

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 -- SECOND DEPARTMENT --

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4 THE CHIEF JUDGE'S HEARINGS,

5 ON CIVIL LEGAL SERVICES,

6 - - - - - X

7 45 Monroe Place  
8 Brooklyn, New York 11201  
9 October 7, 2010

10 BEFORE:

11 HONORABLE JONATHAN LIPPMAN,  
12 Chief Judge

13 HONORABLE ANN PFAU,  
14 Chief Administrative Judge

15 HONORABLE A. GAIL PRUDENTI,  
16 Presiding Justice, Second Department

17 STEPHEN P. YOUNGER,  
18 New York State Bar President

19  
20 NANCY A. MESSANO &  
21 TERESA MC GRATH,  
22 Official Court Reporters  
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1 JUDGE LIPPMAN: Good morning. We welcome you to  
2 the fourth hearing of the State Judiciary on the issue of  
3 civil legal services. I begin by saying that no issue is  
4 more fundamental to the Court's constitutional mission than  
5 ensuring equal justice for all. The availability of  
6 affordable legal representation for low income New Yorkers  
7 is indispensable to our ability to carry out this mission  
8 and that is why we are here today.

9 We've been in the First Department at the  
10 Appellate Division on 25th Street and Madison Avenue. We  
11 have been in the Fourth Department in Rochester at the  
12 Appellate Division and we've been in the Third Department  
13 at the Court of Appeals in Albany. And, now we are so  
14 pleased, due to the Presiding Justice Prudenti's  
15 hospitality, to be here at this beautiful courtroom in the  
16 Second Department which is the largest Appellate Department  
17 in the State.

18 Let me introduce our panel and then I will have a  
19 few words and we can get started. To my right is the  
20 Presiding Justice A. Gail Prudenti who was so pleased as  
21 again welcomed us to this large and diverse wonderful  
22 Second Department. To my left is the Chief Administrative  
23 Judge of the State of New York, Judge Ann Pfau and to my  
24 far right is our good friend the president of the State Bar  
25 Association, Stephen Younger.

1           The issue that brings us together is a critical  
2 one and I will introduce some of the people in the  
3 courtroom to you shortly. But, before that I just want to  
4 thank first of all everyone for being here, witnesses,  
5 citizens, members of the task force. It is particularly  
6 critical because of what has happened in our economy in the  
7 very, very recent past. The economic collapse in this  
8 city, state and country has had a dramatic effect on the  
9 people who appear in our courts. The most vulnerable  
10 among them, the poor, the elderly, struggling families, the  
11 disabled, victims of domestic abuse.

12           There's been a tremendous rise in foreclosures,  
13 evictions, debt cases, family offenses, and matrimonial  
14 conflict. When dealing with the very necessities of life  
15 the roof over people's heads, their livelihood, the  
16 well-being of themselves and their families, there can be  
17 no doubt certainly in my mind that they need to have an  
18 attorney in order to navigate the courts and in order to  
19 navigate all the different entities, health, educational,  
20 the different services that we provide as a society.

21           Fifty years ago, or almost fifty years ago, really  
22 forty-seven years ago United States Supreme Court in Gideon  
23 versus Wainwright said that it is an obvious truth that  
24 when a person is hauled into court on a criminal case they  
25 cannot get their day in court, they cannot get a fair shake

1 unless they have a lawyer.

2 I think it is fair to say that it is an equally  
3 obvious truth today. That when a person comes into court  
4 in a civil matter, dealing with the fundamentals of life,  
5 again the roof over their head, their safety, their  
6 security, they cannot get their day in court without a  
7 lawyer. And, there are so many issues again whether it be  
8 health and education, dealing with the housing agency,  
9 dealing with so many different entities, their rights can't  
10 be upheld unless they are able to interface in an  
11 intelligent way with those different entities.

12 And, last year over two million people, about 2.3  
13 million people came into our courts unrepresented, a  
14 staggering number and very much a product of the economic  
15 problems that we have been having in the state and country.

16 The lawyers in our state as represented by Stephen  
17 Younger, the President of the State Bar have truly risen to  
18 the occasion, have contributed over two million hours of  
19 pro bono work towards helping the poor and the indigent in  
20 our courts. That being said it is not nearly enough.  
21 The legal service providers that hold the real -- do all  
22 the heavy work in this area, and everything else we do, the  
23 self-help programs, the pro bono work, is so important.  
24 But, again, it's just part of a puzzle.

25 The legal service providers are at the center of

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1 this for every one person who is accepted for -- to be a  
2 client of our legal -- civil legal service providers,  
3 another eight to ten are turned away. It is something  
4 that is just inconceivable to all of us in the justice  
5 system.

6 Why is it that the Judiciary and legal profession  
7 are holding these hearings? Because if not us, who. If  
8 our constitutional mission is to provide equal justice for  
9 all, if we are not going to stand up for the most  
10 vulnerable in our society who is? It is our constitutional  
11 responsibility and it is our legal, it is our moral and  
12 ethical obligation to do so.

13 We are committed to this issue and I want to say  
14 how pleased I am that the legislature of this state has  
15 passed a joint resolution that basically applauds these  
16 hearings, says that this is the right way to systemically  
17 build the support that we need and has asked us to provide  
18 them with a comprehensive report detailing what we find and  
19 with our recommendations as to how much moneys are needed  
20 to close the gap in civil legal services.

21 I want to particularly thank two people who are  
22 here today who have provided such great leadership in the  
23 legislature on this issue, both of them from the Second  
24 Department. First Senator John Sampson, the Senate  
25 Conference Leader, head of the Judiciary Committee who

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1 himself was a former Legal Aid lawyer and who has dedicated  
2 himself to this issue in every way; not only to the issue  
3 but to providing leadership in the Senate on this issue and  
4 that joint resolution was very much a product of his  
5 efforts and we are so appreciative to you, Senator Sampson,  
6 for all your wonderful efforts. I know they are so  
7 sincerely held and come from your life experience and we  
8 salute you for that and thank you so much.

9 And equally I want to thank sitting next to  
10 Senator Sampson in the first row is Assemblywoman Helene  
11 Weinstein, the Chair of the Judiciary Committee of the  
12 Assembly who has also totally dedicated herself to this  
13 issue, provided the leadership in the Assembly that  
14 resulted in the joint resolution, has been dedicated to  
15 civil legal services for so many years, really as long as  
16 I've known her; and, on the other side, on the other house  
17 has been such a great partner for Senator Sampson in this  
18 effort. They have both met with us numerous times, again  
19 provided what we need.

20 We need champions. We need champions in all the  
21 different communities in this state but certainly in the  
22 policy making branch of the government. And, I salute the  
23 Senator and Assemblywoman for their wonderful efforts and  
24 together I really believe we are going to make a difference  
25 in an issue that is so ironic that today with the economy



1 so poor and so many began the poorest, the most vulnerable  
2 in society, we have the least money for civil legal  
3 services that we have ever had at a time when we need the  
4 most money.

5 Foreclosures and evictions and all the things --  
6 debt collection cases and all of the different areas we  
7 have had such an explosion in the courts and I think the  
8 IOLA crisis just really -- and again Senator Sampson and  
9 Assemblywoman Weinstein were instrumental to get the money  
10 to save IOLA. The 15 million dollar short fall in IOLA  
11 just demonstrates that we cannot rely on unstable,  
12 inconsistent means of supporting civil legal services. We  
13 have to -- this money, this funding has to come out of the  
14 public fisc.

15 It is in our mind, certainly in my mind as  
16 important as the schools, as the hospitals, as all the  
17 other things that we prioritize in our state. We are not  
18 going to say that gee, this year times are hard. We are  
19 not going to fund schools; and we can't say this year times  
20 are hard we are not going to fund civil legal services.  
21 It has to be, again come out of the public fisc and be  
22 something that we prioritize in our state.

23 So, without further ado I want to move forward.  
24 Let me just introduce to you a few of the other people who  
25 are here. First the Chair of the task force on civil

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1 legal services, Helaine Barnett who is a former head of the  
2 Legal Services Corporation and Helaine overseas a 28 person  
3 task force and thank you so much, Helaine, for your efforts  
4 and for being here today.

5 Steve Banks from the Legal Aid Society has been a  
6 steward in this area and again a member of the task force.  
7 Emily Franchina, the Second Department Team Coordinator who  
8 we're so pleased. Denise Kronstadt also a Second  
9 Department Team Coordinator. Lillian Moy. Is Lillian  
10 here? She was up in Albany the other day. There are so  
11 many people who have contributed to this effort and  
12 certainly Fern Fisher, the Deputy Chief Administrative  
13 Judge for the New York City Courts and head of our  
14 Statewide Access Justice Staff Efforts.

15 Fern, where are you?

16 JUDGE FISHER: Right here.

17 JUDGE LIPPMAN: She's right there. I want to  
18 thank you for your wonderful efforts and you will hear from  
19 Fern later. She will be the closing witness today.

20 So, I would ask that we are going to have -- try  
21 to limit testimony to five minutes for each of the  
22 witnesses and five minutes of questioning. Don't feel  
23 that you have to read your statement. You can tell us  
24 what your views are and we would be happy to then ask you  
25 some questions. So, we want to keep -- we have so many

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1 witnesses and we want to have the input of a wide breath of  
2 witnesses today.

3 So, we are very pleased to start with someone who  
4 has been a champion in this area for all his life and  
5 certainly the Fund for Modern Courts that he represents has  
6 been our partner in so many a good deeds for the courts and  
7 legal profession in this state.

8 So, I would ask Victor Kovner, the Chair of the  
9 Fund for Modern Courts to come forward and please make your  
10 statement and I would note, too, that Dennis Hawkins, the  
11 Executive Director of the Fund, is here today and we  
12 appreciate that.

13 Thank you, Dennis.

14 Mr. Kovner, you want to start?

15 MR. KOVNER: Thank you, Chief Judge Lippman,  
16 Justice Prudenti, Judge Pfau and President Younger. I want  
17 to say it is nice to see our new Bar president up on the  
18 bench. It becomes him.

19 We at Modern Courts very much appreciate the  
20 opportunity to present testimony today on this critical  
21 issue of civil legal services. And we think, we think it  
22 is really vital that you have formed the task force to  
23 expand access to legal -- civil legal services. And, I am  
24 going to take the admonition of the Chief Judge and not  
25 read my statement and turn to what I think is the heart of

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1 the matter.

2 I mean this is an issue that Modern Courts has  
3 been involved with for a great many years and it is so  
4 helpful that you have taken the time and helped assemble  
5 those most concerned about the subject so that the public  
6 can focus on this issue.

7 But, as many of you know we -- there was  
8 commissioned a survey of civil legal needs which was  
9 conducted by the respected Lake Research Partners in August  
10 of this year. This was the first survey of civil legal  
11 needs in our state in 20 years and it covers low income  
12 residents throughout the state. A research for the survey  
13 is complete. The final report will be submitted to the  
14 task force shortly.

15 The survey followed a sample of low income New  
16 Yorkers defined as people living at or under two percent of  
17 the federal poverty guidelines as represents for family of  
18 four roughly, \$44,000 per year. Those surveys were asked  
19 about specific legal problems including housing, finances,  
20 employment, health insurance, and medical bills, public  
21 benefits, domestic and family issues, immigration issues,  
22 with schools affecting their households over the past year.

23 When the representative population was presented  
24 with a specific -- with a list of specific legal problems  
25 nearly half, roughly 47 percent said they had experienced

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1 at least one of these problems in the past year. Applying  
2 this percentage to New Yorkers at this level of income,  
3 this translates to almost three million low income  
4 residents of New York State who have had legal problems and  
5 no access to counsel.

6 Within that number at least as I say three million  
7 experienced one problem a year. 1.2 million experience  
8 three or more legal problems and we have a chart here which  
9 reflects the extraordinary number of people facing, in many  
10 cases, a multiple of legal issues without access to  
11 counsel. Now, the most significant --

12 JUDGE LIPPMAN: Staggering number.

13 MR. KOVNER: It is startling and it is an enormous  
14 burden not simply to those families but to all sorts of  
15 institutions throughout the state to those who you have  
16 heard testimony in your prior hearing. But it affects  
17 everyone, businesses, community, families and the courts.  
18 The last thing a judge wants to do is have a litigant that  
19 doesn't have counsel. It just -- it is a burden on the  
20 Judiciary as a whole.

21 Now, the most significant legal problems are in  
22 the area of health insurance or medical bills. That of  
23 course is not an area that is limited to people with low  
24 income. Most people have those problems and complex  
25 problems. That is followed by finances, employment, and

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1 housing and our chart over here on the right indicates the  
2 various categories. That is the chart on your left on my  
3 far right.

4 JUDGE LIPPMAN: Let me ask you a question on that  
5 chart on the far left.

6 MR. KOVNER: Yes, Your Honor.

7 JUDGE LIPPMAN: I think that a lot of people don't  
8 realize that this is not only -- when we talk about civil  
9 legal services we are not just talking about when someone  
10 finds themselves in court. A lot of these areas are  
11 things that really precede their coming to court and  
12 hopefully never have to do so. Is that what we are  
13 looking at? These are not necessarily cases in the  
14 courthouse. They are interfacing with different parts of  
15 the bureaucracies that one has to deal with in life when  
16 you are a poor New Yorker.

17 MR. KOVNER: You are quite right and of course if  
18 people had access to someone with legal skills in many  
19 instances, enormous instances they wouldn't have to come to  
20 court at all.

21 JUDGE LIPPMAN: Exactly.

22 MR. KOVNER: Now they are coming to court. What  
23 good does that do for our society, what good does it do for  
24 our economy. Now, those low income New Yorkers most in  
25 need of legal services are the young parents of children

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1 under 18, African Americans, Latinos, immigrants, the  
2 unemployed, uninsured and disabled. For example,  
3 47 percent of the disabled low income New Yorkers or those  
4 living in household with someone who is disabled reported  
5 having legal problems. And, their problems like everybody  
6 else varied widely. 60 percent of poor women under the age  
7 of 60 reported having at least one legal problem in the  
8 past year. 60 percent of children living under the age of  
9 18 reported having at least one legal problem as well.

10 JUDGE PFAU: Did you also find what we have been  
11 struck with in hearing the testimony is you think of this  
12 often as an urban issue. But, as we have been going  
13 upstate we have seen this so much as an issue of rural poor  
14 and in geographic distances in reaching even assistance if  
15 it is available. Did you look at that as well?

16 MR. KOVNER: Absolutely, Your Honor. I think the  
17 survey reflects that this is not an urban only problem.  
18 It is a suburban problem, rural problem, downstate problem.  
19 It is a Northern New York problem. It is a Western New  
20 York problem. This limits the ability of our Judiciary to  
21 serve effectively and the families in those areas to get  
22 effective services across the range of the state.

23 Now, the bottom line of course is that legal  
24 representation is the best means of ensuring adequate  
25 resolution of the legal problems of low income individuals

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1 and families and our goal as a society of laws must be to  
2 mitigate the dangers these problems pose and consequences.  
3 Providing a significant portion of low income New Yorkers  
4 with access to equal and fair justice can only be met when  
5 the State offers secure and consistent funding for civil  
6 legal services as a core program of this State. The Lake  
7 Research Survey quantifies the needs and we at Modern  
8 Courts consider this a most urgent and critical problem.  
9 Thank you.

10 JUDGE LIPPMAN: Thank you. I think the numbers  
11 are even more staggering than one would think and you're  
12 right, that one of the problems is we haven't done one of  
13 these surveys for so many years and I think it is out of  
14 control and I think that is not -- the public is not as  
15 aware of this as they should and of course that's one of  
16 the purposes of these hearing. But, I think the survey is  
17 terrific to get our arms around the breath of this problem.  
18 I mean it is staggering.

19 MR. KOVNER: And the other thing if I may in  
20 conclusion. This is not just an additional service to low  
21 income people. This is a service to everybody, everybody  
22 has a stake in our addressing these unmet needs. Everyone  
23 benefits if we can address it.

24 JUDGE LIPPMAN: You know, I think you make a very  
25 good point. We have had testimony and we are going to



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1 have more today. Not just from the people you would  
2 expect to testify in this issue. We have had testimony  
3 from the large banks, from the real estate industry, from  
4 the health industry, saying that not only is this the right  
5 thing to do but their bottom line is affected when people,  
6 poor people don't have representation in court. Actually  
7 the money that is vested in civil legal services will  
8 redound over and over and over again to the benefit of the  
9 State economically putting aside the right thing to do, the  
10 ethical obligation to do. So, I think that it is a very  
11 good point. Anything else?

12 JUDGE PRUDENTI: Mr. Kovner, number one, I  
13 welcome you to 45 Monroe Place and I thank you very much  
14 for being here.

15 And as we who have worked in the court system for  
16 many years are well aware the Fund for Modern Courts goes  
17 out to many, many courts and they have over the last  
18 decade, I know in the Second Department, and observed court  
19 operations.

20 And, besides the survey when these individuals  
21 come back I know they talk to you about, and they talk to  
22 your board about the operations of the courts. Has this  
23 problem been brought to your attention over the past  
24 decade?

25 MR. KOVNER: The answer is yes, Your Honor, and

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1       thank you for referring to our court monitoring programs.  
2       Yes, we do monitor courts throughout the state.   We have  
3       been working in Washington and Warren and now in Suffolk  
4       County and Family Court which is a large court system and  
5       the answer is these issues do arise.   They are covered in  
6       our reports which we publish regularly and hope to continue  
7       to expand that program.   We try to rotate our monitoring  
8       program which is done by volunteers who come in and observe  
9       and write up their reports and are welcomed by the courts  
10      and these problems are specially apparent.

11               We have been to some justice courts upstate and  
12      they are also evident there where there have been basically  
13      travesties of justice where -- this is more in the criminal  
14      area than in the civil area -- but, the need for civil  
15      legal assistance is clear throughout our state.

16               JUDGE LIPPMAN:   Thank you, Mr. Kovner.   Thank  
17      Modern Courts for all of your leadership in this area and  
18      in general to the well-being of the courts of our state.  
19      We greatly appreciate it.   Thank you so much.

20               MR. KOVNER:   You're welcome.

21               JUDGE LIPPMAN:   Okay, next we are going to have a  
22      panel of leaders of the community.   The Reverend Terry  
23      Troia and Rajiv Garg.

24               Reverend Troia.

25               REV. TROIA:   Good morning, Chief Judge Lippman and

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1 Judge Prudenti, Judge Pfau and President Younger. My name  
2 is Terry Troia and I am the Executive Director of Project  
3 Hospitality in Staten Island and Minister of the New  
4 Utrecht Reformed Church in Bensonhurst, Brooklyn.

5 Project Hospitality is an interfaith effort that  
6 has been serving the needs of hungry and homeless Staten  
7 Islanders for the last 28 years and I have been working  
8 with them for 26 of those 28 years.

9 We serve a population of people in our borough,  
10 providing food, clothing, shelter and emergency services,  
11 social and support services to people who are disabled,  
12 people who are unemployed, people who are homeless or on  
13 the verge of homelessness, unstably housed.

14 Many of the people we serve are also newly arrived  
15 immigrants to Staten Island, a borough which has the  
16 largest percentage increase of immigrants in the City of  
17 New York. 75 percent of the people we serve are people of  
18 color. 63 percent disabled and last year we served over  
19 25,000 individual Staten Islanders in need.

20 On Mondays we provide access to free legal  
21 attorney -- legal services from Legal Services of Staten  
22 Island and the Legal Aid Society and our soup kitchen. We  
23 are overpacked and we are booked sometimes two and  
24 three months ahead of time in order to get people in to see  
25 an attorney.

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1 JUDGE LIPPMAN: What kind of problems are they  
2 facing?

3 REV. TROIA: A lot is eviction prevention, debt  
4 resolution, immigration issues, domestic violence. I  
5 would say that would be the top four.

6 JUDGE LIPPMAN: And do you think those issues have  
7 been exacerbated during recent times because of the  
8 economic problems?

9 REV. TROIA: Absolutely. We serve the north  
10 shore. We serve all of Staten Island but predominant  
11 poverty is on the north shore corridor which has a  
12 21 percent unemployment rate right now and actually if you  
13 have been following Staten Island, I am not saying that  
14 anyone should follow the news in Staten Island, but if you  
15 were --

16 JUDGE LIPPMAN: We all follow the news in Staten  
17 Island.

18 REV. TROIA: I thought so. We have had a whole  
19 space of hate crimes that have started in April that -- or  
20 alleged hate crimes and a lot of it stemmed from poverty  
21 and lack of jobs and the struggle of communities to find  
22 their own place and to hang onto what very little they  
23 have.

24 JUDGE LIPPMAN: Why is civil legal representation  
25 so important in that mix?

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1 REV. TROIA: Well --

2 JUDGE LIPPMAN: If they don't have it what  
3 happens?

4 REV. TROIA: Folks fall through the cracks of our  
5 legal system. We serve 640 cases that were served by  
6 Legal Aid Society and Legal Services of Staten Island last  
7 year and those were 640 of what we thought were our most  
8 severe cases that we had to get to an attorney because we  
9 saw the potential of people falling out of their homes, saw  
10 the potential of domestic violence survivors going back  
11 into situations that would imperil their families and  
12 themselves. If we don't provide that level of what I  
13 would call safety net people end up out in the streets.  
14 People end up losing their jobs when they shouldn't have  
15 lost their jobs. People don't get the back wages that  
16 they are entitled to. And, that is a --

17 JUDGE LIPPMAN: We are trying to make the argument  
18 or heard the argument made that in the end it costs society  
19 more than the cost of providing basic legal representation  
20 if people kind of fall off the cliff. You know, they are  
21 not represented. They can't access these different  
22 benefits. They can't access the courts. That in the end  
23 even on an economic basis really is very negative in terms  
24 of, you know, our bottom line in these difficult financial  
25 times.

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1 REV. TROIA: If we can prevent an eviction we save  
2 a family from becoming homeless and going into the homeless  
3 care system which is a very expensive system of care. We  
4 are glad it is there. But, the goal is to not have anybody  
5 become homeless. That is the prime example of the need for  
6 civil legal services.

7 JUDGE LIPPMAN: So, we put aside even beyond that  
8 this is the moral and ethical obligation. It really is in  
9 plain dollars and cents makes sense, doesn't it, in terms  
10 of the people you see every day?

11 REV. TROIA: Absolutely. I mean we are front-line  
12 workers so I have beaten off rats with a broom and I am  
13 pretty good at it. I have been in places where people  
14 lived that are simply beyond our imagination to comprehend.  
15 Where people pay \$25 a week to sleep on a piece of a  
16 mattress in somebody's basement. That's the level of  
17 poverty that we are talking about.

18 And, the free legal services are forced to turn  
19 away at least five people in need for every one that they  
20 can help. Even though the lawyers work long hours, high  
21 case loads and I want to say personally I have been  
22 available to myself and my staff after hours and sometimes  
23 on weekends including New Years Eve.

24 JUDGE PFAU: And you serve the whole community.  
25 What is the impact on the community when you are dealing,

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1 try to prevent people from falling through the cracks and  
2 homelessness and the result that you see with the kind of  
3 hate crime issues that have been raised in Staten Island  
4 recently?

5 REV. TROIA: Well, people need to first of all  
6 believe that they have human dignity and respect and that  
7 they have a place for themselves where they are not going  
8 to get pushed out of their apartment, not end up out on the  
9 street and they are going to have food in their pantry to  
10 take care of their families.

11 I actually go into houses where there isn't any  
12 food. It is simply hard to imagine that. So, if the  
13 kids aren't eating they are not performing well in school,  
14 they become problems in school. ACS gets involved.  
15 There's family problems. When you have four and five  
16 families crammed up in one apartment all together the  
17 family dynamics are threatening and perilous to the  
18 families. Very hard to study when you don't have a  
19 kitchen table to study on, when you are sharing it with 12  
20 or 13 kids.

21 So, we are not doing justice to the children who  
22 are our future generation as a result of the kind of  
23 poverty. And, the need for us to be able to provide the  
24 access to the legal services that will help them be in the  
25 right place, receive the food stamps and entitlements they

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1 are entitled to and sometimes get denied and they need to  
2 go back and fight that are very important to some level of  
3 basic sustenance.

4 PRESIDENT YOUNGER: To follow Judge Pfau's  
5 question up, what is the impact to the community of having  
6 large numbers of foreclosures for example?

7 REV. TROIA: In -- Staten Island has the  
8 unfortunate reputation of having very high foreclosure rate  
9 for the City of New York. Well, there are two effects.  
10 First it is the impoverishment of the family that is losing  
11 their home and many people rent a portion of their home to  
12 try to sustain their mortgage. So, there are also renters  
13 that are victims of foreclosures as well. So, people lose  
14 their homes.

15 The indignity of losing your home, losing your  
16 possessions, people being forced into the homeless system  
17 that never ever imagined that they would have to go through  
18 that. People are ripped away from their schools. They  
19 are sent to shelters in other boroughs. You lose  
20 continuity of care. People that had medical care or  
21 getting cancer treatment are ripped away from that. They  
22 lose all their stability and their roots in the community  
23 and in that case that takes years to build and that forms a  
24 part of the person's identity and dignity and along with  
25 losing their house and possessions and being relocated they



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1       lose that as well.

2               JUDGE LIPPMAN:  So, we are really talking about  
3       the fabric of society that holds it together.  I mean is  
4       that -- as obviously the kinds of services that you provide  
5       in the -- legal services is just an integral part of  
6       keeping that community together, keeping a framework in  
7       which everyone can hopefully thrive and move forward.

8               REV. TROIA:  Absolutely.  And on Staten Island  
9       legal services and Legal Aid Society don't have enough  
10      resources to help everyone in need.  And unlike the other  
11      boroughs in the City of New York in addition to us being  
12      transportation challenged we have no where else to send  
13      clients so we handle 640 cases on Staten Island but we have  
14      taken a number of cases to Queens and to other boroughs and  
15      that means taking a staff person to escort a client who may  
16      never have ridden the subway before and negotiate that in  
17      order to get some type of legal services somewhere else and  
18      then you wait hours and hours because they are already  
19      booked in Queens and we are pushing into their time and  
20      services.

21              JUDGE PRUDENTI:  So we have a clear understanding  
22      is there an advice only component to some of the civil  
23      legal services that your group is providing?

24              REV. TROIA:  The majority of the services -- there  
25      is like a triage because they really take the most pressing

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1 cases. So it is not really advice. It is mostly  
2 representation and of course our priorities are the DV  
3 cases. We do have some advice only from -- CUNY has an  
4 immigration and citizenship project and we have advice only  
5 attorneys that come and advise people. But the majority  
6 of the work that Legal Services of Staten Island and Legal  
7 Aid Society do are court related.

8 JUDGE LIPPMAN: You are -- they are actually  
9 representing them in court?

10 REV. TROIA: Absolutely and because of the triage,  
11 because of the numbers only the most urgent.

12 JUDGE LIPPMAN: Okay, thank you.

13 REV. TROIA: So, I -- you covered the issue of  
14 foreclosure. I again -- again hundreds of impoverished  
15 Staten Islanders faced eviction last year and housing  
16 lawyers are already forced to turn away many clients in  
17 order for them to do the meaningful help to the cases that  
18 they are able to take and despite the high rate of fatal  
19 domestic violence incidents in Staten Island many survivors  
20 do not have the legal protection they need because of the  
21 insufficient resources. Although the 18-B lawyers can be  
22 appointed survivors fear confronting their batterer without  
23 a lawyer who spent time preparing for the court proceeding.  
24 It is very, very scary stuff.

25 Those who are turned away have no place to go for

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1 help on Staten Island. So, decreased civil legal services  
2 will undermine the Island's stability at a time when the  
3 overall population and the poverty rate are growing more  
4 and more rapidly than the rest of New York City. We have  
5 21 percent of unemployment rate in the north shore of  
6 Staten Island. More people will lose their homes. More  
7 people will become homeless and homeless system is at a  
8 critical mass at this time in our city and we end up  
9 eroding the very fragile stability that we have in our  
10 neighborhoods without benefits like food stamps,  
11 unemployment benefits. We will see a high number of people  
12 plunge into a deeper poverty really creating a gap between  
13 rich and poor and more domestic violence survivors will  
14 risk serious harm to themselves and to their families.

15 So, we urgently ask acknowledgement of the severe  
16 situation that poor people face both in our borough and  
17 across the city and hope that there is some way to find a  
18 way to seek, secure additional services for legal services.

19 JUDGE LIPPMAN: Thank you for your very telling  
20 testimony. I note no one should get scared but that red  
21 light means that your time is up. The white light means  
22 that you have about two minutes. Is that what the system  
23 is here? One minute.

24 So, the white light means you have one minute.  
25 Red light means your time is up but there is not a big

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1 crane that comes down and yanks you off. But, you can  
2 watch the lights. It will give you a sense of how long  
3 your testimony is.

4 Let's take Rajiv Garg who is the President and CEO  
5 of Wyckoff Heights Hospital. Mr. Garg.

6 MR. GARG: Good morning, Chief Judge Lippman,  
7 Presiding Judge Prudenti, Judge Pfau and President  
8 Mr. Younger. I am going to take the advice for  
9 summarizing my testimony in a substantive or form manner.

10 What I see in a health care institution where we  
11 see about 80,000 people who use the hospital as an  
12 alternate to private doctor.

13 JUDGE LIPPMAN: Right.

14 MR. GARG: Is the same way they view legal  
15 services. They just do not know legal services can help  
16 better with health treatment plan which would be basic  
17 health care. Examples are people come in either they are  
18 uninsured, they are unaware of the medical treatment plan  
19 which would be given to them had somebody guided them  
20 through the many ways of being able to get medical care.  
21 And that is the biggest challenge when you have a  
22 population which is at an economical disadvantage, language  
23 barriers.

24 And, they are going to be getting educated, at  
25 least the next ten years the education occur in that

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1 neighborhood. It is going to take time to mature as the  
2 younger children go to school in the American system. The  
3 parents who guide them also don't understand the health  
4 care.

5 JUDGE LIPPMAN: What is the effect on the hospital  
6 itself. We can --

7 MR. GARG: Sorry?

8 JUDGE LIPPMAN: What is the effect of the hospital  
9 itself when people come in and they have no idea of how to  
10 let you help them?

11 MR. GARG: Well, the biggest impact is that the  
12 patient becomes what we call unfortunately a frequent  
13 flyer. They come into the emergency room. You give them  
14 the little treatment you can. You let them out of the  
15 emergency room and they are back in a week.

16 JUDGE LIPPMAN: Because you don't cure their  
17 problem?

18 MR. GARG: Well, we have to cure what is  
19 immediate.

20 JUDGE LIPPMAN: Right, you cure the immediate  
21 problem, right?

22 MR. GARG: But to put them on a treatment plan  
23 which is required for an extended period of time would mean  
24 that they would understand their rights and that is where  
25 legal service, civil legal services would be hugely

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1 helpful. Especially it occurs with people with chronic  
2 disease. A diabetic, an aging diabetic with hypertension  
3 disease. They're -- for example the treatment plan would  
4 call them for a device or some implement which they could  
5 get if somebody told them how to get it. Or, for example,  
6 if you get somebody who is a victim of a rape crisis.  
7 They walk into the hospital unaware of where they need to  
8 go.

9 And, what is happening with the medicaid office  
10 and other insurance company, people who basically help pay  
11 for these services, is they are trying to curtail this  
12 expense by basically trying to have people wait a lot  
13 longer and that again has the same impact on making the  
14 patient even more diseased or more ill.

15 JUDGE LIPPMAN: You are not talking about a court  
16 case. You are talking about basic access to health  
17 benefits and isn't that going to become even worse with the  
18 new health law if people don't have the assistance of legal  
19 counsel to navigate, you know, what -- the rights that they  
20 are entitled to, the benefits that they are entitled to?

21 MR. GARG: I definitely think so and that is  
22 becoming more and more obvious as the numbers of people who  
23 walk through doors of hospitals like ours, community  
24 hospitals, with economical disadvantage who just are  
25 bewildered as to what the next step is.

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1           Most of the stuff which we see in a hospital like  
2           ours is three fold. It is not a court case that we are  
3           trying to avoid but some people in the system who were  
4           disadvantaged may end up in court.

5           JUDGE LIPPMAN: Yes.

6           MR. GARG: And that is something to recognize and  
7           try and avoid by providing some legal services at the  
8           outset of a treatment plan. Not that everyone qualifies  
9           for it but certainly a helping hand with a legal edge to it  
10          would be immensely useful to this population.

11          PRESIDENT YOUNGER: It strikes me so often that  
12          the medical profession and legal profession are divided.  
13          Doctors think all lawyers do is sue doctors and what you  
14          are talking about is a collaboration where lawyers can  
15          actually help you treat the patient in ways that a doctor  
16          can't.

17          Now, I was wondering if you can expand on that in  
18          what ways a doctor and lawyer can collaborate.

19          MR. GARG: Well, when the lawyer is getting  
20          involved at the initial stage of, you know, let's just take  
21          an example of a patient who comes in who is chronically  
22          ill, has a bunch of issues and doesn't know what he can get  
23          as a treatment plan. Their lawyer can actually help a  
24          doctor understand what that doctor can do within the bounds  
25          of legality, who he can go to. For example medicare.

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1       What is the patient entitled to? What can the doctor fight  
2       for? What tests are useful in substance or form? Doesn't  
3       it make sense to push some of the boundaries?

4               Doctors and lawyers are divided when it comes to  
5       malpractice because, you know, if you look at it it's two  
6       sides of the same coin. On one hand you are saying well,  
7       we cannot give you the aid that is required to use  
8       defensive medicine because you can't do all the things you  
9       are suppose to do to make the patient better. If you  
10      don't do that and patient finally, you know, falls prey to  
11      either manifestation of disease later on in life or  
12      something bad happens then the lawyers on the other side  
13      are trying to sue the doctor.

14             I think the collaboration would actually reduce  
15      malpractice, will make the doctor I guess more bold in what  
16      he needs to do at the outset. And, it will coordinate the  
17      various pieces at least for this condition and serve the  
18      patient a lot better much early on. I think that's what --

19             JUDGE LIPPMAN: Okay. Thank you so much for your  
20      testimony.

21             And next is Brad Snyder who is the Representative  
22      of the Network of Bar Leaders.

23             MR. SNYDER: Thank you, Chief Judge Lippman and  
24      rest of the panel for having us here today. I will also  
25      just paraphrase some of my testimony although it may be



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1 points where I am reading.

2 I am the executive director of LeGaL which is the  
3 LGBT Bar Association of Greater New York and am here today  
4 as a representative to the Network of Bar Leaders.

5 As you probably know the Network consists of 46  
6 Bar Associations many throughout New York City and State of  
7 New York and one part of our mission is the advancement of  
8 commonly shared views pertaining to the administration of  
9 justice and particularly appropriate for today views  
10 pertaining to the delivery to the public of legal services.  
11 So, this is an issue that has been obviously of great  
12 concern to the Network for some time.

13 Our member associations are quite diverse. We  
14 are the County Bars, the Women Bars, People of Color Bars,  
15 Practice Specialty Bars, LGBT Bars, Cultural and Religious  
16 Bars and reason I emphasize that today is as the panel  
17 already heard in other testimony we represent communities  
18 that are particularly disproportionately affected by  
19 reductions in legal services for the work that many of our  
20 pro bono attorneys are doing throughout the city and state.

21 One example of that that was noted in testimony  
22 that I believe has already been presented to the panel  
23 comes from the focus on Staten Island again. The Staten  
24 Island Women's Bar Association which notes that the client  
25 populations of New York States civil legal services

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1 programs are women and women with families over 70 percent  
2 of the time. There are a lot more statistics about  
3 certain communities who are disproportionately impacted.  
4 They certainly speak to the LGBT community at all different  
5 income levels facing lots of legal uncertainty particularly  
6 during time of crisis and what that means to our community.  
7 But, this is sort of an across the board narrative about  
8 what is going on out there in the world.

9 When funds are scarce the front line public  
10 interest organizations and Bar Associations and Networks at  
11 Bar Associations are forced to make some very tough choices  
12 and in many instances that means a direct reduction in  
13 services.

14 In other instances it means the outright  
15 elimination of services entirely. As Chief Judge Lippman  
16 noted however earlier the Bar has stepped up in many ways  
17 to meet the needs, that there is a call by Chief Judge  
18 Lippman with respect to respond to the foreclosure crisis  
19 and I believe many of our member Bar Associations met that  
20 call although, as noted earlier, the need is just too  
21 great.

22 So, I guess the point that I just want to  
23 emphasize is that our ability as members of the Bar who  
24 care passionately about this to connect visitors either  
25 directly to legal representation or informal ways to

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1 connect them to resources and really reach them before it  
2 is too late because we run an attorney referral service and  
3 lots of our Bar Associations do, we run clinics, and the  
4 worst call that we get is the one where we think if only  
5 that person had had access to someone six months ago this  
6 entire situation would be different.

7 And, I really think there is an opportunity there  
8 for us and the work being done by the panel to try to get  
9 to people sooner.

10 JUDGE LIPPMAN: I think it is a mix of services.  
11 I think pro bono is so helpful and does so many wonderful  
12 things. But, you need that core of the providers to build  
13 around, then the pro bono efforts can be that much more  
14 effective. Because the -- there aren't enough hours in  
15 the year for, you know, pro bono efforts to begin to hit  
16 the core problem. But, I think if we had a stable funding  
17 for providers and then you had this great outpouring from  
18 the Bar around it I think then we would make a difference.  
19 Then we could begin to really cover the unmet need and what  
20 needs to be addressed by our state and our society.

21 So, we greatly appreciate the work of the Network.  
22 We greatly appreciate your pro bono efforts and we want to  
23 continue working with you and with the different providers  
24 to really start to crack this nut, to really start to begin  
25 to deal with the need which as was testified by some of the

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1 people, the good Reverend, for every person taken by the  
2 providers there are so many others turned away. And, for  
3 every pro bono hour given by the Bar we can use ten more,  
4 you know.

5 So, I want to thank you all and it's been a  
6 terrific panel and thank you for coming in and testifying.

7 The next panel is about local issues and need for  
8 legal services. Local issues and need for legal services  
9 panel and this is Mary Barbera, the Chief of the Rockland  
10 County Sheriff's Civil Division and Christine Malafi the  
11 Suffolk County Attorney.

12 Chief, why don't you start and tell us.

13 CHIEF BARBERA: Thank you, Chief Judge and  
14 esteemed panel for the opportunity to speak to you today.

15 In my capacity as Chief of the Rockland County  
16 Civil Division I often see what happens when there is a  
17 lack of adequate legal representation in the cases that we  
18 deal with and the adverse of effect felt by individuals and  
19 families in the County where I live and where I work.

20 The Civil Division serves and enforces all legal  
21 mandates that come out of the Village, Towns, State,  
22 Federal Courts. We also direct the receipt and recordings  
23 of fees for services garnishing payments, seizures,  
24 Sheriff's sale. Our work is not discretionary. We are  
25 at the end of this process. We can't look at a family, we

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1 can't stop an eviction with an elderly person. We have to  
2 do the job that we are asked to. We have to enforce the  
3 mark. I cannot decide not to put the padlock on their  
4 door or put their belongings out on the street.

5 I think it is especially critical for my job and  
6 community's safety and economic well-being that the rights  
7 of these individuals are protected to the fullest extent.  
8 In my experience the only way to do that and make sure  
9 these rights are protected is provide legal representation  
10 to these individuals.

11 New York State Law, New York State Statute  
12 provides that a sheriff serve a 72-hour notice before we  
13 proceed with an eviction. That is three days. That is  
14 three days to tell somebody that they have to vacate their  
15 home. In certain instances we see, we find that it is the  
16 first time they have ever come in contact with the legal  
17 system. There is a deputy showing up on their door saying  
18 here, you got three days to get out. I am sure they are  
19 aware that they are in arrears on their rent or the  
20 foreclosure proceeding is at the end but I don't think they  
21 really know or they can really fathom what the eviction  
22 process is. It is a hard cold reality.

23 JUDGE LIPPMAN: They are not ready to interface  
24 with the legal system, with your office.

25 CHIEF BARBERA: No. I have, and this is an

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1 example from 25 years ago when I first started. There was  
2 a couple. They were being evicted. There was snow on  
3 the ground. They had a ten-day old baby. I held that  
4 baby in my arms wrapped in a blanket while they took what  
5 they could, piled it in their car and everything else  
6 stayed on the street. And I remember walking away looking  
7 at that crib on the street and saying wow, you know, and I  
8 know they had no legal representation. But we had a job  
9 to do.

10 I stood on a street corner and watched children  
11 get off the bus at the end of the day and the content of  
12 their home piled out on the front and I have seen those  
13 parents who were in turmoil all day try to explain to those  
14 children, a ten year old, why everything was out on the  
15 street and where they had to go next. And all I can do is  
16 walk away.

17 We have experienced in Rockland situations where  
18 the deputy knocked on the door. The tenant said come in  
19 and the tenant was sitting there with a shotgun under her  
20 chin. She had no where to go. She had no one to turn  
21 to. And thank goodness those deputies moved that gun as  
22 that shot was fired and it went into a wall. I can  
23 continue on and on. I have been doing this job for a very  
24 long time. These are all situations that we have  
25 encountered and they are all heart wrenching.

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1 JUDGE PFAU: Is it getting worse with the economy  
2 and foreclosures and evictions?

3 CHIEF BARBERA: It absolutely is. It absolutely  
4 is. I think that it -- we can do a better job when the  
5 people that we come in contact with are represented. When  
6 they know there is legal representation out there. When  
7 they know there is somebody who can help them.

8 JUDGE LIPPMAN: When you serve your notice I  
9 assume sometimes you will have someone who has a lawyer  
10 from a provider and something happens within that 72-hour  
11 period?

12 CHIEF BARBERA: Infrequently. Most of the time  
13 --

14 JUDGE LIPPMAN: But generally by that point if  
15 they have gotten to the point where you are putting a --  
16 serving a 72-hour notice it's too late?

17 CHIEF BARBERA: Well, our Legal Aid in Rockland  
18 County usually gets involved right after that 72-hour  
19 notice is served if the person knows. There are times  
20 when we direct them there.

21 JUDGE PRUDENTI: That would be my question,  
22 follow-up of the question of the Chief Judge. After you  
23 serve that 72-hour notice does your office get many calls  
24 and what if anything do you do with those calls?

25 CHIEF BARBERA: We do get a lot of calls. We do

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1 something in Rockland where when we serve a 72-hour notice  
2 we also put a copy in the mail to our Department of Social  
3 Services so that they have it on file and if the person  
4 goes for aid they know that they are about to be evicted.

5 JUDGE LIPPMAN: How many of these people does  
6 Legal Aid wind up representing?

7 CHIEF BARBERA: A good portion of them. I don't  
8 have statistics on that. I can tell you that our eviction  
9 calendar has from 2003 to 2009 risen three-fold in  
10 Rockland.

11 In 2003 we evicted 473 families or individuals.  
12 In 2009 that number has increased to 1,423. Because of  
13 the economic downturn I think in the last two years it's  
14 become a lot worse. We have seen a ten percent increase  
15 just from January to June in this year. We have also got  
16 foreclosure evictions which are much more difficult for us  
17 because it is an entire house. It is a proceeding that  
18 has gone on for a very long time and if it comes to  
19 eviction which is not usual in the foreclosure proceeding  
20 it is because they have absolutely no where to go. They  
21 have no where to turn.

22 It is much more difficult for the deputies to  
23 stand there and do this. It is certainly difficult for  
24 the families. They have no options left. I as a public  
25 servant and officer of the State and concerned member of my



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1 community because there are times when I have scheduled  
2 evictions for, you know, friends of the family or my son's  
3 friends' families and that is a difficult thing.

4 I believe that the funding ensures adequate legal  
5 representation for those in debt, for those maybe facing  
6 potential foreclosure and also for victims of domestic  
7 violence for whom we serve orders of protection.

8 JUDGE LIPPMAN: That's a critical issue.

9 CHIEF BARBERA: In my perspective it is just as  
10 imperative to provide counseling and funding for legal  
11 representation for these families as it is for criminals.

12 JUDGE LIPPMAN: So, you see the other end. You  
13 see the consequences of not having legal representation?

14 CHIEF BARBERA: I absolutely do every day. We  
15 are inundated. I am here because of my working  
16 relationship with the Legal Aid Society. I respect them.  
17 I admire them. They usually come in at the last minute.  
18 They have the ability to work within the court system and  
19 get things done so that their clients aren't -- their  
20 belongs aren't on the street and they are not homeless and  
21 that's why I am here today. I think without counsel we  
22 can't be certain that these people are protected.

23 JUDGE LIPPMAN: Okay. Thank you. I appreciate  
24 it, Chief.

25 Okay, Ms. Malafi, Suffolk County Attorney,

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1 welcome.

2 MS. MALAFI: Chief Judge Lippman, Judge Pfau,  
3 Judge Prudenti, President Younger, thank you. I am very  
4 honored to be here today.

5 Liberty and justice for all. It is a phrase we  
6 have all said numerous times per week since the age of five  
7 when we started kindergarten and learned the Pledge of  
8 Allegiance. Justice for all cannot happen without  
9 meaningful access to the courts. The definition of  
10 meaningful access to the court does vary depending on  
11 circumstances. But, people forfeit rights by being  
12 unrepresented either due to ignorance or inability and it  
13 denies all litigants meaningful access to the court, not  
14 only those that cannot afford attorneys.

15 In Suffolk County and in New York State we have  
16 been fortunate. The court system has made numerous  
17 strides, as you know and as you have effectuated, in  
18 helping get legal representation and helping those who want  
19 to represent themselves have meaningful self access to the  
20 court through your website, through forms, through links to  
21 help.

22 It doesn't only affect those people. It affects  
23 society as a whole. Providing legal services to people  
24 who cannot afford legal services avoids the payment by the  
25 government of Social Service and welfare benefits. It

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1 avoids the use of Social Service workers, probation  
2 officers, police officers and other government workers who  
3 have to assist those who need, who become in need because  
4 they don't have legal representation. It helps society as  
5 a whole because it creates jobs in the area of legal  
6 representation. It helps businesses in the economy and by  
7 avoiding decreased productivity and increased absenteeism  
8 of employees. It helps cases flow through the court  
9 system faster. It allows the Judiciary to act for the  
10 benefit of everyone as other elected officials can do. It  
11 also legitimizes the government as a whole and it avoids  
12 tragedies and reduces incidents of domestic violence.

13 PRESIDENT YOUNGER: It I can stop you one second.  
14 One of the things that struck me is just how overwhelming  
15 these numbers are. We heard a number this morning, three  
16 million people. What kind of criteria would you offer to  
17 decide which of the cases that are worthy of a government  
18 saying you ought to get a right to counsel and where can we  
19 draw that line?

20 MS. MALAFI: I think the line has to be drawn not  
21 at the federal poverty level. I think that is way too  
22 low. I think that there has to be a recognition of the  
23 fact that there are working class people who for lack of a  
24 better term, working poor. They do everything they can to  
25 keep their heads above water and if they have one legal

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1 crisis or legal issue where they need a lawyer that is  
2 enough to put them in complete economic crisis.

3 JUDGE LIPPMAN: And there are some wonderful  
4 programs around the state that require funding that are  
5 targeted at the working poor.

6 MS. MALAFI: Correct.

7 JUDGE LIPPMAN: Certainly people who are not a  
8 burden on society. Who go out every day and work and  
9 because they want to be useful members?

10 MS. MALAFI: Absolutely.

11 JUDGE LIPPMAN: In the communities and it is so  
12 hard because all it takes is one legal issue. They cannot  
13 deal with it and maybe they don't continue to be working  
14 and they just become poor.

15 MS. MALAFI: Correct, and then they qualify for  
16 aid.

17 JUDGE LIPPMAN: Social Services.

18 MS. MALAFI: Social Service aid. We heard a lot  
19 of testimony already and you have said domestic violence  
20 increases greatly in these households which requires police  
21 officer assistance, Social Service assistance, the Family  
22 Court gets involved, foster families. It creates a lot of  
23 expenses.

24 JUDGE LIPPMAN: So from the point of view of  
25 county government civil legal services is not just

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1 something that again is a good thing to do for the right  
2 thing to do. It really directly affects your community  
3 and county government and cost of it and the fabric of the  
4 community. All of the above.

5 MS. MALAFI: It absolutely does and Suffolk  
6 County, we are in economic crisis for -- I have been  
7 involved since January of 2004. And it is constant budget  
8 issues and we have been able to maintain funding for  
9 numerous projects based on the fact that funding a \$200,000  
10 project is actually less costly than having the people who  
11 need help not get help and then have to fund those personal  
12 services through other areas of county government.

13 Also, we are very fortunate. We are -- we have a  
14 law school that is committed to public service that the  
15 county works with to provide assistance so that people's  
16 houses that are in foreclosure, we help get an order, court  
17 ordered support for children or even visitation, and other  
18 important rights. They can go there.

19 JUDGE PRUDENTI: Just to follow up because I know  
20 Suffolk County has done a very, very good job over the  
21 years for funding Suffolk County Legal Aid Society and I  
22 know that the Suffolk County Legal Aid Society handles  
23 criminal matters and a limited amount of civil matters  
24 basically.

25 Are there any discussions with regard to extending

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1 those services into other civil legal services.

2 MS. MALAFI: The Legal Aid Society would like to  
3 do that. I have had discussions with them. The problem  
4 is funding. The county funds the criminal end, the  
5 mandatory legal representation areas. They would like to  
6 extend it. One way the Legal Aid Society has thought to  
7 make their budget a little bit looser so they can afford to  
8 help more people is something as simple as a state law  
9 needs to be passed to allow the Legal Aid Society to  
10 participate in government health insurance which would cut  
11 down the health insurance cost to their lawyers and free up  
12 more money. That can be extended also to other  
13 not-for-profits that provide legal services to people to  
14 free up more budget money because it is -- the government  
15 does have a limited amount of money and everyone  
16 understands that. But, if we can free up other moneys to  
17 help these societies that are willing to have attorneys on  
18 staff to help that it would be beneficial.

19 I would like to mention that doing this does not  
20 only help the person getting the help in society but I was  
21 in private practice for over 15 years before I became a  
22 county attorney. I have been on this other side of the  
23 table for unrepresented litigants. I know my clients  
24 wound up paying more for my services because it is harder  
25 to litigate against an unrepresented person. It is harder

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1 to be on the other side even in a transactional matter from  
2 someone who is unrepresented. You have to put in more  
3 time to review a 300 page rambling complaint.

4 JUDGE LIPPMAN: It is not an effective way to go  
5 about your business or go about society's business?

6 MS. MALAFI: It is not. So, the people who can  
7 afford attorneys do wind up paying more for the attorneys  
8 because there is more time used in being involved with  
9 someone who is unrepresented.

10 JUDGE PFAU: In Suffolk County you are  
11 particularly hard hit by foreclosures. We unfortunately  
12 know the numbers and we know what the impact is. In  
13 particular with the Legal Aid Society having taken on --  
14 being able to take on a limited number of civil cases I  
15 would imagine that the large number of unrepresented  
16 litigants in the foreclosure cases is having the ripple  
17 effect in your community as far as what happens when houses  
18 are foreclosed and impact in the community and  
19 neighborhood.

20 MS. MALAFI: Absolutely. The county, we fund two  
21 different projects to help the pro bono foreclosure  
22 settlement conference through the Suffolk County Bar  
23 Association which is fabulous and to our law school. But  
24 we recognize with that money which we intend to double next  
25 year with the budget that has been proposed that helps when

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1 a house is not empty with a foreclosure. There are a lot  
2 less acts of violence in the area in the community where  
3 the foreclosure is happening. There is less gang activity  
4 because there is not an empty house for kids to hang out  
5 in. There is less vandalism. The police don't have to  
6 keep going there.

7 So, we understand the greater picture of making  
8 sure that people get the legal representation they need and  
9 also it is a basic element of society that we recognize as  
10 the county that people who can't afford a lawyer should not  
11 be taken advantage of.

12 JUDGE LIPPMAN: So the bottom line the health of  
13 your county is very much reflected in the health of our  
14 system of representing poor people. And funding this,  
15 this just isn't about helping them because it is again good  
16 or the right thing to do. The county is impacted in a  
17 very negative way if poor people or the working poor, both,  
18 don't have representation in court in accessing the health  
19 system, housing, all the other things that people run into  
20 when -- in their ordinary day lives.

21 MS. MALAFI: Absolutely recognize it's an  
22 obligation to not only people who need representation but  
23 all the tax payers to keep the cost down and make our  
24 community a better community.

25 JUDGE LIPPMAN: And it is very much -- I am



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1       pleased that you emphasize that last point. It is to keep  
2       the county's cost -- providing representation for the poor  
3       better the bottom line of not only the county but also of  
4       private entities to deal with people who don't have  
5       representation. So, it is very much a holistic approach  
6       to providing funding for civil legal services.

7               MS. MALAFI: Absolutely, yes.

8               JUDGE LIPPMAN: Okay. Thank you. Thank you  
9       both.

10              I see the District Attorney is here. So, I am  
11       going to ask him to come up and he is going to talk about  
12       the criminal justice system and need for legal services.

13              Mr. District Attorney, we are so pleased to have  
14       you here and I think so instructive that someone who  
15       basically deals with the criminal justice system feels it  
16       important to come and testify about civil legal services.

17              DISTRICT ATTORNEY HYNES: I must say you took part  
18       of my statement though, Judge. Very good to see you,  
19       Chief Judge.

20              JUDGE LIPPMAN: Great to see you.

21              DISTRICT ATTORNEY HYNES: And Presiding Justice  
22       Prudenti and Chief Administrative Judge Pfau and State Bar  
23       President Younger. I really thank you for the opportunity  
24       of coming today and I am a former Legal Aid lawyer so I am  
25       proud to appear before this panel. I guess the task force

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1 has heard mostly from people in the civil law arena  
2 including indigent clients of civil legal services. But  
3 my guess is you haven't heard much from those of us who  
4 practice criminal law and yet those of us in the criminal  
5 justice system certainly do have a significant stake in the  
6 issue before you. Namely ensuring that the poor have  
7 access and continue to have access despite the economic  
8 downturn to the civil legal services that they require.

9 Just last week I was in Washington DC  
10 participating in a forum on the role of the 21st Century  
11 Prosecutor. District attorneys around the country are now  
12 embracing that new paradigm of community prosecution and I  
13 am proud to say -- you know this firsthand, Judge.

14 JUDGE LIPPMAN: I do.

15 DISTRICT ATTORNEY HYNES: -- that my office for  
16 two decades has adopted this proactive collaborative  
17 strategy for reducing crime and enhancing public safety.  
18 Community engagement is a critical part of that strategy's  
19 success and it is clear to me that Chief Prosecutor must  
20 care about the health and welfare of community members  
21 because healthier and more stable community inevitably  
22 enhances public safety. And that's why access to civil  
23 legal services becomes so important. By providing to  
24 those who can't afford lawyer's advice and representation  
25 in court regarding a broad range of life-affecting issues

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1 civil legal service providers help keep families and  
2 communities secure, healthy and stable.

3 As the District Attorney of this county I am proud  
4 to say we have implemented many innovative programs to  
5 protect crime victims by stabilizing those who have been in  
6 the criminal justice system, reducing their recidivism and  
7 helping them to rebuild their lives. For example to  
8 divert non-violent drug offenders into treatment in lieu of  
9 prison and to assist formally incarcerated individuals to  
10 successfully reenter their communities. All of these  
11 individuals as well as their families are often wrestling  
12 with the underlying civil legal issues. Family law and  
13 immigration matters, housing problems resulting in  
14 homelessness, wrongful denial of unemployment, disability  
15 or other subsistence benefits and wrongful denial of health  
16 care assistance. Particularly mental health care  
17 services.

18 The administrative agencies involved in many of  
19 these issues have forms, rules, procedures and  
20 bureaucracies that can be at minimum daunting for any lay  
21 person to navigate without the guidance of an attorney.  
22 Unfortunately if the civil legal issues go unaddressed  
23 clearly they will tear down the fragile lives that these  
24 impoverished individuals are struggling to reconstruct. To  
25 ignore their need for professional assistance is to deny

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1       them justice and weaken the social fabric that community  
2       prosecution depends upon for enhancing public safety.

3               You already know by now the single largest group  
4       using free legal services are women.   Many of them  
5       struggling to protect themselves and their children from  
6       the violence of intimate partners.   My office prosecutes  
7       roughly 10,000 domestic violence cases each year.   These  
8       victims are all too often desperately in need of civil  
9       legal services.   Our Family Justice Center which Mayor  
10      Bloomberg and I opened in July of 2005 includes a broad  
11      group of service providers and is located on the same floor  
12      as our Domestic Violence Bureau.   It is heavily used by  
13      the victims in cases handled by my office.

14             Since its inception the Family Justice Center has  
15      seen over 36,000 clients.   Currently the center has  
16      approximately 550 to 750 new clients each month.   Roughly  
17      45 percent of these clients receive on-site civil legal  
18      advocacy services and advice including paralegal screening  
19      and linkage to services.   Help for drafting Family Court  
20      orders of protection petitions, advocacy with Family Court  
21      issues and assistance in obtaining U-Visas.

22             Among its 15 on-site agencies I am proud to say  
23      that the center has four legal services as our partners.  
24      South Brooklyn Legal Services, Sanctuary for Families, The  
25      Urban Justice Center and Jewish Association of Services for

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1 the Aged or JASA. These four partner agencies also  
2 provide smaller percentage of clients with actual legal  
3 representation in immigration, Family Court and matrimonial  
4 matters.

5 While advocacy services are important legal  
6 representation is a vital and necessary service for clients  
7 seeking economic justice and safety from abusive  
8 relationships and quite frankly the current legal services  
9 agencies have a great deal of difficulty meeting our center  
10 demands.

11 We have also seen the need for civil legal  
12 services for clients in my re-entry program which partners  
13 with the Counseling Services of the Eastern District of New  
14 York which is not patient drug treatment provider, the Doe  
15 Fund, a provider of transitional employment and housing,  
16 the New York State Division of Parole and numerous  
17 community based social service providers.

18 The re-entry program targets Brooklyn residents  
19 who are on parole and have been mandated to substance abuse  
20 treatment. Our re-entry initiative which has been  
21 validated by Professor Bruce Western of Harvard University  
22 has a successful cost effective crime reduction strategy,  
23 and by the way six out of ten of the formally incarcerated  
24 are without counseling, without help, are rearrested within  
25 three years and more than half go back to prison.

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1           According to Professor Western's study for our  
2           program it is closer to two, to two and a half. I believe  
3           we can knock it down one out of ten or maybe into  
4           fractions. But they are facing issues such as  
5           landlord/tenant, Family Court issues, child support  
6           payments, and obtaining public assistance benefits. In  
7           the past they were frequently given referrals to an  
8           attorney connected with the special re-entry initiatives  
9           sponsored by the City Bar. But that initiative lost  
10          funding in 2009 and of late referrals are made to the  
11          overworked Legal Aid Society's civil division.

12          The criminal justice system is extremely  
13          expensive. We all know that. The cost of housing a  
14          person in Rikers Island according to the IBO, Independent  
15          Budget Office, is now an astounding \$312 a day. While  
16          providing free legal services to the indigent also carries  
17          a price tag the investment is certainly sound. And seen  
18          in this light the Chief Judge initiatives to increase  
19          access to civil legal assistance State-wide through funding  
20          in the Judiciary's budget is not only the right thing to do  
21          in terms of fairness and access to justice, it can also  
22          have a very positive impact on services to assist the  
23          victims of crime and on services to assist the formally  
24          incarcerated and I commend you, Chief Judge, for this  
25          effort.

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1 JUDGE LIPPMAN: Thank you.

2 DISTRICT ATTORNEY HYNES: And I am certainly  
3 available to provide additional information to help you in  
4 this effort to meet the unmet needs for civil legal  
5 assistance. Again thank you very much for having me.

6 JUDGE LIPPMAN: I thank you so much for your  
7 testimony, District Attorney, and I think the -- what is so  
8 interesting is there really is a very basic interconnection  
9 between providing civil legal services for the poor and the  
10 well-being of our society, particularly as reflected in  
11 crime and crime rates. I think we are feeding into by  
12 allowing particularly in these difficult times the --

13 DISTRICT ATTORNEY HYNES: Of course.

14 JUDGE LIPPMAN: -- feeding into --

15 DISTRICT ATTORNEY HYNES: One of the problems is  
16 the frustration felt by someone who can't get help and they  
17 will turn to drugs or alcohol and then the next step is of  
18 course they will offend.

19 JUDGE LIPPMAN: And it is not only the crime but  
20 it is the bottom line for society and costs of everything  
21 that follows dealing with the legal issue and then almost  
22 going off the cliff whether it is crime or social services  
23 or all the things that as a society ultimately bears the  
24 cost. So, we salute you for all your efforts and not only  
25 in this particular area but recognizing the importance of

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1 the community around, all of us, and that the criminal  
2 justice system and civil justice system don't live in a  
3 vacuum. We are part of the community and we recognize the  
4 interconnection. So, we salute you for all your efforts  
5 and thank you.

6 DISTRICT ATTORNEY HYNES: Thanks Judge, and good  
7 luck with this effort.

8 JUDGE LIPPMAN: Thank you so much. Appreciate  
9 it.

10 DISTRICT ATTORNEY HYNES: Good to see you all.

11 JUDGE LIPPMAN: The next panel that we are going  
12 to have is on domestic violence and that is Jane  
13 Aoyama-Martin, executive director of the Women's Justice  
14 Center at Pace Law School and Lois Schwaeber who is the  
15 Director of the Nassau County Coalition Against Domestic  
16 Violence.

17 MS. AOYAMA-MARTIN: Good morning, Judge.

18 JUDGE LIPPMAN: Thank you for coming.

19 MS. AOYAMA-MARTIN: Thank you very much for  
20 hearing me today. I am the executive director of the Pace  
21 Women's Justice Center of White Plains. We are located at  
22 the law school.

23 JUDGE LIPPMAN: And doing very good work.

24 MS. AOYAMA-MARTIN: Thank you. Our clients are  
25 primarily poor, working poor, women with children and



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1 victims and survivors of domestic violence and elder abuse.  
2 95 percent of our clients are women with children.

3 What I would like to -- I have submitted my  
4 written testimony and what I would like to address today  
5 are really three points. The civil legal services in  
6 Westchester that is serving domestic violence survivors,  
7 the impact that the services have on our clients and the  
8 gaps in service.

9 PRESIDENT YOUNGER: Before you do can I ask you a  
10 question about the law schools?

11 MS. AOYAMA-MARTIN: Sure.

12 PRESIDENT YOUNGER: It struck me. I heard  
13 statistics that said every law student on average comes out  
14 with the kind of debt load that they have to make \$66,000  
15 to pay off their debt. Yet we have all these unemployed  
16 lawyers who can't find jobs. And we have a lot of people  
17 who need lawyers. We have been hearing three million of  
18 them in New York State.

19 Is there some way we can be working with a law  
20 school so we can put these law students who want to work  
21 who want to be able to help people in jobs that -- where  
22 they can still pay off this massive debt loan?

23 MS. AOYAMA-MARTIN: Yes. I mean it is a funding  
24 problem. I know with the current economic situation there  
25 are those -- the deferred associates I think that is a big

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1 program that the City Bar has now. Our problem in  
2 Westchester even though we applied for deferred associate  
3 it is -- I don't know about the recent grants but they  
4 don't seem to want to work in New York City. Westchester  
5 is that -- I don't know, to New York City people,  
6 Westchester is upstate. It is too far, and to people  
7 upstate it is part of New York City. So, we are sort of  
8 in that marginal area.

9 But what we do at the Women's Center is we rely  
10 heavily on volunteers and law students. The good thing  
11 about our program is that in fact in the domestic violence  
12 field we have training for students. They get three  
13 credits and we are -- we staff two offices directly in the  
14 courthouse, walk-in basis for emergency orders of  
15 protection in the Family Courts of White Plains and  
16 Yonkers.

17 JUDGE LIPPMAN: What is the relationship? Explain  
18 to us. You know, the domestic violence area sort of  
19 crosses the boundary between the criminal and the civil in  
20 that a lot of it is in Family Court and where it goes into  
21 the criminal justice system is debatable. What is the  
22 relationship when we talk about the domestic violence area  
23 between again the criminal justice system and civil legal  
24 services?

25 MS. AOYAMA-MARTIN: Well, we work closely with the

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1 District Attorney's Office and, you know, the District  
2 Attorney's Office representing I guess the people of  
3 Westchester, you know, they prosecute the abusers  
4 criminally. But, that still leaves the civil side and  
5 domestic violence survivors they are not clients of the  
6 DA's offices. They are complainants.

7 JUDGE LIPPMAN: Is there any right to  
8 representation in domestic violence situations on the civil  
9 side?

10 MS. AOYAMA-MARTIN: Yes, under the Family Court  
11 Act an order of protection. Certain cases, order of  
12 protection cases, custody cases. But the problem we see  
13 with -- and, you know, the 18-B program is great but you  
14 could be in court on a return date or the second return  
15 date. That's when you get your 18-B attorney. But a lot  
16 of our work takes place before that stage and domestic  
17 violence survivors have myriad legal problems. It is not  
18 just --

19 JUDGE LIPPMAN: So, it is interconnected to their  
20 lives?

21 MS. AOYAMA-MARTIN: Absolutely. And what we do  
22 is when we -- and you know in some cases I mean early  
23 access to attorneys is in some ways preventive because what  
24 typically happens is say there is a call at 11:00 PM or in  
25 the evening before and the police come. They fill out a

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1 -- they really direct the victim to go to Family Court.  
2 They say go to Family Court. So, the next morning  
3 typically the woman is there. You know, we are able to  
4 see that person immediately on a walk-in basis. And we do  
5 a comprehensive intake because there are a myriad of  
6 problems. The protective order, part of it is the sort of  
7 the immediate emergency safety issue. But --

8 JUDGE LIPPMAN: But it is all these issues  
9 surrounding it?

10 MS. AOYAMA-MARTIN: Custody, child support. If  
11 they are married there might be a matrimonial action. But  
12 the support and financial issue are really --

13 JUDGE PFAU: Has the lack of consistent funding  
14 and stability from year to year affected, you know, how you  
15 see your ability to support women who are in this  
16 situation?

17 MS. AOYAMA-MARTIN: The lack of consistent funding  
18 is a big problem and that is hopefully as a result of the  
19 testimony at this task force there will be some permanent  
20 source of funding for civil legal services. It affects,  
21 you know, it affects our ability to plan. It affects --  
22 right now we are sort of at really the absolute minimum in  
23 terms of operating the program efficiently. We have -- we  
24 can't take like another cut in funding without really  
25 affecting the program.

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1 JUDGE PRUDENTI: Have you been able to partner  
2 with any other providers?

3 MS. AOYAMA-MARTIN: Pardon?

4 JUDGE PRUDENTI: Have you been able to partner  
5 with any other providers?

6 MS. AOYAMA-MARTIN: We absolutely partner with  
7 Legal Services of Hudson Valley. Legal Services of Hudson  
8 Valley -- me -- my center just focuses on domestic violence  
9 and elder abuse. But Legal Service of Hudson Valley is  
10 the largest sort of most comprehensive civil legal services  
11 provider. We partner with them because of all the  
12 different issues. They have more areas of expertise. We  
13 have a lot of cross referrals. We work very closely with  
14 them.

15 JUDGE PRUDENTI: Thank you.

16 JUDGE PFAU: One of the things we heard  
17 particularly in the area of domestic violence is not just  
18 the availability of legal services for victims but the need  
19 for the expertise in the area and how the funding affects  
20 that, that it is not just something any lawyer is trained  
21 in. Can you just address that for a moment?

22 MS. AOYAMA-MARTIN: Well, maybe it is because it  
23 is the field I am in but I do feel it is critically  
24 important to understand the dynamics of domestic violence.  
25 To give you an example. When someone walks into our

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1 Family Court Legal Program, you know, sometimes getting an  
2 order of protection is not the safest thing for that  
3 person. So, we, you know, legal services that we provide  
4 there is the comprehensive -- we call it in-take interview  
5 where we discuss all the options. And, there are certain  
6 -- and not insignificant but certain number of clients who  
7 decide it is really not safe for them to file for  
8 protective order. So, they end up not filing.

9 But, you know, that's what that kind -- it is the  
10 kind of expertise that we can provide and true  
11 understanding of the dynamics of domestic violence that  
12 makes our services so critical.

13 JUDGE LIPPMAN: I think it is only in the last  
14 years that we have all had a better understanding of what  
15 domestic violence is all about and all of these --

16 MS. AOYAMA-MARTIN: Yes.

17 JUDGE LIPPMAN: -- and sub-issues that allow one  
18 to deal with, you know, with that scourge, really, of  
19 society.

20 MS. AOYAMA-MARTIN: In my materials I cite to a  
21 study that was done. And during the 1990s the incidents of  
22 domestic violence actually decreased and there was a direct  
23 tie. In fact one of the factors in the study that I cite  
24 is related to the provision of civil legal services.  
25 Although the study took place in the '90s I want to

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1 emphasize though with the current economy and recession  
2 that is over I guess --

3 JUDGE LIPPMAN: Yes.

4 MS. AOYAMA-MARTIN: -- there has been an  
5 18 percent increase in domestic violence.

6 JUDGE LIPPMAN: Okay. Thank you so much. I am  
7 going to thank you for the good work that you do and ask  
8 Ms. Schwaeber to now speak. I would note that in terms of  
9 domestic violence Judge Leventhal one of the justices of  
10 this Court, the Appellate Division Second Department and  
11 former presiding Justice of the Domestic Violence Court  
12 here in Brooklyn is here. So, I am pleased you are with  
13 us.

14 Ms. Schwaeber.

15 MS. SCHWAEBER: Good morning, Judge Lippman, Judge  
16 Pfau, Judge Prudenti and President Younger. I also would  
17 like to thank you all for inviting me here. You have  
18 given me this opportunity for speaking to you --

19 JUDGE LIPPMAN: Thank you for coming.

20 MS. SCHWAEBER: I would like to take one moment to  
21 especially thank Assemblywoman Weinstein for everything  
22 that she has done for civil legal services in the State of  
23 New York because it is critical to our programs.

24 JUDGE LIPPMAN: She just left but I am going to  
25 tell her exactly what you said.

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1 MS. SCHWAEBER: Okay, that's fine. Thank you is  
2 not so much to her personally but publicly to thank her for  
3 what she has done.

4 JUDGE LIPPMAN: Good. Go ahead.

5 MS. SCHWAEBER: I need to first correct my title.  
6 I am not Executive Director of Nassau County Coalition for  
7 Domestic Violence although I am introduced that way most  
8 often. I am simply the Director of Legal Services for the  
9 Agency. Having said that I would like to depart from my  
10 testimony, my written testimony.

11 JUDGE LIPPMAN: Sure.

12 MS. SCHWAEBER: And talk to you from my heart  
13 because I really think, I am very passionate about domestic  
14 abuse. I came to law very late in life. At 53 I went to  
15 law school because I was a volunteer for my agency working  
16 as a volunteer court advocate helping victims of domestic  
17 violence. My agency has a program for walk-ins at Nassau  
18 County Family Court and has since the middle '80s. We are  
19 a private not-for-profit agency. We rely completely upon  
20 funding from any kind of government sources as well as  
21 donations and private foundations.

22 We had a small grant at that time to do this  
23 advocacy program and after working as a volunteer for about  
24 two and a half years I said if I really need to help, just  
25 want to help this population I need to go to law school



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1 because they need attorneys who have the expertise as Judge  
2 Pfau pointed out so amply a minute ago to work with them.

3 The ADV program is terrific but they meet with  
4 them at the courtroom for the first time. They don't know  
5 anything about them. They get two minutes to speak to  
6 them and then it is their attorney and they may do a very  
7 good job from there on, but they don't have the expertise  
8 or the information to pass them on to the many different  
9 kinds of referrals that they need, whether it be to Nassau  
10 Suffolk Law Services, for homeless, for child support,  
11 although they recently lost their funding for that and we  
12 are seeing a tremendous increase in people coming to us for  
13 child support because of that.

14 The population in Nassau county is reflected in  
15 the people that we see coming to us. It is not a  
16 particular population. It is everyone; rich, poor.  
17 Although, we see more and more unemployed people coming to  
18 us, or see women and they are 95 percent or better women  
19 whose spouses are unemployed, whose spouses have left them  
20 without any money and they have to beg for money.

21 This new legislation that has passed for the  
22 temporary maintenance I think will go a long way to helping  
23 our clients not be financially strangled during the  
24 pendency of the divorce. As a result of working with this  
25 population for years we felt that just doing orders of

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1 protection and custody and visitation wasn't enough.

2 JUDGE LIPPMAN: Because it's interconnected to  
3 other issues?

4 MS. SCHWAEBER: Yes. We recently -- not so  
5 recently anymore. I guess it is three or four years ago,  
6 expanded into the divorce area and are doing matrimonials.  
7 Within the first year we had over 30 clients waiting on a  
8 wait list to --

9 JUDGE LIPPMAN: How are you funded?

10 MS. SCHWAEBER: Well, that's federally funded by  
11 the legal assistance, the victims grant out of the office  
12 of violence against women. That provides five attorneys  
13 to us and with five attorneys I cannot keep up with the  
14 case load for the family offenses, for the custody and  
15 visitation.

16 JUDGE LIPPMAN: What other funds do you get?

17 MS. SCHWAEBER: Well, we get a small civil legal  
18 services line and our other funding is from private --

19 JUDGE LIPPMAN: From who is that civil legal  
20 services?

21 MS. SCHWAEBER: Budget line in the New York State  
22 budget.

23 JUDGE LIPPMAN: Okay.

24 MS. SCHWAEBER: We have a small budget line.

25 JUDGE LIPPMAN: So, it is like a member item line?

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1 MS. SCHWAEBER: No, we have a civil legal services  
2 line. We also have always gotten over the last few years  
3 member items which we are not getting this year. As of  
4 January --

5 JUDGE LIPPMAN: Yes.

6 MS. SCHWAEBER: As of January 1st we will not have  
7 that. That will not only impact our legal department but  
8 it will impact the ability of the agency to provide  
9 counseling for children who witness, counseling for victims  
10 of rape --

11 JUDGE LIPPMAN: You know what you are going to  
12 have one year to the next?

13 MS. SCHWAEBER: No, we never know what we are  
14 going to have one year to the next.

15 JUDGE LIPPMAN: Is that at the heart of the  
16 problem not having a stable source of --

17 MS. SCHWAEBER: There is no stable source of  
18 funding. The only stable source of funding has been  
19 federally but it's a two-year program and every two years  
20 you reapply.

21 JUDGE LIPPMAN: And very --

22 MS. SCHWAEBER: And nationally competitive.

23 JUDGE PFAU: If you had a stable source of  
24 funding do you think that would translate into serving more  
25 clients?

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1 MS. SCHWAEBER: I can't really answer that  
2 question. Legal services right now is over capacity.  
3 Any one of my attorneys will tell you oh, my God, don't  
4 give me another case. We have recently gotten  
5 appropriations, congressionally funded appropriations to  
6 reach out to -- and try and get attorneys to work for us  
7 pro bono. And, one thing that the bad economy has done for  
8 us is that it has given us a lot of unemployed attorneys  
9 who have been admitted to the Bar the ability to work for  
10 us. So, we recently did a training two weeks ago on  
11 representing domestic violence victims in matrimonials.  
12 We had 26 attorneys attend. Will they all take clients?  
13 Probably not. But, at least we have given them not only  
14 the matrimonial law but the expertise or the information  
15 and impact of domestic violence on the cases.

16 But, abusers use the court system as a further  
17 means of abuse. They harass clients by constantly filing  
18 new petitions and violations. Being self represented is  
19 another way. How would you like to be a victim sitting  
20 there being cross examined by your abuser who is  
21 self-represented?

22 JUDGE LIPPMAN: The bottom line is that your  
23 domestic violence work doesn't exist in a vacuum?

24 MS. SCHWAEBER: Absolutely not.

25 JUDGE LIPPMAN: That there are all kinds of

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1 services and victims' needs that relate to legal  
2 representation of one kind or another that we would call  
3 civil legal services and needs to be funded in order to let  
4 people live a useful life and get back into society.

5 MS. SCHWAEBER: Absolutely.

6 JUDGE LIPPMAN: And continue forward?

7 MS. SCHWAEBER: Nassau County is thought of as a  
8 wealthy county. However, we have -- we see in my agency  
9 people from all walks of life. 30 to 70 percent of our  
10 cases are people that receive TANF funding. The self  
11 sufficiency -- the federal poverty levels makes one  
12 statement, but the self sufficiency level that you need to  
13 exist in Nassau county --

14 JUDGE LIPPMAN: No question.

15 MS. SCHWAEBER: -- is \$74,000 per family of three  
16 not for a family of four now when county executives really  
17 recently declared a health emergency because of the rate of  
18 increase of domestic abuse in Nassau County. Things are  
19 dire and it is exalating somewhat because of the economic  
20 situation.

21 JUDGE LIPPMAN: I know. Well, we appreciate your  
22 testimony, both of you, and certainly in a critical area  
23 that is so related to the topic of our hearing today. So  
24 thank you both.

25 (Hearing continues on next page.)

1 JUDGE LIPPMAN: Next we are going to have a  
2 client panel, Alvin Thomas, William Schneider, Chakiera  
3 Locust and Gail Greene, please come to the witness  
4 stand.

5 Okay. Thank you all for coming. Don't be  
6 intimidated by the courtroom or the red lights. All we  
7 need you to do is just tell us your story as to, you  
8 know, as clients of legal service providers.

9 I'll start with Alvin Thomas as a client of  
10 legal services of the Hudson Valley and accompanied by  
11 Trevor Eisenman.

12 Alvin, go ahead.

13 MR. THOMAS: Good morning, Judge.

14 My name is Alvin Thomas.

15 JUDGE LIPPMAN: Good morning.

16 MR. THOMAS: Good morning.

17 My name is Alvin Thomas.

18 JUDGE LIPPMAN: Tell us your story.

19 MR. THOMAS: Okay. My story is my name is  
20 Alvin Thomas. I live in Mt. Vernon, Westchester County.

21 I served in the United States military from  
22 1972 to 1979, when I was honorably discharged and  
23 received a good conduct medal. After my discharge I was  
24 admitted to the Medical Pavilion Hospital Center where I  
25 went to psychiatric treatment for more than

1 one-and-a-half years.

2 Over the decade I do have many problems. I  
3 had between 100 and maybe 150 hospitalizations. It was  
4 only recently that I have been able to put the pieces  
5 together in my life. I truly believe that if it was not  
6 for the representation that I had gotten from the legal  
7 services of Westchester County and Hudson Valley I would  
8 not have been ever able to do so.

9 First came the legal service situation with  
10 Hudson Valley. I had got an eviction. The paperwork  
11 was given to me at 5:30 in the evening, p.m. I was not  
12 in court that day. The court did not open that day.  
13 The attorney, Mr. Eisenman, who represented me from this  
14 had the papers in court and had made a complaint in the  
15 court the next day and the negotiations were successful  
16 in bringing me time to move.

17 Another situation that I ran into was over the  
18 next three years I was faced with relocating many a  
19 time, after which I used the services of Hudson Valley  
20 attorney services. Mr. Eisenman had represented me in  
21 court again, maintained stability in difficult  
22 situations. The legal firm has represented me.

23 I was in my apartment for about four months  
24 when the landlord sent me an eviction. I had already  
25 paid two months rent and the security down payment. And

1 the first month I had significant income to pay my rent  
2 because of my veteran's benefits. The landlord would  
3 not work it out with me. Payment schedules with me was  
4 hard to get.

5 The Department of Social Services refused to  
6 give me a one shot deal, which was really, really not  
7 understanding to me and they showed no compassion to me  
8 as a person.

9 The legal services had got with me at the time  
10 to move me into a new apartment.

11 My new apartment --

12 JUDGE LIPPMAN: We all have them, --

13 MR. THOMAS: Yes.

14 JUDGE LIPPMAN: -- for better or worse.

15 MR. THOMAS: I am sorry.

16 My new apartment, Social Services chose to  
17 give me money to get it, and I could not believe it. My  
18 legal services got me to move in and found me an  
19 apartment. The new apartment turned into a nightmare  
20 because I was only able to see that apartment during the  
21 morning hours from eleven, being early. After I moved  
22 in the building I was hanging out with prostitutes, drug  
23 dealers and gangsters, finding myself in another dark  
24 and hard situation while trying to maintain some type of  
25 standard lifestyle and renting. I was very frightened



1 to leave my apartment.

2 Again services came, they helped me.

3 They asked the people up in Mt. Vernon in the courts to  
4 hold onto the lease, which would give me a chance to  
5 find another apartment.

6 So the very next time I said I am not going to  
7 find any more apartments. I am going to deal with  
8 realtors. I went to the realtor, showed me an  
9 apartment, took my money, and gave me keys to an  
10 abandoned, unlivable apartment. I could not believe it.  
11 I withheld my rent.

12 Legal services assisted me in finding another  
13 and safer apartment. Legal services also represented me  
14 in the Small Claims Court with the dispute with the  
15 realtor where they were able to return -- get my  
16 precious money back. I live on a set income and it  
17 would have been very, very more devastating, make a  
18 longer homeless period of time if I didn't have these  
19 people to advocate for me.

20 My housing problems went on for more than two  
21 or three years. But by the time I knew it the court  
22 just recognized me with little sympathy up there when I  
23 was in front of him with these cases with hardly no  
24 compassion. Unfortunately, the workers from the VA only  
25 offered -- so here we go, my legal services offered me

1 the most basic and in a difficult situation he always  
2 listened to me with the details of the situation and  
3 thank God he offered me encouragement, because I, as I  
4 stated, went through a lot of pain, maybe just as many  
5 as 150 hospitalizations, just as many with the different  
6 medications when I had got the right one to deal with  
7 it.

8 But basically it comes down to stability to  
9 put my life together. I had just recently gotten  
10 married, which I feel very good about, because if  
11 somebody had told me when I came home something like  
12 that was possible it wouldn't have mattered. But I  
13 fought back and I would not give up.

14 And basically why I am here is because I  
15 really feel that the money and the resources are needed  
16 or may be more increased. As you know, I am a man,  
17 soldier of arms, and veteran. These guys are going to  
18 be coming home. I would not like to see these gentlemen  
19 be misrepresented or pushed away or even locked up. It  
20 comes down to we have not had anyone that can represent  
21 us, and make our case, make our life, make our story  
22 heard.

23 I was very happy and very pleasurable when I  
24 was asked to come here to talk about the situation that  
25 affected me. If it wasn't for this attorney and legal

1 services I didn't know what was going to happen.

2 JUDGE LIPPMAN: What would you have done  
3 without legal services representation?

4 MR. THOMAS: I think I would have been in the  
5 street and I would have been homeless, and with my  
6 condition of paranoid schizophrenia, which has been  
7 uncontrolled for many years now, it was like a bad  
8 situation.

9 But not only that, also reached out, they  
10 called back and checked with me. They took interest in  
11 making sure that I was okay.

12 As I said, I went to the Veteran's  
13 Administration. They had no resources other than I was  
14 getting. And what really shocked me was the DSS or the  
15 housing preservation that puts money out for social  
16 work, they wouldn't even look at me. They made me feel  
17 like come on, what's going on with this.

18 But the point I am saying, time after time but  
19 the calls at night, Thomas, how are you, how are you  
20 doing, that's what got me through to get me here.

21 JUDGE LIPPMAN: So it's fair to say as an  
22 ex-military guy, someone who served his country, really  
23 legal representation is what's allowed you to now live a  
24 useful life and to go about your business and not be,  
25 you know, a burden to society or who knows what would

1 have happened.

2 MR. THOMAS: Well, sir, I am going to say this  
3 and I know we have to move along.

4 Some of us guys come back so wounded we like a  
5 little saying, you have to put a whole bunch of little  
6 pieces together just to get a little piece to make a big  
7 person.

8 Like I say, I am so very happy now. I have a  
9 wife that I can sit across the table from and have lunch  
10 and dinner with. I never thought these things were  
11 possible. But with the encouragement they showed me I  
12 can do it and they reached out to me and actually made  
13 me feel like somebody. I am a taxpayer. I was  
14 refused --

15 JUDGE LIPPMAN: We are so glad you are here  
16 today and glad that you are here to tell your story and  
17 to demonstrate really the need for funding for civil  
18 legal services.

19 So thank you, so much.

20 MR. THOMAS: Thank you, sir.

21 JUDGE LIPPMAN: William Schneider, a client of  
22 Nassau/Suffolk Legal Services -- Law Services,  
23 accompanied by Rose Caputo.

24 MR. SCHNEIDER: Yes.

25 JUDGE LIPPMAN: Mr. Schneider, glad to have

1       you here.

2                   MR. SCHNEIDER:   Thank you.

3                   As a preface I would like to state that the  
4       circumstances involve me and my wife and we had home  
5       ownership in one place for about 40 years and were able  
6       to maintain ourselves in the community, in the  
7       neighborhood.  What happened is I got older, went on  
8       Social Security, could not obtain the level of  
9       employment I had previously, and we, we were having  
10      trouble paying the property taxes which went up at a  
11      very steep rate in recent years.

12                  And as a second part there were issues between  
13      my wife and myself which made things much, much worse  
14      and brought it to the point of not knowing what to do,  
15      not being able to find a path that would allow us to  
16      solve these problems.  It's quite possible, given the  
17      circumstances, if everything had been simple that we  
18      would have taken stock, sold the house, and moved to a  
19      place that would allow us to take care of our  
20      obligations.

21                  I have here a prepared statement which I would  
22      like to bring before you because it explains some or  
23      most of the reasons for this kind of problem and it  
24      brings into the equation the role that Nassau/Suffolk  
25      Legal Services Senior Division played in helping us

1 overcome these difficulties, not without some serious  
2 consequences to the family, but they put us on the path  
3 where I couldn't find ways to deal with it previously.

4 If you don't mind I will read the statement.

5 JUDGE LIPPMAN: Go ahead, sure.

6 MR. SCHNEIDER: My name is William Schneider.  
7 I am 84 years old and I have lived most of my life on  
8 Long Island, New York. I have an undergraduate degree  
9 from SUNY Albany in math and science and a teaching  
10 degree from Harvard Graduate School of Education.

11 I worked most of my working life as a  
12 mechanical draftsman and since the -- since about the  
13 1950s. I married my wife Adele in 1953. We have two  
14 daughters, Linda and Catherine.

15 About 10 years ago, when I was 74 years old, I  
16 became employed as a consultant to help develop a marine  
17 collision avoidance system based on infrared radiation.  
18 This was for an engineer/designer/inventor who had some  
19 very unique and important ideas. Although the inventor  
20 had procured funding by raising capital for this  
21 endeavor, at some point we couldn't get any more funding  
22 or attract capital. Consequently, at about 190 -- 2003,  
23 after two or three years of advancing the job, we were  
24 unable to continue to the extent necessary.

25 My role was as a -- as a consultant, because

1 the company was small and couldn't have employees. So I  
2 was in that role.

3 Because the inventor who formed the  
4 corporation was a personal friend as well, he and I  
5 having worked a number of years, an association that  
6 went back about 20 years, there was great trust between  
7 us. And I volunteered my, my work after the corporation  
8 was no longer able to pay me for it. There are a couple  
9 of reasons of this; one, as I mentioned, we had a close  
10 association and trust. I was in -- as a Social Security  
11 recipient and at this point in my life I really wasn't  
12 able to get a regular job for myself. When I worked  
13 with him I worked out of my house because of various  
14 infirmities and whatever.

15 So, in addition to this project, of course, we  
16 had Social Security and between my wife and myself it  
17 probably was in the order of 20, 22 thousand dollars  
18 income. But, nevertheless, I continued working for  
19 reasons just mentioned, because there were goals, there  
20 were promises, I had trust, and it would have been a  
21 greater thing to complete it.

22 I continued on this direction for about three  
23 years or so after the ability to pay me directly had  
24 stopped. And at some point in that time I sought  
25 independent or other employment as a necessity because

1 of our personal circumstances. My wife and I were  
2 coming to the point of great difficulty.

3 I went on numerous job interviews, but despite  
4 my efforts I was unable to find another job. As a  
5 result, I was unable to meet household expenses and the  
6 increasing Nassau County property taxes.

7 My financial difficulties worsened as a result  
8 of a difficult relationship between my wife and I. It  
9 had been somewhat adversarial, perhaps independent of  
10 money, but money entered into it to an extent.

11 My wife was diagnosed with bipolar disorder in  
12 2003. She was hospitalized for a short while. And she  
13 had previous indications of mental illness of maybe not  
14 such a serious nature before. And the important thing  
15 financially there is she was unable to distinguish the  
16 reality of our situation; one, that we could not  
17 maintain the home, pay the taxes, and keep up. And so  
18 the situation financially worsened.

19 And we -- I sought help, began seeking help  
20 from various county agencies, from the Nassau County  
21 Assessor regarding the property taxes. And because our  
22 names were both on the deed of the house one party could  
23 not make any kind of decision without the other.

24 By 2008 our property taxes had become  
25 increased to about \$11,000 a year. You measure that



1 against 20 to 22 thousand dollars on Social Security  
2 income and it was an impossible situation.

3 I entered into credit card debt, which at the  
4 largest point got to be about a hundred thousand  
5 dollars. And although I was able to make payments and  
6 never missed a payment, the realization was that our  
7 circumstances were such that it was going to be  
8 impossible.

9 JUDGE LIPPMAN: So what did you do, at what  
10 point did you come in contact with legal service  
11 providers?

12 MR. SCHNEIDER: Well, okay, in 2008 I met my  
13 lawyer, Rose Caputo, at Nassau/Suffolk Law Services.

14 JUDGE LIPPMAN: In relation to this whole debt  
15 situation?

16 MR. SCHNEIDER: Yes.

17 I had contacted other agencies before,  
18 including Nassau County legislature, and one got  
19 sympathy maybe at certain times but nothing tangible.

20 JUDGE LIPPMAN: How did your lawyer help you?

21 Tell us in your own words, you don't have to  
22 continue reading, you can tell us what happened.

23 What happened, you were having a debt problem,  
24 you went to see legal services, how did she help you,  
25 tell us in your own words?

1 MR. SCHNEIDER: Can I please read it because  
2 it's a little --

3 JUDGE LIPPMAN: You can, but we have a lot of  
4 witnesses waiting.

5 MR. SCHNEIDER: I will try to be quick.

6 JUDGE LIPPMAN: Sure, go ahead.

7 MR. SCHNEIDER: I made her aware of the  
8 circumstances of the debt, and most importantly, told  
9 her about the property taxes. Consequently, a lien was  
10 placed on our home. If I were unable to pay the  
11 property taxes with interest within two years our home  
12 would go into foreclosure. The mortgage itself had been  
13 paid off in 1979.

14 Rose advised me to convince my wife, Adele,  
15 that we had to sell our house and/or get a reverse  
16 mortgage. I was unable to convince my wife to sell, or  
17 obtain a reverse mortgage.

18 Rose advised me of other options to resolve  
19 the situation. The first was we explored the  
20 possibility of a guardianship, a limited guardianship  
21 over my wife. That didn't need any more where after  
22 some study because it's just not the way the law works  
23 in New York State.

24 Consequently, the one that I had to go by was  
25 to file for divorce as really the only possible

1 solution, she and I both being deed holders.

2 Several months after filing for divorce on my  
3 behalf my wife's behavior became increasingly erratic.  
4 Sometime in December of 2008, after attending a church  
5 function, my wife left her car in the church parking lot  
6 and walked to a nearby hotel. Right in the hotel she  
7 told the staff that she was there to meet some rich  
8 relatives who were going to give her a lot of money.  
9 Because her behavior was disruptive the hotel staff  
10 called the police. The police arrived, removed her from  
11 the premises and brought her back to the church, instead  
12 of taking her to the hospital or in custody. An officer  
13 then came to my house to notify me where my wife was.  
14 We went back to the church and I drove her home. I  
15 attempted to obtain a police report and the police were  
16 uncooperative.

17 JUDGE LIPPMAN: How did your lawyer help you  
18 out of the situation?

19 That's really --

20 MR. SCHNEIDER: Right now this is the crux  
21 here.

22 JUDGE LIPPMAN: That's what we want. Go  
23 ahead.

24 MR. SCHNEIDER: I informed Rose, who  
25 understood what -- that what had transpired might be

1 helpful in filing for a guardianship proceeding.

2 With my permission Rose called the police the  
3 next day, which allowed Social Services to come into the  
4 picture. Again with my permission Rose made a referral  
5 to the Nassau County Department of Mental Health.  
6 Shortly after, on December 29, 2008, the Department of  
7 Mental Health team of social workers came to our house.  
8 As a result, my wife was involuntarily admitted to this  
9 hospital in serious condition due to tachycardia,  
10 congestive heart failure and hypertension. In addition,  
11 the mental health crisis team immediately diagnosed my  
12 wife as suffering from dementia, a diagnosis that was  
13 confirmed when she was admitted.

14 Just one note, and not reading, and that is we  
15 had tried for a number of times to get, in other  
16 instances, to get the police to take my wife to the  
17 hospital for all I can say is testing to determine if  
18 she was mentally ill to the extent of needing --

19 JUDGE LIPPMAN: But your lawyer helped you to  
20 get a guardianship of your wife?

21 MR. SCHNEIDER: We are right there and I  
22 should --

23 JUDGE LIPPMAN: We are going to have to -- we  
24 have a number of witnesses waiting, so all we really  
25 want to know, and we so appreciate you coming here, what

1 did the lawyer -- in the end how did she resolve your  
2 problems for you, your wife had a guardianship and what  
3 about your debt issues?

4 MR. SCHNEIDER: Rose helped me find an  
5 organization that could help me with the debt issue to  
6 the extent of getting a reduction and clearing up the  
7 debt that way.

8 There were many other things she did. She  
9 filed the timely withdrawal of the divorce action  
10 because we didn't need that anymore, and securing proper  
11 assessment and treatment of my wife.

12 In addition, Rose helped us secure Medicaid  
13 funding for my wife's nursing home care, helped me and  
14 my daughter gain more time for an appropriate nursing  
15 home for my wife after an early discharge order seemed  
16 to forgo that, attended to the guardianship hearings  
17 with me, drafted a will, healthcare proxy and power of  
18 attorney for me and transferred the title of my home to  
19 me to facilitate the sale of our house.

20 In addition, she took over the contract for  
21 the sale of the house from an unscrupulous real estate  
22 attorney, a closing attorney, prepared all the documents  
23 for the closing and attended the closing. She also  
24 tried to help me secure senior housing. And since I am  
25 in the position of working on the credit card debt

1 because of Rose and her referrals and instruction.

2 JUDGE LIPPMAN: I gather that you are on your  
3 way to putting your problems behind you --

4 MR. SCHNEIDER: Yes, we were able.

5 JUDGE LIPPMAN: -- thanks to the  
6 representation by legal services.

7 MR. SCHNEIDER: So strong.

8 JUDGE LIPPMAN: And I gather this is a problem  
9 that had many different tentacles to it.

10 MR. SCHNEIDER: Yes.

11 And there were no ways, we couldn't -- we  
12 couldn't go to a private attorney. They wouldn't work  
13 on, what do you call it, contingency.

14 JUDGE LIPPMAN: We understand.

15 MR. SCHNEIDER: You know, why should they or  
16 whatever.

17 JUDGE LIPPMAN: It's a wonderful story and I  
18 see how -- we see how legal services really allowed you  
19 to have your life back.

20 MR. SCHNEIDER: We had nowhere else to go and  
21 they found a path for us in many directions.

22 JUDGE LIPPMAN: I see in a multitude of many,  
23 many legal entanglements.

24 MR. SCHNEIDER: Yes, and even given my wife's  
25 health, the fact that she was diagnosed with dementia,

1 got nursing home -- good nursing home help, all of that  
2 that were things aside from direct financial that --

3 JUDGE LIPPMAN: I agree and I think the moral  
4 of the story, and I don't mean to cut you short, but I  
5 think that the moral of the story is that it's not --  
6 you are an educated man and obviously have had a fine  
7 career and a home and that legal services is not just  
8 for people who never had a job or are uneducated or who,  
9 you know, have language problems or immigration  
10 problems. They are for normal people, good people, who  
11 work their lives and have some material things and there  
12 comes a point in life where there is no money and no  
13 ability to pull your life together on your own.

14 And we see how essential legal services can be  
15 to getting on with living and enjoying life and because  
16 of legal problems you can't, no matter how educated or  
17 sophisticated you are, you can't necessarily navigate  
18 the legal system.

19 So we thank you for your story and definitely  
20 can see how instrumental legal services are in terms of  
21 so many different people from all walks of life in our  
22 community. So, thank you. We appreciate it.

23 And now we go to Chakiera Locust, client of  
24 the Legal Aid Society of Rockland County, accompanied by  
25 Mary Ellen Natale.

1 Go ahead.

2 MS. LOCUST: Good afternoon.

3 My name is Chakiera Locust and I am pleased to  
4 tell you how the Legal Aid Society of Rockland County  
5 was there for me when I needed help.

6 JUDGE LIPPMAN: Maybe you ought to bring the  
7 mike closer to you.

8 MS. LOCUST: Sorry.

9 Is this better?

10 JUDGE LIPPMAN: Good.

11 Go ahead.

12 MS. LOCUST: I live in Rockland County, New  
13 York, with my two children. My son Xavier is five and  
14 my daughter Kaylah is two.

15 I had been working as a telemarketer in -- I  
16 had been with my company for about three years, but in  
17 2008 things started to fall apart. First, I lost my job  
18 when my business was closing. One day my boss came and  
19 told me to pack up my belongings and leave. I did so  
20 and then I applied for unemployment benefits. I told  
21 unemployment exactly what happened and I was denied when  
22 my boss said that I had quit, which was not true.

23 So I called the Legal Aid Society of Rockland  
24 County for help and that's when I met Mary Wallace, the  
25 advocate assigned to my case. She represented me at the



1 unemployment hearings. She fought for my rights. I was  
2 finally awarded benefits in the spring of 2009. But  
3 that wasn't before that ordeal had an effect on the rest  
4 of my life.

5 You see, I had fallen behind in my rent  
6 payments due to the fact that I wasn't working while my  
7 unemployment case was going on. So my children and I  
8 lived in a private rental apartment, one of the few that  
9 we can afford. The Section 8 waiting list is closed, so  
10 we have very few affordable options. So it was very  
11 important that we were able to stay in our home.

12 My landlord brought an eviction proceeding  
13 against me in the Spring Valley Justice Court in May of  
14 2009 and I contacted Legal Aid again. This time I was  
15 represented in court by Miss Mary Ellen Natale. She  
16 negotiated up enough time for me to be able to pay off  
17 the back rent with the help of Social Services, and I  
18 was able to pay the ongoing rent now that I was  
19 receiving unemployment benefits thanks to Miss Wallace.  
20 So I felt that I was back on my feet and that everything  
21 would be okay from that point on. And I was wrong.

22 In November of 2009 I was served with yet  
23 another eviction petition and I had been paying my rent.  
24 But this time I was being sued by someone I had never  
25 met, a temporary receiver for my building. My landlord

1 was in foreclosure and a receiver had been appointed.  
2 My landlord was supposed to be turning over my rent  
3 payments to the receiver, but he didn't, and the  
4 receiver thought that I didn't pay.

5 I didn't know any of this until I contacted my  
6 lawyer at Legal Aid again and she did some investigating  
7 to find out what was going on. Miss Natale represented  
8 me again in court and the eviction was dismissed. Plus  
9 the judge had told the receiver to find someone to  
10 manage the property as long as we were renting there.

11 I was thrilled that the eviction was dismissed  
12 but my problems still were not over. My furnace broke a  
13 couple of weeks after the proceeding and I called my  
14 landlord to fix it and he refused. I had contacted  
15 Legal Aid. Miss Natale put me in touch with the Health  
16 Department and contacted the receiver, and before the  
17 day was over we had heat again.

18 But my housing problems were still not  
19 resolved because in May my landlord filed an eviction  
20 proceeding against me. He claimed that I had not been  
21 paying my rent, when, in fact, I had been paying the  
22 court appointed receiver. So I contacted Legal Aid once  
23 more. Miss Natale represented me again. She contacted  
24 my landlord's attorney. The case was withdrawn without  
25 me having to go to court, which was really important to

1 me because I am now working, so I can't miss a day of  
2 work. And she also advised me of my legal rights  
3 against my landlord and told me that Legal Aid would  
4 help me if I wanted to pursue them.

5 But I am very hopeful that things will be  
6 looking up for me and my children. We are still in our  
7 apartment and it's a comfort to know that I have  
8 affordable housing at least, you know, for now.

9 In the past year I obtained my GED and am  
10 hoping that this will help to open doors for me. I am  
11 back at work. And I don't know what I would have done  
12 or what would have happened to us if Legal Aid hadn't  
13 fought for my unemployment benefits or prevented our  
14 eviction or helped me even with just heat in the winter.

15 I sat here and I listened to a woman that  
16 worked for the shelter and just listening to what she  
17 said, her client could have been me, and if they hadn't  
18 stepped in at the time that they stepped in, every time  
19 that they stepped in, I was one step away from being  
20 that lady's client.

21 So I just want to say that, you know, what  
22 they do, it really makes a difference in people's lives,  
23 and I have been, you know, someone she represented. So  
24 it's very important that we continue to have their  
25 services and I felt great to know that my rights are

1 protected and that I have someone to fight for me.

2 JUDGE LIPPMAN: The same as Mr. Thomas and  
3 Mr. Schneider, really, legal services helped you to pull  
4 your life together.

5 MS. LOCUST: Most definitely.

6 JUDGE LIPPMAN: And things are looking up?

7 MS. LOCUST: Yes.

8 JUDGE LIPPMAN: Okay. Next is Gail Greene,  
9 client of the Legal Aid Society of New York City,  
10 accompanied by Sumani Lanka.

11 MS. GREENE: Good afternoon.

12 JUDGE LIPPMAN: Hi.

13 MS. GREENE: My name is Gail Greene. I am  
14 currently a client of the Legal Aid Society. I am here  
15 today to share my experience with you, and in doing so I  
16 hope to convince you of the importance of continued  
17 funding for the Legal Aid Society and other civil legal  
18 services programs.

19 I currently reside in East Elmhurst, Queens,  
20 with my 25-year-old son and my 19-year-old disabled  
21 daughter. I have lived in my home for over 10 years.  
22 My home is extremely important to me because it is  
23 handicap-accessible for my daughter, who suffers from  
24 spina bifida, a birth defect that involves the  
25 incomplete development of the spinal cord.

1           My troubles started in 2007, when I was  
2           looking to refinance my home. The mortgage broker,  
3           Atlas Home Equities, promised me a fixed rate mortgage  
4           of eight percent and mortgage payments of approximately  
5           \$3,000 per month, including taxes and insurance.  
6           Instead, I was tricked into taking out an adjustable  
7           rate mortgage with a bank at an initial rate of  
8           12 percent and mortgage payments starting at  
9           approximately \$5,000, which included taxes but not  
10          insurance, despite the fact the lender and broker knew  
11          that I would be unable to afford to make such payments.

12                 Inevitably, I ended up defaulting on my  
13          mortgage payments, and the bank instituted an 18 percent  
14          default interest rate on the loan. At that point I knew  
15          that I would never be able to catch up on my mortgage  
16          payments. Despite my attempts to work something out  
17          with the bank, I ended up in foreclosure.

18                 When I first came to the Legal Aid Society for  
19          assistance I was in foreclosure proceedings. I was  
20          desperate to save my home, but I did not know my legal  
21          rights or even if I had any. My friend advised me to go  
22          to the Legal Aid Society, and I am so grateful that I  
23          did. I met with a foreclosure prevention attorney, who  
24          reviewed my case, patiently answered questions, and  
25          explained all of my legal rights.

1           The Legal Aid Society agreed to represent me  
2           in the foreclosure action. The Legal Aid Society  
3           submitted defenses on my behalf and as a result of their  
4           representation the bank decided on its own to dismiss  
5           the foreclosure action against me. Without Legal Aid's  
6           direct representation, assistance, and advocacy I have  
7           no doubt that my family and I would have already lost  
8           our home.

9           The Legal Aid Society later informed me that  
10          many homeowners have similar stories to me, that they  
11          were also deceived into taking out high interest  
12          adjustable rate loans with banks. However, due to the  
13          lack of resources, many of those homeowners would not be  
14          able to get much needed legal representation.

15          The Legal Aid Society is now representing me  
16          in an affirmative litigation case against this bank and  
17          Atlas Home Equities in the Eastern District of New York,  
18          in the hopes that the rights of other homeowners may be  
19          protected.

20          I am extremely lucky to have a Legal Aid  
21          Society attorney represent me because otherwise I would  
22          not have a home and my daughter would be at a huge  
23          disadvantage. I feel that the Legal Aid Society  
24          provided me with the support and knowledge to fight back  
25          against an injustice that was done to me. All I wanted

1 was the opportunity to save my home and thanks to the  
2 Legal Aid Society I believe that I am being given that  
3 chance. However, I know that there are many other  
4 individuals out there, not just homeowners, that need  
5 access to legal resources in order to protect their  
6 rights.

7 The Legal Aid Society is an extremely  
8 important resource for New Yorkers who would otherwise  
9 lack the ability of obtaining representation or legal  
10 assistance in a variety of civil litigation issues. I  
11 am here today in support of continued and increased  
12 funding to civil legal services in New York.

13 Thank you.

14 JUDGE LIPPMAN: Okay. Your story is certainly  
15 not untypical, particularly today with the economy the  
16 way it is. And again, another example of, I think, the  
17 value in people's everyday lives, that being able to  
18 function in our society in having representation.

19 So I thank you, Mr. Thomas, Mr. Schneider,  
20 Miss Locust and Miss Greene for your testimony, it's  
21 greatly appreciated.

22 Thank you.

23 MR. THOMAS: Thank you, guys.

24 Have a nice day.

25 JUDGE LIPPMAN: Now a judges' panel, Judge

1 Honorable Kathie E. Davidson, Honorable Eleanora  
2 Ofshtein, and Honorable Norman St. George.

3 Well, we have turned the table on the three of  
4 you, now you have to look at the red lights.

5 Anyway, so delighted to see all of you.

6 Judge Davidson, you want to start.

7 JUDGE DAVIDSON: Good morning -- I mean good  
8 afternoon, Judge Lippman, Judge Pfau, Justice Prudenti,  
9 and President Younger.

10 I did prepare a speech. I will probably go  
11 between the both of them.

12 Thank you for this opportunity to discuss the  
13 importance and the necessity of civil legal services.

14 JUDGE LIPPMAN: Thank you for coming.

15 JUDGE DAVIDSON: As the Supervising Judge for  
16 the 9th JD, Family Court, and also presiding over the  
17 neglect and abuse part, I can't imagine being able to  
18 even function without the assistance of civil legal  
19 services.

20 As you are aware, the forum for many of the  
21 legal matters are those where families and children come  
22 before the Family Court. Family courts can provide such  
23 a forum only if there is justice accessible to the  
24 citizen and in the case of the Family Court usually  
25 that's provided by our 18B panel or in fact, by the



1 civil legal services.

2 Generally, most of our litigants are low  
3 income or indigent and as they come before the court,  
4 the cases of the proceedings of the family offense  
5 petitions, neglect/abuse cases, custody, visitation,  
6 juvenile delinquency, and PINS petition.

7 Generally most of the litigants, once they  
8 come into court are, in fact, assigned counsel.  
9 Otherwise they may come before the court through the  
10 justice center which ultimately will refer the case to  
11 the Hudson Valley Legal Services.

12 Interestingly enough, I just had a case this  
13 week where there was a case where the parents were  
14 separated, divorced, and the subject child lived in  
15 Virginia with her mother or with cousins and family and  
16 she was on her visit up here in Westchester for the  
17 summer with the father, a teenager. During that time  
18 she disclosed to her father that she had been sexually  
19 abused by the husband of her cousin whom she was living  
20 with. He was actually a sex offender and that was, in  
21 fact, documented.

22 As a result of that, her father, who was  
23 basically illiterate, tried to come to Family Court, was  
24 unaware of the process, and in fact, was unable to gain  
25 access. As a result he went to the Hudson Valley Legal

1 Services, they filed an Order To Show Cause on his  
2 behalf and the matter was brought before me.

3 As we researched we found that this case was a  
4 case originally before Judge Cooney and, in fact, that  
5 she had an action on that matter. Clearly I signed the  
6 Order To Show Cause and obtained the emergency  
7 jurisdiction.

8 As we reviewed the file it was clear to us  
9 that because there was a previous proceeding regarding  
10 this matter and we were back and forth between Virginia,  
11 he had assigned counsel, but as stated from the previous  
12 testimony, because of his inability, even though we have  
13 probation who assists in filing petitions, because he  
14 was illiterate, can't read or write, he couldn't even  
15 get into the door. So without the assistance of legal  
16 services of the Hudson Valley who knows what may have  
17 happened, in fact, with this young girl, who, in fact,  
18 did disclose, our Department of Social Services went  
19 out, indicated the case and, in fact, the case is before  
20 me now. Just some of the interconnection between the  
21 legal services on these emergency applications,  
22 especially with the litigants that we face.

23 JUDGE LIPPMAN: This is really what you face  
24 everyday.

25 JUDGE DAVIDSON: Absolutely.

1 JUDGE LIPPMAN: Each one of these cases has  
2 all these other tentacles, interconnections, as you call  
3 them, that requires legal help and legal representation.

4 JUDGE DAVIDSON: Absolutely. Every single  
5 stage.

6 As I sat and listened to all the litigants, at  
7 some point that was some litigant before me or in my  
8 days of representing clients were clients before me.

9 When I pooled my court attorneys and the other  
10 staff that I talked with just to say what would they  
11 like me to tell you, our support magistrates really  
12 wanted to tell you that generally they are not allowed  
13 to, not allowed, but usually it's as discretionally and  
14 they allow assigned counsel. And now with the dire  
15 situation with the economic crisis, the highest -- one  
16 of the highest numbers of filings come in the support  
17 cases.

18 In addition, most of my complaint letters are  
19 now with the support matters. And generally the  
20 complaint is not that one doesn't want to pay what they  
21 have, but because the economic circumstances.  
22 Westchester County has the highest paying taxes in the  
23 nation.

24 So the support magistrates are so frustrated  
25 because when we talked about it they say I know that

1 there is testimony or evidence that can deviate from the  
2 support guidelines. However, we can't elicit the  
3 testimony. We can't jump in. So either they get  
4 inadequate orders, the petitions are dismissed, lack of  
5 evidence. And likewise on the other side, when the  
6 litigants know, when the parents or the custodial  
7 parents know that there is income out there but they are  
8 unable to document it.

9 So in those cases I ask them, in light of the  
10 economy, when they can and if they can, to assign  
11 counsel. And then we do have an up and thriving pro  
12 bono committee in the 9th JD, we assign counsel.

13 JUDGE LIPPMAN: So it's really a combination  
14 of all different things.

15 JUDGE DAVIDSON: Absolutely.

16 JUDGE LIPPMAN: Obviously, the providers, pro  
17 bono assistance.

18 JUDGE DAVIDSON: Right.

19 JUDGE LIPPMAN: Whatever we can do with  
20 helping them in the courts, --

21 JUDGE DAVIDSON: Exactly.

22 JUDGE LIPPMAN: -- it's all part of this  
23 picture.

24 JUDGE DAVIDSON: Exactly, exactly.

25 And especially when we have a family petition

1 and the litigants come before us, many of them are just  
2 unaware of the process. So a judge is required in five  
3 minutes or less to explain the constitutional concept of  
4 notice, opportunity to be heard, where many of us had to  
5 take a whole course on understanding.

6 So within the system itself, and I will just  
7 sum up, especially in Family Court, it doesn't really  
8 just begin when you come to the -- when you get into the  
9 court. It really starts with the clerk's office,  
10 because they are unfamiliar with how to file the  
11 petitions. There are unfamiliar language barriers that  
12 I haven't even begun to discuss and I won't discuss now.  
13 There are litigants who are non-speaking -- are  
14 non-English speaking litigants, and the culture issues.

15 So all I can say --

16 JUDGE LIPPMAN: Which is a whole other area.

17 JUDGE DAVIDSON: Absolutely.

18 So, I will nip this in the bud. To make a  
19 long story short, clearly, without access to civil legal  
20 services, the 18B Panel, Attorney/Children Panel, all of  
21 which I have served on, Family Court would just come to  
22 a grinding halt.

23 PRESIDENT YOUNGER: Are there particular kinds  
24 of cases in your court that aren't getting assigned  
25 counsel that would benefit from it?

1 JUDGE DAVIDSON: Clearly in the support  
2 matters, in those matters.

3 And I would also like to say sort of the  
4 middle class, middle class is suffering from cases. So,  
5 for instance, maybe they can't afford a divorce but they  
6 will come into Family Court and get everything else.  
7 they get custody, visitation, but they don't fit into  
8 that area where they quite qualify for assigned counsel.  
9 You know, maybe you will get the attorney for the  
10 subject child who ultimately ends up being the power  
11 broker to have the deal. You know, clearly that's a  
12 section that -- and obviously we again try to get pro  
13 bono.

14 But those two areas I say is a big gap, the  
15 support matters and also those on the custody matters  
16 and the modification of your divorce proceedings that  
17 come into Family Court because we are easier to access  
18 and quicker to get to us and you will get a court date  
19 quicker.

20 JUDGE LIPPMAN: Thank you, Judge Davidson.

21 Judge Ofshtein, you have an area very graphic  
22 in terms of the need for civil legal services, the  
23 Housing Court. Tell us a little bit about how legal  
24 services affects or hurts if you don't have it.

25 JUDGE OFSHTEIN: Thank you, and good

1 afternoon.

2 I have been very lucky to wear three hats in  
3 the Housing Court. At first as a practitioner in a  
4 small landlord/tenant firm. Mostly we represented  
5 landlords, a few tenants. Then as a court attorney in  
6 the Housing Court for nine years in Manhattan. And then  
7 now recently as a judge in the Housing Court.

8 What we are seeing, and through all three of  
9 those hats what you are seeing is what you have seen in  
10 this prior panel. You have seen the ex-vet, the elderly  
11 person going through debt, the woman dealing with  
12 eviction notices. You see all these people every single  
13 day times 70 cases.

14 You have people coming in unrepresented, vast  
15 majority unrepresented. You have, as a practitioner, a  
16 few minutes to speak to them and you have a complete  
17 conflict of interest because you have to represent your  
18 client in the best way that you can, at the same time  
19 you have a person in front of you who has no idea what  
20 you are talking about.

21 JUDGE LIPPMAN: Well, you know it's very  
22 interesting that you say that. We had representatives  
23 of the landlord bar who are saying how destructive it is  
24 to them, too, to have people who are, you know, not  
25 represented. There are rent stabilization associations.

1 We had representatives of the industry as a whole just  
 2 saying that the last thing they want is to come into  
 3 court --

4 JUDGE OFSHTEIN: And that is true --

5 JUDGE LIPPMAN: -- and see tenants without  
 6 representation.

7 JUDGE OFSHTEIN: -- across the board.

8 How do you in five minutes that you have to  
 9 talk to these people, before you run and do your other  
 10 cases, explain jurisdiction, laches and various  
 11 others, and are you allowed to explain that, isn't that  
 12 legal advice, where a person is standing there asking  
 13 you questions.

14 JUDGE LIPPMAN: And as the judge it really  
 15 is -- you are not supposed to be an advocate, yet what  
 16 do you do.

17 JUDGE OFSHTEIN: Well, you can rubber stamp  
 18 everything, that's about it. Otherwise you are going to  
 19 answer questions and you are going to ask questions and  
 20 you are going to open up Pandora's boxes that you don't  
 21 want to open up.

22 JUDGE LIPPMAN: So it really compromises our  
 23 system of justice certainly in the Housing Court.

24 JUDGE OFSHTEIN: Absolutely.

25 And as a court attorney the same thing. There



1 is a lot of tensions that it causes and it causes  
2 tensions, it makes the court look inefficient. There is  
3 that appearance of impropriety.

4 All of these things across the board for every  
5 person, walk of life, not just your poor person who is  
6 on public assistance, you are talking about an  
7 incredible increase in the working poor. People are  
8 trying to get to work, they can't come back to court  
9 every five minutes. You are talking about middle class  
10 people.

11 JUDGE LIPPMAN: The working poor is very much  
12 a product of this.

13 JUDGE OFSHTEIN: Absolutely.

14 And as the judge stated, we are not even  
15 talking about the issues of cultural background,  
16 language background. You have to get through all that  
17 to find out the story.

18 JUDGE LIPPMAN: Yes.

19 Anything else?

20 PRESIDENT YOUNGER: Let me just ask you, you  
21 said the vast majority of the litigants on the tenants'  
22 side are unrepresented.

23 I assume most of the landlords are  
24 represented --

25 JUDGE OFSHTEIN: Most -- sorry.

1 PRESIDENT YOUNGER: -- and I have heard from  
2 one legal services provider here in Brooklyn that when  
3 they have lawyers, when the lawyers show up and they get  
4 assigned, that then 90 percent of those cases get worked  
5 out.

6 What is it about bringing the lawyer into the  
7 equation with this in this dynamic that helps that to  
8 get worked out and leaves the person in their apartment  
9 as opposed to getting evicted?

10 JUDGE OFSHTEIN: So many things. You are  
11 talking about an attorney having already spoken to their  
12 client, best case scenario, has gone through all these  
13 issues, whether it's cultural, language, finding out the  
14 strategical issues in that person's case, coming to talk  
15 to a second person and being able to just cut through  
16 all those things that take time, time we don't have.

17 You have people trying to explain their life  
18 stories, their frustrations, their anger. How do you  
19 get through all that to ask them when are they going to  
20 pay their rent, or what are the issues about repairs.  
21 Or what about timidity, imagine your elderly grandmother  
22 coming into court, an immigrant, and barely speaking  
23 English, and trying to explain to that person do you  
24 have issues, what are your issues. They may not be able  
25 to get them out unless you ask questions. And at some

1 point your questions are going to lead you to legal  
2 advice and they have consequences.

3 So when two attorneys meet they know those  
4 things already. You don't have to go through law school  
5 101 to explain those issues. They already know them.  
6 And they are able to negotiate on a level playing field,  
7 they are able to discuss the true issues of what's  
8 happening in that case.

9 JUDGE LIPPMAN: I think what you are  
10 demonstrating is the whole system breaks down --

11 JUDGE OFSHTEIN: Absolutely.

12 JUDGE LIPPMAN: -- without legal  
13 representation for the poor, working poor, all the  
14 others who really can't defend themselves.

15 JUDGE OFSHTEIN: And it affects the way the  
16 court is viewed as well.

17 JUDGE LIPPMAN: No question.

18 Thank you, Judge, appreciate it.

19 Judge St. George.

20 JUDGE ST. GEORGE: Good afternoon, Chief Judge  
21 Lippman, Chief Administrative Judge Pfau, Presiding  
22 Justice Prudenti and President Younger.

23 My name is Norman St. George. I currently  
24 serve as the presiding judge over the Integrated  
25 Domestic Violence Court for Nassau County, hearing a

1 combination of cases related to Family Court issues and  
2 divorce cases.

3 JUDGE LIPPMAN: So really you structurally are  
4 dealing with the relationship between the need for civil  
5 legal services and the criminal, --

6 JUDGE ST. GEORGE: Absolutely.

7 JUDGE LIPPMAN: -- the different issues  
8 involved, very much a part of your everyday.

9 JUDGE ST. GEORGE: Yes.

10 And I have sat through a number of their prior  
11 panels and all of the testimony comes to play in my  
12 court everyday. So I am well familiar with the effect  
13 that a reduction of legal civil services will have on  
14 our legal system.

15 It's my opinion, and it's the sad, unavoidable  
16 truth that litigants who appear in court without an  
17 attorney obtain an inferior result than those who appear  
18 in court with an attorney. I think that's a fact we  
19 understand. We accept that principle in criminal cases  
20 and therefore we make sure that indigent defendants are  
21 represented in criminal matters.

22 JUDGE LIPPMAN: What do you think  
23 conceptually, I know this is a hard question, but  
24 certainly one of the premises you know of these hearings  
25 and really what we are trying to do is that there is an

1 analogous right, in quotation marks, that people have to  
2 a lawyer when they can't afford one and you are dealing  
3 with things that go to the very necessities of life and  
4 certainly in your part people are dealing with the  
5 well-being of their families, their personal safety, do  
6 you view it from a judge's perspective as people have  
7 that right to representation?

8 JUDGE ST. GEORGE: I believe that they do have  
9 the right to representation because you are dealing with  
10 as severe an issue as you would be dealing with in  
11 Criminal Court.

12 JUDGE LIPPMAN: It's on a parallel track to  
13 when you are dealing with someone's liberty.

14 JUDGE ST. GEORGE: Absolutely.

15 JUDGE LIPPMAN: Because here you can certainly  
16 lose certainly the equivalent of your liberty.

17 JUDGE ST. GEORGE: Absolutely.

18 Dealing with custody and visitation issues, it  
19 goes to the essence of our families and a lot of the  
20 Family Court petitions involve violations of court  
21 orders of protection which carry with it jail time and  
22 we have a screening system that we use. And I have sat  
23 in Family Court for a year where we ask if someone has a  
24 home, and if they have a home they do not qualify for an  
25 18B attorney.

1           Unfortunately, with the down turn of the  
2           economy, many people may have a home but are either in  
3           foreclosure or upside down in their mortgage and do not  
4           have money. So at that moment they are prevented from  
5           an 18B attorney. They could look to civil legal  
6           services if it's available. If those monies are cut  
7           then that is not available for them.

8           The judge mentioned something that's  
9           interesting; the inequity starts at the filing process,  
10          appearing in the clerk's office and not knowing how to  
11          draft a complaint, how not to draft a family offense  
12          petition. I have family offense petitions that allege  
13          incidents that occur in the future and obviously those  
14          have to be dismissed. I have violations, allegations of  
15          a violation of a court order of protection which happen  
16          after, actually before a judge signed the court order.

17          So these little problems in the accusatory  
18          instruments or the filing of the complaints and  
19          petitions have great devastating impact on families and  
20          it also increases the case load where these people, it's  
21          my view, obviously, if they consulted with attorneys you  
22          would have a better quality of accusatory instrument in  
23          the beginning and you wouldn't waste time many months  
24          getting to a point where it would have to be dismissed  
25          at trial based on a technicality, which is unfortunate

1 for the system, but more unfortunate for the families  
2 and the litigants and especially victims of domestic  
3 violence. And there is no way around that.

4 Obviously, as a neutral magistrate we cannot  
5 prompt people, we cannot assist them in their  
6 litigation.

7 After the filing process one of the inequities  
8 is that unrepresented litigants cannot subpoena  
9 witnesses. Many times they are unfamiliar with the  
10 process. They cannot sign off on a subpoena like an  
11 attorney can. So a lot of times their entire case  
12 relies upon their testimony which is normally unedited  
13 and is usually just a flow of consciousness.

14 Another inequity comes when one side is  
15 represented by an attorney and the other side isn't. I  
16 had a case two weeks ago where an attorney made an  
17 objection and the unrepresented litigant stopped her  
18 testimony, don't know if she was embarrassed, don't know  
19 if she was confused, and sat down. And I asked her a  
20 number of times would you like to continue and discuss  
21 some of the issues pertinent in this case. She said no.  
22 And then that case was over.

23 So just those little procedures that an  
24 unrepresented litigant does not know in the court realm  
25 leads to inequities and it goes back to not having

1 representation, and it's at every point of the  
2 litigation process from beginning to end.

3 JUDGE LIPPMAN: And, of course, before the  
4 litigation at all.

5 JUDGE ST. GEORGE: Absolutely, before the  
6 litigation at all.

7 So it's my belief that a further reduction  
8 would have a detrimental effect on our legal system and  
9 those who come before us in civil cases.

10 JUDGE LIPPMAN: Any other questions?

11 We thank the judicial panel.

12 JUDGE ST. GEORGE: Thank you.

13 JUDGE DAVIDSON: Thank you.

14 JUDGE LIPPMAN: You have a unique perspective,  
15 a bird's eye perspective, I think, on the need for  
16 additional funding for civil legal service.

17 Thank you.

18 JUDGE OFSHTEIN: Thank you.

19 JUDGE LIPPMAN: I appreciate it.

20 Our final witness for today, our clean up  
21 hitter, so to speak, is Judge Fern Fisher, who has done  
22 such a fabulous job statewide in promoting access to  
23 justice in this department and the other three  
24 departments around the state and I think also has a  
25 unique perspective on the need for stable funding for



1 civil legal services.

2 So, Judge Fisher, it's a delight to see you.

3 JUDGE FISHER: Good afternoon, Chief.

4 Good afternoon, Justice Prudenti, Judge Pfau  
5 and President Younger.

6 Initially I want to acknowledge the hard work  
7 of Helaine Barnett, Marsha Levy and all the task force  
8 members who contributed to insuring that many voices  
9 have been heard at the four hearings across the state on  
10 this most important issue of stable and adequate funding  
11 for civil legal services.

12 Today I would like to add the voice of the New  
13 York State Courts Access to Justice Program and my own  
14 voice as a Deputy Chief Administrative Judge of the New  
15 York City Courts to the harmonious inquiry. I may echo  
16 a lot of what you have already heard, but I think I do  
17 have some new information for you.

18 The primary mission of the Access to Justice  
19 Program is to insure equal access to justice to everyone  
20 who has a case in one of our courts or a legal problem  
21 outside of our courts' jurisdiction. Our number one  
22 goal is finding long term solutions to chronic lack of  
23 civil legal assistance for people of low income and  
24 modest means in New York, including and foremost finding  
25 a permanent public funding stream for civil legal

1 services.

2 At a time when many in this country are  
3 expressing discontent with government it is essential  
4 the third branch of government, the judiciary, address  
5 the inherit inequity that individuals experience when  
6 they must deal with life effecting legal issues without  
7 access to civil legal assistance.

8 The most compelling voices that we have heard  
9 at all of the hearings are the clients whose lives would  
10 have been dramatically impacted had they not been  
11 fortunate enough to obtain legal assistance. I am  
12 extremely proud to be part of a court system led by a  
13 chief judge who understands the human consequences of  
14 injustice.

15 Our court statistics support that New Yorkers  
16 are in crisis. The crisis is reflected by the volume of  
17 cases filed that affect everyday people's lives. Family  
18 cases, matrimonials, consumer credit, foreclosures and  
19 landlord/tenant cases comprise 70 percent of our civil  
20 filings. Growing foreclosure filings from 2005 to 2009  
21 illustrate the increased pressures the economic down  
22 turn, that down turn has caused for individuals.

23 The statistics are very grim. In Kings County  
24 filings have increased 300 percent. In Nassau County,  
25 the wealthy county supposedly, the increases have been

1 419 percent in filing. In Suffolk the increase was  
2 375 percent. In Queens 370 percent.

3 This year foreclosures continue to increase.  
4 In Queens this year approximately 5,000 conferences have  
5 been held with 3,000 owners represented, meaning 2,000  
6 were not represented.

7 Since legislation was enacted requiring  
8 preliminary conferences in foreclosures there have been  
9 over 75,000 conferences in the Second Department alone  
10 and the numbers are growing throughout the state. For  
11 example, in Orange County there were 129 conferences in  
12 February of 2010, last month there were 750.

13 In the Civil Court of the City of New York in  
14 2009 241,594 consumer credit cases were filed. The  
15 inability to pay debt starts the spiraling down of  
16 people's lives leading them to other legal problems,  
17 such as evictions and foreclosures. Economic pressures  
18 are affecting families. Judges and clerks see more  
19 angry, crying, desperate, hopeless litigants.

20 Family Court statistics are staggering; last  
21 year 742,365 Family Court filings. We are seeing more  
22 people of all incomes faced with potentially life  
23 altering legal problems.

24 In a recent survey of our judges face --  
25 excuse me. In a recent survey of our judges, 42 percent

1 of our judges indicated that there have been an increase  
2 of chronic low income unrepresented litigants in the  
3 courtrooms, 67 percent indicated there have been an  
4 increase of unrepresented litigants who have recently  
5 become low income due to the economic down turn, and  
6 53 percent of the judges reporting indicated that there  
7 has been an increase in unrepresented litigants of  
8 moderate income.

9 The human consequences of the outcomes of  
10 these cases have been amply established by the oral and  
11 written testimonies of clients and legal services  
12 providers.

13 It should be noted that the Access to Justice  
14 Program staff uses the term unrepresented litigants and  
15 not self-represented litigants. The latter term seems  
16 to indicate that individuals who appear without  
17 attorneys have elected not to be represented and not  
18 that they have no access to one. It is a misconception  
19 that litigants choose to be pro se. The overwhelming  
20 majority have no choice.

21 The numbers of unrepresented litigants in the  
22 courts are tremendous. In Family Court in the City of  
23 New York 93 percent of both petitioners and respondents  
24 in child support cases are completely unrepresented.  
25 Another four to five percent had counsel for a part of

1 the case. So, effectively, 97 to 98 percent of  
2 individuals dealing with child support issues in New  
3 York City do so without benefit of counsel. Overall,  
4 approximately 74 percent of all litigants in Family  
5 Court are unrepresented.

6 In 2009 in New York City consumer debt  
7 cases -- in the consumer debt cases approximately  
8 one percent of consumer defendants had counsel, while a  
9 hundred percent of plaintiffs had counsel. A five-day  
10 survey of all of our counties in New York show that in  
11 Richmond County not one defendant had an attorney. In  
12 New York County a small number of litigants were  
13 represented by the Volunteer Lawyer for the Day Program,  
14 which is cosponsored by NIKLER, but no other defendants  
15 had counsel.

16 The numbers in landlord/tenant are similar.  
17 In outside of the City of New York about 98 percent of  
18 tenants do not have counsel. Inside the City of New  
19 York about 90 percent appear without counsel.

20 It should be noted that there is a growing  
21 number of lower income small owners who appear without  
22 an attorney. Owners are now frequent users of our help  
23 centers. Outside the City of New York about 30 percent  
24 of owners were facing foreclosures and other problems  
25 are unrepresented by counsel.

1           The economic crisis had very long tentacles.  
2           There are many unlikely individuals affected by the  
3           economic crisis.

4           The consequences of unrepresented litigants  
5           appearing in our courts are many. The negative effects  
6           of unrepresented litigants on the efficiency of the  
7           court operations has been supported by the testimony of  
8           trial judges. I wish, however, to focus more on the  
9           indicia that unrepresented litigants have difficulty  
10          obtaining equal justice.

11          A recent survey of judges indicated the  
12          following; 63 percent of judges responding felt it was  
13          difficult to ascertain facts, as evidence is not  
14          properly presented; 73 percent indicated unrepresented  
15          litigants failed to present necessary evidence;  
16          64 percent felt that there was ineffective witness  
17          examination; and 67 percent felt there were ineffective  
18          arguments; 70 percent felt there was confusion over  
19          issues; and 84 percent felt that there was lack of  
20          knowledge about the law.

21          Well, nationally the role of a judge in an  
22          unrepresented litigant case is slowly evolving to be a  
23          neutral but engaged figure. Neutrality is central to  
24          judging. Many judges feel it stretches neutrality when  
25          they attempt to be engaged in a case involving

1 unrepresented litigants. When a judge is unengaged a  
2 litigant without a lawyer will have great difficulty.  
3 Judges are grappling with where the line should be drawn  
4 and they are stressed by the difficult decisions they  
5 must make.

6 The court System also understands that the  
7 legal problems that individuals struggle with in our  
8 courts are only a partial reflection of the legal  
9 problems experienced by individuals who have no access  
10 to civil legal services. Problems individuals have with  
11 administrative agencies or private entities prior to  
12 litigation requires lawyers.

13 Our judges are flooded with cases such as  
14 landlord/tenant cases which would not have ripened into  
15 litigation if government benefits, unemployment  
16 insurance, wages and immigration issues were resolved by  
17 lawyers. For example, numerous cases in the New York  
18 City Housing part would completely disappear if  
19 individuals had adequate access to lawyers to resolve  
20 financial issues that fuel nonpayment housing cases.

21 The court system, owners and tenants all  
22 benefit when underlying legal issues are resolved by  
23 attorneys without the need to file housing papers. The  
24 court system would see far less cases in other  
25 substantive areas of law if lawyers were available

1 pre-litigation to assist individuals.

2 Civil legal services attorneys are necessary  
3 also to insure that rights are achieved that are  
4 intended and guaranteed by our state legislature in  
5 housing foreclosure and family and other areas.

6 You have references to pro bono efforts to  
7 assist unrepresented litigants and self-help measures.  
8 We are very pleased with the progress of court sponsored  
9 volunteer programs, such as the Volunteer Lawyer for the  
10 Day Program. However, these programs address only  
11 limited types of uncomplicated cases and reach a small  
12 percentage of the total needs of litigants. We have  
13 learned that pro bono attorneys are excellent sources in  
14 limited types of cases. The more complicated cases with  
15 multiple legal issues require attorneys who are both  
16 experienced and knowledged and have the time to devote  
17 to such cases.

18 Civil legal services attorneys are uniquely  
19 able to address the full range of legal problems  
20 experienced by their clients. In the Second Department  
21 pro bono attorneys from local bar associations, such as  
22 the Nassau County Bar, Suffolk County Bar, Queens County  
23 Bar, Brooklyn Bar Association, Richmond County Bar have  
24 devoted numerous pro bono hours to foreclosure cases.  
25 Bar Associations and other pro bono attorneys must be



1       applauded for their efforts.

2               Even with the surge of pro bono efforts in  
3       foreclosure and the assistance of legal services  
4       providers, 44 percent of homeowners in foreclosures  
5       still remain unrepresented. In other areas in need,  
6       such as unemployment, immigration, housing, consumer,  
7       divorce and family there are far fewer pro bono  
8       attorneys.

9               In some areas in the state, particularly rural  
10       areas, the private bar is insufficient to meet the ever  
11       growing need.

12              While we must continue to encourage attorneys  
13       to serve, we cannot rely on pro bono services to stem  
14       this crisis, nor can we rely on self-help measures. The  
15       help self -- help centers operated by the courts provide  
16       some basic relief to unrepresented litigants, but staff  
17       there can only provide legal information. In some  
18       courthouses the need is so great we are forced to turn  
19       litigants away. In most counties there are no help  
20       centers or the help center is able only to provide  
21       assistance in certain types of cases.

22              The do-it-yourself computer programs that we  
23       have developed provide legal information and they help  
24       litigants fill out forms. But a computer cannot give  
25       legal advice, nor can it calm the fears of an individual

1 facing crisis.

2 Pro bono and self-help measures, while  
3 necessary and helpful, cannot insure equal access to  
4 justice. Civil legal service attorneys alone are able  
5 to shoulder the majority of the need, they must do the  
6 heavy lifting.

7 Obtaining a stable state funding stream in New  
8 York State for civil legal services should be our first  
9 priority. Legal services programs should not be forced  
10 to guess each year if they will continue to remain open.

11 We must, as a state, accept that there is a  
12 price to pay when individuals are denied equal access to  
13 justice in civil cases. The price includes the cost of  
14 cleaning up the results of cases where people could not  
15 access assistance. But most important, those denied  
16 justice lose faith in our system of government.

17 In figuring out what the dollar amount should  
18 be, if you allow me, Chief Judge, using the Chief  
19 Judge's words, we must put together the pieces of the  
20 puzzle. We must fit together the civil legal services  
21 needs of the public combined with setting priorities and  
22 with exploring all models of delivery of legal services  
23 via legal services providers. We must fit in maximizing  
24 the use of pro bono attorneys and self-help measures  
25 where it's appropriate. And we must insure that all

1 civil legal services are delivered efficiently and  
2 effectively.

3 In closing, I quote from the last speech of  
4 Hubert Humphrey in 1977, the moral test to government is  
5 how that government treats those who are in the dawn of  
6 life, the children; those who are in the twilight of  
7 life, the elderly; those who are in the shadows of life,  
8 the sick, the needy and the handicapped.

9 Our justice system must meet the moral test of  
10 providing equal access to justice which can only be  
11 achieved through stable and adequate civil legal  
12 services funding. Our citizens and residents who face  
13 loss of healthcare, home, child or United States  
14 residency, who are unable to protect their incomes or  
15 who are trapped in untenable violent marriages are in  
16 danger -- excuse me, are as in danger of being in prison  
17 in their lives as Mr. Gideon was in jeopardy of being  
18 put in prison. The time is now to embrace the spirit of  
19 Gideon in the civil arena and move forward toward a more  
20 perfect world.

21 Thank you, Chief Judge, for your efforts in  
22 this regard.

23 JUDGE LIPPMAN: Thank you, Judge Fisher.

24 Your passionate and compelling testimony, I  
25 think, sums up very well what we are dealing with here

1 and the breath of it and the comprehensive nature of  
2 really this problem and the approach we are going to  
3 have to take to it. And I do very much agree with this  
4 idea that this is a puzzle and we have to find, I think,  
5 the core part of that puzzle certainly is the people who  
6 are on the line everyday providing civil legal services  
7 to the poor and the indigent and the working poor and  
8 those fighting the battle each and everyday in this city  
9 and this state.

10 I think that what these hearings really  
11 demonstrate is the breath of the problem. Think about  
12 all the things we have heard today and all the things we  
13 have heard at the other hearings, that everything from  
14 divorce to domestic violence, to housing, to education,  
15 to job employment, to the health of our businesses, to  
16 crime, to the effect on crime, to the elderly, to  
17 poverty here in New York City and in the rural parts of  
18 our state, immigration, language problems, the disabled,  
19 minorities. It really impacts not only on the most  
20 vulnerable in our society, the lack of meaningful civil  
21 legal services, or not only impacts on those who, again,  
22 are the poorest, those who need help, who need a helping  
23 hand, but on the well-being of our communities, our  
24 society, our economy, our state government.

25 The strength of New York as a beacon for this

1 country is so deeply affected and impacted by the lack  
2 of sufficient legal representation for the poor. And as  
3 Judge Fisher just laid out, some of the numbers in this  
4 city and around the state in terms of the cases in our  
5 courts, which are only a part of the problem, because so  
6 much of this has to be done before there is a court case  
7 or to avoid a court case or just as matters of basic  
8 human decency.

9 So I thank everybody who has testified at  
10 these four hearings; the clients who are so important to  
11 this equation, the judges who, again, have a bird's eye  
12 view of what it's all about, and all the different  
13 constituent parts of our state, whether it be the  
14 business community, the health people, the education  
15 communities, each and every part of it, domestic  
16 violence people who may have made that a lifetime goal  
17 to eliminate that scourge in our society, our Family  
18 Courts, our Housing Courts, all of it.

19 I think this issue of legal representation for  
20 the poor impacts every part of our society and I thank  
21 the panel today for overseeing this hearing.

22 I thank all of the people who have made their  
23 life's work to correct this inequity and help those who  
24 can't help themselves, Judge Fisher for all your  
25 wonderful efforts around the state.

1           We, this is just the beginning, we have got  
2           our work cut out for us. And Helaine Barnett, the chair  
3           of our task force, is working day and night preparing  
4           with her group, preparing a report that will digest what  
5           happened at these hearings and the surveys we have done  
6           around the state and all the information that we  
7           gathered. And rest assured that every witness' prepared  
8           testimony will be a part of the report, as well as the  
9           transcript of the remarks here that you made at the  
10          hearings.

11           And I do believe, and I kid Helaine about it,  
12          but I do believe that the report that we will put out  
13          will be the most comprehensive and informative report  
14          that's ever been done in this country about the unmet  
15          need of civil legal services.

16           And I emphasize again that I do think that  
17          there is a moral and an ethical obligation here.  
18          Certainly as a judiciary and a profession we absolutely  
19          are committed to providing equal justice for all and  
20          that we cannot do that without addressing this problem.

21           But I would emphasize again that this is not  
22          just about doing good deeds. This is about the  
23          well-being of a society, the bottom line of our society,  
24          the well-being of our communities around this state. I  
25          don't think as an ethical, moral society or as a State

1 of New York, a City of New York it's going to thrive in  
2 these difficult economic times, that we can be who we  
3 are supposed to be, be the Empire State, without  
4 addressing this fundamental issue of justice, of  
5 morality and of well-being for our state, absolutely  
6 expanding access to justice and increasing many, many  
7 fold the funding for civil legal services in a stable,  
8 consistent way that doesn't depend upon the vagaries of  
9 whether the stock market is up or whether the economy is  
10 good on any given day.

11 So I thank you all, I appreciate it. We are  
12 all in this together and we go forward.

13 So thank you so much.

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