation expense for us.

3 Inability to resolve a dispute consensually I
4 frequently like to say is failure of imagination or
5 understanding. And the ability of a customer to rely on
6 trusted counsel, even at the earliest stages of that
7 process, indeed I would say especially at the early stages
8 of the process, can reduce the instances of such failure.

9 The access of customers to counsel in disputes
10 relating to a life-essential financial matter is not
11 uncommon. The outside law firm dealing with our mortgage
12 foreclosure matters in New York where customers have
13 asserted counter claims estimates that one third of all
14 the matters they helped us resolve in 2015 were with
15 customers who did not have legal representation.

16 In short, if those with whom we have disputes
17 are represented by able counsel, we think that could help
18 us get fair and quicker settlements.

19 That in turn will mean a Court system that won't
20 be overwhelmed in matters that should be resolved without
21 much if any Court intervention, and it will also mean a
22 Court system that will be able to devote more resources to
23 matters that do need Court intervention.

24 But maybe most important of all is what any of
25 us would want for ourselves or our parents if we or they

1 were involved in a dispute over a life-essential financial
2 matter and couldn't afford counsel; it's just the right
3 thing.

4 At JP Morgan Chase, we feel an acute sense of
5 responsibility to the communities in which we live and
6 work. Our Foundation gives on the order of \$200 million a
7 year to worthy causes. In 2015, some 47,000 of our
8 employees volunteered more than 300,000 hours of their
9 time to more than 2,000 service projects in communities
10 around the globe.

11 It's that same sense of responsibility that
12 extends to our Legal Department, where it can be seen most
13 clearly in our pro bono program. We provide assistance to
14 among other lower income families securing welfare
15 benefits, to refugees in seeking asylum, and victims of
16 domestic violence in seeking Court protection.

17 The program is one of the ways in which we
18 recognize the importance of legal counsel in securing a
19 fair and just society. And it is that principle that
20 brings me here today to support greater access to Civil
21 Legal Services in the State of New York. Thank you.

22 CHIEF JUDGE DIFIORE: Thank you, Mr. Cutler.
23 Mr. Cutler, you very eloquently make the point that
24 outcomes and resolutions are of course much fairer when
25 both sides are represented by legal counsel.

1 What is there, what should we be doing, if
2 anything, to further impress that upon the minds of the
3 business and bank leaders in our community and how can we
4 better, if that's even appropriate, press them into
5 further service?

6 MR. CUTLER: Well, the way I think of it, your
7 Honor, is none of us in the business community should be
8 out to win, in that narrow sense of the word. What we are
9 all out for I think, or should be out for, is a fair and
10 just resolution of claims.

11 And while in a very narrow and I think
12 shortsighted way, some in the business community might
13 think, gee, if the other side isn't represented, I can
14 achieve a victory. That's not victory, right, and that is
15 not healthy for the long-term interests of any of our
16 businesses. So that, I would say is one.

17 Two, I think we in the business community should
18 be respectful of the scarce resources available to the
19 Court system.

20 And all of us unfortunately manage to get tied
21 up in litigation every now and then, and we want the
22 Courts to be able to devote their time to the complex
23 matters where Court assistance is really, really
24 necessary.

25 And I think what that means is making sure that

1 in some of these matters, which aren't that complicated,
2 but without counsel will invariably need to go to a Court,
3 if we can get, if we can get the other side counsel,
4 trusted counsel, who are doing the right thing, I think we
5 can avoid occupying Court's time needlessly in cases where
6 that simply shouldn't be happening.

7 CHIEF JUDGE DIFIORE: Thank you. Any questions?
8 Thank you, Mr. Cutler, for taking the time from your very
9 business schedule. We appreciate you appearing remotely.

10 MR. CUTLER: Thank you. And thanks so much for
11 the panel's time and for allowing me to do this remotely.
12 I so appreciate it.

13 CHIEF JUDGE DIFIORE: Thank you, sir.

14 Our next witness is Suzanne Goldberg. Ms.
15 Goldberg is the Herbert and Doris Wechsler Clinical Law
16 Professor of law at Columbia Law School and the director
17 of the Law School Center for Gender and Sexuality Law and
18 the Sexuality and Gender Law Clinic.

19 The professor also serves as the Executive
20 Vice-President for University Life at Columbia University,
21 and we thank her collectively for participating in today's
22 hearing. Thank you, Professor, for being here.

23 TESTIMONY OF SUZANNE B. GOLDBERG

24 MS. GOLDBERG: Thank you very much, your Honor,
25 and thank you to all of the esteemed members of the panel

1 for the privilege of testifying today.

2 I am also honored to be presenting with my co
3 panelists here. I want to underscore how important the
4 work of the Permanent Commission on access to justice is
5 in expanding access to justice in our state, and indeed
6 across the country.

7 As a member of the Columbia Law School faculty,
8 I would especially like to recognize how valuable the
9 commission has been in encouraging and inspiring all law
10 schools throughout the state to strengthen our own efforts
11 to make justice more accessible to all.

12 In fact, we talk about justice, we teach about
13 justice a lot, I think we could do more in law schools to
14 use the phrase access to justice regularly, constantly to
15 engage our students in the mission in which, on which we
16 are collectively working.

17 This afternoon I would like to use my time
18 before you to supplement the written testimony that I have
19 already shared with the panel. As you know, that written
20 testimony addresses the ways in which law students in
21 recent years have faced what might be described as a new
22 reckoning with their chosen profession.

23 The gap between law on the books and law in
24 action has always been part of the law school experience
25 at least in recent decades. But the starkness of seeing

1 this gap for many of our students, including through a
2 series of police shootings caught on videos, many of them
3 unarmed black men and women, has been especially
4 threatening and painful for many of our students.

5 What our students have wondered and have asked
6 on their own and in sessions with the faculty is what does
7 it mean to learn legal doctrine and work for justice when
8 they are so troubled by the ways in which the law and
9 justice were being administered.

10 Against this backdrop, the focus of my testimony
11 will be on how the legal community in New York, and in
12 particular the lawyers and judges affiliated with the
13 Permanent Commission and the Judiciary in the state, might
14 think about harnessing both the concerns and the great
15 interest and energy that law students today have in
16 working on meaningful access to justice in our state.

17 So I'll start there, and then turn to the
18 question what are some of the -- to turn to offer some
19 specific thoughts on what this panel and what the
20 commission and what the Bar and the Judiciary more
21 generally might think about doing, to really compliment
22 some of what Judge -- Chief Judge Lippman had to offer.

23 On the first point, issues that are motivating
24 our students relating to race, ethnicity, disparate gender
25 -- other identity-based disparities in justice have always

1 been central to the work of law schools, at least in
2 recent decades.

3 Certainly in my own class, I teach civil
4 procedure, and in the range of other first year courses in
5 the curriculum; criminal law, property, torts
6 constitutional law, these issues are central.

7 There are several additional points I want to
8 highlight where law schools I think are effectively
9 engaging our students on these issues and can do more, and
10 of course the link to access to justice is that so many of
11 those issues impact the way in which members, in which
12 residents of New York State and members of our broader
13 community are facing challenges both systemic and
14 individually in accessing justice, and in obtaining
15 lawyers to facilitate their engagement with the legal
16 system.

17 First, of course is clinical legal education.
18 As the panel well knows, clinical legal education has been
19 a leading light in connecting students to work with
20 communities, burdened or marginalized by law, poverty, and
21 other institutional and systemic challenges.

22 My own Sexuality and Gender Law Clinic involves
23 students in litigation, legislative work, public policy
24 work. We have worked in the state at the local level,
25 nationally and beyond, on a wide range of issues.

1 And just to give you a sense of some of those,
2 in the last ten years, my students have put in thousands
3 of hours addressing domestic violence, family recognition
4 for same sex couples, laws that discriminate and policies
5 that discriminate against transgender individuals, asylum
6 for individuals fleeing persecution based on gender
7 identity, sexual orientation, among a broad range of
8 issues.

9 And that's really, those are just *my* students,
10 right -- if you take those and you add to them all of the
11 students just at Columbia's many other clinics focused on
12 mass incarceration, immigration, prisoner's rights, the
13 needs of youth, adolescent young people aging out of
14 foster care, access to environmental issues, public
15 benefits, mediation, human rights and more, and then you
16 add to those all of the students in clinics at New York's
17 14 law schools all together, it's really an extraordinary
18 number of hours that students are dedicating directly to
19 expand the access to justice.

20 In addition to clinics, of course, at every law
21 school in the state, there's so much more engagement
22 around pro bono opportunities, around externships and so
23 forth.

24 There is also, as I mentioned in my written
25 testimony, the sort of unseen access to justice work that

1 many faculty do of having students collaborate with us on
2 projects, on briefs.

3 As I speak to you, I am hoping that my law
4 students are working on finalizing a brief to the U.S.
5 Supreme Court in an immigration sex discrimination case,
6 and in another project for the American Law Institute on
7 procedures for resolving campus sexual assault complaints.

8 The point being, that there's a constancy of
9 engagement and that we could do more to frame that
10 engagement around access to justice.

11 In addition, of course, are the series of
12 programs that law schools are offering -- and I note some
13 of those in my testimony -- to try to give students not
14 only the practical, but also the intellectual foundation
15 for engaging in these issues; showing them the pathways
16 through which they might use their legal degrees. And
17 I'll speak in a moment about the ways I think the Bar and
18 the Permanent Commission can do more to help students
19 along those pathways.

20 One more thing I want to mention is that many
21 law schools throughout the state and the country are
22 consolidating some of these efforts in important centers
23 and institutes that do research that give experiential
24 learning opportunities and that engage the public debate
25 around these issues, I think all going toward the broad

1 effort to change the culture and to strengthen the culture
2 that the Chief Judge was speaking about.

3 Now I'd like to turn to the question of what
4 more can we do in New York State to engage some of the
5 this tremendous passion and energy. Because we are at a
6 moment I think where there's great opportunity to build on
7 the work that the commission, that the Judiciary, have
8 already brought forward in this state, and to take the
9 passion and the energy of the students and do even more.

10 Now the major challenge that I see, apart from
11 the fact that there are only 24 hours in the day -- no
12 matter what any of us try to do about that -- is to find
13 more and more effective ways for our students to learn
14 from experienced lawyers about the pathways they might
15 take to make a difference.

16 There are so many, as we know, but when you
17 think about the first year law student or the second or
18 third year law student who is looking out at this
19 landscape, and say things like, I see these problems in
20 the world, I care about them, and I have no idea how to
21 take the first step to engage as a lawyer. It can be
22 daunting as well as exciting.

23 So I'll just suggest a few brief points. One is
24 that on the familiar idea of mentoring, there are a lot of
25 opportunities as you know, and I am sure you all regularly

1 speak on career-oriented panels for students.

2 The next step I think we can try to take is to
3 enable, create more opportunities for the one-on-one
4 mentoring that is so vital as students try to figure out
5 their way along the path.

6 And here I want to connect up to the comments
7 that will surely follow about technology when we think
8 about first the ways in which those conversations can
9 happen, over Skype, Face Time, but also perhaps to do more
10 to match students with interested lawyers in the area.

11 If we can do this in the dating world and in the
12 business world, surely we ought to be able to have
13 excellence in connecting students with interested mentors
14 wherever they are in our state.

15 Second, and related, is that some of even our
16 most assertive law students are not sure, well, what do I
17 ask this famous lawyer, this important lawyer who has
18 achieved all of these things that I want to do?

19 And I think there's more that we can do on the
20 lawyer side to provide some guidance for the students and
21 the Permanent Commission working with law schools, in
22 addition to working on mentoring plans in connection with
23 pro bono work for the lawyers who are doing the mentoring,
24 I think we can also do more to elevate this for the law
25 students.

1 An additional suggestion or observation that we
2 might, that the commission and this panel might consider
3 is having a series of smaller convenings on access to
4 justice in law schools throughout this state, that would
5 create opportunities for law students to come to these
6 in-person conversations with the people who they so admire
7 and whose work they would so like to emulate, and perhaps
8 if student travel were funded by some of the leading firms
9 or businesses in the state, it would create real
10 incentives and excitement for people to be able to get
11 together around these issues.

12 I see the red light, and I am quite sensitive to
13 that, so if I could just have one more brief thought, your
14 Honor?

15 CHIEF JUDGE DIFIORE: You may.

16 MS. GOLDBERG: The -- which is this: There is,
17 as I said earlier, great energy and interest and
18 excitement on the part of law students. There is great
19 need for that connection between the law students and the
20 profession, and I think we can do so much more to achieve
21 that.

22 One other possibility to consider is creating
23 more opportunities to recognize those who are doing these
24 matches, right? To celebrate the great mentorships, to
25 celebrate the great programs, to celebrate even the great

1 technologies and so forth that will be developed in the
2 coming years, not only to give recognition where it is
3 due, but also, as New York State has done so effectively
4 and the commission has done so effectively, to hold up
5 models for the rest of the country.

6 Because what we are doing here has such
7 tremendous impact, and that in particular I think would
8 have more. I think the silver lining finally for our
9 times is that a growing number of law students understand
10 in a deeply personal and passionate way how important it
11 is for them to get involved in insuring access to justice.

12 As a result, while the need for more lawyers in
13 the field is pressing in all of the ways that we have
14 already heard and ever present, there are many in law
15 school who are really ready and willing to work, and just
16 need the mentoring, the guidance, and the recognition to
17 find the best paths forward to make their contributions.

18 Thank you for this opportunity to present to
19 you.

20 CHIEF JUDGE DIFIORE: Thank you, Professor.
21 Questions?

22 PRESIDING JUSTICE RANDALL T. ENG: Professor, I
23 have very limited experience in academia. I was an
24 adjunct for a few years, but I was always struck by the
25 degree of academic freedom, faculty independence. If you

1 look at law review article titles, there is a tremendous
2 and broad range of interests. But how do we motivate law
3 faculty to engage in access to justice programs,
4 motivating their students?

5 How do we motivate them to take on something
6 that is not necessarily as glamorous as some of the other
7 things that they have an acute interest in?

8 MS. GOLDBERG: That's a fantastic question. And
9 I think there is great interest. In fact, as our students
10 were coming to the fore and engaging much more
11 passionately with some of these issues than they had
12 before, so too were the faculty, and that interest has
13 sustained.

14 Now there is a core of faculty that has always
15 been engaged in mentoring students along these lines, and
16 it won't surprise you that I land in that group. But when
17 I think about reaching my colleagues, whose work may focus
18 a little bit less in this area, often, what is very
19 motivating is an invitation to participate, to speak, to
20 have the opportunity to be invited to take the opportunity
21 to connect the areas in which a faculty member works to
22 these questions of access to justice.

23 And that I think particularly when I think about
24 people working in finance, when I think about people
25 working on, really on all, in all parts of the curriculum,

1 the opportunity to engage in those conversations with
2 others who are testifying before the panel today and with
3 members of the Judiciary will bring that forward, and I
4 think you'll find that once you bring the breadth of the
5 law school faculty in the state into the fold, the work in
6 this area will really be amplified. So it's a really good
7 point.

8 CHIEF JUDGE DIFIORE: Thank you, Professor, and
9 thank you for taking the time to be here today.

10 MS. GUTEKUNST: If I could just say, it is very
11 nice to hear from you, and we at the State Bar have
12 instituted what we call a pathway to the profession, which
13 goes along -- you're talking about pathways and when we
14 say pathway to the profession, we certainly include the
15 access to justice.

16 So I really would just like to say I would very
17 much like to continue the conversation with you, and maybe
18 we can have a cup of coffee, because we also have a
19 wonderful group called our president's committee on access
20 to justice, which comprises many of the leaders in the
21 access to justice community, the legal services agencies,
22 a number of whom are sitting in the back there now.

23 And I think they -- I would be happy to take
24 back to them some of your ideas about how can we connect
25 the law students -- they are of course very overtaxed

1 already with trying to actually serve the clients, so, you
2 know, there has to be a balance there. They can't be in
3 every classroom. But I would very much look forward to
4 having a conversation with you about how the Bar
5 Association could break into that.

6 I think we were having a conversation just
7 before the hearing about how difficult sometimes it is to
8 get law students to come to things that we do sponsor,
9 because they are so busy in so many different ways. So, I
10 look forward to our conversation.

11 MS. GOLDBERG: Thank you. I do too.

12 HONORABLE GERALD J. WHALEN: You mentioned
13 during your testimony about the coordination between the
14 law schools, and the sharing of information I think is
15 what you're getting at; how far along has that gotten? In
16 other words, are the private law schools, are there a lot
17 of private law schools and public law schools sharing
18 successes for example on how they are promoting these
19 programs within their schools? And is there some
20 initiative to track it and that it could essentially be
21 brought to bear so that we could access it and maybe
22 enhance their own school curriculum based upon the
23 successes you're having at your school?

24 MS. GOLDBERG: The Permanent Commission I think
25 has done tremendous work actually, at their annual

1 conference for law schools bringing people together to
2 share information in that setting. And I know that one of
3 my colleagues actually has been charged with drafting this
4 pro bono guide for lawyers working with students who are
5 doing pro bone projects to help enhance the work and the
6 learning opportunities.

7 I do think that there is much more that can be
8 done, and I know even from my own experience trying to
9 connect with colleagues at all of the law schools on other
10 projects, it's not as easy as I would have thought.

11 So I think this is another one of those areas in
12 which leadership from the state judiciary could have the
13 potential to be transformative. Leadership from the
14 Permanent Commission is already there, and the combination
15 I think will bring more colleagues in together for these
16 kinds of conversations.

17 And just picking up on the prior point, the law
18 students are very busy, so one of the challenges is
19 thinking about how do we meet them where they are? And
20 meet the busy lawyers where they are. And facilitate
21 those connections.

22 I do think, again, that technology enables us to
23 do more of that in ways that will benefit the profession
24 for a long time to come.

25 CHIEF JUDGE DIFIORE: Thank you, Professor. Mr.

1 Heiner? David A. Heiner is vice-president of regulatory
2 affairs for Microsoft Corporation, and he also serves as
3 chair to Probono.net, a national non-profit that works to
4 provide legal services to the poor, as well as his
5 technology expertise. Thank you for being here, sir.

6 TESTIMONY OF DAVID HEINER

7 MR. HEINER: Thank you very much, Judge, for the
8 opportunity to appear here today. I have to say, it's
9 incredibly inspiring to come to New York from Seattle, and
10 to learn how the state is funding the access to justice,
11 and to hear from Judge Lippman about the funding that has
12 been obtained.

13 About seven years ago, Mark O'Brien, the
14 executive director of Probono.net, came out to Seattle to
15 meet with Microsoft, and Mark is here today.

16 And his message was really to extoll the
17 benefits of technology, in addressing the access to
18 justice. As you might imagine, he had a rather receptive
19 audience with respect to the benefits of technology
20 generally, but we hadn't thought that much actually about
21 addressing civil legal needs.

22 And when I started to look into it, I was really
23 struck by the incredible fragmentation in the system, just
24 the broad range of people who need help, the broad range
25 of legal issues which you all know so well, that need to

1 get addressed, and the very broad range of legal aid
2 providers and other organizations that need the help. It's
3 terrific that there are so many.

4 But, as Judge Lippman was saying, it feels like
5 a confusing landscape, and it can be kind of hard to
6 navigate. So it felt like something where technology, you
7 know, could help. Computers are very good at keeping
8 track of things. They are very good at connecting, at
9 networking and connecting people. They are very good at
10 getting things done more efficiently. And so I joined the
11 board of Probono.net.

12 And now in 2016, I have to say, I am especially
13 happy that I did. Because it's more apparent to me today
14 than ever before that technology has a really important
15 role to play. And the reason why is that we are on the
16 cusp of profound technological changes in the years ahead.

17 For the first time in history, we have literally
18 billions of people and billions of things, sensors,
19 connected to one another, via the internet.

20 We have firms like Microsoft, Amazon, Google,
21 and IBM, investing billions of dollars in building massive
22 data centers that enable computing to be done much more
23 efficiently and cheaply than ever before. And we have
24 billions of megabytes of data being collected of all kinds
25 of things, and with advanced machine learning techniques,

1 artificial intelligence, important insights are being
2 drawn from that data.

3 Just an example in the news lately, and it feels
4 like the Jetsons, but we now have cars that can drive
5 themselves. And that is a function of sensors all over
6 the car and a lot of data being analyzed in the cloud, and
7 that has come to pass.

8 So there's great promise, but there is also some
9 peril, because many people are concerned that this
10 technological change, which cannot be stopped and should
11 not be stopped, will unleash economic forces that may
12 actually exacerbate the income inequality.

13 It's always been the case in the past that
14 technology destroyed some jobs, but then created new jobs.
15 And the question is, will that hold in the future. And no
16 one knows the answer. But there's a real concern that
17 with artificial intelligence and automation, a wide range
18 of jobs may be eliminated or devalued in some way.

19 And so we may find an even greater need for
20 legal services than in the past. And we may also find
21 that people who need that legal support, have minimal
22 access to technology, where the landlord and creditor have
23 full access, and so how to balance this would be further
24 exacerbated as well.

25 So I think there's really three ways that

1 technology can help; in creating, in collaborating, and in
2 communicating.

3 When it comes to creation, we have, you know,
4 Google search today, or Bing search, and as amazing as
5 that is, in milliseconds you can get information, and then
6 use that to draft an argument, both tomorrow, you'll be
7 able to just speak to the computer, use natural language
8 to ask a question and get answers.

9 We see just the nascent beginning of that today,
10 with things like Siri, and Cortana, but this will get
11 much, much better over time. An example of where we can
12 build on this is law help interactive, which is offered by
13 Probono.net here in New York State.

14 A person who doesn't have a lawyer can go to
15 this website, and in an interactive way provide
16 information and get Court forms generated for an Order of
17 Protection in a domestic violence case.

18 But the site -- there's so much potential to
19 enhance the site and to make it better with adequate
20 funding. Collaboration software is very, very good at
21 bringing people together. Information can be assembled,
22 posted, and then everybody can access that.

23 We have an example of that here today with
24 Lawhelp New York, which is a project of Probono.net and 11
25 leading legal aid organizations here in New York State

1 that pulls together resources across a variety of areas.
2 Here, again, there are opportunities to enhance that site.

3 And then communication. Thanks to the internet,
4 everyone can be connected to everyone else. And services
5 like Skype, which is a Microsoft offering, can really
6 close distances. We had a nice demonstration of it here
7 this morning. I was relieved to see it go off without a
8 glitch.

9 It usually does. But I didn't want to extoll
10 the benefits of technology by having a glitch. Notice
11 that Mr. Cutler was in high resolution on a big screen,
12 there were no audio drops outs. It all worked very
13 nicely.

14 I am working on a similar project funded by a
15 very generous private donor from Silicon Valley with a
16 group called Kids in Need of a Fence. This is in written
17 testimony. But a major problem with undocumented children
18 in the United States is, they don't have an adult, they
19 don't have a guardian. They're on their own. And they
20 can't even get to the Immigration Court.

21 This is an especially severe problem in
22 California. It's a big state. Many of these kids are
23 agricultural workers, and so they are in the central
24 valley, it's 175 miles to San Francisco. They can't get
25 there.

1 And so we are establishing, using that very same
2 technology, Skyping technology, places where they can just
3 go to a local community site and then appear in Court for
4 scheduled hearings and the like.

5 Coming soon is a service called Skype
6 Translator. It will be released commercially any day now,
7 where it will translate from one language to another. And
8 this is artificial intelligence at work. So, you have a
9 lawyer speaking English and could be serving a Spanish
10 speaking client. You could have a lawyer speaking English
11 in an immigration case and connect via Skype to Spanish
12 speaking witnesses in Latin America someplace.

13 So, obviously, a tremendous benefit there, works
14 in six languages today, and there will be many more
15 offered over time.

16 Finally, I would just mention, which Judge
17 Lippman mentioned, this LSC portal project; this is a
18 joint project of Microsoft, LSC and Probono.net, again,
19 and the goal is to build a prototype of basically the
20 front end to the whole legal aid system in a given state.

21 So it would connect to the Court system, it
22 would connect to available resources, it would have a nice
23 interface. Over time, people should be able to speak to
24 the system, get useful information, be directed to lawyers
25 where there are lawyers, and be directed to how to help

1 themselves, where there is a need to help themselves.

2 So we are getting to work on that project quite
3 soon. I would close with three recommendations. I am
4 obviously a champion of technology, and so would urge
5 funding for it. The point I want to make today though is
6 a little different, which is that it would be very helpful
7 to have sustained sources of funding that can apply over
8 multiple years.

9 I have observed so far that so often from the
10 wonderful groups that fund this kind of work, it's a
11 one-year grant or a two-year grant, which is fine, but,
12 you know, Rome wasn't built in a day, and neither was a
13 great technology project.

14 So you really need more time to build it, get
15 feedback on it, and then to improve it. So we need
16 sustained sources of funding that we can plan from.

17 Second, new technology projects in the state
18 should be built on the basis of cloud computers. This is
19 a new method where the servers are handled professionally
20 someplace else. It takes the burden off the IT staff of
21 the local enterprise. Capacity can be added or subtracted
22 conveniently, and it's a more efficient way of getting
23 computing done.

24 We should also build upon data, collect all the
25 data that you can, in a private technical way, and then

1 gain insight from that, wherever more resources are
2 needed, where things are working well and where things are
3 not working well.

4 Finally, I would just say that all the legal aid
5 providers in New York should make sure they are running
6 the very latest and greatest business productivity
7 software. The lawyers on Wall Street have the best,
8 Microsoft and Google both make their offerings available
9 entirely free of charge to non profits, of any kind,
10 including of course legal aid providers.

11 And for just a very small additional fee,
12 additional services can be provided that are greatly
13 discounted. So every legal aid provider in the state
14 ought to have the benefit of this technology.

15 So again, I thank you very, very much. It's
16 been an honor to appear before you today.

17 CHIEF JUDGE DIFIORE: Thank you. Thank you for
18 your fantastic work. You referenced so many exciting
19 technological initiatives today. Have you given any
20 thought to how we best educate the people who are in need
21 of Civil Legal Services to access these types of
22 innovative ideas?

23 MR. HEINER: That is a very good question,
24 because you can build the resources but you need to get
25 people to know about them. That I think is one of the

1 primary goals of this LSC portal project. The idea would
2 be you have so many places today, so many different
3 resources, kind of where do you start?

4 And the goal would be, you start from this one
5 place, and that's the funding -- and you direct all your
6 resources towards getting the word out, in the Housing
7 Court, in the Landlord/Tenant Court, in the Family Court,
8 here's where you go to begin. And then from there,
9 clients will be sent to the right place.

10 CHIEF JUDGE DIFIORE: Thank you.

11 HONORABLE KAREN K. PETERS: I think it was last
12 year at this hearing there was discussion and testimony
13 concerning client access to information, and one of the
14 subjects we discussed was whether or not the portal could
15 be someplace which exists in every community in New York
16 State, and that's the public library.

17 We have an enormously popular library system.
18 People use it. Do you think that that would be a good
19 location to think about providing an introduction to legal
20 services software to people?

21 MR. HEINER: I do. And there may be other
22 community resources as well. We need to build this portal
23 so it's accessible via smart phones. And there is
24 80 percent penetration today of smart phones in the
25 population. So even low income people, one of the first

1 essentials after housing, is your smart phone.

2 And so, people will be able to access the system
3 with that. Now if you want to get some real work done,
4 you probably will want to go to a bigger device. And so
5 having resources in libraries and other civic centers
6 would be terrific.

7 HONORABLE KAREN K. PETERS: Thank you.

8 HONORABLE LAWRENCE K. MARKS: Mr. Heiner, just
9 on the subject of electronic communication between an
10 attorney and a client through the medium of a computer, a
11 question, do we perhaps lose something with that, given
12 that trust is such an important element in the
13 attorney/client relationship? Can an attorney establish
14 trust with a client through a computer? And obviously if
15 it provides an opportunity for communication, that's
16 better than no communication, but do we run the risk of it
17 becoming a substitute for in the flesh interaction and
18 communication?

19 MR. HEINER: I think it's a great question. The
20 other day a woman named Beth Henderson who leads the pro
21 bono work at Microsoft was telling me about a client she
22 had in Sebwoolie (sic), which is a town 60 miles north of
23 Seattle where we are, and she was saying that she was
24 going to meet the client, and interview him via Skype.

25 And of course we are proponents of that, but I

1 actually urged her to get in the car and drive up there,
2 for the initial meeting at least, for the very reason that
3 you're identifying; that the client was a teenager, he's
4 been somewhat lost in this legal world. Wouldn't it be
5 better -- it's going to take the better part of a day --
6 but drive up there and actually make the connection.

7 So I agree with you that face-to-face is better.
8 But this is an additional tool we can use and so one way,
9 make the first, in-person connection first, and then maybe
10 for subsequent follow-up meetings use the technology.

11 In other cases, you know, Montana is a very big
12 state. And the lawyers are concentrated in one or two
13 cities there, but the need is throughout the state. And
14 there it may be a lot better than nothing, as you said, to
15 have this kind of a Skype connection. And when it works
16 really well, high resolution and the audio is high
17 quality, it feels pretty good.

18 MS. GUTEKUNST: Real quickly; the LSC portal
19 that you've just spoken about is something that we have
20 heard a little bit about, and I understand Microsoft is
21 going to be funding a couple of states on that. And my
22 question is, is this something that is focused on the
23 Court system? Would this be something the Court would be
24 applying? Or the Bar Association would be involved in?

25 Because it's certainly something that we I would

1 think would want to explore in New York as a possible, you
2 know, site too, but I don't know whose going to be doing
3 the outreach.

4 MR. HEINER: So the LSC is putting out a request
5 for a proposal on this, any day now. Maybe they already
6 did. If not, it's coming this week. And it is directed
7 primarily at the Court systems in each state.

8 And the request would be asking, you know, what
9 will you bring to the party, so to speak. Microsoft and
10 LSC and Probono.net will bring the software development
11 project, but it will need government oversight, resources
12 to connect to.

13 So there will be a process here over the next
14 couple of months I think where information would be
15 provided back from the States to the LSC and then LSC will
16 decide.

17 The goal, as I said, is to build a prototype, so
18 it will get built for one state or maybe two states, we'll
19 learn something, improve it, and then if it feels like a
20 success, the software will be open sourced, and then
21 hopefully more funding will become available from
22 someplace, and it could be implemented across the country.

23 But one of the beautiful things about technology
24 is we can build this in such a way where it can be copied,
25 at essentially no cost, there will be some cost, but the

1 code will work, it will be stamped out 50 times.

2 HONORABLE PETER TOM: One quick question:

3 Following Chief Judge's question, it's great to have all
4 this technology, and internet information is a great
5 thing, but how do we reach the large number of poor people
6 out there who may not have access to a computer, who may
7 not know how to use a computer? How do you reach out to
8 them to teach them and to give them that opportunity to
9 share that technology?

10 MR. HEINER: That is where I think we need to
11 work through community organizations, you know, of every
12 type, and get the word out that these resources exist.
13 And, as Judge Lippman was talking about, I forget the term
14 he used, but people who aren't lawyers, but are helping in
15 sort of niche areas of law, they could stand by and sort
16 of help somebody through the system.

17 You know, I've done some of this work in the
18 docket context for Court action for immigrant youth, the
19 Obama Administration Program where undocumented children
20 can apply to not have the Court take deportation
21 proceedings for some period of time. And we build some
22 tools to support that, so then they come to a clinic, and
23 then they don't have to operate the computer; I ask the
24 questions, which are basically, are you eligible for the
25 program and how can we prove it?

1 And I operate the computer, and in the end, I
2 push a button and out comes the form, which we send them
3 off with when they go up to the INS.

4 So you know, it's community support, it's lawyer
5 support, law student support would be terrific, and the
6 technology always, it's just another tool to help. People
7 are always the main thing.

8 CHIEF JUDGE DIFIORE: That's fantastic. Thank
9 you for your being here.

10 MR. HEINER: Thank you very much.

11 CHIEF JUDGE DIFIORE: Mr. Swyer? Edward Swyer
12 is the president of Swyer companies in Stuyvesant Plaza.
13 He is in the commercial real estate market here in the
14 Capital District and he is a supporter of legal services
15 organizations such as The Legal Project and the Albany Law
16 School Clinic and Justice Center. Thank you for being
17 here, Mr. Swyer.

18 TESTIMONY OF EDWARD P. SWYER

19 MR. SWYER: Thank you, Justice. Thank you to
20 the Permanent Commission on Civil Legal Services, and
21 members of the panel.

22 Very happy to be here all the way from
23 Guilderland, New York. This issue is very important to
24 me, access to civil justice. We have a real estate
25 company called Swyer Company that I am president of, and

1 we own a number of commercial developments in the area.
2 And you mentioned Stuyvesant Plaza, which is the most
3 notable.

4 I learned early on from my father, who started
5 the company in the late forties, early fifties, and he
6 believed that with success came a responsibility to give
7 back to our community. He established scholarships for
8 local colleges, for minorities, when it was very
9 progressive. This was in the sixties and seventies.

10 I learned early on from my father, Bill Swyer,
11 to believe that with success came the responsibility to
12 give back to the community. He established scholarships
13 in local colleges for minorities, where it was not used as
14 often, but he was very progressive.

15 Skidmore College, St. Rose, Girls Academy. He
16 would very often give money to individuals anonymously.
17 He would make loans to people who needed money not
18 expecting to be paid back. He was very quietly well-known
19 for this. In fact, I should say, to give you a sense of
20 how he was respected, he is in Academy Park across the
21 street, across from the capital in bronze, sitting on a
22 park bench. So if you have time, you might go over and
23 visit him and say hello.

24 Although my company supports many important
25 causes, there is a special place in my heart for programs

1 for people who need justice, especially when they can't
2 afford to hire an attorney.

3 Over 20 years ago, I was introduced to The Legal
4 Project, a pro bono Civil Legal Services program that was
5 originally started by the Capital District Women's Bar
6 Association by my colleague, Attorney Janet Caplan, an
7 Albany Law School grad, and also the president of the
8 local Bar.

9 Our support and partnership over the years with
10 The Legal Project helped me really understand the fear
11 that grips those who need legal help, but can't find it.

12 I can see how failing to get access to justice
13 can make a bad situation truly terrible and sometimes
14 impossible to turn around. I have worked closely with and
15 support Albany Law School's Clinic For Justice Center,
16 which helps produce well-trained graduates who are
17 dedicated to public interest law and pro bono work.

18 I know the Permanent Commission has encouraged
19 collaboration between law schools, Civil Legal Services,
20 and there are excellent working relationships between
21 Albany Law and programs such as Legal Aid of Northeastern
22 New York, Albany County Bar Association, and The Legal
23 Project.

24 Our company has numerous programs, and our
25 foundation with the Albany Law School, including the Louis

1 Day Swyer Academic Success Program, the Albany Clinic For
2 Justice Fellowship Support, and recently we just
3 established a community business and development clinic.

4 My enthusiasm is greatly enhanced by the
5 incredibly dedicated smart and diligent professors at the
6 Albany Clinic. Because of my enthusiasm, close
7 relationships and commitment to those programs that
8 support justice, I have an understanding of the obstacles
9 that face our neighbors who have little or no income.

10 I believe it is extremely important for
11 businesses who can afford to, to step up to make a
12 difference. We all have a responsibility to do what we
13 can to make our community a better place to live.

14 Without an ability for an individual to escape
15 the tyranny of domestic violence, an unscrupulous employer
16 or landlord, immigration violations and other situations,
17 legal representation is essential. Otherwise, our
18 unemployment increases creating a draining on our social
19 services and our community suffers.

20 Lisa Fresh, executive director of The Legal
21 Project, shared a comment in the current issue of The
22 Nation that states a study that concludes 60 percent of
23 domestic violence survivors reported losing their jobs as
24 a consequence. 98 percent said it made them worse at
25 doing their jobs. I stand in support of a permanent task

1 force on Civil Legal Services. Our family foundation and
2 our commercial enterprise supports many philanthropic
3 causes, but none is more important than access to those
4 less fortunate.

5 It is in our DNA; civil legal help for victims
6 has the most lasting impact on the quality of their lives.
7 Civil legal help for those at risk of homelessness, facing
8 bankruptcy, in need of economic support, assists families
9 and provides overall stability in our community.

10 Civil legal help is also good for business.
11 William James -- James once said: A community is only as
12 strong as its weakest link. The efforts of the Permanent
13 Commission and the Office of Court Administration have
14 made the chain in our state much stronger with the support
15 of Civil Legal Services. This has improved the lives of
16 thousands and made our state a better place to live and
17 work.

18 Thank you for the opportunity to testify before
19 you today.

20 CHIEF JUDGE DIFIORE: Mr. Swyer, on behalf of
21 all of us, and all the many, many people that you have
22 helped and assisted, we thank you for your commitment, for
23 your compassion, and most important for your example.
24 Thank you very much.

25 MR. SWYER: Thank you very much.

1 HONORABLE KAREN K. PETERS: And, Mr. Swyer, as
2 the local Judge sitting up here today, I am particularly
3 appreciative.

4 CHIEF JUDGE DIFIORE: That concludes the first
5 panel. We would ask you all to take a step back, and Ms.
6 McCormick will assist our second panel to move to the
7 front table. We are going to take a two-minute break
8 while you organize.

9 (BRIEF RECESS.)

10 CHIEF JUDGE DIFIORE: Okay. Come to order,
11 everyone. Our next witness is Mr. Jorge Torres, who is a
12 client of Legal Assistance of Western New York. Mr.
13 Torres is accompanied today by Jake Hamann, his attorney.
14 Thank you so much for being here, sir. Mr. Torres?

15 TESTIMONY OF JORGE TORRES

16 MR. TORRES: Thank you, your Honor, for having
17 us. It is my pleasure to come speak on behalf of Legal
18 Assistance of Western New York. They have helped me out
19 tremendously. I was employed at -- I'm like from the
20 other side of Buffalo, so I came quite a ways to get here
21 today. It was a nice day -- well, I used to -- well,
22 right now, I have, I used to work as a director for the
23 East Side Family YMCA, which was my work with at risk
24 youth, and I work for, you know, supportive grants and for
25 operations, which I was involved in day-to-day operations

1 there, in creating programs for at risk youth in that
2 area, and it's one of the lowest poverty neighborhoods in
3 western New York.

4 So I had a challenging position, very busy
5 position. It was like a 24-hour job; they would call at
6 two in the morning, foster kids to be reunited with their
7 parents or whatever. So I worked with some very young,
8 very difficult kids that were in difficult situations.

9 So, with that being said, when I chose to leave
10 that position, because I knew I needed to be around my
11 family more, you know, I had lost basically my family a
12 little bit, my own kids. And at the same time also, my
13 wife was ill. She got diagnosed with cancer.

14 And so it was time for me to, you know, take
15 care of the family. And it was tough for me to leave the
16 position, but it was something that I had to do, there was
17 no way around it.

18 So I was unemployed for a couple of years, took
19 odd jobs here and there, and I got to spend more time with
20 my kids, my family, catch up so to speak, and take care of
21 my wife, and back and forth from Buffalo for, you know,
22 appointments and that, and making sure she got through her
23 illness the best she could, and in the most comfortable
24 way, even though it was really tough.

25 It was a downwards spiral as far as financially,

1 the stress level and everything. And it led to me to be
2 in a situation where I thought I would never be, which my
3 home was at risk, we were in jeopardy of losing our home.

4 I did manage to get employment, wasn't looking
5 for employment, but a friend of mine called me, and said
6 he had the perfect job, he said my name was all over it,
7 and it was flexible, so I didn't have to, you know, it
8 didn't take time away from my family too much, because if
9 I needed to travel with my wife back and forth because we
10 still were in that battle, that was doable. So I did take
11 that offer and it was the best thing I ever did.

12 I wasn't totally out of the woods yet as far as
13 my home. I went to several hearings with no avail. I
14 mean, there was nothing that they could do as far as they
15 said that they could help me out with several different
16 programs that I applied for, and still there was no, you
17 know, they said there was no possibility of me regaining
18 my home.

19 So that's when I started, you know, questioning
20 if I was going to keep my home or not. And then they
21 referred me to Law New York, Legal Assistance of Western
22 New York, and I kind of went through, you know, the old
23 background, and got all my information, and then he
24 started with the same thing I was doing and gotten over
25 with it and were turned down a couple of times and

1 different programs and then times that they did have some
2 success with the MAP program, we applied to that, we
3 applied for that, and in a timely fashion because there
4 was only so much time, and then I had to, we had to apply
5 for a Chapter 13 I believe.

6 And just to keep my home and not be, you know,
7 taken out of the home, and be in -- so after all that, you
8 know, we got some time, bought some time and applied for
9 the MAP assistance, Mortgage Assistance Program. And that
10 took about a month or so, couple of months, you know, and
11 that Chapter 13 just bought us enough time to get an
12 answer back from them.

13 They asked for more information. We gave it to
14 them, and we got a letter in the mail saying that they
15 approved it. So they did a lot of work for me, for my
16 family, and that's why I am here today, because I am very
17 appreciative of their efforts and, you know, without them,
18 I probably would have lost my home, and God knows I'm
19 still working with kids, and so that's basically how that
20 all came about.

21 And I was kind of like at the bottom, so, you
22 know, it was very emotional, financially stressing, going
23 through all that. And it was hard to keep up, but I kept
24 faith and they helped me out quite a bit.

25 CHIEF JUDGE DIFIORE: Sir, how did you become

1 acquainted with and aware of the legal services that were
2 available to assist you and your family?

3 MR. TORRES: I believe it was the Court system
4 that referred me, if I remember right, the judge's clerk I
5 believe.

6 MR. HAMANN: I believe during the settlement
7 conference, the judge's clerk made him aware of our
8 services.

9 CHIEF JUDGE DIFIORE: Excellent.

10 MR. TORRES: They said I went through a couple
11 of several conferences on my own, before I knew about the
12 program, and then after I learned about the program, they
13 got ahold of me and made an appointment, and from there
14 on, they were involved, and that was the transition.

15 And I was a victim through also mortgage fraud.
16 I believe it was out of Georgia, and those people right
17 now are mostly in jail, because there's like 11 or 12 of
18 them, and some are pending a hearing for sentencing. So
19 it's almost to the final stages of those people that
20 committed that mortgage fraud.

21 So I am very happy to hear that they are getting
22 what they deserve, because I was dealing with them and
23 there was \$2,700 worth and right there, you know, that
24 took the life out of me, just because I didn't have much
25 money. So, you know, thank God for Legal Assistance of

1 Western New York for their efforts.

2 HONORABLE RANDALL T. ENG: I am very pleased
3 that you were able to get this kind of assistance,
4 particularly upon referral from the Court, but I am also
5 interested in victimization. And that is, you testified
6 about a group based in California that took a fee from
7 you, did these people represent themselves to be lawyers?
8 Were they, in fact, lawyers? How did you become the
9 victim, so to speak?

10 MR. TORRES: Well, it's hard to believe that I
11 fell victim to that, you know, even after that would be a
12 possibility that would happen to me, and they were very
13 convincing. They sent they me papers and documents, and,
14 you know, I just don't know how I fell to that, but I did.

15 HONORABLE RANDALL T. ENG: How did you come into
16 contact with them? Did they call you?

17 MR. TORRES: Yes, they called me, because I
18 believe, I think when you're in that situation where
19 there's a foreclosure, they gather that information and
20 they prey on vulnerable people, and I don't consider
21 myself vulnerable, but I must have been at that time, and
22 I was looking for a way out and a way to keep my home, and
23 unfortunately I fell victim to those people. Yeah, it's a
24 very disappointing thing to hear that people go through
25 that. I mean, it's just wrong.

1 HONORABLE KAREN K. PETERS: So when you were
2 served with process, when the foreclosure proceedings
3 began, if you had received notice concerning the
4 availability of legal services, would you think you would
5 have reached out for that?

6 MR. TORRES: Oh, yes, yes, I would have.

7 HONORABLE KAREN K. PETERS: So the timing was
8 that you got taken advantage of before you had the
9 opportunity to discover the opportunity for help?

10 MR. TORRES: Yes, that's correct.

11 HONORABLE PETER TOM: Are you financially stable
12 now?

13 MR. TORRES: Yes, I do have a job, and I only
14 work 40 hours, and I am still working with at-risk youth.

15 HONORABLE PETER TOM: You're not getting any
16 more assistance from any agency now, are you?

17 MR. TORRES: No, I am not.

18 HONORABLE LAWRENCE K. MARKS: What would have
19 happened to you if you had not ended up with the
20 assistance of a lawyer in your case?

21 MR. TORRES: If I wouldn't have ended up?

22 HONORABLE LAWRENCE K. MARKS: Yeah, well, how do
23 you think it would have ended up if you didn't have the
24 help of a lawyer?

25 MR. TORRES: I probably would have been out of

1 my home, I would have been forced to get out of my home.
2 We filed that bankruptcy, I had 30 days to move basically.
3 They were sending me letters. And that is why when we
4 filed that bankruptcy, they gave us the 90 days I believe
5 the automatic stay. I am not sure of the length of that
6 automatic stay, but it gave us enough time for the MAP
7 assistance to take its course.

8 CHIEF JUDGE DIFIORE: Mr. Torres, thank you for
9 traveling all this way to be here today, to share with us
10 your story. And your voice is an excellent and shining
11 example of the value, the undeniable value of providing
12 Civil Legal Services at just the right time for you and
13 your family.

14 And on behalf of all of us, we wish you good
15 health and good luck with your family. Thank you, sir,
16 for being here.

17 MR. TORRES: Thank you, your Honor. My wife is
18 in remission now and things are good for her. And, you
19 know, it was my pleasure to come here today and speak on
20 behalf of my entire family. So it's a good program to
21 have, especially down there in western New York.

22 CHIEF JUDGE DIFIORE: Thank you so very much,
23 sir.

24 MR. TORRES: Thank you.

25 CHIEF JUDGE DIFIORE: You're welcome.

1 Our next witness is Mr. Glenn Rice, who is a
2 veteran of the United States Armed Forces. He is a client
3 of Legal Services of the Hudson Valley, and he is
4 accompanied today by Shara Abraham, a former prosecutor
5 who brings the excellent skills she honed in the
6 Westchester County District Attorney's Office, to helping
7 clients at Legal Services of Hudson Valley.

8 Welcome, Mr. Rice, and Ms. Abraham. Nice to see
9 you.

10 TESTIMONY OF GLENN RICE

11 MR. RICE: Thank you, everybody, for allowing me
12 to speak today.

13 My first contact with Legal Services of the
14 Hudson Valley was in March 2015. I had applied for
15 an increase in my VA service-connected disability benefits
16 and had been denied. My disability had worsened and I
17 knew I needed an attorney at my side to help me fight for
18 benefits I believed I deserved.

19 My disability is PTSD or post-traumatic stress
20 disorder. My disability wasn't forged from some noble or
21 heroic deed on the battlefield, but rather a cowardly act
22 by an officer in command. That onetime encounter on what
23 would have been a beautiful summer night in Fayetteville,
24 North Carolina, would leave a lifelong nightmare embedded
25 in my brain that at times has left me on the verge of

1 madness.

2 The next thirty plus years were filled with
3 detoxes, drug rehabilitations, homelessness, countless
4 encounters with police and the legal system, suicide
5 attempts, and lost opportunities. And then I placed a
6 call to Legal Services of the Hudson Valley and started a
7 journey into recovery.

8 I did an intake over the phone and scheduled a
9 meeting at the Newburgh Office with my attorney, Shara
10 Abraham. I was welcomed with respect and treated with
11 dignity. From our very first meeting, Ms. Abraham showed
12 true concern for my story and my problems. Shara
13 worked diligently on my case with a level of
14 professionalism I have seldom seen.

15 She immediately noticed my apprehension and
16 distrust in the legal system and set my fears at ease.
17 She answered all my questions and I was relieved and
18 grateful when she told me she would represent me in my VA
19 appeal.

20 The results of Shara's efforts were amazing.
21 She was able to get me 100 percent permanent and total
22 disability from the VA. This rating comes with educational
23 benefits that my daughter will be able to use next year
24 when she graduates high school and goes off to college.
25 And the validation I feel from being awarded these

1 benefits means so much to me.

2 After we received the great news on my VA claim,
3 Ms. Abraham set to work on my Social Security/Disability
4 case. I also had been denied Social Security/Disability
5 benefits and was waiting for my hearing. When we were in
6 front of the administrative law judge, Shara could see
7 how nervous I was. Again, she was able to assure me that
8 I was doing fine and everything was going to be okay.

9 I was so impressed when the Judge said on the
10 record that the brief Shara submitted on my behalf was one
11 of the best he had ever seen, and even before we finished
12 the hearing, the judge told us he would be awarding me
13 full Social Security/Disability benefits.

14 I was told that they never do that. By securing
15 Social Security/Disability benefits for me, Shara was able
16 to secure for me a financial stability I have never known.
17 I will appreciate these benefits for the rest of my life.

18 I can only speak about my experience with Legal
19 Services of the Hudson Valley. But I do know veterans
20 returning home from combat zones and overseas deployments
21 have a difficult time admitting they may have a problem,
22 and the Veterans Administration is overwhelmed with cases.
23 It can take years before your case is even looked at, and
24 it is hard to navigate the VA and the Social Security
25 Administration on your own.

1 Having an option like Legal Services of the
2 Hudson Valley gives veterans another avenue to travel and
3 can make the difference between a denial and a favorable,
4 life-changing outcome. That phone call I made to Legal
5 Services of the Hudson Valley changed the course of my
6 life in a manner I could not have anticipated and meeting
7 Shara Abraham has been my honor. That's why when she
8 asked me to speak here today I did not hesitate to say
9 yes.

10 Thank you for allowing me to speak on behalf of
11 my experience regarding my attorney, Shara Abraham, and
12 the important work of Legal Services of the Hudson Valley.

13 CHIEF JUDGE DIFIORE: Thank you, Mr. Rice.
14 Questions?

15 HONORABLE RANDALL T. ENG: How did you get
16 referred to Legal Services of the Hudson Valley?

17 MR. RICE: I don't know if it was just dumb luck
18 or divine intervention. I Google searched, you know,
19 legal aid, help, lawyer, veteran, and it popped up. I
20 just gave them a phone call and from there it just
21 snowballed.

22 PRESIDING JUSTICE RANDALL T. ENG: Thank you.

23 CHIEF JUDGE DIFIORE: This might seem like
24 almost a naive question, but with the veterans coming
25 home, how best do we reach out or make services, legal

1 services, more accessible or educate the community about
2 the availability of lawyers who are as devoted as Shara?

3 MR. RICE: That's a tough one. Because it is
4 hard. When you first get out, you don't know what to do.
5 The VA says, we'll take care of you. And they, you know,
6 they are just so overwhelmed. To have a place where a
7 veteran can go and to be taken seriously, and, you know,
8 you have an issue and -- but how to get that out there to
9 the veterans, I wish I knew.

10 For me, it was just a Google search. And you
11 guys popped up. I don't know how else to get the word out
12 there. It's a good question. I wish I had an answer.

13 CHIEF JUDGE DIFIORE: Well, this is a great
14 example of the marrying up of excellent legal services, a
15 provision of excellent legal services and technology.

16 MR. RICE: Absolutely, absolutely.

17 CHIEF JUDGE DIFIORE: Anything further for Mr.
18 Rice?

19 HONORABLE PETER TOM: Did you try to get any
20 assistance from the Veteran's Administration?

21 MR. RICE: I did. I did. Um, to be quite
22 frankly, I was stonewalled. There was road blocks, it was
23 just denials. And, you know, most people would just
24 forget about it, because it's such, it's such a long road
25 and such a hurdle to have to go through; most people would

1 just forget about it, because it's not worth the effort.

2 They put, you know, things in your way that you
3 finally just say to yourself, I can't do it anymore. And
4 I believe what had happened to me was, it was worth the
5 benefits. And Shara believed the same thing too, and, you
6 know, it just, it worked out fine for us.

7 CHIEF JUDGE DIFIORE: Thank you, sir. And thank
8 you for being here, Ms. Abraham. Excellent work.
9 Excellent work.

10 So our final witness for Panel 2 is Ms. Donna
11 Spinner. And Ms. Spinner is a client of the Legal Aid
12 Society of Northeastern New York. And she's traveled a
13 great distance to come here today and we appreciate that
14 very much, coming this distance to share your story with
15 us.

16 And she's accompanied by Gerry Schafer, her
17 attorney. So thank you for being here, Ms. Spinner.

18 TESTIMONY OF DONNA SPINNER

19 MS. SPINNER: Good afternoon. My name is Donna
20 Spinner and I live in --

21 CHIEF JUDGE DIFIORE: Ms. Spinner, please use
22 the microphone so everyone can hear you.

23 MS. SPINNER: Good Afternoon. My name is Donna
24 Spinner and I live in Plattsburgh, New York.
25 I am here today to tell you how the Legal Aid Society of

1 Northeastern New York helped me in my divorce case. In
2 order to understand the position I was in when I sought
3 help from Legal Aid, please allow me to tell you about my
4 history.

5 I was married to my husband in 1978 and we had
6 two children. During the marriage, my husband was
7 employed as a licensed petroleum product site developer.
8 In other words, he installed gas tanks and pumps at gas
9 stations.

10 My husband's occupation provided a very good
11 income for the family, and we later operated our own
12 business in this field.

13 For most of our marriage, I stayed at home
14 taking care of our children. As the children grew
15 older, I made attempts to obtain employment outside of the
16 home. My husband made it clear he did not want me to work
17 outside the home. I wanted to obtain a degree in
18 accounting, but this was against the wishes of my husband
19 who told me to "get my priorities" right. The right
20 priorities were staying home and doing as I was told.

21 While my husband was not overtly physically
22 abusive, he was mentally and emotionally abusive and
23 financially controlling. I could never do anything right
24 in my husband's eyes and everything that went wrong was my
25 fault.

1 The children and I often couldn't wait for him
2 to go out of town for work so that our home would not
3 be filled with screaming and yelling. When my husband
4 began his own business, I performed the duties of
5 bookkeeper. I had learned basic bookkeeping and received
6 Quickbooks training.

7 The business grew and we incorporated the
8 business and added business partners. Soon, my
9 bookkeeping duties became a nightmare. My husband was
10 evasive and was not keeping me informed of income or the
11 business expenses.

12 It would be a lengthy story to recap the
13 problems which led to end of our business, so I will just
14 state that by 2008, we had to file for bankruptcy. In the
15 middle of the bankruptcy, my husband left me. He
16 literally disappeared. I did not know his address or
17 where he was employed. He had taken payments from a
18 customer and used them without the permission of the
19 bankruptcy trustee.

20 A warrant was issued for his arrest by the
21 Bankruptcy Court for his wrongful distribution of funds.
22 Yet he would contact me and try to make me responsible for
23 dealing with the Bankruptcy Court. He threatened me that
24 I had better "fix" the problems with the Court, which were
25 completely outside of my control and the result of

1 his actions.

2 I retained an attorney to file for divorce in
3 the hopes of obtaining spousal support. This quickly
4 led nowhere as my attorney could not find my husband and
5 he had quit his last place of employment.

6 At this time, I was approximately 50 years of
7 age, I had no employment, no income, and the home I had
8 lived in with my children was being foreclosed upon.

9 I also realized at this time that by working
10 unpaid for my husband, I had no employment history and no
11 earnings for Social Security purposes. Very quickly, I
12 lost everything.

13 I spent the next several years trying to
14 re-build my life. I moved to Plattsburgh to live with my
15 mother. I tried to find employment but was not able to
16 find full-time permanent employment. I found myself with
17 no other option but to apply for public assistance. I
18 also had health problems and applied for Medicaid
19 coverage.

20 I kept trying to locate my husband throughout
21 this time. I knew he was gainfully employed, and based on
22 past experience, knew his gross annual income was
23 approximately \$90,000.00. His license allowed him to work
24 throughout the United States and in many other places
25 outside the country such as in the Caribbean.

1 Periodically, I would know he was back in New
2 York through one of my children, but I was never able to
3 find out where he lived or who he worked for. My husband
4 alienated our children from me, which by default also
5 included my grandchildren. One day my son even stated to
6 me "like Dad said, you are nothing but trailer trash".

7 I had always been so close to my sons, so this
8 time of my life was very painful for me to deal with.
9 In 2014, I believe my husband found out I was on public
10 assistance, and it was at this time he chose to file for
11 divorce believing I would not be able to afford an
12 attorney.

13 I found out about Legal Aid through a friend and
14 went there when I was served with the Summons for Divorce.
15 Soon after, I received a call from Gerry Schafer who met
16 with me and listened to me.

17 I finally felt I had help and not like I was
18 drowning in a sea of problems. Gerry explained the issues
19 involved in my divorce and advised me that I had a legal
20 basis to request maintenance.

21 Despite my husband having filed for the divorce,
22 once I had a lawyer and requested maintenance, he did not
23 appear to want the divorce to proceed. At the Preliminary
24 Conference, my husband did not appear, nor did he provide
25 the Court with his financial disclosure. It became clear

1 that my husband was not going to cooperate in providing
2 his financial information.

3 Gerry requested that I find old tax returns to
4 show my husband's earning ability and also demanded
5 information from my husband. At Gerry's request, I began
6 looking through all of the old records I had, copies of my
7 husband's various licenses and certifications he had
8 acquired to perform his job, copies of his prior resumes
9 and old tax returns.

10 On the date of the trial, we headed to Court
11 with our evidence. My husband finally showed and the
12 Judge requested to meet with the attorneys. Gerry
13 informed the judge and my husband's attorney of the
14 evidence we had regarding my husband's earning ability.

15 Based upon this preparation, we were able to
16 reach an agreement on a monthly sum of maintenance that my
17 husband would be obligated to pay me, and he had to keep
18 me informed of his address and employment information.

19 After several years of turmoil, by the end of
20 2015, I was divorced. To date, my husband has obeyed the
21 Judgment of Divorce. I wake up in the morning free of the
22 anxiety, stress and depression that I endured for so many
23 years of my marriage.

24 I am no longer controlled emotionally or
25 financially, I do not live in fear of my husband's

1 behavior and my children are no longer used as weapons
2 against me. I no longer have to reside with family
3 members, nor do I receive public assistance anymore. My
4 health has improved and my blood pressure is no longer out
5 of control.

6 I am now in the position mentally and
7 financially to go back to college and I intend on
8 enrolling in the next semester. Before going to Legal
9 Aid, I had no idea what my rights were. Legal Aid
10 provided me with the information and assisted me in
11 obtaining what I was legally entitled to. With their
12 knowledge and assistance, my spouse was no longer able to
13 manipulate me and control my life.

14 CHIEF JUDGE DIFIORE: Thank you.

15 HONORABLE PETER TOM: Legal Aid really turned
16 your life around.

17 MS. SPINNER: Oh, yes, they did. I mean I tried
18 for seven years trying to clear up the issues, and there
19 was a lot of turmoil in between, and the threats, and what
20 I was obligated to do that really, by walking through
21 their door, I was set at ease.

22 MS. GUTEKUNST: Is it fair to say then that you
23 were on public assistance and you probably would still be
24 on public assistance if you had not gotten that help from
25 the legal services?

1 MS. SPINNER: Yes. And that was the hardest
2 thing for me, because going down to public assistance, my
3 mother taught me that I had to swallow my pride, and I was
4 in a certain situation, I ended up getting a massive
5 infection which I was literally really longing to obtain
6 that assistance, in dying need.

7 CHIEF JUDGE DIFIORE: Ms. Spinner, thank you for
8 traveling here and sharing your very personal story, and
9 on behalf of all of us, we wish you the best of luck.

10 MS. SPINNER: Thank you. Thank her. Because
11 without her, I wouldn't be where I am trying to regain my
12 life back to some normalcy.

13 CHIEF JUDGE DIFIORE: Thank you.

14 That concludes Panel II. Thank you very much,
15 Mr. Rice, Ms. Spinner, counsel.

16 (BRIEF RECESS.)

17 CHIEF JUDGE DIFIORE: So thank you all for being
18 here. Our next witness is Neil Steinkamp. Mr. Steinkamp
19 serves as a managing director of the Dispute Advising and
20 Forensic Services Group at Stout Risius Ross, which is a
21 global financial adviser group.

22 Mr. Steinkamp was invited by the Permanent
23 Commission to update the estimates of the value of federal
24 funds brought into New York as well as the economic impact
25 of the provision of Civil Legal Services in our state up

1 through I believe it's the close of calendar year 2015,
2 correct, Mr. Steinkamp?

3 And incidentally, this task and these services
4 have been provided pro bono and we very much appreciate
5 that, sir.

6 TESTIMONY OF NEIL STEINKAMP

7 MR. STEINKAMP: Thank you.

8 CHIEF JUDGE DIFIORE: Mr. Steinkamp?

9 MR. STEINKAMP: Thank you, your Honor. It is an
10 honor for me to have the opportunity to testify before you
11 and the panel today.

12 As you said, my name is Neil Steinkamp. I am a
13 managing director at Stout Risius Ross. I also testified
14 in front of the commission last year, with respect to this
15 report and these same numbers.

16 I do lead SRR's pro bono practice, and it was
17 within that practice that we completed this work. I was
18 assisted in this analysis by my colleague Greg Roth, who
19 is sitting to my right. The data that was provided to us
20 for purposes of calculating the value associated with the
21 Civil Legal Aid in New York was provided to
22 representatives from the Interest on Lawyers Account Fund,
23 IOLA.

24 We used this data to measure both the short term
25 and long term impacts of Civil Legal Aid in New York. We

1 look at narrow impacts as well as broad impacts. I'll
2 talk through a number of those here shortly.

3 Every year, both last year, this year, and I am
4 hopeful in the years to come, we work to expand our
5 understanding of the inputs to this model to this data,
6 and to more fully assess and understand the impact of
7 Civil Legal Aid.

8 It is something that does require some degree of
9 estimation, the impacts that we are measuring here are
10 those we can discretely identify and measure, but there
11 are many impacts that go well beyond the discrete numbers
12 in the report that we have, many of which we just heard
13 about from the clients in Panel II.

14 There's more work to do, and in the years to
15 come, we will continue our work to further our
16 understanding of the impact and the variety of the types
17 of cases in which an impact is being made.

18 I'd like to spend just a few minutes talking
19 about the various areas of impact that we analyzed and the
20 opportunity that I think we have to further this work.

21 The essential areas of impact we looked at this
22 year in large part consistent with last year was child and
23 spousal support benefits that are collected, SSI and SSD
24 income benefits that are collected, Medicaid funds into
25 the State of New York, federal benefits and other benefits

1 as well, and earned income tax credits that are provided
2 or refunded into the State of New York.

3 This year we worked to further our analysis in
4 two important respects; we looked at the value of wage
5 impacts associated with immigration work and citizenship
6 work. That work is very valuable and has a significant
7 impact. We calculated benefits this year associated with
8 cases for which there was legal assistance in 2015 to be
9 nearly \$100 million.

10 We also estimate how these dollars, these
11 impacts have the opportunity to be used by the clients who
12 received those dollars. There is a multiplier effect to
13 this. And it's very important to recognize that. It's
14 significant in its contribution to the total.

15 The people who receive these dollars are able to
16 use those dollars in their community. And that is very
17 valuable. It generates economic activity and has the
18 ability to make a much broader impact than just the single
19 dollars that they are receiving.

20 We also this year looked to an initial measure
21 associated with the cost savings for the avoidance of
22 emergency shelter. It is something that we looked very
23 closely at and were able to identify an initial measure.
24 I am hopeful in the years to come we'll continue to
25 analyze that and identify how Legal Aid is contributing to

1 the benefits associated with the avoidance of emergency
2 shelters for individuals.

3 The total of those impacts to be calculated this
4 year was \$2.7 billion, which is a three hundred million
5 dollar increase from the numbers we calculated last year.

6 I want to emphasize that there are and will
7 continue to be areas of impact that we have not measured,
8 but that I look forward to trying to find data for and
9 continue to expand upon this work. Consumer rights
10 counseling, advanced care planning, community legal
11 education, I think very importantly brief services is an
12 area I would like to spend more time understanding the
13 impact.

14 Veteran's rights advocates, again, as we heard
15 in Panel II, can have a significant impact and is one in
16 which Civil Legal Aid has contributed significantly.
17 Human trafficking prosecution and pro bono legal services
18 for low income entrepreneurs are also ways in which Civil
19 Legal Aid is having meaningful impact on New Yorkers, and
20 data can help us further identify how those benefits can
21 be measured.

22 I want to emphasize again that for all of those
23 areas we calculated, the benefits are limited to those for
24 which there is data.

25 The long-term impact on family stability and on

1 children and on their futures is very hard to quantify,
2 and was not included in the estimates that we have
3 calculated.

4 Very briefly, I want to mention a few areas in
5 which I think we can continue to do more associated with
6 identifying and measuring and amplifying the impact of
7 Civil Legal Aid, certainly collecting more data. I look
8 forward to finding ways to engage with the providers and
9 with community and others in New York to find more data
10 that helps us understand the impact Civil Legal Aid is
11 making.

12 I think there are also important ways to amplify
13 the impact of Civil Legal Aid. We heard a couple of those
14 already today in Panel I, both the integration and the
15 interest of law students, as well as the opportunities to
16 maximize the value and impact of technology.

17 Further, I think that there are ways in which we
18 can engage other resources; marketing resources, financial
19 resources, accounting resources, similar to those my firm
20 provides, enable Legal Services providers to amplify the
21 impact that they are making for their clients and
22 therefore expand on the value.

23 We calculated a direct return investment of
24 \$7.88 based solely on the numbers that we calculate in our
25 report this year. However I believe a much more

1 reasonable impact is at least \$10, consistent with what I
2 testified to last year. That impact incorporates the
3 likely impact beyond just the simple numbers, the areas of
4 additional impact that Legal Aid is certainly making.

5 Thank you again for the opportunity to testify
6 before you today.

7 CHIEF JUDGE DIFIORE: Thank you, Mr. Steinkamp.
8 Mr. Steinkamp, what are the types of data that are not
9 available or should be or could be available to help us
10 shine an even brighter light on the impact?

11 MR. STEINKAMP: I think there's a couple of
12 areas of initial data that I would like to continue to
13 explore; one is just what are the cases that are being
14 heard, that are being engaged on? We have a lot of that
15 data in the report. But I think a lot of providers are
16 still finding ways to utilize their own data.

17 Brief services I think is a great example where
18 there's data there, but it's very unstructured. It's not
19 data that's easy to analyze, and it's even harder to
20 analyze what the impact of brief services are.

21 So I think there are ways to, one, gather
22 information on the cases themselves, and then further the
23 analysis of what the impact of those are. That may
24 involve new surveys, interviews with clients, but ways
25 that we can better understand how that thing impacted

1 their lives.

2 HONORABLE RANDALL T. ENG: Regarding collecting
3 more data, are there any substantial untapped sources of
4 data that you would like to get into that you haven't been
5 able to?

6 MR. STEINKAMP: I can't say that I haven't been
7 able to. What I'm looking to do is to explore where those
8 areas are. So I wouldn't say that there are roadblocks,
9 it's an area of inquiry.

10 HONORABLE RANDALL T. ENG: How about the
11 measurement of pro bono services that are given without
12 fanfare? It's probably very hard to get a handle on I
13 would think, but much of that goes on. Any idea how you
14 might gather that -- that is pro bono services?

15 MR. STEINKAMP: Yeah, I think this starts with
16 asking questions. I work in our pro bono practice with a
17 variety of organizations, some of which are here today.
18 And it usually starts by asking questions. I think more
19 and more pro bono providers are very interested in
20 understanding what their impact is, and really looking
21 beyond just what is the number of hours and what is the
22 market rate for that time, but looking more closely at how
23 they are impacting the lives of their clients.

24 So, I often find that the first answer is that
25 they can tell me how they are affecting the lives of their

1 clients, but they aren't collecting the data and the
2 outcomes for their clients in a consistent way.

3 So I think the first answer to your question is
4 really asking questions, and once we have a better
5 understanding of the data that providers are collecting,
6 we'll have a better sense of where to go from there.

7 CHIEF JUDGE DIFIORE: Thank you, Mr. Steinkamp.
8 This is exactly the important kinds of information that we
9 need to have available to let the policymakers know what
10 the effect and impact of this work is. And we very much
11 appreciate your work in the pro bono service.

12 MR. STEINKAMP: Thank you.

13 CHIEF JUDGE DIFIORE: You're very welcome.

14 Our next witness is Jordan Dressler, who will be
15 delivering testimony on behalf of Steven Banks who is the
16 commissioner of the New York City Human Resources
17 Administration.

18 Commissioner Banks at the very last moment was
19 called away and was unable to be here, but he did send his
20 very able colleague, Mr. Dressler, who serves as the
21 coordinator of the New York City Human Resources
22 Administration Office of Civil Justice. Welcome, Mr.
23 Dressler.

24 TESTIMONY OF JORDAN DRESSLER

25 MR. DRESSLER: Thank you, your Honor. And good

1 afternoon to the members of this panel, and thank you for
2 having me and allowing me to appear before you today.

3 My name is Jordan Dressler and I am the civil
4 justice coordinator with the New York City Human Resources
5 Administration's Office of Civil Justice.

6 I appreciate the opportunity to discuss our work
7 on behalf of low income New Yorkers with civil legal
8 needs.

9 HRA is the nation's largest social services
10 agency. We serve over three million New Yorkers annually
11 through the administration of more than 12 major public
12 assistance programs. We play a key role in advancing one
13 of the de Blasio Administration's chief priorities,
14 reducing income inequality and leveling the playing field
15 for all New Yorkers.

16 Since it started in 2014, the de Blasio
17 Administration has made access to quality legal assistance
18 a key component of its financial program addressing the
19 needs of low income New Yorkers and addressing poverty and
20 income inequality.

21 I'm proud to say that New York is now a national
22 leader in providing Civil Legal Services for low income
23 families and individuals. Starting in the City's fiscal
24 year 2014, which is July 1st, 2013 through July 31st,
25 2014, the administration dramatically expanded these

1 important services providing access to quality
2 representation that was previously unavailable to
3 thousands of low income New Yorkers.

4 In 2015, Mayor de Blasio and New York City
5 Council amended the city charter to create the Office of
6 Civil Justice, a permanent office to oversee the City's
7 civil justice services and monitor progress of those
8 programs.

9 In my testimony today, I will focus on the
10 City's extraordinary investment in the civil legal
11 assistance for low income tenants, as one of the tools
12 this administration is utilizing in combating poverty and
13 addressing income inequality and homelessness.

14 I will discuss the work of the Office of Civil
15 Justice, and present recent findings from our first annual
16 report, which demonstrate that the justice gap for New
17 York City tenants facing eviction in our housing Courts is
18 narrowing, given in large part to the extraordinary
19 investments in access to Civil Legal Services and other
20 tenant supports by the Administration, the New York City
21 Council, and the State Judiciary.

22 We greatly value our partnership with the
23 Judiciary in this access to justice endeavor. We are
24 proud to say that the City's investment in Civil Legal
25 Services for low income New Yorkers is at an all time

1 high.

2 In the City's current fiscal year, fiscal year
3 2017, New York City's overall funding for Civil Legal
4 Services for low income city residents will for the first
5 time exceed \$100 million.

6 This year mayoral programs exceeding \$83 million
7 and city council awards of nearly \$28 million, will
8 provide free legal services for low income New Yorkers
9 across a range of areas, including immigration, access to
10 benefits, support for survivors of domestic violence,
11 assistance for veterans, and the main focus of my
12 testimony today, anti-eviction legal services and other
13 legal assistance for low income tenants.

14 These increases in city funding for assistance
15 have been made over the last few years at the same time
16 that the State Judiciary has made its own impressive
17 commitment to increasing access to justice for low income
18 New Yorkers.

19 We acknowledge and are grateful for the State
20 Judiciary support -- it was just announced last week of
21 the JCLS branch for Civil Legal Services providers in New
22 York City, are part of a commitment of \$100 million in the
23 coming year to support Civil Legal Services across New
24 York State.

25 In addition to increasing funding for Civil

1 Legal Services, this year the Mayor and the City Council
2 established the Office of Civil Justice to coordinate, to
3 evaluate, and to improve Civil Legal Services for low
4 income New Yorkers. It's located within HRA and the
5 office currently includes central administrative staff,
6 program development, contract management teams, and a
7 group of HRA liaisons, who are located in New York City
8 Housing Courts, to assist in identifying service-eligible
9 tenants in need, connecting them with a legal services
10 provider, and also interfacing with the Court and the
11 attorneys regarding assignments and logistics, and linking
12 them with HRA-administered benefits as needed.

13 The provision of quality legal representation
14 for thousands of low income tenants facing eviction and
15 displacement is a key component of our Civil Legal
16 Services initiatives.

17 Funding by the de Blasio Administration for
18 legal services for low income tenants in New York City is
19 approximately \$62 million dollars this year. That is a
20 ten-fold increase compared to the funding in fiscal year
21 2013.

22 HRA's Homelessness Prevention Law Project, or
23 HPLP is the primary vehicle for our anti-eviction legal
24 services. Through HPLP, HRA contracts with a dozen
25 non-profit legal services providers, including both large

1 city providers, and also smaller community-based
2 organizations, to provide free legal representation and
3 advice to low income tenants at risk of homelessness
4 because of eviction.

5 Through this program, legal services providers
6 in each borough provide assistance in in-Court
7 representation of tenants in Housing Court eviction
8 proceedings, Housing Part actions seeking repairs,
9 proceedings following illegal lockdowns or evictions, and
10 administrative hearings that may result in a loss of
11 tenancy or deregulation of a rental unit.

12 Program providers primarily target low income
13 families with children who are at risk of eviction, with
14 households without children making up a small portion of
15 the caseload. The HPLP Program has funded approximately
16 \$4.9 million in city fiscal year 2013. But starting with
17 the Administration's first budget in fiscal 2014, funding
18 for this program has substantially increased.

19 This year HPLP has funded \$25.8 million,
20 providing legal services for low income tenants,
21 respondents in eviction cases throughout the city, with
22 additional expanded legal services targeting specific
23 high-need neighborhoods.

24 This expanded legal service's component of the
25 program is intended to essentially provide universal legal

1 representation for low income tenants facing eviction from
2 their homes in ten zones across the city. We target these
3 zones because they include the most at-risk households
4 facing eviction and homelessness as reflected in rates of
5 shelter entry.

6 Anti-eviction legal services and issues also
7 include the Housing Health Program. In this program, the
8 Legal Aid Society, the sole providers selected through a
9 competitive bidding process, employs a Court-based open
10 door model and offers full representation as well as brief
11 legal services, coupled with social work services that
12 include assessment, counseling, referrals, and benefits
13 advocacy.

14 In total, HRA anti-eviction legal services are
15 expected to serve approximately 20,000 households this
16 year. The Anti-Harassment and Tenant Protection Program
17 is a legal services program that was launched in HRA by
18 the de Blasio Administration in January of this year.

19 Whereas, the anti-eviction legal services
20 program targets tenants who are already involved in
21 Housing Court proceedings, this newer program provides
22 resources for tenant outreach and prelitigation services
23 with the goal of preventing eviction and displacement.

24 In addition to full representation and brief
25 legal assistance for Housing Court and administrative

1 proceedings, the AHTP program offers community education,
2 landlord/tenant mediation, and counsel on cooperative
3 tenant actions and building-wide lawsuits.

4 Currently, services are targeted to seven
5 neighborhoods across New York City that have been
6 identified as posing a high risk for landlord harassment
7 and/or tenant displacement. This program was launched in
8 2015 with a \$4.6 million initial start up allocation and
9 will be funded at \$32.9 million dollars in fiscal year
10 2017.

11 This program is expected to serve approximately
12 13,000 households this year, and, in total, through the
13 Administration's investment of nearly \$62 million in
14 tenant legal services, we expect that approximately
15 113,000 low income New Yorkers in 33 households will
16 receive free legal advice, assistance, and representation
17 this year.

18 These programs are part of the Administration's
19 effort to preserve and expand the availability of
20 affordable housing for New Yorkers. Affordable housing, a
21 precious resource, is currently being lost to the city
22 when tenants are evicted from rent regulated and rent
23 controlled apartments, and the rent is increased above
24 affordable levels.

25 Protecting these affordable units throughout New

1 York City for families and seniors, and protecting tenants
2 in small billings is critical. And the financial and
3 human cost that we avert when tenants avoid eviction and
4 preserve their tenancies are substantial.

5 More importantly, many families are spared the
6 trauma of homelessness, including disruption of education,
7 employment and medical care. Our legal services programs
8 are interested in keeping these New Yorkers in their
9 homes, preventing displacement, and preserving and
10 protecting the city's affordable housing stock.

11 And we are already seeing results from our
12 programs to protect tenants. Our office issued its first
13 annual report this summer, and I want to thank the
14 Permanent Commission and the people who are here who
15 helped us prepare that first report. We look forward to
16 continuing to work with you on it.

17 We have researched the availability of legal
18 assistance for tenants facing eviction in New York City
19 housing Courts. We partnered with OCA to undertake a new
20 analysis to assess the current prevalence of legal
21 representation among tenants in Court for eviction cases
22 and the need for counsel that remains.

23 We found that a substantially higher proportion
24 of tenants in Court for eviction had legal representation
25 than ever before. Some key findings: Even before our

1 housing legal assistance programs are implemented fully
2 this year, more than one in four tenants in Court, facing
3 an eviction case in New York City, 27 percent, is now
4 represented by a lawyer; a marked increase compared to the
5 Office of Court Administration findings that in calendar
6 year 2013, only one percent of tenants in Housing Court
7 were represented by attorneys.

8 More than half of the in-Court representation
9 for tenants is provided by non-profit legal services
10 organizations for low income New Yorkers, and meanwhile,
11 only one percent of landlords in eviction proceedings
12 appeared in Court without counsel.

13 I do see the red light. These results suggest
14 that we are on the right track with this investment.
15 Furthermore, we see very encouraging signs that by making
16 access to legal representation more available, we are
17 realizing concrete improvement in the Courts, and in the
18 lives of New Yorkers. The two key findings to bear that
19 out: Residential evictions by city marshals declined 24
20 percent in 2015 compared to 2013, a period during which
21 New York City substantially increased funding for legal
22 services for low income tenants, as well as other rental
23 support programs.

24 Let me finish with a point about judicial and
25 Court efficiency, because I know judges like to hear about

1 that; during 2015, Orders to Show Cause in the city's
2 housing Courts, motions by tenants to reverse a Court's
3 order of eviction also declined nearly 14 percent, while
4 residential evictions filed remain largely stable, which
5 suggests increased efficiency in the Courts with the
6 increase in legal representation.

7 Going forward, we will continue to monitor this
8 and we will continue to work on these important issues.
9 Thank you.

10 CHIEF JUDGE DIFIORE: Thank you. Thank you, Mr.
11 Dressler. Mr. Dressler, can you just take a moment and
12 describe and make a record today of the specific kinds of
13 costs that the city avoids when an eviction is avoided, in
14 a glandular way, so we really understand how basic that
15 is?

16 MR. DRESSLER: They come down to a number of
17 different topics. Every time someone is staying in their
18 home avoiding eviction and avoiding homelessness, we are
19 sparing the City the expense of emergency shelter
20 services.

21 We have costs that might improve, from the
22 disruption of education, from loss of employment, from
23 increase need for medical care, we manage to avoid those
24 costs, in a way that we are still working to quantify,
25 when we can avoid shelter due to eviction.

1 CHIEF JUDGE DIFIORE: Can you talk about the
2 specific costs associated with children and moving
3 children's educational sites around the city?

4 MR. DRESSLER: Well, I mean, it's everything
5 from bussing to the resources that go into moving people
6 from one place to another, and then I think there are
7 costs that are derived from that that come from the
8 disruption that happens in the loss of education, loss of
9 productivity going forward.

10 Impacts like this are exactly the kinds of
11 things that we will be developing a more rigorous analysis
12 going forward. The first step in our analysis was
13 understanding what the prevalence was for counsel and the
14 availability of counsel.

15 Now the next step for us is looking at things
16 that speak to impact; entering into shelter, maintenance
17 of regulated units within the five boroughs -- because
18 that's where eviction was avoided due to the introduction
19 of counsel -- and then the costs that come from those as
20 well. So we'll be looking at all these questions.

21 CHIEF JUDGE DIFIORE: Well, we'll look forward
22 to your analysis and learning about that. Any questions?

23 HONORABLE LAWRENCE K. MARKS: Mr. Dressler, do
24 you have a personal view on the merits of the City Council
25 legislation to create a legal right to an attorney in

1 these cases?

2 MR. DRESSLER: Well, I think our position on
3 this is that we want to see what the further
4 implementation of our pretty substantial tenant legal
5 resources programs will look like. Fiscal 2017 for us is
6 a further implementation year. We are in the process of
7 working with providers. As they ramp up, I think the
8 imposition soon to see will be what was the impact of that
9 on availability of counsel, having that play in, do we see
10 an increase in the 27 percent finding that we expect that
11 we will see? And from there we can look at things like
12 costs as well as savings.

13 This is a legislative process that's acting with
14 the City Council. We contributed to the hearing
15 yesterday, we offered testimony, and we did a lot of
16 listening too. So I think these conversations will
17 continue with the council, with providers, and with
18 stakeholders, and we'll end up in a place where we have a
19 position soon.

20 CHIEF JUDGE DIFIORE: Thank you for being here,
21 Mr. Dressler, and thank you for your service.

22 MR. DRESSLER: Thank you for having me.

23 CHIEF JUDGE DIFIORE: Our next witness is John
24 Kiernan, and in addition to Mr. Kiernan's very busy life
25 as a partner at Debevoise & Plimpton, he does serve as

1 president of the New York City Bar Association.

2 And I know that many of you do know, but for
3 those of you who aren't familiar with the City Bar's work,
4 they have long been a leading voice on behalf of access to
5 justice. And Mr. Kiernan will address their leadership
6 role and the evolution of providing services to
7 underprivileged people.

8 TESTIMONY OF JOHN KIERNAN

9 MR. KIERNAN: Thank you, Judge. That's right.
10 Thank you for this opportunity to testify on behalf of the
11 New York City Bar Association this afternoon.

12 My written testimony already submitted to you
13 includes expressions of the Bar's deep appreciation to
14 Chief Judge Lippman, Chief Judge DiFiore, the members of
15 the Permanent Commission and the task force that preceded
16 it for their extraordinary leadership in prioritizing an
17 allocation of limited resources of the Judiciary budgets,
18 where there are so many competing claims for those
19 resources, to be providing the critical legal services for
20 people who face potential deprivation of the essentials of
21 life often as a result of Court orders.

22 Rather than repeat those remarks here, as Chief
23 Judge DiFiore said, this afternoon's remarks of my oral
24 testimony will focus on the particular issues associated
25 with the delivery of unbundled legal services.

1 So provision of so-called limited or unbundled
2 legal services, is ultimately at the heart of legal
3 services provider's pragmatic determinations of how best
4 to serve clients who need legal representation in
5 circumstances where, as just a matter of reality, there
6 simply aren't enough available resources to meet the
7 demand of all the people who can't afford a lawyer.

8 The City Bar considers itself a leader in
9 providing several forms of such unbundled legal services
10 through many of our justice center's existing projects.

11 We believe these representations reflect a
12 highly valuable form of legal service that enables the
13 Justice Center and other providers that are -- this
14 testimony is intended also to embrace -- to increase
15 substantially the number of people that are able to assist
16 and to place clients in far better positions than if they
17 had no legal assistance at all.

18 From our perspective, it seems useful to think
19 of unbundled legal services as falling in three broad
20 categories, each of which presents its own issues of
21 resource allocation and judgment.

22 First, brief advice, where an experienced
23 attorney answering a hotline call or some other contact
24 determines that the Justice Center can't represent the
25 client for all aspects of his or her problem, but can

1 provide real assistance by talking with a client, pointing
2 the client to available social services or other sources
3 of assistance, directing the client to do-it-yourself
4 forms, or explaining processes and possible courses of
5 action to the client.

6 Second, you have representations where the
7 intake attorney decides that more than brief advice is
8 needed, but that it should be possible to help the client
9 and possibly resolve the entire matter through forms of
10 advocacy or other services that don't involve full
11 adjudication or even necessarily a Court appearance,
12 including letter writing, phone calls to the adversary's
13 counsel, research into disputed legal or factual points,
14 completion of needed applications, navigation through
15 agencies, early settlement negotiations, or preparation
16 even of ghostwritten submissions.

17 And the third category is representations where
18 the lawyer and the client agree in advance that the lawyer
19 will enter an appearance in Court, but will represent the
20 client only up to a particular point, the smaller category
21 than the others, but it raises its own particular issues,
22 which I'll get to in a second.

23 Now the brief advice category of unbundled
24 representations in terms of numbers of matters handled,
25 the biggest category by far of services the Justice Center

1 provides last year, the Justice Center had about 150
2 volunteer attorneys working with it and helped about
3 25,000 New Yorkers in this way.

4 In the vast majority of those contacts, your
5 attorneys believe with good reason that the assistance
6 they were providing was highly valuable to the client,
7 even though limited in scope.

8 We can't claim of course that all recipients of
9 brief advice from the Justice Center or other providers
10 achieved the same outcomes they would have received with
11 full representation.

12 But the experience of the lawyers who work with
13 the Justice Center and the results of the clients surveyed
14 indicate that the clients believe with good reason that
15 they are far better off with these limited scope
16 representations than with no help.

17 Last year, a limited survey of calls to the City
18 Bar's legal hotline -- described more fully in my written
19 materials -- indicated, for example, the caller generally
20 felt helped by and better informed as a result of their
21 hotline communications.

22 The recently released New York City Office of
23 Civil Justice report similarly contains descriptions of
24 some relatively small and limited studies, seeming
25 similarly to support conclusions that unbundled

1 representations probably do not collectively achieve as
2 many favorable results as full representation, but they
3 still often alter the outcome from what the client would
4 have experienced with no assistance at all, consistently
5 provide significant assistance and self-empowerment to the
6 client, and overwhelmingly are viewed by the client as
7 preferable to no assistance at all.

8 As Mr. Dressler just remarked, one of the great
9 teasers in the remarkable inaugural report by the Office
10 of Civil Justice is his observation at the end that if he
11 had just repeated to you, that in the next generation,
12 they'll be digging in even further with some of the same
13 terrific rigor that is characterized in this first report
14 into effects of various forms of representation, and
15 having that kind of quality and effort devoted to that
16 issue is something that will be a service to all of us I
17 am sure.

18 Now our intake lawyers at the Justice Center
19 relatively frequently conclude after talking with a client
20 that the client needs additional service beyond brief
21 advice, that may resolve the matter entirely. Last year,
22 about 3,000 contacts were escalated to this higher level
23 of service, based on identification of specific steps that
24 could be taken with the client.

25 My written testimony provides a number of

1 examples in these limited, but ultimately dispositive
2 representations, including ghostwriting successful motions
3 to dismiss, drafting petitions to correct birth
4 certificates that paved the way to receiving previously
5 denied benefits, coordinating the demand and
6 accomplishment of repairs from landlords, assisting
7 clients who were unable to navigate do-it-yourself forms,
8 successfully negotiating repayment plans with creditors
9 whose original deals were unworkably harsh, and drafting
10 bankruptcy or uncontested divorce petitions.

11 In each of those contexts, the City Bar Justice
12 Center obtains the client's agreement regarding the
13 limited defined scope of the representation. We believe
14 that to proceed in this way is ethically proper,
15 consistent with the New York Rule of Professional Conduct
16 1.2C, which permits limited scope representation if the
17 limitation is reasonable under the circumstances, the
18 client gives informed consent, and, where necessary, notes
19 were provided to the tribunal or opposing counsel, and
20 significantly, Rule 6.5, which in the particular context
21 of permission of pro bono legal services permits short
22 term limited legal services to a client without
23 expectation that either the lawyer or the client will --
24 that by either the lawyer or the client, that the lawyer
25 will provide continuing representation of the matter after

1 an identified point, so long as the lawyer has secured,
2 once again, the client's informed consent to this
3 limitation.

4 The judgment of the Justice Center lawyers
5 making decisions about how to handle communications for
6 clients is sufficiently good that the great majority of
7 these increased, but still limited-scope representations
8 end up being essentially and effectively complete
9 representations and the services provided end up leading
10 to a complete resolution of the matter.

11 Those matters by their nature are invisible to
12 Courts because of the representations that exist before
13 the lawyer ever gets engaged in Court proceedings.
14 Sometimes though, lawyers do, in limited scope
15 representations, get engaged in matters that involve
16 making Court appearances.

17 And when that happens, even where the lawyers
18 pursue a withdrawal pursuant to prior agreements with the
19 client that may be entirely consistent with ethical rules,
20 unsurprisingly Courts may feel concerned about the effects
21 of those withdrawals on the operations of the proceedings
22 before them.

23 Now Courts in some other states, most of which
24 have ethical rules similar to New York rules, permitting
25 limited scope representations, have addressed through

1 Court rules what they view as the separate judicial
2 administration questions of how and when opposing counsel
3 or Courts should be notified with limited representations
4 in the existence of ghostwritten pleadings, how service of
5 papers should be handled and how limited representation
6 and the future lawyer's entry of an appearance is handled.

7 Some Courts require notification of the Court
8 and opposing counsel and the attorneys first filings of
9 the limited nature of the representation. Some require
10 that ghostwritten pleadings be identified as having been
11 prepared by lawyers.

12 Some think the early notification may even
13 convey information to the opposition that adversely
14 affects the client's interest. For that reason, other
15 states require the filing just with a notice of withdrawal
16 when limited representation ends. And at least one state,
17 Massachusetts, has a hybrid approach; the attorney has to
18 file either a notice of limited representation up front or
19 a notice of withdrawal later.

20 I will submit with today's materials the address
21 of an ABA website that identifies the rules different
22 states have promulgated in this area in case that may be
23 helpful to you. May I have one more paragraph?

24 CHIEF JUDGE DIFIORE: Yes, sir.

25 MR. KIERNAN: The City Bar has not yet processed

1 through its usual committee review process a set of points
2 of view about what Court rules might be appropriate in New
3 York in these circumstances.

4 We certainly recognize the potential for tension
5 between on one hand legal services providers need to be
6 able to triage their allocations with limited resources in
7 the face of overwhelming demands for assistance, by
8 defining the limits of their legal representation, even
9 including when they have entered Court appearances that
10 trigger concerns of Courts.

11 On the other hand, we see all the reasons why
12 Courts would understandably prefer not to have legal
13 services lawyers end representation before the matter has
14 been completed.

15 We would hope that any Court rules on this
16 subject would recognize in the spirit of the ethical rules
17 that the ability to limit the scope of representations can
18 be crucial for legal services providers seeking to
19 optimize their overall effectiveness for clients who can't
20 afford lawyers.

21 We'd be happy to engage further on the details
22 of potential rules going forward, if you thought that
23 might be helpful. Thank you.

24 CHIEF JUDGE DIFIORE: Thank you, Mr. Kiernan.

25 HONORABLE RANDALL T. ENG: The goals are very

1 commendable, they are very commendable indeed. But I can
2 foresee some situations where you might have counsel
3 exposed to grievance complaints. We in the Appellate
4 Division of course are in charge of that process,
5 grievance committees, I can see clients, you know, just
6 being disgruntled perhaps by limited representation, and I
7 am wondering if those clients might need independent
8 counsel to advise them as to whether or not they should
9 sign agreements for limited scope. And I am concerned
10 about the lawyers staying out of trouble. I'm concerned
11 about clients that may not being able to make the judgment
12 about this agreement.

13 MR. KIERNAN: Well, what you identify is
14 reasonable thicket; the comment has been made that
15 recipients of pro bono assistance sometimes have
16 malpractice claims, but rarely have the capacity to answer
17 them.

18 If you think about this issue in the context of
19 rather than pro bono context Rule 6.5, just low bono
20 clients, of course there has been since time in memorial
21 clients who agree with their lawyers that for a particular
22 fee, which represents the maximum that the lawyer could
23 pay -- that the lawyer -- or the client could pay, the
24 lawyer would provide X and Y services, but I am not going
25 to try the case for you. And so that the perceived key in

1 all those conflicts before, has been that the agreement
2 between the lawyer and the client be informed and be
3 spelled out.

4 And you're right that there's an argument for
5 independent counsel on that agreement as there is for any
6 time a lawyer and a client negotiate an agreement to a
7 point. As you know, in the context of criminal
8 representations, the Courts haven't always allowed the
9 lawyers to exit their contract. And when you overlay on
10 that dynamic, the pro bono nature of the things, again, I
11 think the answer still has to be a spelled-out agreement,
12 but you're right that the agreement on the limited scope
13 of the representation is not one between people with equal
14 bargaining power. It is as a practical matter, the terms
15 of the arrangement by which the pro bono provider is
16 willing to provide something for free, which is I can give
17 it to you up to this point, but after this point, I am
18 taking it away from somebody else, and that's got to be
19 limited and defines what I do for you.

20 HONORABLE LAWRENCE K. MARKS: Are you aware of
21 any instances where a lawyer signed on for a limited
22 service and then, you know, once that limited service was
23 completed, the lawyer decided to stay on for the duration
24 of the matter, became invested in the case?

25 MR. KIERNAN: Yes. The answer is, that has

1 happened frequently. One of the particular contexts where
2 that has happened is the City Bar Justice Center, for
3 example. As I indicated, the Justice Center will do an
4 uncontested divorce petition, spell out all the agreements
5 and say, we're going to do this, it's going to be an
6 uncontested divorce petition. And then it turns into a
7 contested divorce.

8 We, in those circumstances, we actually try to
9 figure out a way to continue representing the client,
10 either through staff counsel or through finding somebody
11 else to represent them.

12 But you know the personalities of lawyers who
13 provide these services; their desire is to serve their
14 clients are just super abundant. And any kind of
15 withdrawal based on a limited scope agreement is painful
16 to every legal services lawyer's -- the sensibilities of
17 every legal services lawyer I have ever met. There's
18 tough decisions --

19 HONORABLE LAWRENCE K. MARKS: As a result of
20 that, some do end up staying on.

21 MR. KIERNAN: Yes. Absolutely.

22 CHIEF JUDGE DIFIORE: Judge Whalen?

23 HONORABLE GERALD WHALEN: Yes. Brief question.
24 First of all, the need for an imaginative approach to
25 solve this problem is apparent. And this is an

1 imaginative approach to this, and I give you a lot of
2 credit for advancing that.

3 My question though is in terms of the Courts and
4 the judges; having sat on a trial bench handling civil
5 cases when the idea of having these unbundled services was
6 new to me frankly when I was reading about it, and so, is
7 there an education needed for the judges, that these
8 lawyers are appearing briefly?

9 And I know we have three levels here that we are
10 talking about, but some do include litigation, even if
11 it's limited.

12 MR. KIERNAN: I think the answer to that is,
13 yes, your Honor, not only because the concept is new to
14 many judges, but also because the concept is unpleasant to
15 almost all judges. Judges, you say to a Judge, well, I
16 have been representing this client up until now, but it's
17 going to trial next week and the client is on his or her
18 own.

19 That has, we have talked to a number of judges
20 about this, and we have seen that, that's not something
21 that naturally resonates in an appealing way with judges.
22 And so it's an important thing to have dialogue about it,
23 it's what led these other states to develop Court rules on
24 the subject, because this may be an area where the judge's
25 sensibilities warrant dialogue, so that they get

1 appropriately balanced against the very harsh reality that
2 if you can't enforce a limited scope representation, the
3 choice of representing one person may become a choice not
4 to represent a large number of other people, and it's in
5 nature of triage, decisions that difficult judgments have
6 to be made in that area.

7 HONORABLE KAREN PETERS: So you support limited
8 scope representation, not just with nonprofit providers,
9 but in for-profit providers also?

10 MR. KIERNAN: Well, the rules are a little
11 different under 1.2C and 6.5; but the rules of ethics
12 recognize that limited scope representations are
13 permissible in commercial arrangements. In some ways,
14 it's almost easier there, because in commercial
15 arrangements, there's some element of a recognizable
16 bargain, where the lawyer says, for this amount of money,
17 you get this level of services. If that is not
18 acceptable, go find another lawyer who can give you the
19 whole thing for that amount of money.

20 HONORABLE KAREN K. PETERS: Thank you.

21 MR. KIERNAN: So the answer is yes.

22 HONORABLE PETER TOM: Do you know how many
23 lawyers in the Bar Association participate in this
24 program?

25 MR. KIERNAN: In the City Bar Justice Center

1 program, just the City Bar Justice Center, we had about
2 1,150 volunteers last year, which we are very proud of.
3 And that's from large groups going all the way down to
4 solo practitioners. And of course, there are many other
5 programs in New York City that pro bono lawyers volunteer
6 for as well.

7 CHIEF JUDGE DIFIORE: Thank you for being here,
8 Mr. Kiernan. Very nice to see you, sir.

9 Our next witness is one of us. Judge Douglas
10 Hoffman who serves as an acting justice of the Supreme
11 Court, New York County, as well as a Judge of the Family
12 Court, and for the last I believe it's been approximately
13 seven months, Judge Hoffman has been sitting as the
14 presiding Judge of a new pilot, which is called the
15 Integrated Custody and Domestic Relations Part. Judge?

16 TESTIMONY OF HONORABLE DOUGLAS HOFFMAN

17 HONORABLE DOUGLAS HOFFMAN: Thank you, Judge
18 DiFiore, and other members of this very esteemed panel. I
19 appreciate the opportunity to testify today. And as Judge
20 DiFiore mentioned, I served for a number of years in
21 Family Court, and also as a justice of the Supreme Court.

22 As the supervising Judge of the New York County
23 Family Court for seven years until this past February,
24 when we started a new part, a pilot called the Integrated
25 Custody and Domestic Relations Part, the ICDR, when I

1 described the new part a few months ago to a group of
2 leading matrimonial practitioners, one commented: This
3 new part defines the term Unified Court System.

4 It also in many ways can serve as an integral
5 component in access to justice. It not only exemplifies
6 the concept of one family, one Judge, but it focuses on
7 having an attorney for the family on day one, first
8 possible time, and consistency of that representation
9 through different Courts, and consistency of those support
10 services, such as social workers and other ancillary
11 services for the family throughout the litigation in two
12 different Courts.

13 So this is how the ICDR part works: From the
14 moment a married person walks into Family Court to file a
15 custody, visitation, guardianship, family offense which
16 relates to domestic violence petition or petition for writ
17 of habeas corpus, that person is immediately referred to
18 my Family Court Part 9 that day. Counsel is assigned that
19 day.

20 If appropriate on day one, the Court issues a
21 Temporary Order of Protection and/or a Temporary Order of
22 Child Support, together with a summons, Order to Show
23 Cause, or writ.

24 We have a sheriff serve a combination of a
25 custody petition, a writ, a family offense petition, and

1 temporary Order of Protection that day, day one. All
2 parties have access to counsel the first day they come
3 into Court to file or respond.

4 The Court then assigns a short return date, and
5 when the respondent appears, counsel is assigned if they
6 are eligible, and the case is all addressed in one
7 courtroom.

8 There is a wide array of services in Family
9 Court that can assist the litigants, and the ICDR can
10 select and refer those litigants to various services,
11 which I'll describe shortly, that day or any other Court
12 date.

13 If there are no related Supreme Court filings,
14 the case proceeds and all those cases, the Family Court
15 cases are heard together in the Family Court part.

16 But, if as often happens, one spouse or both
17 files for divorce in Supreme Court, once an RJI request
18 for judicial intervention is filed in the matrimonial
19 action in Supreme, that divorce action is referred to me
20 in the Supreme Court part of the ICDR, Part 14, in the
21 very same courtroom. Same Judge, different cloak.

22 Instead of the parties engaging in sometimes
23 contested motions and motion practice to consolidate all
24 pending matters in Supreme Court and forum shopping and
25 other costly divisive motions and time consuming motion

1 practice, and then in often losing the Family Court's
2 familiarity with everything that's occurred, the
3 matrimonial action is heard by me in the Supreme Court
4 part, and then all or selected Family Court proceedings
5 are transferred by me as a Supreme Court Justice to the
6 Supreme Court ICDR part.

7 And, as I'll discuss shortly, the tremendous
8 benefits to be able to be selective in that regard. The
9 Supreme Court action then proceeds on an expedited track
10 with a case conferencing model and efficient time-certain
11 appearances that have been engrafted from Family Court
12 practice.

13 If a Family Court Article 10 proceeding, abuse
14 and neglect proceeding is filed by Administration For
15 Children Services, ACS against one or both parents, the
16 ICDR will hear that case as well; so everything involving
17 the family.

18 So what are the truly major benefits to
19 litigants of this integrated part and how does it further
20 the goals of access to justice? In addition to what I
21 already said, all cases for this entire family are heard
22 by one Judge who is familiar with and equipped to address
23 all the issues presented by the family.

24 The Judge addresses all the family's cases from
25 day one, through the conclusion of the Supreme Court

1 matrimonial action. So no part is then referred back to
2 Family Court, everything is dealt with from inception to
3 conclusion.

4 Now, Attorneys for the children and the parents
5 are in Family Court on site daily through their contracts
6 with New York City or New York State, and social workers
7 are paired with the attorneys to form a team to represent
8 the litigation interests of the children or adults.

9 An attorney for the children can be appointed
10 when appropriate in the ICDR the first day a case is
11 filed. This is particularly important when a petition for
12 a writ of habeas corpus is filed or there is another
13 emergency application.

14 What we have also found is that there are a
15 number of attorneys who appear in Family Court and may be
16 assigned a case, but are not authorized to appear pursuant
17 to their contract or pursuant to Rule 36 in Supreme Court.

18 So what happens is, you can have proceedings for
19 months in Family Court, then the case goes to Supreme
20 Court and new attorneys for the parents, new attorneys for
21 the children have to be assigned, plus there is a new
22 Judge.

23 What we do now, what I do now in these
24 circumstances, is we keep the same attorneys and the
25 social worker-attorney team for the parents of the

1 children together.

2 I can do that by selecting which cases get
3 consolidated with the matrimonial action and which are
4 heard separately. So, for example, if through the
5 contract, the attorneys for the children and the social
6 worker cannot appear in Supreme Court, I may keep the
7 custody case or the domestic violence case in Family
8 Court, and what I do is then calibrate the Family Court
9 and Supreme Court matters so they are heard on the same
10 day.

11 And in that way, all the cases are heard and
12 people have access to their attorneys from day one, the
13 very same attorneys.

14 In addition, there are a number of issues that
15 frequently overlay both the Family Court and the Supreme
16 Court matters; particularly substance abuse and mental
17 health issues.

18 Supreme Court has essentially no in-house access
19 to substance abuse and mental health testing and treatment
20 services. The ICDR utilizes services available to Family
21 Court to address the wide range of issues confronting the
22 families who appear before it. With respect to substance
23 abuse issues, the ICDR can utilize in a consolidated
24 matrimonial action the on-site testing, counseling,
25 referral and monitoring services of Family Treatment

1 Court.

2 These benefits can play a key role in providing
3 the optimal outcome for a family that has concurrent
4 matrimonial, custody, domestic violence or supervised
5 visitation issues.

6 The ICDR has recently partnered with Family
7 Court Mental Health Services (MHS) on a pilot basis to
8 provide critical mental health testing and evaluation for
9 families whose proceedings have started in Family Court
10 regardless of whether or not those proceedings have been
11 consolidated with a divorce action in the Supreme Court
12 Part of the ICDR.

13 I can direct MHS type of mental health
14 evaluations, such as emergency evaluations to determine if
15 someone is likely a danger to themselves or others, and
16 might require immediate hospitalization.

17 They can conduct imminent risk assessments to
18 assist the Court in determining whether or not remaining
19 in the care of a particular parent presents a risk to the
20 child's physical and emotional well-being.

21 They can also conduct through the specialized
22 part a functional parenting capacity assessment, as well
23 as an evaluation to focus on the risks and benefits to a
24 child if the parent's visitation or contact with the
25 parent is modified as to frequency, duration or level of

1 supervision.

2 Very importantly, they can also conduct an
3 assessment, which could help the Court determine whether
4 or not a guardian ad litem is needed, as this happens in
5 many cases where you have a mental health overlap.

6 These services are generally not available in
7 Supreme Court once a matrimonial has been filed. We can
8 also refer the parties to mediation services which are not
9 available in Supreme Court, and very importantly we've
10 also worked out a system with the Manhattan Family Justice
11 Center where the ICDR conducts a Skype intake in
12 coordination with our petitioners whose safety concerns
13 preclude their presence in Court for the initial intake.

14 Unlike the non-ICDR Supreme Court part, the
15 litigants here can utilize the protection and services of
16 Safe Horizon within the courthouse for victims of domestic
17 violence who fear for their safety by having to travel to
18 the courtroom unaccompanied.

19 Now very importantly as part of the integrated
20 part, the rapid access to counsel in the ICDR can play a
21 crucial role in keeping children safe and families
22 together when there are allegations of child abuse and
23 neglect. If there is a custody visitation/domestic
24 violence case already in the Court, the ICDR will take the
25 new Article 10 abuse or neglect case.

1 This, again, has many benefits, as the parents
2 of children already have counsel, and children have social
3 workers who are familiar with all the issues.

4 What often happens otherwise is that an abuse
5 and neglect case will be filed, ACS may ask for a remand
6 of the children, remove the children from the parents, and
7 the Judge has no familiarity with the case. The attorneys
8 meet the client for the first time that afternoon and the
9 Judge has to decide whether or not to let the children go
10 home, or otherwise develop a safety plan.

11 With this part, if it's already been in the part
12 through another case, I take the Article 10 case, and so,
13 when ACS files a case, there's extensive information
14 available to the Court, to the attorneys, the social
15 workers, and to the family as to procedures and what's in
16 the best interest of the children under those
17 circumstances.

18 In my written testimony, I describe how the
19 impact upon the parties without counsel in child support
20 matters can be devastating and why child support for the
21 parties, particularly for those of low and modest income,
22 to have Court-appointed attorneys available to them.
23 Because of time constraints, I just respectfully refer you
24 to that portion of the written testimony.

25 In the integrated part, where there's usually a

1 claim for both parties, at least concerning the custody or
2 domestic violence aspects of the cases, I try to insure
3 that the child support cases are decided as ancillary
4 issues to the custody aspect of the cases, and thereby
5 maximizing the legal representation and therefore the
6 access to justice concerning this crucial issue.

7 So I just want to say in finishing essentially
8 that it's a nuanced approach to a whole host of cases for
9 this family to provide services from day one.

10 So far in the seven months, I have had about 750
11 Family Court dockets in this part, and the number of
12 Supreme Court matters that have been filed and transferred
13 to in whole or in part, they've been integrated together.

14 Just some suggestions; the agencies that have
15 contracts with the city to provide legal services and
16 social work services need to be able to appear in both
17 Courts to integrate services available for the family.

18 There also needs to be a formal expansion in
19 Supreme Court of managed health testing and evaluative
20 services for cases that are transferred there, as well as
21 drug testing, assessment, referral, and monitoring
22 services.

23 I am very excited about the part and the nuanced
24 approach, and I hope that and expect that it will provide
25 a more meaningful opportunity to be heard for those who

1 are most vulnerable and will achieve a more just result.
2 Thank you.

3 CHIEF JUDGE DIFIORE: Thank you. And thank you,
4 Judge Hoffman, for stepping up and presiding in this final
5 report.

6 Is there any plan for any sort of an evaluative
7 study of the way in which cases are proceeding?

8 HONORABLE DOUGLAS HOFFMAN: Right. At end of
9 the first year, I think we are going to see how many cases
10 we get, what stage they are, in terms of the litigation.

11 CHIEF JUDGE DIFIORE: The time line.

12 HONORABLE DOUGLAS HOFFMAN: Right. And see
13 whether or not they are -- the parties have been able to
14 avail themselves of the services to really make it a
15 comprehensive integrated approach. So I think at the end
16 of the first year, we reevaluate.

17 CHIEF JUDGE DIFIORE: Any questions?

18 HONORABLE LAWRENCE K. MARKS: You said that you
19 have 750 cases?

20 CHIEF JUDGE DIFIORE: 750 Family Court dockets,
21 and a certain number of matrimonial cases. There are many
22 more filed in RJI, so sometimes because of what we're
23 doing in Family Court, they're waiting to file an RJI.
24 They're not necessarily pursuing the matrimonial which had
25 already been filed, instead of having all the issues heard

1 in the contested matrimonial. But so far we have 750 --

2 HONORABLE LAWRENCE K. MARKS: And when you
3 started, you took only new cases?

4 HONORABLE DOUGLAS HOFFMAN: Only new cases,
5 that's right -- plus some of the fun cases I had before.

6 HONORABLE PETER TOM: Is this the only county,
7 New York County, that has this program?

8 HONORABLE DOUGLAS HOFFMAN: That's the only one
9 I am aware of, yes.

10 HONORABLE PETER TOM: Well, if it works out,
11 then obviously it has to be expanded, because once the
12 calendar goes up and you have more cases on the docket,
13 there's no way you're going to be expediting these
14 matters.

15 HONORABLE DOUGLAS HOFFMAN: I agree -- no, not
16 that it won't be expedited, there is a system set up for
17 it to be expedited, but it is a lot of work. But if we
18 can continue with the same representation, it will help in
19 terms of efficiency as well.

20 MS. GUTEKUNST: A particular interest of mine,
21 because New York State Bar along with the Women's Bar
22 Association of the State of New York just launched a
23 domestic violence initiative a couple of weeks ago. So
24 very interested in your area, and it sounds to me like it
25 should really be called the innovative integrated custody

1 SCR part.

2 But my question is, you start with saying that
3 you are providing access to counsel for all of the
4 litigants from day one and it goes all the way through,
5 how are you insuring that they can continue to have
6 counsel in areas where they're not entitled to assigned
7 counsel?

8 HONORABLE DOUGLAS HOFFMAN: They can't. In
9 terms of access, in other words, custody, domestic
10 violence, certain aspects of child support, they are
11 entitled to counsel. The child support, we sort of move
12 that counsel, since it does relate to custody and so
13 forth, they help with that.

14 In terms of the pure matrimonial, they are not
15 assigned, but because everything is dealt with in one
16 part, there are major benefits to having counsel there at
17 all times.

18 MS. GUTEKUNST: And the same Judge?

19 HONORABLE DOUGLAS HOFFMAN: Yes. Same judge,
20 same counsel, same social workers.

21 CHIEF JUDGE DIFIORE: Thank you, sir. That
22 concludes Panel III. Mr. Kiernan, Mr. Dressler, Judge
23 Hoffman, thank you very much.

24 (BRIEF RECESS.)

25 CHIEF JUDGE DIFIORE: The first witness for our

1 final panel is Susan McParland-Leisen. Ms.
2 McParland-Leisen is a client of Nassau Suffolk Legal
3 Services, and today she's accompanied by her attorney
4 Melissa Zeidler. Thank you both for traveling here today.

5 TESTIMONY OF SUSAN MCPARLAND-LEISEN

6 MS. MCPARLAND-LEISEN: We are all set. And
7 thank you very much, Chief Judge DiFiore. And thank you
8 so much to the panel for your time and listening.

9 My name is Susan McParland-Leisen. And so far,
10 I am a breast cancer survivor. Currently, I am also a
11 client board member of the Nassau Suffolk Law Services.

12 I say that sentence with tremendous pride and
13 gratitude. I had been employed in the not-for-profit
14 sector since 1993, and in 2009 I lost my job as executive
15 assistant to the executive director of a prominent
16 children's charity.

17 The economy was in shambles, and thanks to
18 Bernie Madoff, no one was hiring in the nonprofit sector
19 or anywhere else. In June of 2011, my unemployment
20 insurance ran out. As luck would have it, in July I was
21 diagnosed with breast cancer, Stage IIIA.

22 I was 50 years old. I had no health insurance,
23 or financial resources. I was terrified, panic stricken
24 and completely gut smacked. I had no clue what to do.

25 As an adoptee, I had very little knowledge about

1 my genetic history. What I was well aware of what was the
2 exceedingly high rate of breast cancer on Long Island.
3 Thankfully, the breast health clinic at Nassau University
4 Medical Center filed for emergency Medicaid for me so I
5 could begin treatment.

6 I was told to go to Nassau County Social
7 Services and file for welfare. I was stepping into more
8 than one world that was completely unknown to me.

9 It was a humiliating experience. I qualified
10 for Medicaid and then an EBT card, which is food stamps
11 and cash public assistance. It equaled approximately \$119
12 a month.

13 I was also told to file for Social
14 Security/Disability and that I could do this online
15 throughout my treatment. I began chemo in August of 2001.
16 Chemo was never pretty. I lost my hair, my eyebrows, my
17 lashes. I had severe and frequent bouts of hot flashes.
18 I had mouth sores, chemo brain, which I still suffer from,
19 and sores broke out around my ankles.

20 I was taking morphine, steroids, antinausea
21 medication, and anything and everything that would help me
22 while this poison coursed through my veins.

23 During this time, while I was in this completely
24 drugged-out head space, I was filing for Social
25 Security/Disability online.

1 Every time I thought I was done, I was notified
2 that there were more forms that needed to be filled out.
3 I was sick. I didn't have an executive assistant to
4 assist me throughout this process.

5 About a week after my final chemo treatment, I
6 had my doctor's appointment with the Nassau County Social
7 Services. I was at the lowest point you could possibly be
8 after chemo. I was in the weakest condition possible; I
9 couldn't drive, I had painful sores around my ankles,
10 numbness and pain and tingling due to chemo-induced
11 peripheral neuropathy, and, again, the horrible brain fog
12 of chemo brain.

13 The doctor that saw me told me that she had been
14 seeing patients for 30 years and that she had never heard
15 of chemo brain. I felt dismissed and disrespected. I had
16 my mastectomy in late February of 2012. And when I had
17 healed enough, I began radiation treatments five days for
18 a total of 33 treatments. Those treatments left me with
19 permanent lung and muscle fibrosis on my left side.

20 That's when I received my letter informing me
21 that I had been rejected for Social Security/Disability.
22 I was shocked. I was hurt. And I was terrified.

23 I could barely navigate the hospital much less
24 return to work. I was having nightmares and panic attacks
25 due to these experiences, and I still have a series of

1 reconstructive plastic surgeries ahead of me. I have had
2 seven so far. My last one was in May of this year.

3 I knew I needed help. And thankfully, I reached
4 out to my social worker from the Adelphi Breast Cancer
5 Program and Hotline. She gave me the phone number for
6 Nassau Suffolk Law Services. I was incredibly weak when I
7 had my first meeting with an attorney from NSLS.

8 The little I do remember about it was that I had
9 to stop and rest on the way back up from the corridor when
10 I was leaving the office. I had just -- I didn't have the
11 steam to leave.

12 That started the ball rolling, and sometime
13 after that, I was assigned to an amazing attorney, Melissa
14 Zeidler. She understood my predicament, she was extremely
15 professional, and incredibly compassionate. With very
16 little assistance from me, Ms. Zeidler took care of all of
17 the paperwork, and I finally had my day in Court.

18 I was a nervous wreck, as most people are when
19 they don't know the procedures that determine their fate.
20 The hearing was held before an Administrative Law Judge,
21 and Ms. Zeidler presented my case with all of the
22 evidence.

23 Thanks to Ms. Zeidler's knowledge of the law and
24 attention to detail, I was finally approved for Social
25 Security/Disability. I broke down in tears when I read

1 the letter. It was so important to have my own source of
2 income, which gave me dignity and security.

3 My first phone call was to Ms. Zeidler to thank
4 her for all of her hard work and to express my elation and
5 relief that I was finally approved. The second phone call
6 was to Nassau County Social Services to tell them that I
7 no longer needed public benefits. This entire process took
8 two years, two very long years, and I still had more
9 reconstructive surgeries in my future.

10 As time passed, every time I received a notice
11 from the Office of Social Security/Disability, I reached
12 out to Ms. Zeidler for her advice and input. My brain was
13 and still is pretty foggy from the chemo, and she was
14 always more than happy to help me make sense of any
15 additional paperwork.

16 In 2014, Ms. Zeidler reached out to me, and
17 called and asked if I wanted to appear on a TV special for
18 the Susan G. Komen Foundation that was to appear the night
19 before their big walk through Central Park. Of course.
20 Anything to help.

21 She then mentioned there was a seat on the board
22 of directors for Nassau Suffolk Law Services for a client
23 board member that needed to be filled. Would I be
24 interested? Again, I agreed.

25 I will do my best to help anyone who has ever

1 felt as helpless as I did. I am amazed at the number of
2 civil cases that NSLS handles on a yearly basis for people
3 like me and others with even worse problems, over 7,000
4 cases.

5 Although Long Island is considered an affluent
6 place to live, we all know that there are many communities
7 with people living in dire poverty who are unaware of what
8 resources are available to them. In late February 2017, I
9 will cautiously be celebrating five years in remission. I
10 am still constantly at the hospital seeing my general
11 practitioner, my oncologist, my neurologist, hematologist,
12 therapist, etcetera, etcetera.

13 There are always tests and more tests to insure
14 I am getting healthier. And to help me navigate my way
15 with the damage done to my body by the treatments that
16 have saved my life.

17 While I am there, I make certain to drop off
18 NSLS pamphlets in each department I visit. People need to
19 know that there's help available on Long Island. And NSLS
20 is pretty much the only organization that provides such a
21 vast array of Civil Legal Services pro bono. People need
22 hope. And from what I have heard today, now I know to
23 make a stop in the veteran's wing while I am there.

24 Most of us are just one disaster away from
25 complete financial devastation. I thought the loss of my

1 job in 2009 was my disaster. I was wrong. It was only
2 the beginning of a series of disasters.

3 The services that NSLS provide to the public
4 free of charge are essential to the quality of life for
5 many people on Long Island. The funding that Nassau Law
6 Services receives for Civil Legal Services is the life
7 blood of Nassau Suffolk Law Services, so that we may
8 continue to help people in crisis.

9 So, please, continue to help us help them. So
10 far, my story has a happy ending. I am more than well
11 aware that not everyone gets to have one of those. So I
12 feel privileged to be able to sit before you and tell you
13 of my experience. I'd like to thank you all for your time
14 and attention. Thank you.

15 CHIEF JUDGE DIFIORE: Thank you, Ms.
16 McParland-Leisen, are there any questions? An amazing
17 story. Thank you. I think you are the best example of
18 all the culmination of the work that we are all trying to
19 participate in. Thank you for being here.

20 MS. MCPARLAND-LEISEN: Thank you very much.

21 CHIEF JUDGE DIFIORE: Our next witness is Harry
22 Michel, a client of the Legal Aid Society, Queens
23 Neighborhood Office. And he is accompanied today by his
24 lawyer, Sateesh Nori. Mr. Michel?

25 TESTIMONY OF HARRY MICHEL

1 MR. MICHEL: Good afternoon, your Honors.

2 My name is Harry Michel and I am here to tell my story about
3 how the Legal Aid Society helped keep me and my son from
4 becoming homeless after a deeply challenging and tragic time in
5 my life.

6 I live in a co-op apartment in Rego Park, New
7 York where I have lived for almost 15 years. My brother
8 William purchased the apartment on October 24, 2001, using
9 money he received from our mother Efthemia Michel from the
10 sale of our family home.

11 William and I resided together in the apartment
12 until William suffered a nearly fatal accident in
13 January 2007 while he was vacationing in Florida.

14 After the accident, William was removed from a
15 medically induced coma and remained in a natural state of
16 comatose. He currently stays in a facility.

17 Following the accident, my mother and I
18 continued to reside in the apartment. In September 2007,
19 my son Peter moved into the apartment with me. I am
20 Peter's primary parent.

21 My mother passed away in 2008. During this
22 time, I felt tremendous financial stress. In late 2010, I
23 began having difficulty paying the monthly maintenance on
24 the apartment. In 2011, the co-op sued William and me for
25 nonpayment of rent. I had almost lost hope and considered

1 the possibility that my son and I would become homeless.

2 In the courthouse, I discovered that I could get
3 help from The Legal Aid Society. They helped me fight the
4 co-op and force them to allow me to remain in the
5 apartment despite my brother's and my mother's absences.
6 With their help, I obtained a Family Eviction Prevention
7 Subsidy (FEPS), which enabled me to pay down the arrears
8 and continue paying the monthly maintenance on the
9 apartment so that my son and I did not lose our home.

10 In 2013, the co-op sued William again, alleging
11 that he was illegally -- mind he's in a coma now --
12 alleging that he was subletting the apartment to me.
13 Again, The Legal Aid Society, this time with help from a
14 private law firm, Kaye Scholer, represented me and got
15 this case dismissed.

16 In 2015, the co-op sued me a third time,
17 alleging that William had violated the by-laws of the coop
18 by allowing me to live there. Again, The Legal Aid
19 Society assisted me and won me the right to occupy the
20 apartment.

21 Recently, I fell behind in my share of the rent
22 because I had to use my limited resources to apply for a
23 TLC license so I could become self-sufficient. The co-op
24 served me with an eviction notice.

25 For the fourth time, The Legal Aid Society

1 helped me by obtaining rental assistance to satisfy my
2 rental arrears. I continue to maintain the apartment with
3 the hope that William will someday be able to return home
4 and we will occupy the apartment together again.

5 I visit him at his facility two to five times
6 every week, hold his hand, and talk to him with the hope
7 that he can hear and understand me.

8 Again, I want to express my gratitude to lawyers
9 like those at The Legal Aid Society, who have given my
10 family and me a chance to make it. Thank you for
11 listening.

12 CHIEF JUDGE DIFIORE: Thank you, Mr. Michel.
13 Any questions? Thank you, sir, for being here, and good
14 luck to you.

15 MR. MICHEL: Thank you.

16 CHIEF JUDGE DIFIORE: Our final witness this
17 afternoon is Ady Escobar.

18 TESTIMONY OF ADY ESCOBAR

19 MS. ESCOBAR: Thank you, your Honor.

20 My name is Ady Escobar, and my son's name is Jose Daniel Lopez
21 Escobar. Jose is five years old, and he suffers from a rare
22 condition called Lesch Nyhan Syndrome --

23 CHIEF JUDGE DIFIORE: That's okay. Take your
24 time.

25 MS. ESCOBAR: He suffers from a rare condition

1 called Lesch Nyhan Syndrome.

2 He is the only child in New York State who has this condition.

3 I am here to testify about what Bronx Legal Services' Education
4 Law Unit did for me and my son.

5 Without their help, Jose would not have been
6 placed in a school that could care for him and give him
7 the help he needs. Without their help, Jose would not be
8 able to get the education all children deserve. I live
9 alone with Jose, and raise him with help from his
10 father -- I'm sorry --

11 CHIEF JUDGE DIFIORE: No need to apologize.
12 Take your time.

13 MS. ESCOBAR: Jose suffers from frequent kidney
14 stones, and has had surgery for them more than five times.
15 He has a gastric tube to give him water. He sometimes
16 makes unexpected movements that he cannot control. His
17 condition will get worse over time.

18 Jose sits in a wheelchair, and can walk with
19 help. He attends the John Coleman School, a state
20 approved non-public school in White Plains, New York where
21 he has been a student for the last 2 and a half years,
22 first in pre-school, and now as a first grader.

23 John Coleman is a good school for Jose because
24 they specialize in working with fragile kids with multiple
25 disabilities. The teachers know Jose's condition and let

1 the nurse know right away when he needs help. The school
2 knows Jose's capabilities and helps him reach his full
3 potential.

4 They give him the attention that he needs and
5 help him become more independent. My son is safe in this
6 school and very happy to be there.

7 When Jose was turning five, it was time for him
8 to receive an official school placement for elementary
9 school. I was working with an organization for people
10 with disabilities. They told me I needed a lawyer, and I
11 was referred to Bronx Legal Services.

12 I met my lawyer, Kathleen Dennin, on April 28,
13 2015. On April 30th, just two days after we met, Kathleen
14 and I went to a meeting where a Department of Education
15 team was supposed to decide where Jose could go to school.
16 They told us that Jose should go to a District 75 school.
17 District 75 is a public school for children with
18 disabilities.

19 In April and May, I visited a number of
20 different District 75 schools. Of the five schools I
21 visited, none were the right place for Jose. The schools
22 did not have the kind of medical help he needs. Jose's
23 condition can change at any moment; for example, people
24 with this condition start biting themselves and need to be
25 protected from their actions.

1 Also, Jose's unexpected movements could make him
2 fall at any time. The District 75 classroom would have
3 had 12 students in it, which would not have provided
4 enough individual attention for Jose.

5 With my permission, Legal Services contacted all
6 of Jose's doctors to obtain medical documentation to make
7 the case for Jose to stay at John Coleman.

8 Legal Services asked each of the doctors to
9 explain more about the urgency of Jose's condition and
10 about his needs. Despite getting the new medical
11 documents, when my lawyer and I met again with the
12 Department of Education on July 16th, 2015, they still did
13 not agree with our position. We decided to request a
14 hearing.

15 We asked that Jose be allowed to continue in a
16 state-approved non-public school because of his medical
17 needs, and we also asked for an evaluation to better
18 identify Jose's needs and his abilities.

19 After we filed our hearing request, the hearing
20 officer issued an order that Jose could stay at the
21 Coleman School until the hearing was complete. The
22 Department of Education agreed to a new evaluation of Jose
23 and to re-consider my request for Jose to attend a
24 non-public school.

25 On November 30th, we met again with the

1 Department of Education. This time they considered all of
2 the medical letters and the new evaluations, and decided
3 that Jose could stay at the Coleman School because it is
4 the right type of school to take care of Jose's needs.

5 Legal Services helped me get what I need for my
6 son. My lawyer fought hard for Jose and for me. She
7 talked to me regularly to keep me posted about everything
8 that was being done. When the case wasn't going well, she
9 helped to give me the strength to keep working and get
10 past the disappointment and never give up.

11 My lawyer spoke very powerfully and clearly
12 about my son's needs at the meetings she attended for my
13 son. She helped to make sure that the law would work for
14 my son's benefit. I felt that I was not alone in fighting
15 for Jose's rights.

16 Without Legal Services, my son would not have
17 the opportunity to be in a school that recognizes his
18 needs, as well as the wonderful potential that he has.
19 Thank you for letting me speak to you today. May I show
20 you a picture of my son?

21 CHIEF JUDGE DIFIORE: We would love to see a
22 picture of your son.

23 MS. ESCOBAR: This is my son.

24 CHIEF JUDGE DIFIORE: He's a beautiful child.

25 MS. ESCOBAR: Thank you.

1 CHIEF JUDGE DIFIORE: Thank you for being here.
2 Any questions?

3 HONORABLE RANDALL T. ENG: Congratulations on
4 succeeding in your battle. You have much courage.

5 MS. ESCOBAR: Thank you, sir.

6 HONORABLE RANDALL T. ENG: What is the highest
7 grade that the school goes up to?

8 MS. ESCOBAR: It goes up until first grade.

9 HONORABLE RANDALL T. ENG: So you're going to
10 have to probably --

11 MS. ESCOBAR: Start fighting, yes, I know.

12 HONORABLE RANDALL T. ENG: That's why I asked.
13 It's disheartening, but at least you know what you have to
14 do, and you're in very capable hands.

15 MS. ESCOBAR: It's hard, but with the help of
16 God, and the strength of a mother, I will fight for his
17 right.

18 HONORABLE RANDALL T. ENG: Stay brave.

19 MS. ESCOBAR: Thank you, sir.

20 CHIEF JUDGE DIFIORE: Thank you very much.

21 MS. ESCOBAR: Thank you.

22 CHIEF JUDGE DIFIORE: So this concludes our 2016
23 hearing on Civil Legal Services in New York. And I want
24 to thank my colleagues who joined us here today; Judge
25 Marks, Justice Peters, Justice Tom, Justice Eng, Justice

1 Whalen, President Gutekunst.

2 I want to thank Helaine Barnett and the
3 commission members, counsel and staff. I want to thank
4 the staff here at the Court of Appeals for assisting us.

5 And I want to thank each of the witnesses on the
6 professional side and on the brave client side as well who
7 traveled here today.

8 It makes us all very proud to be lawyers and of
9 service to people who need Civil Legal Services in our
10 community.

11 Thank you all for being here. That concludes
12 the hearing. We are adjourned. Thank you, all.

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15 (END OF HEARING.)

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I N D E X

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ADY ESCOBAR

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STATE OF NEW YORK
COUNTY OF COLUMBIA

ss:

*I, B. Bennett-Calkins, Shorthand Reporter
and Notary Public duly and qualified in and for the State
of New York do hereby certify that the foregoing
originally signed transcript is a true and correct
transcription of my original stenographic notes to the
best of my knowledge.*



B. BENNETT-CALKINS

PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK

APPENDIX 8:

**Written Statements from Testifying Witnesses at the
Chief Judge's Hearing Held on September 27, 2016**

NOVEMBER 2016

Written Statements From Testifying Witnesses at the
Department Hearing on September 27, 2016

Hon. Jonathan Lippman (*former Chief Judge of New York; Of Counsel, Latham & Watkins, LLP*)

Stephen M. Cutler, Esq. (*Vice Chairman, JP Morgan Chase & Co.*)

Suzanne B. Goldberg, Esq. (*Herbert and Doris Wechsler Clinical Professor of Law, Director, Center for Gender & Sexuality Law and Sexuality & Gender Law Clinic, Columbia Law School; Executive Vice President for University Life, Columbia University*)

David A. Heiner, Esq. (*Vice President, Regulatory Affairs, Microsoft Corporation*)

Edward P. Swyer (*President, The Swyer Companies & Stuyvesant Plaza, Inc.*)

Jorge (“Billy”) Torres (*client of Legal Assistance of Western New York, Inc., accompanied by C. Jake Hamann, Esq.*)

Glenn Rice (*client of Legal Services of the Hudson Valley, accompanied by Shara J. Abraham, Esq.*)

Donna Spinner (*client of Legal Aid Society of Northeastern New York, accompanied by Gerry A. Schafer, Esq.*)

Neil Steinkamp (*Managing Director, Dispute Advisory & Forensic Services Group, Stout Risius Ross, Inc.*)

Commissioner Steven Banks (*New York City Human Resources Administration, Department of Social Services*) (*Testimony presented by Jordan M. Dressler, Coordinator, New York City Human Resources Administration, Office of Civil Justice*)

John S. Kiernan, Esq. (*President, New York City Bar Association; Partner, Debevoise & Plimpton LLP*)

Hon. Douglas E. Hoffman (*Acting Justice, Supreme Court, New York County; Family Court Judge, New York County*)

Susan McParland-Leisen (*client of Nassau Suffolk Law Services Committee, Inc., accompanied by Melissa Zeidler, Esq., Urban Justice Center*)

Harry Michel (*client of The Legal Aid Society, Queens Neighborhood Office, accompanied by Sateesh Nori, Esq.*)

Ady Escobar (*client of Legal Services NYC [Bronx Legal Services], accompanied by Kathleen Dennin, Esq.*)

Hon. Jonathan Lippman

*(former Chief Judge of New York;
Of Counsel, Latham & Watkins, LLP)*

**Legal Services Hearing
Court of Appeals
Testimony of Judge Jonathan Lippman
September 27, 2016**

I am delighted to return to the Court of Appeals and to testify at this important hearing on civil legal services. First I would like to thank you, Chief Judge DiFiore, for continuing the wonderful tradition of having the leadership of the Judiciary and the bar preside over a hearing to determine the state of access to justice in New York. I believe that we in New York have set the standard for providing legal representation to those in need and I could not be more proud, Chief Judge, that you are leading the way, along with the Permanent Commission on Access to Justice and its singular chair, Helaine Barnett, our terrific Chief Administrative Judge, Lawrence Marks, and the Presiding Justices who have been stalwarts in the fight for equal justice. And, I believe that our State Bar is the best in the country, and I want to thank President Claire Gutekunst and the Bar for their unstinting support for providing legal representation for the poor and people of modest means.

Chief Judge, I also cannot praise you enough for your consummate skill and determination along with Judge Marks in shepherding the Judiciary budget through the legislature, which includes 100 million dollars in public funding for legal services – a fantastic accomplishment! This money is by far the most public funding in the country and central to our constitutional mission of fostering equal justice. These critically needed monies belong, as they are, right in the middle of the judiciary budget as they are essential to our efforts to ensure legal services to rich and poor, high and low alike. For example, these monies, at least in New York City, have in combination with funding from the Di Blasio administration, directly resulted in 27% of tenants in Housing court now having legal representation – a vast improvement on the 0 - 5% of tenants previously represented. And, I want to thank HRA Commissioner Steve Banks for his herculean efforts in this regard.

I must also say that the Bar has risen to the occasion as it always does, to help those in need with an outpouring of pro bono work, and that our 50-hour rule, and our Pro Bono Scholars and Poverty Justice Solutions programs engage new lawyers with a value system that is all about service to others. In addition, our pro bono reporting system, the best and most comprehensive in the county, allows us to have the information that we need to chart the course for our future access to justice efforts.

New court rules on foreclosures and consumer credit cases have greatly helped to protect those in need of legal help, and our navigator and legal hand non-lawyer initiatives are being followed and replicated around the country. And, that is not to mention our lawyer for a day program, self-help centers, do-it-yourself forms and the wide use of modern technology to further access to justice in our state.

The question is where do we go from here? We know we cannot sit on our laurels, when legal service providers in New York still have to turn away more people than they can help. While we are representing one-third or more of those needing legal representation, we are not near to reaching the goal of 100% representation for those in need of legal assistance. The

poverty rate still hovers at about 20%, and all the money in the world will not provide the necessary resources to eliminate the justice gap without increasing our pro bono work.

It is clear that we need innovation, leadership and partnerships to meet our obligation to solve the continuing crisis in access to justice. It is up to the Bar, the Judiciary and the Academy to narrow and ultimately end the justice gap that we face. There are so many examples of new ideas and new thinking that we need to embrace here in New York and around the country, and I would like to mention just a few areas that I think we need to pursue in the coming days:

- The bill in the New York City Council to provide a right to counsel in housing cases for those under 200% of poverty level is a milestone in the right to counsel movement should be vigorously supported. Passage of the bill would, in my view, even rival in significance the seminal case of *Gideon vs. Wainwright*, guaranteeing the right to counsel when one's liberty is at stake.
- Expanding unconventional ways to deliver legal services like the Navigator and Legal Hand programs is a must, and the use of non-lawyers is at the cutting edge of access efforts around the country. I am constantly asked about our efforts in this area when I speak to access to justice commissions and the Bar in other states.
- Expanding the use of technology to support legal services in rural areas should be a priority, as it can make such a dramatic difference in presently under-served communities.
- In regard to the use of technology, we should also support LSC's new single portal legal services technology grant. The single portal approach to legal service delivery is efficient and cost effective.
- Support for the Public Welfare Foundation and NCSC's 100% representation initiative will focus us all on the ultimate goal of access to justice for each and every person in need. State Judiciaries around the country are applying to be a part of this program and there is great enthusiasm for this project in the access to justice community.
- Adoption of the 50-hour and experiential learning requirements in New York should be followed by other states using New York's rules as a model. California has had such rules pending under consideration for a number of years.
- Expanding funding for legal services at the local level, including municipalities around New York and the country is necessary in an era where federal funding is gridlocked, and state governments have finite resources that need to be supplemented at the local level.
- We must continue to educate Judges on how to ensure that there is a level playing field for all litigants in their courtrooms in order to ensure that everyone gets their day in court, no matter the amount of money in their pocket. The new rules we have put into place in New York have been helpful in this regard.

- Incubator programs and other like ideas that provide low bono legal assistance to people of modest means should be expanded in New York to address the needs of the average person who cannot afford the high cost of legal services.
- Finally, we must generate public understanding that support for legal services is as important as hospital, schools and housing and all the other things we hold dear. We must re-prioritize our values in society recognizing how important legal representation for the poor is to our societal goals and the fabric of our communities.

With all of these new ideas and approaches to access to justice and so many more, we are much closer to the day that all individuals, rich and poor will get the benefit of desperately needed legal representation and effective legal assistance. Judge DiFiore, with you at the helm, and with all of your continued efforts and openness to new ideas, I am absolutely confident that the day will come, in the not so distant future, that the ideal of equal justice will be a reality for every single person in our great state.

Thank you

Stephen M. Cutler, Esq.
(Vice Chairman, JP Morgan Chase & Co.)

Stephen M. Cutler is Vice Chairman of JPMorgan Chase & Co.



Cutler joined the company in February 2007 as General Counsel and served in that role until December 2015. Previously, he was a partner at Wilmer Cutler Pickering Hale and Dorr LLP in Washington, D.C. and co-chair of the firm's Securities Department.

From 2001 to 2005, Cutler served as Director of the Securities and Exchange Commission's Division of Enforcement, where he oversaw the Commission's investigations of Enron and WorldCom, as well as those involving New York Stock Exchange specialists, research analyst conflicts and mutual fund market timing and revenue sharing.

Before joining the SEC as Deputy Director of Enforcement in 1999, Cutler was a partner at Wilmer, Cutler & Pickering in Washington, D.C.

Cutler earned his J.D. from Yale Law School, where he served as an editor of the Yale Law Journal, and a B.A. (summa cum laude) from Yale University.

Cutler is on the boards of the Legal Action Center, the National Women's Law Center and the Metropolitan Museum of Art. He is also a Visiting Lecturer in Law at Yale Law School, where he has co-taught a class called "Global Inside Counsel: The Challenges of an In-House Lawyer in an Increasingly Integrated World."

**September 27, 2016 Hearing on Civil Legal Services
Testimony of Stephen M. Cutler, Vice Chairman, JPMorgan Chase & Co.**

My name is Stephen Cutler. I am a Vice Chairman of JPMorgan Chase & Co. For nearly a decade, I served as the Company's General Counsel and as a member of its senior-most management committee. I am honored to be here today to offer my personal support for the work of the Permanent Commission on Access to Justice (led by its extraordinarily dedicated and wise Chair, Helaine Barnett), as well as the important initiatives of Chief Judge DiFiore (and before her, former Chief Judge Lippman) to expand the provision of civil legal services to those who can't afford them in New York State

Every day, hundreds of times of day, as one of the nation's, and this state's, leading financial services companies, JPMorgan Chase is in the middle of financial matters involving what the New York State Legislature has referred to as "the essentials of life." Indeed, that's where we want to be: When it comes to the largest, most important and most emotional purchase many of us will ever make – our homes – we want to be there with a mortgage. And when you're buying a car, making significant home improvements, or starting a small business, we want to be able to give you a loan to make that possible. Whether you're seeking to open a checking account, obtain a credit card, save for your children's education or plan for retirement, we want to be the company to help you do that.

And though I wish it weren't so, not every single one of those life-essential transactions and relationships proceeds without a hitch. Sometimes, those hitches lead to disputes; sometimes, those disputes lead to lawsuits; and sometimes, those lawsuits lead to protracted litigation.

Now you might be tempted to think that our sole objective, once we're in the realm of case or controversy, is to "win" by minimizing our liability or by maximizing the amount that we collect – and that we might view an unrepresented customer as a path to achieving such a victory. But I can tell you, most emphatically, that's not how we think about disputes with our customers. If we have made a mistake, we want, first and foremost, to fix it and make sure our customer is whole. If our customer says he or she has been wronged, what we really want is a resolution that's fair to the customer – and to us – and to reach that resolution expeditiously. (On the latter point, we do believe that justice delayed is often justice denied; and that justice delayed is almost certainly more expensive for everyone, including us.) For us, the ultimate "win" is a resolution that allows us to retain or regain our customer's trust.

We frequently find that the best way to get there – to achieve a fair and timely disposition of a customer dispute – is for our customer to have able counsel whom he or she can trust. Counsel can explain to the customer why his or her claim makes sense or doesn't, why an offer from us is fair or isn't – and can do so in a way that sometimes wouldn't resonate with the customer if it were coming from us. Indeed, we've been involved in a number of matters where a customer's lack of legal representation resulted in the customer's failure to appreciate the strengths and weaknesses of his or her claim, and the merits of a proposed settlement of that claim. In some cases, that has meant substantial delay for the customer, and in others, the customer's refusal to consider an offer of settlement substantially *more* favorable than the ultimate judgment rendered by the court.

Of course, we'd prefer not to resort to protracted litigation at all. That's one of the objectives of the Early Dispute Resolution teams we established in our consumer area several years ago. Our EDR teams consist of a total of approximately 20 lawyers and paralegals in offices throughout the U.S. who seek, and are empowered, to resolve disputes and lawsuits instead of litigating them. They make every effort to reach out to customers or their counsel *before* we initiate a lawsuit or file a formal response to one. We are often able to resolve matters in a mutually satisfactory manner, and with a minimum of court intervention, when we can enter into meaningful dialogue with our customers – one that allows the company and its customers to express their respective views, understand each others' perspectives, and establish a common framework for resolution.

The inability to resolve a dispute consensually is frequently, I like to say, a failure of either imagination or understanding. And the ability of a customer to rely on counsel even at the earliest stages of the process – indeed, I would say, *especially* at those stages of the process – can reduce the instances of such failure.

This is not a once-in-a-blue-moon item. The absence of customer counsel in disputes relating to life-essential financial matters is more common than you might think. I recently inquired how often we encounter pro se plaintiffs in our docket of mortgage foreclosure matters where customers have asserted counter claims. Just to give you a sense of it, the outside law firm that handles the majority of those cases for us in New York estimated that one-third of all the matters they helped resolve for us in 2015 were with customers who did not have legal representation.

To sum up my views on the subject, I'd recount a recent conversation I had with one of my colleagues at JPMorgan Chase. When I told her I was testifying in support of the expanded provision of civil legal assistance in New York, she asked me why that might be important to a big financial services company. Well, I said, if those with whom we have disputes are represented by able counsel, we think that could help us get fair and quicker settlements; it'll mean a court system that won't be overwhelmed with matters that should be resolved without much (if any) court intervention; and it'll also mean a court system that'll be able to devote more resources to matters that truly do need court intervention. But maybe most important of all, it's what any of us would want for ourselves or our parents if we were involved in a dispute over a life-essential financial matter and couldn't afford counsel. It's just the right thing. As our Chairman and CEO, Jamie Dimon has said, many of the challenges we face in this country can best be "overcome by government, business and the nonprofit sectors working together." Providing equal access to civil justice is one such challenge.

At JPMorgan Chase, we feel an acute sense of responsibility to the communities in which we live and work. Our Foundation gives on the order of \$200 million a year to worthy causes. In 2015, some 47,000 of our employees volunteered more than 300,000 hours of their time to more than 2,000 service projects in communities around the globe. That same sense of responsibility extends to our Legal Department, where it can be seen most clearly in our pro bono program. Started by my late, great predecessor, Joan Guggenheimer, and now under the aegis of my great successor, Stacey Friedman, the program facilitates global participation in pro bono work and related community service volunteer activities that strengthen our local communities, empower families and advocate for vulnerable

individuals. We've provided assistance to, among others, low income families in securing welfare benefits, to refugees in seeking asylum, and to victims of domestic violence in seeking court protection. We've also helped unaccompanied youth obtain birth certificates, we've read to children living in shelters, and we've taught high school students about their legal rights.

Our pro bono program is one of the ways in which we recognize the importance of legal counsel in securing a fair and just society. And it's that principle that brings me here today, to support greater access to civil legal services in the State of New York.

Thank you.

Suzanne B. Goldberg, Esq.

*(Herbert and Doris Wechsler Clinical Professor of Law,
Director, Center for Gender & Sexuality Law and
Sexuality & Gender Law Clinic, Columbia Law School;
Executive Vice President for University Life,
Columbia University)*



Suzanne B. Goldberg is the Herbert and Doris Wechsler Clinical Law Professor at Columbia Law School, where she also founded and directs the Sexuality and Gender Law Clinic and co-directs the Center for Gender & Sexuality Law. She is also the Executive Vice President for University Life at Columbia University, where she leads University-wide efforts on a variety of community citizenship and intellectual life issues. At Columbia Law School, Professor Goldberg teaches civil procedure and seminars in advocacy and lawyering and social change in addition to her clinic.

Her academic writing focuses primarily on barriers to equality, focusing, for example, on antidiscrimination frameworks (*Discrimination by Comparison*, Yale Law Journal) and the evolution of equality law related to social groups (*Constitutional Tipping Points*, Columbia Law Review). Through the Sexuality & Gender Law Clinic, she has been involved in litigation and legislative and policy work in local, national and global forums on an array of gender and sexuality law issues, including marriage equality, immigration, domestic violence, trafficking, and parental rights. She serves frequently as a media commentator on sexuality and gender law issues, and has won numerous awards, including the Willis L.M. Reese Prize for Excellence in Teaching.

During the 1990s, Professor Goldberg spent nearly a decade as a lawyer with Lambda Legal, where she was counsel on a wide range of cases, including two that became landmark gay rights victories – one striking down a Colorado antigay amendment (*Romer v. Evans*) and the other striking down Texas’s Homosexual Conduct Law (*Lawrence v. Texas*). She is co-author of *Strangers to the Law: Gay People on Trial*, which recounts the trial in the *Romer* case. Professor Goldberg graduated with honors from Harvard Law School in 1990 and from Brown University in 1985, and was a Fulbright Fellow at the National University of Singapore from 1985-86.



Suzanne B. Goldberg

Herbert and Doris Wechsler Clinical Professor of Law

Director, Center for Gender & Sexuality Law

and Director, Sexuality and Gender Law Clinic

Executive Vice President for University Life

Columbia University

Testimony for the Chief Judge's Civil Legal Services Hearing

September 27, 2016

Thank you for the privilege of testifying before this esteemed Hearing Panel, which has been so important in expanding access to justice in our state and, indeed, across the country. I want to underscore, too, how important the work of the Permanent Commission on Access to Justice has been in encouraging and inspiring law schools to strengthen our own efforts to make justice more accessible to all.

Just about two years ago, shortly after the decision made in Ferguson not to indict the officer involved in shooting Michael Brown, many law students faced what might be described as a new reckoning with their chosen profession. What, our students wondered, did it mean to work for justice when so many had concerns about the ways in which justice was administered.

Both at Columbia Law School, where I teach, and at law schools around the country, students turned to these issues, along with many of their professors, with passion and a strong sense of the connections across an array of challenges. As discussions have continued, issues related to race and policing are engaged alongside concerns about sexual violence, immigration policy, bathroom access, hate crimes, and anti-Muslim hostility and much more. Many students have also turned inward, to their experience in school, and are examining how identity – including race, class, immigration status, gender, sexual orientation and other characteristics – are shaping their academic and student life experiences while they are in the process of learning to be lawyers.

The focus of my testimony will be on how the legal community in New York State, and in particular, the lawyers and judges affiliated with the Permanent Commission on Access to Justice might think about harnessing the interest and energy of these lawyers-in-training to serve the tremendous legal needs we see across our state.

I will address this challenge by responding to three questions that grow out of these experiences in the legal academy and more broadly in colleges and universities during the past two years.

1. What are some of the concerns that have been expressed by this up and coming group of law students?
2. How have law schools been engaging with the intensified focus on inclusion and diversity following the non-indictments and the growth of the Black Lives Matter movement?
3. How might New York's legal community engage some of this tremendous energy and passion to enhance access to justice in our state?

Turning to the first question, much has been written in the past year about activism on college and university campuses across the country. Students' interests, often expressed as demands, have addressed both academic and residential life and have frequently been framed as an insistence that school administrations take steps to ensure a more inclusive environment for students marginalized by race, ethnicity, sexual orientation, gender identity and other aspects of identity.

Coming primarily, although not exclusively, from undergraduates, these demands have been framed as responses to structural racism and other institutional features of higher education that have disregarded or actively disadvantaged students of color, women, and LGBTQ students, among many others. Students have focused on hiring practices, curricular content, the ways in which issues are discussed (or not) in classroom settings, and the need for greater support for marginalized students. Also growing out of these demands have been contentious debates regarding the tensions between free expression and speech or practices that offend or denigrate listeners. (For an extensive collection of these demands, see the website [TheDemands.org](https://www.thedemands.org), which includes demands made by students at 80 different institutions.)

Law students have expressed similar concerns, with special attention to the issues most concerning to them as graduate and professional school students. In particular, as I mentioned at the outset, following the non-indictments in Ferguson and Staten Island, law students spoke powerfully about their struggle to learn legal doctrine while seeing, in real time, the ways in

which that doctrine did not necessarily serve to insure just outcomes. This gap between law on the books and law in action is part of the lesson of law school, of course, but the starkness of seeing this gap through a series of police shootings caught on video, many of unarmed black men and women, was especially painful as well as threatening for a significant number of our students.

I will turn now to the question of how law schools, in particular, have engaged with issues related to diversity, inclusion and justice raised with increasing intensity by both students and social movements. In some ways, these issues have always been central to the work of law schools – or at least to the content of the core curriculum, whether in my own area, civil procedure, or in constitutional law, criminal law, property and even torts.

In addition, as this panel knows well, clinical legal education has, since its early years, played a leadership role in connecting students to working with communities that have been burdened or marginalized by law, by poverty, and by other institutional and systemic challenges. My own [Sexuality and Gender Law Clinic](#), which involves students in litigation, legislation and public policy advocacy on sexuality and gender, has these sorts of issues at its core. During the past ten years, my students have put in thousands of hours addressing anti-transgender laws, domestic violence, family recognition for same-sex couples, and asylum for individuals fleeing persecution based on their gender identity or sexual orientation, just to name a few of the many essential needs and projects in this area of law. So, too, do the other [clinics at Columbia Law School](#) work directly on these systemic challenges, including in immigration, mass incarceration, public benefits, environmental issues, human rights, mediation, community enterprises, and the needs of adolescents and young adults aging out of foster care, among many other issues. The same is true for the clinics at the other 14 law schools across our state.

Every law school that I am aware of, both in New York and across the country, also already has in place extensive opportunities for internships and externships to engage students in community-based work on these issues. I reviewed our offerings at Columbia and found well over 100 of our students engaged in direct services, impact litigation, policy work and government work on these and related issues during their summer break, with many more taking up these opportunities during the school year as well. On LGBT issues, for example, which are within my expertise, in addition to the types of issues I have already mentioned, students have worked with organizations on facilitating name changes for transgender people; addressing discrimination in healthcare access, shelters and other public accommodations; assisting LGBTQ youth who have been bullied at school; advocating for public benefits and housing for LGBT

youth who have been excluded from their families and are struggling to survive, and challenging abuse of LGBT prisoners, to name just a few.

There are also the numerous collaborations between students and faculty that may not be counted among these experiences but can also be effective ways of engaging students in justice-oriented work. This month alone, for example, I have students working with me on one amicus brief addressing an immigration sex discrimination case before the U.S. Supreme Court and another in the challenge to North Carolina's House Bill 2, known more popularly as the bathroom bill. And still others are working with me on an American Law Institute project related to principles for handling campus sexual assault complaints. The same is true, I know, for many of my colleagues both at Columbia and around the state.

Also, and importantly, law schools have made substantial additional efforts to show students how the issues that concern them in the news are directly linked to what they might contribute as lawyers. For several years now, a few colleagues and I have run a [Lawyering for Change series](#) that brings students, faculty, alums and other lawyers into conversation about the many ways in which they might use their legal skills to bring about change in the communities of interest to them. Last year, our Dean, Gillian Lester, also launched a new series, [Lawyers, Community and Impact](#), as a forum for deeper engagement outside the classroom. The first of these events, Policing the Police: The Future of Police Reform, brought together an overflowing classroom of students to hear and participate in a conversation between two faculty members about the possibilities and future of police reform in America. The next in the series will take up the question of voter identification laws and ask what they are meant to accomplish.

There is much more, of course, and I want to be sure to recognize, again, that every law school in the state is enhancing its efforts to make these connections and to create spaces for our students to engage in these conversations. If the Commission is interested, I will be happy to provide a collection of some of these efforts after today's hearing.

With this foundation, I would like to turn to my final question: How might New York's legal community engage some of this tremendous energy and passion to expand access to justice in our state? Here, there is great opportunity that is directly in keeping with the leadership this Commission has already exercised in creating programs and setting standards for our state that also serve as models for much of the rest of the country.

Building on what you have already done, here are three possibilities for your consideration, against the backdrop that our students are deeply interested in learning from more experienced lawyers about what pathways they might take to make a difference:

First, I want to return to the familiar idea of mentoring. There are many opportunities for students to attend career-oriented panels but it is often much harder for students to find ways to have those one-to-one conversations about working on access to justice that can be so formative early – and even much later – in one's career.

How to do this? Career services and public interest offices at law schools are often looking to make these individualized connections for their students. It would be quite wonderful, I think, for the Commission to encourage even greater collaborations between schools, legal services communities, and bar associations in initiatives along these lines.

Second and related is the idea of having a series of small convenings on access to justice, led by the Commission, that would create these opportunities to bring law students into conversation with access-to-justice-oriented lawyers and judges from around the state. Particularly if student travel were funded, perhaps through generous sponsorship by a law firm, there might be great opportunity to create and invigorate cross-regional or statewide connections and education on these issues.

Third, the Commission might amplify its already-tremendous contribution by encouraging the enhancement of law school bono experiences, which often give students their first direct connection to playing a part in expanding access to justice. This could take many forms, from soliciting information about best practices and consolidating that information for law schools around the state (or encouraging a bar association to do so), to creating opportunities to highlight model efforts, perhaps through student-recognition and pro bono-placement recognition awards for exemplary work in our communities.

There are many more possibilities, of course. The silver lining of these fraught times is that a growing number of law students understand, in a very personal way, the deep importance of participating in expanding access to justice. As a result, while the need for more lawyers in the field is pressing and ever present, there are many in law school who are ready and willing to step

Suzanne B. Goldberg, Columbia Law School
Testimony for the Chief Judge's Civil Legal Services Hearing

in and just need the mentoring, guidance and recognition to find the best paths to make their contributions.

David A. Heiner, Esq.
*(Vice President, Regulatory Affairs,
Microsoft Corporation)*

DAVID A. HEINER

DAVID A. HEINER is Vice President for Regulatory Affairs at Microsoft Corporation. Dave is responsible for regulatory aspects of privacy, telecommunications, finance, accessibility, human rights, online safety and data analytics. Dave joined Microsoft in 1994, leading the company's antitrust work until 2013. For several years he was also responsible for Microsoft's work with international standard-setting organizations. Dave is a 1982 graduate of Cornell University, where he received a B.A. in Physics, and a 1985 graduate of the University of Michigan Law School, where he served on the editorial board of the law review. Following law school, Dave clerked for the Honorable Thomas P. Griesa of the U.S. District Court in New York. Before joining Microsoft in 1994, Dave practiced at Sullivan & Cromwell in New York.

Dave is Chairman of the Board of Probono.net, a national non-profit that works to increase access to justice for the poor through efficient use of technology. Dave has handled a number of immigration cases through Kids in Need of Defense, an advocacy group for unaccompanied immigrant children in the United States.



**TESTIMONY OF DAVID A. HEINER
VICE PRESIDENT, REGULATORY AFFAIRS, MICROSOFT CORPORATION
CHAIR OF THE BOARD, PRO BONO NET, INC.**

**CHIEF JUDGE'S 2016 HEARING ON CIVIL LEGAL SERVICES IN NEW YORK
SEPTEMBER 27, 2016**

Thank you for the opportunity to testify about the role technology can play in efforts to close the access to justice gap. My work at Microsoft is largely focused on the societal impact of rapid technological change. We know from experience that the impact can be profound. Today technology is enabling fundamentally new ways for people to create, to collaborate, and to communicate with one another. This digitization of our daily lives is presenting increasingly important questions about our most fundamental human rights, including privacy, free expression, safety from all manner of ills facilitated by the internet, and the right to participate fully in civil society, regardless of race, gender, or income level. Technological change presents important implications for the civil justice system too—great promise but also some peril, if we fail to grasp the opportunity to leverage technology to close the access to justice gap.

We are on the cusp of great change in law, healthcare, education, finance, manufacturing, services delivery and even social relations due to rapid technological advances. The breadth of the possibilities is reflected in Microsoft's mission statement: "to empower every person and every organization on the planet to achieve more." That may sound a bit grand (or even self-important), but at Microsoft we truly believe that technology can enable everyone to achieve more. That includes lawyers at Manhattan law firms serving Fortune 500 companies. It includes the legal aid provider in rural upstate New York helping an undocumented agricultural worker find her way through immigration proceedings. And it includes the young mother in Brooklyn who finds herself navigating the Kings County Family Court on her own.

Advances in information technology are likely to be so fundamental that the World Economic Forum now believes that we're entering a "fourth industrial revolution." The late 18th century saw the advent of the steam engine and industrial manufacturing. The late 19th century saw the advent of electric power, the internal combustion engine, the telephone and the telegraph. The computer age dawned in the second half of the 20th century. Each of these technology "revolutions" brought about rapid and often unforeseeable changes. The fourth industrial revolution will be no different. Already many of our daily activities are handled more efficiently and more easily than just a few years ago. Think shopping (Amazon), hailing a cab (Uber), finding lodging (Airbnb), listening to music (Spotify), dating (Match.com), connecting with friends and family (Facebook) or finding the answer to just about anything in milliseconds (Google). Click, click, tap, tap and you are done.

These are all information technology companies, first and foremost. Consider Uber: it is the world's largest taxi service by far, yet it owns no cars and employs no taxi drivers. Its value is in its software platform. And although it was founded just seven years ago, Uber's market valuation is greater than \$60 billion, more than General Motors, Ford, or Fiat Chrysler. Amazon has no retail stores, but efficiently connects sellers and buyers through its software platform. It is worth \$150 billion more than

Wal-Mart. The likelihood that technology will rapidly transform a range of industries is not lost on investors.

Nor is it lost on CEOs of leading firms. According to a recent survey by PricewaterhouseCoopers, more than four out of five CEOs believe that in the years ahead technology will transform their business more than any other global trend.

Governmental operations can be transformed as well. After the difficult initial roll-out of HealthCare.gov, President Obama established a new team, called the U.S. Digital Service (USDS), to bring together the best technology, design and government talent to help modernize not only HealthCare.gov, but also immigration and veteran's benefits. The Administration refers to the USDS as "a startup at the White House that pairs the country's top technology talent with the best public servants, to improve the usefulness and reliability of the country's most important digital services." Its mission statement reflects Silicon Valley can-do optimism: "building a more awesome government through technology." After just two years, the USDS has attracted 170 mostly young designers, developers and managers to this important work. (My son is one of them.) Non-governmental groups, such as Civic Hall (based in Manhattan) and Code for America (out of San Francisco), are getting into the act too, seeking to bring together innovators, funders, developers, academics and others to improve government operations through technology, often by leveraging data. (The nascent field is often referred to as "civic tech.")

The technologies that are transforming so much of the economy, and government, provide us with a clear opportunity today to help close the access to justice gap.

The stakes are high, for if we fail to seize this opportunity we may find that technological progress makes the access challenges we face today even worse. Although the jury is still out, we face a real risk that technological change may depress blue-collar wages, and in this and other ways, increase income inequality. In past industrial revolutions, technological change eliminated some types of jobs while creating entirely new job categories. (Good-bye horse and buggy operator, hello auto worker.) Whether that will hold in the future is an open question, as artificial intelligence techniques may enable a range of job categories to be eliminated. (Uber's contract drivers may be replaced by self-driving cars within the not-too-distant future. In fact, Uber is reportedly testing self-driving cars in Pittsburgh.) Automation may substantially reduce jobs in a range of categories that employ large numbers of middle class workers today, such as telemarketing, tax preparation, real estate brokerage and administrative support (my team at Microsoft has only one administrative assistant for 30 people). At its peak, Rochester-based powerhouse Kodak employed more than 140,000 people. When today's hot photography company—Instagram—was purchased by Facebook for \$715 million in 2012, it employed about a dozen people. (Computer servers do the heavy lifting.) Technology enables globalization, too, as supply chains efficiently stretch from Wal-Mart, U.S.A. to China, Inc. As we've seen in the current election cycle, critics on the right and on the left increasingly point to globalization as a cause of job loss in the United States.

If wages stagnate and unemployment increases, we are likely to face an increased demand for legal services associated with poverty, ranging from consumer debt matters, to landlord-tenant matters and to divorce and child custody proceedings as families strain under financial pressure. At the same time, we may find that people facing legal challenges, and their lawyers—if they are fortunate enough to have a lawyer—are further disadvantaged because creditors or other corporate interests are

represented by law firms with access to the latest technology for handling legal matters, while they make do with older technologies.

We can't let this happen. This is why Microsoft has partnered closely with Pro Bono Net, a not-for-profit based in New York City and San Francisco, that is dedicated to increasing access to justice through innovative technology solutions and expertise in building justice networks. (I am honored to serve as the chair of Pro Bono Net's board.) Microsoft and Pro Bono Net believe that the same tools that businesses and people are increasingly using to shop, learn and communicate can be deployed to address the access to justice gap. I will briefly describe the kinds of benefits technology can bring in addressing the access to justice gap, provide a few examples of technology in action toward this goal and offer three recommendations for your consideration.

A. The Technological Promise for Access to Justice

Three powerful trends are coming together to enable a range of new technological capabilities. The first is the broad availability of connectivity to the internet, through a range of devices, from personal computer to tablets to smartphones. To take one example: as recently as six years ago, fewer than 500 million people worldwide had a smartphone. Today more than 2.5 billion people are routinely communicating with one another and accessing internet resources via smartphones. Although there is more work to be done in this area, nearly all organizations and most Americans, including those who cannot afford a lawyer, have access to the internet.

The second important trend is the availability of massive, secure, on-demand, and highly efficient computing resources, offered at low cost, via so-called "cloud services"—computer processing handled in large datacenters rather than on the premises of individual organizations. Electrification in the late 19th century provides a good analogy to this trend: at first manufacturing plants had their own generators to create electricity, and having access to a dedicated source of electrical power was a competitive advantage. Before long it became apparent that it would be far more efficient to generate electricity centrally and distribute it to manufacturing plants. Similarly, today every organization can have ready access to professionally-managed, state-of-the-art computing resources, and they can add or subtract capacity as needed in minutes. Amazon, Microsoft, Google and others are building out massive datacenters to meet the rapidly growing demand for information technology services delivered via the cloud. Already Microsoft is serving more than one billion people from more than 100 datacenters located all over the world.

The third trend is the growing availability of data, the rapidly declining cost to store it, and recent advances in data analytics that enable data scientists to extract important insights from data. This is the basis of machine learning and artificial intelligence. With the increasing digitization of so many aspects of our lives, and sensors everywhere, we are awash in data. (The Microsoft smartwatch I wear has eleven sensors, including an altimeter, a heart rate monitor, and a UV radiation gauge, all recording to the cloud.) IBM estimates that 90% of the data ever created, from the first cuneiform tablets to today, was created in just the past two years. With powerful analytical tools—now widely available for use by all—analysts can make predictions about a range of phenomena, promising rapid advances in healthcare, law, transportation and many other fields. The possibilities are often surprising and non-intuitive. Researchers at Columbia University and Microsoft recently showed, for example, that it may be possible to detect pancreatic cancer early by analyzing a person's search queries on Google or Bing. (People routinely search online for health information, and queries on certain terms may indicate

that the searcher has particular symptoms that may be associated with pancreatic cancer before onset of the cancer would be apparent to a doctor.) In effect, logs of search queries could serve as a sort of “sensor” for cancer.

All three of these trends have important implications for everyone associated with the access to justice community: certainly legal aid providers, pro bono lawyers, and courts, but also low income people and the working poor who cannot afford as well as community-based organizations that help people find suitable legal resources. Importantly—and this cannot be emphasized enough—useful technologies that could help to reduce the justice gap are available today and ready to be deployed. The challenge is primarily one of funding, and perhaps training. Additional beneficial technologies are still in early stages of development, but it is not too soon for the access to justice community to begin to plan for their deployment. I’ve found it helpful to think in terms of three big buckets of technological capabilities: creation, collaboration and communication.

Creation. More than 25 years ago, Bill Gates gave a speech called “Information at your Fingertips.” The idea, novel at the time, was that computers would make it easy for people to access information—about their business, about their competitors, about the economy—really anything, with a click of a mouse and use that to *create* (a business plan, a legal brief, a spreadsheet, a novel). With nearly ubiquitous connectivity, cheap data storage in the cloud, and search technologies, that vision has come to pass. The latest business productivity software from Microsoft, Google and others makes it easy for legal professionals (or a self-represented litigant) to access information quickly that may be relevant to building and presenting a case, whether through briefs, memoranda, spreadsheets, slides, video, or other media. From within the latest version of Microsoft Word, for example, a user can conduct research on any term and pull results directly into a document. Natural language interfaces are increasingly making it possible for people to just “ask” their computer (Siri, Cortana, Google Now) for information and get an answer. Documents can be stored in the cloud and accessed from any mainstream computing device (laptop, tablet or smartphone), so that legal professionals and others can work on the go, from client locations, from home or from the coffee shop. Modern case management and document systems enable lawyers to access all the information pertinent to their cases anytime from anywhere where they have web access.

Imagine if all of the dedicated professionals among legal aid providers in New York state had access to the same business productivity software as their AmLaw 100 counterparts (or even more up-to-date software) so they could address their clients’ needs anytime, from anywhere, with ready access to information.

Collaboration. Teamwork is a force multiplier. The latest business productivity software is built to enable easy collaboration among team members, whether they are located next door to one another, across town, or across the country. Real-time editing by multiple authors, access controls, version controls and the like are all available today. Technologies such as Microsoft Sharepoint enable workgroup teams, or much larger communities, to pull together relevant resources and share them with one another, with rich control over access and editing privileges. Last month the Conference of Chief Justices and the Conference of State Court Administrators noted that “one of the biggest barriers to access is the uncoordinated and unintegrated nature of [legal aid] resources.” One way to address this is to bring key resources together in one place and make them available to all—much the same way Amazon makes available nearly anything you might want to buy, or Spotify makes available any song

you might want to hear. Once first-rate materials are prepared on any subject relevant to access to justice, they can be shared with everyone via cloud resources at near zero cost. The availability of such a shared resource can then foster development of a community where legal professionals can share ideas, best practices and the like through online chat forums and other means. (LawHelpNY is an example of the power of the collaboration here in New York state. LawHelpNY is a joint effort of Pro Bono Net and eleven leading legal aid, bar and pro bono organizations working together to use technology to advance innovative models of assistance for people living on low incomes and the organizations that serve them.)

Imagine if we had one central resource, for all of New York state, on consumer debt law, or landlord-tenant law, with all the latest practice guidelines, forms, templates, key cases, and legal developments available directly, and with a vibrant community of practitioners helping one another to address common challenges.

Communication. Twenty years ago communication meant a letter, a phone call or a fax. Today it is email, instant messaging, and internet voice and video calls. These technologies can help to collapse distances between lawyer and client. Solutions built on Skype (or other messaging platforms) enable legal professionals to connect with their clients—or colleagues or adversaries—from wherever they are. Technology is readily available (and is being deployed today in a limited way) to pair clients located in rural parts of the state with volunteer lawyers, the great majority of whom are in urban areas. Technology can help reduce language barriers too. On the immediate horizon are real-time translation capabilities, made possible by powerful data analytics, that will enable a legal professional speaking English to communicate effectively with a client speaking any language. Already a service called Skype Translator enables voice translation among seven major languages. This technology is available in a public “preview” for testing now and will soon be released for general use. I have seen live demonstrations, and it is already satisfactory for basic conversations. Skype Translator will get much better over time as it “learns” speech patterns and accents. (Search on “Skype Translator” to learn more.)

Imagine an immigration lawyer in midtown Manhattan effectively communicating with a Spanish-speaking undocumented migrant worker upstate—and then communicating with Spanish-speaking family members in Latin America to gather facts pertinent to the case.

B. Technology in Action

The benefits of the technological capabilities outlined above really come to life in the context of technology projects that are well-designed, funded and executed upon. I’ll briefly describe three projects, in varying stages of development and roll-out, and provide examples of comparable technology uses here in New York state.

1. **Citizenshipworks.** With generous funding from the Knight Foundation and the New Americans Campaign, Pro Bono Net and partners recently launched Citizenshipworks.org. Citizenshipworks is an end-to-end solution to guide people through every step of the process of applying for U.S. citizenship. Through an interactive, question-and-answer approach delivered via the internet, an applicant can complete the required form to apply for citizenship. If the system determines that the applicant will require help from a legal professional, the system will direct the applicant to appropriate resources. Applicants can start and stop work on their application at any time. (Everything is stored in

the cloud.) The system tracks every interaction, so we will be able to learn a great deal over time. What ‘red flags’ most commonly present problems for would-be citizens? Which birth countries are most applicants hailing from? What personal circumstances lead people to apply for citizenship? And so forth. What we learn may help us to deliver legal services more efficiently or even suggest legal reforms.

Citizenshipworks is offered nationally. Here in New York state, thousands of low-income people have used Pro Bono Net’s LawHelp Interactive to prepare their own legal forms online free of charge. The program, offered in conjunction with the New York Courts’ Access to Justice Program, gives overstretched court staff and legal aid advocates tools to improve their efficiency. For example, trained domestic violence advocates at shelters and legal aid programs across the state are using LawHelp Interactive to help domestic violence survivors to complete and electronically file orders of protection in family court. LawHelp Interactive makes the justice system more accessible and saves countless hours of data entry time for busy court clerks. The program garnered Legaltech News’ 2015 Innovation Award for Most Innovative Use of Technology in a Pro Bono Project.

2. Video Court Appearances for Unaccompanied Immigrant Children. Kids in Need of Defense (KIND) is a national non-profit aimed at helping unaccompanied immigrant children in their search for safety. (Microsoft co-founded KIND, together with the actress Angelina Jolie.) KIND and Microsoft recently worked together to explore how technology could help to address a practical—and very substantial—problem in serving unaccompanied children: they often have a hard time getting to immigration court in the big cities and so they miss key hearings. (As you can imagine, kids don’t fare well in court when they don’t show up.) The problem is particularly acute in the agricultural fields in California’s central valley, where many unaccompanied kids end up. For example, Fresno, in the heart of the central valley, is nearly 200 highway miles from the immigration court in San Francisco. Children who have little money, speak very little English, and have no adult in their lives often have no way to get to San Francisco. Communications technologies can help. Why not equip immigration courts and legal aid providers with access to cloud-based video solutions so that unaccompanied children could “appear” in court for scheduling hearings via video conference? With funding from a generous private donor and technical support from Microsoft, KIND is building a prototype solution to connect a KIND field office in Fresno with the immigration court in San Francisco. The solution will be based on professional-grade Skype TX for Broadcasting technology (the kind in use when someone appears via Skype on a television news broadcast). Pending Department of Justice approval, the court will be equipped with a 55 inch monitor (so that the judge can get a good look at the child), and the court and the remote location will have standard web cams and microphones. Skype Translator will provide real-time, automated translation between English and Spanish, in case an interpreter is not available. With this system, we hope that immigration judges will find it quick and efficient to conduct scheduling conferences by Skype. If the pilot is a success, KIND will seek funding to build out the solution in other immigration courts.

We’re deploying technology to shrink physical distances here in New York too. The Legal Aid Society of Northeastern New York, Legal Assistance of Western New York, the Volunteer Legal Services Program of Rochester and Pro Bono Net have launched a virtual legal service initiative called Closing the Gap. Closing the Gap links volunteer lawyers—who are mostly in urban areas—with rural clients through remote assistance technology and collaboration tools, including web video conferencing, document sharing, and remote generation of court pleadings using LawHelp Interactive.

3. Statewide Access to Justice Portal. In April the Legal Services Corporation (LSC) announced that it is partnering with Microsoft and Pro Bono Net to build a prototype “legal portal” for one or more

state court systems. The goal of the project is to demonstrate how technology can enable people to navigate a court system and legal aid resources, learn about their legal rights and even prepare and file critical court documents in a way that is accessible, comprehensive and easy to navigate. Microsoft has committed to provide at least \$1 million in funding, plus in kind project management and technical support to develop the prototype. Pro Bono Net will help convene local partners in bringing together networks of legal aid providers and provide service design expertise. Over the next month or two LSC will solicit interest among state court systems to serve as pilot projects to implement the portal concept.

The legal portal project is meant to address the fact that every state has multiple websites providing information on courts, bar resources and legal aid resources. As the president of the LSC, Jim Sandman put it in announcing the project, “[t]he current system of accessing legal services is confusing, opaque, and inefficient for many people.” Technology can help. With input from local stakeholders, we aim to build a system that will provide a single, state-wide way to access the justice system. It will be accessible anytime, from smartphones, tablets, laptops and desktop computers (because it will be hosted in the cloud). The system will be tailored to the individual user, asking questions so as to discern the user’s need and then pointing the user in the right direction—helping self-represented litigants to create relevant court documents and connecting those who need professional help to legal aid providers. Drawing upon existing collaboration and communication technologies, the system will provide all relevant information about the user’s legal problem to the right legal aid provider so that the provider can move directly to offering help. If the user engages with the court system, the portal will track the user’s case, providing access to court documents, calendars and the like. Over time we hope to add machine learning capabilities to the system, so that it can “understand” the user’s needs more fully and be as helpful as possible. (Think in terms of advanced versions of Apple’s Siri or Microsoft’s Cortana.) Although it may sound a bit far-fetched today, in the not-too-distant future it may be quite feasible for users to merely speak to the portal and receive help in a written or spoken “chat” format that will feel natural and comfortable for people who may otherwise feel uncomfortable when interacting with the court system.

If developed in a state such as New York, this portal would draw on resources and online services such as LawHelpNY, Closing the Gap and Citizenshipworks, as well as local clinics and private bar resources. The portal will not obviate the need for local investment in innovative approaches to information and service delivery; rather it will serve as a force multiplier to ensure that these services reach and are used successfully by those in need.

If the pilot is successful, Microsoft will publish the portal software code to GitHub, one of the leading websites for open source software development projects. We would hope that additional funding would emerge to enable others to build on this code, further improve it, and customize it for particular state court systems.

C. Recommendations

As the state considers how best to leverage technology to address the access to justice gap, I would offer three recommendations.

1. Establish *Sustained* Sources of Funding

Obviously I am a big believer in the benefits of technology to improve business processes, including the delivery of legal services. I trust that the state will consider the economic efficiencies that arise from deploying software solutions, such as a single “portal” that could serve the whole state, a single collaboration site that could serve every legal professional working in a particular practice area, or savings in time and travel expenses as lawyers interact with clients remotely. The suggestion I wish to make here, however, concerns not so much the amount of funding dedicated to technology initiatives, but rather the importance of establishing *sustained* funding streams. For the most part, technological solutions are not built once, and then declared to be “done”. They often require ongoing development work to account for new capabilities in other parts of the technological ecosystem, to reflect feedback from users, and to address new needs. (Microsoft has been developing Windows for more than 30 years.) Less complex systems can be declared “done,” but even those may require some ongoing maintenance as software bugs are discovered, underlying platforms change, and the like. (This is less expensive than initial development.) Developers need to know that funding will be available for a multi-year period so that they can plan an appropriate development and maintenance schedule. Funding grants that are limited to a year or two will often be insufficient to enable the successful deployment of transformational technology across the disparate resources that make up the legal aid community.

2. Move to the Cloud and Embrace Data Analytics

Perhaps the most important trend in deploying computing solutions computing is the move from “on-premises” solutions to “cloud” solutions. In funding technology projects, the state should encourage grantees to design their technology solutions to run in the cloud.

Businesses are moving their computing needs to the cloud because the benefits are unmistakable. Cloud computing is less expensive than traditional computing (where organizations purchase and operate their own hardware and software) because cloud providers benefit from vast economies of scale, which are reflected in prices. (Cloud computing prices have steadily declined over the past few years as capacity has grown.) Cloud computing would enable legal aid providers to focus on what they do best—serving clients—rather than updating and otherwise maintaining software run in house. With cloud solutions, software is professionally managed by the cloud provider. Use of the cloud would also provide the legal aid community with great flexibility: if a solution is working well, and demand grows, additional computing capacity can be added immediately. If demand declines, capacity can be scaled back immediately too. Cloud computing would also facilitate collaboration among legal aid providers and the ability to work from anywhere, on any device.

Cloud-based systems should be designed to draw insights from the data that is integral to usage of the systems. Computers are excellent at remembering things. With cloud-based services, every interaction that users have with the system can be tracked—with appropriate privacy protections—and used to provide better, personalized services to users and to improve the system as a whole through analysis of aggregate data. (All major web services, both consumer and business, are doing this today.) To facilitate data sharing and analysis, we should work to establish a common taxonomy of data types across the legal aid community. More broadly, data regarding use of legal aid systems could be analyzed together with other open government data. The insights we gain might suggest salutary reforms to the legal system.

3. Equip Legal Aid Professionals with State of the Art Business Productivity Software

Consider establishing a program to ensure that every legal aid professional has access to business productivity software that is at least as good as their counterparts at law firms. After all, their work is every bit as important. In fact, it may be possible to equip every legal aid professional in the state with *better* software than is in use at many law firms because the leading providers of such software—Microsoft and Google—both offer the most recent versions of their software on a free or heavily discounted basis for non-profits. I’m familiar with the Microsoft offering: wholly free of charge, all employees (and associated volunteers) of qualifying non-profits can obtain business-class email, calendar and contacts, file storage with 1 terabyte per user, unlimited online video meetings with HD video and web conferencing, an internal web site to manage office business, a corporate social network for internal collaboration, and advanced tools to search across all files and other information associated with the system. These are the very same services that Microsoft offers to its largest business customers. This free offering also includes web-based versions of Microsoft Word, PowerPoint, Excel, OneNote (for note taking) and the other familiar Office programs. Legal aid lawyers with document-intensive practices would likely prefer versions of these programs installed on their own devices, and that is available to non-profits for just \$2 per user per month. (And for that price each user can install and use the Office software on up to five computers, laptops, tablets or phones, from Microsoft, Apple or Google, for computing on the go.) As with all cloud services, this offering (called “Office365”) will be continually improved, without any action required by users (other than accepting updates for locally-installed software).

I recognize, of course, that there are considerable costs in setting up new systems and training people in how to use them, and funding would need to be found for that. But with the availability of these relatively new offers for non-profits from Microsoft and Google, it would seem a shame to leave legal aid professionals with anything other than state-of-the-art business productivity software.

* * *

Thank you, once again, for the opportunity to appear before you today. I know I speak for both Microsoft and Pro Bono Net in expressing our profound appreciation for the work of the New York State Permanent Commission on Access to Justice and the entire court system in addressing unmet civil legal services needs.

David A. Heiner

Edward P. Swyer
*(President, The Swyer Companies &
Stuyvesant Plaza, Inc.)*

Civil Legal Services in New York State

Testimony by Edward P. Swyer, President

The Swyer Companies & Stuyvesant Plaza, Inc.

Submitted To:

The Permanent Commission on Access to Justice

NYS Court of Appeals

Albany, NY

September 27, 2016

Thank you to Chief Judge Janet DiFiore, the Permanent Commission on Civil Legal Services and the members of the panel. I am pleased to have the opportunity to provide testimony about an issue that is very important to me—access to civil justice. My name is Ed Swyer and I am the President of the Swyer Companies, a real estate company that owns and manages commercial developments in the Capital District, including Stuyvesant Plaza, Inc. and Executive Office Park and several other office buildings in the area. Our company began with my father, Lewis Swyer, who instilled the importance of community philanthropy and support of not for profits. I have been active with many local and regional companies, and am involved in a number of not for profit organizations including The Legal Project and the Albany Law School Clinic & Justice Center.

I believe that it is important for companies that can afford to, to support services to poor and low income people. In my business, I sometimes have the need to engage attorneys and am acutely aware of how expensive legal services can be. This has brought home to me the reality that low income people are unable to afford the services of an attorney without significant help, and has spurred me to support, and to help solicit support for civil legal services organizations in my community.

It was my work over the past 18 years with The Legal Project and Albany Law School that sparked my interest and understanding of the importance of the availability of civil legal services to those who cannot afford an attorney. I have been supportive of the great efforts that the Permanent Commission, led by Chief Judge DiFiore and previously, the Hon. Jonathan Lippman, to increase the financial support for civil legal services statewide and to help provide much

needed stability for these programs. You have helped New York State become a role model for other states in their efforts to bolster civil legal services.

New York and the Capital Region are economically vibrant in many ways, but we still face a major problem with having far too many people living in poverty or existing paycheck to paycheck. According to the NYS Community Action Coalition, 15.6% of New Yorkers are living in poverty, including 22.1% of those under eighteen. In the four county Capital District area alone, we have 93,533 people who are living under the poverty level. In the last four years, we have seen an over 20% increase in the number of clients who are low and moderate income seeking civil legal services. Essentially, more and more individuals are falling into the working poor category.

As this panel well knows, Civil Legal Services makes a tremendous difference in the lives of those who do not have the income to be able to afford the rates of the private Bar. Having access to an attorney can make the difference between having a secure place to live or being out on the street; living a life of safety or being beaten and controlled; getting an education or being forced out of school; or having a secure job or facing unemployment. My involvement with The Legal Project and Albany Law School made me especially aware of the impact of legal help for victims of domestic violence.

Beyond the emergency assistance and support of domestic violence advocates, it is the assistance of a civil legal attorney that has the most positive impact on the lives of victims of domestic violence. A civil attorney may represent a victim in several actions, possibly starting with an order of protection, handling the custody matter in Family Court and then ending with a divorce. Victims of abuse also

often have a host of other legal issues and needs that can impact their long term psychological well-being and economic self-sufficiency, in addition to their safety.

For example, civil legal services can address economic issues by helping a battered woman get a higher child support payment or a more equitable distribution of marital property in a divorce settlement; stop a landlord from evicting her from public housing due to her batterer's behavior; or stop an employer from terminating her from her job as a result of her batterer's harassment in the workplace. Most victims of abuse report being economically controlled by their abuser—either not being allowed to work or having to hand over their paycheck to the batterer. Bills may be put in the victim's name while all assets are in the batterer's name. She may be harassed on the job, or miss work due to injuries. She may become homeless, has to skip meals to pay rent or is threatened with eviction.

A 2008 study found that 80% of women interviewed who experienced economic abuse reported trouble finding affordable housing and 86% had to stay with family or friends or in a shelter because they could not find affordable housing. Half of these women also experienced an eviction or lost a home due to foreclosure. Domestic violence threatens a victim's economic self-sufficiency, as well as her safety, and the economic burdens can last for years after even if she is able to get away from her abuser. The help of a civil legal attorney can not only assist with the safety aspects of the abuse, but also with the economic impacts over the long term. In fact, a recent study released by the National Institute of Justice in May, 2016 found that women who received civil legal services reported significant decreases in re-victimization, along with major

improvements in psychological well-being and economic self-sufficiency over time. While we strive to fight against domestic violence, we can't ignore that providing additional services to provide civil legal assistance to victims clearly makes a tremendous, positive impact that helps the individual victim as well as the entire community.

As a business leader in the Capital Region, I am concerned not only about the quality of life of our residents—including those seeking legal help—but also, with the economic impact of this assistance. I am keenly aware of the need for those services that provide stability and offer economic support to those most in need. Legal services does just that. Providing legal assistance to those at risk of homelessness, those confronting domestic violence and those in need of economic support not only assists individual families but provides overall stability in the community. We have seen for example how widespread a neighborhood's devastation can become when just one or two homes on a block go into foreclosure. The impact on the family becomes the impact on the block becomes the impact on the neighborhood and community – driving down housing prices and diminishing tax collections. As a businessman I am also focus on basic operational efficiencies and I worry that our court system – the very underpinnings of our judicial systems – is confronted with such staggering numbers of unrepresented litigants. No system can function in the face of those consistently rising numbers of people in need.

Finally, I am also aware of the bottom line and the return on my investments. I have invested in civil legal services for many, many years – I believe in the mission of access to justice and I believe in ensuring that those in my own community are

given every opportunity to have their issues heard and their needs met. Now, as I see the economic data analyzed by the Permanent Commission on Access to Justice and done by leading economists that find a societal return of \$10 for every \$1 invested in legal services I am even more pleased that I've been able to give back in the way I have. Looking just at the impact of the civil legal services funding that has supported programs in the Capital Region; we see a huge impact—with nearly \$40 million in savings in 2015 alone.ⁱ

I urge the Permanent Commission and the Judiciary to continue its hard work in both providing stable support for civil legal services and identify strategic and creative ways to assist the greatest number of people in need. Thank you for the opportunity to testify before you today.

ⁱ Extrapolated from the 2015 Interest on Lawyer Account Final Report, including economic impacts from Legal Aid of Northeastern New York, The CDWBA Legal Project, Empire Justice Center, the Rural Law Center, and Albany County Bar Association.

Jorge (“Billy”) Torres
*(client of Legal Assistance
of Western New York, Inc.)*

Jorge “Billy” Torres Background Information

I am a husband, father and grandfather. I reside in Jamestown, New York with my wife and two of our children. I am employed as a Group Facilitator at Gustavus Adolphus Family Services in Jamestown, New York. At GA Family Services I work with at-risk youths that have been referred to us by the Department of Health and Human Services or Probation. We provide these youths with preventative services to help ensure that they stay in school and become productive members of society once they reach adulthood.

Prior to working with GA Family Services I spent 8 years as the Director of the East Side YMCA in Jamestown. At the East Side YMCA, we built up the premiere program educating at-risk youth in Chautauqua County. We provided these young people with lessons in English, and facilitated access to tutors and other programs to help these youth develop into productive young adults who make a positive contribution to society and the economy. Unfortunately, such a position necessitated a great deal of time away from my family and I was forced to leave my position as director to help out more at home when my wife became ill. GA Family Services allows me to continue to do the work I began at the East Side YMCA, but with more flexibility in my schedule to tend to my wife’s and family’s needs.

Testimony for Chief Judge's 2016 Statewide Civil Legal Services Hearing

Good Afternoon, Your Honor. My name is Jorge Torres. I am employed as a Group Facilitator at Gustavus Adolphus Family Services in Jamestown, New York. As a Group Facilitator, I work with at-risk youth who have been referred to GA Family Services by the Department of Health and Human Services or Probation for preventative services. The goal of these preventative services is to provide at-risk young people with the resources they need to become productive members of society once they reach adulthood. At GA Family Services, I am able to continue the work I began as director of the East Side YMCA, but with a bit more flexibility in my schedule to attend to my family's needs. At the East Side YMCA, we built up the premiere program educating at-risk youth in Chautauqua County. We provided these young people with lessons in English, and facilitated access to tutors and other programs to help these youth develop into productive young adults who make a positive contribution to society and the economy. Unfortunately, such a position necessitated a great deal of time away from my family and I was forced to leave my position as director to help out more at home when my wife became ill. She was later diagnosed with Hodgkins Lymphoma.

After leaving the YMCA, I worked as a contractor when time permitted, but with my wife's illness I had to take on a lot more responsibility at home. At the same time, my family faced increased monthly expenses for travel to and from medical appointments for my wife. The result was that we could no longer meet our monthly financial obligations, and in the summer of 2010, we began to fall behind on our mortgage payments. This led to my home loan lender bringing a foreclosure action against me seeking title to my home, where my wife and I reside with two of our children. I initially sought assistance in resolving the matter with assistance from a group based in California. After paying about \$2700 to this group, I discovered that I was

being scammed. They had done nothing to resolve my foreclosure problem and had simply pocketed the funds I had provided them. This left me in even more dire financial straits. I had found stable and flexible employment with GA Family Services and could now afford my monthly mortgage payments, but I had no assets with which to deal with the mortgage arrears, interest and fees that had accrued since my wife's illness.

I was advised by the Supreme Court that Legal Assistance of Western New York, Inc.® might be able to provide me legal assistance that would allow me to retain ownership of my home. I contacted LawNY® for assistance and they agreed to provide me with representation in the foreclosure action at no cost to me. This was crucial as I did not have the funds to retain a private attorney to represent me.

LawNY® represented me in home mortgage foreclosure settlement conferences with the aim of preserving ownership of my home. They appeared at five separate conferences on my behalf and also assisted me in applying for a modification to the terms of my loan agreement that would allow me to bring the loan current. In order to be reviewed for a loan modification, my lender wanted to get a complete picture of my financial situation. This required repeated submissions of documentation of my income and assets, paystubs, bank statements, tax returns, and other documents. This process was arduous and took months to complete. Despite the best efforts of myself and LawNY®, my home loan lender decided that I did not qualify for a home loan modification, and we were forced to look into other options to preserve ownership of my home.

LawNY® advised me of a program available through the New York State Office of the Attorney General known as the Mortgage Assistance Program, or MAP. The MAP Program was able to provide interest-free 30-year loans of up to \$40,000 to eligible homeowners who had

exhausted all other options to avoid foreclosure. LawNY® believed that, if approved for assistance through MAP, I could use the MAP funds in conjunction with a Chapter 13 bankruptcy to bring my mortgage current.

With the assistance of LawNY®, I applied to MAP for assistance. This was no small task. The process of applying for a MAP loan was comparable to the process of applying for a loan modification through my home loan lender. However, with the assistance of LawNY®, I was able to submit a complete application for review.

At the same time, LawNY®, filed a Chapter 13 bankruptcy on my behalf. This provided me with the protections of the automatic bankruptcy stay of the foreclosure proceeding, allowing us time to submit a complete application to MAP and for MAP to complete a review of my request for assistance. The review of my application took a few months to complete, but I was ultimately approved for MAP assistance. Issues then arose in my Chapter 13 bankruptcy that made the Chapter 13 plan no longer feasible. LawNY® then stepped in and negotiated with my lender on my behalf and convinced them to accept the MAP assistance alone in full satisfaction of my mortgage.

As a result of the advocacy efforts of LawNY®, my financial situation is now stable and my status as a homeowner is secure. And to add to the good news, my wife's cancer is now in remission.

The adversarial legal system that we have adopted in this country only works to advance justice if all parties to a legal action have access to skilled legal professionals who will zealously defend and pursue their clients' interests. Without a robust and well-funded legal services program, access to justice for those of lower income will be severely curtailed. The services that LawNY® provides are absolutely vital for people like me who find themselves in a situation

where they need legal representation but cannot afford to retain a private attorney. The services that LawNY® provided me has allowed me to continue my work with at-risk youth, rather than fighting a legal battle alone against an opponent who has virtually unlimited funds for their own legal representation.

My particular case required the investment of over 100 hours of attorney time. There is no way that I could have been able to afford to pay a private attorney for the time required to achieve the positive result ultimately reached in my case. If not for the assistance of a strong legal services program, like LawNY®, it is likely that I would have lost my home, destabilizing myself and my family, and also jeopardizing my ability to continue to do the work I do within my community. Therefore, I urge the Office of Court Administration and the New York State Legislature to continue their support of legal services organizations, such as LawNY®, so that they may continue to help others in need. Thank you, Your Honor.

Glenn Rice
*(client of Legal Services
of the Hudson Valley)*

Testimony by

Glenn Rice

**The Chief Judge's Hearing on Civil Legal Services
Presented Before**

Hon. Janet DiFiore, Chief Judge of the State of New York

**Hon. Peter Tom
Acting Presiding Justice of the First Department**

**Hon. Randall T. Eng,
Presiding Justice of the Second Department**

**Hon. Karen K. Peters
Presiding Justice of the Third Department**

**Hon. Gerald J. Whalen
Presiding Justice of the Fourth Department**

**Hon. Lawrence K. Marks
Chief Administrative Judge of New York State**

**Claire Gutekunst
President of the New York State Bar Association**

September 27, 2016

Court of Appeals, 20 Eagle Street

Albany, New York

Glenn Rice
Testimony for Chief Judge's Statewide Civil Legal Services Hearing

Good morning. My name is Glenn Rice, and I am a veteran of the United States Armed Forces.

I want to thank you for the opportunity to speak to you today about how important access to high-quality, free civil legal services is for low-income veterans to ensure that we are able to protect the basic necessities of life.

My first contact with Legal Services of the Hudson Valley was in March 2015. I had applied for an increase in my VA service-connected disability benefits and had been denied. My disability had worsened and I knew I needed an attorney at my side to help me fight for benefits I believed I deserved.

My disability is PTSD or post-traumatic stress disorder. My disability wasn't forged from some noble or heroic deed on the battlefield, but rather a cowardly act by an officer in command. That onetime encounter on what would have been a beautiful summer night in Fayetteville, North Carolina, would leave a lifelong nightmare embedded in my brain that at times has left me on the verge of madness. The next thirty plus years were filled with detoxes, drug rehabilitations, homelessness, countless encounters with police and the legal system, suicide attempts, and lost opportunities.

And then I placed a call to Legal Services of the Hudson Valley and started a journey into recovery. I did an intake over the phone and scheduled a meeting at the Newburgh Office with my attorney, Shara Abraham. I was welcomed with respect and treated with dignity. From our very first meeting, Ms. Abraham showed true concern for my story and my problems. Shara worked diligently on my case with a level of professionalism I have seldom seen. She

immediately noticed my apprehension and distrust in the legal system and set my fears at ease. She answered all my questions and I was relieved and grateful when she told me she would represent me in my VA appeal.

The results of Shara's efforts were amazing. She was able to get me 100% permanent and total disability from the VA. This rating comes with educational benefits that my daughter will be able to use next year when she graduates high school and goes off to college. And the validation I feel from being awarded these benefits means so much to me.

After we received the great news on my VA claim, Ms. Abraham set to work on my Social Security Disability case. I also had been denied Social Security Disability benefits and was waiting for my hearing. When we were in front of the administrative law judge, Shara could see how nervous I was. Again, she was able to assure me that I was doing fine and everything was going to be okay. I was so impressed when the Judge said on the record that the brief Shara submitted on my behalf was one of the best he had ever seen and, even before we finished the hearing, the judge told us he would be awarding me full Social Security Disability benefits. I was told that they never do that. By securing Social Security Disability benefits for me, Shara was able to secure for me a financial stability I have never known. I will appreciate these benefits for the rest of my life.

I can only speak about my experience with Legal Services of the Hudson Valley. But I do know veterans returning home combat zones and overseas deployments have a difficult time admitting they may have a problem and the Veterans Administration is overwhelmed with cases. It can take years before your case is even looked at and it is hard to navigate the VA and the Social Security Administration on your own. Having an option like Legal Services of the Hudson

Valley gives veterans another avenue to travel and can make the difference between a denial and a favorable, life-changing outcome.

That phone call I made to Legal Services of the Hudson Valley changed the course of my life in a manner I could not have anticipated and meeting Shara Abraham has been my honor. That's why when she asked me to speak here today I did not hesitate to say "Yes." Thank you for allowing me to speak on behalf of my experience regarding my attorney, Shara Abraham, and the important work of Legal Services of the Hudson Valley.

Donna Spinner
*(client of Legal Aid Society
of Northeastern New York)*

Testimony of Donna Spinner

Good Afternoon. My name is Donna Spinner and I live in Plattsburgh, New York.

I am here today to tell you how the Legal Aid Society of Northeastern New York helped me in my divorce case. In order to understand the position I was in when I sought help from Legal Aid, please allow me to tell you about my history.

I was married to my husband in 1978 and we had two children. During the marriage, my husband was employed as a licensed petroleum product site developer. In other words, he installed gas tanks and pumps at gas stations. My husband's occupation provided a very good income for the family, and we later operated our own business in this field.

For most of our marriage, I stayed at home taking care of our children. As the children grew older, I made attempts to obtain employment outside of the home. My husband made it clear he did not want me to work outside the home. I wanted to obtain a degree in accounting, but this was against the wishes of my husband who told me to "get my priorities" right. The right priorities were staying home and doing as I was told. While my husband was not overtly physically abusive, he was mentally and emotionally abusive and financially controlling. I could never do anything right in my husband's eyes and everything that went wrong was my fault. The children and I often couldn't wait for him to go out of town for work so that our home would not be filled with screaming and yelling.

When my husband began his own business, I performed the duties of bookkeeper. I had learned basic bookkeeping and received Quickbooks training. The business grew and we incorporated the business and added business partners. Soon, my bookkeeping duties became a nightmare. My husband was evasive and was not keeping me informed of income or the business expenses. It would be a lengthy story to recap the problems which led to end of our business, so I will just state that by 2008, we had to file for bankruptcy.

In the middle of the bankruptcy, my husband left me. He literally disappeared. I did not know his address or where he was employed. He had taken payments from a customer and used them without the permission of the bankruptcy trustee. A warrant was issued for his arrest by the bankruptcy court for his wrongful distribution of funds. Yet he would contact me and try to make me responsible for dealing with the bankruptcy court. He threatened me that I had better "fix" the problems with the Court, which were completely outside of my control and the result of his actions.

I retained an attorney to file for divorce in the hopes of obtaining spousal support. This quickly led nowhere as my attorney could not find my husband and he had quit his last place of employment. At this time, I was approximately 50 years of age, I had no employment, no income and the home I had lived in with my children was being foreclosed upon. I also realized at this time that by working unpaid in for my husband, I had no employment history and no earnings for Social Security purposes. Very quickly, I lost everything. I spent the next several years trying to re-build my life.

I moved to Plattsburgh to live with my mother. I tried to find employment but was not able to find full time permanent employment. I found myself with no other option but to apply for public assistance. I also had health problems and applied for Medicaid coverage.

I kept trying to locate my husband throughout this time. I knew he was gainfully employed and based on past experience knew his gross annual income was approximately \$90,000.00. His license allowed him to work throughout the United States and in many other places outside the country such as in the Carribean. Periodically, I would know he was back in New York through one of my children, but I was never able to find out where he lived or who he worked for. My husband alienated our children from me, which by default also included my grandchildren. One day my son even stated to me "like Dad said, you are nothing but trailer trash". I had always been so close to my sons, so this time of my life was very painful for me to deal with.

In 2014, I believe my husband found out I was on public assistance, and it was at this time he chose to file for divorce believing I would not be able to afford an attorney.

I found out about Legal Aid through a friend and went there when I was served with the Summons for Divorce. Soon after, I received a call from Gerry Schafer who met with me and listened to me. I finally felt I had help and not like I was drowning in a sea of problems.

Gerry explained the issues involved in my divorce and advised me that I had a legal basis to request maintenance. Despite my husband having filed for the divorce, once I had a lawyer and requested maintenance, he did not appear to want the divorce to proceed.

At the Preliminary Conference, my husband did not appear, nor did he provide the Court with his financial disclosure. It became clear that my husband was not going to cooperate in providing his financial information. Gerry requested that I find old tax returns to show my husband's earning ability and also demanded information from my husband. At Gerry's request, I began looking through all of the old records I had - copies of my husband's various licenses and certifications he had acquired to perform his job, copies of his prior resumes and old tax returns.

On the date of the trial, we headed to Court with our evidence. My husband finally showed and the Judge requested to meet with the attorneys. Gerry informed the judge and my husband's attorney of the evidence we had regarding my husband's earning ability. Based upon this preparation, we were able to reach an agreement on a monthly sum of maintenance that my husband would be obligated to pay me, and he had to keep me informed of his address and employment information.

After several years of turmoil, by the end of 2015 I was divorced. To date, my husband has obeyed the Judgment of Divorce. I wake up in the morning free of the anxiety, stress and depression that I endured for so many years of my marriage. I am no longer controlled emotionally or financially, I do not live in fear of my husband's behavior and my children are no longer used as weapons against me.

I no longer have to reside with family members, nor do I receive public assistance anymore. My health has improved and my blood pressure is no longer out of control. I am now in the position mentally and financially to go back to college intend on enrolling in the next semester.

Before going to Legal Aid, I had no idea what my rights were. Legal Aid provided me with that information and assisted me in obtaining what I was legally entitled to. With their knowledge and assistance, my spouse was no longer able to manipulate me and control my life.

Neil Steinkamp

*(Managing Director, Dispute Advisory &
Forensic Services Group, Stout Risius Ross, Inc.)*

**Executive Summary of Testimony by Neil Steinkamp to The
New York State Permanent Commission on Access to Justice
Presented at the Court of Appeals Hearing
September 27, 2016**

Stout Risius Ross (“SRR”) was asked by the New York State Permanent Commission on Access to Justice (the “Commission”) to update the estimates of the value of federal funds brought into New York State as well as the economic impact from the provision of civil legal services using data for cases closed through 2015. Using similar methodology described in testimony in September 2013 and 2014, but relying on more recent data through 2015, the updated total economic impact from civil legal services in New York, for cases closed in 2015, is \$2.7 billion (an increase in total value of benefits of \$300 million from amounts estimated in this report last year). This reflects present and future dollar benefits to clients and their families that were from civil legal services in 2015. In addition, this amount includes the economic impact as these amounts are used by clients and their families throughout their communities, estimated to be nearly \$1.3 billion.

All analyses performed at the request of the Commission were done pro bono.

I. Qualifications

1. I am a Managing Director in the Dispute Advisory & Forensic Services group at Stout Risius Ross, a global financial advisory firm. I hold a bachelor's degree in finance from Michigan State University and am a Certified Valuation Analyst (CVA) and Master Analyst in Financial Forensics (MAFF). I am experienced in providing business and financial advice to trial lawyers and in-house counsel regarding damages and other economic analyses. I have testified in domestic and international arbitration and jury and bench trials, and have assisted parties in settlement negotiations, mediations and facilitation. Further, I lead SRR's pro bono practice overseeing all of our efforts to apply the talents, experience and expertise of our finance professional for the benefit of low income individuals and not-for-profit organizations.

II. Assignment and Summary of Findings

2. I was asked by the Commission to estimate the economic benefits resulting from the provision of civil legal services to help low-income New Yorkers access benefits. I, with the assistance of others at SRR, performed these analyses for the Commission pro bono. Specifically, I was asked to:
 - i. Evaluate the current year's financial impact of increased access to several federal programs on the direct recipients of those benefits and their families;
 - ii. Estimate the long-term financial impact on the direct recipients and their families of increased access to certain federal programs for which they can expect long-term, ongoing eligibility and benefits;
 - iii. Evaluate the economic impact of the flow of federal benefits into the New York State economy as a whole;
 - iv. Estimate the current year's and long-term impact of Child and Spousal Support payments obtained due to Extended Representation civil legal services on the direct recipients of those benefits and their families; and

- v. Estimate the financial impact on the direct recipients of Advice and Brief services.
3. Representatives from the Interest on Lawyers Account Fund ("IOLA") provided me with summaries of the estimated dollar value of federal benefits as well as Child and Spousal Support received by low-income New Yorkers as a result of the provision of civil legal services by grantee organizations from 2006 until 2015, along with estimates of the wage impact of legal work authorization for immigrants and taxpayer savings resulting from the delay or avoidance of eviction or foreclosure. SRR relied on the numbers supplied which in some cases included assumptions made on economic variables. SRR inquired into the source and substance of these figures but were provided with source documentation to independently verify.¹ Having reviewed this information, I find:
 - i. The long-term financial impact in 2015 of increased access to federal benefits (SSI/SSD, Medicaid, and Other Federal Benefits) on the direct recipients of those benefits and their families, inclusive of amounts received from civil legal aid activities in prior years, is conservatively estimated to be \$2.70 billion.
 - Focusing only on cases closed in 2015, and excluding amounts received in 2015 from prior years' work as well as amounts that will be received in future years for work completed in prior years, \$953.9 million in value was created in 2015 alone related to these benefits.
 - ii. Multiplier effects for the in-flow of federal resources to New York State resulted in estimated economic benefits to the State of \$1.3 billion and the estimated creation of approximately 9,020 jobs.

¹ SRR received information and analysis from Christopher O'Malley at IOLA and Ken Smith, Ph.D. President of The Resource for Great Programs, Inc.

- iii. The additional economic benefit in 2015 from Child and Spousal Support payments on the direct recipients of those benefits and their families is estimated to be \$26.2 million.
 - iv. The additional economic benefit in 2015 of Earned Income Tax Credit (EITC) refunds into 2015 is estimated at \$27.8 million.
 - v. The value of the wage impact of work authorization assistance for immigrants is estimated to be \$52.6 million.
 - vi. The value of the wage impacts of citizenship for immigrants is estimated to be \$49.5 million.
 - vii. Taxpayers have saved an estimated \$345.2 million due to decreased usage of emergency shelters as a result of legal assistance delaying or avoiding eviction or foreclosure.
 - viii. The long-term financial impact of increased access from the provision of civil legal services in recent years ranges as high as \$4.5 billion, depending upon the expected duration of continued participation in key federal programs and other support payments. Excluding the impact of services provided prior to 2015, the long-term financial impact of services provided in 2015 is conservatively estimated to be \$2.7 billion, for the value impacts described herein.
4. In this report, I summarize the various benefits evaluated, the data received from IOLA regarding increased access to these benefits, and my methodology and conclusions for evaluating the overall financial and economic impact resulting from increased access to benefits.

III. Summary of Benefits Evaluated

5. Provision of civil legal assistance enables low-income New Yorkers to obtain access to benefits under several key federal programs that are targeted at the neediest in our population. The benefits that I analyzed include:
 - i. Supplemental Security Income: SSI is a federal program that makes monthly payments to people who have low-income and few resources and

are age 65 or older, blind or disabled. Eligibility for SSI depends upon income and certain assets.

- ii. Social Security Disability Income: SSD is a federal program that pays monthly benefits to people who cannot work because they have a medical condition that is expected to last at least one year or result in death. Eligibility is tested with specific rules regarding recent work and duration of work, as well as a determination of disability by doctors and disability specialists.
 - iii. Medicaid funded by the federal government: Some portion of Medicaid benefits is funded by the State, but some is reimbursed by the federal government.
 - iv. Earned Income Tax Credits: EITC is a benefit for certain people who work and have low to moderate wages that reduces the amount of federal tax owed and may also provide a refund.
 - v. Various other federal benefits: In addition to these major federal benefit programs, low-income New Yorkers may be eligible for other programs such as Veteran's benefits and Medicare.
6. We also received supporting data on the number of clients who received legal assistance and successfully gained work authorization, as well as cases in which legal assistance delayed or avoided eviction or foreclosure, and the estimated costs to the taxpayer of providing emergency shelter for homeless families.
7. I also analyzed Child Support and Spousal Support payments, which are as follows:
- i. Child Support: A parent who has custody of a child and who lives separate from the other child's parent may file a petition in Family Court asking the court to enter an order for the "non-custodial parent" to pay Child Support.
 - ii. Spousal Support: In New York State, a married person may file a petition in Family Court seeking Spousal Support from a current husband or wife. While a divorced person may not seek a new order of support from an ex-spouse in

Family Court, a petition may be filed seeking to modify an already existing order for an ex-spouse.

8. It may be difficult for low-income New Yorkers to access these programs and benefits for a number of reasons, including: 1) they may not be aware of the programs or of their eligibility; 2) determining eligibility can require knowledge of complex rules and regulations; and 3) proof of eligibility may require documents and/or information that are difficult for low-income persons to access or obtain. As a result, provision of civil legal assistance may be the only avenue available to low-income New Yorkers to ensure that they receive the federal benefits and other payments to which they are entitled. As shown in my analysis, legal assistance results in substantial cost savings for State and local governments to whom these needy families would likely turn to instead.
9. IOLA provided me with data reported by grantee organizations detailing the dollar value of benefits from cases completed in 2015 for SSI, SSD, state unemployment benefits, federal reimbursement for Medicaid benefits, earned income tax credits and various other federal benefits. Where appropriate, the value of these benefits was reported separately for back awards and on-going monthly benefits. IOLA also provided information for on-going monthly benefits for SSI/SSD to include cases closed back to 2005 and for "other" federal benefits to include cases closed back to 2012. We also received supporting data on the number of clients who received legal assistance and successfully gained work authorization and their estimated wages, as well as cases in which legal assistance delayed or avoided eviction or foreclosure, and the estimated avoided costs to the taxpayer of providing emergency shelter for homeless families. IOLA also provided me with data on Child Support and Spousal Support payments, which I used together with the benefits data to estimate the value of benefits obtained and support payments

received by New Yorkers as a result of the provision of civil legal services. Furthermore, I used information provided to me by IOLA regarding the success of Advice and Brief Services in Pennsylvania's legal assistance programs in order to approximate the additional impact of such services in New York.

Estimated Value of Benefits and Payments Received as a Result of Civil Legal Services

A. Child and Spousal Support

10. Child and spousal support awards are segregated into amounts that consist of back awards and monthly payment awards. The value of the award for 2015 is based upon the back awarded amount plus the net present value of future monthly payments expected to be received.
11. I have estimated that the monthly payments will continue, on average, for nine years. This is estimated on the premise that the average child of divorce is nine years old at the time of the divorce² which leaves nine more years for monthly payments until the child is 18. This also considers that spousal support payments are applicable over at least a similar duration.
12. In 2015, the IOLA Grantee Report presented back awards at \$1,378,233 and monthly payment awards at \$355,856. The net present value of awarded monthly payments, based on a payment stream of nine years, is approximately \$38.4 million. Thus the total value of the child and spousal support award for 2015 is approximately \$39.8 million.
13. However, when considering the economic impact of this award to the State of New York, it is important to consider the amount of these awards that are received by

² Liu, Shirley H., "The Effect Parental Divorce and Its Timing on Child Educational Attainment: A Dynamic Approach," page 17; available at http://moya.bus.miami.edu/~sliu/Research_files/divorcetiming.pdf.

the clients. The U.S. Department of Health and Human Services, Administration for Children & Families, Office of Child Support Enforcement reports that roughly 66% of child support payments are actually received. Thus, the expected collection of back awards are estimated at approximately \$900,000 and monthly payments at approximately \$25.3 million resulting in an estimated value of child and/or spousal support of approximately \$26.2 million.

B. Supplemental Security Income and Social Security Disability Income

14. Awards for Social Security Supplemental Income (“SSI”) and Disability Payments (“SSD”) are segregated by extended representation cases and limited representation cases. Under both types of representation, these payments are awarded for back awards and monthly payments awards. The value of SSI/SSD awards are computed similarly to that of child/spousal support awards where the back awarded amount is added to the net present value of the future monthly payments.
15. The Social Security Administration has released studies that estimate the average duration of SSI payments at 9.7 years while SSD payments average 10.5 years. For purposes of my analysis, I have utilized a payment expectation of ten years. Thus, the SSI/SSD amounts awarded in 2015 are expected to continue until 2024.

Extended Representation

16. In 2015, \$25.30 million was awarded as back-pay and \$1.51 million in monthly payments for Extended Representation Cases. The net present value of the awarded monthly payments, utilizing a ten year payment period, is estimated at \$180.9 million. Thus the total value of the SSI/SSD award for Extended Representation cases in 2015 is estimated at \$206.2 million. This represents the estimated net present value of expected future payment streams exclusively for

extended representation performed on cases closed in 2015. However, it is important to recognize that in 2015 amounts were received by clients as the result of prior civil legal services and that amounts will be received in future periods related to prior civil legal services.

17. Based on the information received from IOLA, the value of payments received by clients in 2015 as a result of civil legal services (extended representation) performed in prior periods (ten years) is estimated to be approximately \$267.5 million. For civil legal services provided over the last five years the amount is estimated to be \$136.1 million.
18. Further, both the cases closed in prior periods and the cases closed in 2015 will continue to provide amounts for clients in future periods. Based on a 10-year payment stream expectation, and incorporate a run-off whereby amounts end 10 years after case completion, it is estimated that the present value of the future payment stream (excluding 2015 which is included in the amounts above) for these cases is approximately \$1.0 billion. Based on a five year payment stream expectation this amount would be approximately \$195.8 million.
19. In combination, the total value of amounts received for SSI/SSD benefits in 2015 as a result of Extended Representation and the future benefits expected to be received (over a ten year period) is approximately \$1.3 billion.
20. Focusing only on cases closed in 2015, and excluding amounts received in 2015 from prior years' work as well as amounts that will be received in future years for work completed in prior years, \$206.2 million in value was created in 2015 alone related to these extended representation benefits.

Limited Representation

21. A similar analysis was performed with respect to Limited Representation matters. In 2015, \$22.80 million was awarded as back-pay and \$1.36 million in monthly payments for Limited Representation Cases. The net present value of the awarded monthly payments, utilizing a ten year payment period, is estimated at \$163.0 million. Thus the total value of the SSI/SSD award for Limited Representation cases in 2015 is estimated at \$185.8 million. This represents the estimated net present value of expected future payment streams exclusively for limited representation performed on cases closed in 2015. However, it is important to recognize that in 2015 amounts were received by clients as the result of prior civil legal services and that amounts will be received in future periods related to prior civil legal services.
22. Based on the information received from IOLA, the value of payments received by clients in 2015 as a result of civil legal services (limited representation) performed in prior periods (ten years) is estimated to be approximately \$164.3 million. For civil legal services provided over the last five years the amounts is estimated to be \$94.7 million.
23. Further, both the cases closed in prior periods and the cases closed in 2015 will continue to provide amounts for clients in future periods. Based on a 10-year payment stream expectation, and incorporate a run-off whereby amounts end 10 years after case completion, it is estimated that the present value of the future payment stream (excluding 2015 which is included in the amounts above) for these cases is approximately \$656.5 million. Based on a five year payment stream expectation this amount would be approximately \$148.1 million.

24. In combination, the total value of amounts received for SSI/SSD benefits in 2015 as a result of Limited Representation and the future benefits expected to be received (over a ten year period) is approximately \$820.8 million.
25. Focusing only on cases closed in 2015, and excluding amounts received in 2015 from prior years' work as well as amounts that will be received in future years for work completed in prior years, \$185.8 million in value was created in 2015 alone related to these limited representation benefits.

C. Medicaid Funds into NY State

26. Advice and Brief services have also assisted New Yorkers in obtaining Medicaid benefits. In 2015, a total of 2,064 limited representation Medicaid cases were closed by the Advice and Brief Services program in New York. According to information provided by IOLA regarding survey results of Pennsylvania's legal assistance programs in 2011 (the "Pennsylvania Survey"), such cases had a 6.5% success rate. I incorporated a more conservative 6.0% success rate in my estimates. Based thereon, I estimate that in total, 124 cases out of all limited representation cases closed in New York were likely to obtain or maintain Medicaid benefits for clients. Additionally, IOLA reported 5,698 extended representation cases in which Medicaid benefits were obtained or preserved. As a result, I estimated the total number of limited and extended representation cases in which Medicaid benefits were obtained or preserved in 2015 to be 5,822.
27. Medicaid benefits may also be obtained through successful SSI cases. In 2015, a total of 4,102 limited representation SSI cases were closed by the Advice and Brief services in New York. Applying the estimated success rate of SSI cases (per the Pennsylvania Survey) of 41%, I estimated a total of 1,682 SSI cases in which benefits were successfully obtained, preserved, or increased. Additionally, IOLA

reported 1,723 extended representation SSI cases in which benefits were successfully obtained, preserved, or increased. As a result, I estimated the total number of limited and extended representation SSI cases in which benefits were obtained, preserved, or increased in 2015 to be 3,405.

28. Based on the above, I estimated that a total of 9,227 successful Medicaid and SSI cases were closed by the Advice and Brief services in New York in 2015. Per the New York State Department of Health, the average annual Medicaid benefits per case is \$9,583.³ Assuming an average duration of Medicaid benefits of ten years per case, I estimated the average total benefit per case to be \$95,834, or \$884.2 million in aggregate for all 9,227 successful Medicaid and SSI cases. Assuming a 55% federal reimbursement percentage (per Medicaid.gov), I estimate \$486.3 million in Medicaid benefits were generated from civil legal programs in 2015.

D. Other Federal Benefits into NY State

29. Other federal funds have also been awarded as back awards and monthly payment awards. As such, the value of the award for 2015 is based upon the back awarded amount plus the net present value of future monthly payments expected to be received.
30. In 2015, the other federal funds back awards were \$20.0 million and the monthly payment awards were \$18.5 million. I have conservatively applied the premise that monthly payment awards are expected to continue for three years resulting in

³ It is noted that the average benefit per case has increased by approximately \$1,500. It is unknown why there was such an increase, but it may be related to a lack of data in the last two quarters of 2014 or an increase in expenditures and beneficiaries in 2014, possibly due to The Patient Protection and Affordable Care Act.

a net present value of 55.6 million. Thus, the total value of the 2015 award is approximately \$75.6 million.

E. Earned Income Tax Credit Refunds into NY State

31. IOLA has provided me with estimates of the amount of Earned Income Tax Credit (“EITC”) refunds received by low-income New Yorkers who received civil legal services. The total of value of EITC refunds provided to me by IOLA is approximately \$27.8 million. I understand that this amount represents the total of refunds reported by IOLA grantees in their annual outcomes report provided to the IOLA Fund.

F. Wage Impacts of Immigrant Work Authorization

32. We used 6,513 as the number of program clients who achieved work authorization. This is comprised of 3,058 program clients receiving a “Green Card” or other long-term legal status, 1,312 clients receiving VAWA⁴ based relief and 2,143 clients receiving DACA/DAPA⁵ status as reported by The Resource of Great Programs, Inc. (“TRGP”).
33. To estimate the wage impact on working immigrant women, we assumed that 51% of clients were female⁶ and based on information TRPG representatives received from legal advocates in other immigration legal services programs, we have assumed that all female clients were employed. Afterwards, we assumed a

⁴ Violence Against Woman Act (“VAWA”)

⁵ Deferred Action for Childhood Arrivals (“DACA”)/Deferred Action for Parents of Americas (“DAPA”)

⁶ Based on data found in Furtuny, Capps and Passel, “The Characteristics of Unauthorized Immigrants in California, Los Angeles County, and the United States; The Urban Institute, 2007; Table 9

differential in average annual wages between unauthorized and authorized female immigrant workers⁷. We calculated this differential to be \$1,278 for women.

34. Multiplying the assumed wage differential by the number of employed women who received authorization results in the combined estimated annual wage impact for women of approximately \$4.24 million.
 - a. Adjustment of Legal Status (10 year duration) – 1,560 women receiving authorization results in the estimated annual wage impact of approximately \$1.99 million.
 - b. VAMA benefits (4 year duration) – 669 women receiving benefits results in the estimated annual wage impact of approximately \$0.85 million.
 - c. DACA/DAPA status (2 year duration) – 1,093 women receiving status results in the estimated annual wage impact of approximately \$1.40 million.
35. To estimate the wage impact on working immigrant men, we assumed that the remaining clients (49%) were male and based on information The Resource of Great Programs, Inc. representatives received from legal advocates in other immigration legal services programs, we have assumed that 94% of male clients were employed. Afterwards, we assumed a differential in average annual wages

⁷ Source: Pastor, Scoggins, Tran and Ortiz, "The Economic Benefits of Immigrant Authorization in California", 2012. That study found an average wage differential between unauthorized and authorized immigrant workers to be 9.5 percent controlling for human capital and other characteristics. To estimate the impact for men we applied the differential to the average wage for unauthorized Latino immigrants working in California's "Building Maintenance and Grounds keeping" industry. To estimate the wage impact for women we applied the differential to the average wage for unauthorized Latino immigrants working in California's "Personal Care and Service" industry. We assumed the workers were employed 35 hours per week, 50 weeks per year, or 1,750 hours per year. The figures are in 2009 dollars and were not adjusted for inflation. Additionally, we considered an assessment of legal service programs funded by the Marin Community Foundation from 2009 through 2012 prepared by Ken Smith, Ph.D, Kelly Thayer, MA, and Kathy Garwold, MBA, as well as the article "Legal Status and Wage Disparities for Mexican Immigrants" by Matthew Hall, Emily Greenman, and George Farkas.

between unauthorized and authorized male immigrant workers⁸. We calculated this differential to be \$1,435 for men.

36. Multiplying the assumed wage differential by the number of employed men who received authorization results in the estimated annual wage impact for men of approximately \$4.3 million.
 - a. Adjustment of Legal Status (10 year duration) – 1,408 men receiving authorization results in the estimated annual wage impact of approximately \$2.02 million.
 - b. VAWA benefits (4 year duration) – 604 men receiving benefits results in the estimated annual wage impact of approximately \$0.87 million.
 - c. DACA/DAPA status (2 year duration) – 987 men receiving status results in the estimated annual wage impact of approximately \$1.42 million.
37. Adding the estimated annual wage impact for men and women results in the total wage impact of receiving authorization through a U Visa, T Visa, and VAWA benefits.
38. The duration of the wage impact of authorization for adjustment of legal status was assumed to be 10 years. This is based on a median age of 41.5 years based on the assumption that the age of those employed would be at least 18 years and at most 65 years. Hence, we assume that the duration would last from this median age of 41.5 years until retirement at 65 years. However, it is our understanding that work authorizations expire at different intervals and must be renewed. While it is our understanding that renewals are rarely denied, we have conservatively estimated 10 years as an appropriate interval in which to measure these awards.

⁸ Ibid.

Durations for VAWA and DACA/DAPA authorizations were assumed to 4 years and 2 years, respectively, based on information provided to us by TRGP.

G. The Economic Multiplier Effect

39. Certain of the above-calculated benefits and savings result in added benefits associated with Federal funds being brought into the state, which result in additional ongoing economic benefits. Such items include the Social Security Supplemental Income and Disability (SSI/ SSD) Awards, Medicare and Medicaid benefits, and other federal benefits. These areas of economic benefits and savings were described in detail above. The annual benefit associated with each of these items was calculated. The sum of these benefits received in 2015 resulting from cases completed in recent years was estimated to be \$1.0 billion, while total benefits attributable solely to cases completed in 2015 were estimated to be \$953.9 million.
40. An economic multiplier, as sourced from the Regional Input-Output Modeling System (“RIMS II”) and provided by TGRP, was applied to this amount to estimate the economic value associated with these additional federal funds being brought into the state. The RIMS II is a regional economic model, is a tool used by investors, planners, and elected officials to objectively assess the potential economic impacts of various projects. This model produces multipliers that are used in economic impact studies to estimate the total impact of a project on a region.⁹ The idea behind the results of RIMS II is that an initial change in economic activity results in other rounds of spending—for example, building a new road will lead to increased production of asphalt and concrete. The increased production of

⁹ RIMS II An Essential Tool for Regional Developers and Planners: User Guide. www.bea.gov

asphalt and concrete will lead to more mining. Workers benefiting from these increases will spend more, perhaps by eating out at nicer restaurants or splurging more on entertainment.¹⁰

41. Thus this multiplier considers both the initial inputs into an economy and the associated output those inputs create by cycling through the economy. TGRP computed the multiplier for use in this instance by considering various weights of different consumer multipliers based on known patterns of consumer spending. Additionally, TGRP provided instruction that the output value of this multiplier should be added to the initial inputs for the purposes of measuring both the award received as well as the overall impact to the economy. SRR has not received or tested any source data or assumptions in receipt and use of the multiplier provided.
42. The economic multiplier received by TGRP is 1.35, which when multiplied by the total estimated Federal funds brought into the state in 2015 of \$953.9 million, yields \$1.29 billion.

H. Cost Savings for the Community – Avoidance of Emergency Shelter

43. The calculation of costs savings associated with the avoidance of emergency shelter costs was based on certain information and data provided to and compiled by the IOLA Fund. Primary factors considered in the calculation included (1) the number of housing cases for which brief representation was provided, (2) the number of housing cases for which extended representation was provided, (3) the

¹⁰ Ibid.

success rate in these matters for the avoidance of public shelter, and (4) the average annual cost of emergency shelter for one family.¹¹

Brief Representation Cases

44. For Brief Representation Cases, information was provided by general legal aid grantees to the IOLA Fund relating to the number of housing cases closed by Brief Representation in 2015. A “success rate” was estimated for these cases representing the percentage of these cases in which one or more of the following outcomes was achieved: avoided eviction, obtained additional time, or avoided foreclosure. This percentage was estimated to be 11 percent based on a scientific survey by The Resource in which 400 legal aid clients that had received advice or brief services in the latter half of 2011 in Pennsylvania were randomly sampled and interviewed by phone to determine the outcomes of their cases. Eleven percent of those with housing issues achieved outcomes of "avoided eviction," "obtained additional time to seek alternative housing," or "avoided foreclosure."
45. By multiplying the success rate by the number of Brief Representation Cases, the number of limited representation cases in which clients avoided eviction, obtained additional time, or avoided foreclosure was estimated.
46. A portion of these matters could be assumed to have resulted in the avoidance of emergency shelter costs by these families. To estimate the percentage of these matters for which emergency shelter was avoided, I have considered analysis results provided to the Chief Judge's Task Force to Expand Access to Civil Legal

¹¹ SRR has also prepared a separate study in regards to an eviction right to counsel as contemplated under New York City Council bill Intro 214-A. While there are some consistent themes between the calculations presented in the right to counsel study in this analysis and the cost benefit study of the right to counsel in New York City there are some notable differences. For example, the analysis conducted for this report is encompassing the state of New York, while our other study is looking at only New York City. Additionally, the study of New York City examines evictions that are avoided that otherwise would not have, while this analysis looks at all evictions avoided.

Services in New York on October 19, 2011 by consultant Geeta Singh, Ph.D. of Cornerstone Research (“Singh Analysis”). The estimated avoidance percentage based on this study was 41%. This percentage was applied to calculate the number of cases for which emergency shelter was avoided.

47. Finally, an estimate of the average cost per family per year of emergency shelter was estimated, based on the Singh Analysis. The estimated annual cost per family of \$27,023 was multiplied by the estimated number of cases for which emergency shelter was avoided to yield total estimated cost savings from Brief Representation cases of \$63.2 million.¹²

Extended Representation Cases

48. For Extended Representation Cases, the total number of extended representation cases in which clients avoided eviction, obtained additional time, or avoided foreclosure were determined based on the IOLA Grantee Report.
49. The number of cases was again multiplied by the 41% avoidance percentage represented in the Singh Analysis (described above). The resulting estimated number of cases for which need for emergency shelter was avoided was then multiplied by the estimated annual cost per family of \$27,023 per the Coalition Report to yield total estimated cost savings associated with Extended Representation Cases of \$282.0 million.¹³

¹² Data released by the Coalition for the Homeless in 2015 estimates that the average cost to shelter an entire family for the total duration of their stay in a shelter (14 months) is 43,222. If this figure is utilized instead of the \$27,023 which is as of 2011 the total cost savings increases to \$101.1 million.

¹³ Data released by the Coalition for the Homeless in 2015 estimates that the average cost to shelter an entire family for the total duration of their stay in a shelter (14 months) is 43,222. If this figure is utilized instead of the \$27,023 which is as of 2011 the total cost savings increases to \$451 million.

Total Cost Savings

50. Based on the consideration and analysis of Brief Representation and Extended Representation Cases described above, the total estimated cost savings from the avoidance of emergency shelter was estimated to be \$345.2 million.¹⁴ This amount corresponds to shelter avoidance for an estimated 32,038 individual people, based on an estimated family size of 2.51 as per the IOLA Grantee Annual Report data.

IV. Conclusion

51. The provision of civil legal services to disadvantaged populations provides substantial economic value to needy families, as well as state and local economies and governments. Assuming continued participation in key federal programs and other support payments in coming years, the economic value to the beneficiaries and their families of benefits secured as a result of legal representation in 2015 is estimated to be approximately \$1 billion. These benefits also provide a significant stimulus to the New York State economy overall and creates thousands of jobs. Considering the multiplier effect of the federal funds brought into New York State, the positive impact on the economy from the provision of civil legal services in 2015 is estimated to amount to \$1.29 billion and the creation of approximately 9,020 jobs. Finally, the use of civil legal services to delay or avoid foreclosure or eviction reduces homelessness and the associated costs to taxpayers. The 30,990 cases in 2015 in which legal assistance helped avoid eviction or foreclosure resulted in an estimated savings for

¹⁴ Data released by the Coalition for the Homeless in 2015 estimates that the average cost to shelter an entire family for the total duration of their stay in a shelter (14 months) is 43,222. If this figure is utilized instead of the \$27,023 which is as of 2011 the total cost savings increases to \$552.1 million.

taxpayers of \$345.2 million as a result of reduced need for emergency shelter. As a result, the total economic impact of civil legal services provided to disadvantaged populations in 2015 is estimated to total approximately \$2.7 billion.

52. There are many ways one could use the estimates provided herein to consider a return on program funding. For example, relative to program funding of \$348 million, and considering the full 10 years of economic benefit from certain legal services would explicitly imply a return of \$7.88 on each dollar of funding for civil legal services. However, the program funding amount of \$348 million includes funding to support legal assistance services in fields such as consumer rights, advanced care planning, and community legal education, the economic impacts of which were not quantified for purposes of this analysis. Accordingly, the amount of program funding resulting in the aforementioned economic impact of \$2.7 billion is less than \$348 million, meaning the return on each dollar of funding is greater than \$7.88.
53. When considering the funding to legal assistance that is not directly quantified the \$7.88 return is significantly understated. Each category of unquantified legal assistance is discussed below.
 - a. Consumer rights counseling includes legal assistance for credit card debt, medical debt, identify theft, and telemarketing and other scams. The savings to consumers from these services are additional dollars that consumers would have available to spend in the state economy that they otherwise would not.
 - b. Advance care planning involves helping individuals make their end of life decisions so that in situations where there is a loss in the ability to communicate patients are getting only the treatments that they want.

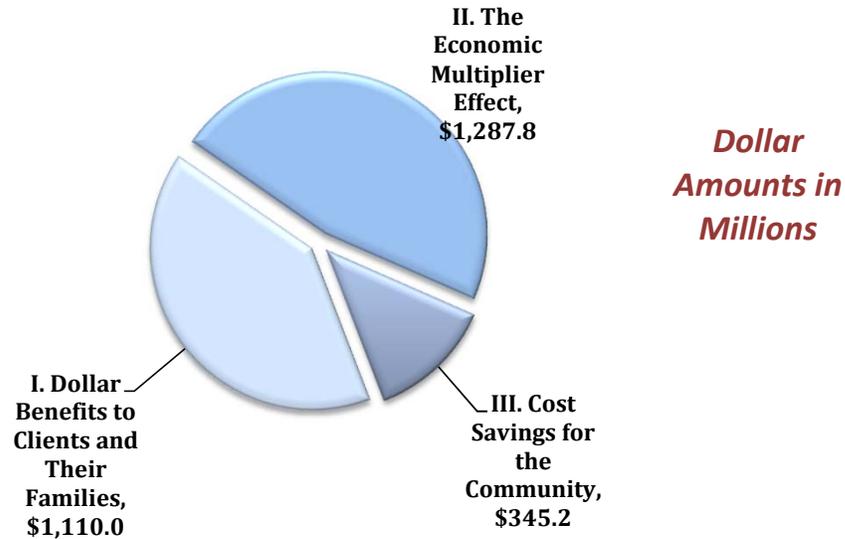
Advances in medicine can sometimes lengthen the end of life process, but not overcome the inevitable and many individuals have created do not resuscitate orders amongst other options in these situations. This type of planning allows individuals to make their own choices in these situations, but also saves the cost of unwanted medical procedures. As Medicare pays for many of these procedures and the baby boomers are increasingly aging there is enormous potential for cost savings.

- c. Community legal education involves creating a more informed population of their rights and where to access additional legal resources. Thus compounding the effects of other benefits discussed.
 - d. Brief Services encompass a wide range of legal services, in many times a simple phone call, that help people to locate the right resource. Enabling people to connect with the right resource in a timely manner can speed up issue resolution and avoid the need for more substantial services.
 - e. Pro Bono Legal Services for Low Income Entrepreneurs such as business incubators and other organizations are connecting low income individuals with pro bono legal assistance to assist with issues such as business formation, copyright, patent, negotiations, etc. These legal services are essential to allow start-ups to focus on growing their business which in turn spurs economic development on the local level.
54. The benefit amounts calculated in the benefit areas discussed in the report are related to the actual benefits received. The calculations do not, and cannot, include the benefits and monetary savings associated with circumstances where people would have otherwise lost homes, missed time at work, missed time in school, etc. Each of these could amount to significant economic benefits.

55. As such, we believe a more reasonable estimate of a return on program funding to be **a return of \$10.00 on each dollar of funding for civil legal services.**

Summary of Economic Benefits and Savings From Civil Legal Services in New York, 2015

\$2.7 Billion in Benefits and Savings



Summary of Economic Benefits and Savings	Total Impact, Millions	Exhibit # For Details
I. Dollar Benefits to Clients and Their Families	\$1,110.0	
<i>A. Child and Spousal Support</i>	\$26.2	1
<i>B. SSI/SSD Income</i>	\$392.0	2A, 2B
<i>C. Medicaid Funds Into NY State</i>	\$486.3	3
<i>D. Federal Benefits Other Than Above Into NY State</i>	\$75.6	4
<i>E. Earned Income Tax Credit (EITC) Refunds into NY State</i>	\$27.8	
<i>F. Wage Impacts of Immigrant Work Authorization</i>	\$52.6	5A
<i>G. Wage Impacts of Citizenship</i>	\$49.5	5B
II. The Economic Multiplier Effect	\$1,287.8	6
III. Cost Savings for the Community	\$345.2	
<i>Avoidance of Emergency Shelter</i>	\$345.2	7
Total Economic Impact (Sum of Lines I through III)	\$2.7 Billion	

** The "Impact per Dollar of Program Funding" figure shown above was computed by dividing the total economic impact of the organizations included in the study by the total funding they received in 2015 for the provision of civil legal services to low-income people. In many ways, the impact per dollar of funding is a very conservative calculation because the total funding figure used in the denominator includes funding to support legal assistance services in subject areas such as consumer rights, advanced care planning, community legal education, etc. that did not produce economic impacts of the types quantified by this report.

Exhibit 2: SSI/SSD Funds Brought into State in 2015	
A. Extended Representation Cases (see Exhibit A), in \$M	\$1,311.2
B. Limited Representation Cases (see Exhibit 2B), in \$M	\$820.8
Total Federal Funds Brought Into State, \$M:	\$2,132.0

For cases completed in 2015	
A. Extended Representation Cases (see Exhibit A), in \$M	\$206.2
B. Limited Representation Cases (see Exhibit 2B), in \$M	\$185.8
Total Federal Funds Brought Into State, \$M:	\$392.0

Exhibit 2A: SSI/SSD Funds Brought Into State in 2015													
Not Including Limited Representation Cases (Advice and Brief Services)													
A. EXTENDED REPRESENTATION CASES - Benefits Received by Clients in 2015 From Cases Completed in 2015 and Earlier													
Year >>	Benefits from Cases Completed in 2015		Benefits Received in 2015 From Past Years' Cases									Total Received in 2015	
	(1) Back Awards	(1) Monthly Benefits	(2) 2014 Cases	(3) 2013 Cases	(4) 2012 Cases	(5) 2011 Cases	(6) 2010 Cases	(7) 2009 Cases	(8) 2008 Cases	(9) 2007 Cases	(10) 2006 Cases	Five Years, (1) thru (5)	Ten Years, (1) thru (10)
1. SSI/SSD back awards (\$M)	\$25.30											\$25.30	\$25.30
2. SSI/SSD monthly benefits received by clients from cases completed in year (\$M)*		\$1.51	\$1.75	\$1.66	\$1.71	\$2.61	\$2.90	\$2.20	\$2.23	\$1.83	\$1.79		
3. Total monthly benefits received for year (12 times Line 2), \$M in year's dollars		\$18.09	\$21.03	\$19.91	\$20.53	\$31.28	\$34.78	\$26.37	\$26.72	\$22.02	\$21.46		
4. Factor for inflation-adjustment to 2015 dollars		1.000	1.001	1.017	1.032	1.054	1.087	1.105	1.101	1.143	1.176		
5. Monthly Benefits Received in 2015 (Line 3 x Line 4), \$M in 2015 dollars (for reference):		\$18.09	\$21.06	\$20.26	\$21.19	\$32.96	\$37.81	\$29.13	\$29.42	\$25.17	\$25.23		
6. Total SSI/SSD benefits received in 2015 (Line 1 + Line 5), unadjusted (i.e., assuming inflation factor =1.000), \$M:	\$25.30	\$18.09	\$21.03	\$19.91	\$20.53	\$31.28	\$34.78	\$26.37	\$26.72	\$22.02	\$21.46	\$136.14	\$267.49

B. EXTENDED REPRESENTATION CASES - 10 YEAR ASSUMPTION*												Net Present Value in 2015 (excl. 2015)
Net Present Value in 2015 of Benefits Received in Future From Cases Completed in 2015 and Earlier Assuming 10-Year Benefit Stream												
Year in Which Benefits Are Received >>	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024		
1. Back Awards	\$25.30											
2. Year's Total of Monthly Benefits from Cases Completed in:												
2015	\$18.09	\$18.09	\$18.09	\$18.09	\$18.09	\$18.09	\$18.09	\$18.09	\$18.09	\$18.09	\$162.81	
2014	\$21.03	\$21.03	\$21.03	\$21.03	\$21.03	\$21.03	\$21.03	\$21.03	\$21.03	\$21.03	\$168.24	
2013	\$19.91	\$19.91	\$19.91	\$19.91	\$19.91	\$19.91	\$19.91	\$19.91	\$19.91	\$19.91	\$139.37	
2012	\$20.53	\$20.53	\$20.53	\$20.53	\$20.53	\$20.53	\$20.53	\$20.53	\$20.53	\$20.53	\$123.18	
2011	\$31.28	\$31.28	\$31.28	\$31.28	\$31.28	\$31.28	\$31.28	\$31.28	\$31.28	\$31.28	\$158.40	
2010	\$34.78	\$34.78	\$34.78	\$34.78	\$34.78	\$34.78	\$34.78	\$34.78	\$34.78	\$34.78	\$139.12	
2009	\$26.37	\$26.37	\$26.37	\$26.37	\$26.37	\$26.37	\$26.37	\$26.37	\$26.37	\$26.37	\$79.11	
2008	\$26.72	\$26.72	\$26.72	\$26.72	\$26.72	\$26.72	\$26.72	\$26.72	\$26.72	\$26.72	\$53.44	
2007	\$22.02	\$22.02	\$22.02	\$22.02	\$22.02	\$22.02	\$22.02	\$22.02	\$22.02	\$22.02	\$22.02	
2006	\$21.46	\$21.46	\$21.46	\$21.46	\$21.46	\$21.46	\$21.46	\$21.46	\$21.46	\$21.46	\$0.00	
3. Total of Monthly Benefits Received in Year >>	\$242.19	\$220.73	\$198.71	\$171.99	\$145.62	\$110.84	\$79.56	\$59.03	\$39.12	\$18.09	\$1,043.7	
4. Total Benefits Received in Year, \$M	\$267.49	\$220.73	\$198.71	\$171.99	\$145.62	\$110.84	\$79.56	\$59.03	\$39.12	\$18.09	\$1,043.7	

* Assumed average duration of SSI/SSD benefits: 10 years. This assumption is based on studies by the Social Security Administration, which has estimated the duration of SSI benefits to be 9.7 years and SSDI benefits to be 10.5 years. See See Kalman Rupp and Charles G. Scott, "Trends in the Characteristics of DI and SSI Disability Awardees and Duration of Program Participation," Social Security Administration, 1996.

C. EXTENDED REPRESENTATION CASES - FIVE YEAR ASSUMPTION												Net Present Value in 2015 (excl. 2015)
Net Present Value in 2015 of Benefits Received in Future From Cases Completed in 2015 and Earlier Assuming 5-Year Benefit Stream												
Year in Which Benefits Are Received >>	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024		
1. Back Awards	\$25.30											
2. Year's Total of Monthly Benefits from Cases Completed in:												
2015	\$18.09	\$18.09	\$18.09	\$18.09	\$18.09						\$72.36	
2014	\$21.03	\$21.03	\$21.03	\$21.03	\$21.03						\$63.09	
2013	\$19.91	\$19.91	\$19.91	\$19.91	\$19.91						\$39.82	
2012	\$20.53	\$20.53	\$20.53	\$20.53	\$20.53						\$20.53	
2011	\$31.28	\$31.28	\$31.28	\$31.28	\$31.28						\$0.00	
2010												
2009												
2008												
2007												
2006												
3. Total of Monthly Benefits Received in Year >>	\$110.84	\$79.56	\$59.03	\$39.12	\$18.09	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$195.8	
4. Total Benefits Received in Year, \$M	\$136.14	\$79.56	\$59.03	\$39.12	\$18.09	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$195.8	

** Assumed average duration of SSI/SSD benefits: 5 years. This is a conservative assumption applied in prior years by the Task Force.

Exhibit 2B: SSI/SSD Funds Brought Into State in 2015 by Limited Representation											Total Received in 2015	
A. Benefits Received in 2015 From Cases Completed in 2015 and Earlier	2015 Cases	2014 Cases	2013 Cases	2012 Cases	2011 Cases	2010 Cases	2009 Cases	2008 Cases	2007 Cases	2006 Cases	Five Years, (1) thru (5)	Ten Years, (1) thru (10)
A. SSI and SSD BRIEF REPRESENTATION Cases												
1. Cases Closed by brief representation (see Note 1):	5,284	4,719	3,853	4,040	4,514	4,434	5,297	4,270	3,890	3,640		
2. Estimated percentage of cases for which SSI/SSD Benefits were Obtained (see Note 2):	41%	41%	41%	41%	41%	41%	41%	41%	41%	41%		
3. Estimated Successful Cases ("1" x "2"):	2,176	1,943	1,587	1,664	1,859	1,826	2,181	1,758	1,602	1,499		
B. Estimated Dollar Benefits												
1. Estimated back awards per successful case (see Note 3):	10,478											
2. Total back awards ("1" x "2"), \$M:	\$22.8											
3. Estimated monthly award per successful case (see Note 3):	\$624	\$670	\$563	\$731	\$655	\$655	\$655	\$655	\$655	\$655		
4. Total monthly benefits ("1" x "4"), \$M:	\$1.36	\$1.30	\$0.89	\$1.22	\$1.22	\$1.20	\$1.43	\$1.15	\$1.05	\$0.98		
5. Annualized total of monthly benefits, 12 mos. x line 4, \$M:	\$16.30	\$15.62	\$10.73	\$14.60	\$14.61	\$14.35	\$17.14	\$13.82	\$12.59	\$11.78		
8. Total projected impact ("3" + "5"), \$M:	\$39.1	\$15.6	\$10.7	\$14.6	\$14.6	\$14.4	\$17.1	\$13.8	\$12.6	\$11.8		
9. Factor for inflation-adjustment to 2015 dollars	1.000	1.001	1.017	1.032	1.054	1.087	1.105	1.101	1.143	1.176		
10. Total estimated impact ("8" x "9") in 2015 dollars (for reference), in \$M:	\$39.1	\$15.6	\$10.9	\$15.1	\$15.4	\$15.6	\$18.9	\$15.2	\$14.4	\$13.8	\$ 96	\$ 174
C. Total Impact, Not Adjusted for Inflation (Line 8) \$M (see Note 4):	\$39.1	\$15.62	\$10.7	\$14.6	\$14.6	\$14.4	\$17.1	\$13.8	\$12.6	\$11.8	\$94.7	\$164.3

Note 1: Source: Estimate by The Resource for Great Programs extrapolated from data reported by large, general civil legal services programs to the IOLA fund.

Note 2: The assumed "Estimated percentage of cases for which SSI/SSD Benefits were Obtained" was based on an analysis by The Resource of secondary data collected in a scientific survey in which 400 legal aid clients in Pennsylvania, randomly sampled from all who had received advice or brief services in the latter half of 2011, were interviewed by phone to determine the outcomes of their cases. Forty one percent of those with SSI or SSD issues achieved the positive outcomes they sought. Accordingly, we applied that percentage to the total number of cases closed by this program by Brief Representation for those legal problem types to derive the estimate indicated above.

Note 3: Source of these figures: dollar benefits reported to the IOLA Fund for extended representation cases of the above legal problem types closed by the programs. For the years 2005 through 2011, the average of the figures for 2012 through 2014 was used.

Note 4: Historically, federal benefits have been adjusted annually for inflation, so the benefit amounts awarded to clients in prior years (line 8) would increase automatically to the amounts shown in 2015 dollars (line 10). However, the total in row C applies the conservative assumption that benefits in prior years were NOT adjusted for inflation and accordingly uses the figures in line 8.

B. Net Present Value in 2015 of Benefits Received in Future From Cases Completed in 2015 and Earlier Assuming 10-Year Benefit Stream											Net Present Value in 2015 (excl. 2015)
Year in Which Benefits Are Received >>	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	
1. Back Awards	\$22.80										\$0.00
2. Year's Total of Monthly Benefits from Cases Completed in:											
2015	\$16.30	\$16.30	\$16.30	\$16.30	\$16.30	\$16.30	\$16.30	\$16.30	\$16.30	\$16.30	\$146.73
2014	\$15.62	\$15.62	\$15.62	\$15.62	\$15.62	\$15.62	\$15.62	\$15.62	\$15.62	\$15.62	\$124.97
2013	\$10.73	\$10.73	\$10.73	\$10.73	\$10.73	\$10.73	\$10.73	\$10.73	\$10.73		\$75.11
2012	\$14.60	\$14.60	\$14.60	\$14.60	\$14.60	\$14.60	\$14.60				\$87.61
2011	\$14.61	\$14.61	\$14.61	\$14.61	\$14.61	\$14.61					\$73.05
2010	\$14.35	\$14.35	\$14.35	\$14.35	\$14.35						\$57.40
2009	\$17.14	\$17.14	\$17.14	\$17.14							\$51.42
2008	\$13.82	\$13.82	\$13.82								\$27.63
2007	\$12.59	\$12.59									\$12.59
2006	\$11.78										\$0.00
3. Total of Monthly Benefits Received in Year >>	\$141.54	\$129.76	\$117.17	\$103.36	\$86.22	\$71.87	\$57.26	\$42.66	\$31.92	\$16.30	\$656.5
4. Total Benefits Received in Year, \$M in 2015 Dollars	\$164.34	\$129.76	\$117.17	\$103.36	\$86.22	\$71.87	\$57.26	\$42.66	\$31.92	\$16.30	\$656.5

C. Net Present Value in 2015 of Benefits Received in Future From Cases Completed in 2015 and Earlier Assuming 5-Year Benefit Stream											Net Present Value in 2015 (excl. 2015)
Year in Which Benefits Are Received >>	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	
1. Back Awards	\$0.41										\$0.00
2. Year's Total of Monthly Benefits from Cases Completed in:											
2014	\$16.30	\$16.30	\$16.30	\$16.30	\$16.30						\$65.21
2013	\$15.62	\$15.62	\$15.62	\$15.62							\$46.87
2012	\$10.73	\$10.73	\$10.73								\$21.46
2011	\$14.60	\$14.60									\$14.60
2010	\$14.61										\$0.00
2009											
2008											
2007											
2006											
2005											
3. Total of Monthly Benefits Received in Year >>	\$71.87	\$57.26	\$42.66	\$31.92	\$16.30						\$148.1
4. Total Benefits Received in Year, \$M in 2015 Dollars	\$72.28	\$57.26	\$42.66	\$31.92	\$16.30						\$148.1

Exhibit 3: Total Projected Medicaid Benefits from Cases Closed in FY 15-16	
A. Benefits from Successful Medicaid Cases	
1. LIMITED REPRESENTATION Medicaid Cases	
a. Total limited representation Medicaid cases closed (see Note 1):	2,064
b. Estimated percentage of cases for which Medicaid benefits were successfully obtained or preserved (see Note 2):	6.0%
c. Number of cases in which Medicaid benefits were obtained or preserved "a" x "b") :	124
2. EXTENDED REPRESENTATION Medicaid Cases	
Number of cases in which Medicaid benefits were obtained or preserved (see Note 1):	5,698
3. LIMITED and EXTENDED REPRESENTATION Cases (Combined)	
Total number of cases in which Medicaid benefits were obtained or preserved (sum of "1" and "2"):	5,822
B. Medicaid Benefits From Successful SSI Cases	
1. LIMITED REPRESENTATION SSI Cases	
a. Total cases closed	4,102
b. Estimated percentage of cases for which benefits were successfully obtained, preserved, or increased (see Note 3):	41%
c. Estimated number of cases for which benefits were successfully obtained, preserved, or increased ("a" x "b"):	1,682
2. EXTENDED REPRESENTATION SSI Cases	
Number of extended representation SSI cases for which Medicaid benefits were successfully obtained, preserved, or increased (see Note 4):	1,723
3. LIMITED and EXTENDED REPRESENTATION Cases (Combined)	
a. Total estimated LIMITED and EXTENDED cases that produced benefits (sum of "1" and "2" above)	3,405
C. Medicaid Benefits From Successful Medicaid and SSI Cases Combined	
1. Total successful cases (sum of A.3 and B.3.a above)	9,227
2. Average annual benefit (see Note 5):	\$9,583
3. Assumed duration of benefits in years (see Note 6):	10.0
4. Projected total benefit per case ("2" x "3"):	\$95,834
e. Total cases x total projected benefit ("a" x "d"), in \$millions:	\$884.2
Sum of Benefits from Medicaid Cases (\$millions): \$884.2	
Percentage of Medicaid Benefits from federal dollars (see Note 7): 55%	
Federal Medicaid Funds Into New York State From Cases Closed in FY 15-16 (\$millions): \$486.3	
Note 1: Source: Program's case tracking data systems, used to produce "Individual Benefits" reports to the IOLA fund.	
Note 2: The assumed "success rate" was based on a scientific survey by The Resource in which 400 legal aid clients in Pennsylvania randomly sampled from all who had received advice or brief services in the latter half of 2011 were interviewed by phone to determine the outcomes of their cases. 6.5 percent of those with Medicaid issues achieved the positive outcomes they sought. Accordingly, we applied that percentage to the total number of cases closed by this program by Brief Representation for those legal problem types to derive the estimate indicated above.	
Note 3: Source: survey described in Note 2. Forty one percent of those with SSI/SSDI issues achieved the positive outcomes they sought. Accordingly, we applied that percentage to the total number of brief representation cases closed by this program for those legal problem types to derive the estimate indicated above.	
Note 4: Source of these figures: outcomes reported all 2015 cases of the above legal problem types closed by IOLA grantees in 2015.	
Note 5: Estimated based on state expenditure and enrollment data provided to the CMS data center through the Medicaid Budget and Expenditure System https://www.medicaid.gov/medicaid-chip-program-information/by-topics/financing-and-reimbursement/expenditure-reports-mbes-cbes.html and https://www.medicaid.gov/medicaid-chip-program-information/program-information/medicaid-and-chip-enrollment-data/medicaid-enrollment-data-collected-through-mbes.html	
Note 6: Assumed average duration of Medicaid benefits: 10 years, same as assumed for SSI benefits - see "Note" below Exhibit 2.	
Note 7: Source: Estimated from expenditure data for New York State provided to the CMS data center through the Medicaid Budget and Expenditure System https://www.medicaid.gov/medicaid-chip-program-information/by-topics/financing-and-reimbursement/expenditure-reports-mbes-cbes.html	

Exhibit 4: Other Federal Funds Brought Into State in 2015

A. Federal Funds Coming Into the State	Benefits from Cases Completed in 2015	
	Back Awards	Monthly Benefits
	Dollars in Millions	
1. Other Federal Benefits Back Awards*	\$20.02	
2. Other Federal Benefits Monthly Benefits Going Forward**		\$1.54
3. Total Monthly Benefits Received (12 times Line 2)		\$18.53
4. Factor for inflation-adjustment to 2015 dollars:		1.000
5. Monthly Benefits Received - Adjusted to 2015 Dollars (Line 3 x Line 4):		\$18.53
6. Total Other Federal Benefits Received in 2015 (Line 1 + Line 5)	\$20.02	\$18.53
Total Duration of Monthly Benefits (Years)		3
Total Value of Monthly Benefits from 2015 Awards		\$55.59
Total Value of Monthly Benefits & Back Pay from 2015 Awards		\$75.61

* Source of "Other Federal Benefits" figures: TOLA Grantee Annual Reports submitted by grantees. These include all benefits from federal programs OTHER than SSI or SSD, including such programs as Temporary Assistance to Needy Families (TANF), Food Stamps (SNAP), child care assistance, federal unemployment payments, cash aid, and housing assistance. Grantees are required to report

** Conservative assumption regarding average duration of "Other" federal benefits: 3 years.

Exhibit 5A: Estimated Wage Impacts of Work Authorization

1. Number of program clients who achieved work authorization as a result of programs' legal assistance	Number of Cases
A. Through adjustment of legal status and other outcomes conferring work authorization - 10 Years' Duration	3,058
B. Through VAWA-based relief - U-visas, T-visas, and VAWA self-petition cases - 4 Years' Duration	1,312
C. Through cases conferring DACA/DAPA status - 2 Years' Duration	2,143
2. Total Wage Impacts of Work Authorization:	6,513

Exhibit 5A.1: Estimated Wage Impacts of Authorization

1. Number of program clients who achieved work authorization - Green Card or other long-term legal status (see Note 1)	3,058
2. Impact on Working Immigrant Women	
A. Percentage of the total in line 1 who were female (see Note 2):	51%
B. Number of women who achieved authorization ("1" x "2A"):	1,560
C. Percentage of authorized immigrant women who are employed (see Note 3):	100%
D. Number of employed women who received authorization ("2.B" x "2.C"):	1,560
E. Assumed differential in average annual wages between unauthorized and authorized female immigrant workers (see Note 4):	\$1,278
F. Estimated annual wage impact for women ("2.D" x "2.E"), millions:	\$1.99
3. Impact on Working Immigrant Men	
A. Percentage of the total in line 1 who were female (see Note 2):	49%
B. Number of the total in line 1.d who were male ("1.D" minus "2.A"):	1,498
C. Percentage of authorized immigrant men who are employed (see Note 5):	94%
D. Number of employed men who received authorization ("3.A" x "3.B"):	1,408
E. Assumed differential in average annual wages between unauthorized and authorized male immigrant workers (see Note 4):	\$1,435
F. Estimated annual wage impact for men ("3.D" x "3.E"), millions:	\$2.02
4. Total Estimated Annual Wage Impact ("2.F" + "3.F"), Millions:	\$4.01
5. Assumed Duration of Wage Impact in Years (see Note 6):	10.0
Estimated Net Present Value of Wage Impact ("4" x "5"), Millions:	\$40.1
Note 1: Source: programs' outcomes reported to the IOLA Fund for 2015.	
Note 2: For this analysis, we assumed that 51 percent of clients were female, based on data found in Furtuny, Capps and Passel, "The Characteristics of Unauthorized Immigrants in California, Los Angeles County, and the United States; The Urban Institute, 2007; Table 9. This table shows the characteristics of foreign-born citizens, legal non-citizens and unauthorized immigrants.	
Note 3: Based on information received from legal advocates in other immigration legal services programs we have analyzed, we have assumed here that all female clients were employed.	
Note 4: Source: Pastor, Scoggins, Tran and Ortiz, "The Economic Benefits of Immigrant Authorization in California", 2012. That study found an average wage differential between unauthorized and authorized immigrant workers to be 9.5 percent controlling for human capital and other characteristics. To estimate the impact for men we applied the differential to the average wage for unauthorized Latino immigrants working in California's "Building Maintenance and Groundskeeping" industry. To estimate the wage impact for women we applied the differential to the average wage for unauthorized Latino immigrants working in California's "Personal Care and Service" industry. We assumed the workers were employed 35 hours per week, 50 weeks per year, or 1,750 hours per year. The figures are in 2009 dollars and were not adjusted for inflation.	
Note 5: Source: Furtuny, Capps and Passel, Table 9 - see Note 2 above.	
Note 6: The duration of the wage impact of authorization was assumed to be 10 years, the period for which the original approval applies before requiring renewal. This is an extremely conservative assumption; a more realistic estimate is 23 years based on a calculation that assumes the average age of an immigrant at authorization is 42 years and the person would work until retirement at 65 years.	

Exhibit 5A.2: Estimated Wage Impacts of VAWA Cases

1. Number of program clients who achieved work authorization through VAWA-based relief (see Note 1)	1,312
2. Impact on Working Immigrant Women	
A. Percentage of the total in line 1 who were female (see Note 2):	51%
B. Number of women who achieved authorization ("1" x "2A"):	669
C. Percentage of authorized immigrant women who are employed (see Note 3):	100%
D. Number of employed women who received authorization ("2.B" x "2.C"):	669
E. Assumed differential in average annual wages between unauthorized and authorized female immigrant workers (see Note 4):	\$1,278
F. Estimated annual wage impact for women ("2.D" x "2.E"), millions:	\$0.85
3. Impact on Working Immigrant Men	
A. Percentage of the total in line 1 who were female (see Note 2):	49%
B. Number of the total in line 1.d who were male ("1.D" minus "2.A"):	643
C. Percentage of authorized immigrant men who are employed (see Note 5):	94%
D. Number of employed men who received authorization ("3.A" x "3.B"):	604
E. Assumed differential in average annual wages between unauthorized and authorized male immigrant workers (see Note 4):	\$1,435
F. Estimated annual wage impact for men ("3.D" x "3.E"), millions:	\$0.87
4. Total Estimated Annual Wage Impact ("2.F" + "3.F"), Millions:	\$1.72
5. Assumed Duration of Wage Impact in Years (see Note 6):	4.0
Estimated Net Present Value of Wage Impact ("4" x "5"), Millions:	\$6.9

Note 1: Source: programs' outcomes reported to the IOLA Fund for 2015.

Note 2: For this analysis, we assumed that 51 percent of clients were female, based on data found in Furtuny, Capps and Passel, "The Characteristics of Unauthorized Immigrants in California, Los Angeles County, and the United States; The Urban Institute, 2007; Table 9. This table shows the characteristics of foreign-born citizens, legal non-citizens and unauthorized immigrants.

Note 3: Based on information received from legal advocates in other immigration legal services programs we have analyzed, we have assumed here that all female clients were employed.

Note 4: Source: Pastor, Scoggins, Tran and Ortiz, "The Economic Benefits of Immigrant Authorization in California", 2012. That study found an average wage differential between unauthorized and authorized immigrant workers to be 9.5 percent controlling for human capital and other characteristics. To estimate the impact for men we applied the differential to the average wage for unauthorized Latino immigrants working in California's "Building Maintenance and Groundskeeping" industry. To estimate the wage impact for women we applied the differential to the average wage for unauthorized Latino immigrants working in California's "Personal Care and Service" industry. We assumed the workers were employed 35 hours per week, 50 weeks per year, or 1,750 hours per year. The figures are in 2009 dollars and were not adjusted for inflation.

Note 5: Source: Furtuny, Capps and Passel, Table 9 - see Note 2 above.

Note 6: The duration of the wage impact of authorization was assumed to be 10 years, the period for which the original approval applies before requiring renewal. This is an extremely conservative assumption; a more realistic estimate is 23 years based on a calculation that assumes the average age of an immigrant at authorization is 42 years and the person would work until retirement at 65 years.

Exhibit 5A.3: Estimated Wage Impacts of Authorization

1. Number of program clients who achieved work authorization through cases conferring DACA/DAPA status (see Note 1)	2,143
2. Impact on Working Immigrant Women	
A. Percentage of the total in line 1 who were female (see Note 2):	51%
B. Number of women who achieved authorization ("1" x "2A"):	1,093
C. Percentage of authorized immigrant women who are employed (see Note 3):	100%
D. Number of employed women who received authorization ("2.B" x "2.C"):	1,093
E. Assumed differential in average annual wages between unauthorized and authorized female immigrant workers (see Note 4):	\$1,278
F. Estimated annual wage impact for women ("2.D" x "2.E"), millions:	\$1.40
3. Impact on Working Immigrant Men	
A. Percentage of the total in line 1 who were female (see Note 2):	49%
B. Number of the total in line 1.d who were male ("1.D" minus "2.A"):	1,050
C. Percentage of authorized immigrant men who are employed (see Note 5):	94%
D. Number of employed men who received authorization ("3.A" x "3.B"):	987
E. Assumed differential in average annual wages between unauthorized and authorized male immigrant workers (see Note 4):	\$1,435
F. Estimated annual wage impact for men ("3.D" x "3.E"), millions:	\$1.42
4. Total Estimated Annual Wage Impact ("2.F" + "3.F"), Millions:	\$2.82
5. Assumed Duration of Wage Impact in Years (see Note 6):	2.0
Estimated Net Present Value of Wage Impact ("4" x "5"), Millions:	\$5.6

Note 1: Source: programs' outcomes reported to the IOLA Fund for 2015.

Note 2: For this analysis, we assumed that 51 percent of clients were female, based on data found in Furtuny, Capps and Passel, "The Characteristics of Unauthorized Immigrants in California, Los Angeles County, and the United States; The Urban Institute, 2007; Table 9. This table shows the characteristics of foreign-born citizens, legal non-citizens and unauthorized immigrants.

Note 3: Based on information received from legal advocates in other immigration legal services programs we have analyzed, we have assumed here that all female clients were employed.

Note 4: Source: Pastor, Scoggins, Tran and Ortiz, "The Economic Benefits of Immigrant Authorization in California", 2012. That study found an average wage differential between unauthorized and authorized immigrant workers to be 9.5 percent controlling for human capital and other characteristics. To estimate the impact for men we applied the differential to the average wage for unauthorized Latino immigrants working in California's "Building Maintenance and Groundskeeping" industry. To estimate the wage impact for women we applied the differential to the average wage for unauthorized Latino immigrants working in California's "Personal Care and Service" industry. We assumed the workers were employed 35 hours per week, 50 weeks per year, or 1,750 hours per year. The figures are in 2009 dollars and were not adjusted for inflation.

Note 5: Source: Furtuny, Capps and Passel, Table 9 - see Note 2 above.

Note 6: The duration of the wage impact of authorization was assumed to be 10 years, the period for which the original approval applies before requiring renewal. This is an extremely conservative assumption; a more realistic estimate is 23 years based on a calculation that assumes the average age of an immigrant at authorization is 42 years and the person would work until retirement at 65 years.

Exhibit 5B: Estimated Wage Impacts of Citizenship Filings

1. Immigrants Who Achieve Citizenship	
a. Total clients for which citizenship was attained (see Note 1):	3,831
2. Impact on Female Workers	
a. Percentage of "1.c" who are female (see Note 2):	51.0%
b. Number of female immigrants who achieve naturalization ("1.c" x "2.a"):	1,954
c. Percent who are employed (see Note 3):	59%
d. Number of employed female immigrants who achieve citizen status ("b" x "c"):	1,153
e. Average increase in annual wages achieved through obtaining citizen status (see Note 4):	\$735
f. Total annual wage impact in \$Millions ("d" x "e"):	\$0.85
3. Impact on Male Workers	
a. Percentage of "1.c" who are male (100% minus "2.a"):	49.0%
b. Number of male immigrants who achieve naturalization ("1.c" x "3.a"):	1,877
c. Percent of authorized male immigrants who are employed (see Note 3):	84%
d. Number of employed male immigrants who achieve citizen status ("b" x "c"):	1,577
e. Average increase in annual wages achieved through obtaining citizen status (see Note 4):	\$823
f. Total annual wage impact in \$Millions ("d" x "e"):	\$1.30
4. Total Impacts of Citizenship Filings	
a. Total annual impacts (sum of "2.f" and "3.f"):	\$2.15
b. Assumed duration of wage impacts in years (see Note 7):	23.0
Estimated Net Present Value of Wage Impact ("4" x "5"), Millions:	\$49.5

Note 1: Source: Program's outcomes reported to the IOLA Fund for 2015.

Note 2: For this analysis, we assumed that 51 percent of clients were female, based on data found in Furtuny, Capps and Passel, "The Characteristics of Unauthorized Immigrants in California, Los Angeles County, and the United States; The Urban Institute, 2007; Table 9. This table shows the characteristics of foreign-born citizens, legal non-citizens and unauthorized immigrants.

Note 3: Source: Furtuny, et. al., Table 9.

Note 4: Source: Pastor and Scoggins, "Citizen Gain: The Economic Benefits of Naturalization for Immigrants and the Economy." To estimate the wage impact for men we applied the average wage for Latino immigrants working in California's "Building Maintenance and Groundskeeping" industry. To estimate the wage impact for women we applied the average for Latino immigrants working in California's "Personal Care and Service" industry. According to Pastor and Scoggins., the wage impact of going from authorized immigrant to citizen status is 5.6 percent of median wages of these workers; we rounded this figure down to 5 percent. We assumed the workers were employed 35 hours per week, 50 weeks per year, or 1,750 hours per year.

Note 5: The average age of people at naturalization is 42 years (Office of Immigration Statistics, 2011), giving naturalized workers more than 23 years to receive the wage differential before reaching a retirement age of 65. Naturalized citizens are much more likely to stay in the U.S. for the remainder of their lives than non-citizen legal permanent residents.

Exhibit 6: Economic Impacts of Economic Multiplier Effect		
I. Funds Brought Into Service Area From Outside in the Form of Direct Benefits for Clients	Total	Total Attributable to 2015 Cases
A. Federal benefits		
1. SSI/SSD benefits (See Exhibit 2), in \$M:		
a. Extended Representation Cases (See Exhibit 2A):	\$267.5	\$206.2
b. Limited Representation Cases (See Exhibit 2A):	\$164.3	\$185.8
c. Total of "a" and "b":	\$431.8	\$392.0
2. Medicare/Medicaid benefits - federal share (See Exhibit 3), in \$M:	\$486.3	\$486.3
3. Federal benefits other than the above (\$M):	\$86.2	\$75.6
B. Total Federal Funds Brought Into State, \$M:	\$1,004.3	\$953.9
II. Economic Multiplier Effect		
A. Multiplier (per U.S. Dept. of Commerce "RIMS II" Model - see Note 1):	1.35	1.35
B. Economic Multiplier Effect (Line I.C x Line II.A), \$M:	\$1,355.8	\$1,287.8
C. Jobs factor, number of jobs created per \$1 million in funds coming in from outside state (per U.S. Dept. of Commerce RIMS II Model - see Note 1):	9.46	9.46
D. Total jobs ("I.C" x "II.C"):	9,500	9,020

Note 1: Values derived by The Resource for New York State in 2015 using U.S. Dept. of Commerce RIMS II regional economic multiplier model.

Exhibit 7: Savings in emergency shelter costs, 2015

ALL Cases Included	Total
A. Number of cases for which eviction was avoided or delayed or foreclosure was averted:	30,990
B. Estimated # of people for whom eviction was avoided or delayed or foreclosure was averted:	77,722
C. Percentage of the above for which the need for emergency shelter was avoided:*	41%
D. No. of cases for which the need for emergency shelter was avoided (line A times line C):	12,774
E. Average annual cost of providing emergency shelter to one homeless family:*	\$27,023
F. Estimated Savings for Taxpayers (line D x line E -- in \$Millions):	\$345.2
G. Estimated # of people who avoided the need for emergency shelter (line B times line C):	32,038

* Data source for assumptions in line C: analysis results provided to the Chief Judge's Task Force to Expand Access to Civil Legal Services in New York on October 19, 2011 by consultant Geeta Singh, Ph.D., Cornerstone Research. The average cost figure in line "E" has been updated to reflect reported 2015 NYC emergency shelter costs. Estimated costs for upstate regions reflected in this average are based on Dr. Singh's 2011 data, inflation-adjusted to reflect 2015 dollars.

Detailed Computation of Cost Savings - Avoidance of Emergency Shelter

	Total Benefits	Total People Directly Benefited
A. Brief Representation Cases		
1. Number of Housing cases closed by Brief Representation (see Note 1):	50,121	
2. Assumed success rate: Percentage of above cases in which one or more of the following outcomes was achieved: avoided eviction, obtained additional time, or avoided foreclosure (see Note 2):	11%	
3. Estimated number of limited representation cases in which clients avoided eviction, obtained additional time, or avoided foreclosure ("1" x "2"):	5,674	14,230
4. Cost savings achieved		
a. Assumed "Emergency Shelter Avoidance Rate (see Note 4):	41%	
b. Number of cases for which need for emergency shelter was avoided ("1" x "2"):	2,339	
c. Average cost per year of emergency shelter for one family (see Note 4):	\$27,023	
d. Estimated Cost Savings (line E multiplied by line F), in \$Millions:	\$63.2	
B. Extended Representation Cases		
1. Measured number of extended representation cases in which clients avoided eviction, obtained additional time, or avoided foreclosure, per IOLA Grantee Report data:	25,316	63,492
2. Cost savings achieved		
a. Assumed "Emergency Shelter Avoidance Rate (see Note 4):	41%	
b. Number of cases for which need for emergency shelter was avoided ("1" x "2"):	10,435	
c. Average cost per year of emergency shelter for one family (see Note 4):	\$27,023	
d. Estimated Cost Savings (line E multiplied by line F), in \$Millions:	\$282.0	
C. Total Cost Savings Achieved - Brief Representation and Extended Representation Cases Combined		
1. Total cases in which clients avoided eviction, obtained additional time, or avoided foreclosure (sum of "A.3" and "B.1" above):	30,990	77,722
2. Assumed "Emergency Shelter Avoidance Rate (see Note 4):	41%	
3. Number of cases for which need for emergency shelter was avoided ("1" x "2"):	12,774	
4. Average cost per year of emergency shelter for one family (see Note 4):	\$27,023	
5. Estimated Cost Savings (line E multiplied by line F), in \$Millions:	\$345.2	
6. Average number of people per case who avoided eviction, obtained additional time, or avoided foreclosure, per IOLA Grantee Annual Report data:	2.51	
7. Estimated total number of people who avoided emergency shelter ("3" x "6"):	32,038	
<p>Note 1: Source: Detailed breakdowns of 2015 housing cases provided to the IOLA Fund by general legal aid grantees in 2016. These grantees were comparable in terms of size, structure, and types of services provided to the Pennsylvania programs from which the data on "success rates" of Brief Representation cases were derived - see Note 2.</p> <p>Note 2: The assumed "success rate" of 11 percent was based on a scientific survey by The Resource in which 400 legal aid clients in Pennsylvania randomly sampled from all who had received advice or brief services in the latter half of 2011 were interviewed by phone to determine the outcomes of their cases. Eleven percent of those with housing issues achieved outcomes of "avoided eviction," "obtained additional time to seek alternative housing," or "avoided foreclosure." Accordingly, we applied that percentage to the total number of Housing advice/brief services cases handled by IOLA grantees to derive the estimate indicated above.</p> <p>Note 3: The "Emergency Shelter Avoidance Rate" is the percentage of evicted or foreclosed households that would have utilized emergency shelter if not kept in their homes as an outcome of legal assistance. This value was estimated by consultant Geeta Singh, Ph.D., Cornerstone Research, using a methodology described in "Testimony at Chief Judge's Hearing on Civil Legal Services," September 26, 2011.</p> <p>Note 4: Data source for item A.4.c: analysis results provided to the Chief Judge's Task Force to Expand Access to Civil Legal Services in New York on October 19, 2011 by consultant Geeta Singh, Ph.D., Cornerstone Research. The average cost figure in line A.4.c has been updated to reflect reported 2015 NYC emergency shelter costs. Estimated costs for upstate regions reflected in this average are based on Dr. Singh's 2011 data, inflation-adjusted to reflect 2015 dollars.</p>		

Commissioner Steven Banks
*(New York City Human Resources Administration,
Department of Social Services)*

Commissioner Steven Banks Bio

Mayor Bill de Blasio appointed Steven Banks as Commissioner of the New York City Human Resources/Department of Social Services (HRA) on February 28, 2014, and he has served in that position since April 1, 2014. As Commissioner, Banks serves as chief executive of the largest local social services agency in the country, which serves over 3 million New Yorkers through the administration of more than 12 major public assistance programs, with 15,000 employees and an operating budget of over \$9 billion. Commissioner Banks is a key leader in implementing Mayor de Blasio's agenda to expand opportunity for more New Yorkers, address income inequality, and ensure that New Yorkers receive the benefits and assistance to which they are entitled.

Commissioner Banks has dedicated his entire career to improving the lives of low-income New Yorkers and is recognized as one of New York City's leading public interest lawyers. Throughout his 33 years with the Legal Aid Society, Banks developed an extensive track record of working productively with a unionized workforce and helping the city's most vulnerable residents – including seniors, survivors of domestic violence, immigrants, and people living with HIV/AIDS – navigate HRA's programs and services. From 2004 until his appointment, Banks was the Attorney-in-Chief of the Legal Aid Society, the country's oldest and largest not-for-profit legal services organization. During his tenure, he led the organization through a complete financial and managerial restructuring to save it from bankruptcy in 2004. With an annual budget of \$225 million, he managed a staff of 1,900, including some 1,100 lawyers, and was responsible for all aspects of the legal practice and operations of the organization's criminal, juvenile rights, and civil programs in New York City. Prior to becoming the Attorney-in-Chief, Banks held the positions of Associate Attorney-in-Chief, Deputy Attorney-in-Charge of the Civil Practice, Coordinating Attorney of the Homeless Rights Project, and Director of Government Relations for the Civil Practice. He began his career at Legal Aid in 1981 as a Staff Attorney in the organization's Staten Island Neighborhood Office. He has also previously served as counsel to the Coalition for the Homeless, and he was the lead attorney in major class action litigation requiring the provision of lawful shelter and services to homeless New Yorkers.

He is credited with helping reach a landmark settlement with the City in 2008 over its treatment of homeless children and adults, which resulted in the establishment of a permanent enforceable right to shelter for homeless families in New York City.

The [American Lawyer](#) has listed him as one of the top 45 public interest lawyers in the United States, The [Daily News](#) described him as "perhaps the City's most legendary Legal Aid attorney in this generation," and [New York Magazine](#) called him one of the most influential New Yorkers.

Banks graduated from the New York University School of Law in 1981, and from Brown University in 1978.



Steven Banks
Commissioner

September 13, 2016

150 Greenwich Street
New York, NY 10007

929 221 7315

Via Electronic Mail:

New York State Permanent Commission on Access to Justice
c/o Jessica Klein, Esq.
Sullivan & Cromwell LLP
125 Broad Street, 32nd Floor
New York, NY 10004

Dear Ms. Klein:

I am the Department of Social Services/Human Resources Administration Commissioner Steven Banks and I respectfully submit this request to testify at the Chief Judge's 2016 Hearing on Civil Legal Services in New York on behalf of the City of New York and the Honorable Mayor Bill de Blasio.

Since its start, the de Blasio Administration has made access to quality free legal assistance a key component of its plan for addressing the needs of low-income New Yorkers and addressing poverty and income inequality. New York City is now a national leader in providing civil legal services for low-income families and individuals. Starting in the City's Fiscal Year 2014 (July 1, 2013 through June 30, 2014), the de Blasio Administration has dramatically expanded these important services, providing access to quality representation that was previously unavailable to thousands of low-income New Yorkers. In 2015, Mayor de Blasio and the New York City Council amended the City Charter to create the Office of Civil Justice within the Human Resources Administration, a permanent office to oversee the City's civil justice services and monitor the progress and effectiveness of these programs, and in 2016, the Mayor appointed the City's first Civil Justice Coordinator to lead the Office.

In our testimony, we will present recent findings of New York City's Office of Civil Justice that demonstrate that the "justice gap" for New York City residents in need, and in particular tenants facing eviction in New York City's housing courts, is narrowing, due in large part to the extraordinary investments in access to civil legal services by the State Judiciary and the de Blasio Administration and the New York City Council. For example, government funding for civil legal services in New York City will top \$180 million for the City's Fiscal Year 2017. This includes, for the first time, \$110 million in New York City investment in legal services programs to assist tenants facing eviction or the threat of homelessness; for tenants facing harassment and mistreatment by unscrupulous landlords; for low-income immigrant children and adults to assist with the complexities of the immigration legal system and defend against deportation

proceedings; for survivors of domestic violence; for low-income people to assist with connecting to federal benefits; veterans; and New Yorkers with civil legal needs.

These increases in City funding for civil legal assistance have been made over the last few years at the same time that the State Judiciary has made its own unprecedented commitment to increasing access to justice for low-income New Yorkers. We acknowledge and are grateful for the State Judiciary's support of over \$58 million in grants for civil legal services providers in New York City, part of a commitment of \$100 million in the coming year to support civil legal services in New York State.

Our testimony will focus in part on legal services for tenants in New York City. One of the cornerstones of our legal services initiative has been legal assistance programs for low-income tenants, which we are funding at \$62 million in the City's Fiscal Year 2017, ten times what it was in Fiscal Year 2013. These services, provided through a network of contracted providers, including large citywide nonprofits and smaller community-based organizations, level the playing field for low-income New Yorkers who otherwise appear alone in court when other parties like landlords are represented, and they provide quality legal representation for low-income tenants who face eviction actions and/or harassment by unscrupulous landlords seeking to harass them out of their homes.

Our investment in these services is part of the Administration's effort to preserve and expand the availability of affordable housing for New Yorkers. Affordable housing, a precious resource, is permanently lost to the City when tenants are evicted from rent-regulated and rent-controlled apartments and rent is increased above affordable levels. Protecting these affordable units throughout New York City for families and seniors and protecting tenants in small buildings is critical. And the financial and human costs that we avert when tenants avoid eviction and preserve their tenancies are substantial; every family that stays in their home spares the city the expense of emergency shelter services – and more importantly spares the family the trauma of homelessness, including disruption of education, employment and medical care. Our legal services programs are aimed at keeping these New Yorkers in their homes, preventing displacement and preserving and protecting the City's affordable housing stock. Our program is by far the largest initiative of its kind in the nation, enough to provide more than 113,000 New Yorkers each year with legal services to protect against harassment and evictions.

And we are already seeing results from all of our programs to protect tenants. Even before our housing legal assistance programs are implemented fully in Fiscal Year 2017, more than one in four tenants in court facing an eviction case in New York City – 27 percent - is now represented by a lawyer, a marked increase compared to findings

that in calendar year 2013 only 1 percent of tenants in New York City housing court were represented by attorneys. An analysis of recent data shows that more than half of in-court representation for tenants is provided by non-profit legal services organizations for low-income New Yorkers. Only 1 percent of landlords in eviction proceedings appeared in court without counsel.

Furthermore, we see very encouraging signs that by making access to legal representation more widely available, we are realizing concrete improvement in the courts and in the lives of New Yorkers. Residential evictions by city marshals declined 24 percent in 2015 compared to 2013, a period during which New York City substantially increased funding for legal services for low-income tenants. During 2015, orders to show cause in the City's Housing Courts – motions by tenants to reverse a court's order of eviction – also declined nearly 14 percent, while the volume of residential eviction cases filed remained largely stable, suggesting increased efficiency in the courts with the increase in legal representation.

In addition, our testimony will discuss the creation of the Office of Civil Justice at HRA in 2015. The Mayor and the City Council established OCJ to coordinate, evaluate and improve civil legal services for low-income New Yorkers. Located within HRA, the Office currently includes central administrative staff, program development and contract management teams and a group of HRA liaisons located in the four largest New York City Housing Courts to assist with identifying service-eligible tenants in need, connecting them with a legal services provider and also interfacing with the court and the attorneys regarding assignments and logistics and linking them with HRA-administered benefits as needed.

Through our substantial investment in legal services to level the playing field for New Yorkers who face potentially life-changing legal challenges, and our creation of a formal office with administrative infrastructure and the support of one of the largest agencies in City government to ensure that services are delivered effectively and efficiently, we are proud that New York City is a national leader in providing this important assistance for low-income families and individuals.

Our testimony will also address the steps we are taking to continue this progress. The Office of Civil Justice will be releasing its second Annual Report in 2017, and along with it the City's first five-year plan for increasing and enhancing civil legal services for low-income New Yorkers. Our tenant legal services programs will reach full implementation this fiscal year, and we expect that this expansion will mean that even more tenants in need will have the assistance of quality legal representation and a more level playing field in court.

Respectfully, I would welcome the opportunity to testify about these important issues at the Chief Judge's 2016 Hearing on Civil Legal Services in New York. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Banks', written in a cursive style.

Steven Banks
Commissioner

John S. Kiernan, Esq.
*(President, New York City Bar Association;
Partner, Debevoise & Plimpton LLP)*



The Chief Judge's 2016 Hearing on Civil Legal Services in New York

**September 27, 2016
Court of Appeals
20 Eagle Street
Albany, N.Y.**

**Testimony of the New York City Bar Association
By: John S. Kiernan, President**

Thank you for this opportunity to testify on behalf of the New York City Bar Association in support of civil legal services for people who cannot afford to pay for a lawyer. Like prior City Bar presidents, let me begin by expressing the City Bar's gratitude and appreciation to the Chief Judge, and to the Permanent Commission on Access to Justice and its predecessor Task Force, for their leadership in recognizing the need to prioritize allocation of scarce public resources to provision of free civil legal services to people who otherwise face deprivation of essentials of life, often by court orders, without the legal assistance they need. We share your view of the importance of providing for support for legal services in the Judiciary Budget, and we recognize the sacrifices of other important priorities that have been made to provide this support.

My testimony will primarily be directed to two questions: 1. What effects are these allocations of public resources for legal services having on the lives of poor people? and 2. What is the best way to proceed with provision of free legal services when existing allocations of resources for civil legal services remain insufficient to fill the need, and in particular how well

do so-called unbundled legal services – provision of various forms of limited assistance short of full legal representations – serve existing needs?

Direct measurement of the impact of providing free civil legal services is so difficult and susceptible to confounding variables that almost all assessments of these impacts end up feeling like a combination of observers' intuitions, subjective feelings of clients and somewhat selective-seeming, manipulable and incompletely understood statistics. As just one example, the impressive inaugural report by the New York City Office of Civil Justice released a few weeks ago¹ collected some highly relevant-seeming information about effects, but expressly reserved for its next iteration a more fully disciplined evaluation of how much and how well its legal services programs work.

But even with all of the data shortcomings, the directional indications discernible from the limited data appear to be consistent, powerful and aligned with what intuitions would expect. The Office of Civil Justice reported results of a study suggesting that tenants facing the threat of eviction are four times likelier to avoid eviction if they have a lawyer than if they don't. While it would feel uncertain to extrapolate from that limited study to a firm prediction about the exact number of cases in which low-income tenants would avoid eviction if they all had lawyers, that 4x success rate seems in line with reasonable expectations.

The Office of Civil Justice also reported significant-sounding statistics relating to changes in eviction patterns linked temporally to the New York City's increased commitment to

¹ NYC Office of Civil Justice 2016 Annual Report, *available at* http://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf

the provision of legal services. From 2013-15, a period when the City has dramatically scaled up its resource allocations to legal representation of tenants facing eviction proceedings, marshals' evictions fell from more than 28,000 to about 22,000, or nearly 24 percent. At the same time, warrants of eviction – which often lead to departures from homes before a marshal shows up to force the tenant out immediately – fell by more than 21,000, from almost 133,000 to a little below 112,000. If you apply the finding of the Office of Civil Justice that each warrant of eviction applies on average to 3 people living in an apartment², these results suggest an impact of 63,000 fewer people targeted by warrants of eviction in 2015 than in 2013 following two years of phased-in significant increases in legal services – a medium-sized city of people not ordered to leave their homes.

Providing a lawyer to a tenant facing eviction not only increases the likelihood that she will be able to remain in her home, thereby reducing displacement, disruption and homelessness, but also appears to be highly cost-effective. An independent study commissioned by the City Bar this year³ concluded that even without regard to the profound humanitarian benefits of eviction protection that prevents homelessness, the cost of eviction prevention through provision of free legal services would be materially lower than the resulting savings in shelter costs (about \$44,000 per family sent to shelters, more than 20 times what it would cost to provide legal representation on average) and other direct expenses of homelessness. When the other

² *Id.* at p. 1 (“The average anti-eviction legal services client is 43 years old and resides in a household of three.”).

³ Stout, Risius & Ross, Inc., “The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A,” (March 16, 2016), *available at* http://www2.nycbar.org/pdf/report/uploads/SRR_Report_Financial_Cost_and_Benefits_of_Establishing_a_Right_to_Counsel_in_Eviction_Proceedings.pdf.

advantages of eviction prevention aside from direct shelter costs are factored in, the cost-effectiveness of eviction prevention becomes difficult to dispute. I have provided a link to the SRR report in my testimony and commend it as well as the Office of Civil Justice Report for the panel's consideration.

Let me turn, then, to the value of so-called unbundled or limited scope legal services – circumstances where, with the client's consent, the lawyer provides something less than the full legal services the client would obtain if there were sufficient resources to provide such full representation to everyone. The City Bar considers itself a leader in providing unbundled legal services through many of the City Bar Justice Center's existing projects, including its Elder Law, Consumer Bankruptcy, Federal Pro Se Legal Assistance, Immigrant Justice and Planning and Estates Law Projects, in addition to its Legal Hotline, the largest free general legal services hotline in New York City. The City Bar Justice Center and other organizations provide such limited or unbundled legal services along a broad spectrum. These services range from nearly complete representations, in which our lawyers or pro bono volunteers actually enter appearances as counsel for the clients pursuant to understandings that they will do so only for limited purposes, or ghostwrite pleadings, bankruptcy petitions or other submissions without going to court, to brief telephonic hotline advice and direction of callers to do-it-yourself forms and potentially helpful social services providers, and even to non-legal assistance like the assistance provided in the Courthouse Navigator pilot projects. Rules 1.2(c) and more specifically 6.5 of New York's Rules of Professional Conduct expressly authorize arrangements for delivery of this full range of limited legal services, so long as clients give informed consent.

The calibration of precisely what services to provide particular clients inherently involves a challenging balancing exercise. That balancing reflects providers' desire to provide full legal

services to everyone who needs them and cannot afford to pay for them, our recognition that insufficient resources exist to achieve that goal, and our determination to provide some valuable assistance to as many people who ask for help as possible. That can be a challenge. Every year, the Justice Center and about 1,150 volunteer attorneys working with it help about 25,000 New Yorkers, including almost 10,000 callers to the Legal Hotline, and close about 13,000 cases.

Realizing that we cannot give full legal representation to most of the people seeking our assistance, we view unbundling as a pragmatic, efficient and valuable mechanism for providing clients with the best tools possible to complete their legal case on their own. Our Legal Hotline attorneys continuously make judgments based on extensive experience about how to help callers effectively while retaining the nimbleness to identify particular representations that require more than brief advice and may even ultimately require extensive attorney involvement. For many callers, attorneys are able to provide significant (even though brief and limited) assistance in the form of describing the legal process they are experiencing, pointing them to relevant forms, and if necessary creating court papers for pro se litigants and assisting with filling out forms. When clients' problems seem to require more, the Justice Center seeks to provide them with a pro bono attorney through one of its full representation projects or to refer them to another legal services provider that handles that particular area of law.

We cannot claim that all recipients of brief or limited services from the City Bar Justice Center or other providers achieve the same outcomes they would have received with full representation. But the Justice Center's experience and the results of our client surveys indicate that clients believe (with good reason) they are far better off with the limited scope representations than with no help. Last year, a survey (with a less than fully informative return

rate of about 6%) of callers to the Legal Hotline indicated that those callers believed their interactions with the Justice Center had provided them with answers to their legal questions (74.2%), empowered them to deal with the problem better (51.6%), helped them keep the problem from getting worse (22.6%), relieved stress and/or anxiety (45.2%), explained the consequences of various courses of action (32.3%), and helped them understand the legal system better (25.8%). These limited and not completely clear or consistent statistics appear to suggest that callers generally felt helped by and better informed as a result of their hotline communications but could not say whether and to what extent those communications affected their ultimate outcomes.

There continues to be limited authoritative data about the results achieved from limited scope representations for people who cannot afford a lawyer. The Office of Civil Justice Report describes (pages 44-55) some relatively small and limited studies regarding the effects of unbundled representations on ultimate outcomes, on clients' experiences and on clients' perceptions about the process. While the evidence on these questions remains limited and equivocal, the studies generally provide ample basis for concluding – once again, in accordance with intuition – that limited scope representations probably do not collectively achieve as many favorable results for clients as full representation would achieve, that they still often alter the outcome from what the client would have experienced with no assistance at all, that they consistently provide significant assistance and self-empowerment to the client in addressing the challenges the client is facing, and that they overwhelmingly are viewed by clients (again, for good reason) as preferable to no assistance.

In operating our Legal Hotline, we have continued to expand the degree to which our services to callers amount to something more than just brief oral legal advice, reflecting a perception of their need for greater individualized assistance and our belief that limited scope

representation is effective and helpful. Over the past year, the Justice Center has handled about 3,000 cases of this type, including uncontested divorce actions involving custody or child support issues. Representation in these cases can include not only providing legal answers over the phone and sending callers know-your-rights information but also reviewing and helping to process a caller's faxed documents, drafting simple advocacy letters and legal answers, making phone calls, negotiating with opposing parties, and setting up in-person appointments with callers to help work through more complicated legal issues.

Examples of such representation include:

- Ghostwriting a successful motion to dismiss a landlord's petition for eviction of a disabled senior citizen from his apartment in Queens.
- Drafting Article 78 petitions to correct several clients' names and dates on birth certificates, clearing the way for their receipt of previously denied benefits.
- Helping a mother with a severe learning disability and her school-age children obtain extensive apartment repairs by coordinating inspections and access with the landlord.
- Assisting a low-income woman in obtaining guardianship of her developmentally-delayed sister by helping her draft an Article 17a petition in the Queens Surrogate Court when the client could not navigate the court-generated DIY form on her own, and by obtaining the medical evidence needed to establish the ward's disability.
- Helping a low-income mother file an answer to her husband's divorce petition that had omitted reference to the couple's two minor children born during the marriage.
- Assisting a senior citizen through successful direct advocacy with a furniture store to renegotiate a payment plan that she didn't understand and couldn't afford.

The City Bar Justice Center is continuously working on improving its delivery of unbundled legal services. Last year, the Justice Center launched an online intake application that gives applicants with a web browser another way to access the Legal Hotline’s services at any time. The Justice Center is also leading a collaboration of legal services organizations to create a unified online consumer intake portal for low-income New Yorkers. Our Veterans Assistance Project and Consumer Bankruptcy Project have produced legal educational videos for clients on specific areas of law. We continue to identify new ways to leverage the pro bono volunteer efforts of New York’s vibrant legal community, including through our Monday Night Law program in which pro bono attorneys provide one-on-one consultations with clients at City Bar clinics every Monday night.

As mentioned last year, we are aware that not all judges have embraced the notion of attorneys' undertaking only part of a full representation, and we still talk to judges who have “never heard of” unbundled or limited scope services. Volunteer attorneys sometimes express concern that a court may require them to stay on for an entire case even when their retainer spells out the limited nature of the representation. These issues have arisen in other states, too; discussions about providing limited scope representation as a way to increase access to justice are occurring between bench and bar all over the country.⁴ We believe it is important for the Court to continue to educate our judges that this is an essential part of bridging the justice gap,

⁴ See, e.g., *Are You Ready? New Limited-Scope Representation Rules Take Effect in 2015*, State Bar of Wisconsin “Inside Track” newsletter, available at: <http://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=6&Issue=21&ArticleID=23685> (discussing new rules taking effect January 1, 2015 to provide more guidance to lawyers with respect to limited scope representation, especially in court cases, and noting that 42 states now allow attorneys to offer unbundled legal services); Grueskin, C., *New Rules Give Lawyers More Flexibility To Take On Cases*, Bismarck Tribune (June 7, 2016), available at: http://bismarcktribune.com/news/local/crime-and-courts/new-rules-give-lawyers-more-flexibility-to-take-on-cases/article_379da74d-a2a7-5fe6-bfa3-8caa9f9bc5dd.html.

and that the ethics rules expressly recognize attorneys' entitlement to enter and adhere to retainer agreements limiting the scope of their pro bono services. Fewer attorneys will volunteer for needed limited scope representation if they think they cannot end their representations as provided in their limited scope retainer letters.

Thank you for the opportunity to testify, and a particular thank you to the Permanent Commission for its pathbreaking contributions to improving access to justice in this state.

Hon. Douglas E. Hoffman
*(Acting Justice, Supreme Court, New York County;
Family Court Judge, New York County)*

Hon. Douglas E. Hoffman

Presiding Judge

Integrated Custody and Domestic Relations Part

New York County Supreme Court

New York County Family Court

**HONORABLE DOUGLAS E. HOFFMAN
PRESIDING JUDGE
INTEGRATED CUSTODY AND DOMESTIC RELATIONS PART
NEW YORK COUNTY SUPREME COURT
NEW YORK COUNTY FAMILY COURT**

**Summary of Background and Testimony for Chief Judge DiFiore's
Statewide Civil Legal Services Hearing**

I would like to thank Chief Judge Janet DiFiore, Chief Administrative Judge Lawrence Marks, Deputy Chief Administrative Judge Fern Fisher, the Presiding Justices of the Appellate Division, Administrative Judge of the New York City Family Court Jeanette Ruiz, and Administrative Judge of the New York County Supreme Court Peter Moulton for providing me with the opportunity to testify today.

I have been an Acting Justice of the Supreme Court of the State of New York since 2009. I was first appointed to the Bench 20 years ago. Prior to appointment to the Bench in 1996, I served in various positions with the Civil Division of The Legal Aid Society, including Litigation Director for the Bronx Neighborhood Office, Director of Training, Attorney-in-Charge of the Brooklyn Office for the Aging, and Staff Attorney for the Harlem Neighborhood Office.

In my 20 years on the Bench, I have been a Housing Court Judge, Family Court Judge and Acting Supreme Court Justice. For several years, I served as Supervising Judge of the New York County Family Court. Starting in February 2016, I have had the privilege to preside over a new pilot Part in New York County, the Integrated Custody and Domestic Relations Part (ICDR).

When I described the new Part a few months ago to a group of leading matrimonial law practitioners, one commented that this new Part defined the term "Unified Court System." It also, in many ways, can serve as an integral component of access to justice.

This is how the ICDR Part works: From the moment a married person walks into New York County Family Court to file a custody, visitation, guardianship or family offense petition concerning domestic violence, that person is immediately referred to my Family Court Part 9. I hear the case in the ICDR that day. The petitioner is informed of the right to counsel and, if the petitioner is eligible, counsel is assigned that day. If appropriate, on day one, the court issues an interim order of protection and/or a temporary order of support, together with a summons, order to show cause or writ. We may have the Sheriff serve a combination of a custody petition,

family offense petition and temporary order of protection that day. All parties have access to counsel the first day they come to court.

The court assigns a short return date, where the respondent is appointed counsel if eligible, and the cases are carefully and promptly addressed all in one courtroom. There is a wide array of services available in Family Court that can assist the litigants. The ICDR can select and refer litigants to those services, which I will describe shortly, that day or on any other court date. If there are no related Supreme Court filings, the court addresses all matters together in Family Court. If there are later, supplemental petitions, the litigants are referred back to the ICDR to address these new or supplemental petitions.

Either spouse may subsequently file for divorce in Supreme Court, the only court that has jurisdiction to hear matrimonial actions. If a related Family Court proceeding is in the ICDR Part, once a Request for Judicial Intervention (RJI) is filed in the matrimonial action, that divorce action is referred to me in the Supreme Court Part of the ICDR, Part 14, in the very same courtroom - same Judge, different clerk. Instead of the parties engaging in sometimes contested motion practice in Supreme Court to consolidate all pending matters in Supreme Court, with the attendant forum shopping and other very costly, divisive and time consuming litigation, and with tremendous judicial familiarity with the issues lost in the transition to Supreme Court, the matrimonial action is heard by the same Judge in the ICDR, who at the outset is very familiar with the parents, the children and all the relevant circumstances. All or selected Family Court proceedings are transferred by me as a Supreme Court Justice to the Supreme Court ICDR Part, and, as I will discuss shortly, there are tremendous benefits to that ability to be selective. The Supreme Court action proceeds on an expedited track with a case conferencing model and time certain appearances that have been engrafted from Family Court. If a Family Court Article Ten proceeding is filed by Administration for Children's Services (ACS) against one or both parents, the ICDR will hear that case as well.

So what are the truly major benefits to litigants of this integrated Part and how does an integrated Part of this nature further the goals of access to justice? In addition to what has already been stated:

* All cases in Family and Supreme Court are heard by one Judge, who is familiar with and equipped to address all issues presented by this family. When the parties are addressing Family Court matters, such as custody and domestic violence issues in the ICDR and the parties are aware that an emergency application has to be made that can be heard only in the Supreme Court matrimonial action, the integrated court can rapidly schedule that hearing in advance of the anticipated filing, instead of waiting for the RJI, subsequent assignment to a particular Justice and scheduling by that Part without the detailed familiarity with the case or the emergency in question.

* The party is seen by the Judge who will be addressing his or her cases the day the litigant first files or appears in Family Court through the conclusion of the Supreme Court matrimonial

action.

* Counsel is assigned to a litigant the first day that party appears in court. In a non-ICDR matrimonial action where there is a custody, visitation, guardianship or domestic violence component, counsel is not assigned until at least the first appearance before the Supreme Court Justice following filing of an RJI, which may result in significant and harmful delay. In addition, it may take the Supreme Court Justice a period of time to become sufficiently familiar with the family and its issues before deciding to assign counsel.

* Attorneys for the children and parents are in Family Court daily through their contracts with New York City or New York State and social workers are paired with the attorneys to form a team to represent the litigation interests of the children or adults. An attorney for the children can be appointed when appropriate in the ICDR the first day a case is filed. This is particularly important when a petition for a writ of habeas corpus is filed or there is another emergency application.

* There are certain agencies or individual attorneys who may be assigned in Family Court to represent a child or parent, who are not authorized to appear in Supreme Court. When the ICDR did not exist and the custody, domestic violence or other Family Court proceeding was transferred to and consolidated with the Supreme Court matrimonial action, that attorney-social worker team would have to be replaced by new counsel, who often functioned without a partner social worker, who had already formed a relationship with the children and had been fully familiar with the issues concerning the children. With the ICDR, the court can elect to keep those cases, such as custody or visitation, in Family Court so that the team in place representing the children or an adult can continue to function effectively. Those cases are calibrated with the matrimonial action and the court can manage its calendar to have both the Family Court and Supreme Court cases on the same day. If I do consolidate the Family Court proceedings and the matrimonial action, the attorneys have long-standing familiarity with the issues confronting the family and are poised to act more expeditiously and effectively in their clients' interests.

* There are a number of issues that frequently overlay both Family Court and Supreme Court matrimonial matters, most particularly, mental health and substance abuse. In a separate matrimonial action or one in which the Family Court proceedings have been consolidated, Supreme Court has essentially no in-house access to substance abuse and mental health testing and treatment services. The ICDR utilizes services available to Family Court to address the wide range of issues confronting the families who appear before it. With respect to substance abuse issues, the ICDR can utilize in a consolidated matrimonial action the on-site testing, counseling, referral and monitoring services of Family Treatment Court. These benefits can play a key role in providing the optimal outcome for a family that has concurrent matrimonial, custody, domestic violence or supervised visitation issues.

* The ICDR has recently partnered with Family Court Mental Health Services (MHS) on a pilot basis to provide critical mental health testing and evaluation for families whose proceedings have

started in Family Court regardless of whether or not those proceedings have been consolidated with a divorce action in the Supreme Court Part of the ICDR. The ICDR court can direct MHS to conduct different types of mental health evaluations, depending upon the particular need in a given case. For example, in a matrimonial action with a disputed custody component and assertions of the need for one parent to have supervised parenting time, MHS could conduct an emergency mental health evaluation that day to determine if an adult or minor child is likely to present a serious danger to himself or others and may need immediate hospitalization. Alternatively, MHS could conduct an imminent risk assessment to assist the court in determining whether or not remaining in the care of a particular parent would present risk to the child's physical and/or emotional well-being. MHS may also conduct for the ICDR assessments as to a party's functional parenting capacity, as well as an evaluation to focus on the risks and benefits to a child if a parent's visitation or contact with a parent is modified as to its frequency, duration and level of supervision. Very importantly, MHS conducts assessments of litigants to assist the ICDR to determine whether or not a litigant needs appointment of a *guardian ad litem*. These are among the many assessments that are available in the ICDR in an integrated action, which would not otherwise be available to Supreme Court in a matrimonial action.

* Parties in the ICDR have access to mediation services in Family Court that are not available to non-ICDR Supreme Court litigants. Skilled, experienced mediators often play a crucial role in having often self-represented parties reach a reasonable resolution of their parenting disputes.

* With respect to domestic violence issues, the ICDR conducts Skype intake in coordination with the Manhattan Family Justice Center for those petitioners whose safety concerns preclude their presence in court for the initial intake. ICDR litigants can utilize the protection and services of Safe Horizon within the court house for victims of domestic violence who fear for their safety by having to travel to the courtroom.

* Rapid access to counsel in the ICDR can play a critical role in keeping children safe and families together when there are allegations of child abuse or neglect. The usual practice in Family Court is that when a Family Court Article Ten abuse or neglect proceeding is filed, any prior pending custody, visitation or family offense petitions are transferred to the Article Ten child protective judge. If there is a custody, visitation or domestic violence case in the ICDR, the ICDR Part will take the new Article Ten filing. This has many benefits, as the parents and children already have counsel and the children have social workers who are familiar with all family issues. Instead of a parent meeting his or her attorney for the first time just before a new abuse or neglect petition is to be heard before a judge who never met the family previously, while ACS may be seeking to remove one or more children from the home, the parties will have the services of attorneys and social workers with whom they have developed a relationship, who know the case, and who will appear before a judge who is fully familiar with the issues presented in the home. This has resulted in more just outcomes for both children and parents.

When there is a pending Article Ten proceeding and a spouse files a matrimonial action in Supreme Court, only some of the matrimonial judges will take the Article Ten proceeding,

even though the outcome of the matrimonial and the Article Ten proceedings can have a great impact upon one another. With the ICDR Part, all cases, including Article Ten proceedings and the divorce itself, are heard by one judge in the Supreme Court Part, again leading to a more just result. The ICDR Part can direct ACS to conduct a court-ordered investigation of the parties' home and to explore various child protective issues. In the custody and guardianship context, the court may also order the Department of Probation to investigate and report concerning similar issues. These services are not available in Supreme Court.

* Very importantly, there are no filing fees or other costs associated with Family Court filings, while Supreme Court fees may be prohibitive for many litigants. The ICDR Part can select whether to consolidate Family Court and Supreme Court matters based in part on this consideration.

* The new ICDR Part plays an important role in access to counsel and therefore access to justice in child support and paternity proceedings. There are approximately 250,000 petitions filed annually in the New York City Family Court. Of these petitions, roughly 89,000 are support petitions and 21,000 are paternity cases. The overwhelming majority of Family Court litigants are not represented by counsel and do not have meaningful legal guidance when they first appear in court. Although many litigants are ultimately represented in an array of cases in Family Court, petitioners in paternity proceedings and most parties in support proceedings are not entitled to assigned counsel and do not have counsel. It is only when a party potentially faces incarceration, such as where there is a willfulness hearing in a child support case, that the party is entitled to counsel. Parties are not entitled to counsel in a violation hearing; thus, by the time the party potentially faces incarceration in a hearing to determine if the violation was willful, it may be effectively too late meaningfully to assist the litigant, even with assigned counsel.

The impact upon parties without counsel can be devastating. Our paternity and support laws are complex, and a party represented by counsel, with an opponent who is *pro se*, has a strong advantage in terms of presenting evidence and articulating legal arguments. In a paternity case, for example, where the petitioner does not have the right to counsel, a petitioner may not know that he may have the right to DNA testing, may not be able to raise issues such as the presumption of legitimacy of a child born to a woman who is married, or may not be aware that there is an equitable estoppel argument that may prevent testing to indicate biological parentage.

In support cases, seeking to establish income, assets, adjustments for other children for whom there may or may not be an order of support, validity of employment searches, bases for upward or downward modifications, child care costs, or bases for deviation from standard support guidelines, are difficult to establish. At the hearing, an unrepresented litigant has a distinct disadvantage based upon a lack of understanding of how to obtain and present testimonial or documentary evidence in a coherent manner.

The Family Court Act requires litigants in support proceedings to provide numerous financial documents, including sworn financial statements, a current and recent pay stub, copies

of their tax returns and W-2 forms. Litigants often have to produce employment records and documentation as to employment searches. They may be obliged to submit medical records to substantiate a claim of inability to work. As a result of inexperience of unrepresented litigants with the process, many fail to provide proper documentation to the Support Magistrate or Judge, who must at times issue an order of support without key documents. This creates the potential for unduly onerous orders of support to be entered against low-income litigants who are ultimately unable to meet these child support obligations. This can lead to findings of violations of orders of support and, potentially, incarceration, most frequently of low-income fathers.

Furthermore, under the law, with limited exceptions, upward or downward modification of support orders can be effective only as of the date of the filing of the modification petition, even though the facts underlying the downward modification may have existed long before the petition was filed. Had the litigant had appropriate legal counsel, the support order could have corresponded more properly to the economic reality of the parties. Lack of counsel can also play a significant role in cases involving litigants who are self-employed and do not usually receive "W2" income, and can lead to inadequate orders for a custodial parent. In these complex cases, counsel can make a difference between an order which adequately and fairly supports a child and one that provides very little help to a family. In all of these types of cases, the problems are often compounded by the lack of familiarity so many of our newest citizens have with the judicial system and how outcomes in civil proceedings may affect legal status in this country.

Greater availability of counsel would be extremely beneficial to unrepresented litigants in these proceedings and to the court system as well. Cases that include counsel for both sides result in more informed, and therefore more just, decision making by the court. The process moves more expeditiously and eliminates the filing of unnecessary supplemental petitions. A litigant in a child support proceeding represented by an attorney with experience in child support matters may receive a more reasonable child support order, consistent with actual income, which would decrease the need to file future petitions for downward modification, as well as violation petitions. Increase in the availability of counsel for these cases would promote judicial economy and would provide jurists with more time to spend on each case, while also decreasing the amount of time each jurist spends explaining Family Court procedures to unrepresented litigants.

I have tried today to describe some of the ways in which an integrated Part affords a greater, more timely and more effective opportunity to be heard than proceedings or actions in a non-integrated judicial setting. Of course, resources are needed to ensure that the parties have a truly meaningful opportunity to be heard and a more just result. In the seven months during which the ICDR Part has existed, I have heard approximately 750 Family Court dockets, together with related matrimonial actions in which an RJI has been filed. In addition to the overall need for funding for counsel for child support, agencies that have a contract with New York City and/or New York State to provide legal services should be permitted pursuant to their contract to appear in both Family and Supreme Court, to address all issues relevant to the family, including child support, and to be paid for their services. There needs to be a formal expansion of mental health testing and evaluative services for cases that are transferred to Supreme Court, as well as

drug testing, assessment, referral and monitoring services.

I am very excited about this Part. Its integrated and therefore more nuanced approach will result in a much more meaningful opportunity to be heard for those who are most vulnerable and will achieve a more just result. Thank you.

Susan McParland-Leisen

*(client of Nassau Suffolk
Law Services Committee, Inc.)*

Susan McParland-Leisen

Testimony for Chief Judge's Statewide 2016 Civil Legal Services Hearing

September 27, 2016

My name is Susan McParland-Leisen. I am a breast cancer survivor and a client Board Member of Nassau Suffolk Law Services (NSLS).

In 2009, I lost my job as Executive Assistant to the Executive Director at a major children's charity. I had been working in the non-profit sector since 1993. Our economy was in shambles, and people were not hiring. I sent out hundreds of resumes, with very few responses. Although I often made it to the final interviews, I had received no firm job offers.

In June of 2011, my unemployment insurance ran out. Soon thereafter in July of 2011, I was diagnosed with Invasive Ductal Carcinoma, Triple Negative Breast Cancer, Stage IIIA. I was 50 years old. I had no health insurance, no financial resources, and I did not know what to do. I was terrified, and shaken to the core. As an adoptee, I had very little information about my genetic history, and had no idea if breast cancer ran in my family. However, I was extremely aware of the high rate of breast cancer on Long Island.

Thankfully, the Breast Health Clinic at Nassau University Medical Center filed for emergency Medicaid for me so I could begin treatment. I always had a job and health insurance, so I had absolutely no clue what to do. I had to file for Welfare at Nassau County Social Services. It was an overwhelming and humiliating experience. At that time, I was also told to additionally file for Social Security Disability. I was informed that I could file on-line. I qualified for Medicaid and an EBT card, (food stamps and cash public assistance) which gave me approximately \$119 per month.

I began chemo treatments August 16, 2011. Chemo is never pretty. I lost my hair, eyebrows and lashes, had severe and frequent bouts of hot flashes, mental cloudiness ("chemo brain"), mouth sores, and sores broke out around my ankles. It also left me with permanent peripheral neuropathy. During this time period, while I was undergoing chemotherapy, on morphine, steroids, and any other drug needed to get me through this experience, I began to fill out all of the on-line forms necessary for Social Security Disability. Every time I thought I was done, I was notified there were more forms to complete. I did the best I could. At the doctor's appointment with Nassau County's Social Services, while I was at the lowest point

of my final chemo treatment (I could not drive, and had open sores around my ankles, chemo brain, and extremely painful neuropathy), I was informed by the doctor that she had never heard of “chemo brain.” I felt terribly disrespected.

After my mastectomy, in late February of 2012, I had to wait until I was healed enough to begin radiation treatments, of which I was to receive thirty three. The radiation not only burned my skin, but left me with permanent muscle and lung fibrosis on my left side. During that time, I received a notice in the mail, informing me that I was rejected for Social Security Disability. I was astounded and panicked. I could barely navigate the hospital, much less return to work. I was also going to require reconstructive surgery. (To date, I believe I’ve had seven surgeries. My latest one was in May, 2016.)

I knew I needed help and I spoke to my social worker from the Adelphi Breast Cancer Program and Hotline, who gave me the phone number for Nassau Suffolk Law Services (NSLS).

I was very weak when I had my first meeting with an attorney from NSLS. I barely remember it. What I do remember is that I did not have the energy to endure the long walk down the corridor, and had to stop and rest in the hallway after I met with the attorney.

That initial meeting started the ball rolling, and sometime after, I was assigned to an amazing attorney, Melissa Zeidler at an NSLS office that was more convenient for me. Ms. Zeidler understood my predicament, and was very professional but always compassionate. We gathered medical records, filled out more forms, and I finally had my day in court. I was very nervous, as most people are when they don’t know the procedures that determine their fate. The hearing was held before an administrative law judge, and Ms. Zeidler presented my case and all the evidence.

I received the decision very promptly. Thanks to Ms. Zeidler’s knowledge of the law and attention to detail, I was finally approved for Social Security Disability. I broke down in tears when I read the letter. It was so important to have my own source of income which gave me dignity and security. My first phone call was to Ms. Zeidler, to thank her for all of her work, and express my elation and relief that I was finally approved. One of the next phone calls I made was to Nassau County Social Services, to tell them I no longer needed public benefits.

This entire process took two years. Two very long years, and I still had many reconstructive surgeries in my future. As time passed, every time I received a

notice from the office of SS Disability, I reached out to Ms. Zeidler for her advice and input. Some of the letters were rather confusing, or it could have been my chemo brain at work, but she was more than happy to help me make sense of their content.

I am amazed at the number of cases that NSLS handles on a yearly basis for people like me, and for others with even worse problems! Although Long Island is regarded as an affluent place to live, we all know that there are many communities with people living in dire poverty, who do not know what resources are available to help them through many different types of crises.

In 2014, Ms. Zeidler called me and asked if I wanted to appear on a TV special for the Susan G. Komen Foundation, which was to air the night before their big walkathon through Central Park. I agreed. Anything to help! She then mentioned that there was a seat on the Board of Directors at NSLS that needed to be filled for a client member, would I be interested? Again, I agreed. I will do my best to help anyone who has ever felt as helpless as I have felt and I am happy to give back.

I am still constantly at the hospital. I can be there three to four times a week, seeing my neurologist, plastic surgeon, oncologist, general practitioner, hematologist, therapist, etc. There are tests, and more tests to ensure that I am getting healthier, and able to navigate my way with the damage done to my body, by the treatments that have saved my life. While I am there, I make certain to drop off NSLS pamphlets in each department I visit. People need to know there is hope. People need to know there is help available.

Most of us are just one disaster away from complete financial devastation. I thought the loss of my job in 2009 was my disaster. I was wrong. It was only the beginning of a series of disasters. The services that NSLS provides to the public free of charge, are essential to the quality of life for many people on Long Island. The funding that NSLS receives for Civil Legal Services is the life's blood of NSLS, so that we may continue to help people in crisis. Please continue to help us, so that we may continue to help others like me, and those in even more dire straits than mine. So far, my story has a happy ending. I am more than well aware that not everyone gets to have one of those. So, I feel privileged to be able to sit before you today, and tell you of my experience. Thank you for your time and your attention.

Harry Michel

*(client of The Legal Aid Society,
Queens Neighborhood Office)*

TESTIMONY OF THE LEGAL AID SOCIETY
FOR THE CHIEF JUDGE'S CIVIL LEGAL SERVICES HEARING

September 27, 2016

Introduction

This testimony is submitted by the Legal Aid Society, through its Queens Neighborhood Office, Sateesh Nori, Attorney-in-Charge. The testimony, given by our client Harry Michel, highlights the extreme hardship faced by Mr. Michel after the incapacitation of his brother, the death of his mother, the accompanying financial pressures, and the legal challenges to his right to remain in his long-term home.

The Legal Aid Society assisted Mr. Michel in three distinct eviction proceedings, helped him apply for a rental subsidy program called the Family Eviction Prevention Supplement (FEPS), and helped him obtain additional rental assistance so that he could remain in his home.

Testimony of Harry Michel

Good Afternoon.

My name is Harry Michel and I am here to tell my story about how the Legal Aid Society helped keep me and my son from becoming homeless after a deeply challenging and tragic time in my life.

I live in a co-op apartment in Rego Park, New York 11374 where I have lived for almost 15 years. My brother, William Michel, purchased the apartment on October 24, 2001, using money he received from our mother, Efthemia Michel.

William and I resided together in the apartment until William suffered a nearly fatal accident in January 2007 while he was vacationing in Florida. After the accident, William was removed from a medically induced coma and remained in a natural state of comatose. He currently stays in a facility. Following the accident, my mother and I continued to reside in the apartment. In September 2007, my son Peter moved into the apartment with me. I am Peter's primary parent.

My mother passed away in 2008. During this time, I felt tremendous financial stress.

In late 2010, I began having difficulty paying the monthly maintenance on the apartment. In 2011, the co-op sued William (and me) for nonpayment of rent. I had almost lost hope and considered the possibility that my son and I would become homeless.

In the courthouse, I discovered that I could get help from The Legal Aid Society. They helped me fight the co-op and force them to allow me to remain in the apartment despite my brother's and my mother's absences. With their help, I obtained a Family Eviction Prevention Subsidy (FEPS), which enabled me to pay down the arrears and continue paying the monthly maintenance on the apartment so that my son and I did not lose our home.

In 2013, the co-op sued William again, alleging that he was illegally subletting the apartment to me. Again, The Legal Aid Society, this time with help from a private law firm, Kaye Scholer, represented me and got this case dismissed.

In 2015, the co-op sued me a third time, alleging that William had violated the by-laws of the co-op by allowing me to live there. Again, The Legal Aid Society assisted me and won me the right to occupy the apartment.

Recently, I fell behind in my share of the rent because I had to use my limited resources to apply for a license to become a taxi-driver. The co-op served me with an eviction notice. For the fourth time, The Legal Aid Society helped me by obtaining rental assistance to satisfy my rental arrears.

I continue to maintain the apartment with the hope that William will someday be able to return home and we will occupy the apartment together again. I visit him at his facility every week, hold his hand, and talk to him with the hope that he can hear and understand me.

Again, I want to express my gratitude to lawyers like those at The Legal Aid Society, who have given my family and me a chance to make it.

HARRY MICHEL

Ady Escobar
(*client of Legal Services NYC*
[Bronx Legal Services])

Testimony of Ady Escobar
Chief Judge DiFiore's Statewide Public Hearing on Access to Civil Legal Services
September 27, 2016

My name is Ady Escobar, and my son's name is Jose Daniel Lopez Escobar. Jose is 5 years old, and he suffers from a rare condition called Lesch Nyhan Syndrome. He is the only child in New York State who has this condition. I am here to testify about what Bronx Legal Services' Education Law Unit did for me and my son. Without their help Jose would not have been placed in a school that could care for him and give him the help he needs; without their help Jose would not be able to get the education all children deserve.

I live alone with Jose, and raise him with help from his father. Jose suffers from frequent kidney stones, and has had surgery for them more than five times. He has a gastric tube to give him water. He sometimes makes unexpected movements that he cannot control. His condition will get worse over time.

Jose sits in a wheelchair, and can walk with help. He attends the John Coleman School, a state approved non-public school in White Plains, New York where he has been a student for the last 2 ½ years, first in pre-school, and now as a first grader. John Coleman is a good school for Jose because they specialize in working with fragile kids with multiple disabilities. The teachers know Jose's condition, and let the nurse know right away when he needs help. The school knows Jose's capabilities, and helps him reach his full potential. They give him the attention that he needs, and help him become more independent. My son is safe in this school, and very happy to be there.

When Jose was turning five, it was time for him to receive an official school placement for elementary school. I was working with an organization for people with disabilities. They told me I needed a lawyer, and I was referred to Bronx Legal Services. I met my lawyer Kathleen Dennin, on April 28, 2015.

On April 30th, just two days after we met, Kathleen and I went to a meeting where a Department of Education team was supposed to decide where Jose could go to school. They told us that Jose should go to a District 75 school. District 75 is a public school for children with disabilities.

In April and May I visited a number of different District 75 schools. Of the five schools I visited, none were the right place for Jose. The schools did not have the kind of medical help he needs. Jose's condition can change at any moment; for example, people with this condition start biting themselves and need to be protected from their actions. Also, Jose's unexpected movements could make him fall at any time. The District 75 classroom would have had 12 students in it, which would not have provided enough individual attention for Jose.

With my permission, Legal Services contacted all of Jose's doctors to obtain medical documentation to make the case for Jose to stay at John Coleman. Legal Services asked each of the doctors to explain more about the urgency of Jose's condition and about his needs.

Despite getting the new medical documents, when my lawyer and I met again with the Department of Education on July 16, 2015, they still did not agree with our position. We decided to request a hearing.

We asked that Jose be allowed to continue in a state approved non-public school because of his medical needs, and we also asked for an evaluation to better identify Jose's needs and his abilities. After we filed our hearing request, the hearing officer issued an order that Jose could stay at the Coleman School until the hearing was complete. The Department of Education agreed to a new evaluation of Jose and to re-consider my request for Jose to attend a non-public school. On November 30th we met again with the Department of Education. This time they considered all of the medical letters and the new evaluations, and decided that Jose could stay at the Coleman School because it is the right type of school to take care of Jose's needs.

Legal Services helped me get what I need for my son. My lawyer fought hard for Jose and for me. She talked to me regularly to keep me posted about everything that was being done. When the case wasn't going well, she helped to give me the strength to keep working and get past the disappointment and never give up. My lawyer spoke very powerfully and clearly about my son's needs at the meetings she attended for my son. She helped to make sure that the law would work for my son's benefit. I felt that I was not alone in fighting for Jose's rights. Without Legal Services my son would not have the opportunity to be in a school that recognizes his needs, as well as the wonderful potential that he has.

PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK

APPENDIX 9:

**Written Statements Submitted for the Chief
Judge's Hearing Held on September 27, 2016**

NOVEMBER 2016

Written Statements Submitted at the
Department Hearing on September 27, 2016

Carolyn E. Coffey (*Director of Litigation for Economic Justice, MFY Legal Services, Inc*), Dora Galacatos (*Executive Director, Fordham Law School Feerick Center*) & Tashi Lhewa (*Staff Attorney, The Legal Aid Society*)

Michele Cortese (*Executive Director, Center for Family Representation*) & Rebecca Horowitz (*Manager for Government and Community Affairs, Center for Family Representation*)

Matthew Desmond (*John L. Loeb Associate Professor of the Social Sciences, Harvard University*)

Michael P. Friedman (*Civil Legal Services in New York*)

Dora Galacatos (*Executive Director, Fordham Law School Feerick Center*) & Matthew Schedler (*Supervising Attorney, CAMBA Legal Services, Inc.*)

Beth Goldman (*President & Attorney-in-Charge, New York Legal Assistance Group*)

Adam J. Halper, Esq. (*Director of Legal Services, Legal Wellness Institute at The Family Center*), Caroline L. Bersak, Esq. (*Assistant Director of Legal Services, Legal Wellness Institute at The Family Center*) & Leigh Thomas (*Legal Services Coordinator, Legal Wellness Institute at The Family Center*)

Carol LaFleur (*Executive Director, New York Legal Services Coalition*)

Dorchen A. Leidholdt (*Director, Center for Battered Women's Legal Services*)

Rohan Pavuluri (*Co-Founder of Upsolve.org*) & Jonathan Petts (*Co-Founder of Upsolve.org*)

C. Kenneth Perri (*Executive Director, Legal Assistance of Western New York, Inc.*)

Barry Seidel, Esq. (*Barry Seidel & Associates*)

Carolyn E. Coffey

Director of Litigation for Economic Justice
MFY Legal Services, Inc.

Dora Galacatos

Executive Director
Fordham Law School Feerick Center

Tashi Lhewa

Staff Attorney
The Legal Aid Society



September 12, 2016

New York State Permanent Commission on Access to Justice
c/o Jessica Klein, Esq.
Sullivan & Cromwell LLP
125 Broad Street, 32nd Floor
New York, New York 10004-2498

Dear Commission Members:

We are consumer law advocates who are engaged in a variety of direct service and policy advocacy and we serve as co-chairs of the New York City Broken Leases Task Force (“the Task Force”).¹ We convened the Task Force in 2015 in response to the marked increase in post-tenancy, rent arrears collection cases filed primarily in New York City Civil Court and the dearth of legal services providers who could represent defendants in such actions. We refer to these cases as “broken lease” cases.

Since the establishment of the Task Force, members have sought to address this substantial access-to-justice gap through several means. First, we convened legal services providers—specifically, housing and consumer practitioners—to discuss the increase in “broken lease” cases, the gap in legal services, and the policy and practice issues raised by such cases. Second, we developed legal resources for practitioners to use, especially at limited-scope clinics such as the Civil Legal and Resource Office (CLARO) Programs. Third, in collaboration with Legal Services NYC, we organized two training programs for legal services and volunteer attorneys regarding these such cases. These programs trained over 120 advocates on “broken lease” issues.

In our experience providing full representation and limited-scope assistance to New Yorkers on “broken lease” cases, we have seen the devastating impact of these cases on low- and middle-income litigants, including working poor households, the elderly, immigrants, domestic violence survivors, and identity theft victims. These cases are particularly challenging for a number of reasons. First, although the law is somewhat unsettled, landlords do not have a duty to mitigate

¹ Carolyn E. Coffey is Director of Litigation for Economic Justice of MFY Legal Services, Inc. Dora Galacatos is Executive Director of Fordham Law School’s Feerick Center for Social Justice. Tashi Lhewa is a Staff Attorney with The Legal Aid Society. Among our organizations, MFY Legal Services, Inc. and The Legal Aid Society, provide direct representation and limited-scope assistance to low-income New Yorkers on consumer issues, bring impact litigation, and engage in a range of legislative, regulatory, and other policy advocacy. Fordham Law School’s Feerick Center for Social Justice helped establish and operates the Civil Legal and Resource Office (CLARO) Programs in the Bronx, Manhattan, and Staten Island. CLARO Programs operate under the auspices of the New York State Unified Court Systems and provide limited-scope legal advice and assistance to New Yorkers on consumer debt collection issues.

losses when tenants vacate prior to the end of the term of a lease.² Second, landlords often file “broken lease” cases well after tenants have relocated and thrown out key documents and other proof that could aid in their defense and property managers assure tenants that they can vacate without repercussion. Third, “broken lease” cases often seek money damages of substantial sums—on average greater than other consumer credit actions. Finally, these cases suffer from many of the infirmities of consumer credit actions—improper service of process resulting in default judgments, inaccurate accounting by landlords, and other illegal debt collection practices. Judgments in such cases often result in substantial financial hardship and barriers to accessing housing.

We include with our letter written testimony and the outline for the oral presentation. We thank the Permanent Commission for its work in enhancing and expanding access to civil legal services for New Yorkers and for the opportunity to present this testimony. New York State’s expanded civil legal services has improved access to legal services for thousands of New Yorkers and, in the process, improved the administration of justice in state courts.

Thank you for the opportunity to submit written testimony and for the Commission’s consideration of the request to submit oral testimony.

Sincerely,

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² See *Holy Props. v. Cole Prods.*, 661 N.E.2d 694, 696 (N.Y. 1995) (holding that landlords do not have a duty to mitigate damages when commercial tenants breach their leases); *Gordon v. Eshaghoff*, 60 A.D.3d 807, 808 (App. Div. 2nd Dep’t 2009) (extending *Holy Props.* to residential leases); *Whitehouse Estates, Inc. v. Post*, 173 Misc. 2d 558, 559 (1st Dep’t App. Term 1997) (same).

**NEW YORK STATE PERMANENT COMMISSION ON ACCESS TO JUSTICE
2016 PUBLIC HEARING
SEPTEMBER 27, 2016
TESTIMONY FROM THE NEW YORK CITY BROKEN LEASE TASK FORCE**

We are honored to submit this testimony as part of the Hearing on Civil Legal Services in New York. We are co-chairs of the New York City Broken Leases Task Force (“Task Force”), which was established in 2015 by Fordham Law School’s Feerick Center for Social Justice, MFY Legal Services, Inc., and The Legal Aid Society. Our testimony is focused on the unmet legal services needs of low- and moderate-income New Yorkers who have been sued by landlords usually after they have vacated tenancies, most often for alleged rental arrears. We term such actions, which are brought in New York City Civil and Supreme Court, “broken lease” cases—a hybrid type of lawsuit that implicates both consumer debt collection and landlord/tenant law.

Impact of judiciary civil legal services on delivery of civil legal services

MFY Legal Services, Inc., The Legal Aid Society, and a number of the Task Force members receive Civil Legal Services funding. This funding has reduced the significant “justice gap” that existed for consumer credit actions, particularly in New York City Civil Courts. According to data from New York City Civil Court, in 2015, 14.4% of consumer credit actions had defendants who were represented by counsel.¹ By contrast, in 2014, in his Law Day Address of April 30, 2014, former Chief Judge Jonathan Lippman reported that only 2% of defendants in New York State consumer credit actions were represented.²

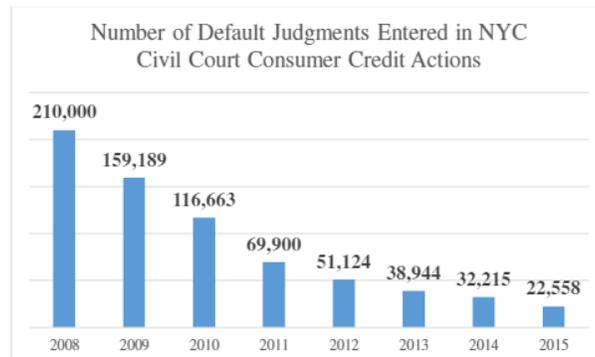
Consumer defense has a far-reaching and invaluable impact in achieving fairer outcomes in litigation—often with life-changing consequences for litigants and their families. For example, through limited-scope assistance and especially through full representation, consumer legal defense helps vulnerable New York State residents address default judgments. During an eight-year period, consumer experts estimate that at least 700,000 default judgments were entered in consumer credit actions filed in New York City Civil Court³—a disproportionate amount in communities of color and working poor and low-income households.⁴

¹ Source: New York City Civil Court.

² Hon. Jonathan Lippman Law Day Address, April 30, 2014, at 1.

³ This estimate is based on the annual number of filings of consumer credit actions in New York City Civil Court and rough estimates of the rate of default judgments stemming from the failure to file an answer.

⁴ See, e.g., New Economy Project, *The Debt Collection Racket in New York: How the Industry Violates Due Process and Perpetuates Economic Inequality* (June 2013) (examining impact of debt collection lawsuits on communities of color).



In New York City, widespread and well-documented improper service of process contributed significantly to astronomically high default rates,⁵ which peaked at approximately 70% in 2008 and dropped to approximately 41% in 2015.⁶ The change in the default rate reflects marked improvements in service of process in consumer credit actions over the past. Nonetheless, the 2015 rate remains unacceptably high.

Default judgments have devastating impacts on the lives of litigants—particularly those with low incomes. Although the Stop Credit Discrimination in Employment Act of 2015 goes a long way to protect New York City residents against employers’ use of consumer credit history in hiring, compensation, and other terms and conditions of employment, credit history continues to be essential for accessing housing and other essentials of life, including insurance.⁷ Further, when judgment creditors enforce default judgments—through income garnishment and bank restraints—litigants often suffer considerable hardship.

Legal assistance for litigants facing default judgments, particularly in debt buyer cases, makes a world of difference, first, by stopping the devastating harm of judgments on the lives of indigent and working-poor New Yorkers and, second, by assisting litigants to assert their legal rights to vacate default judgments and assert legal defenses in the underlying lawsuits.

⁵ See New York City Bar Association, *Out of Service: A Call to Fix the Broken Process Server Industry 2*, 4-5 (Apr. 2010), available at <http://www.nycbar.org/pdf/report/uploads/ProcessServiceReport4-10.pdf> ; Press Release, New York State Office of Attorney General, Attorney General Cuomo Sues to Throw Out Over 100,000 Faulty Judgments Entered Against New York Consumers in Next Stage of Debt Collection Investigation, July 23, 2009, available at <http://www.ag.ny.gov/press-release/attorney-general-cuomo-sues-throw-out-over-100000-faulty-judgments-entered-against-n-0> . See also MFY Legal Services, Inc., *Justice Disserved: A Preliminary Analysis of the Exceptionally Low Appearance Rate by Defendants in Lawsuits Filed in the City Court of the City of New York 2* (June 2008), available at http://www.mfy.org/wp-content/uploads/reports/Justice_Disserved.pdf.

⁶ Source: New York City Bar Civil Court Committee, which requests data from the New York City Civil Court on an annual basis. Please note that these numbers are estimates based on how the data was collected by the Court.

⁷ See Press Release, CFPB Monthly Complaint Snapshot Spotlights Credit Reporting Complaints, Aug. 25, 2015, available at <http://www.consumerfinance.gov/about-us/newsroom/cfpb-monthly-complaint-snapshot-spotlights-credit-reporting-complaints/> (noting that “[c]redit reporting affects the lives of most Americans” and that “[credit reports and scores can determine everything from consumer eligibility for credit to the rates consumers pay for credit”); CFPB Consumer Advisory: Fact-Check Your Specialty Consumer Report (May 2015), available at http://files.consumerfinance.gov/f/201505_cfpb-consumer-advisory-fact-check-your-specialty-consumer-report.pdf (stating that specialty consumer reporting agencies compile and sell reports related to consumers’ history of employment, rental, banking, lending, insurance, and criminal background).

Consumer legal defense is also critically important for litigants in the first instance—at the outset of litigation. Consumer debt collection consistently generates the highest number of complaints to the federal Consumer Financial Protection Bureau.⁸ Unfortunately, the public record is replete with examples of industry-wide abusive and deceptive debt collection practices.⁹ With assistance from counsel—ideally full scope representation, but if necessary through limited-scope assistance—defendants are often able to raise powerful substantive and procedural defenses and, as necessary, seek legal recourse when victimized by debt collectors. It must be noted, however, that legal defense and affirmative litigation in consumer credit actions are difficult and in some cases impossible for unrepresented litigants to take on and create significant burdens for courts and court administrators.

In summary, legal service representation and limited-scope assistance in the consumer area brings about fairer outcomes for consumers, which in turn assists in the fairer administration of justice in the state courts adjudicating such cases.

The unmet need: the increase in broken lease cases

Broken lease cases are primarily post-possessory actions brought by landlords for alleged rent arrears, attorney’s fees and other tenancy-related charges. Landlords file these actions most frequently in New York City Civil Court, but also in Supreme Court typically in two circumstances: (1) to collect on money judgments that are obtained in Housing Court in nonpayment actions that have been concluded, or concurrent with pending and active Housing Court actions; and (2) when tenants vacate residential tenancies prior to the end of the term of the lease. In the latter circumstance, tenants are often compelled to break their lease because of conditions in the apartment (which sometimes constitute constructive eviction) and/or because of economic hardship. In the case of economic hardship, tenants often receive oral assurances from management companies—as well as from counsel for landlords and even housing court judges, according to some tenants—that the tenants may break their lease without any adverse consequences. There is precedent that landlords do not have a duty to mitigate in the latter circumstance. *See Holy Props. v. Cole Prods.*, 661 N.E.2d 694, 696 (N.Y. 1995) (holding that landlords do not have a duty to mitigate damages when commercial tenants breach their leases); *Gordon v. Eshaghoff*, 60 A.D.3d 807, 808 (App. Div. 2d Dep’t 2009) (extending *Holy Props.* to residential leases); *Whitehouse Estates, Inc. v. Post*, 173 Misc. 2d 558, 559 (1st Dep’t App. Term 1997) (same). Therefore, a landlord can let an apartment sit empty for the remainder of an unexpired lease and then collect on the entire owed rent. With the epidemic of homelessness, housing shortage and low vacancy rates, the lack of a duty of mitigate permits landlords to hold tenants hostage to their leases and are incentivized to let the residence remain unoccupied.

⁸ Consumer Financial Protection Bureau, *Consumer Response Annual Report: January 1 – December 31, 2015* 7 (Mar. 2016), available at http://files.consumerfinance.gov/f/201604_cfpb_consumer-response-annual-report-2015.pdf (showing that debt collection complaints were the leading type of complaint in 2014 and 2015, accounting for 35% and 31% of complaint volume respectively).

⁹ *See, e.g.*, Consumer Financial Protection Bureau, *Fair Debt Collection Practices Act: CFPB Annual Report 2016* (Mar. 2016), available at http://files.consumerfinance.gov/f/201603_cfpb-fair-debt-collection-practices-act.pdf; National Consumer Law Center, *Consumer Debt Collection Facts*, <http://www.nclc.org/issues/consumer-debt-collection-facts.html>; Benjamin Mueller, “Victims of Debt Collection Scheme in New York win \$59 Million Settlement,” *N.Y. Times* (Nov. 13, 2015), available at http://www.nytimes.com/2015/11/14/nyregion/victims-of-debt-collection-scheme-in-new-york-win-59-million-in-settlement.html?_r=0.

Tenant advocates prioritize cases in which they can help preserve housing and keep current tenants in their apartments. Indeed, many grants and funding streams base payment on assistance to tenants in possession of leased premises and will not reimburse legal services providers for services provided to litigants with broken lease cases. Moreover, it is common in non-payment proceedings for tenants to enter into settlements whereby they preserve housing, but sever portions of the rental arrear claims, which are raised subsequently in civil court. Meanwhile, consumer defense attorneys working at legal services organizations (while greater in number than in the past) do not have the capacity to adequately handle these cases. Additionally, defending breach of lease cases requires dual expertise in consumer debt collection and housing law and few legal services attorneys currently have such training and experience in both substantive law areas. The problem is compounded when Civil and Supreme Court judges are unfamiliar with housing law and regulations such as warranty of habitability and constructive eviction and the proof required to establish rental arrear claims.

Organizations providing legal services to consumers have seen an increase in the number of broken lease cases filed in New York City. For example, data from Civil Legal Advice Resource Office (“CLARO”) limited-scope, consumer debt legal clinics in the Bronx, Manhattan, and Staten Island show a total of one visitor with a breach of lease case in 2009. By contrast, these clinics encountered in 2015 95 broken lease cases and through August 2016 105 broken lease cases. We note that this trend is especially stark given the decline in the number of consumer credit action filings in New York City Civil Court in recent years.

Moreover, in 2015, two law firms that specialize in breach of lease cases brought 2,383 actions based on searches on the New York State Office of Court Administration’s (“OCA”) eCourts database, of which 2,297 actions were filed in New York City Civil Court. According to data for the Bronx, Manhattan, and Staten Island CLARO programs, from 2010 to the present, the two debt collection law firms which represented the greatest number of landlord-plaintiffs were Kavulich & Associates, P.C. and Gutman, Mintz, Baker & Sonnenfeldt LLP. Searches on eCourts show the following number of filings by these law firms in 2015 and 2016 to date:

2015	Kavulich & Associates	Gutman Mintz	Total
Bronx	957	242	
Brooklyn	175	284	
Manhattan	189	207	
Queens	29	166	
Staten Island	15	33	
Total	1365	932	2297

2016 through September 7, 2016	Kavulich & Associates	Gutman Mintz	Total
Bronx	479	192	
Brooklyn	151	158	
Manhattan	55	188	
Queens	4	101	
Staten Island	0	11	
Total	689	650	1339

Further, some traditional debt collection law firms appear to be taking on more breach of lease cases.¹⁰

These numbers suggest that broken lease cases are emerging as a focus of consumer debt collection in New York City. The aggregate impact of the OCA’s pioneering court rules regarding consumer credit card cases,¹¹ impact litigation,¹² and other reform efforts are likely resulting in a reduction of consumer credit filings in New York City (down to 55,408 in 2015) for the time being. With collection cases appearing to be diminishing, consumer advocates believe that traditional debt collection firms will seize this area as a new source of cases and this trend will intensify.¹³

The unmet need: the complexity of broken lease cases

As noted previously, broken lease cases require legal services defense attorneys to have dual competencies in consumer defense and landlord / tenant law—something a relatively small number of New York City legal services attorneys currently have. Moreover, landlord / tenant law in New York City (as in other parts of the state) is very complex and highly specialized, particularly for tenants who receive housing subsidies or live in subsidized housing. For example, legal services attorneys report regularly seeing landlords and their law firms knowingly and repeatedly suing the same tenants for rent that had been paid as part of public assistance or through a Section 8 voucher or other housing subsidy.

¹⁰ For example, data from the Bronx, Manhattan, and Staten Island CLARO Programs show the traditional debt collection law firm of Daniels Norelly Scully & Cecere PC also representing plaintiffs in broken lease cases.

¹¹ Press Release, New York State Unified Court System, NY Court System Adopts New Rules to Ensure a Fair Legal Process in Consumer Debt Cases (Sept. 16, 2014), available at https://www.nycourts.gov/PRESS/PDFs/pr14_06.pdf.

¹² See, e.g., Sykes v. Mel S. Harris & Assocs., 780 F.3d 70 (2d Cir. 2015).

¹³ Feerick Center data shows that there has been an upward trend in the amount of breach of lease cases encountered at Bronx, Manhattan, and Staten Island CLARO sessions in the last several years. The following figures represent the number of breach of lease cases seen at these CLARO Programs according to Center data, by year: 2008 – 0 cases, 2009 – 1 case, 2010 – 18 cases, 2011 – 30 cases, 2012 – 37 cases, 2013 – 44 cases, 2014 – 63 cases, 2015 – 95 cases, through August 2016 – 105 cases.

Added to this complexity is the fact that many defendants are survivors of domestic violence and of identity theft—which fact presents additional considerations and complications. Not infrequently, survivors who flee apartments for which they were either the tenant or co-tenant find that abusers stay behind, stop paying the rent, and accrue rental arrears until they are evicted.¹⁴ With regard to identity theft, these are especially pernicious types of broken lease case. Identity thieves use personal identifying information to enter into leases and obtain apartments.¹⁵

Moreover, because breach of lease cases are not denominated as consumer credit actions by OCA, these defendants do not have the important protections available to defendants in consumer credit actions. Those protections include, for example, receiving a copy of the summons in Spanish, receiving an additional notice, being eligible for the Volunteer Lawyer for the Day program, and default safeguards OCA promulgated for consumer credit actions.

The economic and social consequences due to the lack of legal services for broken lease cases

Broken lease cases can have long-lasting and devastating effects on litigants—particularly economically vulnerable ones. Bronx, Manhattan, and Staten Island CLARO data show that the money judgments sought in broken lease cases, on average, are greater than that for credit card cases—the most common type of consumer credit action. Judgments in these cases, thus, tend to be for greater sums of money as well.

Bronx, Manhattan, and Staten Island CLARO – Combined

	Credit Card Action – Average Amount Sued For	Broken Lease Case – Average Amount Sued For
Cases filed in 2015	\$4,889	\$7,570
Cases filed in 2016	\$5,119	\$8,023

Money judgments—either because of default judgments or judgments following the filing of an answer—appear on credit reports typically for seven years. In New York City’s very tight rental market, prospective landlords can afford to be extremely selective and, in our experience, it is virtually impossible for a tenant to secure an apartment with a judgment appearing on her credit report. These credit reports are separate from tenant screening bureau (“TSB”) reports, which include information from housing court filings. Negative information in TSB reports can also be very damaging and prevent low-income New Yorkers from securing apartments. Such reports

¹⁴ New York Real Property Law § 227-c provides a judicial mechanism for a domestic violence survivor to get out from under a lease. This provision, however, is hardly ever invoked due to its onerous requirements, including that the survivor has obtained an order of protection and that the relief related to lease termination be sought in that court.

¹⁵ The Federal Trade Commission in its annual report on fraud and identity theft now includes a category of “Other Identity Theft: Apartment or House Rented.” See Federal Trade Commission, *Consumer Sentinel Network Data Book for January – December 2015* 20 (Feb. 2016), available at <https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2015/160229csn-2015databook.pdf>. While the numbers of these cases are small nationally, New York City legal services providers see these cases on a regular basis.

often contain inaccurate, incomplete, and / or misleading information.¹⁶ The sharp increase in homelessness means that, once a defendant has a bad credit or TSB report history, it virtually becomes impossible to obtain housing in New York City and many families and individuals remain in shelter for prolonged periods of time.

The following case summaries from CLARO visitors illustrate the far-reaching and devastating impacts of broken lease cases.

- Ms. M., a college student, and her father sought assistance from Bronx CLARO. The family were immigrants and only Ms. M spoke English. They had vacated their leased apartment three months early because after a many years' wait, they received a NYCHA apartment. Prior to doing so they spoke with the management company and were assured verbally that they could vacate and that the apartment would be re-let quickly. The apartment was not re-let and the landlord sued them for three months' rent. The family is extremely low income with only one wage earner, who worked part time and earned about \$900 per month. The lawsuit meant that Ms. M. would not be able to continue her studies.
- Ms. S. is a Spanish-speaking mother of two children who works as a home health aide. She rented an apartment with extensive conditions, including frequent leaks, of which she complained to the landlord. When the landlord sent the renewal lease, she did not sign it, but she did not immediately vacate the premises. She stayed in the apartment five months past the end of the lease term and paid all the rent. She was sued for \$8,382 in rent arrears, alleging non-payment of five months of rent. The client had to take time off from work to go to CLARO and to court, which was a financial hardship.
- Ms. A is a domestic violence survivor with an infant son. She fled her apartment and entered a domestic violence shelter. She and her husband were both on the lease. The abuser stayed behind and stopped paying rent. Eventually, the landlord sued them both for non-payment and evicted the abuser. Ms. A was never served and did not appear. The judgment appeared on Ms. A's credit report and prevented her from obtaining housing from domestic violence nonprofit housing provider, as well as other mainstream housing options.

Summary: the benefits to individuals, communities, the courts, and the State, from the provision of civil legal services in matters involving the “Essentials of Life”

Due to the complexity of broken lease cases, unrepresented litigants are unable to defend themselves effectively in these actions. Moreover, limited-scope programs face challenges in appropriately serving clients, given the relatively high number of these cases going to trial, complex fact finding and legal analysis and expertise these cases require. As noted previously, judgments in broken lease cases are often for significantly more than credit card actions. Both the fact of the judgment and its impact on litigants' creditworthiness as well as the higher amounts and subsequent enforcement through wage garnishment and /or bank restraint cause tremendous financial hardship for low-income New Yorkers. These negative outcomes are

¹⁶ New York State Bar Association, LEGALease: The Use of Tenant Screening Reports and Tenant Blacklisting 4 (2015), available at <http://www.nysba.org/workarea/DownloadAsset.aspx?id=27883>.

compounded by the many unfair, abusive, and deceptive practices advocates regularly see in connection with these cases: tenant harassment; housing conditions; and illegal debt collection.

Enhanced and expanded legal services related to broken lease cases will benefit first and foremost low-income and other vulnerable litigants—protecting their financial wellbeing and ability to access housing in New York City’s tight market, and in many cases protecting them from homelessness. Additional legal services capacity will also enhance and expand coordination and advocacy efforts. Opportunities exist for addressing a myriad of policy and practice issues, including:

- Advocacy with court administrators to deem broken lease cases consumer credit actions, so that defendants benefit from the consumer protections and access-to-justice programs established for such actions;
- Outreach and training to judges and court personnel—in civil court and housing court—regarding the issues raised by and applicable law in broken lease cases; and
- Impact litigation to address the chronic illegal and abusive practices by landlords and their law firms and legislative advocacy related to the law of mitigation.

Potential for reduction in unmet needs through use of non-lawyers

There is a tremendous need for community outreach and education related to broken lease cases. Non-lawyers could be very helpful in raising awareness among tenant organizations, housing advocacy groups, homelessness organizations and other community-based entities about the risks and problems associated with these actions and steps tenants can take to protect themselves from unscrupulous landlords. Collaborative efforts with non-lawyers are essential to inform consumers of their rights as tenants and to take preventative measures to protect them from unscrupulous landlords, including documenting evidence of repair conditions, navigating civil court procedures, and sharing legal and non-legal resources.

* * * *

We deeply appreciate the efforts of the Permanent Commission to expand access to civil legal services for low- and moderate-income New Yorkers. We also thank the Permanent Commission for the opportunity to submit this written testimony and to request oral testimony.

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OUTLINE OF ORAL TESTIMONY OF THE BROKEN LEASE TASK FORCE
2016 PUBLIC HEARING OF NEW YORK STATE PERMANENT COMMISSION ON
ACCESS TO JUSTICE

- The New York City Broken Leases Task Force is co-chaired by the Fordham Law School's Feerick Center for Social Justice, MFY legal Services, Inc., and The Legal Aid Society. The task force aims to address the unmet legal services needs of New Yorker's being sued by landlords in civil court for alleged rental arrears and other tenancy-related charges.
- Civil legal services funding has significantly reduced the "justice gap" that exists for consumer credit actions in New York City. Consumer legal defense has a significant impact in achieving fair outcomes in litigation through limited-scope assistance and full representation. The devastating impact of abusive litigation practices involving sewer service and default judgments is ameliorated by legal assistance provided to low-income consumers.
- Broken lease lawsuits are filed in civil court to either collect on housing court judgments, filed concurrently with active housing court cases, or when tenants vacate residential tenancies prior to the end of their lease term. Tenants are often forced to break their lease due to conditions in the apartment and economic hardship. Under New York case law, landlords do not have a duty to mitigate. Apartments often remain vacant for the rest of the lease and are followed by rental arrear lawsuits. The lack of a duty to mitigate incentivizes landlords to let apartments remain unoccupied, in an environment of high homelessness and housing shortages.
- Tenant advocates prioritize preserving housing and keeping tenants in their homes. Often housing advocates enter into stipulations in housing court that preserve housing, but sever the rental arrear claims that arise in a later lawsuit in civil court. Consumer advocates often do not have the capacity to handle these cases which require dual expertise in housing and consumer debt collection law. This problem is compounded when Civil and Supreme Court judges are unfamiliar with housing laws and regulations.
- There has been a sharp increase in the number of broken lease cases filed in NYC. This is concurrent with a decrease in consumer credit actions in NYC Civil Court. Some traditional debt collection law firms appear to be taking on more broken lease cases.
- Broken lease cases have a long lasting and devastating impact on litigants. Judgment amounts in these cases are substantially higher than credit card cases. They appear on credit reports typically for seven years which are used by landlords to screen housing applicants. Enhanced and expanded legal services related to broken leases will protect the financial wellbeing and access to housing of low to moderate income New Yorkers, and in many cases protect them from homelessness.
- Opportunities to advocate for litigants facing broken lease lawsuits include: (1) advocacy efforts with court administrators to deem broken lease cases consumer credit actions so defendants benefit from current consumer protections for such action, (2) outreach and training to judges and court personnel in civil court and housing court regarding these cases, (3) impact litigation and legislative advocacy on behalf of litigants facing broken lease cases, and (4) community education and outreach on broken lease cases through collaboration with local advocacy and community groups.

Michele Cortese

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Center for Family Representation

Written Testimony for the Chief Judge's 2016 Hearing on Civil Legal Services in New York

*Submitted by the Center for Family Representation
Michele Cortese, Executive Director
Rebecca Horwitz, Manager for Government and Community Affairs
September 26, 2016*

On behalf of the more than 1900 vulnerable families that the Center for Family Representation (CFR) works with each year, we thank Chief Judge DiFiore for the opportunity to submit testimony regarding the impact of Judiciary Civil Legal Services funding.

About the Center for Family Representation

In 2002, CFR piloted a model of legal representation that offered parents accused of neglect and abuse in family court the services of an attorney, a social worker, and a parent advocate. Our parent advocates personally experienced having their children placed in foster care and have now successfully reunified their families. CFR started with a staff of two and a budget of \$250,000 in 2002. Now, we employ over 80 staff that represent 1900 parents annually with a budget of approximately \$8 million. By combining in-court litigation with out-of-court social work referrals and case management, individualized service planning, and parent mentoring, CFR's teams dramatically improve outcomes for our families. CFR has consistently kept 50% of our client's children out of foster care entirely, and for those that do enter care, the children spend, on average, half as long in foster care as they did prior to 2007. Importantly, they also re-enter foster care less often.

On average, one-third of CFR's cases in family court are dismissed each year. Many of these are because our unique brand of advocacy has convinced family court judges, the Administration for Children's Services, and attorneys for children that an Adjournment in Contemplation (or ACD) is appropriate, as the family's resolution of its underlying challenges makes court oversight unnecessary. This means that our model improves court efficiency and makes repeated permanency hearings or lengthy termination proceedings less likely. By avoiding or reducing the time children spend in foster care and shortening the length of court proceedings, CFR estimates that it has saved taxpayers over \$35 million since 2007.

In addition to providing direct representation and services to vulnerable families, CFR annually trains more than 500 practitioners each year who are seeking to replicate our model. These trainings cover family law, child welfare regulations, visitation guidelines, best practices, and our innovative model of service. CFR is also regularly consulted by city and state officials seeking to improve child welfare. By serving on advisory boards, leading working groups, and providing expert commentary on legislation and policy initiatives, CFR continuously works to address the obstacles vulnerable families face. In late 2015, the New York State Bar Association selected CFR to receive its 2015 Award for Promoting Standards of Excellence in Mandated

Representation, noting that CFR “exemplifies and defines the highest professional practice standards, is a recognized innovator in parent representation, and is a tireless advocate for legislative and policy reform.”

The Importance of Judiciary Civil Legal Services (JCLS) funding to Good Family Court and Child Welfare Outcomes

While New York City funds most of our family court work, we would not be able to adequately address the civil legal services issues that are collateral (but integrally related) to the family court case without the benefit of JCLS funding, and thus would not be able to achieve the positive results we describe above. Indigent parents at risk of losing their children to foster care often confront several interrelated challenges, rooted in poverty, such as homelessness or unstable housing, interruptions in public benefits, untreated substance abuse or mental health issues, domestic violence, financial insecurity, and/or immigration problems. These collateral issues have the potential to undermine a family’s success and stability, and often lead to foster care or re-entry into care.

Of the clients we served in 2015, over 51% receive some form of public assistance, 48% are unemployed, 40% are single parents, 34% are immigrants, and 27% are homeless. In order to better understand our clients’ unmet service needs, we undertook an extensive client needs assessment and staff survey to identify gaps that contributed to family instability. These efforts revealed that one-third of surveyed clients experienced an unmet public benefits need. Further, 28% percent of surveyed clients reported problems with food stamps, WIC, or cash assistance, the highest of any single question on the survey. Only two in five surveyed clients reported holding jobs, and 28% experienced an unmet employment need. In our staff survey, 24% of staff indicated that a lack of stable housing was one of the top three reasons that children were at risk of entry or re-entry into foster care. An additional 12% of staff identified a lapse of public benefits as a top reason. Additionally, 81% of staff felt than an increase in housing assistance would speed reunification, while 76% felt that more assistance with public assistance and other entitlements would speed reunification.

Through the steady increase in JCLS funding over the past few years, CFR has begun to address some of these concerns. By providing more services in an efficient and well coordinated way under one roof, CFR hopes to reduce the instances where children enter foster care or have to re-enter foster care. Building on the relationship our family court teams have with our clients, we are able to easily identify and rectify collateral issues, ensure they are integrated into the family court case, and minimize the extent to which clients have to access to critical services elsewhere.

The unmet needs of Homeless or potentially Homeless Families.

For many parents, housing issues are at the center of a neglect allegation or arise as a collateral issue that prevents their children from staying out of foster care. A landlord’s refusal to make repairs can leave a home unsafe for children; a missed benefit check can leave a parent choosing between buying medication for their child and paying rent. Even the shortest interruption in public benefits or difficulty with a landlord can lead to eviction, which makes it more likely children will enter care and once a parent is homeless, it is even more difficult for them to get

their children back. With funding from JCLS, CFR can fund non-attorney staff, including social work and parent advocate staff, to provide advocacy at administrative hearings when a parent is risking eviction from NYCHA housing or has been denied placement in the shelter system. They assist with applications for rent assistance and supportive housing, accompany parents to housing interviews, act as liaisons with foster care agency housing specialists to establish housing priority and apply for available subsidies, and negotiate repairs and rent payment plans with landlords. They help parents navigate complicated bureaucracies that control public benefits to establish eligibility or challenge the disruption in benefits, including by attending administrative hearings related to both. In addition, with the generous support of JCLS, in Fall 2014, CFR created the position of Housing Specialist to focus exclusively on housing-related situations. In May 2015, CFR was awarded a Poverty Justice Solutions Fellow¹ to focus exclusively on housing litigation. This attorney has been able to take our current housing work to the next level. Once administrative remedies had been exhausted, we can now initiate or defend a claim in housing court. Since the Housing Attorney Fellow began, she has served over 190 families and has achieved successful outcomes in 83% of the cases where relief was available. According to recent studies, when tenants represent themselves in housing court, they end up being evicted almost half the time.² Without funding for representation in housing court, the potential impact on vulnerable families is grave. Funding from JCLS has also enabled CFR to provide supervision in these efforts from experienced attorney and social work supervisors who are able to oversee and continue to train staff in all of this critical work.

Unique challenges for a Rapidly Growing Immigrant Population

Since the opening of our Queens office in 2011, CFR has seen a substantial increase in the number of immigrant and non-English speaking clients; of cases opened in 2015, over 40% of our Queens clients were immigrants and/or non-English speaking versus 14% in Manhattan. As an immigrant, these clients face multiple additional challenges beyond those of poverty and child welfare involvement. For example, it is often very difficult for these clients to have meaningful visitation with their children if they are in foster care, as their often unconventional part time work hours do not permit them to have agency-supervised visitation which occurs during business hours; family members are often unwilling to serve as visit hosts or kinship foster parents because they fear government involvement in their lives. Most services available require parents to pay some money out of pocket since they are not eligible for health insurance, and these payments can be difficult to manage. Services in Spanish are generally available, but services offered in other languages are hard to find. Because of this, our social work and parent advocate staff have spent tremendous time and resources identifying appropriate services that are rarely found by the City, and secured referral relationships with community-based organizations.

Through funding from JCLS, CFR was able to consolidate and focus this work in the position of Immigrant Specialist. Since December 2015, the Immigrant Specialist has worked with over 30 clients, assisting them in obtaining appropriate services and determining and assisting with any

¹ The Poverty Justice Solutions Fellowship is also a beneficiary of New York State civil legal services funding as it is a joint project between the Center for Court Innovation, the New York State Unified Court System, the New York City Human Resources Administration, and the Robin Hood Foundation.

² Navarro, Mireya, "Evictions are down by 18%; New York City Cites Increased Civil Legal Services, New York Times, February 19, 2016 (<http://www.nytimes.com/2016/03/01/nyregion/evictions-are-down-by-18-new-york-city-cites-increased-legal-services.html>).

necessary actions to resolve or achieve legal status. While CFR does not currently provide representation in removal proceedings, our Immigrant Specialist has developed relationships to ensure our clients receive the legal assistance they need. As discussed in the November 2015, Permanent Commission on Access to Justice Report, “providing civil legal services to immigrants...can have the largest statistically significant impact on the quality of justice that our immigrant community receives.”³

Conclusion

Over the years, JCLS funding has allowed CFR to expand our work in each “essential of life” category: housing, family stability, access to health care, and subsistence income and benefits. By providing access to critical civil legal representation and advocacy beyond family court, in administrative hearings and housing court, and by providing support for our clients navigating complicated bureaucracies related to public benefits, we improve child welfare and family court outcomes. When our clients’ children do not enter care, or return from care quickly, we are able to resolve their family court case in less time, so this funding directly impacts family court efficiency as well. Further, as the November 2015 Permanent Commission on Access to Justice Report details, the “economic impact of civil legal services provided to low-income New Yorkers in 2014 was conservatively estimated to total approximately \$2.4 billion- a return of 8.2 times on the \$296 million total civil legal services funding in 2014.”⁴

The Center for Family Representation commends Chief Judge DiFiore and the New York State Permanent Commission on Access to Justice for its continuing efforts to address the unmet civil legal services needs of New Yorkers.

For further information on CFR’s civil legal services work, please contact Michele Cortese, Executive Director at mcortese@cfrny.org or 212-691-0950, ext. 209 or Rebecca Horwitz, Manager for Government and Community Affairs at rhorwitz@cfrny.org or 212-691-0950, ext. 275.

³ Former Chief Judge Lippman’s Hearing on Civil Legal Services, Third Department, October 13, 2015 (statement of Prof. Sarah Rogerson, Director, Immigration Law Clinic, Albany Law School).

⁴ Former Chief Judge Lippman’s Hearing on Civil Legal Services, First Department, Sept 29, 2015 (testimony of Neil Steinkamp, Managing Director, Dispute Advisory & Forensic Services, Stout Risius Ross, Inc.).

Matthew Desmond

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Testimony of Matthew Desmond
IN SUPPORT OF EXPANDING CIVIL LEGAL SERVICES IN NEW YORK

My name is Matthew Desmond. I am a John L. Loeb Associate Professor of the Social Sciences at Harvard University in Cambridge, Massachusetts. I am a co-director of the Justice and Poverty Project, a group focusing on issues facing the low-income community, such as mass incarceration and housing instability. I am also the author of *Evicted*, a book about poverty and evictions in Milwaukee, Wisconsin.

I submit this testimony to express the importance of providing accessible, publicly funded civil legal services in New York.

To gather my research for *Evicted*, I moved into a poor trailer park nicknamed “The Shame of the Southside” by the news media. I lived there for about five months before moving into a rooming house in the middle of the inner city, where I’d live for nine months. Living in those neighborhoods, I met families facing eviction and began spending my days with them. I sat beside families at eviction court, followed them into shelters, slept at their houses, and joined them at births and funerals.

I interviewed 250 tenants in eviction court, surveyed over a thousand renters in Milwaukee, and analyzed hundreds of thousands of eviction court records. This research showed how common eviction is, and some of the most important findings had to do with the consequences of eviction. The data linked eviction to heightened residential instability, substandard housing, declines in neighborhood quality, depression, and even job loss. I came to recognize that eviction is a cause, not just a condition, of poverty in America.

A single eviction can destabilize multiple city blocks, not only the block from which a family was evicted but also the block to which it begrudgingly relocated. In this way, displacement contributes directly to what Jane Jacobs called “perpetual slums” in *The Death and Life of Great American Cities*, churning environments with high rates of turnover and even higher rates of resentment and disinvestment. Eviction can also cause workers to lose their jobs, because the stress and consuming nature of being forced from their homes wreaks havoc on people’s work performance. And sociological research affirms what anyone who teaches poor children knows: that residential instability is the enemy of school success.

Then there is the toll eviction takes on a person’s spirit. The violence of displacement can drive people to depression and, in extreme cases, even suicide. One study I published found that two years after their eviction, mothers still reported higher rates of depression than their peers. Months and even years after being evicted, people experience more material hardship and higher levels of depression than peers who avoided eviction.

Although *Evicted* took place in Milwaukee, the stories told in the book are reflective of a broader American problem. The majority of poor renting families in America today are spending more than half of their income on housing, and at least 1 in 4 dedicate over 70 percent to paying

the rent and keeping the lights on. These families have watched their incomes stagnate, or even fall, while their housing costs have soared. At a time when more and more families are in need of government support to afford housing, fewer and fewer are getting it. Today, only about 1 in 4 families who qualify for housing assistance receive it. The need far outpaces the aid. In 2013, renters in over 2.1 million homes thought they would be evicted soon. New York City in particular processes 60 marshal evictions a day.

In many housing courts around the country, 90 percent of landlords are represented by attorneys and 90 percent of tenants are not. Establishing publicly funded legal services for low-income families in housing court is a cost-effective social policy that would prevent homelessness and uphold our ideals of fundamental fairness.

Furthermore, the provision of sufficient legal services in civil cases does not have to empty our pockets. A program that ran¹ from 2005 to 2008 in the South Bronx provided more than 1,300 families legal assistance and prevented eviction in 86 percent of cases. It cost around \$450,000, but saved New York City more than \$700,000 in estimated shelter costs. The key point is that when we direct aid upstream in the form of a few hours of legal services we can lower costs downstream. We all pay when the state reacts to the many consequences of eviction by distributing public assistance, subsidizing health care, or preventing children from reaching their full potential in school because they experience so much housing instability. This is especially true in high-rent areas such as New York and the surrounding suburbs.

¹ Seedco. 2010. "Housing Help Program: Homelessness Prevention Pilot Final Report." Retrieved Aug. 25, 2016 (<http://seedco.org/wp-content/uploads/2011/11/Housing-Help-Program.pdf>).

Michael P. Friedman
Civil Legal Services in New York

Written Submission of Michael P. Friedman

Civil Legal Services in New York

“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.” Chief Judge Lippman, Leaveworthy, Winter 2015

On February 17, 2015, Chief Judge Lippman gave his final State of the Judiciary address. His first words were, “Access to Justice is the defining principle of our court system.” I respectfully disagree, and I oppose the Court System’s requested award of \$100 million yearly for civil legal services. Article VI of the New York State Constitution defines the purpose of the judiciary. It confers jurisdiction on the various courts to have general (Supreme Court) and limited jurisdictions to administer cases in law and in equity. Nowhere is the court system permitted to hand out money to organizations to deliver civil legal services to litigants. Section 28(a) of Article VI of the New York State Constitution defines the powers of the Chief Judge which includes being the chief judicial officer of the unified court system. It provides for the appointment of a chief administrator of the courts whose function is to “supervise the administration and operation of the unified court system.” Section 29(a) of Article VI provides for the expenses of the courts and authorizes the legislature to “provide for the allocation and cost of operating and maintaining of the court of appeals, the

appellate division of the supreme court in each judicial department, the supreme court, the court of claims, the county court, the surrogate's court, the family court, the courts for the city of New York established pursuant to section fifteen of this article and the district court, among the state, the counties, the city of New York and other political subdivisions.” It does not provide for the court system to give \$100 million per year for civil legal services.

Like all systems of justice, New York’s Judiciary is a system for people to resolve their differences in a civil and appropriate manner. It applies the law to facts and renders a decision so people can get on with their lives. That’s it.

But what about equal justice? This is defined for this hearing as measuring the impact of funding civil legal services “in particular enhancing the fair and efficient administration of justice in the state courts.” That is a misnomer. A court’s ability to enhance the fair and efficient administration of justice is unrelated to giving money to not for profit organizations, universities and other institutions unconnected to the judiciary.

How did this come about? In 2010, the court system did not hand out any money for civil legal services other than IOLA funding. The then new Chief Judge created the Task Force to Expand Access to Legal Services in New York and immediately scheduled hearings to address the unmet legal service needs of the poor. Just where the court system had the power to create such a Task Force let alone hold hearings is beyond me. Within one year the court system was doling out \$12.5 million in addition to the \$15 million in IOLA money distributed annually. Every year that has expanded to the current request in 2016 for \$100 million. It is included as part of the Judicial Budget submitted annually to the Legislature. The people who decide who gets this money consists of three people including the Chief Administrative Judge.

I believe there is a need for funding of civil legal services. Organizations like charities, bar associations and universities provide valuable services to people without resources, thereby opening up the legal system for people who would otherwise have no access. I have participated in such services for decades, having been a founding member of the Albany County Bar Association's pro se divorce clinic, the teaching of volunteers for the Albany County Family Court petition program of the Albany County Bar Association among other activities. In 1987 I was proud to receive the

Distinguished Service Award of the Legal Aid Society of Northeastern New York. In 1995 I received the Albany County Bar Association Pro Bono Award and in 1996 I received the New York State Bar Association President's Pro Bono Service Attorney Award. In 2015 I received a Pro Bono Award of the New York State Law Journal's "Lawyers Who Lead by Example." It is just not a function of the Judiciary to fund such legal services.

In addition to the constitutional impediment, such awards create an inherent conflict. I do not doubt that some of the speakers at this Hearing will be members of recipient organizations of the court system's largesse. The Permanent Commission on Access to Justice is made up of people representing the recipients of millions of dollars from the Judiciary for their organizations. There is no dissenting voice among them, and they all hold a vested interest in getting as much money as possible each year. If not a conflict of interest, it may be at least an appearance of impropriety. This is a sampling of the members of the Permanent Commission on Access to Justice (formerly the Task Force to Expand Access to Legal Services in New

York) and the money received by their organizations from the Judiciary for the 2015-2016 fiscal year:¹

Robert N. Convissar, Past President, Bar Association of Erie County:
\$502,578.

Shelley J. Dropkin, Past Chair, New York Lawyers for the Public Interest:
\$178,700.

Anne Erickson, President and CEO, Empire Justice Center:
\$1,182,663.

Barbara Finkelstein, Chief Executive Officer, Legal Services of the Hudson Valley: \$4,162,218.

Sheila A. Gaddis, Executive Director, Volunteer Legal Services Project of Monroe County Inc.: \$264,989.

Lillian M. Moy, Executive Director, Legal Aid Society of Northeastern NY:
\$3,612,622.

Raun J. Rasmussen Executive Director, and Mark G. Cunha, Past Chair, Legal Services NYC: \$7,911,675.

This sampling totals \$17,815,445.

In 2015, the president and founder of the New York Legal Assistance Group resigned amid a grand jury investigation of “accounting irregularities.” And just how much did NYLAG receive from the Judiciary for 2015-2016? \$4,420,577.

¹ The amounts for the 2016-2017 are not yet available to the public

The Administrative Judge who was the Chief of Policy and Planning for the NYS Unified Court System left on January 1, 2014 to become the Executive Director of Sanctuary for Families, a not for profit that, among other things, lobbies the legislature in favor of funding for the Judiciary such as their successful request in 2015 for \$25 million per year for 25 new Family Court Judges. At that time, the Judiciary was awarding \$710,273 to Sanctuary for Families. The award the year she became Executive Director? \$906,525. The award for 2015-2016 was \$1,240,405. In 2015 the Chief Administrative Judge left her position to work for Hofstra Law School as Executive Director of the Center for Children, Families and the Law and Senior Associate Dean for Operations. In 2015 Hofstra University was awarded \$116,061 for Civil Legal Services. The 2016-2017 award to Hofstra is not yet available to the public.

Article VII of the New York State Constitution is entitled State Finances. Section 8, subdivision 1 thereof states, “The money of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking; nor shall the credit of the state be given or loaned to or in aid of any individual, or public or private corporation or association, or private undertaking, but the foregoing provisions shall not apply to any fund or property now held or which may hereafter be held by

the state for educational, mental health or mental retardation purposes.” One wonders how the Judiciary can thus create in a few years a \$100 million program, contrary to its stated purpose, that enriches private corporations, associations and undertakings in the name of Civil Legal Services. As the Third Department held in Bordeleau v State of New York, 74 A.D.3d 1688 (3rd Dept., 2010), “This provision was added in 1846 ‘in reaction to the [Legislature's] prior practices of subsidizing private railroad and canal companies through long-term State debt obligations, which the State ultimately was forced to pay when many of those private enterprises failed during the depression of 1837-1842. Thus, subsidization by gifts of public funds to private undertakings, or by pledging public credit on their behalf, was banned, irrespective of how beneficent or desirable to the public the subsidized activity might seem to be.”

Thank you for giving me the opportunity to present this written submission.

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Dora Galacatos

Executive Director

Fordham Law School Feerick Center

Matthew Schedler

Supervising Attorney

CAMBA Legal Services, Inc.



September 12, 2016

New York State Permanent Commission on Access to Justice
c/o Jessica Klein, Esq.
Sullivan & Cromwell LLP
125 Broad Street, 32nd Floor
New York, New York 10004-2498

Dear Commission Members:

We are Dora Galacatos and Matthew Schedler, co-chairs of the Domestic Violence and Consumer Law Working Group ("the Working Group"). We also are Executive Director of Fordham Law School's Feerick Center for Social Justice ("Feerick Center") and Supervising Attorney at CAMBA Legal Services, Inc., respectively.

The Feerick Center established this Working Group in 2007. Since that time, the Working Group has sought to enhance and expand legal services and other resources for domestic violence victims and survivors who have experienced economic abuse and / or have consumer debt and credit reporting issues. We write to request that Matthew Schedler have the opportunity to present oral testimony. We include with our letter the outline for the oral presentation and written testimony as well.

We thank the Permanent Commission for its work in enhancing and expanding access to civil legal services for New Yorkers and for the opportunity to present this testimony. In our work, we see every day the invaluable difference that access to legal services can make for low- and moderate-income persons and especially for those who are highly vulnerable, including persons who have experienced intimate partner violence, immigrants, and the elderly.

Thank you for the opportunity to submit written testimony and for the Commission's consideration of the request to submit oral testimony.

Sincerely,

A handwritten signature in blue ink, appearing to read "D Galacatos".

Dora Galacatos
Executive Director
Fordham Law School Feerick Center
For Social Justice

A handwritten signature in blue ink, appearing to read "Matthew Schedler / DG".

Matthew Schedler
Supervising Attorney
CAMBA Legal Services, Inc.

**NEW YORK STATE PERMANENT COMMISSION ON ACCESS TO JUSTICE
2016 PUBLIC HEARING**

SEPTEMBER 27, 2016

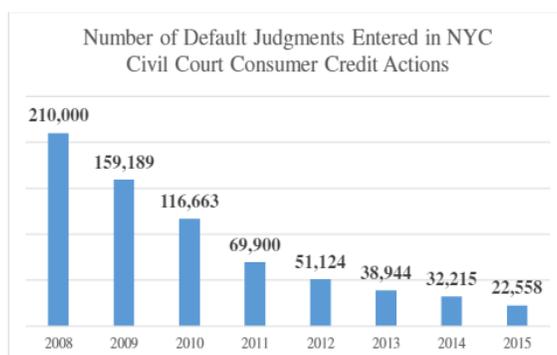
**TESTIMONY FROM THE FORDHAM LAW SCHOOL FEERICK CENTER FOR SOCIAL
JUSTICE DOMESTIC VIOLENCE AND CONSUMER LAW WORKING GROUP**

We are honored to submit this testimony as part of the Hearing on Civil Legal Services in New York. We are members of the Domestic Violence and Consumer Law Working Group—a Working Group established and supported by Fordham Law School’s Feerick Center for Social Justice. Our testimony is focused on the unmet legal services needs of domestic violence victims and survivors in connection with economic abuse, consumer debt, and credit reporting issues.

Impact of judiciary civil legal services on delivery of civil legal services

A number of our Working Group members, including CAMBA Legal Services, Inc., are grant recipients of Civil Legal Services funding. This funding has helped numerous New York City legal services organizations expand delivery of civil legal services in the consumer arena. Enhanced capacity has helped close the extraordinary “justice gap” in this area and, in particular, in New York City Civil Courts. According to 2015 data from New York City Civil Court, 14.4% of consumer credit actions had defendants who were represented by counsel.¹ By contrast, in 2014, in his Law Day Address of April 30, 2014, former Chief Judge Jonathan Lippman reported that only 2% of defendants in New York State consumer credit actions were represented.²

Through our work, we see the invaluable and far-reaching impact of consumer defense work in achieving fairer outcomes in litigation—often with life-changing consequences for litigants and their families. For example, through limited-scope assistance and especially through full representation, consumer legal defense helps hundreds of vulnerable New York State residents address default judgments. During an eight-year period, consumer experts estimate that approximately 700,000 default judgments were entered in consumer credit actions filed in New York City Civil Court—a disproportionate amount in communities of color and working poor and low-income households.³



¹ Source: New York City Civil Court.

² Hon. Lippman Law Day Address, April 30, 2014, at 1.

³ See, e.g., New Economy Project, *The Debt Collection Racket in New York: How the Industry Violates Due Process and Perpetuates Economic Inequality* (June 2013) (examining impact of debt collection lawsuits on communities of color).

Widespread and well-documented improper service of process contributed significantly to astronomically high default rates,⁴ which peaked at approximately 70% in 2008 and dropped to approximately 41% in 2015.⁵ The change in the default rate reflects marked improvements in service of process in consumer credit actions over the past. Nonetheless, the 2015 rate remains unacceptably high.

Default judgments have devastating impacts on the lives of litigants—particularly those with low incomes. Although the Stop Credit Discrimination in Employment Act of 2015 goes a long way to protect New York City residents against employers’ use of consumer credit history in hiring, compensation, and other terms and conditions of employment, credit history continues to be essential for accessing housing and other essentials of life, including insurance.⁶ Further, when judgment creditors enforce default judgments—through income garnishment and bank restraints—litigants often suffer considerable hardship.

The impact of default judgments must also be considered in light of the significant rate of debt buyer cases filed during the last decade. As is well understood and documented, debt buyer cases are riddled with substantive and procedural problems, starting with the purchase of “as is” accounts by debt buyers and insufficient documentary proof.⁷

Legal assistance for litigants facing default judgments, particularly in debt buyer cases, makes a world of difference, first by stopping the devastating harm of judgments on the lives of indigent and working-poor New Yorkers and second, by assisting litigants to assert their legal rights to vacate default judgments and assert legal defenses in the underlying lawsuits. Legal service representation and limited-scope assistance brings about fairer outcomes for consumers, which in turn assists in the fairer administration of justice in the state courts adjudicating such cases.

⁴ See New York City Bar Association, *Out of Service: A Call to Fix the Broken Process Server Industry* 2, 4-5 (Apr. 2010), available at <http://www.nycbar.org/pdf/report/uploads/ProcessServiceReport4-10.pdf>; Press Release, New York State Office of Attorney General, Attorney General Cuomo Sues to Throw Out Over 100,000 Faulty Judgments Entered Against New York Consumers in Next Stage of Debt Collection Investigation (July 23, 2009), available at <http://www.ag.ny.gov/press-release/attorney-general-cuomo-sues-throw-out-over-100000-faulty-judgments-entered-against-n-0>. See also MFY Legal Services, Inc., *Justice Disserved: A Preliminary Analysis of the Exceptionally Low Appearance Rate by Defendants in Lawsuits Filed in the City Court of the City of New York* 2 (June 2008), available at http://www.mfy.org/wp-content/uploads/reports/Justice_Disserved.pdf.

⁵ Source: New York City Bar Civil Court Committee, which requests data from the New York City Civil Court on an annual basis. Please note that these numbers are estimates based on how the data was collected by the Court.

⁶ See Press Release, CFPB Monthly Complaint Snapshot Spotlights Credit Reporting Complaints (Aug. 25, 2015), available at <http://www.consumerfinance.gov/about-us/newsroom/cfpb-monthly-complaint-snapshot-spotlights-credit-reporting-complaints/> (noting that “[c]redit reporting affects the lives of most Americans” and that “[c]redit reports and scores can determine everything from consumer eligibility for credit to the rates consumers pay for credit”); CFPB Consumer Advisory: Fact-Check Your Specialty Consumer Report (May 2015), available at http://files.consumerfinance.gov/f/201505_cfpb-consumer-advisory-fact-check-your-specialty-consumer-report.pdf (stating that specialty consumer reporting agencies compile and sell reports related to consumers’ history of employment, rental, banking, lending, insurance, and criminal background).

⁷ Federal Trade Commission, *The Structure and Practices of the Debt Buying Industry* ii-iv (Jan. 2013), available at <https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf>.

The economic needs of survivors

Domestic violence survivors are especially vulnerable to the consumer abuses described above. Domestic violence is a leading cause of homelessness among women and women-headed households,⁸ and material factors such as employment, income and a place to stay are key determinants of a survivor's ability to escape domestic violence.⁹ In studies, domestic violence survivors who were forced to return to their batterers report that they were driven primarily by a lack of financial stability, including a lack of housing or the ability to obtain employment. Research conducted at a domestic violence advocacy center in Dayton, Ohio, for example, found that respondents who chose not to continue seeking help after their first contact with the center most often did so because they lacked money or shelter.¹⁰ Apart from consumer credit issues, survivors of domestic violence are often also economically sabotaged in other ways—in one sample, 50% of survivors reported being fired or having to quit because of abuse.¹¹

The Working Group used a sample of The Legal Aid Society's domestic violence caseload to estimate what percentage of clients may be impacted by consumer debt. To do so, we ran a query for all active cases as of December 2015 that were coded under a domestic violence funding code. Next, we removed all duplicate cases and common names to pare the list down to a more representative selection. From there, a random selection of 200 client names were run through the E-Courts Civil Court database and through Westlaw's judgment and lien search, both limited to New York State.¹² We found that approximately one-third of our domestic violence clients have had a consumer debt case in civil court. Of those, approximately half had a judgment entered against them—thereby putting them at risk for garnishment of their wages and/or bank accounts.

Since obtaining an apartment or insurance depends on an applicant's creditworthiness,¹³ good credit is essential for domestic violence survivors to establish and maintain stable, abuse-free lives. But default judgments and inaccuracies in credit reports can degrade survivors' credit scores, while enforcement of default judgments, via garnishment or bank account restraint, can imperil their ability to

⁸ The United States Conference of Mayors, *Hunger and Homelessness Survey: A Status Report on Hunger and Homelessness in America's Cities* 14(Dec. 2015), available at <https://www.usmayors.org/pressreleases/uploads/2015/1221-report-hhreport.pdf>.

⁹ Deborah K. Anderson & Daniel G. Saunders, *Leaving an Abusive Partner: An Empirical Review of Predictors, the Process of Leaving, and Psychological Well-Being*, TRAUMA VIOLENCE ABUSE, Apr. 2003, at 171.

¹⁰ Michael A. Anderson et al, *Why Doesn't She Just Leave? A Descriptive Study of Victim Reported Impediments to Her Safety*, JOURNAL OF FAMILY VIOLENCE, June 2003.

¹¹ Stephanie Riger, Courtney Ahrens & Amy Blickenstaff, *Measuring Interference with Employment and Education Reported by Women with Abusive Partners: Preliminary Data*, 15 VIOLENCE AND VICTIMS, No. 2, 2000, at 167.

¹² Note that there is room for inaccuracies and the numbers derived from The Legal Aid Society case pull are not exact. Both databases search by name only, so there is the possibility that a consumer case or judgment associated with a given name could pertain to another person by that name, and not the Legal Aid client. Second, the fact that both domestic violence survivors and low-income individuals move more frequently than other individuals further complicates the accuracy of the pull. Because we limited the search to New York State, clients who had moved from other states may have had cases or judgments in jurisdictions that were not reflected in the case pull. Similarly, because of the frequency of moves among this client population, we included cases and judgments that appeared within the five boroughs, even if the address is different from where the client currently lives. Lastly, we only ran the E-Courts query through the civil court database, thus omitting any cases in the state's supreme courts concerning debts larger than \$25,000. Despite these likely inaccuracies, we believe that the case pull provides a suggestive representation of the percentage of domestic violence survivors who struggle with consumer debt issues.

¹³ State Farm and Allstate both report using credit scores in insurance scoring. See <https://www.statefarm.com/about-us/company-overview/company-profile/insurance-industry-issues/use-of-credit-in-insurance-scoring> (accessed Aug. 15, 2016) and allstate.com/about/credit.aspx (accessed Aug.15 2016).

keep up with day-to-day expenses and deplete any savings they might have. This can reverberate throughout survivors' lives, making them vulnerable to additional legal consequences, causing them to fall behind on bills and rent, or even forcing them to seek out high-cost credit and become trapped in a cycle of predatory debt.

Coerced debt

For domestic violence survivors, these concerns are compounded by the threat and effects of economic abuse, an increasingly powerful expression of domestic violence. Economic abuse can take many forms, but in the consumer credit area, there are two major types. First, an abuser may commit identity theft by using a survivor's personal information to obtain a credit card or open an account their name without their permission or knowledge. The second type of abuse, termed coerced debt, is perhaps even more insidious. Coerced debt involves abusers using violence or threats of violence to force survivors to use their credit for the abuser's benefit. Most often, the abuser physically takes the survivors credit card, or forces the survivor to open credit accounts or use existing accounts to purchase things for the abuser.

In one survey of 103 female residents at domestic violence centers in a Midwestern state, 39% described her abuser fraudulently obtaining credit under her name to obtain a house, car, and/or credit card; 51% said the abuser had damaged her credit by obstructing bill-paying; and 59% described fraudulent unauthorized use of the survivor's credit accounts by the abuser, such as running up credit card or phone bills in the victim's name.¹⁴ In theory, the law should treat coerced debt and intimate partner identity theft no differently from other types of credit fraud and identity theft. Yet while identity theft can often be addressed under the existing legal framework with the assistance of an advocate, the legal status of coerced debt is more complicated. It frequently goes unacknowledged by creditors and courts, who often follow traditional and arguably outdated family law and creditor-debtor doctrines, take the position that a couple is one financial unit, and that they each have the right to use each other's information to obtain debt and credit.

The relevance of consumer law

For domestic violence survivors recovering from trauma and attempting to establish a stable life for themselves, consumer legal services are critical. Advocates can work with survivors to vacate improperly obtained default judgments, obtain relief from identity theft and coerced debt, and repair their credit. Many survivors do not know they have the right to a free annual copy of their credit report or may not know how to access it. An advocate can work with survivors to assert that right and identify problems like previously-unknown debts. The members of the Working Group see this frequently among our clients, some of whom have suspicions that their abusive partner utilized their credit, but are unable to confirm these concerns until reviewing their credit report.

Obtaining credit reports also raises issues particular to domestic violence. For example, domestic violence survivors must provide personal information to prove their identity to a credit reporting agency ("CRA"), but for safety reasons, may want to keep their current address private, including from a CRA—especially if they are residing in domestic violence shelters, which have confidential locations. Or, having experienced tremendous instability in the aftermath of leaving an abusive relationship, survivors are unable to recall all of their addresses, or have moved to a different address than is associated with

¹⁴ See Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CAL. L. REV. 951, (2012.), citing Adrienne E. Adams et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563, 563 (2008).

their credit file, which makes pulling their credit reports difficult and sometimes impossible. They may also struggle to answer the security questions often posed by CRAs in issuing such reports, because details were withheld by the abuser from the survivor, or because the questions often concern accounts the survivor doesn't know exist. Perversely, many of these factors mean that abusers may be able to order a survivor's credit report and use it to keep tabs on her whereabouts and activities.¹⁵ An advocate can help survivors navigate this confusing process and safely order their credit reports.

The next step is to dispute items on a survivor's credit report that have arisen from coercion, fraud and unauthorized use, as well as the general inaccuracies that pervade consumer reports. Disputes with CRAs are difficult in general, due to their automated processes and a lack of concern for debtors, who are not their primary customers.¹⁶ These disputes are even more difficult when they concern domestic-violence related identity theft and coerced debt.

Coerced debt can be addressed primarily through two federal laws. The Truth in Lending Act ("TILA")¹⁷ and Electronic Fund Transfer Act ("EFTA")¹⁸ enable victims to discharge or limit their liability for debts incurred through unauthorized use of a card or account. However, the application of both laws to coerced debt is not explicit, and in fact the vast majority of survivors—and credit issuers—do not know they exist. An advocate can help a survivor navigate these protections and advocate for their application.

The Fair Credit Reporting Act ("FCRA") defines identity theft as "a fraud committed using the identifying information of another person,"¹⁹ and enables victims to block debt resulting from identity theft from their credit reports. This mechanism applies more explicitly to economic abuse but nevertheless has proved difficult to use. In our work, we frequently find that clients are told they need to submit documentation that was submitted in the first instance, or we receive no response from the CRAs at all. For example, the identity theft blocking provision requires a consumer to submit a "law enforcement report" describing the identity theft. This term has been interpreted in different ways by courts, regulators, and law enforcement, but the CRAs typically accept only a police report as sufficient documentation.

Unfortunately, getting such a report can be difficult for survivors of the historically underreported crime of domestic violence, who may be reluctant to engage with a system that is not always sympathetic to their concerns. In New York City, our clients are frequently refused police reports. They are given every reason imaginable: they must bring all the statements on the account, even if they only have the information on their credit reports and thus do not even have a full account number; they must provide documentation of former and current addresses, which is sometimes impossible for survivors who left documents behind when fleeing or who were never on a lease or utility account; they are at the wrong precinct, and must go to the one near where the identity theft occurred rather than the one by which they live; or that married partners are allowed to open accounts in a partner's name and no crime has been committed. Our clients have further reported that the experience of attempting to obtain a police report can be re-traumatizing. They have been forced to detail their history of abuse in the lobby in front of strangers, disrespected for living in a shelter, or told that the police do not solve relationship problems.

¹⁵ The Domestic Violence and Consumer Law Working Group has raised these and other policy concerns with the federal Consumer Financial Protection Bureau.

¹⁶ See generally, Chi Chi Wu, National Consumer Law Center, *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in their Credit Reports* (Jan. 2009)

¹⁷ 15 U.S.C. §1601 *et seq.*

¹⁸ 15 U.S.C. §1693 *et seq.*

¹⁹ 15 U.S.C. §1681a(q)(3)

The availability of civil legal services will help these survivors to safely obtain the appropriate documents to support their case, as well as to advocate with the CRAs for more reasonable documentation requirements.

Addressing the unmet need: the activities of DV-CLARO

To understand and address these dire gaps in services, Fordham Law School's Feerick Center for Social Justice convened the Domestic Violence and Consumer Law Working Group, which is chaired by Matthew Schedler of CAMBA Legal Services, Inc., and Dora Galacatos of the Feerick Center. The Feerick Center and the Working Group have developed resources aimed at building domestic violence agencies' service capacity in addressing consumer issues. The Center has organized numerous training programs, which have collectively attracted well over 500 attendees from over 70 service providers.

The Working Group also works to administer and support the DV-CLARO Pilot Project, which operates legal advice clinics for domestic violence survivors with consumer debt issues. Through the Project, consumer and domestic violence advocates meet with survivors at their shelters and provide legal advice and other assistance, including referring survivors to consumer and bankruptcy legal resources as necessary. Typically, survivors are referred out when they are experiencing active debt collection; require bankruptcy consultation; have credit report issues; are in the midst of an active Civil Court consumer debt collection case; or have a default judgment against them. Currently, the Pilot Project operates monthly clinic sessions in the Bronx at Sarah Burke House, a Sanctuary For Families domestic violence Tier II shelter, and in Manhattan alternately on a monthly basis at two shelters operated by Urban Resources Institute. Since August 2012, we have conducted over 75 intakes.

DV-CLARO has been extremely successful as a limited-scope advice program. A former Manhattan Borough President called it a "best practice" strategy for dealing with the fallout of economic abuse in a domestic violence context.²⁰ By identifying those survivors who need consumer legal assistance and connecting them with advice and resources, DV-CLARO enables survivors to repair their lives and secure economic independence while maintaining their personal safety.

To demonstrate the issues we see and the work we do through DV-CLARO, we briefly describe a recent case. Ms. S fled her abusive partner with her two young children and found her way to one of our partner shelters. She eventually started working part-time and began actively seeking housing, but could not understand why she was receiving such frequent rejections. Along with providing other screening and services, shelter staff pulled and reviewed her credit report with her. On the credit report were several defaulted student loans that Ms. S was aware of, as well as two consumer debts that had been reduced to judgment without her knowledge and one additional credit card she had never opened. The shelter staff scheduled Ms. S for a DV-CLARO appointment on-site at her shelter, where she met with a member of the Working Group who was able to take her case on for full representation. Her legal services attorney drafted a letter for her to include with her apartment applications partially explaining her poor credit and detailing her efforts to improve it. The advocate quickly consolidated the student loans and assisted Ms. S in getting onto an income-based repayment plan and out of default. While working to vacate the two default judgments, Ms. S was approved for an apartment and was able to transition out of shelter. Continued legal advocacy eventually cleared all of the fraudulent debts from her credit history, including the credit card debt that had not yet reached the courts.

²⁰ Office of the Manhattan Borough President, Sakhi for South Asian Women & The Worker Institute at Cornell University, *Economic Abuse: The Untold Cost of Domestic Violence*, 13-14 (Oct. 2012).

Despite successes like this one, DV-CLARO by its nature is a limited-scope program and only reaches the residents of a handful of shelters in New York City. Many other domestic violence providers lack expertise in debt and credit-related issues and are not able to robustly screen clients to ascertain their consumer legal needs. In the same way, many consumer advocates do not receive training on best practices for working with domestic violence survivors or the law surrounding coerced debt. They may also lack the time and resources to tackle novel cases involving economic abuse on top of their ordinary legal services caseloads. Outside the Working Group, few organizations accept for full representation the cases that lie at the intersection of domestic violence and consumer debt. As a result of the lack of training and resources, many of New York City’s domestic violence survivors remain unable to obtain the assistance they need to deal with their consumer debt issues, holding them back from attaining financial independence and stability.

From April to August 2016, the Domestic Violence and Consumer Law Working Group conducted an online survey of domestic violence shelter staff focused on the needs of residents related to consumer issues. In developing and carrying out the survey, the Working Group benefited from the assistance and input of the New York City Mayor’s Office to Combat Domestic Violence, the New York City Human Resources Administration, and the Center for Survivor Agency and Justice. Preliminary results from 35 respondents indicate as follows:

- 80% of respondents reported that over 66% of survivors require an extension of the maximum time in shelter;
- Over 50% of respondents reported that residents face challenges in securing housing based on their credit history “very often” and an additional 37% reported that residents face challenges “often”;
- 31% of respondents reported that residents do not apply for mainstream housing options because of their credit history “very often” and an additional 28% reported that residents do not apply for such housing “often”; and
- Of respondents who are not able to access expert legal consumer and credit assistance for residents, 68% of respondents reported that they would like to be able to access legal services.

Summary: the benefits to individuals, communities, the courts, and the State, from the provision of civil legal services in matters involving the “Essentials of Life” for survivors of domestic violence

Civil legal services funding will help the continuation, expansion, and development of the DV-CLARO program. It will ensure that survivors of domestic violence access fair administration of justice in our state courts—including overcoming violations of procedural and substantive justice that occur in many consumer lawsuits. Currently, survivors of domestic violence have limited access to consumer legal assistance tailored to their needs. Without knowledge of defenses and procedures available to them to resolve disputes and legal issues, they are left vulnerable in terms of personal safety and the ability to secure housing, insurance, and employment. With legal assistance, survivors can overcome poor credit and outstanding debts resulting from abusive relationships to lead a more financially secure and economically independent life. The courts and the State of New York can play a leading role in ensuring that survivors of domestic violence are justly served by their rights under consumer law.

Additional funding for civil legal services in this area would not only benefit litigants but would also ease the burden on the New York court system. Early legal advocacy can facilitate resolutions on accounts created by fraud and coercion before they reach the court system, or shortly thereafter. In the case of default judgments, legal representation can often prevent or mitigate the chain of devastating

results when a judgment is enforced and a survivor is unexpectedly denied expected funds, which often renders the survivor unable to pay for other necessities, like rent and utilities, leading to additional legal consequences and cases in the court system. Legal representation can also ensure that default judgments are addressed and stop preventing survivors from accessing housing and other essential products and services. Improved access to legal representation in this area will mean that more survivors of domestic violence are able to understand and assert their legal rights before experiencing these harmful consequences.

Domestic Violence and Consumer Law Working Group Members:

Dora Galacatos, Executive Director, Fordham Law School Feerick Center for Social Justice

Diane Johnston, Staff Attorney, Kirkland & Ellis Fellow, Domestic Violence Consumer Advocacy Project, The Legal Aid Society

Matthew Schedler, Supervising Attorney, CAMBA Legal Services, Inc.

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**NEW YORK STATE PERMANENT COMMISSION ON ACCESS TO JUSTICE
2016 PUBLIC HEARING**

SEPTEMBER 27, 2016

**TESTIMONY FROM THE FORDHAM LAW SCHOOL FEERICK CENTER FOR SOCIAL
JUSTICE DOMESTIC VIOLENCE AND CONSUMER LAW WORKING GROUP**

Oral Testimony Outline

1. Thank you to commission and introduction to the working group.
 - a. Roll of OCA funding in our work
2. Description of the scope of the consumer issues in NYC.
3. Description of economic abuse and the devastating effect on survivors.
 - a. Economic abuse
 - b. Coerced debt
 - c. Barriers created by economic abuse.
4. Role of consumer law in addressing these issues.
 - a. Relevance of consumer law
 - b. Methods of addressing the unmet need
 - i. DV CLARO
 - c. Benefits to individuals, communities, and the courts.
5. Conclusion

Beth Goldman

President & Attorney-in-Charge
New York Legal Assistance Group



The Chief Judge's 2016 Hearing on Civil Legal Services

September 27, 2016

Testimony of the New York Legal Assistance Group

Chief Judge DiFiore, Chief Administrative Judge Marks, and Presiding Justices of the Appellate Divisions, good afternoon and thank you for the opportunity to speak today about the current state of civil legal services in New York. My name is Beth Goldman, and I am the President & Attorney-in-Charge of the New York Legal Assistance Group (NYLAG), a nonprofit law office dedicated to providing free legal services in civil law matters to low-income New Yorkers. NYLAG serves immigrants, seniors, the homebound, families facing foreclosure, renters facing eviction, low-income consumers, those in need of government assistance, children in need of special education, domestic violence victims, people with disabilities, chronically ill patients, low-wage workers, members of the LGBTQ community, and Holocaust survivors.

I want to start by thanking Chief Judge DiFiore for her commitment to continued financial support for civil legal services through Judiciary Civil Legal Services funding, which has increased exponentially over the past several years and now stands at an astounding \$85 million which, when combined with the State's supplemental IOLA funding of \$15 million, totals \$100 million. No other judiciary in the country has made that kind of commitment to funding civil legal services. This would not have happened without the leadership of the Chief Judge and her predecessor, former Chief Judge Lippman, whose dedication to funding for civil legal services has inspired a generation of public interest attorneys. Thank you also to Helaine Barnett and the members of the Permanent Commission on Access to Justice for their thorough and enlightening reporting on the state of civil legal services in New York and their leadership on this issue.

There is no question that Judiciary Civil Legal Services funding has radically changed the landscape in New York State for civil legal services. According to the Permanent Commission's most recent report, the number of unrepresented litigants in civil matters has declined from 2.3 million in 2010 to 1.8 million in 2015, in large part as a direct result of increased funding. JCLS funding has allowed NYLAG and other legal service providers to greatly expand the number of people it can serve. In the 2015-16 state fiscal year, NYLAG closed 35,750 cases, in comparison to 27,518 in the 2011-12 fiscal year. This 25% increase is largely attributable to JCLS/IOLA funding – last year, JCLS funding alone supported 40 FTE attorneys at NYLAG.

Moreover, JCLS funding is unique in that it allows legal services organizations to use the money where they see the greatest need rather than at specifically targeted issues. NYLAG uses this funding in three main ways: (1) to support practice areas where there is little or no designated public and private funding; (2) to handle more complicated and other unfunded cases in practice areas with strict grant requirements; and (3) to support innovative service delivery models that focus on underserved communities and clients. Legal problems in core areas affecting the lives of low-income New Yorkers -- subsistence income, family law matters, and access to health care and education -- are notoriously underfunded, even as funding for civil legal services on both the State and City levels has increased. JCLS funding allows us to provide services in underserved subject areas including consumer protection, public benefits, and employment law, and to expand the types of cases we can take on in areas such as housing, immigration, and family law. Thus, it allows NYLAG to provide full-service family law work, including contested divorces, to victims of domestic violence; to handle complex immigration cases for highly vulnerable individuals, such as removal defense and asylum cases; to provide advice and representation on complicated supplemental needs trusts for senior citizens; and to help veterans obtain the benefits they deserve after honorably serving the country. These cases, which tend to be more complicated and take longer to resolve, are precisely the type of cases where a lawyer is essential, yet, in the absence of JCLS funding, most would be unable to obtain legal representation.

Still, too many low-income New Yorkers confronting legal problems related to the essentials of life continue to face crisis situations alone because legal services organizations simply lack the capacity to provide services to all those in need. The most vulnerable populations, including the elderly and veterans, are disproportionately impacted by the lack of available services. A June 2016 study by the Department of Veterans Affairs, for example, showed that five out of the top ten problems causing veteran homelessness are legal issues; unfortunately, physical and mental health issues often keep veterans from seeking the assistance they need with these issues. Similarly, the elderly often face health obstacles to seeking out legal assistance, or may not even be aware that free services are available. The statistics are staggering – in New York City alone:

- 98% of appellants lack representation in fair hearings for benefits denied
- 96% of defendants are unrepresented in consumer credit cases
- 91% of petitioners do not have lawyers in child support matters in Family Court

Even with increased funding through JCLS and other sources, NYLAG is only able to provide full representation to 2 in 10 individuals seeking services in these and other key legal areas.

So, where do we go from here? We will continue to urge the Judiciary as well as other State and City government funders to increase funding to provide much needed legal representation. I think we can all agree that for an individual facing a potentially life-altering legal predicament, there is no substitute for representation by a zealous lawyer acting on his/her behalf. But, absent adequate funding to do so, legal service providers together with the court system and other

innovators, need to explore models of service delivery that leverage our expertise, expand our capacity, and reach people before they are in crisis situations.

Proactive Outreach

First, we need to find ways to reaching out to potential clients in their communities rather than wait for them to come to us. Many low-income individuals face barriers to accessing traditional legal services, including geographic isolation, health and disability issues, inability to pay for public transportation, childcare concerns, lack of English proficiency, and fears about immigration status. To combat these issues, NYLAG has been a pioneer in community-based lawyering. By bringing legal services to communities, and by partnering with organizations already trusted by community members, NYLAG is able to reach large swaths of vulnerable people who otherwise would not have reached out for help until they reached a true crisis point.

We do this in a number of ways. NYLAG works with more than 600 community organizations, hospitals, libraries, offices of elected officials, and other community-based entities, ensuring that the people who staff these organizations understand when their clients, patients or constituents are in need of legal assistance is essential. NYLAG trains hundreds of social workers, doctors, and staff at community-based organizations on what they can do to help clients with more simple legal needs, and how to recognize when an individual needs to be referred for more complex legal assistance.

NYLAG's Mobile Legal Help Center is another way we go out into communities throughout the Greater New York City region, including chronically underserved parts of Long Island. A partnership between NYLAG and the New York State Courts Access to Justice Program, the Mobile Legal Help Center brings free, civil legal services to these communities where vulnerable individuals are often unable or unwilling to access traditional legal services programs. The vehicle serves as a fully functioning mobile legal services office and courtroom, allowing NYLAG to serve clients anywhere through community-based organizations and elected officials. By partnering with these trusted entities, NYLAG is able to seek out clients who otherwise would not reach out for legal assistance. The vehicle has also proved to be an incredible resource in the wake of disaster, as we saw after Superstorm Sandy, when we used it to begin triage work immediately in devastated communities, making connections with people who would later be in desperate need of legal help. Last year, nearly 900 cases were intaked in communities throughout the Greater New York City area through the Mobile Legal Help Center.

Other programs and collaborations serve to reach people in their own communities before they reach crisis and leverage volunteers to increase capacity. Legal Hand, for example, is a partnership between the Center for Court Innovation and legal services organizations, including NYLAG, that leverages trained community volunteers to provide free legal information, assistance, and referrals to residents in storefront offices in vulnerable New York City

communities. From November 2015 to August 2016, the Crown Heights office staffed by NYLAG received over 1,800 visits from more than 1,000 community members with a variety of issues in areas such as housing, benefits, family law, immigration, consumer protection, and employment. By training volunteers, Legal Hand expands the capacity of organizations to provide necessary information to low-income people with legal issues, allowing them to understand their options before they are called into court or reach another point of crisis.

One legal area where it is particularly critical to reach clients as early as possible is immigration, as immigrants are at serious risk of deportation. To address this, NYLAG has developed an innovative large-scale community clinic model to provide legal services and community education to high volumes of immigrants in safe and convenient environments such as community-based organizations, schools, churches, and libraries. Using a combination of experienced attorneys and pro bono volunteers proficient in the languages spoken in the particular communities, NYLAG is able to provide comprehensive legal screening and services, as well as Know Your Rights presentations and fraud awareness and prevention trainings. By screening clients in their own communities, we are able proactively to reach those who have a potential path to citizenship or other immigration option, as well as warn those who do not have a viable path, before they are exposed to potential deportation. NYLAG screened more than 2,300 immigrants at community clinics last year.

Leveraging Volunteers and Non-Lawyers

In addition to getting out into communities and trying to reach clients early in the process, we need to and do rely heavily on volunteers – lawyers and non-lawyers alike. Last year, NYLAG leveraged the services of 1,767 volunteers, who contributed a total of 81,424 hours of service. Many of the programs described above incorporate volunteers as an essential part of the outreach effort. For example, our Mobile Legal Help Center relies on volunteers and pro bono attorneys to maximize the number of people who can be served on the van. Central to Legal Hand’s model is the training of community volunteers to provide key information to low-income members of their communities with legal issues. Similarly, NYLAG’s immigration clinics rely on pro bono attorney volunteers, trained by NYLAG immigration attorneys, to provide assistance at the clinics.

Utilizing volunteers is just as important for clients who have a court date and are not aware that free legal services are available. Programs like Volunteer Lawyer for the Day, a project of the New York State Access to Justice Program and a consortium of legal services providers, work to provide in-court representation to those unable to afford it. NYLAG oversees volunteer attorneys and student interns at the consumer courts in the Bronx, Queens, and Staten Island, representing litigants who come to court with no representation or ability to defend themselves in debt collection lawsuits. This innovative leveraging of volunteers and pro bono attorneys allows NYLAG effectively and efficiently to represent a large number of clients using minimal

resources, helping them avoid protracted litigation and ensuring that the courts are not tied up with frivolous lawsuits. The VLFD program provided limited scope representation to 3,743 low-income consumers last year throughout the five boroughs.

In addition, the Office of Court Administration has been at the forefront of developing programs for law students and recent graduates, which serve to increase the number of advocates addressing the current gap in available legal services and to ensure that the next generation of public interest lawyers are engaged and trained to serve the vulnerable, low-income populations most in need of services.

The Poverty Justice Solutions program has brought more lawyers into New York City's housing courts to represent low-income tenants, approximately 80% of whom remain unrepresented despite historic amounts of funding for housing legal services, by utilizing recent law school graduates. Programs like Poverty Justice Solutions are important not only because they expand the capacity of legal services organizations to serve the precariously housed, but because they usher in the next generation of public interest attorneys in New York. NYLAG's PJS Fellows have allowed the agency to take on more substantively and geographically diverse housing cases than other types of funding allow, and provided services on a total of 368 unduplicated cases last year.

The Pro Bono Scholars program allows third-year law students with an interest in public interest law to take the Bar early and devote their final semesters of law school to working full-time at legal services organizations throughout New York. NYLAG has hosted Pro Bono Scholars working in the areas of housing, consumer protection, immigration, elder law, and special education, giving new lawyers the opportunity to work in public interest, developing the skills they will need to continue their work with vulnerable, low-income populations. JCLS funding allows NYLAG to continue to employ some of its Fellows and Pro Bono Scholars after their programs have ended, keeping these already trained attorneys in public interest law.

Similarly, NYLAG's unique Domestic Violence Clinical Center (DVCC) gives law students from area law schools the opportunity to represent low-income victims of domestic violence in family offense, custody and visitation cases under a Student Practice Order under NYLAG supervision. The DVCC has grown into an invaluable tool that enables NYLAG to increase the number of domestic violence cases it is able to handle annually, while also mentoring and inspiring the next generation of attorneys. The Clinic demonstrates that, given the chance, law students can be passionate, effective litigators. When they later become lawyers, they carry with them the knowledge that the law is a tool for positive social change, and they are empowered to use that knowledge in their future careers. In fact, many of the DVCC students go on to become public interest attorneys. A total of twelve DVCC alumni have joined NYLAG as staff attorneys and supervisors, helping clients not only with domestic violence-related cases, but housing and consumer law matters as well.

Conclusion

The expansion of civil legal services funding through the Judicial Civil Legal Services funding stream has allowed legal services organizations throughout the state to work together and with the Office of Court Administration to create innovative programs that truly work to bring access to justice to the hundreds of thousands of New Yorkers still in need. Increased funding for civil legal services will allow organizations to continue to expand and improve upon initiatives like those discussed above, which specifically target the most vulnerable populations of low-income New Yorkers. Programs like these allow legal services attorneys to focus their capacity for full representation on those most in need. This is especially important when it comes to limited scope programs, such as Legal Hand and Volunteer Lawyer for the Day. These programs are critical to bringing people in the door, but many of the clients we see through these programs require a higher level of service than can be offered by these programs. JCLS funding allows NYLAG to take on many of these clients for full representation when their needs fall outside the scope of limited scope and very specific funding streams.

JCLS funding has also been an essential means to allowing NYLAG and other legal services organizations to retain Fellows and Pro Bono Scholars after the end of their programs, keeping them engaged in public interest law and using the training they have already received from these organizations. Employing these young attorneys directly following their fellowship experiences ensures that the next generation of public interest attorneys will be ready to provide services to low-income New Yorkers for many years to come.

I want to thank you for holding this hearing, and I look forward to continuing to work with our colleagues and the Office of Court Administration to ensure that all New Yorkers have the access to justice they deserve.

Beth Goldman
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Written Comments of
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Submitted to the
New York State Permanent Commission on Access to Justice

Hon. Janet DiFiore, Chief Judge of the State of New York
Hon. Peter Tom, Acting Presiding Justice, First Department
Hon. Randall T. Eng, Presiding Justice, Second Department
Hon. Karen K. Peters, Presiding Justice, Third Department
Hon. Gerald J. Whalen, Presiding Justice, Fourth Department
Hon. Lawrence K. Marks, Chief Administrative Judge
Claire Gutekunst, President, New York State Bar Association

September 13th, 2016
New York State Court of Appeals
Albany, New York

Thank you to Judge DiFiore and to the Permanent Commission for receiving these comments. I am the Director of the Legal Wellness Institute at The Family Center. The Family Center is a multidisciplinary agency in New York City serving individuals and families affected by severe illness, disability, crisis, and loss. Our Legal Wellness Institute assists clients with a range of civil legal problems all connected to “essentials of life.”

Today, I submit comments on the impact of Judiciary Civil Legal Services Funding specifically on LWI’s clients who are some of New York’s most vulnerable citizens.

Founded in 1994, The Family Center (TFC) provides legal and social services to New Yorkers whose lives are marked by the intertwined challenges of poverty and severe illness or crisis. TFC’s clients are among NYC’s most marginalized and vulnerable residents. Many have lived in poverty for some time; others are recently impoverished due to illness, family death, or other crisis. Our clients face many complex legal and social issues, at a time when they are least able to advocate for themselves. TFC’s goal is to help our clients achieve lasting stability and security - in their homes, income, health, family relationships, and social supports.

Annually, TFC directly serves over **3,500** clients and families, representing an estimated **12,000** household members. Because many clients are homebound or have difficulty traveling, we bring our services to them. Our attorneys, social workers, and counselors do much of their work with clients outside of the office -- in clients’ homes, hospitals or hospice rooms.

Our Legal Wellness Institute (LWI) provides direct representation, advice, professional training, and community education in our primary practice areas of (1) Housing, (2) Family and



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matrimonial law, (3) Income maintenance and public benefits, and (4) Lifetime planning. We serve many special populations including the elderly; the disabled; those affected by severe and chronic illness such as HIV, cancer, ALS, and MS; and caregiver families affected by parental absence or death.

In addition to illness, disability, and other crisis, our clients' lives are often woven with the terrible threads of incarceration, mental health problems, substance use and histories of domestic violence. They live on subsistence incomes and come from the most disadvantaged and underserved areas of the city. Unsurprisingly, our clients often present multiple legal issues at once. This is why our work is done in a holistic manner. Each of our attorneys and paralegals are trained in multiple practice areas and we often represent the same client in multiple simultaneous matters. We appear in 30-plus tribunals throughout NYC, including Housing, Family, Supreme and Surrogate's Courts, HRA Job Centers, SSA Field Offices and ODAR, OTDA Office of Administrative Hearings, NYCHA and DHCR Hearing Offices. We execute advance directives and last wills at bedsides in hospitals and client homes throughout the city.

Our work has always been to help clients access and maintain housing, income, medical, and family stability. Through any lens, our work, intimate by definition, is focused on ensuring that clients, their families and caregivers have the "essentials of life." Funding for this work comes from a number of places including the State. We are recipients of funding from Judicial Civil Legal Services and IOLA (Administration of Justice). Those funds form a backbone of support for our civil legal services work.

This funding pays off in big ways both for our clients and for all New Yorkers. Last year alone, LWI served **1,420** clients through all levels of representation, benefitting over **3,067** household members. We closed **1,541** cases. We successfully resolved **438** court, administrative agency and transactional matters, or about **8 per week**. We conducted **27** off-site consumer and provider clinics reaching **975** people. On behalf of our clients, we obtained **\$2,620,714** in direct dollar benefits. We preserved **\$56,262.00** in lump sums and settlements and helped clients avoid **\$1,850** in monthly payments. We saved taxpayers **\$4,712,500**. Our total economic impact for 2015-2016 was over **\$7.3 million**. These achievements were obtained by a full-time staff of seven and a volunteer army of law students, graduate fellows and pro bono attorneys. By any objective measure, JCLS funding is a wise investment. **For every dollar invested in our services, we obtain or save taxpayers nine dollars.**

We know that the outcomes are similar for other JCLS providers. JCLS monies directly help New Yorkers avoid eviction, access badly-needed subsistence income, stabilize difficult family situations and much more. The numbers and data alone tell a convincing story, but it is individual clients who give it meaning. Below, we offer the Commission true stories of LWI clients¹, supported with JCLS funding, and the impact that civil legal services has had on them and their families.

¹ Client names have been changed.



Income Maintenance/Subsidized Housing: When Marilyn first came to LWI, she struggled to make ends meet on a monthly pension that didn't even cover her rent. She had just finished treatment for breast cancer. But the surgery, radiation, and chemotherapy that put her breast cancer into remission had created lasting problems. She had constant pain, couldn't feel her hands due to nerve damage, and had trouble walking. Worse, Marilyn's cognitive function and memory had been steadily declining since her chemo treatments. Marilyn loved her job, but was forced to retire early due to her health. Marilyn couldn't remember details of events, her medical history, or the names of her doctors. This would have made applying for Social Security and other benefits on her own impossible.

An LWI attorney made multiple trips to Marilyn's home to meet with her and to help gather necessary documents and information. The attorney set up application appointments and accompanied Marilyn to Social Security to provide advocacy and support through the application process. Marilyn was approved for retirement benefits immediately, but her payments were reduced as a penalty for retiring early. We knew that if we could establish that Marilyn's disabilities prevented her from working, she could receive disability benefits with no penalty. The LWI attorney submitted an application for Disability Insurance Benefits on Marilyn's behalf, accompanied her to required medical exams, and advised her to claim an earlier date of disability onset than was recommended by the SSA. At the same time, we helped Marilyn apply for SNAP (Supplemental Nutrition Assistance Program) and SCRIE (Senior Citizen Rent Increase Exemption), and set her up with counseling services at TFC.

With our help, Marilyn was found disabled as of the earlier date. She received over \$10,000 in retroactive benefits and a few hundred dollars extra per month ongoing. With her new benefits, Marilyn can afford to stay in her apartment, eat healthy foods, and cover the copays for her ongoing medical treatments.

Lifetime Planning/Family Law: Gladys was referred to LWI by a Social Worker at Elmhurst Hospital. Gladys had advanced Huntington's Disease, a degenerative and ultimately deadly genetic neurological condition. Her muscle coordination had already deteriorated, rendering her mostly unable to move her legs, arms, and hands. Her mental condition would soon be affected. At 41 years old, she was a single mother to an eight-year-old daughter, Sofia. Sofia's father had never been involved in her life and his paternity had never been legally established.

As Gladys became sicker, her sister Ariana cared for both Gladys and Sofia. Gladys's main concern was making sure that Sofia had a stable home and caregiver, both right now and through adulthood. Ariana had been tested and, fortunately, did not have the gene for Huntington's. After significant conversation with Gladys, an LWI attorney prepared a Designation of Standby Guardian, naming Ariana as Sofia's guardian in the event of Gladys's death or incapacity. Because Ariana was already beginning to be Sofia's primary caregiver, we also prepared a Designation of Person in Parental Relation giving Ariana



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immediate temporary authority to deal with school and medical issues for Sofia.

The LWI attorney met with Gladys at home to execute the documents. She still maintained her mental capacity but was not sure how much longer she would. She wanted Ariana to immediately begin the process in Family Court of becoming Sofia's permanent guardian to be sure that Sofia was taken care of. With Gladys's consent, LWI filed a petition in Family Court for Ariana's appointment as Sofia's guardian. With LWI's advocacy, the petition advanced quickly, and Ariana was appointed Sofia's permanent guardian while Gladys had enough mental capacity to appreciate the news and the fact that Sofia was in good hands.

Housing/Eviction Prevention: Miranda was 66 years old and living in a rent-stabilized apartment in Brooklyn. In the last five years, she has had repeated bouts of breast cancer. Three years ago, her oldest daughter moved in to help with day-to-day and medical needs. The apartment is a two-bedroom but is incorrectly listed and charged as a three-bedroom on the lease. Miranda has lived in the apartment for decades and has never objected to the somewhat inflated rent. Prior to her cancer diagnosis, Miranda had been working as a cashier. She has always paid her rent on time. About a year ago, her building was bought by a new landlord. Within weeks of the purchase, she received a summons to Housing Court. The petition alleged, among other things, illegal occupancy by both Miranda and her daughter, non-payment of rent, failure to abide by various lease provisions and non-payment of building administrative charges totaling \$25.00. Miranda was upset and afraid. Other people in her building had also received summonses and many were leaving. She had never been to court before and she was in an active part of her treatment. Miranda lives on a fixed income and her daughter works part time. They could not afford private counsel.

Miranda receives treatment from Memorial Sloane Kettering. Upon hearing about Miranda's housing troubles, an MSK social workers contacted LWI, who quickly met with Miranda and determined that the landlord's claim had virtually no merit. We soon collected mountains of documents establishing Miranda's and her daughter's residency in the apartment, a complete history of proper rent payments, and an offer to pay \$25.00. At the first court appearance, the LWI attorney aggressively negotiated with the landlord's attorney, and ultimately took the case in front of the judge. The landlord's attorney soon requested the opportunity to speak with his client by phone. Twenty minutes later, he withdrew his case.

Adult Guardianship: Angel had been a normal, healthy 20-year-old. He was taking college classes and getting ready to move out of his parents' NYCHA apartment. But in 2013, Angel was the victim of a random assault that caused traumatic brain injury, leaving him severely disabled. Angel could no longer speak, walk, or meaningfully interact with others. He was cared for in a specialized nursing home over an hour away from his parents' home.

Angel's mother, Bilma, knew that Angel needed someone who could act on his behalf. His student loan bills were piling up and only Angel or his guardian could apply to have the loans discharged. Angel had a warrant for an unpaid traffic ticket and needed a guardian to resolve



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the issue in Court. Most importantly, Angel's family wanted nothing more than to care for him at home. His doctors agreed that Angel would eventually be able to return home, with assistance. Without a legal guardian, no one was authorized to apply for the personal care and therapeutic services Angel would need at home.

Bilma had tried to petition for guardianship of Angel on her own, only to be turned away because her papers didn't meet the Court's confusing standards. Bilma was understandably frustrated by the time she was referred to LWI. LWI worked with Bilma to draft a petition and gather all the necessary facts and supporting documents. This included arranging for Angel to be seen by specialists who could submit certifications to the Court regarding Angel's condition, and working with the doctors to ensure that each report included the necessary information.

LWI represented Bilma at a hearing in Surrogate's Court, where she was appointed as Angel's guardian. Bilma has always been a loving mother to Angel, and as his guardian she is now empowered to be his best advocate as well. Within several weeks, Bilma was able to discharge Angel's student loans and have his warrant vacated. Most importantly, Bilma is now confident that she will be able to get Angel the care and services he'll need when he is ready to come home.

These clients' stories – just four of the thousands served every year – show more than just the necessity of quality Civil Legal Services for low income New Yorkers in need. They also show that providing such assistance has positive impacts that extend far beyond a particular client. Preventing a wrongful eviction preserves affordable housing, maintains NYC communities, and saves the City and State the expenses of supporting a family in the shelter system. Helping a client obtain the benefits to which she is entitled saves the administrative costs that result from a wrongful denial and appeal, and helps protect that client's health and housing -- decreasing the likelihood that additional intervention will be necessary in the future.

The benefits of funding Civil Legal Services are innumerable. Thank you for this opportunity to highlight just a few. The Family Center wishes Judge DiFiore and the Commission good luck.

Adam J. Halper, Esq.
Director of Legal Services

Caroline L. Bersak, Esq.
Assistant Director of Legal Services

Leigh Thomas
Legal Services Coordinator

Carol LaFleur
Executive Director
New York Legal Services Coalition



Harvey Epstein, President
Urban Justice Center

Barbara Finkelstein, Vice President
Legal Services of the Hudson Valley

Jeffrey Seigel, Treasurer
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Martin Needelman, Secretary
Brooklyn Legal Services Corporation A

Rodrigo Sanchez-Camus
Northern Manhattan Improvement Corporation

Anne Erickson
Empire Justice Center

Sheila Gaddis
Volunteer Legal Services Program of Rochester

Adriene Holder
Legal Aid Society

Joe Kelemen
Western New York Law Center

Paul Lupia
Legal Aid Society of Mid New York

Mark O'Brien
Pro Bono Net, Inc.

Carla Palumbo
Legal Aid Society of Rochester

Susan Patnode
Rural Law Center of New York

Raun Rasmussen
Legal Services NYC

Carolyn Silver
Lenox Hill Neighborhood House

September 28, 2016

Ms. Lauren Kanfer
New York State Unified Court System
Office of Court Administration
25 Beaver Street
Albany, NY 12207

Dear Ms. Kanfer:

On behalf of the New York Legal Services Coalition, we applaud Chief Judge DiFiore, members of the legislature and Governor Cuomo for increasing funding for civil legal services in 2016.

We are writing in response to the public hearing on civil legal services that was held on September 27. Several of our members were present at that hearing. The Coalition is thankful for the opportunity to provide additional commentary.

The New York Legal Services Coalition encompasses 49 organizational members that represent hundreds of thousands of low income New Yorkers in civil courts each year. These cases involve essential matters of life: housing, critical government benefits, disability, domestic violence, family issues, health, employment, immigration, HIV/AIDS, prisoners' rights and elder law.

According to the 2015 Report to the Chief Judge of the State of New York from the Permanent Commission on Access to Justice, legal services providers across New York State handled a remarkable 423,676 cases in 2015, an increase from the 384,974 cases that were handled in 2014. Despite this increase in the number of individuals assisted, approximately 1.2 million people go unrepresented in civil courts each year because they cannot afford and have no access to, an attorney. In addition, the number of New Yorkers living below 200% of the poverty level continues to climb. According to the Kaiser Family Foundation, in 2014 this figure was an astounding 35% of New Yorkers.

Protecting access to civil legal services for low income New Yorkers is critical. For every \$1 New York State spends on civil legal aid, \$10 in economic benefit is generated. This benefit is realized through increased federal support for low income New Yorkers, decreased court costs and reductions in social services costs.

The impact of civil legal services can be found in the following case examples.

Housing

Example #1 (Housing Conservation Coordinators):

Client was referred to HCC after having been evicted from her home without any notice. The landlord had started a nonpayment case against the tenant of record, but he had moved out. Our client was not on the lease and did not have a viable claim for succession rights to the apartment. At the time she was pregnant and had a toddler at home. She was extremely nervous and cared about what the future held for her family. With our help, our client and her family were restored to their apartment, received an emergency rent arrears grant from HRA and was given a lease in her name with a preferential rent that she could afford.

Example #2 (Housing Conservation Coordinators):

Client originally presented at HCC for help with a pending nonpayment case, however, an unfortunate fire in his apartment required HCC's assistance with two other cases on his behalf – an illegal lockout and an HP. After the fire, without any vacate order issued, the landlord took it upon himself to change the locks to our client's apartment. We filed an illegal lockout petition against the landlord, and despite the landlord's attorney having entered into a stipulation agreeing to let our client into his apartment, the landlord did not do so. Our client and his family were without access to their medicine and clothes for over a week. Because of the landlord's refusal to comply, we filed a contempt motion, and the landlord finally gave our client the keys to his apartment, five days after agreeing to do so. Meanwhile, the landlord, despite claiming that he changed the locks for the tenant's safety, refused to make any of the emergency repairs, e.g. replacing the windows, restoring the gas, restoring the electricity. We filed an HP petition and then a contempt motion for the landlord's failure to repair the apartment. It was not until months after the fire and the filing of a contempt motion that the landlord finally repaired our client's apartment. Ultimately we were able to settle our contempt motion by getting our client compensation for his time outside the apartment.

Example # 3 Foreclosure (Hiscock Legal Aid Society)

The clients, an elderly couple, missed over three years of mortgage payments due to medical expenses, and the bank filed for foreclosure. They had an adjustable rate mortgage and the bank refused to modify the loan. With the help of HLAS, the clients obtained assistance from the NYS Mortgage Assistance Program (MAP), which paid off arrears so the homeowners could reinstate; a total amount just under \$28,000. The homeowners were able to resume making regular monthly payments and the bank is discontinuing the foreclosure.

Example #4 - Eviction Proceeding (Legal Aid Society of Northeastern New York)

The client came to LASNNY after her landlord filed a nonpayment eviction proceeding. LASNNY represented her at trial and raised the defense of warranty of habitability due to a persistent infestation of bedbugs. The court ordered a 25% rent abatement and ordered the landlord to exterminate. So far as we are aware, this was the first time the

City Court used its equitable powers to order specific repairs/relief in a landlord-tenant case. The most recent census data available indicates that there are 12,804 rental units in Schenectady.

Critical Government Benefits

Example #1 (Erie County Bar Association Volunteer Lawyers Project)

Client came to VLP when his benefits were stopped when the Department of Labor claimed that he refused a reasonable offer of employment. The client had refused to return to his prior employment because his prior employer was verbally abusive, called him names, mocked his weight, and made jokes of a homosexual nature about him. VLP represented the Claimant and successfully argued that his refusal to return to a work environment filled with such harassment established good cause for his refusal of the job offer. The Claimant was awarded nearly \$6000 in retroactive benefits

Example #2 (Legal Aid Society of Northeast New York)

An Article 78 proceeding was filed against the Office of Temporary and Disability Assistance (OTDA) and the Albany and Rensselaer County Departments of Social Services. Client's son visited his father in New York for portions of the Thanksgiving and Christmas holidays. Albany County DSS interpreted this to mean that client failed to report that her son had changed residences and directed her, under threat of a report to Child Protective Services, to disqualify herself from public assistance for a period of time. Without this assistance, the client was unable to afford her housing and stayed temporarily with a friend in Rensselaer County. When she returned to Albany County, Albany County DSS treated her as a Rensselaer County resident and refused to assist her. Rensselaer County DSS stated that they could not help her as she had cases open in Albany. LASNNY represented her at fair hearings; when an administrative law judge upheld the disqualification, we filed an Article 78 proceeding. This ultimately settled, with our client receiving all the benefits she would have been due had her assistance not been terminated. LASNNY ensured that all local personnel, specifically including Albany County, were re-educated with respect to the proper procedure for an IPV. As of January 2016, 5,910 people in Albany County and 4,017 people in Rensselaer County received temporary assistance.

Example #2 (Legal Aid Society of Northeastern New York)

One of the paralegals in the LASNNY Plattsburgh office assisted clients who sought personal care services through DSS. Their assessments were delayed past the timeline under the regulations (18 NYCRR 505.28). Our advocate called the county and the public health nurse charged with the assessments said they were delayed because the client had not filled out a "CDPAP application." No such application is required as part of the assessment process to receive CDPAS. After the advocate wrote a letter to the Deputy Commissioner advising the Department of this, Clinton County DSS agreed to stop requiring the "CDPAP application" which removed a barrier to accessing CDPAS. Approximately 51 consumers in Clinton County participate in CDPAP; this number has tripled in the last seven months.

Immigration:

Example #1 - Special Immigrant Juvenile (Erie County Bar Association Volunteer Lawyers Project)

This example involves a case for a young mother and daughter, both minors in foster care in WNY. Since the mother feared return to their native country, where she had been sex trafficked by a drug cartel, our Coalition member helped them apply for asylum. However, due to high asylum denial rates and long processing times, our member also helped both clients apply for Special Immigrant Juvenile (SIJ) status before USCIS. Both clients received permanent residence.

Example # 2 (Hiscock Legal Aid Society)

For a period of nearly 8 years, our member Immigration Project had represented a client in removal proceedings in the Immigration Court in Buffalo. The client is a national of Mexico, and is married to a U.S. citizen who is age 71 and has suffered poor health. For a number of years, the client helped his wife to care for six U.S. citizen grandchildren of hers, who were living in her care, and also a great-grandchild. The removal proceedings went through two trials, in 2008 and 2012, and two appeals to the Board of Immigration Appeals. Our member Immigration Project represented the client in both hearings and in filing both appeals. The BIA sustained the client's position on appeal in decisions rendered in 2010 and 2014. This made way for the grant of cancellation of removal to the client by the Immigration Judge on March 11, 2016. The client obtained permanent resident status and received his green card, finally achieving security and stability for himself and his family.

These examples provide clear indication of the dramatic impact civil legal services providers have in ensuring economic viability, stable housing and safe environments.

We encourage continued exploration of ways that we can together increase access to justice for vulnerable New Yorkers and look forward dialogue on increased funding in the years ahead.

Sincerely,



Carol LaFleur
Executive Director
518-527-6236
nylscoalition@gmail.com

Mailing address – PO Box 1322, Albany NY 12201

Dorchen A. Leidholdt

Director

Center for Battered Women's Legal Services

September 13, 2016

Access to Justice Commission
c/o Jessica Klein, Esq.
Sullivan & Cromwell LLP
125 Broad Street, 32nd Floor
New York, New York 10004-2498

Dear Ms. Klein:

On behalf of Sanctuary for Families Executive Director Judge Judy Harris Kluger, I respectfully request permission to testify on behalf of our organization at the Chief Judge's 2016 Hearing on Civil Legal Services in New York.

Sanctuary for Families is one of the first and the largest provider of dedicated multidisciplinary services to victims of domestic violence and related forms of gender-based violence in New York State. With 50 full-time staff attorneys and approximately 30 support staff members our Center for Battered Women's Legal Services (hereafter, "Legal Center") is the largest dedicated provider of legal services to gender violence victims in the United States.

I propose to testify about the tremendous assistance Judiciary Civil Legal Services Funding has provided to legal service providers in New York State working on behalf of impoverished and working poor survivors of domestic and related gender violence. As a result of this funding, Sanctuary for Families and other legal service providers addressing the complex and urgent needs of this highly marginalized population have been able to significantly increase the provision of comprehensive legal representation to gender violence victims across practice areas.

My testimony will also address the continuing unmet need among survivors of gender violence for representation in "essentials of life" legal cases, specifically those addressing their needs for safe and habitable housing, economic survival independent of their abusers, custody of their children and visitation arrangements that do not jeopardize their and their children's safety, assistance in accessing public benefits, and representation in immigration legal cases that make them eligible to work and to access public benefits. This unmet need has left countless numbers of New York State gender abuse victims economically dependent on abusive intimate partners and, as a result, vulnerable to ongoing violence, or has forced them and their children into conditions of dire poverty as a result of fleeing for their safety and even lives. Abuse victims' unmet need for legal counsel and representation has also left many without lifesaving protections, such as protective orders and custody/visitation orders that prevent abusers from continuing to harass and intimidate their victims. Free, skillful legal representation is the key to

Hon. Judy Harris Kluger
Executive Director

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**in memoriam*

not only to diminishing the enormous overlap between domestic violence and homelessness and domestic violence but to curtailing the alarming incidence of domestic violence homicide in our State.

Sanctuary for Families has been a leader in developing innovative ways to leverage pro bono services from both the private bar and law schools to address the urgent need for legal services to assist poor victims of gender violence. My testimony will include descriptions of the model pro bono programs we have developed, from our Courtroom Advocates Project, which recruits, trains, and mentors law students from eleven New York City area law schools to assist unrepresented victims petitioning for orders of protection in New York City Family Courts, to the seven-law firm pro bono project that provides legal representation in the Anti-Trafficking Intervention Courts founded in 2013 by Chief Judge Jonathan Lippman. Between April 2015 and March 2016 our Courtroom Advocates Project trained no less than 553 law student advocates to assist 435 domestic violence victims petitioning for orders of protection in New York State Family Courts.

Sanctuary for Families has special expertise in the representation of immigrant abuser survivors in Family Courts in a wide variety of cases—child and spousal support, custody/visitation, abuse and neglect, family offense proceedings, and those involving “special immigrant juvenile status.” We have found that our holistic, interdisciplinary approach, strong relationships with community-based organizations in underserved immigrant communities, and cultural expertise has served us well in our ability to bring justice to women, men, and children in the shadows due to isolation, trauma, and lack of immigration status.

I very much look forward to hearing as to whether I can testify on behalf of Judge Judy Harris Kluger and Sanctuary for Families at the Chief Judge’s 2016 Hearing on Civil Legal Services in New York on September 27th.

Sincerely yours,



Dorchen A. Leidholdt
Director
Center for Battered Women’s Legal Services

Rohan Pavuluri
Co-Founder of Upsolve.org

Jonathan Petts
Co-Founder of Upsolve.org



Civil Legal Services Testimony: Legal Aid Meet Legal Tech

Rohan Pavuluri and Jonathan Petts, Co-Founders of [Upsolve.org](https://www.upsolve.org)

In accounting, consumers have TurboTax to complete personal tax returns. In medicine, patients have WebMD to diagnose their conditions. And in teaching, students have Khan Academy. Despite tech advances in e-discovery, legal research and trial presentation, though, the delivery of legal services has remained largely unchanged since the time of Charles Dickens. One or more lawyers researches, writes and litigates for a single client.

This “a la carte” one-lawyer-per-client model has worked well enough in business law. But it has generally failed us in providing legal aid for low-income Americans. Using this model, the legal aid clinics must turn down four out of every five clients. Waiting times of three to six months are commonplace. And because these organizations never have enough capacity to service outstanding requests, they have no reason to market their services in ways that traditional businesses do. This is highly problematic because the people who need legal help the most often don’t recognize that they have a legal problem. For example, almost 47 million Americans live under the federal poverty line, and the same number have average household credit card debt of \$16,000. But Americans filed a mere 523,000 individual Chapter 7 bankruptcies last year, presumably due to lack of awareness of this avenue of consumer relief.

Because there will never be enough free lawyers to satisfy demand from low-income Americans, we need to leverage technology to allow the legal expertise of one lawyer to reach hundreds or thousands of clients at once, where possible. In particular, we must pay attention to four key areas of technology:

1. Online Self-Help Materials: A cornerstone of the lean manufacturing principles that have dominated the auto industry for decades is that a higher level employee should never perform work that can be performed almost as well by a lower level employee. This principle must be internalized in the legal aid and pro bono worlds. To maximize access to justice for as many low-income Americans as possible, free lawyers cannot spend time performing work that clients could do by themselves with the right guided materials. Legal self-help materials have been around for years, but few of them are any good. Recent research in this area has begun to show what works: pictures, affirmations and plain language. Making effective legal self-help materials available online is critical to economizing free lawyers’ time and allocating it to as many clients as possible.

2. Unbundled Video Chat Advice: Once effective self-help resources become more widely available, fully bundled pro bono representation will become unnecessary in many cases, such as routine consumer bankruptcy and uncontested divorces. What always will be needed is high-



level legal advice: answering questions like "Does bankruptcy or tort litigation make sense for me?" Video chat technology must be expanded to allow lawyers to have these conversations with clients on their phones in bite-sized unbundled engagements, whenever their schedule permits. Allowing lawyers to do the most meaningful part of their job, advising clients, without getting dragged down into the messy details of fully bundled service, could do wonders in scaling pro bono participation.

3. Design Thinking: In Silicon Valley, there is an entire specialization called "user experience design," which focuses on designing software in a way that makes it highly useable.

Unfortunately, almost none of this body of knowledge has been applied to legal aid websites. Though well-intentioned, websites like Probono.net just don't look like Khan Academy. This needs to change. The city of Boston's new website is a shining example of how public institutions can present themselves in a way that is simple, user-focused, and beautifully designed. Legal aid websites must be redesigned in the same way.

4. Online Marketing: If legal aid and pro bono resources are appropriately leveraged through online self-help tools, bite-sized video chat and design thinking, our capacity to serve low-income Americans will expand exponentially. At that point, increasing awareness of the need for legal help will become the critical task for solving our access-to-justice problem. Service providers in many industries have long advertised on social media sites like Facebook, Google and Craigslist to educate clients about the need for their services. Helping as many low-income Americans as possible requires reaching out to people who don't know they need help in the places where they spend time online.

Some of the prescriptions above may seem radical and inconsistent with our traditional ideal of serving each pro bono client as completely as if he were a paying one. But this well-intentioned mindset has impeded our progress in serving low-income Americans. If we're truly serious about increasing access to justice, the solution won't come from incremental efforts (laudable as they are) like increasing mandatory pro bono requirements by a few hours. As Cuban baseball coaches used to say, "You don't get off the island by bunting."

In our view, the potential for increasing access to legal aid through legal tech is limitless. We're excited to see what the future brings.

C. Kenneth Perri

Executive Director

Legal Assistance of Western New York, Inc.

LEGAL ASSISTANCE OF WESTERN NEW YORK, INC.®

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TESTIMONY:

**THE CHIEF JUDGE'S 2016 HEARING
ON
CIVIL LEGAL SERVICES IN NEW YORK**

September 12, 2016

By: C. Kenneth Perri
Executive Director



I. Introduction:

On behalf of Legal Assistance of Western New York, Inc.[®] (hereinafter LawNY[®]), I thank you for conducting the hearing on civil legal services at the New York Court of Appeals on September 27, 2016. I thank you as well for the opportunity to share these very brief comments with regard to the manner in which LawNY[®] has been able to grow the services that we provide to low-income people in civil areas of the law concerning the essentials of life thanks to the funding which we receive through the Judiciary Civil Legal Services program.

I extend my thanks in particular to the Chief Judge of the State of New York, Honorable Janet DiFiore, as well as the other members of the hearing panel, Chief Administrative Judge Lawrence K. Marks, New York State Bar Association President Claire Gutekunst, Acting Presiding Justice Peter Tom and Presiding Justices Randall T. Eng, Karen K. Peters and Gerald J. Whalen. I also extend my thanks to Helaine M. Barnett, the chair of the Permanent Commission on Access to Justice, as well as the other distinguished members of the Permanent Commission.

II. LawNY[®]:

My name is C. Kenneth Perri and I am the executive director of LawNY[®]. LawNY[®] is a 501(c)(3) not-for-profit law firm whose mission is to provide access to the justice system to low-income New Yorkers and other vulnerable populations in our 14 county service area. I have been a civil legal services practitioner for 34 years.

LawNY[®] has seven staffed offices which provide services to low-income people in 14 counties in the Third and Fourth Departments. Our office in Bath serves the residents of Allegany and Steuben Counties. Our office in Elmira serves the residents of Chemung and Schuyler Counties. Our office in Geneva serves the residents of Livingston, Ontario, Seneca, Wayne and Yates Counties. Our office in Ithaca serves the residents of Tioga and Tompkins Counties. Our office in Jamestown serves the residents of Chautauqua County. Our office in Olean serves the residents of Cattaraugus County. Our office in Rochester serves the residents of Monroe County.

With the exception of the urban center in Rochester and the small cities of Canandaigua, Elmira, Geneva, Ithaca, Jamestown, Olean and Salamanca, the nearly 10,000 square mile, 14 county area served by LawNY[®] is primarily rural. In the counties in which we do not have staffed offices, we have sites where we can meet with and interview clients located in Belmont, Lyons, Montour Falls, Mt. Morris, Ovid, Owego and Penn Yan.

III. LawNY[®]'s Use of Oversight Board Judiciary Civil Legal Services Funds:

In the state fiscal year which ran from April 1, 2015 – March 31, 2016, LawNY[®] was able to provide comprehensive civil legal services to our low-income communities throughout our service area due to a significant increase in Judiciary Civil Legal Services funding.

During that time, LawNY[®] closed a total of 8,351 cases. The number of people who benefited from LawNY[®]'s services in these closed cases totaled 17,171.

Of the closed cases, 2,896 (32.6%) involved income maintenance issues such as temporary assistance to needy families, emergency assistance, supplemental nutrition assistance program benefits, SSI benefits, social security disability benefits, unemployment insurance benefits and veterans benefits.

An additional 2,055 cases (23.1%) involved housing issues, such as public housing evictions, private housing evictions, foreclosures and housing conditions.

An additional 1,381 cases (15.5%) involved family law matters, such as child support and securing orders of protection from domestic violence.

Other areas in which LawNY[®] provided services included: health law matters - 1,199 closed cases; consumer matters – 340 closed cases; employment matters – 273 closed cases; and school law matters – 57 closed cases.

IV. **Conclusion:**

In 2017, absent renewed funding from the Oversight Board for Judiciary Civil Legal Services, LawNY[®]'s ability to continue to try to address the unmet needs of the low-income families in our service area with civil legal problems affecting the essentials of life will be irrevocably destabilized.

I am grateful for the efforts of the Chief Judge and the Permanent Commission and extend my thanks on behalf of myself, the LawNY[®] board of directors and staff and, most importantly, the families that we are able to help as a result of this funding and the Permanent Commission's other initiatives.

I fervently urge that the Permanent Commission recommend that funding from New York State for the provision of civil legal services to low-income people be enhanced in the state fiscal year which begins on April 1, 2017 so that LawNY[®] and the entire community of civil legal services providers can continue to respond as effectively as possible to the ever growing need for our services. The continuing demand by our low-income neighbors for assistance from the legal services provider community in turn demands ongoing and stable funding for the providers from the State of New York.

LawNY[®] and the other civil legal services providers throughout New York State welcome the opportunity to work with the Chief Judge and with the Permanent Commission on Access to Justice to achieve this result.

Thank you for your time and your consideration.

Barry Seidel, Esq.
Barry Seidel & Associates

ACCESS TO JUSTICE: A PRIVATE PRACTITIONERS PERSPECTIVE

By: Barry Seidel, Esq.

I opened my own practice right out of law school in 1982, and am now in my 34th year of solo law practice. I practice regularly in Supreme, Civil and Surrogate's Court, mostly in Queens County.

The courtrooms and clerk's offices are inundated with pro-se litigants. I regularly see people in Surrogate's Court struggling to fill out and file the proper forms, with the Clerks (understaffed as they are) valiantly assisting them.

In Civil and Housing Court, pro-se litigants are the norm. These cases usually involve creditor claims and/or housing/rent issues. Routine stuff for the plaintiff's attorneys, who are generally handling a volume of cases. By contrast these cases are stressful and often bewildering to the pro-se parties.

In Supreme Court, most defendants in foreclosure cases are pro-se. They appear regularly in the Centralized Motion Part and on the foreclosure conference calendars.

I am aware of the phrase "access to justice" and the various entities with an interest in this topic, including:

- Law schools and academia.
- Local, State and national bar associations.
- State and local legislatures.
- Civil rights advocates.

Clearly, many people would be better served with representation by competent legal counsel. This commission, and the invitation to address an array of issues, recognizes this.

That being said, there is an untapped, neglected and ignored resource in the "access to justice" discussion. This resource is the availability of private attorneys to provide AFFORDABLE, quality legal services.

I ask the Committee to consider a statement that I hope is not too outrageous, which is:

A significant percentage of pro-se litigants COULD AFFORD TO PAY A COMPETENT LAWYER A REASONABLE FEE FOR CLEARLY DEFINED SERVICES

I wish to be very clear: I am NOT saying that people who cannot afford to pay should be unserved, or forced pay for services they cannot afford. This Committee is rightly addressing those situations.

What I AM saying is there is a disconnect between what people want and need, and what they perceive as being available to them. Recognizing this, and bridging this disconnect, ought to be a high priority.

Isn't it ironic that the "job market" for lawyers is poor, yet the demand for a wide range of legal services is sky high?

This is not lost on legal services "purveyors" like LegalZoom, who are inundating the airways and the internet with advertising. Their advertising specifically emphasizes "access to justice".

Last September I attended a conference where the keynote speaker was John Suh, the CEO of LegalZoom. He told the attorneys in attendance that LegalZoom was focusing its attention on the "access to justice" problem.

His analysis went as follows: For people in the top 1% of income, clients can and do get top quality legal help. Then there is the bottom 15% of income, which LegalZoom cannot service, which he stated could be served in other ways.

Then there is the other 84% of the population (16-99% of income), who he says don't have "access to justice" because small law firms and solos are not able to provide this in an affordable way.

Most of us are familiar with LegalZoom's legal forms. In addition to forms, LegalZoom supplements their forms by enabling customers to call a lawyer at LegalZoom for help with the forms.

At the next level, and what LegalZoom is rolling out now, is a widespread pre-paid legal plan. They intend to have the largest and most expansive pre-paid legal plan in the history of

civilization. I know this must be big because they advertise extensively on Shark Tank. Under these plans customers would be billed each month and then have the ability to obtain legal advice from attorneys who participate in the plan. This will be a great thing for attorneys, Suh claimed, because it will create 20-30,000 new legal jobs.

LegalZoom has "done studies" of attorneys and work quality, and efficiency. Suh summarized his findings this way...

Big law firms are pretty efficient, with their attorneys working at 75% efficiency. That is, they spend 75% of their working hours doing actual legal work for clients. Their quality is good and their use of technology is high.

The most efficient firms are those numbering between 10-20 lawyers ("boutique" firms), who spend 80% of their working hours doing actual legal work. Boutique firms are also more efficient because their lawyers tend to be "in their prime" (i.e. – no newbies and no dead wood older partners). These firms also tend to use the newest technologies most efficiently.

The least efficient lawyers are the solos and small firms. According to Suh, they/we work at a 40% efficiency. We spend only 40% of our time doing actual legal work for our clients. And, we often focus on several areas of law and are not high level on any particular one. And, we are behind on technology.

LegalZoom's plan is to use boutique law firms for their pre-paid legal plans. The 20-30,000 new legal jobs are going there. They expect to pay the boutique firms well, in the realm of pre-paid legal, and for the firms to accept way less than their usual hourly in exchange for the volume and prompt payment from LegalZoom. Will that work? Time will tell.

John Suh made it clear that this pre-paid legal opportunity, and the legal work and income related to it, will NOT be made available to solos and small firms. He said solos could not stand up to LegalZoom's vetting and review processes.

He said it. I was there. There was a gasp in the room....though maybe it was just me.

At first I couldn't put my finger on what was so upsetting about this. But then it struck me...

HE IS RIGHT!!! But also very wrong.

He is right that...solos are not as efficient in our work because we spend time on marketing, and billing, and collections, and evaluating new matters, and personnel issues, and all the other things that comprise being in practice.

He is right that...we sometimes venture out of our best practice areas.

He is right that...we are not all/always on the cutting edge of technology.

He is right that...it would be difficult to guarantee all-day availability for calls from pre-paid legal clients at a reduced hourly rate.

But he is **WRONG** (and disingenuous) when he talks about an access to justice problem for "middle class people".

He is **WRONG** to throw a blanket over the 16-99% income levels, as if people across the entire income spectrum have the same legal needs and issues about access to legal services.

He is **WRONG** if he thinks good clients want to commoditize legal service and get it through a monthly plan where they call an attorney on the plan. Clients don't want (or deserve) that...they want their own lawyer, who they can talk to about the specific matter, but who also know them well enough to offer contextual advice for **THEM**.

I don't know if he thinks small firms and solos are destined to remain inefficient and unable to be accessed by the many clients who are not currently connecting with the best private attorneys for them. But if he thinks this, he is **WRONG**.

This is **NOT** an "access to justice problem". It is a disconnect between the clients actual needs (quality, affordable legal services) and small-firm lawyers ability to provide this **AND** make their services known to the potential clients.

WE (solos and small firm lawyers) should be serving this market **WAY** better. We are uniquely qualified to do this **IF/WHEN** we up our game. Our fees should be commensurate with real value, which clients can see and understand (and appreciate). Clients want, and deserve, personalized legal services.

I don't think most clients have problems that can be resolved with some "access to justice" in the form of a consultation with a lawyer on a pre-paid legal plan.

I don't think clients want their lawyer through a pre-paid legal plan. But they do want their lawyer to be competent, and responsive, and transparent, and to charge fairly.

Can we solo and small firm lawyers honestly say we are doing this? If we are not, we better improve. We then have bigger challenges:

1. Making sure our best potential clients know what we offer and how they can work with us.
2. Overcoming systemic obstacles to our making these connections.

For the many situations where the disconnect between pro-se persons and affordable representation is real, this disconnect ought to be addressed by this Commission and the various participating entities. A realistic way to do this is encouragement, support, and implementation of “unbundled legal services” also known as “limited scope representation”

Limited scope representation may not be THE next big thing in law practice, but it is certainly A next big thing. It's an opportunity waiting to be seized by current and future attorneys, IF we are astute enough to make it happen, and IF it is properly supported by the Courts. It's a trend across the Country, and it has been studied, though apparently not embraced, here in New York. (see “Testimony of NYC Bar President Debra Raskin dated 9/29/15

<http://www.nycbar.org/media-listing/media/detail/city-bar-president-testifies-at-chief-judges-hearing-on-civil-legal-services-1>) Its implementation has been limited to some free “attorney for the day” programs and clinics, some government sponsored programs, and encouragement of more pro-bono by attorneys.

Attorneys in private practice have not been encouraged to pursue or explore limited scope representation, and in fact there is systemic discouragement for attorneys who might offer such representation. If an attorney tries to clearly define the scope of his services with the client, and then file a limited notice of appearance, would the Judges and Clerks permit this? Probably not. More importantly, most attorneys perceive that if they tried to do this, it would not be permitted.

In limited scope representation, the attorney and client clearly define the services to be provided and the fee for such services. It could be assisting with the preparation of documents, making an appearance for a conference or trial, or other services which the lawyer and client could agree upon. Defining and pricing specific services is something that practitioners should do anyway. In complex matters it is not feasible because there are so many potential scenarios. However,

most cases in Civil or Housing Court, or portions of a foreclosure defense case in Supreme, or document prep for Surrogate's Court, are most appropriate for such definition and pricing.

I note that when the "Attorney for the Day" program in Civil Queens (managed by a law professor and staffed by law students) appears at a conference, they file a "Limited Notice of Appearance", which has been sanctioned by the Court.

Private attorneys ought to be able to do this too, subject to appropriate regulation and monitoring. I have asked various Judges, court attorneys and Clerks about this, and the consensus is that this is not permitted because it "could cause a lot of problems". The most frequent objection refers to "the misunderstandings that might occur and the problems this would create for the Courts".

If this is the main obstacle, then looking at how to overcome these obstacles would greatly benefit the public. If people who need legal services, and can afford to pay a reasonable fee, were better able to get THAT, the entire system would be elevated and justice would be served.

I will go one step further. Overcoming these obstacles will also help solo and small firm lawyers, and the profession as a whole. Helping this group of attorneys OUGHT TO BE IMPORTANT to those in a position to help with this, including:

- The Judiciary
- The organized bar
- Lawyers at big firms

My perspective after 34 years in practice is that most of these entities don't actually help lawyers in practice, including the legions of unemployed and under-employed new attorneys. Lawyers in their own practices hear these entities pay lip service to helping "the profession" and "the public", but rarely addressing the actual issues faced by solos and small firm attorneys.

The gap between legal needs and the perceived availability of legal services is being addressed by the likes of LegalZoom and Avvo. They are commoditizing various services, making them appear "affordable", and therefor appealing.

What they are actually doing is "unbundling" various legal services and offering "limited scope representation". They are stepping in and filling the gap between what is needed and what is perceived to be available.

Can private lawyers offer AFFORDABLE legal services?

YES, but only IF they define what the different services are, make clear what they are going to do, and make the pricing for the various services CLEAR.

Doing or not doing this is a choice. Lawyers have traditionally and collectively not done this effectively. And so, we have this paradox: While the law schools and bar associations scratch their heads in wonder over the declining "job market", there is a HUGE demand for legal services of all kinds.

Law practice presents great opportunities for the entrepreneurially minded. The ability to offer limited scope representation ought to be available to practicing attorneys.

In many parts of the country, local bar associations are recognizing the benefits to the public in unbundled legal services. New York is woefully behind in this.

I don't think it can be argued that clients do better when they are represented as opposed to pro-se. There is value in what lawyers can do in a court setting, both substantively and in the harder to quantify aspect of the client's understanding the process and having peace of mind as the case is addressed.

Would clients pay a fair price for such value? I'd say yes, many would, IF they were aware of the option to do this. Even if we don't know this for certain, the upside makes it worth the effort to find out.

Can there be value to clients and lawyers in limited scope representation? YES, but only IF we lawyers....

- Clearly and logically price our services.
- Work efficiently.
- Offer true value, presented with clarity and transparency.
- Make our services known to the potential clients.

In States where unbundled legal services have been encouraged, an interesting thing has happened....MANY times when a limited scope appearance didn't finish a matter, the client hired the attorney to complete the case.

It's pretty clear why that happens: Clients get to see the actual value an attorney provides.

That is a win-win, for the clients and the practicing attorneys.

I am aware, of course, that the expansion of limited scope representation is not specifically on the Commission's agenda for these hearings. I suggest that this topic be on future agendas, as it can have a direct positive impact on enhancing the fair and efficient administration of justice in the Courts.

I wish to make suggestions for several specific items, which will warrant further study, or attention, or input:

1. What criteria are currently used to determine financial eligibility for free legal services?
2. What percentage of pro-se litigants could actually afford (however that may be defined) to pay reasonable fees for clearly defined services?
3. How would private attorneys propose to price various services, and would most potential clients consider this a fair value?
4. How could publicly supported agencies and/or bar associations work together with private attorneys to encourage limited scope representation?
5. Would it be feasible to develop a uniform set of forms and standards of practice for limited scope representation?
6. Would it be feasible to develop and promote public service announcements regarding such services?

Thank you for your consideration.

Respectfully submitted,

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PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK

APPENDIX 10:

**Report of the Permanent Commission's Working Group on
Law School Involvement**

NOVEMBER 2016

NEW YORK STATE PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT OF THE LAW SCHOOL INVOLVEMENT WORKING GROUP



FIFTH ANNUAL
**LAW SCHOOL
CONFERENCE**

**ACCESS TO JUSTICE: THE ROLE OF
NEW YORK'S LAW SCHOOLS IN
HELPING MEET THE ESSENTIAL
CIVIL LEGAL NEEDS OF LOW-
INCOME NEW YORKERS**

Based on the Conference Convened by the New York State
Permanent Commission on Access to Justice at
New York University School of Law, May 17, 2016

HELAINÉ M. BARNETT

Chair, New York State Permanent Commission on Access to Justice

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2016 KEY RECOMMENDATIONS TO THE PERMANENT COMMISSION ON ACCESS TO JUSTICE

- 1. Law schools should take a three-pronged approach to broadening access to a legal education:**
 - A.** Law schools should have more flexible admissions processes that consider and weigh a broader range of qualifying criteria beyond grade point averages and standardized admission test scores.
 - B.** Law schools should build relationships with their communities to foster pipelines to the legal profession for students who might not otherwise consider law school.
 - C.** Law Schools should take greater steps to foster success of a diverse law student body.

- 2. Law schools should develop at least one institutional learning outcome for students related to access to justice in furtherance of ABA Standard 302¹ and Court of Appeals Rule 520.18:²**
 - A.** To ensure students have the opportunity to meet that learning outcome, law schools should identify courses in the required curriculum where this learning outcome is or should be addressed.
 - B.** Once the courses have been identified, course-level learning outcomes related to access to justice should be specifically set out in the faculty member's syllabus.
 - C.** Assessment tools should be developed and implemented that will evaluate whether students have achieved the outcome.

- 3. Law Schools should recognize the value of non-lawyer assistance in the legal services delivery system given the salutary impact non-lawyers can have in enabling access to justice:**
 - A.** Encourage law schools to identify ways for law students to partner with non-attorneys, e.g. social workers, financial counselors, housing advocates, and to foster partnerships between student-run projects and non-lawyer programs.
 - B.** Encourage law schools to recruit students who demonstrate an interest in law, for example, by working with community programs like Legal Hand.
 - C.** Encourage law schools to consider creating training programs for non-lawyers; e.g., language access project like Project Totem at Albany.

1 ABA Standard 302 provides, in relevant part, that "A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

- (a) Knowledge and understanding of the substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession."

2 NY Court of Appeals Rule 520.18, Skills Competency Requirement for Admission, states that "Every applicant for admission to practice...shall demonstrate that the applicant possesses the skills and values necessary to provide effective, ethical and responsible legal services in this State. An applicant may satisfy this requirement by submitting proof of compliance with one of [five pathways]." available at <http://www.nycourts.gov/ctapps/520rules10.htm#B18>

4. The Law School Conference Should Continue to be Convened Annually and be Supported by the Statewide Law School Access to Justice Council.

The annual conference provides a unique opportunity for New York’s law schools and the legal profession to explore collaborative efforts to expand access to justice. A survey conducted subsequent to this year’s conference indicated strong support for continuing the annual conference and its collegial work group format. The Statewide Law School Access to Justice Council serves as an incubator for developing conference themes and identifying speakers, and supports ongoing projects generated from the conference work groups.

OVERVIEW OF THE FIFTH ANNUAL LAW SCHOOL CONFERENCE

The Fifth Annual Law School Conference was convened by the New York State Permanent Commission on Access to Justice (Permanent Commission) on May 17, 2016 at New York University School of Law. Each year, the conference draws deans, administrators, professors, law students, including Pro Bono Scholars, legal services providers and members of the bench and bar, together to discuss access-to-justice issues.³ This year’s 170 attendees heard opening remarks from the Chair of the Permanent Commission, Helaine M. Barnett, the Dean of New York University School of Law, Trevor W. Morrison, and the Chief Judge of New York State, Hon. Janet DiFiore, each underscoring the significant role and contribution New York’s 15 law schools and law students contribute to narrowing the justice gap.⁴

Since the first Law School Access-to-Justice Conference in 2012, initiatives to increase the involvement of New York’s law schools and law students in efforts to expand access to justice have had a profound impact. Progress has been made to integrate access to justice issues and cultural competency principles into curricular and clinical offerings in our law schools to ensure law students will be equipped to sensitively and effectively counsel clients from diverse communities. The pro bono requirement that all candidates for bar admission in New York perform 50 hours of pro bono legal work offers every student an experiential skills and professional values learning opportunity,⁵ inspiring some students to become Pro Bono Scholars and dedicate their final law school semester to public service legal work. Over the years, ideas generated from the opening plenary panels and work group sessions have produced recommendations adopted by the Commission, in addition to sparking pro bono projects and collaborations with legal and non-legal community partners, with the net result of improving access

3 Reports from the Annual Law School Conferences are contained in Appendix 15 to the respective Annual Report to the Chief Judge from 2012-2015, available at <http://www.nycourts.gov/accesstojusticecommission/index.shtml>. The history of the Law School Conference is recounted in Appendix 15 to the 2013 Annual Report to the Chief Judge, <http://www.nycourts.gov/accesstojusticecommission/PDF/2013CLS-Appendices.pdf>. As noted there, the predecessor to the Permanent Commission on Access to Justice, the Task Force to Expand Access to Civil Legal Services in New York, was appointed by former Chief Judge Jonathan Lippman in 2010 to develop a comprehensive approach to the provision of civil legal services to low income New Yorkers. (By order of the Chief Judge in 2015, the Task Force was institutionalized to continue its work to narrow New York’s justice gap.) Beginning in 2010, the Chief Judge, assisted by the Commission, held four annual statewide hearings to assess the level of unmet need for civil legal services in New York. Subsequent to the annual hearings, the Commission prepares a Report to the Chief Judge, as requested by the 2010 joint legislative resolution, with recommendations to address the documented unmet need for civil legal services in New York. Over the past six years, the Annual Reports have detailed the crisis in our legal system resulting from the lack of access to civil legal services for millions of low-income New Yorkers. Due to the contraction of resources in both the public and private sectors, the Commission encourages all the constituent organizations in New York’s legal system to work collaboratively to find solutions to this crisis

4 The 2016 Law School Conference Program is reproduced in Exhibit 1.

5 In 2015, 8868 individuals were admitted to the New York bar and either completed 50 hours or more of qualifying pro bono legal assistance or a semester of field work, in the case of the 107 pro bono scholars. (See <http://www.nycourts.gov/ctapps/news/annrpt/AnnRpt2015.pdf>).

to justice for our most vulnerable citizens.⁶ Each year, the Law School Conference Planning Committee identifies topical access-to-justice issues for the opening plenary session that are expected to inspire further discussion in the work groups. The high cost of a legal education, declining enrollments and a contracting market for legal jobs have generated urgency about what more New York's law schools can do to improve access to equal justice for New Yorkers who face barriers due to race, poverty, gender identity, lack of diversity and their myriad intersections.

Fordham Law School Dean Matthew Diller, Chair of the Commission's Law School Involvement Working Group, which coordinates the annual conference and organizes its planning committee, introduced this year's morning plenary session, "Race, Poverty, Identity: Diversity Issues and Access to Civil Justice," and the keynote speaker Harvard Law School Professor, Charles J. Ogletree, Jr. Dean Diller referenced the impact of Professor Ogletree's legal work and scholarship on civil rights and his influence on scores of young lawyers to give voice, with respect and integrity, to unpopular positions and causes. Professor Ogletree noted that large percentages of Americans, regardless of race, were not confident that judges are free from bias, and that discrimination is a real obstacle to access to justice. It is important, Professor Ogletree remarked, to create enduring models of legal service to reach all sectors of our diverse population with dignity.

The panel discussion following Professor Ogletree's address focused on the role legal professionals can serve to improve access to justice for individuals and communities confronting race, poverty and identity barriers. Through personal experiences and robust dialogue, the panelists parsed ideas and offered tools for attendees to help promote equal access to civil justice.

Maya Wiley, then Counsel to NYC Mayor Bill de Blasio, emphasized the foundational need to create a culture of respect, where tolerance and understanding govern. Reflecting back on her efforts, while a law student, to engage fellow students, faculty, and, importantly, the administration, to assist in overcoming discrimination against and securing assistance for people infected with HIV-AIDS, Ms. Wiley described law schools as incubators of solutions to social challenges. It is critical that institutions, both public and private, embrace social problems and issues that motivate student protests and student activism to find solutions and develop appropriate protocols that are responsive to student concerns. Ms. Wiley commented on the immense value of clinical experience for law students to ensure they can serve clients whose experiences are unlike their own. Concurrently, law schools should incorporate social science learning to develop social consciousness in students. This, Ms. Wiley indicated is key to training students to be culturally competent lawyers. She also noted that creating a stronger pro bono structure within city government, which the current administration is building, will encourage investment of governmental capital in efforts to further access to justice.

6 Recommendations initially made by stakeholders at prior Annual Law School Conferences that have since been successfully implemented, include, for example (a) development of a Handbook of Best Practices for Supervising Law Student Pro Bono Work; (b) adoption of New York Court of Appeals Rule 520.16 in 2013 mandating 50 hours of pro bono service before seeking admission to the New York bar; (c) formation of the Statewide Law School Access to Justice Council to create a forum for stakeholders to discuss and address access to justice activities; (d) pilot of a Statewide Consortium Website for Student Pro Bono Opportunities; (e) support for the Pro Bono Scholars Program allowing law students to sit for the bar exam early and spend the last semester of law school in a supervised, full-time pro bono placement; (f) modification of law school curricula to increase awareness of access to justice issues and to better prepare law students for public service; and (g) support for the Committee on Non-Lawyers and the Justice Gap to find opportunities for non-lawyers to expand access to justice in specific areas. (See PERMANENT COMMISSION ON ACCESS TO JUSTICE, Report to the Chief Judge of the State of New York, Appendix 15: Report of the Permanent Commission's Working Group on Law School Involvement (Nov. 2015), available at https://www.nycourts.gov/accesstojusticecommission/PDF/2015_Access_to_Justice-Appendices.pdf; TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, Report to the Chief Judge of the State of New York, Appendix 15: Report of the Task Force's Working Group on Law School Involvement (Nov. 2014), available at https://www.nycourts.gov/accesstojusticecommission/PDF/2014%20CLS%20Report_Appendices_Vol%202.pdf; TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, Report to the Chief Judge of the State of New York, Appendix 15: Report of the Task Force's Working Group on Law School Involvement (Nov. 2013), available at <https://www.nycourts.gov/accesstojusticecommission/PDF/2013CLS-Appendices.pdf>; TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, Report to the Chief Judge of the State of New York, Appendix 15: Report of the Task Force's Working Group on Law School Involvement (Nov. 2012), available at <https://www.nycourts.gov/accesstojusticecommission/PDF/CLS2012-APPENDICES.pdf>).

Judge Fern Fisher, Director of the New York State Courts Access to Justice Program, stressed the need for law schools to educate students about the impact of poverty, and develop a student body that is culturally competent and responsive to current social issues. Judges must be sensitive and made aware of the pervasive reach of poverty – how it not only affects a client’s legal posture in court but dictates an individual’s interaction with the court, e.g. a person with limited literacy may need an order orally recited not just be provided with a written document. The toll of poverty is palpable as evidenced by strained civil dockets in New York’s housing, family and trial courts, where inordinate numbers of unrepresented low-income New Yorkers appear, confronted by challenges to their essentials of life. Judge Fisher emphasized that it is critical for judges and lawyers to have a real appreciation of how poverty affects justice, individually and institutionally. Likewise, this appreciation must be imparted to law students across the curriculum-- in classroom instruction, texts, clinical and externship offerings, as well as poverty simulations. Education and understanding, Judge Fisher posited, can ensure both access to justice and the fair administration of justice for all people.

Jennifer Ching, Project Director at Queens Legal Services/Legal Services NYC, observed that it is a core value of the legal profession to ensure justice is accessible, with effective communication being a key component. Indeed, this message is essential all along the pipeline, particularly for students who will consider applying to law school. Ms. Ching spoke for all the panelists stating that law schools should teach law in an accessible manner, that connections between practical/experiential learning and theoretical teaching should be meaningfully demonstrated, and that the language used both to teach law and counsel clients must be more responsive to the diverse populations living in poverty. Ms. Ching remarked that segregation is exacerbated by entrenched legal culture and that we, as leaders of the legal profession, are responsible for changing attitudes and addressing structural racism front and center.

To this end, New York Law School Professor Deborah Archer indicated that it is incumbent upon law professors and faculty to raise diversity issues in every law school subject and create space for this conversation in every class. Professor Archer noted that faculty should be willing to share their experiences and facilitate difficult conversations, to create an environment of tolerance and deference where students will feel comfortable. Using social media, television episodes and assigned readings are useful tools to encourage trenchant dialogue.⁷ Professor Archer noted that it is the responsibility of the professors to help students translate activism into practical steps to help effectuate change. It is critical that the tenets of civil rights lawyering be imparted, particularly in times of protest, tension and community uproar, to ensure gains endure.

Columbia’s Executive Vice President for University Life and Clinical Law Professor Suzanne Goldberg, framed one essential inquiry for schools and faculty: “What does it take for a student to thrive?” Our social environment is ever-changing and we must inspire students from all backgrounds to promote change. Personal stories are at once powerful and empowering. Multidimensional approaches, using principles from political science, cognitive psychology or marketing, can reach and empower a broad population of students to engage in efforts of social change. For example, Professor Goldberg encouraged individuals to consider how a public health campaign targets different factions in the community distinct from messages directed at individuals. Next, consider the professionalism of a lawyer: to be a good lawyer and an effective advocate, the lawyer must understand all of the arguments and strategically select the one that will best serve the client. On some level, this is a marketing tool and can be employed to reach students. At the outset, issues of access to civil justice must be infused into law school. Students must be educated about what the justice gap is and taught how to expand access to justice. Further, providing students the opportunity to represent clients makes a lasting impression and serves as a way to influence behavior and attitudes.

⁷ For example, Ta-Nehishi Coates, “The Case for Reparations” (The Atlantic, June 2014); The Wire (HBO.com); Dave Chappelle on racial draft (<https://www.youtube.com/watch?v=dNkmIWFoDtk>).

In concluding the plenary discussion, the panelists universally agreed that students should be more fully educated about the civil justice gap and how racism, poverty and identity prevents people from thriving and receiving civil justice. The legal profession should consider how to better serve marginalized communities: how can lawyering more effectively serve diverse individuals? Social change comes incrementally; providing law students with opportunities for practical experiences, including clinical and other experiential learning, like poverty simulations, can influence behavior and communication skills, ultimately producing social change. Law students who are trained to be culturally competent and sensitive, are educated about poverty and the history of civil rights laws, and have been exposed to diversity issues across the law school curriculum, will be the new agents of social change who help close the justice gap in New York.

Dean Diller adjourned the morning plenary and directed participants to join their assigned work groups where discussions on targeted themes could serve to integrate the issues raised by the plenary panel. For this year's conference, the four work group sessions opened with introductory panels and, in some instances, short break-out sessions to establish action items. Following a lunch break, the work group sessions resumed for further panel presentations and small group discussions to develop recommendations to present at the afternoon plenary session. These recommendations inform the Commission in developing proposed recommendations to include in its Annual Report to the Chief Judge on the work underway to bridge the justice gap, as requested in the 2010 Joint Legislative Resolution⁸ and in furtherance of the 2015 Joint Legislative Resolution, which adopted a State policy that all New Yorkers are entitled to effective civil legal assistance when confronting matters involving the essentials of life (housing, family matters, access to health care and education benefits, and subsistence income).⁹

8 The Resolution is reproduced in Appendix 3 of the 2010 Annual Report to the Chief Judge available at <http://www.nycourts.gov/accesstojusticecommission/PDF/CLS-Appendices.pdf>.

9 The Resolution is reproduced in footnote 17 of the 2015 Annual Report to the Chief Judge available at http://www.nycourts.gov/accesstojusticecommission/PDF/2015_Access_to_Justice-Report-V5.pdf (<https://www.nysenate.gov/legislation/resolutions/2015/c776>).

REPORTS FROM CONFERENCE WORK GROUP SESSIONS

1. OPENING THE DOORS: ACCESS TO LAW SCHOOL AS AN ACCESS-TO-JUSTICE ISSUE

Facilitator: **Lillian M. Moy**

Executive Director, Legal Aid Society of Northeastern New York

Panelists:

Charles I. Auffant

Clinical Professor of Law

S.I. Newhouse Center for Law & Justice, Rutgers School of Law

Elaine M. Chiu

Professor of Law

Director, Ronald H. Brown Center for Equal Rights and Economic Development

St. John's University School of Law

Robin A. Lenhardt

Professor of Law

Director, Center on Race, Law and Justice

Fordham University School of Law

Anne Williams-Isom

Chief Executive Officer

Harlem Children's Zone

OVERVIEW

The Work Group session addressed how access to law school affects access to civil justice; does who becomes a lawyer affect who receives legal services? Law schools have a variety of approaches to addressing issues of race, identity and diversity that can limit access to a legal education and the legal profession. The Work Group explored law school efforts to nurture pipeline opportunities to legal education and the effect of economic considerations, such as law school tuition, financial aid, student debt and loan forgiveness, on the composition of the law school class.

RECOMMENDATION

Law schools should take a three-pronged approach to broadening access to a legal education:

- 1. Law schools should have more flexible admissions processes that consider and weigh a broader range of qualifying criteria beyond grade point averages and standardized admission test scores.**
- 2. Law schools should build relationships with their communities to foster pipelines to the legal profession for students who might not otherwise consider law school.**
- 3. Law Schools should take greater steps to foster success of a diverse law student body.**

SYNOPSIS OF DISCUSSION: DETAILING THE RECOMMENDATION

Initially, the Work Group panelists and participants agreed that, for purposes of this discussion, “diversity” is intended to be construed broadly to include race, gender, age, class, gender identity, sexual orientation, disability and other differences that affect the interactions with legal profession and law school community. The panelists shared their personal stories to illustrate how gaining access to a legal education can shape a successful career in law and cultivate leaders for non-profit organizations.

- 1. Law schools should actively engage in their community for the purpose of building pipelines to the legal profession as soon as possible for those who might not otherwise have the opportunity to pursue, or even the option of considering, a legal education.**

Law schools should deeply engage with their community. From the outset, law schools can expand their mission statements to include a commitment to the communities where they are located. The Work Group agreed that expanding the law school mission to include cultivation of relationships with local communities provides pedagogical benefits in addition to enhancing access. These relationships will create opportunities for students to practice lawyering skills through, for example, public speaking or thinking strategically for a client. The local community provides many interdisciplinary internship opportunities for law students. Engagement with the community will also provide law school faculty with options for research on community issues. The law school’s local community provides a field for research and targeted action toward narrowing the justice gap.

Law schools should know their community partners well. Law schools should be guided on how to pick a community-based organization with which to work. The community-based organization (CBO) should be a significant shareholder in the community and the relationship should be mutually beneficial. For example, supervision opportunities for staff can be provided for the oversight of law student work. In addition, the CBO’s mission should be somewhat aligned with the law school mission.

Law schools should work with local community-based organizations to share what “law” means to the community, including its children, parents and local organizations. This relationship could address both civil and criminal issues. This type of working relationship will inevitably lead to more clinical opportunities in the community and educational paths for local middle school, high school and undergraduate students to proceed directly to law school. Here are some specific suggestions about where to start:

- Plan a law day program;
- Adopt a school;
- Create a mentoring opportunities; or
- Develop a local pipeline.

Formal successful pipeline programs, such as Legal Outreach, NYSBA’s Youth Outreach programs, and the Ronald H. Brown Center for Equal Rights and Economic Development, furnish good models for involving community, law school and the legal profession. Funding, of course, will make a difference but funding is not expected solely from the law school. The legal community holds opportunities for funding these types of partnerships, including law firms, local, state and federal government and private foundations. These partnerships could provide interdisciplinary opportunities which such individuals and organizations may want to fund. The law school and the local community could potentially benefit from funding obtained for stipends for summer law students.

2. The admissions process should be more holistic, and create options to gain access to a legal education beyond the Grade Point Average (GPA) and LSAT scores.

There was strong sentiment to encourage law schools to continue to look beyond the GPA and LSAT, especially to reconsider numeric cut-offs. All schools might want to consider offering applicants the option of proceeding without consideration of their scores. Law schools might also add questions that relate to access to a legal education. For example, is the applicant a first generation college student? Did the student face great adversity growing up? What is the educational background of other members of the prospective student's family?

It was suggested that law schools offer the option of providing diversity statements as part of their admissions process. Some schools already ask specifically about the items suggested above. Law schools should also assure that their admissions committee is itself diverse.

Law schools should provide interview opportunities and assure that such opportunities are broadly available, even to those who cannot travel to the location of the law school. It was suggested that utilizing Skype or other methods of providing videoconference interviews be available for all students.

Colleges and law schools should partner with one another to direct entry from particular colleges into a local law school. Developing relationships with appropriate feeder schools, such as HBCUs¹⁰, public colleges and universities, where more diverse applicants attend college, will broaden access to a legal education. Utilizing alumni and other resources to create diversity scholarships to law schools will also assist in overcoming some of the economic burdens. Efforts to ensure that pipeline programs have adequate information to prepare participants for the economic realities of attending law school should be undertaken.

Other suggestions to ensure admissions processes reach a diverse range of potential students include having law schools assist in increasing access to paid bar preparation courses via scholarships or other economic supports to diverse law students, targeting older students, and preserving evening programs. Recruiting from paralegals and non-lawyers involved in the delivery of justice could ensure bringing in applicants who will increase access to justice.

3. Law schools can support diversity once students are enrolled.

Once admitted, law schools should work to support diverse students. Law schools should prioritize resources for the study of race equity issues in society, in law school and in the legal profession. In this way, law schools can support and train students to become future agents of social change. Academic options, such as learning labs devoted to access-to-justice issues provide law students with opportunities to support their passion for justice and have the dual benefit of creating change agents. To this end, the Work Group recognized that the Pro Bono Scholars Program serves as an invaluable tool for developing access-to-justice leaders and encourages law schools to continue to support the Program.

Here are some examples of how law schools can support a diverse student body:

- Law schools should provide earlier opportunities for clinical and access-to-justice experiences.
- The core curriculum should include a mandatory access-to-justice seminar in the first year.
- Law schools should consider adopting a mandatory pro bono requirement, signaling the importance of pro bono even beyond the 50-hour bar admission rule.
- The career development offices of law schools should improve career placement for public interest jobs, including paid internships and attorney positions.

¹⁰ Historically Black Colleges and Universities (HBCU) are defined as institutions established prior to 1964.

- Law schools should provide support for diverse student groups, such as affinity groups.
- Alumni and law school resources should be further utilized for the creation of scholarships and placement of diverse students into paid internships.

CONCLUSION

The Work Group generated a list of options that law schools have for promoting increased access to justice.¹¹ The session made it clear that law schools have a wealth of options to support diverse law students in gaining access to a legal education and the profession.

2. INFUSING DIVERSITY ISSUES AND ACCESS TO JUSTICE INTO THE LAW SCHOOL CURRICULUM: UNDERSTANDING THE SKILLS, PROFESSIONAL VALUES AND CULTURAL COMPETENCIES

Facilitator: **Connie Mayer**

Associate Dean for Academic Affairs

Raymond and Ella Smith Distinguished Professor of Law, Albany Law School

Panelists:

Kim Diana Connolly

Professor of Law

Vice Dean for Legal Skills, Director, Clinical Legal Education

SUNY Buffalo Law School

Alexander D. Forger

President, Legal Services Corporation (1994-1997)

Jennifer A. Gundlach

Senior Associate Dean for Experiential Education, Clinical Professor of Law

Maurice A. Deane School of Law, Hofstra University

Sarah Rogerson

Associate Professor of Law

Director, Law Clinic & Justice Center

Director, Immigration Law Clinic

Albany Law School

OVERVIEW

The purpose of this Work Group was to explore how to draft and assess learning outcomes related to access-to-justice issues. This topic has recently become very important as law schools work to comply with two new rules: (1) American Bar Association (ABA) Standard 302¹² and (2) Section 520.18 of the Rules of

¹¹ See Exhibit 2 annexed to this Report.

¹² ABA Standard 302 provides, in relevant part, that "A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

- (e) Knowledge and understanding of the substantive and procedural law;
- (f) Legal analysis and reasoning, legal research, problem solving, and written and oral communication in the legal context;
- (g) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- (h) Other professional skills needed for competent and ethical participation as a member of the legal profession."

the Court of Appeals for the Admission of Attorneys.¹³ These two rules place responsibility on law schools to ensure that law students have basic competency in the skills and values needed to practice law upon graduation.

ABA Standard 302 requires law schools to establish learning outcomes that, at a minimum, include competency in the knowledge and understanding of the law, as well as proper professional and ethical responsibilities needed for competent law practice. Section 520.18 of the Rules of the Court of Appeals for the Admission of Attorneys builds on this new ABA requirement. Applicants to the New York bar will now have to demonstrate that they possess the skills and values necessary to provide effective and ethical representation. One of the ways that applicants can demonstrate competence is through Pathway No. 1, law school certification. Pathway No. 1 allows an applicant for admission to the New York bar to submit a certification from their law school confirming that the law school has developed a plan identifying learning outcomes pursuant to American Bar Association Standard 302 and that the applicant has acquired sufficient competency in those skills and values set out in the learning outcomes.

These new rules offer an opportunity for law schools to make a commitment to teaching about access to justice. While discussions have been ongoing for years about how to teach access to justice in the law school curriculum,¹⁴ these rules provide a concrete way to establish a learning outcome, ensure that it is taught in the required curriculum, and assess students' competency with respect to such outcomes.

Towards this goal, this Work Group explored how to draft and assess learning outcomes related to ensuring that students acquire an understanding of the gap in our justice system and recognize the responsibility of lawyers to ensure all individuals have equal access to the privileges of our justice system. The group discussed concrete examples of learning outcomes related to access to justice, how these values can be taught through the required curriculum, and how the sufficiency of competency may be assessed in order to meet the requirements of the new ABA Standards and Court of Appeals rules.

RECOMMENDATION

All law schools should develop at least one institutional learning outcome for students related to access to justice in furtherance of ABA Standards and Court of Appeals rules.

1. To ensure students have the opportunity to meet that learning outcome, law schools should identify courses in the required curriculum where this learning outcome is or should be addressed.
2. Once the courses have been identified, course-level learning outcomes related to access to justice should be specifically set out in the faculty member's syllabus.
3. Develop and implement assessment tools that will evaluate whether students have achieved the outcome.

13 NY Court of Appeals Rule 520.18, Skills Competency Requirement for Admission, states that "Every applicant for admission to practice...shall demonstrate that the applicant possesses the skills and values necessary to provide effective, ethical and responsible legal services in this State. An applicant may satisfy this requirement by submitting proof of compliance with one of [five pathways]" available at <http://www.nycourts.gov/ctapps/520rules10.htm#B18>

14 See 2013 Report from the Law School Conference, Appendix 15 to the 2013 Annual Report to the Chief Judge accessible at <http://www.nycourts.gov/accesstojusticecommission/PDF/2013CLS-Appendices.pdf> and the 2014 Report from the Law School Conference at http://www.nycourts.gov/accesstojusticecommission/PDF/2014%20CLS%20Report_Appendices_Vol%202.pdf

SYNOPSIS OF DISCUSSION

Alexander Forger introduced the topic through a discussion of the history of civil legal services and the unmet need that still exists in New York. Professor Jennifer Gundlach then discussed how to design learning outcomes and gave some concrete examples of learning outcomes related to access to justice. The Work Group participants divided into small groups to draft examples of learning outcomes. In the afternoon session, Hon. Jenny Rivera discussed the new Court of Appeals rules related to learning outcomes and responded to questions. Professors Kim Connolly and Sarah Rogerson discussed assessment of learning outcomes. The Work Group brainstormed ways to assess whether students have gained knowledge and understanding of access-to-justice issues that would meet the goals set out in the learning outcome.

Mr. Forger's overview of the history and development of civil legal services underscored the need for law students to understand their obligation to work toward access to justice for all in order to narrow the justice gap. Studies dating back decades and continuing through the present show that there is an immense unmet need for civil legal services for low-income individuals and families.¹⁵

Professor Connie Mayer, the session moderator, next described the new ABA and Court of Appeals rules requiring law schools to establish learning outcomes and ensure that law students meet the basic competencies set out in those outcomes. To ensure that law students acquire an understanding of the gap in our justice system and recognize the responsibility of lawyers to ensure all individuals have equal access to the privileges of our justice system, law schools should seize the opportunity provided by the new rules to establish learning outcomes directly related to access to justice. Schools should also develop assessment methods that will ensure that students achieve the learning outcome articulated by the school. If a law school establishes a learning outcome, the skills and values targeted by that outcome must be intentionally taught and assessed by the law school. The focus of the balance of the session was to brainstorm how to draft a learning outcome related to access to justice that can be taught, and how to assess competency of that desired outcome.

Professor Gundlach began our discussion of learning outcomes by providing examples of learning outcomes adopted by other law schools.¹⁶ Learning outcomes allow a school to articulate the learning goals each school would like students to achieve. The first key issue is to identify what outcome or goal is desired. Access to justice is very broad and can encompass outcomes related to gaining knowledge/ understanding of the justice gap, demonstrating an understanding of diversity issues, or focusing on the knowledge, skills and values needed to perform competent access-to-justice work. The second key issue is how to draft or frame the outcome so it can be assessed. Carefully drafting learning outcomes will allow schools to plan the assessments needed to determine if the outcome has been met. This, in turn, will help schools identify the courses or other activities that need to be put in place to ensure students achieve such outcomes. Learning outcomes should be specific and measurable.

Drafting Learning Outcomes

Smaller groups of four or five participants were asked to try to formulate their own learning outcomes related to access-to-justice issues, as well as discuss challenges inherent in developing learning outcomes, identifying various possible outcomes, and attempting to draft actual language for such learning outcomes.

Participants identified several challenges to creating and defining learning outcomes related to access to justice. Many ideas surrounding access to justice are somewhat intangible. Translating those "big ideas" to concrete learning outcomes is sometimes difficult to do. Other challenges mentioned were prioritizing

¹⁵ See generally, Johnson Jr, E., *To Establish Justice for All: The Past and Future of Civil Legal Aid in the United States* (2013); Johnson, Jr. E., "Justice for America's Poor in the Year 2020: Some Possibilities Based on Experience Here and Abroad," 58 *DePaul Law Review* 393 (Winter 2009); National Equal Justice Library and Archives at <https://www.law.georgetown.edu/library/collections/nejl/>.

¹⁶ See Exhibit 3 annexed to this Report.

and deciding which outcomes and how many, making word choice as deep as possible but still specific and measurable, and the problem of mandating learning outcomes in a law school world in which academic freedom is valued and guarded.

Participants grappled with where and how to begin and several suggestions were made about what the starting point should be. Participants recommended that we look to other professions or disciplines to borrow from work already done regarding learning outcomes. All agreed that you have to start at the end: Identify what it is we want lawyers to ultimately do and think about what we are trying to accomplish.

The small groups suggested the following as possible access-to-justice learning outcomes for law graduates:

- Demonstrate an understanding of how implicit bias impacts a lawyer's ability to analyze legal problems;
- Demonstrate an understanding about the lives and challenges of indigent clients;
- Demonstrate an awareness of disparities between individuals;
- Demonstrate multicultural competencies;
- Demonstrate an understanding of the structural disparities of race, class, gender, etc.;
- Demonstrate an understanding of their responsibilities when an unrepresented person is on the other side;
- Gain a substantive understanding of how and why the court system does not work for all litigants;
- Demonstrate an understanding of the lawyer's professional responsibility to those who are not represented and make a commitment to providing representation; and
- Recognize issues facing vulnerable populations in society and the tools and strategies available to lawyers to affect change.

Court of Appeals Rule 520.18 for Admission of Attorneys

Judge Rivera described the purpose of the new Court of Appeals rules on admission to ensure that law school graduates are prepared to practice and have basic competencies and professional values. The old model of training on the job is no longer the reality and graduates must be prepared to immediately begin representing clients. The law schools' submission to the Court of Appeals under the new rules should be an integrative process with the ABA accreditation requirements and is intended to build on new ABA Standard 302. As is true of the ABA Standards, law schools are free to identify those skills and professional values they believe are appropriate given each school's unique mission.

Following Judge Rivera's remarks, Professors Connolly and Rogerson discussed assessment. Once a learning outcome is in place, law schools need to create assessment tools that can measure whether the students have achieved the outcome. Professor Connolly discussed some of the challenges with regard to assessment. ABA Standard 314 requires that law schools utilize formative and summative assessment across the curriculum. Because of academic freedom and entrenched norms, some faculty are resistant to changing the way they assess student work. Other challenges relate to methods used to teach access-to-justice issues. The type of assessment and tools used to assess student achievement depend on the method of teaching issues surrounding access to justice.

Professor Connolly said that most universities have a central office that can assist with drafting learning outcomes and creating methods of assessment because undergraduate and other graduate programs have had to use learning outcomes for accreditation purposes for many years. She recommended that law schools seek out those resources.

Professor Rogerson discussed ways to take an interdisciplinary approach to assessment and also suggested that a wider community can be engaged in assessment. For example, in the clinic, faculty could create an assessment tool that would allow feedback from clients or other community partners with which a student has worked to determine whether the student has achieved the learning outcome.

Methods of Assessment

As stated above, the type of assessment tools to be used will depend on how issues surrounding access to justice are taught. Participants echo what previous conference work groups have recommended in acknowledging the various ways that access to justice can be incorporated throughout the curriculum: a free-standing course in the first year or in the upper division that teaches what access to justice means, including the impact of the law on poor clients and the roles of access-to-justice lawyers; a specific module offered through a Legal Ethics course addressing the unmet need for legal representation; participation in a clinical course in which students get actual experience working with low-income clients.

Participants suggested the following methods of assessing whether students met the learning outcome of demonstrating an understanding of access-to-justice issues:

- Essay and/or group project / presentation on what it means to have a system of justice;
- Collaborative projects in which students discuss and prepare a class presentation on a particular aspect of access to justice (extent of the unmet legal need, duty toward an unrepresented client, impact of the lack of legal representation, changes in the law that would promote access to justice.);
- Reflective paper/discussion at end of course/module in which students reflect on how their perspective on access to justice has changed;
- Essay/paper/discussion in which students identify access to justice issues faced by litigants;
- Students participate in an implicit bias test to begin conversation, reflection on results;
- In a clinic course, discussion of impressions of client before and after representation;
- Court observation followed by reflection (paper or discussion) on experience and how it impacted student's personal code of conduct; and,
- Interview clients who have had negative experiences with lawyers and write a paper or discuss the reasons for the negative experience and how that impacts the student's own professional identity.

CONCLUSION

This Work Group discussion reinforced what previous conference work groups addressing law school curriculum have recommended. Schools should develop learning outcomes for students that identify the knowledge, skills and values needed to understand access-to-justice issues and encourage the commitment to performing access-to-justice work in school and after graduation. Creating these learning outcomes is now required and schools should seize the opportunity presented by this mandate to include an access to justice learning outcome as an institutional goal. Once a learning outcome is articulated, the school must intentionally teach it and create a way to assess it to ensure students have met the desired outcome. The break-out discussion groups were able to articulate several learning outcomes and methods for assessment that would be relatively easy for law schools to implement.

3. NON-LAWYERS WORKING TO HELP NARROW THE JUSTICE GAP AND THE ROLE OF LAW SCHOOLS AND LAW STUDENTS

Facilitator: **Thomas Maligno**

Executive Director, Public Advocacy Center; Director of Public Interest; Touro Law Center

Panelists:

Natalia Faras

*Founder and Manager, Project Totem, Albany Law Clinic & Justice Center
Albany Law School, J.D. Candidate 2017*

Ignacio Jaureguilorda

Director, Legal Hand

Roger J. Maldonado

*Co-Chair, Committee on Non-Lawyers and the Justice Gap;
Partner, Balber Pickard Maldonado & Van Der Tuin, PC*

Denise Miranda

*Managing Director, Safety Net Project
Urban Justice Center*

Karin Anderson Ponzer

Executive Director, Pace Community Law Practice

OVERVIEW

To fully realize equal justice, access-to-justice work must include trained, competent non-lawyers in efforts to serve marginalized individuals for whom access is abridged due to race, gender, disability, language, immigration status, geographic issues or other barriers. Law schools can play an important role in developing non-lawyers to serve low-income people, as well as the programs in which non-lawyers can work with underserved and underrepresented communities. Moving beyond the discussions of the 2014 and 2015 Work Group sessions on the need for non-lawyers to be part of the legal services delivery system, this year's session examined the effective use of non-lawyers in the New York State courts, in neighborhood storefront centers, in community organizations, and in law school clinics and practice settings, to enhance access to justice for unrepresented and self-represented individuals.

RECOMMENDATIONS

1. Law Schools should recognize the value of non-lawyer assistance in the legal services delivery system given the salutary impact non-lawyers can have in enabling access to justice:
 - a. Encourage law schools to identify ways for law students to partner with non-attorneys, e.g. social workers, financial counselors, housing advocates, and to foster partnerships between student-run projects and non-lawyer programs.
 - b. Encourage law schools to recruit students who demonstrate an interest in law, for example, by working with community programs like Legal Hand.
 - c. Encourage law schools to consider creating training programs for non-lawyers; such as the language access project like Project Totem at Albany.

2. Based on the success of the Navigator Program piloted in select housing and consumer credit courts, law schools should be encouraged to support the proposed OCA bill to amend the unauthorized practice of law statute (Judiciary Law section 478) to expand the availability of civil legal assistance by trained and supervised non-lawyers (to be known as “Court Advocates”) for low-income litigants.
3. A review of the 50-hour pro bono bar admission rule (Court of Appeals Rule 520.16) should be undertaken to assess its impact and possible amendment to include appropriately supervised law student legal work with non-lawyer programs as qualifying pro bono work.

SYNOPSIS OF DISCUSSION

Moderated by Thomas Maligno, Executive Director of the Public Advocacy Center and Director of Public Interest at Touro Law Center, the panel discussion was designed to spotlight how non-lawyers are currently working in the legal services delivery system. The session began with an overview of the court-based Navigator Program, described by Roger J. Maldonado, Co-Chair of the Committee on Non-Lawyers and the Justice Gap, and of the newly established Legal Hand neighborhood storefront centers outlined by the director, Ignacio Jaureguilorda.

Navigator Pilots

The Committee on Non-Lawyers and the Justice Gap recommended creation of the Navigator Program to help respond to the crisis of the unrepresented in our state courts by allowing trained non-lawyers, “Navigators,” to lend free assistance in connection with specifically delineated tasks in select housing and consumer debtor courts.¹⁷

Two years after the pilot was initiated, there is consensus that the Navigator model, while not a substitute for representation by a lawyer, offers a level of service that can “help to promote basic fairness for people otherwise unable to receive legal assistance in matters of significant consequence to their lives.”¹⁸ In numerous instances, Navigators have identified issues and affirmative defenses that unrepresented individuals may have been unaware even existed. Likewise, the assistance of a trained non-lawyer in completing court forms improves outcomes for the litigants and promotes the fair and efficient administration of justice.

The housing court navigator programs were piloted in Brooklyn under the auspices of Housing Court Answers, University Settlement House and the Unified Court System’s Access to Justice (A2J) Program. One basic, yet critical, element of assistance provided by the non-lawyer/navigator is offering explanations of court processes and forms. All three programs work collaboratively, to ensure the litigant receives the most appropriate assistance, including social services if that is in order. The assistance is limited in scope, but in some cases, the navigator may work with a tenant until the matter is finally resolved. The A2J Navigator Program has since expanded to housing parts in the Bronx, Queens and Manhattan. The consumer debt navigator program operates in Bronx County’s City Civil Court under the auspices of the court system’s A2J Program.

¹⁷ Navigators may engage in preliminary discussions with litigants to explain all facets of the court process; review and explain relevance of papers received by litigants; provide information to litigants about appropriate or available court services (including interpreters); provide assistance to litigants in filling out court-approved DIY forms and help in identifying additional resources available on the Internet; accompany client to court, including giving notes or reminders to litigants where and when necessary; if asked a direct factual question by the judge respond by providing factual statements; take notes during any conference or hearing to discuss with litigants afterwards to ensure litigants are clear about what has been said or decided and what the litigants must do to comply with any directions they may have been given; and some Navigators in Housing Court, may provide more in-depth service to help provide needed social services, including benefits to cover rent arrears where available. (See Administrative Order AO-42/14 [adopted Feb. 10, 2014]).

¹⁸ New York State Court Navigator Program, Committee on Non Lawyers and the Justice Gap, Navigator Snapshot Report (Dec. 2014) (on file with the Permanent Commission).

Draft legislation has been developed by the Office of Court Administration that formalizes an expanded role for non-lawyers, to be known as “Court Advocates,” who would receive targeted training and work under the supervision by a lawyer. It was suggested that one way to increase the number of persons assisted in our courts is to further expand the role of non-lawyers in the legal services delivery spectrum.

Legal Hand neighborhood storefront centers

Legal Hand is a new initiative dedicated to improving access to justice for low-income New Yorkers. Legal Hand neighborhood storefront centers have trained community volunteers who provide free legal information, assistance, and referrals to help members of low-income communities resolve issues that affect their lives in areas like housing, family, divorce, domestic violence, immigration, and a variety of public assistance benefits, and try to prevent them from turning into legal actions. This model, developed by Commission Chair Helaine Barnett, in collaboration with former Chief Judge Jonathan Lippman, was launched in 2015 with a \$1million anonymous grant. Three Legal Hand storefront walk-in centers are operating in low-income neighborhoods, which are staffed by trained neighborhood volunteers who are not lawyers. By recruiting, training and mentoring community residents, Legal Hand volunteers are uniquely positioned to identify neighborhood resources to assist individuals with matters related to their housing, public assistance benefits, employment, immigration or domestic situations. Volunteers are requested to commit to a period of service, and data is being collected to assess the services provided. As of the date of the Conference, over 1,200 visitors were served in the two Legal Hand centers opened by former Chief Judge Lippman in Crown Heights, Brooklyn and Jamaica, Queens. The number of people who will be served is expected to continually increase and a third Legal Hand center is scheduled to be officially opened by Chief Judge Janet DiFiore in Brownsville, Brooklyn in June 2016. Legal Hand provides access to justice by offering services and information that can help identify whether there is a legal issue and, in this regard, can be an effective preventative tool.

Responding to the Need

Following the overview, there was discussion regarding the fact that it is frequently the case that a person who meets with a legal services provider has a host of issues that legal services cannot address. For example, the housing issue may actually be finding affordable housing. In this regard, one legal services provider has added resources, including social workers and financial planners, to direct an affordable housing search. The participants agreed that a team of professionals is a good model. While there is a pressing need for lawyers, models that provide information and referrals can be very useful. Absent the lawyer-client relationship, there is no confidentiality and the importance of training volunteers as to the nature and scope of appropriate assistance is critical.

Panelist Denise Miranda, Managing Director of the Safety Net Project at the Urban Justice Center, reported that this project employs a large number of trained non-attorneys, who engage in public advocacy, as well as offer legal information and assistance to clients who have issues related to various public assistance benefits and basic human needs. Ms. Miranda indicated the importance of (1) shifting the culture between lawyers and non-lawyers given the impact non-lawyers have in providing access to justice for underserved people, and (2) partnering with community organizations and law schools to maximize the scope of services.

Karin Anderson Ponzer, Executive Director of the Pace Community Law Practice (PCLP), remarked that there are many opportunities to have law schools play a role in cultivating non-lawyers. Ms. Ponzer pointed to several factors, such as declining law school enrollments and post-graduate opportunities for law students, and the fact that many people who do not qualify for free legal assistance cannot afford a lawyer as strong reasons to expand the community-based lawyering practiced by the PCLP. PCLP uses university office space, computer hardware and software and a wireless platform for its integrated model of service. By partnering with community-based organizations that do not provide legal services, the PCLP provides legal fellows, who are recent law graduates, and current law students, to deliver legal

services and help train community groups on handling a range of issues. In some instances, the PCLP Fellows and law students engage directly with the community by joining mobile offices to offer services. The PCLP is an economical model that has a tremendous impact on the community having served over 1,800 people since it launched in 2012.

Working with undergraduate students, Albany Law student Natalia Faras, founded and manages Project Totem at Albany Law Clinic & Justice Center, to respond to the barriers non-English speakers in the community encounter when confronted with legal issues. Ms. Faras recruited bilingual undergraduate students, who received academic and community service credit, to volunteer to translate documents and serve as interpreters for clients of Albany Law School's clinics. The students received training on ethics, confidentiality and the nature of legal work to familiarize them with the type of documents and matters the clinics' clients may present. The Project serves as a pipeline for undergraduates interested in law as they have the opportunity to interact with law students, professors and experience the law school environment. Mention was made to consider how to involve law students in this Project, including qualifying as eligible work for the 50-hour pro bono bar admission rule.

CONCLUDING DISCUSSION

The Work Group discussion turned to how law schools can establish programs to work with non-lawyers, particularly in a model like Legal Hand, and train law students to understand how to partner with non-lawyer programs. Collaborations between community organizations, legal services providers and law schools to integrate "holistic service delivery systems" and develop students' skills are strongly recommended. Indeed, a model such as Legal Hand can offer very valuable experiences for law students, graduate and undergraduate students to cultivate advocates, not only lawyers. Joint degree programs that combine law and social work, partnerships with medical providers and integrating technological tools are examples of how to use the skills and knowledge of non-lawyers to enhance access to justice for individuals facing barriers. The group noted the importance of "marketing" the exposure students receive by community volunteering when it falls outside the scope of academic or pro bono credit.

4. NEW MODELS FOR COST EFFECTIVE LEGAL SERVICE DELIVERY TO ENHANCE ACCESS TO JUSTICE

Facilitator: Jack Graves

*Professor of Law & Director of Digital Legal Education
Touro Law Center*

Panelists:

Benjamin H. Barton *(via Zoom from Tennessee)*

*Helen and Charles Lockett Distinguished Professor of Law
University of Tennessee College of Law*

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OVERVIEW

The ABA established the Commission on the Future of Legal Services, which took on a specific charge under then ABA President William C. Hubbard, to develop new and more effective models for legal service delivery to meet the needs of the underserved. Consistent with the mission of this ABA Commission, the Work Group explored potential new models for cost effective legal service delivery to enhance access to justice in New York.

RECOMMENDATIONS

1. Reduce the cost of legal service “intake” to the greatest extent possible to allow greater allocation of legal service resources to the actual provision of services—ideally though a single intake system.
2. Early in the intake process, a determination of whether the legal problem in question requires direct consultation with an individual lawyer, or whether it might be effectively solved by other lower-cost delivery means, using technology and/or non-lawyer human assistance, is critical to reducing costs and facilitate quick and appropriate access.
3. The current regulatory structure should be examined and evaluated for ways in which it might better accommodate low-cost delivery of legal services by licensed legal professionals to individuals and small businesses of modest means, including, by way of example:
 - a. Greater opportunities for legal service delivery on a nationally scalable model;
 - b. Greater opportunities for legal service delivery by limited license service providers; and
 - c. Greater opportunities to employ technology in bringing down the cost of legal services.
4. Law schools should better train students on the economics and various forms of cost-effective legal service delivery. Specifically, schools should teach students how uniform processes used

to address common legal issues, together with technology, can enable a legal service provider to deliver more cost-effective legal services to individuals and small businesses of modest means.

5. Law schools should do more to facilitate new and innovative means for the delivery of pro-bono and low-bono/low cost legal services by law students and recent graduates.

SYNOPSIS OF DISCUSSION: DETAILING THE RECOMMENDATIONS

The Work Group sought to determine how to balance the value of one-on-one counseling by a lawyer with the inability of most Americans to pay for counseling delivered in this manner. In doing so, it took a “triage” approach, seeking quickly to identify circumstances that might tip this balance in either direction.

The group sought to distinguish situations involving significant power or knowledge imbalances from those involving simple, non-contentious transactional advice. In the former, direct communication with an actual lawyer is more important, while the latter might be serviced to a greater degree through technology. However, even in the latter case, the group noted the benefits of knowledgeable assistance, even if in the form of a non-lawyer.

Intake Process

The dialogue regarding the triage process dovetailed nicely with the break-out group’s discussion on the intake process as a means of increasing the cost-effectiveness of the ultimate legal service delivery. The group also noted that much of this intake triage could be performed by non-lawyers and/or technology. The group did, however, note concern over challenges in measuring outcomes when employing automated legal services.

Another break-out group considered how government and non-profit entities might do more with available resources, and how the private, “for profit” sector might also help to close the justice gap. This group focused primarily on the intake process as the key, ideally relying on a single intake system.

In addressing the intake process, the group noted that one of the best ways to improve the cost-effectiveness of legal service delivery is to get the potential client to the right source of legal expertise as quickly and efficiently as possible. The group also acknowledged the increasing effectiveness of technology in assisting with or even performing in large part this intake process.

By improving the intake process, the government or non-profit entity can better focus its limited resources on actual legal service provision. Private practitioners are more likely to be able to deliver cost-effective services at a profit if the intake service is effective in matching them up with clients for which their specific expertise is best suited.

The group also talked in some detail about the nature of scalable services and limited-scope representation, as well as various delivery settings for such services. The group recognized the importance of both pro-bono and low-cost legal service delivery in closing the access-to-justice gap, and suggested collaboration between courts, practitioners, and law schools in providing both.

Regulatory Issues

This break-out group began by discussing the regulatory barriers to low-cost legal service delivery by lawyers. Participants noted the difference between the relative lack of regulation relating to free services, when compared to the standard application of the regulatory structure to low-cost legal services. In effect, the licensed legal community is at a significant disadvantage when attempting to compete with non-lawyer, low-cost legal service providers, like LegalZoom. If we believe that licensed

lawyers are the most qualified to deliver low-cost legal services to individuals and small businesses of modest means, then we need to modify the regulatory structure to better allow lawyers to compete effectively in this market.

In further examining this issue, the group considered unauthorized practice of law (UPL) definitions (which vary considerably from state-to-state) and the degree to which these UPL rules serve to protect consumers of legal services. The group also discussed the idea of multi-level licensing, as found in the medical profession, as well as multi-jurisdictional, and even national, law practice, as opportunities for lower cost delivery of certain legal services. Finally, the group examined a number of specific technology applications allowing for potentially significant reductions in the cost of certain legal services, but potentially affected by the current regulatory scheme.

CONCLUDING DISCUSSION

The group concluded by discussing how we might better prepare today's law student to address and potentially find answers to these challenges upon graduation and successful admission to the bar. The discussion also addressed how existing law schools might provide different levels of legal training to facilitate any multi-level approach to licensure.

AFTERNOON PLENARY SESSION

Upon conclusion of afternoon work group sessions, the participants reconvened for the closing plenary session. Dean Diller introduced Laren Spierer, Director of Pro Bono Programs at Columbia Law School, who previewed one of the chapters for the online Handbook of Best Practices for Supervising Law Student Pro Bono Work, conceived and developed during the 2014 and 2015 Conference Work Groups on Supervision. The Handbook is a continuing project of the Statewide Law School Access to Council, which will be published online as a resource tool for individuals and organizations engaged in the supervision of law student pro bono work.

Dean Diller recognized the facilitators of the four conference work groups, each of whom delivered brief reports outlining the recommendations detailed herein, drawing his praise and that of the audience. He commended the facilitators, the plenary and work group panelists, members of the law school planning committee and all the participants for the inspired discussions and their proposals to further efforts to expand access to justice and law schools' contributions. Dean Diller highlighted the value of the annual law school conference for its educational function, collaborative spirit and the significant contribution to the Commission in its development of recommendations directed to efforts by New York's law schools and law students to expand access to justice.

Dean Diller urged participants to harness the energy and talent of New York's law students, to provide guidance and mentoring, and maximize this time of increased opportunities and resources for pro bono legal work aimed at helping our most vulnerable citizens. Law schools are singularly equipped to cultivate lawyers and leaders who are versed and skilled to be responsive to individuals who, confronted with legal matters, face societal barriers due to race, poverty, gender identity, religion, English fluency or any physical or mental impairment—and their intersections—impair their access to justice.

Ms. Barnett closed the conference with a message of appreciation and a request for feedback both on the content and structure of the conference to inform efforts in planning for next year.

EXHIBIT 1

FIFTH ANNUAL LAW SCHOOL ACCESS TO JUSTICE CONFERENCE PROGRAM

NEW YORK STATE PERMANENT COMMISSION ON ACCESS TO JUSTICE



FIFTH ANNUAL LAW SCHOOL CONFERENCE

**ACCESS TO JUSTICE: THE ROLE
OF NEW YORK'S LAW SCHOOLS IN
HELPING MEET THE ESSENTIAL
CIVIL LEGAL NEEDS OF LOW-
INCOME NEW YORKERS**

Convened by the New York State Permanent Commission on
Access to Justice at New York University School of Law
May 17, 2016

HELAINÉ M. BARNETT
Chair, New York State Permanent Commission on Access to Justice



FIFTH ANNUAL LAW SCHOOL

ACCESS TO JUSTICE CONFERENCE

THE ROLE OF NEW YORK'S LAW SCHOOLS IN HELPING MEET THE ESSENTIAL CIVIL LEGAL NEEDS OF LOW-INCOME NEW YORKERS

9:00 - 9:30 am Registration, Check-In & Light Refreshments

Vanderbilt Hall

9:30 - 10:00 am Welcome and Introduction

Tishman Auditorium

Helaine M. Barnett, Chair, New York State Permanent Commission on Access to Justice; President, Legal Services Corporation (2004-2009)

Trevor W. Morrison, Dean and Eric M. and Laurie B. Roth Professor of Law, New York University School of Law

Opening Remarks **Hon. Janet DiFiore**, Chief Judge of the State of New York

10:00 am - 12:00 pm Morning Plenary Session

Tishman Auditorium

Race, Poverty, Identity: Diversity Issues and Access to Civil Justice

Keynote Speaker **Charles J. Ogletree, Jr.**, Jesse Climenko Professor of Law; Director, Charles Hamilton Houston Institute for Race & Justice, Harvard Law School

Panel Discussion Moderated by **Professor Ogletree**

The panel discussion will explore how New York's law schools can and should contribute to improved access to equal justice for New Yorkers who face barriers due to race, poverty, identity and their intersections. Intended to provide inspiration and preparation for the Work Group sessions that follow, the Panel will consider (a) how law schools can encourage and educate their students to become lawyers who help close, or at least narrow, the justice gap; (b) whether there is a relationship between who graduates from law school and what needs are served; (c) how to best encourage and empower students from marginalized communities to enter and succeed in law school; and (d) whether schools should also increase access to justice by training other legal professionals, in addition to lawyers.

Panelists **Deborah N. Archer**, Dean of Diversity & Inclusion; Professor of Law; Co-Director, Impact Center for Public Interest Law; Director, Racial Justice Project, New York Law School

Jennifer Ching, Project Director, Queens Legal Services, Legal Services NYC

Hon. Fern Fisher, Director, New York State Courts Access to Justice Program; Deputy Chief Administrative Judge for New York City Courts

Suzanne B. Goldberg, Executive Vice President for University Life; Herbert and Doris Wechsler Clinical Professor of Law; Director, Center for Gender and Sexuality Law, Columbia Law School

Maya Wiley, Counsel to Mayor Bill de Blasio, City of New York

12:15 - 1:10 pm Work Group Sessions: Part One**Four Concurrent Sessions**

Participants will hear brief panel presentations about the Work Group themes and goals during Part One of the Work Group Session. After the lunch break, participants will return to their Work Groups for Part Two of the Work Group Session. Part Two will feature targeted discussions to generate ideas for future action and recommendations, to present to the Permanent Commission on Access to Justice for consideration and possible inclusion in its Annual Report to the Chief Judge, on law school efforts to help close the justice gap.

A. Opening the Doors: Access to Law School as an Access-to-Justice Issue Faculty Library

The Work Group Session will address how access to law school affects access to civil justice; does who becomes a lawyer affect who receives legal services? Law Schools have a variety of approaches to addressing issues of race, identity and diversity that can limit access to a legal education and the legal profession. The Work Group will explore law school efforts to nurture pipelines to legal educational opportunities and discuss the effect of economic considerations, e.g. law school tuition, financial aid, student debt and loan forgiveness, on the composition of the law school class.

Facilitator **Lillian M. Moy**, Executive Director, Legal Aid Society of Northeastern New York

Panelists **Charles I. Auffant**, Clinical Professor of Law, S.I. Newhouse Center for Law & Justice, Rutgers School of Law

Elaine M. Chiu, Professor of Law; Director, Ronald H. Brown Center for Equal Rights and Economic Development, St. John's University School of Law

Robin A. Lenhardt, Professor of Law; Director, Center on Race, Law and Justice, Fordham University School of Law

Anne Williams-Isom, Chief Executive Officer, Harlem Children's Zone

B. Infusing Diversity Issues and Access to Justice into the Law School Curriculum: Understanding the Skills, Professional Values and Cultural Competencies Greenberg Lounge

An overview of the history of the justice gap will set the framework for the Work Group dialogue about the learning objectives law schools should identify, in furtherance of ABA Standard 302 and Court of Appeals Rule 520.18, to ensure that students acquire an understanding of the justice gap and recognize the lawyer's responsibility to ensure all individuals have equal access to the privileges of our justice system. The Work Group will examine existing examples of learning objectives related to access to justice, consider further formulations of such objectives, discuss how these objectives can be taught through the required curriculum and how law schools can assess students' competency for ethical participation in the profession. The Work Group will also explore how law schools can impart an understanding of the unique value pro bono legal services offer to people in need to achieve the fair administration of equal justice for all.

Facilitator **Connie Mayer**, Associate Dean for Academic Affairs; Raymond and Ella Smith Distinguished Professor of Law, Albany Law School

PROGRAM

Panelists **Kim Diana Connolly**, Professor of Law; Vice Dean for Legal Skills; Director; Clinical Legal Education, SUNY Buffalo Law School

Alexander D. Forger, President, Legal Services Corporation (1994-1997)

Jennifer A. Gundlach, Senior Associate Dean for Experiential Education; Clinical Professor of Law, Maurice A. Deane School of Law, Hofstra University

Sarah Rogerson, Associate Professor of Law Director; Law Clinic & Justice Center Director; Immigration Law Clinic Albany Law School

C. Non-Lawyers Working to Help Narrow the Justice Gap and the Role of Law Schools and Law Students

Furman Hall 334

The Work Group Session will examine the use of non-lawyers, in the New York State courts, neighborhood storefront centers, community organizations and law school clinics and practice settings, to enhance access to justice for unrepresented and self-represented individuals and the impact of this collaborative work on the administration of justice. The Work Group will consider how law schools can teach and train law students to effectively and efficiently work with non-lawyers to enhance access and ensure the fair administration of justice.

Facilitator **Thomas Maligno**, Executive Director, Public Advocacy Center; Director of Public Interest; Touro Law Center

Panelists **Natalia Faras**, Founder and Manager, Project Totem, Albany Law Clinic & Justice Center, Albany Law School, J.D. Candidate 2017

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Roger J. Maldonado, Co-Chair, Committee on Non-Lawyers and the Justice Gap; Partner, Balber Pickard Maldonado & Van Der Tuin, PC

Denise Miranda, Managing Director, Safety Net Project, Urban Justice Center

Karin Anderson Ponzer, Executive Director, Pace Community Law Practice

D. New Models for Cost Effective Legal Service Delivery to Enhance Access to Justice**Furman Hall 210**

The Work Group will explore innovative models of legal service delivery, teaching paradigms that incorporate digital lawyering and regulatory challenges that may unreasonably deter access-to-justice reforms. Against this backdrop, the Work Group will examine how these models can work to close the justice gap; explore how to effectively use technology to reach underserved communities; and, provide students with opportunities to develop the skills and cultural competencies to practice law in the 21st Century and narrow the justice gap.

Facilitator **Jack Graves**, Professor of Law & Director of Digital Legal Education, Touro Law Center

Panelists **Benjamin H. Barton**, (via Zoom from Tennessee) Helen and Charles Lockett Distinguished Professor of Law, University of Tennessee College of Law

Lynn Lu, Clinical Law Professor; Managing Attorney, Court Square Law Project, CUNY School of Law

Leah Margulies, Senior Advisor, LawHelp NY, Pro Bono Net

1:15 - 1:45 pm Lunch

Greenberg Lounge

1:55 - 3:45 pm Afternoon Work Group Sessions: Part Two

Concurrent Sessions continue

Return to Rooms

3:55 - 4:35 pm Afternoon Plenary Session

Tishman Auditorium

Moderator **Matthew Diller**, Dean and Paul Fuller Professor of Law, Fordham University School of Law; Chair, Law School Involvement Working Group, New York State Permanent Commission on Access to Justice

Presentation **Laren Spierer**, Director of Pro Bono Programs, Columbia Law School

Preview component chapter of the online Handbook of Best Practices for Supervising Law Student Pro Bono Work

Reports from Facilitators of Work Group Sessions

Conference Recap **Dean Diller**

Concluding Remarks **Helaine M. Barnett**

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The Law School Conference Planning Committee thanks Madeline Jenks and Grace Son, Legal Assistants at Sullivan & Cromwell LLP, and Elizabeth Satarov and Ashlyne Polynice, Legal Assistants at Skadden, Arps, for recording notes of the Conference proceedings.

EXHIBIT 2

WORK GROUP A: Options for Law Schools to Support Access-to-Justice Activities and Involvement of Diverse Students

FIFTH ANNUAL LAW SCHOOL ACCESS TO JUSTICE CONFERENCE

Opening the Doors: Access to Law School as an Access-to-Justice Issue: Options for Law Schools to Support Access-to-Justice Activities and Involvement of Diverse Students

A. Community Involvement by Law Schools

- Develop better relationships between law schools and community organizations
- Comprehensive prep program for economically disadvantaged
- Offer exposure to students early on – connect to local middle schools
- Recruit for public interest
- Joint college/law school program
- Broaden the 50-hour pro bono bar admission rule
- Shift law school mission to develop focus on local issues/community in early years
 - o Sweeten the pot for law school/coordinate the money

B. Admissions

- Interviews
- Diversity statement
- Admissions Fair
- Can Black Lives Matter rebirth action at law schools to broaden access to justice
- Holistic look at law school applicants – demand that the culture change
- Looking beyond LSAT and grades (numeric cut-offs, other factors/statements)
 - o Option to not submit LSAT
- Ask more questions related to issues that impact access – i.e., first generation, poverty, family education
- Diversity statement – optional
- Diverse admissions committee reviewing applications
- College/law school partnerships – direct entry from college (3&3); scholarship programs
- More recruitment at feeder schools with majority minority and low income community colleges and for profit colleges
- Diversity scholarships/funding from law firms
- Targeted recruitment and scholarships for older students/2nd career
- Preserve evening student programs
- Recruit from paralegals in legal services and government.

C. Support once in Law School

- Infuse ourselves into the community
 - Point local youth to law school
 - Youth law development
 - Coordinate funding
- Broaden reach of 50-hour pro bono bar admission rule
 - Serve low income or diverse groups
- Support programs for students once in
- Summer/paid internships
- Diversity writ large
- Prepare change agents
- Increase access to paid prep programs
- Tie into LEO
- Lower tuition – scholarships
- Support training for faculty
 - Disclaimer
- Prepare agents for change
 - Opportunities to support my passion
- Earlier clinical/ATJ experiences – part of core curriculum in first year
- Learning lab – attacking race equity issues
- Paid internships
- School should have pro bono requirement
- Mandatory seminar on ATJ
- Better career public interest placement
- Better push on PBS program – should be a year
- Increase access to bar prep programs via scholarship

EXHIBIT 3

WORK GROUP B: Examples of Learning Outcomes Focused on Diversity & Access-to-Justice Issues

Infusing Diversity Issues and Access to Justice into the Law School Curriculum: Understanding the Skills, Professional Values and Cultural Competencies Work Group: Examples of Learning Outcomes Focused on Diversity & Access-to-Justice Issues

CUNY School of Law:

4. Graduates will be able to critically analyze the social context in which a legal issue arises.

Competency may be assessed through demonstrated:

- Formation of individualized and independent judgments supported by legal doctrine;
- Ability to reflect on and reassess judgments based on new information;
- Recognition of the effects of the social and political context in which legal issues arise; and
- Recognition of the role of law in social change.

10. Graduates will understand the specific responsibilities and potential issues that arise when working with clients, including, among others, disempowered individuals, organizations, or when representing government entities.

Competency may be assessed through demonstrated:

- Understanding of lawyers' responsibilities to provide legal services to those unable to afford them; and
- Engagement in identifying and challenging bias in the legal profession.

12. Graduates will demonstrate an ability to work across difference.

Competency may be assessed through demonstrated:

- Recognition of the potential for structural inequality to negatively impact relationships with clients and others;
- Active listening and engagement with multiple perspectives; and
- Incorporation of theoretical perspectives in practice.

15. Graduates will be able to incorporate social justice lawyering into their practice.

Competency may be assessed through demonstrated:

- Understanding of the impact the law has on access to justice;
- Understanding of the role allocation of resources has on access to justice; and
- Familiarity with critical theoretical perspectives and how those perspectives may be incorporated into a social justice practice.

University of St. Thomas School of Law:

Learning Outcome 1: Professional Formation and Ethical Responsibilities

Graduates will demonstrate an understanding of their professional and ethical responsibilities in serving clients, the profession, and society. Whether working in law, business, government, or the non-profit sector, each graduate will be able to describe his or her evolving professional identity, which is grounded in a moral core, includes a commitment to self-directed professional learning, and reflects a concern for the disadvantaged and those who lack access to justice.

University of Puerto Rico Law School

Demonstrate sensibility to the problem of access to justice by economically disadvantaged groups.

Chicago-Kent College of Law

Learning Outcome: Graduates will demonstrate knowledge and understanding of lawyer's moral, ethical, and professional responsibilities.

Performance Indicators:

c. Demonstrate awareness of attorneys' obligations to society, including the responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them.

Albany Law School

Aspirational Goals for Our Graduates as Emerging Professionals:

Embrace professional life that advances the mission of service to the underrepresented and recognizes the lawyer's responsibility to ensure all individuals have equal access to the privileges of our justice system.

Loyola University-New Orleans College of Law

Graduates will be able to: recognize issues facing the vulnerable populations in society and the tools available to lawyers to affect change, and be alert to the Jesuit mission of service to those communities.

SMU-Dedman School of Law (proposed, not yet approved)

Outcome: Graduates will understand the professional and ethical responsibilities of lawyers to clients and the legal system and the responsibility of the profession to provide access to justice and public service.

Competency: Graduates will demonstrate a commitment to public service.

Gonzaga University School of Law

Outcome: Graduates will demonstrate knowledge of the importance of service to the profession and to the community at large.

Competency 1: Students will demonstrate an awareness of and a willingness to contribute to the profession's responsibility to ensure access to justice.

Competency 2: Students will demonstrate a willingness to contribute to serving the underserved and traditionally marginalized communities.

PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK

APPENDIX 11:

**Report of the Permanent Commission's Working Group on
Technology**

NOVEMBER 2016

NEW YORK STATE PERMANENT COMMISSION ON ACCESS TO JUSTICE



REPORT OF THE PERMANENT COMMISSION'S
WORKING GROUP ON
TECHNOLOGY

HELAINÉ M. BARNETT

Chair, New York State Permanent Commission on Access to Justice

OCTOBER 2016

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EXECUTIVE SUMMARY

DURING THE YEAR, THE WORKING GROUP ON TECHNOLOGY (“Working Group”) continued to advance programs and initiatives that leverage technology to improve the quality and efficiency of legal services and close the justice gap. The Working Group’s Pro Bono Law Firm IT Initiative, led by Michael Donnelly, Chief Information Officer at Simpson Thacher & Bartlett LLP, evaluated the efficacy of its pro bono efforts, including its assessment pilot, and continued to work with various providers to highlight the advantages of document management and online training tools through, among other means, educational webinars and active participation in the Technology Conference. The Working Group observed the steady progress of the two pilot projects that are creating online screening and intake systems for low-income New Yorkers in western New York and New York City with consumer credit issues.

The Permanent Commission, along with NYSTech¹ and New York Law School, sponsored its second, day-long Statewide Technology Conference, an event that brought together directors and technology staff from civil legal aid providers, law firms, law schools, legal funders and technology service providers to share innovative ideas that can improve the delivery of civil legal services and the efficiency of provider operations. Finally, the Working Group continued to recognize that effective technology initiatives require dedicated funding to enable civil legal aid providers to integrate those systems into their operations and client service delivery.

As a result of these efforts, the Working Group offers the following recommendations to the Permanent Commission:

1. **Pro Bono Law Firm IT Initiative:** This sub-committee should continue to expand its reach to civil legal aid providers throughout the state by recruiting pro bono IT professionals from additional law firms, and engaging law school communities. The assessment process and other technology related projects should be formulated into a menu of limited scope pro bono matters for IT volunteers that could be managed with the assistance of pro bono coordinators.
2. **Online Screening and Intake Pilots:** The developers of the two online pilots should continue to consult with each other during the planning and implementation of their respective projects with the goal of making these systems, where technically feasible, compatible with each other. In addition, the pilots should be capable of expansion to address the full range of legal problems that low-income people commonly face. Ideally, the pilots should jointly develop and publish data standards for their projects that could be followed by others, as well.

The Permanent Commission should support the continued efforts of the two pilots, along with an eventual statewide screening and intake system, by encouraging the development, with all appropriate stakeholders, of a shared governance model to address such issues as funding, decision-making, data ownership, and system maintenance.

3. **Technology Conference:** The Permanent Commission should continue to convene an annual technology conference, with the goal of encouraging the civil legal aid community to engage in sustained collaboration, best practices development, training, critical analysis and revolutionary thinking around the improved use of technology to increase access to effective legal assistance by low-income New Yorkers.
4. **Funding:** The Permanent Commission should continue to support civil legal services providers in their efforts to identify dedicated funding streams that will support technology expansion and innovation to improve delivery of civil legal services.

1. NYSTech is a voluntary collaboration of legal services providers from across New York that convenes technology leaders regularly for information sharing and training.

PRO BONO LAW FIRM IT INITIATIVE SUB-COMMITTEE

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FINDINGS

This group of pro bono Information Technology (“IT”) coordinators from private law firms and other senior IT leaders continued to work this year to provide IT support to nonprofit civil legal aid providers in New York State.

The Tech Assessment Project largely completed its pilot project in which pro bono IT professionals evaluated and identified improvements to the internal technology infrastructures of five individual nonprofit providers (CAMBA, Legal Services of the Hudson Valley, MFY Legal Services, Nassau Suffolk Law Services, and Urban Justice Center). The mechanics of this project were described in detail in the Working Group’s 2015 Report.

Feedback was solicited from the providers and they reported great appreciation for the objective expert analyses provided by the pro bono teams and praised the volunteers for their responsiveness, enthusiasm and clear communication. With the ongoing guidance of their pro bono teams, the providers have been updating hardware, improving security and adopting necessary technology policies.

The providers reported that various issues have delayed or stalled implementation of some of the recommendations from the tech assessments. For example, even where the recommended technology was reasonably priced, many providers noted the high cost in dollars and staff time to implement the migration to the new technology. Providers also reported struggling with staff resistance, especially where a provider was already in the process of (or had recently completed) a significant technology conversion, such as a change in the case management or email system. Some of the resistance arises because the technology change raises potential programmatic changes (e.g., to the client intake process), which require greater discussion with and buy-in from program staff. Ultimately, the providers seemed confident that they were moving forward with the pro bono team’s recommendations, albeit on a slower timeframe than the teams expected.

The sub-committee also continued to work with various providers to highlight the advantages of document management and online training tools, using educational webinars organized in conjunction with NYSTech, as well as other tools. In addition, sub-committee members negotiated competitive prices from various technology vendors for nonprofit providers.

RECOMMENDATIONS

The Working Group recommends that this sub-committee continue to expand its reach to civil legal aid providers throughout the state by recruiting additional law firms and engaging law school communities. The assessment process and other technology related projects should be formulated into a menu of limited scope pro bono matters for IT volunteers that could be managed with the assistance of pro bono IT coordinators.

ON-LINE SCREENING & INTAKE PILOT PROJECTS

FINDINGS

TWO MULTI-ORGANIZATIONAL PILOT PROJECTS continue to develop collaborative online screening and intake systems for consumer law inquiries, one in New York City and one in Western New York.

The NYC Pilot, led by the City Bar Justice Center, includes providers CAMBA, MFY, Urban Justice Center and the Feerick Center, which employ a variety of case management systems. A full demonstration system is expected by October 2016, with a public launch shortly thereafter, followed by an ongoing analysis of volume, routing, advantages, disadvantages, and other features. The likely client volume remains unclear, but participating providers expect they will need to monitor referrals on a weekly or daily basis.

Led by Legal Assistance of Western New York, the Western NY Pilot includes the two other Legal Services Corporation grantees that serve central and western New York (Legal Aid Society of Mid-NY and Neighborhood Legal Services). They concluded the business process analysis phase of the project in late summer 2016 and will be engaged in the technical scoping of the project during fall 2016. Portal development will begin in or about December 2016, with a system launch projected by June 2017. Their system design will follow the New Mexico model, based on Neota logic, and customized for consumer issues in New York. Customization will include the development of an API to facilitate data transfers to providers with varying case management systems, eliminating financial eligibility screening (which will be handled after referral to the individual provider) and development of case sorting and routing by type of consumer matter as well as geography.

Both pilots plan to track and analyze the point in the process where users tend to drop out of their systems, to allow providers to update their case acceptance protocols and set appropriate case referral caps. Both pilots have several structural issues that remain unresolved, including ongoing funding, data ownership, and responsibility for maintenance and governance.

RECOMMENDATIONS

The Working Group recommends that the developers of the two pilots continue to consult with each other during the planning and implementation of their respective projects with the goal of making their systems, where technically feasible, compatible with each other. In addition, the pilots should be capable of expansion to address the full range of legal problems that low-income individuals commonly face. Ideally, the pilots should jointly develop and publish data standards for their projects that could be followed by others.

The Permanent Commission should support the continued efforts of the two pilots, along with an eventual statewide screening and intake system, by encouraging the development, with all appropriate stakeholders, of a shared governance model to address such issues as funding, decision-making, data ownership, and system maintenance.

TECHNOLOGY CONFERENCE

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FINDINGS

Following up on the successful inaugural technology conference held in 2015, the Permanent Commission convened another technology conference in 2016 to educate stakeholders from around the state and promote collaborative and sustainable use and support of technology among civil legal services providers. The Conference was planned by the Permanent Commission's Working Group on Technology with the assistance of NYSTech and other justice community partners. A comprehensive agenda was developed with the goal of bringing together stakeholders to learn about the latest technological initiatives, how those could be leveraged to maximize efficiency and increase service population, and the resources available to assist in implementation.

On June 23, 2016, New York Law School hosted the Statewide Civil Legal Aid Technology Conference for over 160 people, including Executive Directors, technology managers and other leaders representing dozens of civil legal aid providers from around the state, technology directors and staff from law firms, technology leaders from law schools, administrators from the NYS Unified Court System, major funders and technology service providers. The agenda boasted two plenary panels, as well as three, distinct break-out sessions, offering a total of six panel options, as well as a Tech Fair, where innovative technology projects were displayed. Chief Judge Janet DiFiore opened the conference, offering praise and encouragement for technological innovations that expand access to justice. The day ended with an inspiring address from Seth Andrews, then-Senior Advisor, Executive Office of the President, Office of Science and Technology Policy, The White House.²

RECOMMENDATIONS

The Working Group recommends that the Permanent Commission continue to convene an annual technology conference, with the goal of encouraging the civil legal aid community to engage in sustained collaboration, best practices development, training, critical analysis and revolutionary thinking around the improved use of technology to increase access to effective legal assistance by low-income New Yorkers.

EXPANDING TECHNOLOGY FUNDING

THE COMMISSION'S RESEARCH, as well as its experience in seeking to implement its technology recommendations, has demonstrated the need for dedicated, stable funding for technology expansion and innovation.

In its 2015 Report, the Permanent Commission recommended that the Oversight Board to Distribute Judiciary Civil Legal Services Funds in New York consider innovative technology projects in its funding decisions for Judiciary Civil Legal Services Awards ("JCLSA"). This recommendation was implemented in the 2016 Judiciary Civil Legal Services Request for Proposals through expansion of the selection criteria for services that enhance access to justice beyond the provision of direct services and the awarding of higher points for demonstration of effective and innovative use of technology.

RECOMMENDATIONS

The Permanent Commission should continue to support civil legal services providers in their efforts to identify dedicated funding streams that will support technology expansion and innovation to improve the delivery of civil legal services.

2. Detailed summaries and findings from the Conference sessions are set forth in full in the Conference Report, annexed hereto as Exhibit A.

EXHIBIT A TO WORKING GROUP REPORT

NEW YORK STATE PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT TO THE WORKING GROUP ON TECHNOLOGY



2016 STATEWIDE CIVIL LEGAL AID TECHNOLOGY CONFERENCE

THE ROLE OF TECHNOLOGY IN PROMOTING ACCESS TO JUSTICE

Based on the Conference Convened by the New York State
Permanent Commission on Access to Justice at
New York Law School, June 23, 2016

HELAINÉ M. BARNETT
Chair, New York State Permanent Commission on Access to Justice

OCTOBER 2016

STATEWIDE CIVIL LEGAL AID TECHNOLOGY CONFERENCE

OVERVIEW OF THE TECHNOLOGY CONFERENCE

SINCE 2013, THE NEW YORK STATE PERMANENT COMMISSION ON ACCESS TO JUSTICE (then known as the Task Force to Expand Access to Civil Legal Services) has focused on the role of technology in increasing access to justice in New York. Guided by the recognition that technology can transform the delivery of civil legal services, but aware of the severe resource limitations facing legal aid providers, the Commission initially conducted a comprehensive technology survey of legal services providers assisting low-income New Yorkers. Approximately 70 providers, from around the state, responded. The results of the survey indicated, overwhelmingly, that most legal services providers have not been able to integrate technology effectively into either their day-to-day internal operations or their client service delivery. And, it was clear that the inability to meet today's technological requirements was not because of a lack of desire, but, rather, due to fiscal constraints and the need for greater knowledge, expertise and understanding. As a result of the survey, the Permanent Commission was able to identify a number of key needs for assisting providers in order to maximize the use of technology for internal efficiencies and the enhanced delivery of services, including staffing, policy development and training.

Accordingly, in its 2013 Report, the Permanent Commission recommended that the civil legal services community prioritize the need for technology in order to improve access to justice for low-income New Yorkers. And, in its 2014 Report, the Permanent Commission recommended convening a technology conference, in order to educate stakeholders from around the state, promote collaborative and sustainable use and support of technology among civil legal services providers, and address the lack of dedicated funding to meet technology needs. To promote collaboration, it was further recommended that the conference be planned in partnership with NYSTech,³ and include the participation of Chief Information Officers (CIOs) from major law firms, as well as law school faculty and technology administrators.

The inaugural, statewide Tech Conference was held in 2015, at Columbia Law School. Approximately 135 attendees participated in the highly successful conference which focused on the ever-increasing important role of technology. All involved agreed that another conference should be held, the following year.

Planning for the 2016 conference began early in the year, spearheaded by a sub-group comprised of members of the Permanent Commission's Working Group on Technology and NYSTech, as well as other justice community partners. A comprehensive agenda was developed with the goal of bringing together stakeholders to learn about the latest technological initiatives, how those could be leveraged to maximize efficiency and increase service population, and the resources available to assist in implementation.

On June 23, 2016, the Statewide Civil Legal Aid Technology Conference, entitled "The Role of Technology in Promoting Access to Justice," was held at New York Law School.⁴ Helaine M. Barnett, Chair of the Permanent Commission on Access to Justice, welcomed the approximately 160 people who came from around the state and beyond to participate in the full-day conference, and thanked New York Law School and the many people involved in putting together the conference. Anthony W. Crowell, Dean and President of New York Law School, welcomed the conference attendees and highlighted the law school's significant work on law and technology. Helaine Barnett then introduced New York State Chief Judge Janet DiFiore, who offered opening remarks. Judge DiFiore applauded the Permanent Commission's efforts, noted a number of significant, relevant technological accomplishments, and encouraged the participants to focus on finding additional ways that technology could expand access to justice.

Presenters included directors and technology experts from civil legal service providers, major law firms, leading academics in the legal/technology field, private industry and others with experience and expertise to share.

3. NYSTech is a voluntary collaboration of legal services providers from across New York that convenes technology leaders regularly for information sharing and training.

4. The Conference program, including a list of participants, is attached as Appendix 1.

MORNING PLENARY - INSPIRING EXAMPLES OF TECHNOLOGY INNOVATION

SUMMARY OF PANEL DISCUSSION

THIS SESSION WAS LED BY JEFF HOGUE, Community Relations & Operations, LegalServer, and provided an overview of a number of existing technology related projects in New York, followed by a national view of the direction of technology in the provision of civil legal services. Community partners highlighted projects and technologies currently in use. Glenn Rawdon, Program Counsel for Technology, Legal Services Corporation, spoke about a new portal project being developed in conjunction with Microsoft. Chris Schwartz, Deputy Director, Legal Hotline & Legal Assistance for the Self-Represented, City Bar Justice Center, and Anna Himeline, Technology Coordinator, Legal Assistance of Western New York, reported on the status of the development of their online consumer portal pilots. Michael Donnelly, Chief Information Officer, Simpson Thacher & Bartlett LLP, described several projects undertaken by the pro bono law firm IT initiative. Ari Waldman, Associate Professor and Director, Innovation Center for Law and Technology, New York Law School, addressed the importance of integrating privacy considerations into the design of technology tools. Finally, Bill Cromie, Director of Emergent Technology, Blue Ridge Labs at Robin Hood, elaborated on how to build technology tools using a human-centered design approach.

The overall message to the community was that all technology users are not the same and that technology tools need to be built with different kinds of users in mind. This approach applies to the efforts to automate intake, as in the case of the online intake portal pilots in New York State, or through the new statewide portals that the Legal Services Corporation, Microsoft and Pro Bono Net are developing, as well as the new legal services tools that may emerge from Blue Ridge Labs this year. As these and other online activities increase, especially with respect to data collection, privacy concerns increase. Panelists stressed the need for privacy to be a primary consideration in the design of technology tools, not an afterthought.

FINDINGS

When developing sustainable technology tools for civil legal aid, best practices should include incorporating human-centered design principles, consciously attending to privacy issues, and collaborating with multiple partners in the design, execution and planning for shared governance.

MEETING CLIENT NEEDS WITH USER-FRIENDLY ONLINE TOOLS

SUMMARY OF PANEL DISCUSSION

THIS SESSION WAS LED BY ANNA HINELINE, Technology Coordinator, Legal Assistance of Western New York. First, Jeff Hogue discussed how to align potential projects with user needs. He explained the importance of analyzing whether technology is necessary to address the client need at issue and to embrace the value of “negative know-how,” which is learning from what did not work. Nationally, the civil legal aid community has developed excellent tech tools, many of which came about after significant trial and error; the New York civil legal aid community can and should take advantage of this collective knowledge. To keep the focus on users, a new technology tool should serve the organization’s mission and also incorporate a commitment to the organization’s clients. Anna Himeline described how user experience (“UX,” the emotion that a technology tool evokes) and user interface (“UI,” the technical aspects of the technology tool) can and should be considered in technology development. Rochelle Klempner, NYS Courts Access to Justice Program, illustrated these considerations through her discussion of NYS CourtHelp, NYS DIY forms and Illinois Legal

Aid Online (ILAO). She advised that UX testing need not be expensive to be effective. Co-workers, friends and family can be great resources. Tony Lu, Immigration Advocates, Pro Bono Net, echoed the need for user testing, emphasizing that the feedback from such testing should be incorporated into the design. He encouraged the use of prototypes that could test assumptions and then enable the designers to revise the product in an ongoing way that creates a feedback loop.

FINDINGS

When developing effective technology tools for civil legal aid, best practices should include researching existing tools, projects and platform; using experts to guide the user considerations; and conducting actual user testing.

GATHERING AND USING DATA

SUMMARY OF PANEL DISCUSSION

THIS SESSION WAS LED BY CHRISTINE FECKO, General Counsel, NYS IOLA Fund. Panelists discussed how data collection, especially using uniform data standards, could benefit service delivery. David Udell, Executive Director of the National Center for Access to Justice and then-Visiting Professor at Cardozo Law School, discussed how consistent data tracking provides “evidence-based research,” to support policy advocacy for clients and increase a provider’s overall effectiveness. Wilneida Negron, Project Manager at Florida Justice Technology Center, illustrated this point by explaining how Florida is currently developing a standardized data collection protocol to support both the data needs of individual providers and statewide access to justice leaders. Similarly, Greg Bloom, Chief Organizing Officer at Open Referral Initiative, provided an example of how uniform data standards can improve the speed and accuracy of information-and-referral systems, a small but powerful component of the overall civil legal aid delivery system. Shawn Morehead, Program Officer, New York Community Trust, encouraged providers to rethink the way in which they report data to funders. She advised providers to demonstrate the longer-term impact of their work on their clients’ lives, not just the money saved by state or city agencies, which can then inform service and funding priorities.

FINDINGS

When developing responsive technology tools for civil legal aid, best practices should include incorporating data standards, capturing real-time data, and enabling data analysis to improve internal program efficiency, client services and fundraising.

LEGAL TECH FAIR

A NUMBER OF INNOVATIVE TECHNOLOGY PROJECTS WERE DISPLAYED for conference attendees to examine during the lunch break. Akin to a school science fair, this Legal Tech Fair was a new feature of this year’s Technology Conference and was well-received by attendees, sparking numerous individual conversations about expansion, replication and further improvement.

PARTICIPANTS INCLUDED:

1. Citizenshipworks, a project of Pro Bono Net’s Immigration Advocates Network, is a free, online self-help service which provides users with step-by-step assistance through the citizenship application process, www.citizenshipworks.org;

2. NYS Courts Advocate and Legal Services Assisted Document Assembly Programs, authored by the NYS Courts Access to Justice Program, www.nycourts.gov/ip/nya2j;
3. A Salesforce-based, volunteer management tool developed by Legal Services NYC and Pro Bono Net, www.legalservicesnyc.org;
4. Various online screening and triage tools used by Pro Bono Net, www.probono.net;
5. WriteClearly/ReadClearly tools, developed by LawNY and Urban Insight, to assist civil legal aid providers with improving the readability of legal information, <http://openadvocate.org/writeclearly>, <http://openadvocate.org/readclearly>;
6. Closing the Gap, a program for managing pro bono volunteer attorneys throughout upstate New York and Long Island, managed by the Legal Aid Society of Northeastern New York, in partnership with Pro Bono Net, <https://www.closingthegapny.org>.

FINDINGS

Innovative technology initiatives and partnerships are active within the New York State civil legal aid community and deserve more attention so that they may be replicated or expanded to include additional partners.

SECURITY AND TECH POLICIES

TWO CONCURRENT SESSIONS WERE HELD ON TECHNOLOGY SECURITY AND TECHNOLOGY POLICIES. Participants attended the session that aligned with their technical expertise and familiarity with the issues.

Michael Hernandez, Director of Consulting Services, Just-Tech, moderated a panel that included Michael Donnelly, Chief Information Officer, Simpson Thacher & Bartlett LLP and Tina M. Foster, Foster Law Firm. The panel covered best practices in managing more secure internal and cloud-based environments; mobile security issues; data breach risk reduction; development of security governance and audit capacities; and current trends in security.

John Greiner, President, Just-Tech, moderated the advanced security discussion, which included panelists Scott Arciszewski, Developer, LegalServer; Peter Lesser, Director, Global Technology, Skadden, Arps, Slate, Meagher & Flom LLP; Joseph Melo, Director of Engineering, Just-Tech; and Mary O'Shaughnessy, Manager, Information Technology, Her Justice. The panel members discussed the major security threats for civil legal aid providers; data breach notification and liability issues; tips for determining who to follow on tech and security matters; basic security health checklists; and recommendations for leadership and setting tech policy. Panelists noted that security technologies, such as two-factor authentication and centralized mobile device management, are becoming more affordable and providers should investigate their use.

Civil legal aid providers indicated their understanding of the serious threats to their data and technology systems, and expressed an eagerness to learn about and improve their security. Some providers have made considerable progress in advancing their security related systems and operations and offered to share their knowledge and experience with colleagues.

FINDINGS

When developing secure technology tools for civil legal aid, best practices should include paying close attention to security threats, protecting confidential data, developing and maintaining appropriate security policies and providing security awareness and training to staff and volunteers.

TECHNOLOGY STRATEGIZING FOR PROGRAM DIRECTORS & SENIOR MANAGEMENT

IN THIS SESSION, ORGANIZED BY CHRISTINE FECKO, General Counsel, IOLA Fund of the State of New York, participants attended two 30-minute conversations that were chosen from ten topics of interest to directors and managers. Each of the ten facilitated conversations was offered twice. Approximately five to ten people attended each conversation to allow for one-to-one exchanges of information and experience. Those in the small groups benefited from technical advice from the IT professionals who participated and provided peer support to each other. The conversation facilitators reported lively and engaged discussions, but had not been asked to report out any formal findings regarding the conversations. The topics and facilitators were as follows:

TOPIC & FACILITATORS

- **Managing Mobile Devices:** Jennifer DeCarli (Her Justice), Ben Pongsanarakul (LIFT), Dilip Kulkarni (LS-NYC), Susan Patnode (Rural Law Center)
- **Change Management:** Randal Jeffery (NYLAG), Janet Miller (CAMBA), Andrea Zigman (LS-NYC), Kathia Casion (Legal Aid Society of Rochester)
- **Technology Planning and Budgeting:** Lillian Moy (LASNNY), Myra Loewenstein (LSHV), Ken Perri (LawNY)
- **Project Management Planning and Tools:** Kermit Wallace (Strook), McGregor Smyth (NYLPI)
- **Technology Purchasing:** Katie Urtnowski (Urban Justice Center), Curt Meltzer (Chadbourne), Keith McCafferty (LawNY)
- **LawHelpNY:** Mark O'Brien and Michelle Born (ProBono.Net)
- **Case Management Systems and Document Management Systems:** Sally Curran (Volunteer Lawyers Program of Onondaga County), Anne Erickson (Empire Justice Center), Randal Jeffery (NYLAG), Jennifer DeCarli (Her Justice)
- **Security:** Peter Lesser (Skadden)
- **Document Assembly:** Rochelle Klempner (NYS Courts), Sun Kim (NYS Courts), Glenn Rawdon (Legal Services Corporation), Tony Lu (ProBono.Net)
- **Video Conferencing:** Ken Perri (LawNY), Dennis Kaufman (Legal Services of Central NY), Cynthia Knox (Legal Services of the Hudson Valley), Lisa Frisch (The Legal Project)

FINDINGS

When developing collaborative technology tools for civil legal aid, best practices should include sharing information on managing technology with peer organizations.

ESSENTIAL TOPICS IN IT MANAGEMENT

SUMMARY PANEL OF DISCUSSION

THIS SESSION WAS LED BY JOHN GREINER, Michael Donnelly and Anna HineLine, who discussed topics of importance to providers statewide, such as document management systems and technology training for advocates and support staff. The first topic, document management, was explored through a case study of Empire Justice Center's recent installation of NetDocuments. John Roman, Director of IT Firm Operations & E-discovery Services, at Nixon Peabody, and Ray Burke, staff attorney, outlined the challenges that Empire Justice Center faced in its daily operations, without a document management system, in finding, reusing,

sharing, and securing their documents, and how the installation of such a system revolutionized its practice. Implementation of document management is a worthwhile system improvement for legal aid agencies, but requires buy-in from both management and staff, as well as a significant investment of resources for design, purchase and staff training.

The discussion then led to another popular concern among providers: technology training. Panelists Ellen Kearns, Professional Legal Trainers Group; Gina Buser, Traveling Coaches; and John Attinger, Capensys, discussed the impact of insufficient technology training for advocates and program staff, and how training and minimum skill proficiencies can be a strategic benefit to programs in better serving their mission and providing individual employee growth. Anna Hineline introduced a training initiative that, if funded, would build a comprehensive approach to technology training for the civil legal aid community that is sustainable, collaborative, economical and replicable.

FINDINGS

When maintaining technology systems for civil legal aid, best practices should include taking advantage of pro bono technology support and recommendations, nonprofit discounts and free and low-cost training resources.

KEYNOTE ADDRESS

SETH ANDREW, then-Senior Advisor, Executive Office of the President, Office of Science and Technology Policy, The White House, delivered the Keynote Address.

Using playbook.cio.gov as a case study to guide development, Seth reviewed the following key 13 “Digital Service Plays” as the starting point for discussion (<https://playbook.cio.gov>):

1. Understand what people need
2. Address the whole experience, from start to finish
3. Make it simple and intuitive
4. Build the service using agile and iterative practices
5. Structure budgets and contracts to support delivery
6. Assign one leader and hold that person accountable
7. Bring in experienced teams
8. Choose a modern technology stack
9. Deploy in a flexible hosting environment
10. Automate testing and deployments
11. Manage security and privacy through reusable processes
12. Use data to drive decisions
13. Default to open (standards, data, interoperable, open-source, open APIs)

The theme that emerged was that service providers should not try to build the portal to end all portals. Rather, online tools are most effective when they are simple and intuitive.

Online legal assistance tools should be made available through and integrated with online sites that the targeted community frequents; the tools should be constructed with more than one entry point (i.e., the civil legal aid provider’s website).

CLOSING PLENARY

SUMMARY OF PANEL DISCUSSION

MODERATED BY CHRISTINE FECKO, General Counsel, NYS IOLA Fund, this panel first provided the facilitators from the earlier panels with an opportunity to briefly report out the key points from their sessions.

Next, panel members Deborah Wright; Mark O’Brien, Executive Director, Pro Bono Net; Shawn Morehead, Program Officer, New York Community Trust; Glenn Rawdon; and Nishan DeSilva, Chief Technology Officer, Corporate External Legal Affairs, Microsoft, reflected on one of the themes that had emerged at the conference—the need to consider feedback from the user community when developing technology to best deliver civil legal services. They also discussed how the New York civil legal aid community could move forward to implement the ideas that had been generated to benefit providers and ensure that the state is at the forefront of providing civil legal services.

CONFERENCE EVALUATION AND FEEDBACK

According to a detailed, post-conference survey sent to all attendees, the conference was an overwhelming success. Both informal feedback at the conference and the subsequent attendee survey revealed that the security discussions, the director breakout session and the Legal Tech Fair stood out as conference favorites that should be repeated.

Suggestions for next year include allocating more time and space for the Tech Fair, increasing the participation of law firm IT professionals and securing greater participation by technology companies.

APPENDIX 1 TO THE TECHNOLOGY CONFERENCE REPORT

NEW YORK STATE PERMANENT COMMISSION ON ACCESS TO JUSTICE



2016 STATEWIDE CIVIL LEGAL AID
**TECHNOLOGY
CONFERENCE**

**THE ROLE OF TECHNOLOGY
IN PROMOTING ACCESS TO JUSTICE**

Convened by the New York State Permanent Commission on
Access to Justice at New York Law School, June 23, 2016

HELAINÉ M. BARNETT

Chair, New York State Permanent Commission on Access to Justice



2016 STATEWIDE

CIVIL LEGAL AID TECHNOLOGY CONFERENCE

#A2JTECHNY • [HTTPS://NYSTECH2016.SCHED.ORG](https://nystech2016.sched.org)

8:30–9:00 AM

REGISTRATION AND LIGHT REFRESHMENTS

LOBBY

9:00–9:15 AM

WELCOME AND INTRODUCTION

AUDITORIUM

Helaine M. Barnett, Chair, New York State Permanent Commission on Access to Justice;
President, Legal Services Corporation (2004-2009)

Anthony W. Crowell, Dean and President, New York Law School

OPENING REMARKS

Hon. Janet DiFiore, Chief Judge of the State of New York

9:15–10:30 AM

MORNING PLENARY

AUDITORIUM

INSPIRING EXAMPLES OF TECHNOLOGY INNOVATION

Facilitator: Jeff Hogue, Community Relations and Operations, LegalServer; Co-Chair, NLADA
Technology Section

This series of presentations will highlight exciting technologies currently in use or within reach
of the New York State civil legal services community.

- **Statewide Access Portal Project**
Glenn Rawdon, Program Counsel for Technology, Legal Services Corporation
- **Online Consumer Portal Pilots**
Christopher Schwartz, Deputy Director, Legal Hotline & Legal Assistance
for the Self-Represented, City Bar Justice Center
Anna Hineline, Technology Coordinator, Legal Assistance of Western New York
- **Pro Bono Law Firm IT Initiative and Training Pilot**
Michael Donnelly, Chief Information Officer, Simpson Thacher & Bartlett LLP
- **Privacy by Design**
Ari Waldman, Associate Professor and Director, Innovation Center
for Law and Technology, New York Law School
- **Human-Centered Design to Build Tools for Access to Justice**
Bill Cromie, Director of Emergent Technology, Blue Ridge Labs @ Robin Hood

PROGRAM

10:45–11:45 AM

CONCURRENT BREAKOUT SESSION ONE

1.A. MEETING CLIENT NEEDS WITH USER-FRIENDLY ONLINE TOOLS

AUDITORIUM

Facilitator: Anna Hinline, Technology Coordinator, Legal Assistance of Western New York

Presenters will examine the importance of incorporating the user perspective in the design, usability and fitness of online information and tools. Topics will include user interface design, user goals and needs, user testing and addressing service gaps.

- **Aligning Potential Projects with User Needs**
Jeff Hogue, Community Relations and Operations, LegalServer;
Co-Chair, NLADA Technology Section
- **Surprises in Real World User-Testing**
Rochelle Klempler, Chief Counsel, NYS Courts Access to Justice Program
- **User-Interface Evaluations**
Tony Lu, Product Manager, Immigration Advocates Network, Pro Bono Net

1.B. GATHERING AND USING DATA

CONFERENCE CENTER

Facilitator: Christine Fecko, General Counsel, New York State IOLA Fund

This panel will explore the benefits to the civil legal services provider community of sharing data and creating uniform data standards, including better data collection, improved resource allocation and support for increased private funding.

- **Data to Support Evidence-Based Research**
David Udell, Executive Director, National Center for Access to Justice and Visiting Professor, Cardozo Law School
- **Uniform Data Standards in Statewide Online Access Systems**
Wilneida Negron, Project Manager, Florida Justice Technology Center
- **Toward Openness and Interoperability of Information- and-Referral Systems**
Greg Bloom, Chief Organizing Officer, Open Referral Initiative
- **Philanthropy's Approach to Data**
Shawn Morehead, Program Officer, New York Community Trust

PROGRAM

11:45 AM–1:00 PM

LUNCH

CONFERENCE CENTER

LEGAL TECH FAIR

FACULTY COMMONS

Tabletop demonstrations and discussions of innovative tech projects.

- **Advocate and Legal Services Assisted Document Assembly Programs**
NYS Courts Access to Justice Program
Rochelle Klempner, Chief Counsel
Sun Kim, Special Counsel for Technology Initiatives
- **Citizenshipworks**
Immigration Advocates Network
Sandra Sandoval, Program Manager
Tony Lu, Product Manager
- **Closing the Gap**
Legal Aid Society of Northeastern New York
Melody Harkness, PAI PBIF Coordinator
Michael Grunenwald, Pro Bono Net
- **Innovations in Online Legal Screening and Triage Tools**
Pro Bono Net
Niki DeMel, Pro Bono and Special Initiatives Coordinator
- **Salesforce as a Management System**
Volunteer Legal Services Project
Bryan Babcock, Finance/Database/IT
- **Volunteer Management via Salesforce**
Legal Services NYC
Adam Heintz, Director of Pro Bono Services
Nicole Jeong, Pro Bono Coordinating Attorney
- **WriteClearly/ReadClearly**
Legal Assistance of Western New York
Anna Hineline, Technology Coordinator

1:00–2:00 PM

CONCURRENT BREAKOUT SESSION TWO - SECURITY AND TECH POLICIES

Attendees to these sessions on technology security and sound technology policies will have the option to attend either a fundamental discussion or an advanced discussion, depending on their technical expertise and familiarity with the issues.

2.A. FUNDAMENTALS OF SECURITY AND TECH POLICIES CONFERENCE CENTER

Facilitator: Christopher Schwartz, Deputy Director of Hotline and Legal Assistance for the Self-Represented, City Bar Justice Center

Topics to be discussed include a review of top threats to civil legal aid providers, data breach notification and liability issues, tips for determining who to follow on tech and security matters, basic security health checklists, and recommendations for leadership and tech policy setting.

- **Security Fundamentals**
Michael Hernandez, Director of Consulting Services, Just-Tech
- **Technology Policies**
Michael Donnelly, Chief Information Officer, Simpson Thacher & Bartlett LLP
- **Breach Notification**
Tina M. Foster, Foster Law Firm

2.B. ADVANCED TOPICS IN SECURITY AND TECH POLICIES ROOM 220

Facilitator: John Greiner, President, Just-Tech

Topics will include best practices in managing more secure internal and cloud-based environments, mobile and BYOD security issues, data breach risk reduction, developing security governance and audit capacities, and current trends in security.

- Scott Arciszewski, Developer, LegalServer
- Peter Lesser, Director, Global Technology, Skadden, Arps, Slate, Meagher & Flom LLP
- Joseph Melo, Director of Engineering, Just-Tech
- Mary O'Shaughnessy, Manager, Information Technology, Her Justice

PROGRAM

2:15–3:30 PM

CONCURRENT BREAKOUT SESSION THREE

3.A. TECHNOLOGY STRATEGIZING FOR PROGRAM DIRECTORS & SENIOR MANAGEMENT

CONFERENCE CENTER

Facilitator: **Christine Fecko**, General Counsel, New York State IOLA Fund

Participants will be able to choose to attend two of the 30-minute targeted conversations on topics of interest to directors and managers, as identified below. Each facilitated conversation will max out at about ten people, in order to allow for a one-on-one exchange of information and experience.

1. Managing Mobile Devices at Work
2. Change Management
3. Tech Planning & Budgeting
4. Project Management Planning & Tools
5. Tech Purchasing
6. Changes at LawHelpNY
7. Case Management Systems/Document Management Systems
8. Security
9. Document Assembly
10. Video Conferencing

3.B. ESSENTIAL TOPICS IN IT MANAGEMENT

ROOM 220

Facilitator: **John Greiner**, President, Just-Tech

Technology managers will discuss topics of importance to providers statewide, in order to enable them to navigate common challenges, and partake in innovative tech projects and new resources. The session will explore document management systems and technology training for advocates and support staff.

- **Document Management Systems**
Ray Burke, Staff Attorney, Empire Justice Center
John Roman, Director, Electronic Discovery & Information Technology Operations, Nixon Peabody
Michael Donnelly, Chief Information Officer, Simpson Thacher & Bartlett LLP
 - Primer on Document Management Solutions (DMS)
 - The Value of DMS for the Legal Aid Community
 - Report Back on the Empire Justice Center's DMS Project

PROGRAM

- **Technology Training for Advocates and Support Staff**

Anna Hine, Technology Coordinator, Legal Assistance of Western New York
Gina Buser, Chief Executive Officer, Traveling Coaches
Ellen Kearns, Technical Trainer, Wachtell, Lipton, Rosen & Katz

- The Value of Professional Technology Training
- The Challenges to Developing Effective Training Programs
- New Statewide Training Initiatives

3:45–4:15 PM

KEYNOTE ADDRESS

CONFERENCE CENTER

Seth Andrew, Senior Advisor, Executive Office of the President, Office of Science and Technology Policy, The White House

4:15–5:00 PM

CLOSING PLENARY

CONFERENCE CENTER

Moderator: Christine Fecko, General Counsel, New York State IOLA Fund

Each facilitator will report out the key points from their sessions. The panel will then offer feedback on the day's conference and discuss ways to implement the technology priorities of New York's civil legal services community.

- Deborah Wright, President, UAW Local 2325; Chair, Technology Working Group, New York State Permanent Commission on Access to Justice
- Mark O'Brien, Executive Director, Pro Bono Net
- Shawn Morehead, Program Officer, New York Community Trust
- Glenn Rawdon, Program Counsel for Technology, Legal Services Corporation
- Nishan DeSilva, Chief Technology Officer, Corporate External Legal Affairs, Microsoft

CLOSING REMARKS

Helaine M. Barnett, Chair, New York State Permanent Commission on Access to Justice; President, Legal Services Corporation (2004-2009)

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REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK

APPENDIX 13:

**Memorandum on Prior Reform Efforts and Proposals to
Simplify the New York State Court System**

NOVEMBER 2016

*A Review of Prior Reform Efforts and Proposals
to Simplify the New York State Court System*

I. Executive Summary

On June 15, 2016, Sullivan & Cromwell LLP was asked by the Permanent Commission on Access to Justice (the “Permanent Commission”) to review historical efforts to simplify the structure of the New York State Court System (the “NY Court System”) and to provide its initial findings to the Permanent Commission at its July 20, 2016 meeting. This memorandum summarizes the history and outcome of select court reform efforts that have been considered and obstacles encountered in the course of those efforts.

The reform efforts summarized in this memorandum all aimed, at some level, to reduce system complexity in order to address issues including disproportionate judicial caseloads, inconsistent calendaring, and confusion among practitioners and litigants. Over the years, proposed solutions to these problems have included calls for sweeping structural change, such as would require a constitutional amendment (e.g., recommendations of the 2007 Special Commission for a two-tier court structure),¹ as well as proposals for targeted reform, such as may be implemented with administrative power alone (e.g., creation of the Commercial Division within the Supreme Court in 1995).²

Results of these efforts have been mixed. Some proposals, such as the 1985 Senate Plan,³ were never implemented, in part because implementation would have required constitutional amendment. Others, such as the IDV Courts,⁴ were implemented through targeted OCA action, and have seen at least some reported success. Still others, such as the 2004 Bronx Reform,⁵ were successfully implemented but later abandoned after they failed to have the desired effect.

II. Background

The current NY Court System is composed of four appellate courts and eleven trial courts, including: the Supreme Court, the Court of Claims, Surrogate’s Courts, County Courts, Family Courts, a New York City Civil Court, a New York City Criminal Court, District Courts for Long Island and a City Court per city (excluding New York City) as well as Town and Village Justice Courts. These courts have varying jurisdictions, which can add a level of complexity to the process of adjudicating some types of matters. For example, Family Courts do not have jurisdiction over families with matrimonial (including custody matters for those same families) or family-related criminal cases (e.g., domestic violence) even if such families are in Family Court for other family-related matters. This means that *often, families have to shuffle*

¹ See *infra*, at Part V The 2007 Special Commission’s Reform Proposals.

² See *infra*, at Part IV.B Commercial Division.

³ See *infra*, at Part III.B The 1985 Senate Plan.

⁴ See *infra*, at Part IV.C IDV Courts.

⁵ See *infra*, at Part IV.D The 2004 Bronx Reform.

*between multiple courts for hearings, often retelling the same story to multiple judges, in order to resolve family-related disputes.*⁶

The impact of the complexity of the NY Court System on family law matters is of particular importance. The Task Force on the New York State Constitutional Convention observed in 1997 that domestic matters provided the “most extreme example[] of fragmentation” of trial courts. The NY Constitutional Convention Task Force’s 1997 Report explained that:

Supreme Court has sole jurisdiction over divorces, while it shares jurisdiction over custody, visitation and support with Family Court. Incidents of domestic violence can be addressed in family offense proceedings in Family Court, and, if serious enough, in criminal prosecutions in a local criminal court (Criminal Court, District Court, or a city, village or town court), County Court or at the Criminal Term of Supreme Court, as well. If the monied spouse stops paying rent or if the level of domestic violence is such that the landlord contends it breaches the lease, issues relating to the possession of real property may need to be resolved in Housing Court. Finally, arrearages in maintenance and child support can be sought by separate lawsuits in Civil Court.⁷

Reform advocates have argued that this shuffling between numerous courts has a negative impact on litigants and recommended that Family Court should be merged into the Supreme Court to provide “one forum for intra-family disputes.”⁸

In the course of pursuing other reform efforts and proposals, advocates have identified various factors negatively impacting the experience of litigants in the NY Court System. Inconsistent calendaring methods can cause a burden for litigants who have to miss work multiple times to meet the independent calendaring requirements of multiple judges. Divergent orders can be entered by different judges for the same dispute, which not only harms litigants, but also reduces the perceived legitimacy of the courts. Shortages of judges in certain courts are addressed through temporary transfers and reassignments of judges from one court to another, causing issues relating to selection, subject matter expertise and geography.

These inefficiencies also take a toll on the New York economy. *It was estimated in 2007 that reducing these complexities would result in a combined cost savings of approximately \$443 million for litigants, businesses, state agencies and municipalities, due to productivity and wages lost every year, owing to litigants missing work to attend court, paid legal fees and related costs.*

⁶ See *A Court System for the Future: The Promise of Court Restructuring in New York State*, SPECIAL COMMISSION FUTURE N.Y. STATE COURTS (2007) [hereinafter, 2007 State Report], http://nycourts.gov/reports/courtsys-4future_2007.pdf; see also *Court System History*, NEW YORK STATE UNIFIED COURT SYSTEM (last visited July 14, 2016), <https://www.nycourts.gov/courts/6jd/history.shtml>.

⁷ *Report of the Task Force on the New York State Constitutional Convention*, 52 RECORD NO. 5 522, 595-604 (1997).

⁸ In 2007, this problem was discussed during the final plenary session of the conference, *The Family Court in New York City in the 21st Century: What Are Its Roles and Responsibilities?* The session report advised engaging with lobbyists to encourage elected officials to push for such reform. See Todd Arena, *Report and Recommendations of the Final Plenary Session*, 40 COLUM. J. L. & SOC. PROBS. 443 (2006-2007).

III. Calls for Broad Restructuring (1962 to 2002)⁹

Since 1962,¹⁰ a number of commissions and other advocates have analyzed the NY Court System and presented various reform proposals to the presiding Chief Judge or the NY Legislature. These early reform efforts and proposals near universally recommended a wholesale restructuring of the NY Court System (e.g., merging all trial courts into one Supreme Court to create a two-tier court structure), which would require a constitutional amendment for adoption and implementation. None of these efforts were adopted and implemented wholesale. Each reform effort and proposal failed to garner the necessary political will to achieve success.

A. The Dominick and Vance Commissions¹¹

In the early 1970s, two commissions were formed to review the NY Court System and recommend proposals for its reform. Each commission ultimately advocated for sweeping reform of the administration, financing, structure and method of selecting judges of the NY Court System. In 1970, the NY Legislature established the Temporary State Commission to Study the Courts (the “Dominick Commission”). *The Dominick Commission issued a report in 1973 recommending a merger of the Supreme Court, the Court of Claims, the County Court, the Surrogate’s Court and the Family Court into a single Superior Court with general and original jurisdiction over all criminal and civil matters. This recommendation sought in part to address the surge of criminal cases before the courts following the enactment of the Rockefeller Drug Laws in 1973.*¹² In 1974, Governor Hugh Carey established the Task Force on Judicial Selection and Court Reform to review the NY Court System (the “Vance Commission”). The Vance Commission agreed with and echoed the proposal of the Dominick Commission, recommending a merger of courts within the NY Court System.

While the wholesale recommendations of the Dominick Commission and Vance Commission were never adopted and implemented, some progress towards simplifying the NY Court System was made. In 1976, the NY Legislature passed Article VI of the NY Constitution, which centralized court administration under the Chief Administrator/Chief Administrative Judge, authorized the gubernatorial appointment of judges to the Court of Appeals and abolished the Court on the Judiciary. In 1977, Article VI was passed by the NY Legislature again, because New York Constitutional amendments must be passed by the legislature twice in two consecutive years before being presented to voters for ratification.¹³ These amendments provided only minor improvements to the NY Court system, certainly much more restrained than

⁹ See 2007 State Report, *supra* note 4. See also *Court System History*, NEW YORK STATE UNIFIED COURT SYSTEM (last visited July 14, 2016), [hereinafter, *Court System History*], <https://www.nycourts.gov/courts/6jd/history.shtml>.

¹⁰ In 1846, the NY Court System was overhauled pursuant to discussions and agreements arising from a Constitutional Convention and the subsequent adoption of Article VI of the New York State Constitution (the “NY Constitution”). In 1880, the New York State Legislature (the “NY Legislature”) enacted the NY Court System’s Code of Civil Procedure, which was replaced by enactment of the Civil Practice Act in 1920. In 1962, a new Article VI of the NY Constitution was adopted, restructuring the NY Court System into its prevailing form.

¹¹ 2007 State Report, *supra* note 4, at 52-54; see also *Court System History*, *supra* note 7, at *1.

¹² *Court System History*, *supra* note 7, at *1.

¹³ Constitutional amendments must be passed two consecutive years by the NY Legislature before being presented to voters for ratification. See 2007 State Report, *supra* note 4, at 99; see also *Amendment Victory Spurs Court Change*, N.Y. TIMES (November 10, 1977), <http://www.nytimes.com/1977/11/10/archives/new-jersey-pages-amendment-victory-spurs-court-change-plans-to-make.html>.

the sweeping consolidation that had been recommended earlier in the decade by the Dominick and Vance Commissions.

B. The 1985 Senate Plan¹⁴

In the 1980s, members of the NY Legislature developed a slightly more tailored reform proposal compared to the recommendations of the Dominick Commission and Vance Commission of the 1970s. In 1985, John R. Dunne, Chairman of the Senate Judiciary Committee, and Warren M. Anderson, Senate Majority Leader, proposed a plan to restructure the NY Court System (the “1985 Senate Plan”). *The 1985 Senate Plan proposed (i) merging the Court of Claims, County Court, Surrogate’s Court, Family Court, District Courts and New York City Criminal and Civil Courts into a single Supreme Court, (ii) creating a Surrogate’s Division of the Supreme Court for counties with more than 200,000 residents, and (iii) forming a Fifth Judicial Department for the Ninth and Tenth Judicial Districts.*

The creation of a Fifth Judicial Department specifically stalled the reform effort, as political actors largely disagreed over the redrawing of electoral lines within the Ninth and Tenth Judicial Districts.¹⁵ The NY Legislature approved a court reorganization in 1986, however, that closely mirrored the 1985 Senate Plan, but New York voters never voted on the proposal. When the proposal was resubmitted for a second vote in 1987, it failed to pass.¹⁶

C. The 1997 and 2002 Proposals¹⁷

In 1997, Chief Judge Judith S. Kaye and then-Chief Administrative Judge Jonathan Lippman proposed a concurrent resolution to the NY Legislature to amend Article VI of the NY Constitution (the “1997 Proposal”) for the purpose of restructuring and simplifying the New York trial courts.¹⁸ *The 1997 Proposal provided for (i) reconfiguration of the state’s major*

¹⁴ 2007 State Report, *supra* note 4, at 55.

¹⁵ Maurice Carroll, *Plan to Simplify New York Trial Courts Hit Snags*, N.Y. TIMES (October 6, 1985); Maurice Carroll, *Albany Republicans Offer Plan to Merge Trial Courts*, N.Y. TIMES (July 9, 1985).

¹⁶ Similar concerns were raised by the Committee on State Courts of Superior Jurisdiction of the New York City Bar in a 1985 Committee Report, advocating for a reform of the Master Calendar System into an Individual Calendar System, that identified – (i) the inherent delay, poor substantive results and procedural inefficiency produced from the division of components of cases among several judges; (ii) without continuous responsibility and control over a case, judges are unable to direct and maintain the pace and timeline of litigation which may result in “judge-shopping” (e.g., a motion denied by one judge may be accepted by another judge for the same case), and (iii) with numerous judges hearing a single case, no single judge maintains accountability and may be held accountable for the entirety of the case – as the primary problems afflicting the NY Court System that would be bettered by an Individual Calendar System. The 1985 Committee Report bespoke the Individual Calendar Parts (the “IC Parts”) use in New York County in 1971, which experimented with individual calendaring by assigning one case to one *part* as opposed to one *judge*, was rather successful at reducing case backlog and disposing of cases at first, but ultimately failed in its efforts largely owing to a constant reshuffling of judges. *See* Committee on State Courts of Superior Jurisdiction, *Committee Report: Report Recommending the Establishment of an Experimental Individual Calendar Program in the Civil Term of Supreme Court in New York City*, 40 REC. ASS’N B. CITY N.Y. 129 (1985).

¹⁷ 2007 State Report, *supra* note 4, at 55-57.

¹⁸ Calls and the need to amend Article VI of the NY Constitution were acknowledged by the Task Force on the New York State Constitutional Convention in its 1997 Report, which ultimately concluded voters should vote “no” in regards to commencing a Constitutional Convention, but stated that while the need for constitutional revision of Article VI is grave and that “the Association has long supported merit selection of judges, merger of trial courts of record into a single court, creation of a Fifth Department of the Appellate Division, increasing the monetary jurisdiction of the Civil and District Courts, according Housing Court judges the same status as Civil Court judges,

trial courts into a two-tiered structure, which would consist of a Supreme Court and a statewide system of District Courts with limited jurisdiction, (ii) partition of the Supreme Court into five divisions (family, commercial, probate, state claims and criminal), and (iii) creation of a Fifth Judicial Department. Later that year, however, the New York State Assembly Judiciary Committee announced an alternative reform proposal that called for a more limited restructuring of the trial courts. The NY Legislature's 1998 session closed without a vote on the proposed concurrent resolutions. In 2002, Chief Judge Kaye announced a modified version of the 1997 Proposal (the "2002 Proposal"). The 2002 Proposal incorporated all of the 1997 Proposal, but excluded the merger of the Surrogate's Court into the Supreme Court and added a recommendation for the mandatory transfer of most criminal actions or proceedings involving domestic violence or other family offenses to the Supreme Court. As it did for the 1997 Proposal, the NY Legislature took no action on the 2002 Proposal.

IV. Targeted Reform Efforts (1993-2004)

While reform proposals that would require a constitutional amendment to implement have been largely unsuccessful at gaining political traction, the exigencies of increasing populations to serve and backlogs of cases to handle have necessitated the development of certain smaller-scale court reforms. The Office of Court Administration for the NY Court System (the "OCA") under the direction of the Chief Administrative Judge has taken the lead in adopting and implementing incremental, tailored reforms. These reforms have ranged from the creation of courts tailored towards the local communities served to the formation of a single judicial forum for victims of domestic violence to be heard. While the OCA has implemented these reforms to attempt to fill gaps in the overly complex NY Court System, its efforts have had varying levels of success.

A. Community Courts¹⁹

In 1993, the first "community court" was opened in New York City, representing a two-year planning effort and a unique collaboration among government agencies, business groups and non-profit organizations, including the NY Court System, the City of New York and the Fund for the City of New York. Community courts were created to provide a neighborhood-focused solution to identified community problems through an array of non-traditional programs, such as community mediation, job training and placement, drug treatment, homeless outreach and various juvenile-tailored programs; each of which the community court oversees. Studies have found community courts to be highly effective at lowering recidivism and saving costs.²⁰

improvement of the procedures for certification and removal of judges, and simplification of the relevant constitutional text, . . . [when] [w]eighed against the risks to other constitutional provisions, however, the need for amendment in [Article VI] is not sufficient to justify calling a constitutional convention." The 1997 Report found that the NY Legislature has historically seemed reluctant to consider constitutional reforms to Article VI that would significantly alter the selection of judges or the organization of courts. *Report of the Task Force on the New York State Constitutional Convention*, 52 RECORD NO. 5 522, 595-604 (1997).

¹⁹ 2007 State Report, *supra* note 4, at 65-66.

²⁰ See, e.g., Michele Sviridoff et. al., *Dispensing Justice Locally: The Impacts, Cost and Benefits of The Midtown Community Court*, CENTER FOR COURT INNOVATION (2002), <https://www.ncjrs.gov/pdffiles1/nij/grants/196397.pdf>.

B. Commercial Division²¹

In 1995, the Commercial Division of the Supreme Court was created under Chief Judge Kaye's direction. The Commercial Division was created to provide a forum for complex commercial litigation. This specialized forum eases resolution of business disputes, in part, by (i) appointing to the Commercial Division justices with greater expertise on commercial matters, and (ii) overseeing and managing cases and setting and enforcing deadlines to avoid creating any backlog. The Commercial Division has been reported a success, but has not yet been implemented on a statewide scale.²²

C. IDV Courts²³

In 2001, as part of a unified "one family/one judge" reform model, in which a single judge hears all cases, criminal, family and matrimonial, related to a single family, the OCA established the first of many Integrated Domestic Violence Courts (the "IDV Courts"), which sought to fill perceived gaps (e.g., an inability to address custody issues or divorce proceedings) in the Domestic Violence Courts established in 1996.²⁴ The OCA formed the IDV Courts to improve court efficiency, allow for more informed judicial decision-making, promote victim safety, eliminate conflicting orders and improve service delivery to victims of domestic violence as well as their children.²⁵ The IDV Courts improve the ability of the NY Court System to handle domestic violence matters through certain program elements, including:²⁶

- Comprehensive Jurisdiction. The IDV Courts have jurisdiction over all matters affecting families and children, including intra-family criminal offenses.²⁷
- One Family/One Judge. The judge assigned to the family-specific court case(s) is cross-trained to handle all other matters, criminal and civil, relating to such family.
- Defendant Monitoring. The IDV Courts address the issue of defendant accountability in part through more rigorous judicial monitoring for defendant compliance with judicial

²¹ 2007 State Report, *supra* note 4, at 61-63.

²² The Commercial and Federal Litigation Section of the New York State Bar Association, for example, declared the Commercial Division "a case study in successful judicial administration." 2007 State Report, *supra* note 4, at 62.

²³ 2007 State Report, *supra* note 4, at 63-65.

²⁴ Hon. Judy Harris Kluger & Liberty Aldrich, Esq., *An Argument for a One-Judge/One-Family Approach to Domestic Violence: Lessons Based on New York's Model*, Batterer Intervention Services Coalition of Michigan, Fall Conference, Battle Creek, at *1-2 (November 4, 2009), <https://www.nycourts.gov/courts/family-violence/pdfs/J-Kluger-Integrated-Domestic-Violence-Courts-whitepaper-091009.pdf>.

²⁵ Melissa Labriola et al., *A National Portrait of Domestic Violence Courts*, CENTER FOR COURT INNOVATION (December 2009), <https://www.ncjrs.gov/pdffiles1/nij/grants/229659.pdf>.

²⁶ National Institute of Justice, *Program Profile: New York Integrated Domestic Violence Courts* (October 26, 2015), <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=435>.

²⁷ The IDV Courts work closely with the Domestic Violence Courts (the "DV Courts"), which hear domestic violence cases involving felonious conduct, and have concurrent jurisdiction in many instances. To be eligible to transfer a case from a DV Court to an IDV Court, a family must have a criminal court case and at least one family court or matrimonial case (typically, a family offense or a custody or visitation case). Some IDV Courts also take child support, child abuse or neglect and paternity cases. An IDV Court judge reviews eligible cases and decides whether it is appropriate to transfer any of such cases to an IDV Court. Once such a case is transferred, any subsequent cases involving that family automatically fall within the jurisdiction of the IDV Court.

orders. IDV Court judges will monitor defendants closely through, for example, regularly scheduled compliance dates and are quick to respond to allegations of noncompliance.

- Efficiency. The IDV Courts handle both civil and criminal cases in a single integrated hearing to reduce the numbers of court appearances for litigants, which increases the speed of dispositions and streamlines the process for participants.
- Victim Services. The IDV Courts assist families in accessing community services and resources, in part, by connecting litigants with the providers of such services. The IDV Courts work closely with community-based victims' advocates to coordinate services for victims, including through the provision of counseling, job training and housing.²⁸

The reported success of the IDV Courts is likely attributable entirely to these program elements.²⁹ The IDV Courts have established a single forum for easier resolution of domestic violence matters; victims of domestic violence may tell their story one time, to one judge and have their matter resolved through a mechanism that also provides support and continuing services to victims in need.

D. The 2004 Bronx Reform³⁰

In 2004, the Bronx Supreme Court began a pilot reform effort that merged hearings of misdemeanor and felony cases (the "2004 Reform"). The 2004 Reform sought to streamline hearing of criminal matters to minimize the amount of time accused individuals waited in jail and was implemented partially due to a drop in felony cases and a surge in misdemeanor offenses. The 2004 Reform ultimately had the opposite of its intended effect. While the 2004 Reform, for example, sought to decrease the backlog of felony cases waiting to be heard by the court, by January 2, 2011, the court's backlog had increased since November 2004 by 96%.

The OCA and others found the 2004 Reform distracted designated Supreme Court justices, who were also Criminal Court judges, from cases at the Supreme Court, as such judges

²⁸ Richard R. Peterson, *The Impact of the King's County Integrated Domestic Violence Court on Case Processing*, NEW YORK CITY CRIMINAL JUSTICE AGENCY (January 2014).

²⁹ A number of studies have found that victims of domestic violence rate their experiences with the IDV Courts as highly positive. For example, Sarah Picard-Fritsche found that due to same-day scheduling of cases from multiple jurisdictions, families make fewer total trips to court than comparable families comparing cases appearing in the Erie County IDV court from court inception (December 2003) through December 2005 to families that met IDV court eligibility criteria but were not transferred to the specialized court during the same time period. In addition, Shani Katz and Michael Rempel found that family court cases were more likely to be settled or withdrawn and less likely to be dismissed in the IDV Court, which was found to possibly indicate that IDV Courts produce case resolutions that are mutually acceptable to both parties. See Sarah Picard-Fritsche, *Litigant Perspectives in an Integrated Domestic Violence Court: The Case of Yonkers, New York*, CENTER FOR COURT INNOVATION (December 2011), Picard-Fritsche et al., *The Erie County Integrated Domestic Violence Court: Policies, Practices, and Impacts*, CENTER FOR COURT INNOVATION (December 2011), Shani Katz & Michael Rempel, *The Impact of Integrated Domestic Violence Courts on Case Outcomes; Results for Nine New York State Courts*, CENTER FOR COURT INNOVATION (March 2011).

³⁰ Jeff Storey, *Merger to End as Officials Plan to Split Bronx Criminal Courts*, N.Y.L.J. (April 9, 2012); Daniel Beekman, *Court Administrators Will Undo "Experiment" That Merged Bronx Courts in 2004 and Created Backlog*, New York Daily News (April 12, 2012), <http://www.nydailynews.com/new-york/bronx/court-administrators-undo-experiment-merged-bronx-courts-2004-created-backlog-article-1.1060088>.

found themselves increasingly drawn away to oversee arraignments. In addition, trial court judges seemed to review misdemeanors with the same detail that they were accustomed to in their review of felonies. In 2012, the 2004 Reform ended with participants identifying uncertainty and ambiguity in the delineation of the role and responsibilities of judges as a major impediment to the efficacy of the reform effort. At least one District Attorney also noted that the underlying problem was not enough judges and justices on the bench.³¹

V. The 2007 Special Commission's Reform Proposals

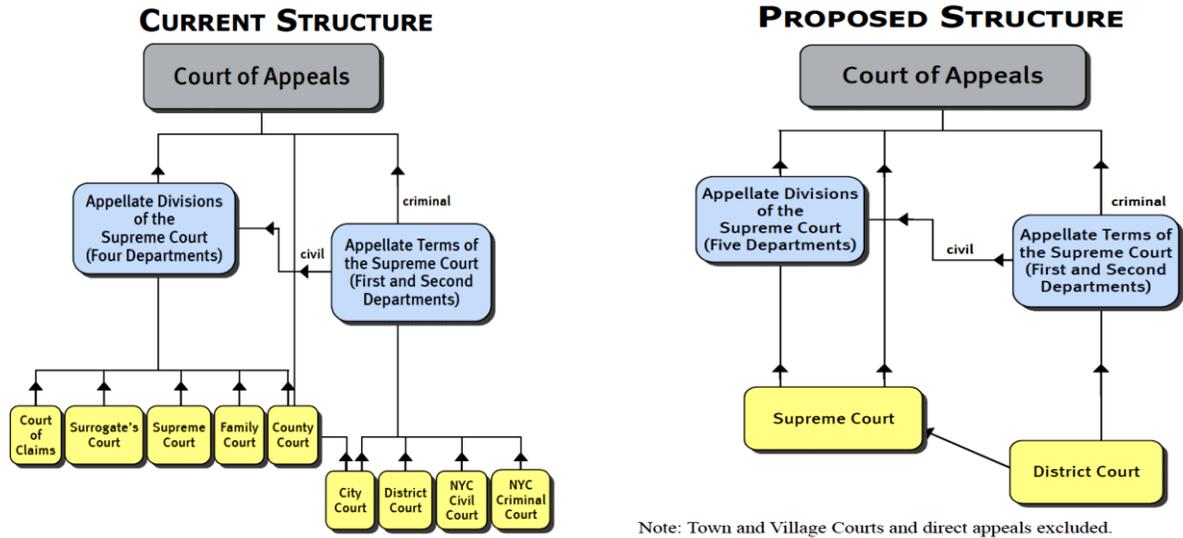
In 2006, Chief Judge Kaye appointed the Special Commission on the Future of the New York State Courts (the "2007 Commission") to assess the need for structural and other operational reforms of the NY Court System. The 2007 Commission released a report in 2007 detailing its findings and recommendations for state-paid court reform ("2007 State Report").³² The 2007 State Report concluded that such reforms would greatly improve the administration of justice and save litigants, the state and the economy over an estimated \$500 million per year. The report and its findings were endorsed by Chief Judge Kaye, and a constitutional amendment was subsequently proposed by Governor Eliot Spitzer, which largely mirrored reform proposals detailed in the 2007 State Report. Owing to significant political gridlock in the NY Legislature, however, the constitutional amendment was not passed, and the 2007 Commission's reform efforts stalled.

A. Proposed Structure

The 2007 State Report recommended, among other things, consolidating trial courts into a two-tier structure (e.g., one Supreme Court and statewide District Courts); merging the Court of Claims, the County Courts, the Family Courts and the Surrogate's Courts into the Supreme Court; creating six divisions within the Supreme Court (e.g., Family, Commercial, State Claims, Criminal, Probate and a General Division); merging the New York City Civil Court, the New York City Criminal Court, the District Courts of Nassau and Suffolk and the 61 City Courts into the newly created, statewide District Courts; and forming a Fifth Department of the Appellate Division.

³¹ See Alice Brennan, *State Judiciary Vows to Reverse Troubled Bronx Criminal Court Merger*, N.Y. WORLD (April 5, 2012), available at <http://www.thenewyorkworld.com/2012/04/05/state-judiciary-vows-to-reverse-troubled-bronx-criminal-court-merger>.

³² The 2007 State Report may be accessed by visiting NYCourtReform.org and clicking on "Reports" (http://www.nycourts.gov/reports/courtsys-4future_2007.pdf). See 2007 State Report, *supra* note 4.



The 2007 State Report considered the inequitable distribution of caseloads under the current structure of the Appellate Division. For example, while four judicial departments of the Appellate Division were created in 1894 in rough proportion to the population of residents, by 2007, approximately 50% of the State’s population resided in the Second Department. The 2007 Commission recommended creating a Fifth Judicial Department and expanding the pool of judges eligible for the Appellate Division to include all Supreme Court justices to ease this burden.³³

B. Policy Considerations

The 2007 State Report provided a host of policy considerations in framing its recommendation, including, among others, widespread support for reform of the NY Court System, including from bar associations, lawyers, judges, businesses and other organizations, the desire for predictability and consistency in legal outcomes for the current and prospective business community, the burden low income litigants face navigating between multiple trial courts for family disputes and the excess costs associated with layering courts of limited jurisdiction.

In formulating its proposal, the 2007 Commission also considered external reform efforts and especially highlighted and applauded reform efforts in New Jersey and California.³⁴

³³ In 1972, the Committee on State Courts of Superior Jurisdiction of the New York City Bar ultimately opposed creation of a Fifth Department in the Appellate Division owing, in part, to a lack of specific pro forma estimates for the costs and savings of creating and operating a Fifth Department. Committee on State Courts of Superior Jurisdiction, *Committee Reports: Report on Advisability of a Fifth Judicial Department*, 27 REC. ASS’N B. CITY N.Y. 585 (1972).

³⁴ New Jersey adopted a new state constitution in 1947 that streamlined its system by consolidating 17 courts into seven courts. The 2007 Commission observed that this enabled the New Jersey Supreme Court to “make rules governing the administration of all courts in the state and, subject to law, the practice and procedure in all courts.” The California Constitution was amended in 1950 to establish a two-tier system in which the lower courts of limited jurisdiction were consolidated into either Municipal or Justice Courts, and the trial courts of general jurisdiction would become Superior Courts. The 2007 State Report referenced a 2000 study conducted by the Administrative

The 2007 State Report identified two fundamental issues with the NY Court System: (1) it is generally not possible to reallocate cases from overburdened courts to those with capacity, and (2) the current system limits the ability of a single judge to take jurisdiction over all claims arising from a given event or transaction.

C. Perceived Obstacles

The 2007 State Report identified the constitutional limit under Article VI on the number of Justices of the Supreme Court that may be distributed by the NY Legislature to each Judicial District (one Justice per 50,000 residents) as a major impediment to restructuring efforts for the NY Court System. While Article VI vests the Chief Administrator of the Courts with temporary assignment powers, which has led to ad hoc reallocations of judges from other trial courts to the Supreme Court on an as-needed basis, the 2007 State Report proposed addressing this and other issues by eliminating this constitutional limit and consolidating the 11 major trial courts into a streamlined, two-tier structure with a single Supreme Court and statewide District Courts.³⁵ The 2007 State Report also considered and responded to concerns historically voiced by members of the judiciary, politicians and the general public during prior reform efforts, including, among others:³⁶

1. Arbitrary Reassignment of Judges. Some judges expressed concerns regarding the OCA having discretionary power to reassign judges to different geographies on an arbitrary basis, while some judges raised concerns that the OCA could potentially abuse its discretionary reassignment power under the proposal (e.g., reassign judges who render unpopular decisions). The 2007 Commission noted that the OCA already has the authority to assign judges anywhere within the state and that, in some larger counties, judges must already travel great distances. The 2007 Commission noted further that its proposal did not advocate for either an expansion of the OCA's preexisting reassignment power or provide additional bases for the OCA to exercise its discretionary authority.
2. Creation of Incongruous Electoral Lines. A merger of the NY Court System into a two-tier structure may create incongruities in electoral results, as, for example, in a restructured Supreme Court, two sitting judges with the same authority and jurisdictional reach may have been elected or appointed by constituencies of immensely dissimilar sizes. The 2007 Commission responded by acknowledging that redrawing electoral lines was beyond its mandate and is a judicial-selection issue for other state actors to consider, but also recognized the powerful impact this concern has had on derailing consistent attempts to create a Fifth Department of the Appellate Division.

Office of the Courts of California that identified numerous benefits of California's court unification reform, including, among others, "improved service to the public", "a reduction in backlog and improved case disposition time" and "standardization of local rules, policies and procedures." 2007 State Report, *supra* note 4, at 28-33.

³⁵ The 2007 Commission reported further that such proposal would involve merging the Court of Claims, County Courts, Family Courts and Surrogate's Courts into the Supreme Court. Once merged, six distinct, but not jurisdictionally separate, Divisions (Family, Commercial, State Claims, Criminal, Probate and General) would be created within the Supreme Court, and, in addition, the New York City Civil Court, the New York City Criminal Courts and the District Courts for Nassau and Suffolk and the 61 City Courts would merge into the District Court.

³⁶ 2007 State Report, *supra* note 4, at 89-98.

3. Dilution of Pool of Eligible Appointees for Appellate Positions. The proposal may potentially dilute the existing pool of Supreme Court Justices (“JSCs”) eligible for appointment to the Appellate Division. Since consolidation of the courts would make selection to the appellate bench possible for a larger number of JSCs, existing, experienced JSCs may have reduced chances of being selected for appointment to the Appellate Division. The 2007 Commission argued that an expanded pool of potential appellate judges is a benefit to the public and contended further that since only sitting JSCs may be appointed to the Appellate Division, the pool of eligible judges is both too small and not sufficiently diverse. By elevating Family Court judges, for example, to Supreme Court positions, the Appellate Division would see an increase in the number of women and minorities who would be eligible to sit on the appellate bench.
4. Impact on the Judicial Electoral Process. A restructured court system would be the first step towards changing the way judges attain their positions. The 2007 Commission repeated that its proposal suggested no changes to the current judicial selection system and indicated further that court restructuring and judicial selection are distinct issues (i.e., the former is not dependent upon any changes to the latter).
5. Administrative Fix over Constitutional Amendment. The OCA should use administrative rules to implement proposed court reform instead of seeking the adoption of a constitutional amendment.³⁷ The 2007 Commission responded that (1) ad hoc administrative fixes do not adequately address the NY Court System’s now-flawed structural foundation, (2) the uniform statewide implementation of administrative fixes is extremely difficult, (3) the costs associated with adopting and implementing administrative fixes are very high, and (4) courts that lack resources, largely owing to an inferior placement in the current judicial hierarchy, will gain legitimacy through a constitutional change and not through an administrative fix.
6. Negative Fiscal Impact. Restructuring proposals will cost a significant amount of money rather than provide savings. The 2007 Commission demonstrated through a conservative cost-benefit analysis vetted by economists that a restructuring of the NY Court System is expected to save the OCA near \$59 million per annum, while private individuals, businesses and municipalities are expected to save \$443 million per annum, for the total estimated annual savings of \$502 million.
7. Effect of Restructuring on Non-Judicial Employees. A restructuring of the courts might result in the elimination of jobs for non-judicial (including union) employees. The 2007 Commission explained that, even after a reform of the NY Court System, the number of cases brought to the courts would remain unchanged, and, thus, skilled personnel will continue to be needed to operate the courts and handle the courts’ caseload.

³⁷ These concerns may have been raised owing to various administrative fixes pursued by the OCA and previous Administrative Judges in an attempt to streamline the NY Court System. For example, the Committee on State Courts of Superior Jurisdiction of the NY City Bar identified in a 1985 Committee Report that certain cases may be designated for “complex case” treatment. When a case qualifies for such treatment, the case and all components of the case are assigned to one judge. The 1985 Committee Report noted such a designation may be obtained by either (i) *ex parte* suggestion to an Administrative Judge, or (ii) the court’s *sua sponte* designation. The 1985 Committee Report acknowledged that this practice is rarely utilized. See Committee on State Courts of Superior Jurisdiction, *Committee Report: Report Recommending the Establishment of an Experimental Individual Calendar Program in the Civil Term of Supreme Court in New York City*, 40 REC. ASS’N B. CITY N.Y. 129 (1985).

These perceived obstacles, among others, identified by judges, politicians or other actors have continuously been raised as new reform efforts and proposals have been considered and recommended to the NY Legislature.

D. Town and Village Justice Courts³⁸

In 2008, the 2007 Commission released a second report focusing exclusively on the need for reform of the Town and Village Justice Courts (the “2007 Town Report”).³⁹ The Town and Village Justice Courts are a system of nearly 1,300 local courts statewide that hear millions of cases ranging from traffic infractions to serious criminal matters (the “TVJ Courts”). In 2007, questions had been publicly raised as to whether the TVJ Courts were appropriately structured and funded, and whether local justices were adequately trained to effectively protect litigant rights. The 2007 Town Report identified and responded to four broad categories of issues affecting the TVJ Courts: (1) Organization; (2) Qualifications of Justices; (3) Facilities and Resources; (4) Fines and Funding. Owing to political gridlock and negative feedback from TVJ Court Justices, among other factors, reform efforts for the TVJ Courts halted.⁴⁰

³⁸ *Justice Most Local: The Future of Town and Village Courts in New York State*, SPECIAL COMMISSION FUTURE N. Y. STATE COURTS, 53-80 (2008), http://nycourtreform.org/Justice_Most_Local_Part1.pdf.

³⁹ *Id.* at 53-80.

⁴⁰ William Glaberson, *Reform of New York's Courts Stalls*, N.Y. TIMES (Jan. 7, 2010), http://www.nytimes.com/2010/01/08/nyregion/08courts.html?_r=0.