

In The Matter Of:

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

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

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

THE CHIEF JUDGE'S HEARINGS
ON CIVIL LEGAL SERVICES,

Court of Appeals
Albany, New York
September 27, 2016

BEFORE:

HONORABLE JANET DIFIORE
Chief Judge

HONORABLE LAWRENCE K. MARKS
Chief Administrative Judge

HONORABLE PETER TOM
Acting Presiding Justice of the First Department

HONORABLE RANDALL T. ENG
Presiding Justice of the Second Department

HONORABLE KAREN K. PETERS
Presiding Justice of the Third Department

HONORABLE GERALD J. WHALEN
Presiding Justice of the Fourth Department

CLAIRE GUTEKUNST
President of the New York State Bar Association

BARBARA BENNETT-CALKINS
Official Court Reporter

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

2 OPENING REMARKS OF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Each of our witnesses today has been allotted

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

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

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

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

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

1 being here.

2 TESTIMONY OF HONORABLE JONATHAN LIPPMAN

3 HONORABLE JONATHAN LIPPMAN: Thank you, Chief
4 Judge. And it is an absolute delight, some might say to
5 return to the scene of the crime, but I don't know exactly
6 what happened, Chief Judge -- I remember sitting right
7 over there where you are sitting and your testifying at
8 this hearing in the chair that I'm sitting in.

9 CHIEF JUDGE DIFIORE: Indeed.

10 HONORABLE JONATHAN LIPPMAN: Somewhere along the
11 line, something has taken place. But I couldn't be
12 happier than to have the person sitting in that seat being
13 my dear friend and colleague for so many years, Chief
14 Judge Janet DiFiore.

15 And, Chief Judge, I do want to say that, that I
16 am so delighted that you have kept this tradition of
17 having the leadership of the Judiciary, and the leadership
18 of the Bar in this state together preside over the legal
19 services hearing where we find out about the status and
20 present state of access to justice in our state.

21 I think leadership starts at the top, and what
22 could be more the top than this wonderful assemblage
23 before me. And so I thank you, not only for your
24 leadership, Chief Judge, on this issue, but also -- not
25 only your words, but your deeds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 law school.

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

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

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

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

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

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

1 are different ways that that can be done.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 I talked a little bit about local funding, the

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

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

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

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

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

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

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

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

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

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

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

1 the work that they do.

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

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

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

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

25 It really goes to everything we have been trying

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

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

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

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

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

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

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

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

25 And I am absolutely confident, with you, Chief

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

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

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

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

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

21 HONORABLE JONATHAN LIPPMAN: I know.

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

24 HONORABLE JONATHAN LIPPMAN: Sure.

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

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

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

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

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

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

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

19 CHIEF JUDGE DIFIORE: Any questions?

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

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

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

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

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

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

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

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

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

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

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

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

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

20 CHIEF JUDGE DIFIORE: Thank you, sir.

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

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

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

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

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

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

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

1 TESTIMONY OF STEVEN CUTLER

2 MR. CUTLER: Good afternoon, Chief Judge.

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

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

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

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

1 New York State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And I think what that means is making sure that

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

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

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

13 CHIEF JUDGE DIFIORE: Thank you, sir.

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

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

23 TESTIMONY OF SUZANNE B. GOLDBERG

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

1 for the privilege of testifying today.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 speak on career-oriented panels for students.

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

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

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

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

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

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

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

15 CHIEF JUDGE DIFIORE: You may.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 TESTIMONY OF DAVID HEINER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 So I think there's really three ways that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 CHIEF JUDGE DIFIORE: Thank you.

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

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

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

1 essentials after housing, is your smart phone.

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

7 HONORABLE KAREN K. PETERS: Thank you.

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

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

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

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

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

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

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

25 Because it's certainly something that we I would

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

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

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

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

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

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

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

2 HONORABLE PETER TOM: One quick question:

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

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

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

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

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

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

10 MR. HEINER: Thank you very much.

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

18 TESTIMONY OF EDWARD P. SWYER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 MR. SWYER: Thank you very much.

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

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

9 (BRIEF RECESS.)

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

15 TESTIMONY OF JORGE TORRES

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

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

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

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

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

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

25 It was a downwards spiral as far as financially,

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

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

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

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

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

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

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

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

25 CHIEF JUDGE DIFIORE: Sir, how did you become

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

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

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

9 CHIEF JUDGE DIFIORE: Excellent.

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

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

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

1 Western New York for their efforts.

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

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

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

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

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

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

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

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

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

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

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

17 MR. TORRES: No, I am not.

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

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

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

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

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

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

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

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

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

24 MR. TORRES: Thank you.

25 CHIEF JUDGE DIFIORE: You're welcome.

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

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

10 TESTIMONY OF GLENN RICE

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

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

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

1 madness.

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

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

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

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

1 benefits means so much to me.

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

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

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

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

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

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

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

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

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

22 PRESIDING JUSTICE RANDALL T. ENG: Thank you.

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

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

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

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

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

16 MR. RICE: Absolutely, absolutely.

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

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

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

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

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

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

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

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

18 TESTIMONY OF DONNA SPINNER

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

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

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

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

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

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

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

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

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

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

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

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

1 his actions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 CHIEF JUDGE DIFIORE: Thank you.

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

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

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

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

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

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

13 CHIEF JUDGE DIFIORE: Thank you.

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

16 (BRIEF RECESS.)

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

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

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

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

6 TESTIMONY OF NEIL STEINKAMP

7 MR. STEINKAMP: Thank you.

8 CHIEF JUDGE DIFIORE: Mr. Steinkamp?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 The long-term impact on family stability and on

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

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

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

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

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

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

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

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

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

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

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

1 their lives.

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

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

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

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

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

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

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

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

12 MR. STEINKAMP: Thank you.

13 CHIEF JUDGE DIFIORE: You're very welcome.

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

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

24 TESTIMONY OF JORDAN DRESSLER

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

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

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

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

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

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

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

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

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

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

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

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

1 high.

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

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

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

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

25 In addition to increasing funding for Civil

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Protecting these affordable units throughout New

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 these cases?

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

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

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

22 MR. DRESSLER: Thank you for having me.

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

1 president of the New York City Bar Association.

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

8 TESTIMONY OF JOHN KIERNAN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 My written testimony provides a number of

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

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

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

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

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

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

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

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

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

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

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

24 CHIEF JUDGE DIFIORE: Yes, sir.

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

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

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

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

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

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

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

25 HONORABLE RANDALL T. ENG: The goals are very

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

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

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

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

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

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

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

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

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

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

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

21 MR. KIERNAN: Yes. Absolutely.

22 CHIEF JUDGE DIFIORE: Judge Whalen?

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

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

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

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

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

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

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

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

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

20 HONORABLE KAREN K. PETERS: Thank you.

21 MR. KIERNAN: So the answer is yes.

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

25 MR. KIERNAN: In the City Bar Justice Center

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

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

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

16 TESTIMONY OF HONORABLE DOUGLAS HOFFMAN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 An attorney for the children can be appointed
10 when appropriate in the ICDR the first day a case is
11 filed. This is particularly important when a petition for
12 a writ of habeas corpus is filed or there is another
13 emergency application.

14 What we have also found is that there are a
15 number of attorneys who appear in Family Court and may be
16 assigned a case, but are not authorized to appear pursuant
17 to their contract or pursuant to Rule 36 in Supreme Court.

18 So what happens is, you can have proceedings for
19 months in Family Court, then the case goes to Supreme
20 Court and new attorneys for the parents, new attorneys for
21 the children have to be assigned, plus there is a new
22 Judge.

23 What we do now, what I do now in these
24 circumstances, is we keep the same attorneys and the
25 social worker-attorney team for the parents of the

1 children together.

2 I can do that by selecting which cases get
3 consolidated with the matrimonial action and which are
4 heard separately. So, for example, if through the
5 contract, the attorneys for the children and the social
6 worker cannot appear in Supreme Court, I may keep the
7 custody case or the domestic violence case in Family
8 Court, and what I do is then calibrate the Family Court
9 and Supreme Court matters so they are heard on the same
10 day.

11 And in that way, all the cases are heard and
12 people have access to their attorneys from day one, the
13 very same attorneys.

14 In addition, there are a number of issues that
15 frequently overlay both the Family Court and the Supreme
16 Court matters; particularly substance abuse and mental
17 health issues.

18 Supreme Court has essentially no in-house access
19 to substance abuse and mental health testing and treatment
20 services. The ICDR utilizes services available to Family
21 Court to address the wide range of issues confronting the
22 families who appear before it. With respect to substance
23 abuse issues, the ICDR can utilize in a consolidated
24 matrimonial action the on-site testing, counseling,
25 referral and monitoring services of Family Treatment

1 Court.

2 These benefits can play a key role in providing
3 the optimal outcome for a family that has concurrent
4 matrimonial, custody, domestic violence or supervised
5 visitation issues.

6 The ICDR has recently partnered with Family
7 Court Mental Health Services (MHS) on a pilot basis to
8 provide critical mental health testing and evaluation for
9 families whose proceedings have started in Family Court
10 regardless of whether or not those proceedings have been
11 consolidated with a divorce action in the Supreme Court
12 Part of the ICDR.

13 I can direct MHS type of mental health
14 evaluations, such as emergency evaluations to determine if
15 someone is likely a danger to themselves or others, and
16 might require immediate hospitalization.

17 They can conduct imminent risk assessments to
18 assist the Court in determining whether or not remaining
19 in the care of a particular parent presents a risk to the
20 child's physical and emotional well-being.

21 They can also conduct through the specialized
22 part a functional parenting capacity assessment, as well
23 as an evaluation to focus on the risks and benefits to a
24 child if the parent's visitation or contact with the
25 parent is modified as to frequency, duration or level of

1 supervision.

2 Very importantly, they can also conduct an
3 assessment, which could help the Court determine whether
4 or not a guardian ad litem is needed, as this happens in
5 many cases where you have a mental health overlap.

6 These services are generally not available in
7 Supreme Court once a matrimonial has been filed. We can
8 also refer the parties to mediation services which are not
9 available in Supreme Court, and very importantly we've
10 also worked out a system with the Manhattan Family Justice
11 Center where the ICDR conducts a Skype intake in
12 coordination with our petitioners whose safety concerns
13 preclude their presence in Court for the initial intake.

14 Unlike the non-ICDR Supreme Court part, the
15 litigants here can utilize the protection and services of
16 Safe Horizon within the courthouse for victims of domestic
17 violence who fear for their safety by having to travel to
18 the courtroom unaccompanied.

19 Now very importantly as part of the integrated
20 part, the rapid access to counsel in the ICDR can play a
21 crucial role in keeping children safe and families
22 together when there are allegations of child abuse and
23 neglect. If there is a custody visitation/domestic
24 violence case already in the Court, the ICDR will take the
25 new Article 10 abuse or neglect case.

1 This, again, has many benefits, as the parents
2 of children already have counsel, and children have social
3 workers who are familiar with all the issues.

4 What often happens otherwise is that an abuse
5 and neglect case will be filed, ACS may ask for a remand
6 of the children, remove the children from the parents, and
7 the Judge has no familiarity with the case. The attorneys
8 meet the client for the first time that afternoon and the
9 Judge has to decide whether or not to let the children go
10 home, or otherwise develop a safety plan.

11 With this part, if it's already been in the part
12 through another case, I take the Article 10 case, and so,
13 when ACS files a case, there's extensive information
14 available to the Court, to the attorneys, the social
15 workers, and to the family as to procedures and what's in
16 the best interest of the children under those
17 circumstances.

18 In my written testimony, I describe how the
19 impact upon the parties without counsel in child support
20 matters can be devastating and why child support for the
21 parties, particularly for those of low and modest income,
22 to have Court-appointed attorneys available to them.
23 Because of time constraints, I just respectfully refer you
24 to that portion of the written testimony.

25 In the integrated part, where there's usually a

1 claim for both parties, at least concerning the custody or
2 domestic violence aspects of the cases, I try to insure
3 that the child support cases are decided as ancillary
4 issues to the custody aspect of the cases, and thereby
5 maximizing the legal representation and therefore the
6 access to justice concerning this crucial issue.

7 So I just want to say in finishing essentially
8 that it's a nuanced approach to a whole host of cases for
9 this family to provide services from day one.

10 So far in the seven months, I have had about 750
11 Family Court dockets in this part, and the number of
12 Supreme Court matters that have been filed and transferred
13 to in whole or in part, they've been integrated together.

14 Just some suggestions; the agencies that have
15 contracts with the city to provide legal services and
16 social work services need to be able to appear in both
17 Courts to integrate services available for the family.

18 There also needs to be a formal expansion in
19 Supreme Court of managed health testing and evaluative
20 services for cases that are transferred there, as well as
21 drug testing, assessment, referral, and monitoring
22 services.

23 I am very excited about the part and the nuanced
24 approach, and I hope that and expect that it will provide
25 a more meaningful opportunity to be heard for those who

1 are most vulnerable and will achieve a more just result.
2 Thank you.

3 CHIEF JUDGE DIFIORE: Thank you. And thank you,
4 Judge Hoffman, for stepping up and presiding in this final
5 report.

6 Is there any plan for any sort of an evaluative
7 study of the way in which cases are proceeding?

8 HONORABLE DOUGLAS HOFFMAN: Right. At end of
9 the first year, I think we are going to see how many cases
10 we get, what stage they are, in terms of the litigation.

11 CHIEF JUDGE DIFIORE: The time line.

12 HONORABLE DOUGLAS HOFFMAN: Right. And see
13 whether or not they are -- the parties have been able to
14 avail themselves of the services to really make it a
15 comprehensive integrated approach. So I think at the end
16 of the first year, we reevaluate.

17 CHIEF JUDGE DIFIORE: Any questions?

18 HONORABLE LAWRENCE K. MARKS: You said that you
19 have 750 cases?

20 CHIEF JUDGE DIFIORE: 750 Family Court dockets,
21 and a certain number of matrimonial cases. There are many
22 more filed in RJI, so sometimes because of what we're
23 doing in Family Court, they're waiting to file an RJI.
24 They're not necessarily pursuing the matrimonial which had
25 already been filed, instead of having all the issues heard

1 in the contested matrimonial. But so far we have 750 --

2 HONORABLE LAWRENCE K. MARKS: And when you
3 started, you took only new cases?

4 HONORABLE DOUGLAS HOFFMAN: Only new cases,
5 that's right -- plus some of the fun cases I had before.

6 HONORABLE PETER TOM: Is this the only county,
7 New York County, that has this program?

8 HONORABLE DOUGLAS HOFFMAN: That's the only one
9 I am aware of, yes.

10 HONORABLE PETER TOM: Well, if it works out,
11 then obviously it has to be expanded, because once the
12 calendar goes up and you have more cases on the docket,
13 there's no way you're going to be expediting these
14 matters.

15 HONORABLE DOUGLAS HOFFMAN: I agree -- no, not
16 that it won't be expedited, there is a system set up for
17 it to be expedited, but it is a lot of work. But if we
18 can continue with the same representation, it will help in
19 terms of efficiency as well.

20 MS. GUTEKUNST: A particular interest of mine,
21 because New York State Bar along with the Women's Bar
22 Association of the State of New York just launched a
23 domestic violence initiative a couple of weeks ago. So
24 very interested in your area, and it sounds to me like it
25 should really be called the innovative integrated custody

1 SCR part.

2 But my question is, you start with saying that
3 you are providing access to counsel for all of the
4 litigants from day one and it goes all the way through,
5 how are you insuring that they can continue to have
6 counsel in areas where they're not entitled to assigned
7 counsel?

8 HONORABLE DOUGLAS HOFFMAN: They can't. In
9 terms of access, in other words, custody, domestic
10 violence, certain aspects of child support, they are
11 entitled to counsel. The child support, we sort of move
12 that counsel, since it does relate to custody and so
13 forth, they help with that.

14 In terms of the pure matrimonial, they are not
15 assigned, but because everything is dealt with in one
16 part, there are major benefits to having counsel there at
17 all times.

18 MS. GUTEKUNST: And the same Judge?

19 HONORABLE DOUGLAS HOFFMAN: Yes. Same judge,
20 same counsel, same social workers.

21 CHIEF JUDGE DIFIORE: Thank you, sir. That
22 concludes Panel III. Mr. Kiernan, Mr. Dressler, Judge
23 Hoffman, thank you very much.

24 (BRIEF RECESS.)

25 CHIEF JUDGE DIFIORE: The first witness for our

1 final panel is Susan McParland-Leisen. Ms.
2 McParland-Leisen is a client of Nassau Suffolk Legal
3 Services, and today she's accompanied by her attorney
4 Melissa Zeidler. Thank you both for traveling here today.

5 TESTIMONY OF SUSAN MCPARLAND-LEISEN

6 MS. MCPARLAND-LEISEN: We are all set. And
7 thank you very much, Chief Judge DiFiore. And thank you
8 so much to the panel for your time and listening.

9 My name is Susan McParland-Leisen. And so far,
10 I am a breast cancer survivor. Currently, I am also a
11 client board member of the Nassau Suffolk Law Services.

12 I say that sentence with tremendous pride and
13 gratitude. I had been employed in the not-for-profit
14 sector since 1993, and in 2009 I lost my job as executive
15 assistant to the executive director of a prominent
16 children's charity.

17 The economy was in shambles, and thanks to
18 Bernie Madoff, no one was hiring in the nonprofit sector
19 or anywhere else. In June of 2011, my unemployment
20 insurance ran out. As luck would have it, in July I was
21 diagnosed with breast cancer, Stage IIIA.

22 I was 50 years old. I had no health insurance,
23 or financial resources. I was terrified, panic stricken
24 and completely gut smacked. I had no clue what to do.

25 As an adoptee, I had very little knowledge about

1 my genetic history. What I was well aware of what was the
2 exceedingly high rate of breast cancer on Long Island.
3 Thankfully, the breast health clinic at Nassau University
4 Medical Center filed for emergency Medicaid for me so I
5 could begin treatment.

6 I was told to go to Nassau County Social
7 Services and file for welfare. I was stepping into more
8 than one world that was completely unknown to me.

9 It was a humiliating experience. I qualified
10 for Medicaid and then an EBT card, which is food stamps
11 and cash public assistance. It equaled approximately \$119
12 a month.

13 I was also told to file for Social
14 Security/Disability and that I could do this online
15 throughout my treatment. I began chemo in August of 2001.
16 Chemo was never pretty. I lost my hair, my eyebrows, my
17 lashes. I had severe and frequent bouts of hot flashes.
18 I had mouth sores, chemo brain, which I still suffer from,
19 and sores broke out around my ankles.

20 I was taking morphine, steroids, antinausea
21 medication, and anything and everything that would help me
22 while this poison coursed through my veins.

23 During this time, while I was in this completely
24 drugged-out head space, I was filing for Social
25 Security/Disability online.

1 Every time I thought I was done, I was notified
2 that there were more forms that needed to be filled out.
3 I was sick. I didn't have an executive assistant to
4 assist me throughout this process.

5 About a week after my final chemo treatment, I
6 had my doctor's appointment with the Nassau County Social
7 Services. I was at the lowest point you could possibly be
8 after chemo. I was in the weakest condition possible; I
9 couldn't drive, I had painful sores around my ankles,
10 numbness and pain and tingling due to chemo-induced
11 peripheral neuropathy, and, again, the horrible brain fog
12 of chemo brain.

13 The doctor that saw me told me that she had been
14 seeing patients for 30 years and that she had never heard
15 of chemo brain. I felt dismissed and disrespected. I had
16 my mastectomy in late February of 2012. And when I had
17 healed enough, I began radiation treatments five days for
18 a total of 33 treatments. Those treatments left me with
19 permanent lung and muscle fibrosis on my left side.

20 That's when I received my letter informing me
21 that I had been rejected for Social Security/Disability.
22 I was shocked. I was hurt. And I was terrified.

23 I could barely navigate the hospital much less
24 return to work. I was having nightmares and panic attacks
25 due to these experiences, and I still have a series of

1 reconstructive plastic surgeries ahead of me. I have had
2 seven so far. My last one was in May of this year.

3 I knew I needed help. And thankfully, I reached
4 out to my social worker from the Adelphi Breast Cancer
5 Program and Hotline. She gave me the phone number for
6 Nassau Suffolk Law Services. I was incredibly weak when I
7 had my first meeting with an attorney from NSLS.

8 The little I do remember about it was that I had
9 to stop and rest on the way back up from the corridor when
10 I was leaving the office. I had just -- I didn't have the
11 steam to leave.

12 That started the ball rolling, and sometime
13 after that, I was assigned to an amazing attorney, Melissa
14 Zeidler. She understood my predicament, she was extremely
15 professional, and incredibly compassionate. With very
16 little assistance from me, Ms. Zeidler took care of all of
17 the paperwork, and I finally had my day in Court.

18 I was a nervous wreck, as most people are when
19 they don't know the procedures that determine their fate.
20 The hearing was held before an Administrative Law Judge,
21 and Ms. Zeidler presented my case with all of the
22 evidence.

23 Thanks to Ms. Zeidler's knowledge of the law and
24 attention to detail, I was finally approved for Social
25 Security/Disability. I broke down in tears when I read

1 the letter. It was so important to have my own source of
2 income, which gave me dignity and security.

3 My first phone call was to Ms. Zeidler to thank
4 her for all of her hard work and to express my elation and
5 relief that I was finally approved. The second phone call
6 was to Nassau County Social Services to tell them that I
7 no longer needed public benefits. This entire process took
8 two years, two very long years, and I still had more
9 reconstructive surgeries in my future.

10 As time passed, every time I received a notice
11 from the Office of Social Security/Disability, I reached
12 out to Ms. Zeidler for her advice and input. My brain was
13 and still is pretty foggy from the chemo, and she was
14 always more than happy to help me make sense of any
15 additional paperwork.

16 In 2014, Ms. Zeidler reached out to me, and
17 called and asked if I wanted to appear on a TV special for
18 the Susan G. Komen Foundation that was to appear the night
19 before their big walk through Central Park. Of course.
20 Anything to help.

21 She then mentioned there was a seat on the board
22 of directors for Nassau Suffolk Law Services for a client
23 board member that needed to be filled. Would I be
24 interested? Again, I agreed.

25 I will do my best to help anyone who has ever

1 felt as helpless as I did. I am amazed at the number of
2 civil cases that NSLS handles on a yearly basis for people
3 like me and others with even worse problems, over 7,000
4 cases.

5 Although Long Island is considered an affluent
6 place to live, we all know that there are many communities
7 with people living in dire poverty who are unaware of what
8 resources are available to them. In late February 2017, I
9 will cautiously be celebrating five years in remission. I
10 am still constantly at the hospital seeing my general
11 practitioner, my oncologist, my neurologist, hematologist,
12 therapist, etcetera, etcetera.

13 There are always tests and more tests to insure
14 I am getting healthier. And to help me navigate my way
15 with the damage done to my body by the treatments that
16 have saved my life.

17 While I am there, I make certain to drop off
18 NSLS pamphlets in each department I visit. People need to
19 know that there's help available on Long Island. And NSLS
20 is pretty much the only organization that provides such a
21 vast array of Civil Legal Services pro bono. People need
22 hope. And from what I have heard today, now I know to
23 make a stop in the veteran's wing while I am there.

24 Most of us are just one disaster away from
25 complete financial devastation. I thought the loss of my

1 job in 2009 was my disaster. I was wrong. It was only
2 the beginning of a series of disasters.

3 The services that NSLS provide to the public
4 free of charge are essential to the quality of life for
5 many people on Long Island. The funding that Nassau Law
6 Services receives for Civil Legal Services is the life
7 blood of Nassau Suffolk Law Services, so that we may
8 continue to help people in crisis.

9 So, please, continue to help us help them. So
10 far, my story has a happy ending. I am more than well
11 aware that not everyone gets to have one of those. So I
12 feel privileged to be able to sit before you and tell you
13 of my experience. I'd like to thank you all for your time
14 and attention. Thank you.

15 CHIEF JUDGE DIFIORE: Thank you, Ms.
16 McParland-Leisen, are there any questions? An amazing
17 story. Thank you. I think you are the best example of
18 all the culmination of the work that we are all trying to
19 participate in. Thank you for being here.

20 MS. MCPARLAND-LEISEN: Thank you very much.

21 CHIEF JUDGE DIFIORE: Our next witness is Harry
22 Michel, a client of the Legal Aid Society, Queens
23 Neighborhood Office. And he is accompanied today by his
24 lawyer, Sateesh Nori. Mr. Michel?

25 TESTIMONY OF HARRY MICHEL

1 MR. MICHEL: Good afternoon, your Honors.

2 My name is Harry Michel and I am here to tell my story about
3 how the Legal Aid Society helped keep me and my son from
4 becoming homeless after a deeply challenging and tragic time in
5 my life.

6 I live in a co-op apartment in Rego Park, New
7 York where I have lived for almost 15 years. My brother
8 William purchased the apartment on October 24, 2001, using
9 money he received from our mother Efthemia Michel from the
10 sale of our family home.

11 William and I resided together in the apartment
12 until William suffered a nearly fatal accident in
13 January 2007 while he was vacationing in Florida.

14 After the accident, William was removed from a
15 medically induced coma and remained in a natural state of
16 comatose. He currently stays in a facility.

17 Following the accident, my mother and I
18 continued to reside in the apartment. In September 2007,
19 my son Peter moved into the apartment with me. I am
20 Peter's primary parent.

21 My mother passed away in 2008. During this
22 time, I felt tremendous financial stress. In late 2010, I
23 began having difficulty paying the monthly maintenance on
24 the apartment. In 2011, the co-op sued William and me for
25 nonpayment of rent. I had almost lost hope and considered

1 the possibility that my son and I would become homeless.

2 In the courthouse, I discovered that I could get
3 help from The Legal Aid Society. They helped me fight the
4 co-op and force them to allow me to remain in the
5 apartment despite my brother's and my mother's absences.
6 With their help, I obtained a Family Eviction Prevention
7 Subsidy (FEPS), which enabled me to pay down the arrears
8 and continue paying the monthly maintenance on the
9 apartment so that my son and I did not lose our home.

10 In 2013, the co-op sued William again, alleging
11 that he was illegally -- mind he's in a coma now --
12 alleging that he was subletting the apartment to me.
13 Again, The Legal Aid Society, this time with help from a
14 private law firm, Kaye Scholer, represented me and got
15 this case dismissed.

16 In 2015, the co-op sued me a third time,
17 alleging that William had violated the by-laws of the coop
18 by allowing me to live there. Again, The Legal Aid
19 Society assisted me and won me the right to occupy the
20 apartment.

21 Recently, I fell behind in my share of the rent
22 because I had to use my limited resources to apply for a
23 TLC license so I could become self-sufficient. The co-op
24 served me with an eviction notice.

25 For the fourth time, The Legal Aid Society

1 helped me by obtaining rental assistance to satisfy my
2 rental arrears. I continue to maintain the apartment with
3 the hope that William will someday be able to return home
4 and we will occupy the apartment together again.

5 I visit him at his facility two to five times
6 every week, hold his hand, and talk to him with the hope
7 that he can hear and understand me.

8 Again, I want to express my gratitude to lawyers
9 like those at The Legal Aid Society, who have given my
10 family and me a chance to make it. Thank you for
11 listening.

12 CHIEF JUDGE DIFIORE: Thank you, Mr. Michel.
13 Any questions? Thank you, sir, for being here, and good
14 luck to you.

15 MR. MICHEL: Thank you.

16 CHIEF JUDGE DIFIORE: Our final witness this
17 afternoon is Ady Escobar.

18 TESTIMONY OF ADY ESCOBAR

19 MS. ESCOBAR: Thank you, your Honor.

20 My name is Ady Escobar, and my son's name is Jose Daniel Lopez
21 Escobar. Jose is five years old, and he suffers from a rare
22 condition called Lesch Nyhan Syndrome --

23 CHIEF JUDGE DIFIORE: That's okay. Take your
24 time.

25 MS. ESCOBAR: He suffers from a rare condition

1 called Lesch Nyhan Syndrome.

2 He is the only child in New York State who has this condition.

3 I am here to testify about what Bronx Legal Services' Education
4 Law Unit did for me and my son.

5 Without their help, Jose would not have been
6 placed in a school that could care for him and give him
7 the help he needs. Without their help, Jose would not be
8 able to get the education all children deserve. I live
9 alone with Jose, and raise him with help from his
10 father -- I'm sorry --

11 CHIEF JUDGE DIFIORE: No need to apologize.
12 Take your time.

13 MS. ESCOBAR: Jose suffers from frequent kidney
14 stones, and has had surgery for them more than five times.
15 He has a gastric tube to give him water. He sometimes
16 makes unexpected movements that he cannot control. His
17 condition will get worse over time.

18 Jose sits in a wheelchair, and can walk with
19 help. He attends the John Coleman School, a state
20 approved non-public school in White Plains, New York where
21 he has been a student for the last 2 and a half years,
22 first in pre-school, and now as a first grader.

23 John Coleman is a good school for Jose because
24 they specialize in working with fragile kids with multiple
25 disabilities. The teachers know Jose's condition and let

1 the nurse know right away when he needs help. The school
2 knows Jose's capabilities and helps him reach his full
3 potential.

4 They give him the attention that he needs and
5 help him become more independent. My son is safe in this
6 school and very happy to be there.

7 When Jose was turning five, it was time for him
8 to receive an official school placement for elementary
9 school. I was working with an organization for people
10 with disabilities. They told me I needed a lawyer, and I
11 was referred to Bronx Legal Services.

12 I met my lawyer, Kathleen Dennin, on April 28,
13 2015. On April 30th, just two days after we met, Kathleen
14 and I went to a meeting where a Department of Education
15 team was supposed to decide where Jose could go to school.
16 They told us that Jose should go to a District 75 school.
17 District 75 is a public school for children with
18 disabilities.

19 In April and May, I visited a number of
20 different District 75 schools. Of the five schools I
21 visited, none were the right place for Jose. The schools
22 did not have the kind of medical help he needs. Jose's
23 condition can change at any moment; for example, people
24 with this condition start biting themselves and need to be
25 protected from their actions.

1 Also, Jose's unexpected movements could make him
2 fall at any time. The District 75 classroom would have
3 had 12 students in it, which would not have provided
4 enough individual attention for Jose.

5 With my permission, Legal Services contacted all
6 of Jose's doctors to obtain medical documentation to make
7 the case for Jose to stay at John Coleman.

8 Legal Services asked each of the doctors to
9 explain more about the urgency of Jose's condition and
10 about his needs. Despite getting the new medical
11 documents, when my lawyer and I met again with the
12 Department of Education on July 16th, 2015, they still did
13 not agree with our position. We decided to request a
14 hearing.

15 We asked that Jose be allowed to continue in a
16 state-approved non-public school because of his medical
17 needs, and we also asked for an evaluation to better
18 identify Jose's needs and his abilities.

19 After we filed our hearing request, the hearing
20 officer issued an order that Jose could stay at the
21 Coleman School until the hearing was complete. The
22 Department of Education agreed to a new evaluation of Jose
23 and to re-consider my request for Jose to attend a
24 non-public school.

25 On November 30th, we met again with the

1 Department of Education. This time they considered all of
2 the medical letters and the new evaluations, and decided
3 that Jose could stay at the Coleman School because it is
4 the right type of school to take care of Jose's needs.

5 Legal Services helped me get what I need for my
6 son. My lawyer fought hard for Jose and for me. She
7 talked to me regularly to keep me posted about everything
8 that was being done. When the case wasn't going well, she
9 helped to give me the strength to keep working and get
10 past the disappointment and never give up.

11 My lawyer spoke very powerfully and clearly
12 about my son's needs at the meetings she attended for my
13 son. She helped to make sure that the law would work for
14 my son's benefit. I felt that I was not alone in fighting
15 for Jose's rights.

16 Without Legal Services, my son would not have
17 the opportunity to be in a school that recognizes his
18 needs, as well as the wonderful potential that he has.
19 Thank you for letting me speak to you today. May I show
20 you a picture of my son?

21 CHIEF JUDGE DIFIORE: We would love to see a
22 picture of your son.

23 MS. ESCOBAR: This is my son.

24 CHIEF JUDGE DIFIORE: He's a beautiful child.

25 MS. ESCOBAR: Thank you.

1 CHIEF JUDGE DIFIORE: Thank you for being here.
2 Any questions?

3 HONORABLE RANDALL T. ENG: Congratulations on
4 succeeding in your battle. You have much courage.

5 MS. ESCOBAR: Thank you, sir.

6 HONORABLE RANDALL T. ENG: What is the highest
7 grade that the school goes up to?

8 MS. ESCOBAR: It goes up until first grade.

9 HONORABLE RANDALL T. ENG: So you're going to
10 have to probably --

11 MS. ESCOBAR: Start fighting, yes, I know.

12 HONORABLE RANDALL T. ENG: That's why I asked.
13 It's disheartening, but at least you know what you have to
14 do, and you're in very capable hands.

15 MS. ESCOBAR: It's hard, but with the help of
16 God, and the strength of a mother, I will fight for his
17 right.

18 HONORABLE RANDALL T. ENG: Stay brave.

19 MS. ESCOBAR: Thank you, sir.

20 CHIEF JUDGE DIFIORE: Thank you very much.

21 MS. ESCOBAR: Thank you.

22 CHIEF JUDGE DIFIORE: So this concludes our 2016
23 hearing on Civil Legal Services in New York. And I want
24 to thank my colleagues who joined us here today; Judge
25 Marks, Justice Peters, Justice Tom, Justice Eng, Justice

1 Whalen, President Gutekunst.

2 I want to thank Helaine Barnett and the
3 commission members, counsel and staff. I want to thank
4 the staff here at the Court of Appeals for assisting us.

5 And I want to thank each of the witnesses on the
6 professional side and on the brave client side as well who
7 traveled here today.

8 It makes us all very proud to be lawyers and of
9 service to people who need Civil Legal Services in our
10 community.

11 Thank you all for being here. That concludes
12 the hearing. We are adjourned. Thank you, all.

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15 (END OF HEARING.)

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ADY ESCOBAR

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STATE OF NEW YORK
COUNTY OF COLUMBIA

ss:

*I, B. Bennett-Calkins, Shorthand Reporter
and Notary Public duly and qualified in and for the State
of New York do hereby certify that the foregoing
originally signed transcript is a true and correct
transcription of my original stenographic notes to the
best of my knowledge.*



B. BENNETT-CALKINS