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SUPREME COURT OF THE STATE OF NEW YORK
SECOND DEPARTMENT
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THE CHIEF JUDGE'S HEARING
ON CIVIL LEGAL SERVICES

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Westchester County Courthouse
111 Dr. M.L.K. Blvd.
White Plains, New York 10601
September 20, 2011

BEFORE: HON. JONATHAN LIPPMAN
Chief Judge

HON. GAIL PRUDENTI
Presiding Justice

HON. ANN PFAU
Chief Administrative Judge

HON. SEYMOUR W. JAMES, ESQ.
NYS Bar Association

CAMI L. LANDAU
Senior Court Reporter

1 CHIEF JUDGE LIPPMAN: Good
2 morning. It's a pleasure to see all
3 of you. This is the second annual
4 hearing, series of hearings on civil
5 legal services in the state.

6 We're here today, the genesis
7 of these hearings is the recognition
8 on our part, the judiciary and the
9 profession, that it is our fundamental
10 constitutional and ethical mission to
11 provide equal justice in this state
12 with the, again, clear view on our
13 part that we, the judiciary and the
14 profession, must take the lead in this
15 area. We recognize that it's not
16 enough to keep our courthouses open
17 and functioning, but that beyond that,
18 what happens inside those courthouses,
19 inside our courtrooms, is the, really,
20 the essential issue in terms of the
21 courts of this state and in this
22 country, and that equal and fair
23 justice is, obviously, is our first
24 and foremost priority.

25 We recognize that these are

1 unusual times and difficult economic
2 times in New York State. The amount
3 of people in poverty went in one year
4 from 5.6 million people to 6.3 million
5 people, and the story is no different
6 around the country, which you're aware
7 of. If you've been following it in
8 recent days, there have been new
9 reports of record numbers of people in
10 poverty in our states, in the country
11 as a whole.

12 I think it fair to say that
13 every civilized society is judged by
14 how it treats its most vulnerable
15 people, the most vulnerable among us,
16 and certainly today is no different.
17 This goes back to biblical times, the
18 whole idea of justice, justice shall
19 you pursue, for rich and poor, high
20 and low alike is a theme and an effort
21 that has gone on from time and
22 memorial. This is, certainly in my
23 view, not only what we should be doing
24 and the right thing to do, but
25 fundamentally important in terms of

1 the bottom line of our state
2 institutions and our state government.

3 Certainly, when we allow the
4 poor, the indigent, the working poor
5 in this state to fall off a cliff
6 because they do not have
7 representation in matters involving
8 the necessities of life, we all
9 suffer.

10 And last year, in my role as
11 Chief Judge, I talked to the judicial
12 and legal leadership in this state,
13 and we decided that it was essential
14 to hold hearings around the state on
15 civil legal services, and I appointed
16 the task force to expand civil legal
17 services in New York, headed by
18 Helaine Barnett, who is the chair, and
19 seated right over there. I gave her
20 an offer that she couldn't refuse.
21 And she is right off of service of the
22 longest head of the Legal Services
23 Corporation in Washington. She agreed
24 to head our effort in New York, and
25 I'm so grateful to her and to all

1 members of the task force, which
2 include Barbara Finkelstein, who has,
3 is the coordinator of today's event,
4 and is the head of the Legal Services
5 of the Hudson Valley.

6 Barbara, thank you again for all
7 of your efforts on the task force and
8 in preparation for today's hearing.

9 Seated with me today on the
10 presiding panel is A. Gail Prudenti,
11 the Presiding Justice of the Appellate
12 Division Second Department. And I'm
13 so grateful for her to be here.

14 Last year we were in Brooklyn
15 for the first hearing, and today, here
16 in White Plains.

17 Ann Pfau, the Chief
18 Administrative Judge of the State
19 Court System, who does such a terrific
20 job with the day-to-day management and
21 operation of the courts, and Seymour
22 James, the President Elect of the
23 State Bar Association, who I know will
24 be a spectacular leader of the State
25 Bar, and we're so pleased, Seymour,

1 that you're here with us today.

2 The job that we have with these
3 hearings is to measure the current
4 state of civil legal services in New
5 York, to measure the unmet civil legal
6 service needs, particularly where it
7 relates to the essentials of life:
8 The roof over someone's head, the
9 safety, the fiscal safety of
10 themselves and their families, the
11 well-being of the families, their
12 livelihoods and their entitlement to
13 sub systems income and benefits from
14 the government.

15 I think the emphasis that we've
16 placed is on 200 percent of the
17 poverty level to have people that
18 would be eligible for civil legal
19 services under the moneys that we've
20 pinged, and that means to put into
21 perspective for you, 200 percent of
22 the poverty level is a family of four
23 earning \$44,000.00 a year is
24 200 percent of the poverty level, so
25 you not only have, when we talk about

1 helping the poor and the indigent in
2 the state, we're very much also
3 talking about the working poor, who
4 every day go out, pay their taxes, do
5 their jobs, and just cannot afford
6 legal representation, again, in
7 matters that deal with the very basics
8 of their lives.

9 The goal is to provide a
10 permanent, dependable systemic stream
11 of funding for civil legal services
12 out of the public fisc, and when I say
13 out of the public fisc, I don't mean
14 on a pay-as-you-go basis where we have
15 fees that are often unreliable and
16 vary from year to year that civil
17 legal services have been dependent on.
18 We mean, direct funding from the
19 state.

20 As you know, the Federal Legal
21 Services Corporation, which Elaine
22 Barnett used to head, is at great risk
23 in Washington. And I think it's fair
24 to say that the whole hodgepodge of
25 legal funding, civil legal services

1 funding in this state and around the
2 country is at great risk. So, what I
3 would propose as the way to look at
4 this is, we don't say that, you know,
5 it's a very bad economic year, and
6 therefore, we're not going to have
7 public schools this year, or it's a
8 very bad economic year, and we're not
9 going to have hospitals to treat our
10 sick. Well, it's a very bad economic
11 year, and we can't say we're not going
12 to provide basic civil legal services
13 for people dealing for the poor and
14 the indigent in this state, dealing
15 with the very essentials of life that
16 we're all entitled to.

17 Last year, we were able to
18 obtain 27 and a half million dollars
19 from the legislature, \$15 million that
20 we turned over to IOLA, whose funding
21 had dried up from \$36 million to
22 \$8 million a year, because of the
23 fiscal crisis, and the lowering in
24 interest rates that really funds IOLA.
25 So, we turned over that money to IOLA

1 to give out grants, and 12 and a half
2 million dollars that we gave out
3 through the court system through an
4 oversight board to 56 different
5 providers of civil legal services.
6 Those moneys were placed in the
7 judiciary budget where they should be
8 given, again, our intimate
9 relationship to providing, again,
10 equal and fair justice in our courts,
11 and the process which we've
12 established by joint legislative
13 resolution of the Legislature in New
14 York, and I might add, unanimous joint
15 resolution of the Legislature, is that
16 we hold hearings -- the Legislature
17 has asked us to do this -- we have
18 hearings each year around the state.
19 We determine the gap in civil legal
20 services, we put moneys into the
21 judiciary budget to address that gap,
22 or at least to narrow that gap, and
23 then the Legislature and the Governor
24 act on our request.

25 So, this is a continuing

1 an analysis of the cost and benefits
2 of providing civil legal services on
3 the simplification of court processes
4 to reduce the cost of litigating in
5 our courts, to make it easier for the
6 poor to navigate our courts, and on
7 the collaborations necessary to allow
8 us to have a strong system of funding
9 civil legal services in this state.

10 Today we're going to hear our
11 two lead-off witnesses, Janet DiFiore,
12 the District Attorney of Westchester
13 County, and Mr. David Boies, the head
14 of Boies, Schiller, one of the most
15 prominent law firms in the country,
16 who's continuing his service as the
17 head of an ABA committee with Ted
18 Olsen, on the preservation of our
19 state judiciary around the country,
20 focusing on the funding of state
21 judiciaries and access to justice
22 issues, which are so important.

23 And we will hear from, later on
24 in the hearing, from clients from a
25 panel on foreclosures, from a panel on

1 judges, business people, religious
2 people and government leaders.

3 We learned a lot last year from
4 the hearings. What we learned is, in
5 some parts of the state, for every
6 person who signs on, who is able to
7 have a civil legal services provider
8 represent him, eight to ten people are
9 turned away. Think about that. For
10 every person who gets civil legal
11 representation, eight to ten people in
12 many parts of the state are turned
13 away. Last year, 2.3 million
14 litigants appeared in the state courts
15 without representation. 99 percent of
16 tenants in eviction cases,
17 unrepresented in the State of New
18 York. 98 percent of borrowers in
19 hundreds of thousands of consumer
20 credit cases, unrepresented.
21 97 percent of parents in child support
22 matters, unrepresented. And until
23 very recently, and I think we made
24 great progress in New York, over
25 60 percent of people come in in

1 foreclosure proceedings, up until very
2 recently, were unrepresented. We have
3 turned that around, I might add, in
4 part due to the hearing and some of
5 the moneys that we've been able to
6 obtain. We're now well over
7 60 percent of people who come in for
8 foreclosure proceedings are
9 represented in some fashion in those
10 foreclosure proceedings.

11 Seventy percent of civil matters
12 in the State of New York are matters
13 involving the necessities of life:
14 Family law, consumer credit,
15 landlord-tenant and foreclosure cases.
16 So, when we say the essentials of
17 life, we mean, the essentials of life.

18 And one more fact I mentioned
19 from last year's hearing. We
20 determined that for every dollar that
21 comes out of the state fisc to pay for
22 civil legal services, \$5.00 is
23 returned to the state by reduced
24 social services, incarceration costs,
25 homelessness cost, and federal

1 benefits coming into the state. So,
2 we have started this effort. We are
3 continuing with great vigor, because
4 the problem, again, is not going to
5 improve overnight. It's all about
6 this systemic way to fund legal civil
7 legal services. And make no mistake
8 to the judiciary and the profession,
9 nothing is more important than meeting
10 our constitutional and ethical
11 responsibilities to provide equal
12 justice, and that's the spirit in
13 which these hearings have been held
14 and will be held.

15 We're on a tight schedule, and
16 if the Chief Judge would stop talking,
17 we could get on with that schedule.
18 And so don't be put off if we may
19 interrupt you during your testimony.
20 We want to get some questions in too.
21 We are on a very tight schedule, but
22 each and every one of you, and we do
23 have the written submissions from so
24 many of you, and again, I thank you
25 all for coming, I thank the task force

1 for being so helpful and making these
2 hearings a reality.

3 And without further ado, I'm
4 going to call our first witness, who
5 is the District Attorney of
6 Westchester County, Janet DiFiore.
7 District Attorney DiFiore. And I
8 mentioned too in so many of these
9 hearings, you might ask, well, why is
10 the District Attorney, who is mainly
11 interested in criminal matters, why is
12 she testifying here today on civil
13 legal services for the poor? And
14 you're all going to find out right
15 now.

16 District Attorney, a pleasure to
17 have you.

18 DISTRICT ATTORNEY DIFILORE:
19 Thank you. Good morning, Chief Judge
20 Lippman, Justice Prudenti, Judge Pfau,
21 President Elect James. Thank you for
22 allowing me the opportunity to appear
23 here this morning.

24 Our Constitution guarantees the
25 right to counsel for defendants who

1 stand before the bar charged with a
2 crime. We cherish this right, and
3 because the right to counsel in
4 criminal cases is so important, we
5 organize our courts and our legal
6 system to provide counsel, even though
7 it can be very difficult and expensive
8 to do so.

9 Yet, in civil litigation, where
10 the stakes for civil litigants are
11 frequently just as high as they are
12 for criminal defendants, we don't have
13 similar protections.

14 While I appear here today as
15 Westchester County District Attorney,
16 I'm mindful of my days as a judge when
17 I presided in the Family Court.
18 There, litigants often attempt to
19 navigate the legal system without
20 counsel. And the stakes for those
21 litigants is often of equal or greater
22 importance to them than their liberty
23 interest, as such matters often
24 involve the custody of a child or the
25 need for protection for them or their

1 children from an abusive spouse.
2 Those fortunate enough to have counsel
3 are better positioned to more
4 effectively communicate their need for
5 judicial intervention, and are more
6 likely to obtain the needed relief,
7 whatever it is; the emergency Order of
8 Protection, or the Custody Order
9 determining who should have the
10 responsibility for decisions affecting
11 the health, safety and welfare of
12 their children.

13 Unfortunately, the well-being of
14 these litigants and their families
15 often bear a direct relationship to
16 the legal assistance and services they
17 have access to.

18 As the Westchester County
19 District Attorney, I'm committed to
20 enhancing the safety of these same
21 families who find themselves
22 simultaneously victims in the criminal
23 justice system, and litigants in the
24 civil legal system. Nowhere is this
25 more common than in the area of

1 domestic violence.

2 In Westchester County, this year
3 alone, we will prosecute over 3,000
4 domestic violence cases. 3,000 cases
5 translates into hundreds of families
6 in crisis with victims who frequently
7 need civil legal assistance to address
8 the host of necessary issues beyond
9 their criminal justice needs. Child
10 support and custody orders, divorces
11 and the resulting reorganization of
12 family structure and immigration
13 relief. These are victims whose lives
14 are in transition, often as a direct
15 result of crimes that have been
16 committed against them.

17 Research shows that 25 percent
18 of homeless women are homeless because
19 of domestic violence. Successful
20 prosecution of these important cases
21 often depends upon helping these
22 victims gain their economic
23 independence. Without civil legal
24 assistance and other services, victims
25 frequently find themselves trapped in

1 relationships with their abusive
2 partners. In our continuing effort to
3 address this issue, last year my
4 office collaborated with the Office
5 for Women to open the Family Justice
6 Center, which is located adjacent to
7 the Westchester County District
8 Attorney's Domestic Violence Bureau.
9 Since that time, 685 clients have been
10 served at the center.

11 While the Family Justice Center
12 has successfully met the counseling
13 and emergency needs of nearly every
14 client who has been processed for
15 service, it frequently has not been
16 able to meet the needs of those
17 clients and their families for legal
18 services. Of the Family Justice
19 Center clients who needed civil legal
20 assistance, 58 percent did not receive
21 the legal services their circumstances
22 suggested they needed. The need for
23 legal services outstrips the resources
24 that are available to provide those
25 services. This predicament can mean

1 that while a victim becomes empowered
2 to envision a new life, safe and free
3 of abuse, the legal ties that keep
4 them ensnared in the abusive
5 relationship may remain very firmly in
6 place.

7 Immigrant domestic violence
8 victims and other crime victims face
9 an additional obstacle in reporting
10 crime: The fear of deportation. An
11 abuser or criminal defendant will
12 often instill fear in the victim that
13 by reporting a crime or cooperating in
14 a prosecution, immigration authorities
15 will become alerted and seek to deport
16 them, whether or not they are legally
17 residing in the country.

18 The Westchester County District
19 Attorney's office works closely with
20 immigration attorneys at My Sister's
21 Place and the Empire Justice Center to
22 assist victims in understanding their
23 rights, and where appropriate,
24 obtaining Visa's. But these resources
25 are insufficient to address the entire

1 need. Our success in prosecuting
2 domestic violence and bringing justice
3 to these cases is greatly enhanced
4 when civil legal services are provided
5 to victims.

6 While domestic violence is an
7 area where criminal law, family law
8 and civil law frequently intersect,
9 there are other equally important ways
10 in which our partnerships with civil
11 legal providers can enhance the
12 quality of life for the community we
13 serve. These partnerships arise in
14 many different contexts; for instance,
15 seniors. Our fastest growing
16 population here in Westchester County
17 represent another group of vulnerable
18 victims who benefit from the
19 partnerships that can be forged
20 between prosecutors and civil legal
21 services providers. We know that
22 older individuals, victimized by
23 crime, frequently live in isolation
24 and with diminished financial
25 resources. In New York, the poverty

1 rate for seniors is higher than the
2 national rate.

3 Similar to victims of domestic
4 violence, elderly victims of crime
5 often find themselves embroiled in
6 civil legal tangles arising from the
7 crimes that have been committed
8 against them. Elderly victims of
9 economic fraud, identity theft or
10 physical abuse need help to restore
11 their financial stability and
12 standing, and they often cannot do
13 that without civil legal assistance.

14 These victims have a wide range
15 of needs. They may need to change a
16 power of attorney designation or
17 health care proxy, fend off bankruptcy
18 or foreclosure proceedings, file for
19 bankruptcy, or require skill advocacy
20 with Adult Preventive Services to
21 provide a safe and appropriate living
22 arrangement.

23 Here in Westchester County the
24 Elder Abuse Unit of the District
25 Attorney's office consults regularly

1 with elder law attorneys at Hudson
2 Valley Legal Services and the Pace
3 Women's Justice Center in order to
4 meet the many and varied civil legal
5 service needs of our elderly victims.

6 On the flip side, the attorneys
7 at these agencies often identify
8 crimes and refer cases to my office
9 for criminal prosecution. This is the
10 type of collaboration we find to be
11 critical to resolving the issues
12 confronting many of our senior
13 victims. The issues that all too
14 often prevent an older victim from
15 enjoying a safe and secure quality of
16 life in their later years.

17 While these providers are doing
18 excellent work in their efforts to
19 assist seniors with their civil legal
20 services needs, their resources are
21 insufficient for the job, and the
22 needs are growing at a rate greater
23 than these organizations can meet.
24 Acceptable resolutions designed to
25 enhance quality of life will only be

1 possible when there are additional
2 resources made available to provide
3 these necessary civil legal services
4 to our senior victims.

5 Beyond crime victims, the
6 offenders we prosecute also have civil
7 legal needs that, if not adequately
8 met, can interfere with their path to
9 a productive life once their sentences
10 have been served. Providing these
11 services is in the community's
12 interest because successful re-entry
13 of these men and women back into our
14 communities when they return home from
15 prison enhances the public safety.

16 For the last four years, I have
17 worked as chair of the Westchester
18 County Re-Entry Task Force to see that
19 individuals returning home to
20 Westchester County, after serving
21 state prison sentences, are positioned
22 to achieve a successful re-integration
23 back into our communities. This is
24 not only a matter of doing what is
25 right, but is also a matter of public

1 safety, because facilitating
2 successful re-entry is one of the most
3 effective means of reducing
4 recidivism, thereby making our county
5 a safer place to live.

6 The re-entrants with whom we
7 work face many significant obstacles,
8 including access to housing and
9 employment. The Re-Entry Task Force
10 is a partnership of government and
11 not-for-profit agencies designed to
12 assist these men and women by linking
13 them to needed services. Many times
14 these re-entrants need civil legal
15 services. An individual who faces
16 barriers in securing appropriate
17 housing or employment often needs a
18 civil lawyer to advocate for him or
19 her to overcome discriminatory
20 practices that can impede their
21 successful re-entry back into our
22 communities.

23 As a prosecutor, I consider it
24 part of our collective public safety
25 mission to reduce recidivism by

1 insuring that these men and women have
2 the tools necessary to rebuild their
3 lives and live within and abide by the
4 law. While these public/private
5 partnerships have been effective in
6 reducing recidivism and enhancing
7 public safety, they lack the necessary
8 resources to accomplish the mission.
9 It is tragic that we are creating all
10 of these effective means to enhance
11 public safety and the quality of life
12 of our citizens, and then we find
13 ourselves short of the resources that
14 are necessary to turn these effective
15 models into broader practices. With a
16 smart investment of the appropriate
17 resources, we can achieve significant
18 improvements in the quality of life
19 for the victims of domestic violence,
20 including children, for our seniors,
21 and for overall community safety.

22 In closing, I want to thank you
23 and tell you all how much I appreciate
24 and admire each of you for
25 investigating, identifying and solving

1 the unmet needs for civil legal
2 services here in New York State. The
3 partnership to be forged by and
4 between the courts and the legal
5 community to formulate a smart,
6 effective, adequately funded plan to
7 meet these needs will benefit and
8 ultimately enhance the safety and
9 welfare of all of us.

10 Thank you also for your
11 opportunity this morning to address
12 you, and I invite you, please do not
13 hesitate to call upon me if you think
14 I can be assistance to you as you
15 continue your work. Thank you.

16 CHIEF JUDGE LIPPMAN: Thank you,
17 District Attorney. Two quick
18 questions. One, really, question, and
19 one, more a muse.

20 In answer to the question I
21 raised at the outset in terms of the
22 relationship between the criminal
23 justice law enforcement role you have
24 and civil legal services, is it fair
25 to say it's really a partnership that

1 you can't meet your duty to foster
2 public safety in this county without
3 having these partnerships with
4 providers of legal, civil legal
5 services?

6 DISTRICT ATTORNEY DiFIORE:

7 Without question, and I think the
8 areas of domestic violence, the work
9 that we do protecting seniors and
10 prosecuting people who commit crimes
11 against seniors and our very important
12 re-entry work on the back end of our
13 cases could not be done without the
14 assistance of these providers and the
15 partnerships.

16 PRESIDING JUSTICE PRUDENTI: Can
17 I ask a follow-up question, please?

18 CHIEF JUDGE LIPPMAN: Of course.

19 PRESIDING JUSTICE PRUDENTI:

20 District Attorney DiFiore, from your
21 unique perspective of a former family
22 court judge as well as Westchester
23 County District Attorney, I heard you,
24 and I listened very carefully to your
25 testimony this morning where you

1 talked about, to follow-up on what the
2 Chief Judge said, a public/private
3 partnership. So that I have a clear
4 understanding and so I think the
5 entire panel does when we report and
6 when we put together what we feel are
7 the needs of the residents of the
8 Second Judicial Department on legal
9 services, could you tell me, does the
10 District Attorney's office have any
11 specific referral systems itself or
12 resource coordinators for victims who
13 are in need of civil legal services?

14 DISTRICT ATTORNEY DiFIORE: We
15 had a victim's justice center, but for
16 example, I think the best, for
17 example, is our work in re-entry,
18 where we have brought to the table
19 government and not-for-profit
20 partners, and we all, you know, the
21 criminal justice system has so many
22 moving parts. In order to enhance
23 public safety, we have to bring those
24 partners to the table. And the piece
25 that has really been missing and

1 frustrating on the re-entry piece is
2 the civil legal services need that is
3 difficult for us to meet and satisfy
4 on behalf of our re-entry clients.

5 PRESIDING JUSTICE PRUDENTI:
6 From a fiscal point of view, would it
7 be your position that your budget
8 really does not allow you to provide
9 those type of services?

10 DISTRICT ATTORNEY DiFIORE: Not
11 only our budget, our mission as well.

12 CHIEF JUDGE LIPPMAN: One final
13 question, really more of a muse, as I
14 said before.

15 You started your testimony by
16 talking about the right to counsel in
17 criminal cases, and the fact that
18 there is no established right to
19 counsel in civil legal cases.

20 Do you think -- I don't mean to
21 put you on the spot, just kind of came
22 into my head -- do you think it's
23 possible that when you talk about the
24 consequences of not having counsel in
25 civil cases, that it could actually

1 rival the consequences, the ultimate
2 consequence in a criminal case of loss
3 of liberty?

4 DISTRICT ATTORNEY DiFIORE:
5 Absolutely. These are such basic and
6 fundamental needs and issues that
7 we're talking about. I absolutely do
8 think so, Judge.

9 CHIEF JUDGE LIPPMAN: I think
10 it's a hard concept for people to get
11 their arms around, that people who are
12 left, in fact, not to be, what should
13 I say, down about it at all or looking
14 at things in a negative way, but I
15 think also the lack of civil legal
16 representation can lead to people
17 actually having a life in crime. When
18 they get so desperate and so, you know
19 --

20 DISTRICT ATTORNEY DiFIORE:
21 We're talking about life's essentials.
22 A safe place to live, a roof over your
23 head, children who can grow up feeling
24 confident and not distracted by the
25 noise of the struggle of life. Once

1 their families get those issues
2 resolved, they can show up at school
3 free and ready to learn. Major
4 impact.

5 CHIEF JUDGE LIPPMAN: Thank you.
6 And thank you again for taking the
7 time to testify and for the job you do
8 here in Westchester County as the
9 District Attorney. We're all proud of
10 you.

11 DISTRICT ATTORNEY DiFIORE:
12 Well, thank you.

13 CHIEF JUDGE LIPPMAN: Good to
14 see you.

15 Our next witness is David Boies,
16 who's the managing partner of Boies,
17 Schiller & Flexner, and I would say
18 one of the most recognizable legal
19 figures in this country, and I'm so
20 pleased that he's here with us. I
21 want to thank him for taking the time
22 to testify, and also, particularly to
23 thank him for his services as the head
24 of the ABA Committee on the
25 Preservation of State Judiciary, which

1 has done such terrific work and
2 continues to do so. And really, David
3 Boies represents the best in our
4 profession.

5 So, so pleased that you are
6 here.

7 MR. BOIES: Thank you very much,
8 your Honor. Let me begin by thanking
9 you and the other members of the panel
10 in the task force for this work.

11 Nothing is more critical to our
12 justice system than the provision of
13 legal services for people who cannot
14 afford it. I've submitted written
15 testimony together with a report of
16 the ABA Task Force. I would like,
17 with the Court's permission, to just
18 summarize three points that I think
19 are particularly important.

20 One of those, the first one
21 really underscores the constitutional
22 and ethical obligation we have to
23 provide legal services to people who
24 cannot afford it. Access to justice,
25 legal services are not merely another

1 product of services that people
2 without money are sometimes deprived
3 of. This is an essential element of
4 our rule of law. We depend on our
5 courts, not merely as another state
6 agency, but as a co-equal branch of
7 government. And indeed, a branch of
8 government upon which all of our other
9 rights and benefits depend.

10 Without the fair and just
11 application of the rule of law, none
12 of our rights or benefits are secure.
13 And for somebody who is deprived of
14 legal services at a time that they
15 need them, they are not able to
16 navigate the legal system, they are
17 not able to protect their rights.

18 And to follow-up on the Court's
19 question to the District Attorney, I
20 think that when you are dealing with
21 deprivation of housing, deprivation of
22 education, possibly deprivation of
23 your children, threats of domestic
24 violence, those are the kinds of
25 threats to personal safety, liberty,

1 the right to pursue property and
2 happiness, that rival and indeed
3 sometimes exceed the penalties that
4 our criminal justice system imposes.
5 Fines and even jail sometimes pale in
6 significance to the significance of
7 losing a child, not being able to be
8 protected from domestic violence, not
9 being able to stay in your house, be
10 threatened with homelessness.

11 I think the kinds of
12 impositions, the kinds of cost, the
13 kinds of losses that people suffer as
14 a result of not having access to legal
15 services in civil cases are in many
16 cases as great as and in some cases
17 greater than the danger of not having
18 legal services in a criminal context.

19 The second thing I'd like to
20 emphasize is what I believe is the
21 importance not merely to our justice
22 system, and not merely to the
23 individual litigants involved, but to
24 our society in making sure that people
25 who cannot afford legal services in

1 essential areas are provided those
2 legal services. It is not only a
3 person who's evicted from their house,
4 perhaps unnecessarily and perhaps
5 wrongfully, because of lack of legal
6 services to suffer, although they
7 certainly do suffer. But society
8 suffers when we have costs imposed in
9 our society of unnecessary
10 homelessness. When we have the costs
11 imposed on our society, not merely the
12 victims of domestic violence, but the
13 society itself that must bear those
14 costs. That too is cost not merely on
15 the victims, but on society as a
16 whole.

17 When you have unnecessary
18 foreclosures, that damages not only
19 the individual whose home is
20 foreclosed, but all of the financial
21 system that's involved. We are all
22 benefited from keeping people in their
23 homes when that is appropriate and
24 possible. And I think that the cost
25 of, on society itself that come from

1 not providing adequate legal services
2 for people who cannot afford it are
3 sometimes lost in the process. We
4 concern ourselves with the loss of
5 rights, and that's very important.
6 But we also, I think, need to
7 recognize that the costs of providing
8 these legal services pale in
9 significance to the costs that are
10 imposed on society, all of us, as a
11 consequence of not providing those
12 legal services.

13 The third point I'd like to
14 emphasize is what I see is the
15 relationship between providing legal
16 services and an effective, efficient
17 justice system for everybody, for all
18 litigants. One of the things that the
19 ABA Task Force that Ted Olsen and I
20 have co-chaired has done is, we have
21 held hearings, as the Chief Judge
22 knows, and who's very gratefully
23 participated in those hearings, and it
24 has been brought home, I think to us,
25 how important it is to our society to

1 have a functioning, well-funded court
2 system.

3 In New York, we are fortunate.
4 We do not face some of the most severe
5 problems that are faced in other
6 states. But the problems and the
7 dangers are real. The extent of
8 demands on our judges and our court
9 personnel, our facilities are already
10 stretched. We need more resources, we
11 need more facilities, we need better
12 technology, we need a lot of things
13 that cost money. At the same time,
14 not providing legal services to people
15 who can't afford it stretch those
16 resources unnecessarily more. The
17 litigant without representation when
18 they get to court is a litigant that
19 takes much more of our judicial
20 system's scale's resources. It takes
21 much more of the judge's times. It
22 takes much more of the court personnel
23 time.

24 People have to be supervised.
25 They have to be taught. Things have

1 to be explained to them. They have to
2 be monitored, and then and they have
3 to have this done over and over again
4 as they try to navigate something that
5 they are simply unfamiliar with. It's
6 not their fault. They simply can't do
7 it without an enormous expenditure of
8 time from judges and court personnel.
9 That means that the whole process
10 closes down, closes down for
11 everybody. When courts and judicial
12 personnel have to expend unnecessary
13 time on cases because there is not
14 counsel involved, that is a cost that
15 is imposed on the entire justice
16 system and imposed on a justice system
17 that is already, as I say, even in New
18 York, stretched.

19 In addition, one of the things
20 that lawyers should do, don't do as
21 often as they should do, but should do
22 and do to a large extent, is keep
23 people out of court. Without having
24 legal services, more litigants come to
25 court than they would have to if they

1 had legal services. Legal services
2 are often able to resolve matters
3 without the necessity of litigation.
4 And when you have people who are
5 unrepresented, first, they come to
6 court more often, and second, when
7 they come to court, they take more
8 time and more expense and more
9 personnel than they would if they had
10 legal services. So, the consequences
11 of not providing legal services to
12 people who need it are that not only
13 do they impose costs on the side, not
14 only do we deprive them from
15 protection that I believe we have a
16 constitutional, ethical duty to
17 provide them, but we damage our
18 justice system ourselves by diverting
19 scarce resources at a time that we do
20 not have extra scarce resources.
21 Thank you.

22 CHIEF JUDGE LIPPMAN: Thank you,
23 Mr. Boies. We so appreciate your
24 testimony and your work with the ABA
25 Task Force. A couple of quick

1 questions for you.

2 We talked a little bit before
3 your testimony about the bad economy
4 and how that impacts on this whole
5 idea of providing civil legal services
6 funding. What's wrong with the
7 argument that, gee, times are bad, we
8 just can't, you know, this is, it's
9 commendable, terrific, everybody wants
10 to help poor people. What's wrong
11 with that argument?

12 MR. BOIES: I think there are
13 three things wrong with that argument,
14 your Honor. One is, I think it
15 ignores the fact that justice is not
16 simply another product or service.
17 Justice is a promise we make to every
18 member of our society, and we can't
19 say to people, times are tough, we're
20 going to charge you \$1,000.00 to vote
21 in an election. Or, times are tough,
22 we've got to raise money. If you want
23 to have a policeman come to protect
24 you, you're going to have to pay for
25 it. Justice is an essential element

1 of our society, and it's an essential
2 constitutional guarantee, an ethical
3 guarantee that we guarantee every
4 citizen. This is not like saying,
5 times are tough, we have to cut back
6 on everything. What we can't cut back
7 on is justice, because every other
8 right and benefit we have in society
9 depends on that.

10 The second is that it's a false
11 economy. It's a false economy for two
12 reasons. First, it's a false economy
13 because you are spending much more
14 money to take care of people once
15 they're homeless than you are to give
16 them legal services that perhaps they
17 don't become homeless. You spend much
18 more money to solve problems with
19 domestic violence after they occur
20 rather than providing legal services
21 that might prevent it.

22 The third point, the second
23 aspect of the false economy is that it
24 imposes such costs on our court system
25 that we're not saving money. It's

1 costing us money. Even if we ignore
2 it, the constitutional and ethical
3 guarantee, even if we ignore the cost
4 to society at large, it is a bad deal
5 for our court system to deprive people
6 of legal services because that just
7 costs all of us money and costs every
8 litigant an opportunity to have their
9 case decided in an expeditious way.
10 Every litigant, rich or poor -- in
11 fact, I would say, the wealthier you
12 are, the more the court system is
13 important to you, and the more
14 efficient, quick justice is important
15 to you. So, I would say that the
16 bigger the corporation, the more
17 wealthy the individual, the more you
18 have a stake in providing legal
19 services to the poor.

20 CHIEF JUDGE LIPPMAN: I think
21 that's such an interesting point. In
22 last year's hearing, we had so many of
23 the heads of the big banks, the heads
24 of the landlord associations, the
25 hospitals, that came in to say, it's

1 not only all these things that are the
2 right thing to do, but our bottom line
3 is our well-being. So, I think that's
4 an interesting concept that's, you
5 know, again, hard to grasp.

6 MR. BOIES: My firm primarily
7 represents large corporations, large,
8 medium-sized corporations. We have
9 the distinction, I think, of being the
10 second largest employer in Armonk
11 where our world headquarters is. And
12 we've been very successful in doing
13 that, but I can tell you from personal
14 experience that I would much rather
15 have somebody representing on the
16 other side than be faced with a pro se
17 litigant. It costs me much more time,
18 it costs my client much more money to
19 deal with the delays, the disruptions.
20 It also requires the Court to, in
21 effect, step in a little bit as an
22 advocate for their side, which
23 distorts our adversarial process.

24 So, from every aspect, I would
25 much rather have somebody represented

1 on the other side than be with a pro
2 se litigant.

3 CHIEF JUDGE LIPPMAN: I think
4 that's true. We're going to see that
5 later on, particularly with the
6 judges. We're going to have a judge's
7 panel which is going to, I think,
8 analyze exactly this issue you're
9 talking about. How can the judge be
10 the neutral when the deck is so
11 stacked.

12 One last quick question, at
13 least from me. You talked about
14 having people without representation
15 delays the court process. As a
16 practicing lawyer who represents
17 certainly over the years not only big
18 corporations but obviously
19 individuals, what's the consequence,
20 especially to some of the people
21 unfamiliar with the court process
22 here, what's the consequence where you
23 have, for instance, a civil trial
24 delayed for a year? Why can't, what's
25 the difference? Why is it important?

1 MR. BOIES: I think there are
2 two real important differences.
3 First, in some cases, justice delayed
4 really is justice denied, because
5 sometimes the time you need to
6 accomplish something passes. If
7 you're trying to enforce a contract,
8 you may lose your business while
9 you're waiting to enforce that
10 contract. If you have a dispute over
11 employee relationship, you may lose
12 that employee while you're resolving
13 that, and you may lose the entire area
14 the employee's working on if that
15 can't be resolved quickly.

16 So, in some cases, justice
17 delayed really is justice denied,
18 because no matter what the result is
19 at the end of the day, if events have
20 passed you by, you've lost the
21 opportunity to get justice.

22 The second is, the costs go up
23 enormously. The costs of delay, the
24 legal cost, the costs of coming back
25 to court, the cost of just waiting

1 while decisions are made in other
2 cases. I've been in court when a pro
3 se litigant has come up, where we were
4 supposed to be on that day, and with
5 several people ahead of us, and with a
6 pro se litigant taking up hours for
7 something that ought to take just a
8 few minutes, we don't get reached.
9 Not only me, perhaps an associate and
10 my client sat there all day. We've
11 got to come back. And that process
12 goes over and over again, because
13 delays are indeming (phonetic) in a
14 system in which you do not have
15 represented counsel because you can't
16 predict how long it's going to take.
17 All you can predict is, it's going to
18 take a lot longer than it should.

19 CHIEF JUDGE LIPPMAN: I
20 particular ask Mr. Boies this question
21 because in his services as the head of
22 the ABA Task Force, he's actually
23 heard testimony that there are states,
24 when he indicated that New York has
25 been spared the worst of some of the

1 things going on, where literally there
2 are no civil trials allowed to proceed
3 for like a year on end.

4 MR. BOIES: They suspend civil
5 trials. There are states in which
6 judges have lost their health
7 insurance, or you can't get a copy of
8 a Court Order unless you take your own
9 paper to the courthouse, where they
10 don't have anything like the
11 technology that we have and are
12 increasingly getting, thanks a lot to
13 our efforts here in New York, which is
14 critical.

15 So, there are many, many states
16 that are in, really, crisis situation.
17 New York is not there, but we don't
18 want to rest our laurels. There's a
19 lot to do, and we've got to keep
20 improving. We've got to keep leading,
21 and I believe the only way to do that
22 is to provide legal services, because
23 otherwise, all the other good efforts
24 get dissipated as those resources get
25 diverted.

1 CHIEF JUDGE LIPPMAN: Thank you
2 for your testimony. Thank you for
3 your leadership in the ABA Task Force,
4 and again, thank you for representing
5 our profession so well. It's a
6 pleasure to have you here.

7 MR. BOIES: Thank you.

8 CHIEF JUDGE LIPPMAN: Next we
9 will have a client panel that will
10 come up and will testify about first
11 hand what happens when you don't have
12 civil legal services.

13 Before you come up, I would
14 recognize my colleague on the high
15 court, Theodore Jones has come in.
16 And Ted, so good to have you here.
17 Thank you for coming.

18 Okay, client panel, come on up.

19 Okay, we really have a client
20 panel. The order that I have, and you
21 will correct me if there's any change
22 in the order, we're going to have
23 Alina Saez -- is that the way you
24 pronounce it?

25 MS. SAEZ: Good morning.

1 THE COURT: You want to start?
2 And you're the mother of, what is it
3 the -- yes, the mother of Justin
4 Rosario, and tell us about why you're
5 here. That's Justin next to you?

6 MS. SAEZ: Yes.

7 CHIEF JUDGE LIPPMAN: Good to
8 see you.

9 JUSTIN SAEZ: You too.

10 MS. SAEZ: My name is Alina
11 Saez. I am a single mother of a
12 16-year-old boy. His name is Justin,
13 who's here with me today. Justin has
14 been diagnosed with severe
15 developmental disabilities and has
16 been classified by the Ossining School
17 District as intellectually disabled
18 and emotional disabled.

19 Justin and I moved into Ossining
20 in April 2010. And from April 2010
21 through November 2010, only a
22 six-month period, according to a
23 school calendar, Justin was suspended
24 or otherwise disciplined approximately
25 20 times. On November 16, 2010,

1 Justin was suspended because he threw
2 a pencil across the classroom. The
3 pencil did not hit anyone, nor was
4 Justin, nor was it Justin's intention
5 to hit anyone. He was just having a
6 bad day.

7 We then had an administrative
8 hearing that was scheduled to
9 determine my son's guilt or innocence
10 and his potential punishment. At that
11 hearing I was not represented by
12 counsel, and the counsel for the
13 district encouraged me to sign a
14 stipulation of settlement admitting my
15 son's guilt, waiving my right to a
16 hearing and waiving my right to a
17 manifestation review, the
18 determination by the CSE team whether
19 the behavior is a manifestation of
20 Justin's disability.

21 I signed the stipulation. I did
22 not know my options or my rights at
23 that time. I knew my son threw the
24 pencil. I thought I was doing the
25 right thing. This resulted in Justin

1 being suspended for approximately 80
2 days. I tried everything I could to
3 get the district to find Justin an
4 appropriate placement. I knew it
5 wasn't right that Justin was not
6 receiving an education, that he was
7 not receiving the counseling that he
8 needed, he was not receiving any of
9 the services or supports that were
10 designated on his individualized
11 education program, his IEP. But the
12 District refused to listen to me.
13 After 80 days of agony, the district
14 finally found Justin a place at a
15 24-hour residential facility for
16 extremely emotionally disturbed
17 children in another county. The most
18 restrictive setting for Justin. This
19 is what led me to Legal Services of
20 the Hudson Valley. I knew Justin
21 would never survive, let alone
22 progress in this setting. I was put
23 in touch with Gina DeCrescenzo, and
24 she immediately reviewed my paperwork
25 and decided to file a complaint in our

1 behalf. This complaint explained all
2 the district's failures to provide
3 Justin with an appropriate education
4 since he arrived in Ossining, and
5 asked for relief that we hoped would
6 put Justin back on track.

7 Ms. DeCrescenzo filed a due
8 process complaint against the
9 district. She negotiated with them
10 and attended several meetings with the
11 district for approximately two months.
12 The district held firm in their
13 position that Justin needed a 24-hour
14 residential setting, regardless of
15 what I believed, and refused to
16 conduct an updated psychological
17 evaluation to better understand the
18 root of Justin's problem. They also
19 refused to offer any more than 60
20 hours of compensatory educational
21 services and four hours of
22 compensatory counseling to make up for
23 the time that my son had lost.

24 My attorney did not waiver from
25 her position. Instead, she held her

1 ground and moved forward to state that
2 this was not okay. We proceeded to
3 the due process hearing. On the eve
4 of the first day of the hearing, the
5 district's attorney called
6 Ms. DeCrescenzo and gave in to all of
7 our requests. To name a few, Justin
8 was placed in a therapeutic private
9 day program. The district also agreed
10 to provide 20 hours of one and one
11 counseling as compensatory counseling.
12 The district agreed to provide
13 180 hours of one and one tutoring with
14 a special education teacher as
15 compensatory educational services, to
16 be used whenever I want without an
17 expiration date. And the district
18 also agreed to pay for a
19 neuropsychological evaluation by an
20 independent provider of my choosing.

21 At this time my son is attending
22 a school that he loves and one that is
23 meeting his needs. This, all because
24 of legal services' help and efforts.
25 I don't know where Justin and I would

1 be at this moment if not for them.
2 Legal services made every stride,
3 excuse me, in helping us through this
4 difficult challenge, because as I have
5 said previously, the Ossining School
6 District was not providing my son with
7 any alternatives rather than just to
8 get rid of him, and whatever happens,
9 happens. Instead, my attorney fought
10 long and hard for our rights and
11 services.

12 I would like to take this time
13 to sincerely thank you, Gina
14 DeCrescenzo, because without you, they
15 would have never given Justin what he
16 needed and deserved.

17 Gina DeCrescenzo came into our
18 lives and turned it all around.
19 Amazing is all I have to say, and I
20 feel that if every person knew about
21 legal services, they would have the
22 same outcome as we have had, success.

23 Thank you, Gina DeCrescenzo and
24 the Legal Services of Hudson Valley.
25 We appreciate you. Thank you.

1 CHIEF JUDGE LIPPMAN: Thank you,
2 Alina, appreciate it. I just have one
3 question for you. Is there anything
4 more important to you than your son?

5 MS. SAEZ: Nothing.

6 CHIEF JUDGE LIPPMAN: Then I
7 guess the follow-up, which I don't
8 have to ask the question, is there
9 anything more important to you than
10 having the services of your attorney
11 from legal services?

12 MS. SAEZ: I was very thankful
13 for her help.

14 PRESIDING JUSTICE PRUDENTI:
15 Could I please just ask you how you
16 were referred to the legal services,
17 and how you were referred to your
18 attorney?

19 MS. SAEZ: I went on the
20 internet looking for help, and that's
21 where I --

22 PRESIDING JUSTICE PRUDENTI: So,
23 you found the Legal Services of the
24 Hudson Valley all by yourself; is that
25 correct?

1 MS. SAEZ: Yes.

2 CHIEF ADMINISTRATIVE JUDGE PFAU:

3 If I could ask your attorney, how many
4 Alina's do you have to turn away that
5 come to your office with these kinds
6 of stories that you can't help because
7 you don't have the resources to do it;
8 would you say?

9 MS. DeCRESCENZO: I mean, it's
10 true that especially for a case that
11 warrants a due process complaint,
12 they're so complex that it's
13 impossible to handle all. We probably
14 turn away complex cases like this,
15 maybe 20 a year. I do try to handle
16 as many as I possibly can though,
17 because I know how important it is.

18 CHIEF JUDGE LIPPMAN: I think in
19 talking to Barbara Finkelstein, the
20 head of Hudson, the Legal Services of
21 the Hudson Valley, I think she
22 estimated on a whole that it's for
23 every person you take, there's one
24 that's turned away. And that's not
25 unusual, you know, in the country and

1 here in New York. In fact, Steve
2 Banks, who's the head of the Legal Aid
3 Society in New York City, will tell
4 you that they turn away probably eight
5 or nine for every person that they
6 take. This is a real problem.

7 So, thank you again, Alina.

8 MS. SAEZ: Thank you.

9 CHIEF JUDGE LIPPMAN: The next
10 is Esther Jimenez, client of the
11 Staten Island Legal Services,
12 accompanied by Nancy Goldhill.

13 (Testifying through Todd
14 Burrell, the Spanish Interpreter.)

15 MS. JIMENEZ: Thank you for
16 giving me this opportunity to address
17 you about the services that I received
18 from Legal Services of Staten Island.
19 As I was going through a very hard
20 time in my life --

21 CHIEF JUDGE LIPPMAN: Move the
22 mike a little between the two of you
23 would be helpful.

24 MS. JIMENEZ: My name is Esther
25 Jimenez. I live in Staten Island. I

1 have three children, two daughters who
2 are nine and six, and a son who is
3 three.

4 In 2009 I left my husband after
5 eight years of abuse. My husband was
6 very abusive. At many times he
7 punched me, he choked me, he forced me
8 to have sexual relations against my
9 will. And many times he threatened to
10 kill me. Much of them happened while
11 my children were present. He also
12 threatened me many times that he was
13 going to get the best attorneys in the
14 country and take my children away from
15 me. And thank God I was able to get a
16 great attorney, and I did not lose my
17 children.

18 Luckily, our pastor suggested
19 that we separate, which made it much
20 easier for me. At first I let him see
21 the children almost every day, because
22 I wanted them to have a relationship
23 with their father. That changed after
24 a few weeks when my husband came to
25 see the children and he attacked me.

1 We had an argument, and he slammed me
2 against the wall. I was holding my
3 son, he was only a year and a half
4 old, and my son fell to the ground. I
5 wasn't even able to pick him up
6 because my husband had me pinned
7 against the wall. My daughter, who
8 was only four, tried to pull my
9 husband off of me, but he pushed her
10 out of the way, and he threw her
11 against the wall as well. And when he
12 tried to leave, my daughter tried to
13 stop him, and he pushed her down to
14 the floor. My eldest daughter saw
15 everything that was happening and she
16 was terrified.

17 After my husband left, I called
18 911. When the police came, they
19 didn't do anything because I don't
20 speak English, and I wasn't able to
21 communicate with them. I found my way
22 to Staten Island Legal Services, and
23 they gave me the help that I needed.
24 Manar Waheed, my attorney, explained
25 my rights to me, and she told me about

1 the different options that I had. And
2 then Manar represented me in Family
3 Court so that I could get an Order of
4 Protection and custody of my children.
5 She also told me that I had the right
6 to file a complaint with the police,
7 and that I could do so even though I
8 don't speak English and I wasn't able
9 to communicate with them, so that I
10 would be able to -- she explained how
11 to do this so I would have proof and I
12 could take it to court. Manar and
13 Claire, a social worker in her office,
14 helped me to prepare for trial so that
15 I could tell my story, even though I
16 was afraid. I was afraid of speaking
17 in front of my husband and talking
18 about the awful things he did to me.
19 The trial was very emotional and
20 difficult, but in the end the judge
21 gave me a three-year Order of
22 Protection that includes my children.
23 I feel like the Judge really listened
24 to me and understood what I was going
25 through, and it made me feel good.

1 After that, my husband agreed to give
2 me custody of the children. The Judge
3 is still deciding how often my husband
4 should be able to see the children,
5 but at this time he's not allowed to
6 see them at all.

7 I would not have been able to do
8 all of this without a lawyer. Staten
9 Island Legal Services helped me to
10 escape a long and very abusive
11 relationship. They supported me
12 through a very difficult time in my
13 life, and they helped me protect
14 myself and my children. Without them
15 I would have never known that I had a
16 right to go to court and get an Order
17 of Protection and custody of my
18 children. I would have been afraid to
19 go by myself. I know that many other
20 women are in this situation like mine.
21 They have no idea what they're options
22 are or where to go for help. And when
23 they don't speak English, the problem
24 is even more serious. Manar helped me
25 to move forward with my life, and she

1 helped me to get what I needed. And
2 on top of everything else, the social
3 worker Claire, she helped me to get my
4 children into therapy to deal with the
5 abuse that they witnessed.

6 Without the help of legal
7 services, I don't know what I would
8 have done. I know they can't help
9 everyone. I was fortunate that they
10 were able to help me. If they aren't
11 able to continue doing what they do,
12 I'm afraid that people in situations
13 like mine wouldn't be able to get the
14 help that they need. I want you to
15 know how important it is, how
16 important their services are,
17 especially on Staten Island where
18 there are very few services to help
19 people who are not able to afford
20 their own private attorneys.

21 CHIEF JUDGE LIPPMAN: Thank you.
22 I think what's so graphic is when we
23 talk about civil legal services
24 affecting the necessities of life, and
25 we have our first two witnesses, one

1 talking about getting rights for her
2 child in school, in terms of
3 education, which is, what could be
4 more important, and the other
5 testifying about a domestic violence
6 situation and the well-being of her
7 family and her children. So when we
8 talk about the necessities of life,
9 that is what civil legal services is
10 all about. And I bring you back to
11 the analogy that was made in some of
12 the earlier testimony. The
13 consequences of the lack of civil
14 legal services can be equally as
15 significant as even the loss of
16 liberty in a criminal case.

17 So, thank you for being here,
18 and thank you for your testimony.

19 The next on the client panel is
20 Esther Jimenez -- no, that's Tara
21 Grisby, client of the Legal Aid
22 Society of Rockland County,
23 accompanied by Alexander Bursztein.

24 MS. GRISBY: Hi, good morning.

25 CHIEF JUDGE LIPPMAN: Good to

1 have you.

2 MS. GRISBY: My name is Tara
3 Grisby, and I would like to thank you
4 for this opportunity to tell you how
5 the Legal Aid Society of Rockland
6 County was there for me when I needed
7 help.

8 Earlier this year, my son, who
9 just turned 21 years old, was arrested
10 for a drug charge. In addition to him
11 getting arrested for the drug charge,
12 the housing complex where I reside
13 wanted to terminate my residency, and
14 I have six children in total, ages 21
15 to four. And I was nervous, scared,
16 didn't know what to do. I was a
17 single mother for a very long time,
18 and I couldn't just see him, you know,
19 be out there like that because he's a
20 good kid. He has two jobs, graduated
21 high school, went to college.

22 And I did contact Legal Aid.
23 Mary Ellen Natale took the case. We
24 spoke, you know, back and forth, and
25 we actually negotiated to where maybe

1 myself, my children could remain and
2 maybe him getting his own place and
3 dealing with what he had to do, but as
4 a parent, I did not feel that would be
5 right either. If he could get some
6 counseling, you know, to make him
7 better, that's what I wanted for him.

8 So, it pretty much happened to
9 where I was, he had to go into an
10 18-month treatment drug treatment
11 program where he is today. Actually,
12 they dismissed him for that because
13 he's been dedicated about going,
14 dedicated with work, doing what he had
15 to do. He goes to AA meetings two
16 times a week, which he continues to
17 do. He holds down two jobs, works
18 daytime and nighttime, and he is
19 definitely getting the help he needed,
20 and so I'm thankful for the Legal Aid
21 Society of Rockland County that we
22 were able to keep the apartment and
23 stay. And I felt that I wanted him
24 home with me because if he had to go
25 out on his own, I don't think the drug

1 program would have worked in his
2 favor.

3 CHIEF JUDGE LIPPMAN: What
4 happens to your life without the
5 apartment?

6 MS. GRISBY: Well, I would have
7 to go and find somewhere else to live,
8 and with the price range, I just
9 couldn't afford it. With the rents
10 that they want today, I could
11 definitely not afford it.

12 CHIEF JUDGE LIPPMAN: Again,
13 when we talk about the necessities of
14 life, could there be anything more
15 necessary or essential to you than the
16 roof over your head?

17 MS. GRISBY: Well, and to see
18 that he overcomes his drug issue,
19 which he has, which he has.

20 Like I said, he's been dedicated
21 to these AA classes and doing what he
22 has to do, and he still maintains his
23 two jobs, so I'm very happy for that.

24 CHIEF JUDGE LIPPMAN: So, it's
25 held your life together, as well as

1 his life together?

2 MS. GRISBY: Absolutely.

3 MR. JAMES: Ms. Grisby, you
4 indicated that the housing development
5 where you were living wanted to evict
6 you and your son. If you had been
7 evicted and your son was no longer
8 able to live in the county where you
9 are, would he have been able to
10 continue in that treatment course?

11 MS. GRISBY: I would think not,
12 because we're so close. He's like
13 all, I'm all he has ever had, you
14 know? His father wasn't in the
15 picture.

16 MR. JAMES: You provided a lot
17 of emotional support.

18 MS. GRISBY: That's right. We
19 helped each other out, and we stuck by
20 one another to make this happen.

21 MR. JAMES: Because you were able
22 to continue with your housing, he was
23 able to rehabilitate himself?

24 MS. GRISBY: That's correct, and
25 he still continues to today.

1 CHIEF JUDGE LIPPMAN: Great.
2 Thank you, Tara. Thank you for your
3 testimony.

4 Kathleen Denezzo, client of
5 Nassau/Suffolk Law Services Committee,
6 Inc., accompanied by Sheila Johnson.

7 MS. DENEZZO: Accompanied by
8 Denise Snow.

9 CHIEF JUDGE LIPPMAN: Okay,
10 happy to have Denise here. Go ahead.

11 MS. DENEZZO: Good morning. My
12 name is Kathleen Denezzo, I am a
13 51-year-old woman --

14 CHIEF JUDGE LIPPMAN: You look
15 much younger.

16 MS. DENEZZO: Thank you. As a
17 life-long resident of Long Island, I
18 was born in Huntington Hospital and
19 raised in East Northport. I was
20 married, I have three sons. I had to
21 leave my husband because of abuse and
22 raise my sons as a single mother. My
23 husband did not support my children
24 consistently, and as a result, I spent
25 a considerable amount of time in the

1 court system, most of the time
2 representing myself. My husband was
3 incarcerated several times for
4 nonpayment of child support. Life has
5 not been easy for me. I worked as an
6 aide in a nursing home taking care of
7 the elderly and sometimes had to work
8 more than two jobs to keep a roof over
9 our heads and food on our table. I
10 never, ever asked anyone for help.
11 However, in 2007 -- this is the bad
12 part -- I was diagnosed with breast
13 cancer. I had a bilateral mastectomy
14 in January 2008. Soon after the
15 surgery, aggressive chemotherapy
16 followed. While in treatment I
17 experienced grand mal seizures. Not
18 only did I have to deal with providing
19 my family with the basic necessities
20 of life, I had to deal with the
21 anguish and pain of a catastrophic
22 illness.

23 To survive, I had to apply for
24 social security, and I did receive it.
25 I also received benefits for my sons

1 until they graduated from high school.
2 Financially, things were very tight.
3 I was barely making ends meet and
4 stressed out from recovery from an
5 illness and trying to care for my
6 family. Then the unspeakable
7 happened. I was informed by social
8 services, they wanted to take out
9 \$186.00 per month out of my social
10 security check for medical insurance.
11 That was in addition to the \$110.00
12 they had already taken. That would
13 leave me with \$763.00 a month to live
14 on. The cost of living is high on
15 Long Island. How could I live on
16 \$763.00 a month to support my family?
17 I felt this was very unfair. And I
18 never had asked anyone for help, even
19 though I had a very hard life. I am
20 certainly, and I certainly did not ask
21 for breast cancer. Social Services
22 told me that if I did not pay them
23 \$186.00, that they would cancel my
24 health insurance. I borrowed money to
25 pay and then requested a fair hearing.

1 At the fair hearing, a
2 representative from Social Services
3 and an Administrative Law Judge was
4 present at the proceedings. The
5 representative asked the Judge if we
6 could step out of the room so she
7 could explain things to me. She told
8 me I made too much money so the health
9 insurance money would be deducted from
10 my benefits. She told me I should be
11 able to live off \$763.00 a month. I
12 explained my story to her, and she
13 told me I could move to Albany or
14 someplace cheaper. I could not
15 believe it. I'm a life-long resident
16 of Long Island, and why should I move?
17 Why should I move to live? We
18 returned to the courtroom, and the
19 Judge could see that I was very upset.
20 He told me not to worry. He told me
21 that he would direct me to people that
22 would help me. For the record, the
23 representative from Social Services
24 told her story, and then I told mine.
25 Finally, the judge said, okay, I've

1 heard enough. He ended the
2 proceedings and told me that I need to
3 set up a trust, then he walked me out
4 to the waiting room and introduced me
5 to a woman. She told me she was from
6 Nassau Suffolk Law Services. She said
7 she could not help me directly, but
8 she would make a phone call to an
9 attorney who could help me. She told
10 me to call Denise Snow. Denise Snow
11 is an attorney in the PLAN project in
12 Nassau-Suffolk Law Services that
13 provides legal services to victims of
14 breast cancer. She made an
15 appointment for me the very next day.
16 Ms. Snow explained the facts and the
17 law to me. She set up a Supplemental
18 Needs Trust so I could receive the
19 medical benefits I needed to and have
20 money left over to live on. What a
21 relief. Ms. Snow is caring,
22 knowledgeable and thorough. In that
23 interview she discovered that my
24 husband had filed for divorce
25 proceedings against me 15 years ago.

1 I hired an attorney but the
2 proceedings were never completed, and
3 I never received final Judgment of
4 Divorce. My ex-husband never stays in
5 one place long enough for me to track
6 him. Ms. Snow believes she could help
7 me obtain a divorce. This is
8 something I could have never done
9 myself.

10 As I said before, I had to
11 represent myself many times in court.
12 I could never get satisfactory legal
13 aid from any other organization, so I
14 thought I was better off representing
15 myself. However, I was wrong. I did
16 not know the laws regarding Medicare,
17 Medicaid, social security, and I
18 certainly didn't know, did not know
19 about the Supplemental Needs Trust. I
20 have no idea, I had no idea when I was
21 stricken with cancer that I would have
22 to deal with legal issues. I thought
23 I would be dealing with doctors,
24 nurses, not lawyers. Thank goodness
25 Nassau-Suffolk Law Services has the

1 PLAN project and other projects like
2 it. I feel like a ton of bricks have
3 been lifted off my shoulders, and now
4 I can focus on healing and helping my
5 sons advance themselves in life. I am
6 a single mother and alone for all
7 these years; however, I don't feel
8 that way any more. Now I know I have
9 Nassau-Suffolk Law Services, and I
10 know I could turn to them for help.
11 Sorry.

12 CHIEF JUDGE LIPPMAN: Thank you
13 so much, and again, it demonstrates
14 really the things that are so
15 important in life, that a lawyer can
16 be so helpful and that, you know,
17 there is such a wide swath of people
18 who just cannot afford in this economy
19 to support their families, to go to
20 work, do what they have to do, and yet
21 have legal representation. And I
22 think the examples that the four of
23 you have given so vividly demonstrate
24 the benefit of civil legal services
25 and why, again, as some of the

1 testimony earlier indicated, why
2 society as a whole benefits from
3 providing civil legal services for
4 those who can't afford it. So, thank
5 you so much. Greatly appreciate your
6 all being here. You're all terrific.
7 Thank you.

8 The next panel is going to be a
9 foreclosure panel, which is such a
10 problem today. Before they come up, I
11 note that Fern Fisher is here, the
12 Deputy Chief Administrative Judge for
13 the New York City Courts and someone
14 who's in charge to access for justice
15 throughout the state and does such a
16 terrific job, and we're so pleased
17 that she's here with us. Thank you,
18 Fern, for being here.

19 So, the foreclosure panel can
20 come up now. You also all look very
21 young, everyone. Okay, foreclosure is
22 such an upfront issue today, and it so
23 represents, again, the, the essentials
24 of life, the roof over one's head.
25 So, we're going to start out -- and by

1 the way, now that I see we're getting
2 some more lawyers coming up, what
3 these lights mean, if the red light
4 comes on, be very afraid. That means
5 that your time is up. When the white
6 light's on, you're doing fine.

7 Okay, John Lindstrom is a Court
8 Attorney Referee in Supreme Court
9 Orange County, and John, you're going
10 to lead off?

11 REFEREE LINDSTROM: Good
12 morning, your Honors.

13 CHIEF JUDGE LIPPMAN: Pleasure
14 to have you, John.

15 REFEREE LINDSTROM: I'm a Court
16 Attorney Referee assigned to the
17 Mortgage Foreclosure Settlement
18 Conference Part in Orange County.
19 With my submissions were the
20 statistics from my part for the past
21 20 months. During the past 20 months
22 ending August of this year, I
23 conducted 9,000 foreclosure
24 conferences. During the year 2009,
25 there were 975 foreclosure conferences

1 held in Orange County. I had 970 in
2 September 2010. We're very busy. I'm
3 not a real statistics person; some
4 people are. There's two statistics I
5 want to talk to you about. The first
6 one is the number 518. That's the
7 number, if you take my statistics and
8 add them up, that's the number of
9 settlements we've had in the
10 foreclosure conference part during
11 that time period. Most of those
12 settlements are not short sales, they
13 are not deeds in lieu where people
14 have to leave their house; those are
15 difficult to get.

16 CHIEF JUDGE LIPPMAN: What's the
17 purpose of the part, John?

18 REFEREE LINDSTROM: The purpose
19 of our part --

20 CHIEF JUDGE LIPPMAN: Why are
21 people coming in there?

22 REFEREE LINDSTROM: The
23 Legislature directed that in every
24 mortgage foreclosure action there be a
25 settlement conference. The purpose is

1 to try to bring about a settlement
2 between the debtor and the creditor.
3 The form of that settlement is not
4 really defined by the statute. What
5 we try to do is get people into
6 modifications of their loans so that
7 they can stay in their house.

8 CHIEF JUDGE LIPPMAN: So, the
9 goal is to keep them in there?

10 REFEREE LINDSTROM: That's the
11 goal. When you look at the numbers,
12 last year Judge Cohen testified before
13 the Legislature, and he sat down with
14 me to go over the numbers, and I said,
15 gee, Judge, our batting average isn't
16 very good. We don't get a lot of
17 settlements. And he said, John, when
18 you look at your total number of cases
19 and your settlements, you're settling
20 favorably about 20 percent of your
21 cases. Now, for a baseball player
22 that's not so good, but on a human
23 level, if, you know, two out of every
24 ten people that come in to see me get
25 to save their house, I think that's

1 great, and I'm very proud of that. I
2 think that that number could be bigger
3 if we had more people represented by
4 counsel appearing before me.
5 20 percent of the people who come
6 before me are represented by counsel.
7 80 percent are not.

8 CHIEF JUDGE LIPPMAN: We're
9 trying to change that.

10 REFEREE LINDSTROM: I know that.
11 I know that, Judge, and that's the
12 purpose of us being here today.

13 I know funding is an issue. I
14 don't know anything about funding, but
15 I do know about need. And I want to
16 tell you about what a lawyer can do
17 for a person in the foreclosure part.

18 CHIEF JUDGE LIPPMAN: Sure, go
19 ahead.

20 REFEREE LINDSTROM: We endeavor
21 to get people modifications. The
22 biggest thing I'm involved with on a
23 day-to-day basis is a paper chase.
24 Get the papers from the creditor to
25 the bank so that the bank can review

1 this for modification, some sort of
2 settlement. It is incredible how
3 difficult that is. Especially with
4 pro se people, it's very difficult.
5 Mr. Raishevich is here today. He was
6 in my court yesterday. We both got
7 haircuts today.

8 MR. RAISHEVICH: Mine is more
9 drastic.

10 REFEREE LINDSTROM: He's had a
11 rough road. Getting that paperwork to
12 the bank is very difficult.
13 Sometimes -- I've changed the way I
14 operate because of that. I would tell
15 people, all right, get those papers to
16 the bank, here's the contact
17 information. The bank would come back
18 60 days later and say, we never got
19 it. And the debtor will say, well, I
20 sent it. This isn't going to work, so
21 I have people come in for conferences,
22 they bring the papers here to me, we
23 hand them off to the bank attorney, so
24 I don't want to hear from the bank
25 that they didn't get the documents.

1 And we've stopped hearing a lot of
2 that and things are moving quicker.

3 Without counsel -- counsel have
4 access, and Ndukwe has access to a
5 scanner, a fax machine and a copier.
6 Pro se defendants don't have that.
7 People go to Staples to fax things to
8 the bank, and it costs \$1.50 a page.

9 CHIEF JUDGE LIPPMAN: You could
10 do your job better, and the bottom
11 line is, more people would be in their
12 houses today if they had
13 representation.

14 REFEREE LINDSTROM: Absolutely.
15 No doubt. That's just the nuts and
16 bolts of it. Getting papers back and
17 forth. When Ndukwe comes in for a
18 conference with me, he has an extra
19 copy of everything, just in case the
20 bank says, I don't have anything. One
21 of the things we use most in my part
22 is a Wite-Out pencil. We white out a
23 date on anything that the bank says is
24 out of date. We change the date,
25 Ndukwe sends it over that day so the

1 bank has the information, again, so we
2 can keep things moving.

3 Lawyers, when things are going
4 good, people don't need a lawyer.
5 They get their modification. It's
6 wonderful. They go away. It's when
7 they don't get a modification that
8 they need the help of a lawyer. You
9 know, when there's bad news. Why was
10 there a modification denial? People
11 are entitled to the numbers. I will
12 direct the bank attorney make sure
13 that they know exactly what the input
14 numbers that were used to evaluate
15 this loan were provided to the
16 borrower.

17 As much as I advocate, there's
18 only so much I could do, so much time
19 I have to help people. They have to
20 look at these numbers on their own.
21 When they have -- I'm sorry, Ndukwe, I
22 keep saying Ndukwe because you're here
23 and appear regularly -- he can go back
24 out in the hall, he can go back to his
25 office, look at those numbers and say,

1 wait a minute, the bank did it wrong.
2 We can re-apply. That, I see
3 happening a lot where somebody's
4 represented. They get a second shot,
5 and people get a modification because
6 they look at the errors.

7 The other thing that people need
8 in terms of having representation is,
9 they need advice. What do I do. You
10 talk about the economic impacts of
11 foreclosures. There's no bottom to
12 our real estate market. How can you
13 buy a house, you don't know what it's
14 worth. The banks have people who are
15 willing to pay \$300,000.00 for a
16 \$200,000.00 house, and they won't take
17 people's money. I have 30 people a
18 day who just are dying to get to that
19 money, and they won't take it. That's
20 another issue. When people are
21 provided with a modification, they
22 look at it, I don't know if I make
23 enough money, what should I do.
24 Should I take it, should I move. I
25 can't tell people what to do. I don't

1 know enough, I don't know enough about
2 them or their circumstances, and I'm
3 not allowed to. I realize that.

4 CHIEF JUDGE LIPPMAN: It's
5 inconsistent with your role as sort of
6 the neutral, right?

7 REFEREE LINDSTROM: Yes, very
8 much so, and we're very informal in a
9 conference part. We don't have a
10 court reporter, we don't have a judge.
11 We have me and the people across the
12 table, and we try to work something
13 out.

14 Bank attorneys can be very, very
15 helpful in this process. They send
16 people who are trained in mediation,
17 not in litigation. We deal strictly
18 with mediation issues and trying to
19 get things done and looking for
20 solutions. Whether somebody should
21 file bankruptcy, will bankruptcy help
22 them save their house. These are
23 answers only a lawyer can give, and
24 again, I don't know enough about that
25 proceeding, I don't know about

1 bankruptcy --

2 PRESIDING JUSTICE PRUDENTI:

3 Excuse me, what do you do when people
4 ask you all of these questions?

5 REFEREE LINDSTROM: It depends
6 on the question, Judge. Sometimes
7 I'll say, well, people usually do this
8 and this and this and this, but your
9 circumstances may be different.
10 People ask me how do I get a lawyer.
11 Now we have a program that I'm hoping
12 will take off where they can go talk
13 to somebody. Most of the people, most
14 of the bankruptcy practitioners in
15 Orange County will give people a free
16 consultation, so I encourage
17 everyone -- you should see the look on
18 people's faces when I suggest they go
19 see a bankruptcy attorney. It's like
20 I told them to go to a vampire.
21 They're horrified at the thought.
22 Knowledge is power. Go find out. You
23 may be able to save your house that
24 way. That's something that only a
25 lawyer can do. The -- I'm looking at

1 the final aspect; it starts at the
2 outset of a case, and I had this
3 happen yesterday in a conference.
4 What do people do with their money
5 while they're in foreclosure. When
6 the bank puts a case in foreclosure,
7 they will refuse payments, except if
8 there's a plan in place. So, what do
9 people do with their money? People
10 that have lawyers ask their lawyer
11 what should we do with our money until
12 we can work something out with the
13 bank? Others, we don't know. Again,
14 I don't give people financial advice.
15 Not my place. I will say, what some
16 people do, if they ask me, people have
17 put their money away, make their
18 minimum payments on their credit cards
19 and wait to see what's going to
20 happen, which is what lawyers tell
21 them to do. Have further options down
22 the line when it comes time to decide
23 what to do.

24 And yesterday I had people who
25 have been in foreclosure, they haven't

1 made a payment in three years, they
2 have \$50,000.00 sitting in the bank,
3 and that is now available. They were
4 not eligible for a modification, but
5 they will be eligible for another
6 program because their lawyer told them
7 at the outset, put your money away,
8 don't pay off your credit cards. Some
9 day you may have to go bankrupt, and
10 we can get rid of your credit card
11 debt, but that won't help you work out
12 things with the bank.

13 I do want to -- I see a court
14 reporter, so if I can say something
15 for the record. We're up in Orange
16 County. The hurricane hit us hard. I
17 had a courtroom up there that is now
18 being shared by three judges. Thanks
19 to Judge Scheinkman, our Chief Clerk
20 Eileen Stanford and the Family Court
21 Chief Clerk, Liz Holbrook, they put my
22 part, took a room in Family Court and
23 gave me space down there where I will
24 be indefinitely, and I just want you
25 to know that the Ninth Judicial

1 District is really supporting our part
2 and helping us out.

3 CHIEF JUDGE LIPPMAN: Your part
4 is very important, obviously.

5 REFEREE LINDSTROM: I'd like to
6 thank you for the opportunity to speak
7 with you today.

8 CHIEF JUDGE LIPPMAN: Thank you.

9 REFEREE LINDSTROM: Happy to
10 answer any questions.

11 CHIEF JUDGE LIPPMAN: No,
12 thanks, John. I think it's clear the
13 important work that you do, and it's
14 greatly appreciated, and now we're
15 going to talk to some of the other
16 players in this process.

17 So, Faith Piatt, who's the
18 Executive Director of the Orange
19 County Rural Development Advisory
20 Corporation. Faith.

21 MS. PIATT: Good morning. Thank
22 you for this opportunity to be here.
23 As you said, I'm Faith Piatt. I'm the
24 Director for the Orange County Rural
25 Development Advisory Corporation,

1 better known as RDAC. We have a
2 non-profit housing counseling and
3 development agency that boasts nearly
4 three decades worth of service to the
5 Orange County residents. RDAC
6 administers various, various state and
7 federal housing grant programs and
8 offers a suite of counseling services.

9 One of the most dear to me is
10 the Foreclosure Prevention Program.
11 My organization has worked very
12 closely with Mr. Lindstrom for the
13 last 20 months. We too can say that
14 we have pretty much a 26 percent
15 modification rate. Not everything
16 ends up in modification, but we're
17 pretty much right there at the same
18 numbers.

19 CHIEF JUDGE LIPPMAN:
20 Modification means?

21 MS. PIATT: Modify the terms of
22 the original mortgage to help keep
23 people in their homes. There's some
24 cases that it's not sustainable to
25 keep people in their homes, even with

1 those modifications. We answer a lot
2 of the questions John is talking
3 about. The first thing we do with a
4 client is put them in a crisis budget
5 and explain to the client, you should
6 be putting money away, making your
7 minimum payments.

8 I'm here to talk about the
9 collaboration of Legal Services of the
10 Hudson Valley, the courts and the
11 private bar.

12 For the past two months all the
13 partners in the foreclosure
14 collaboration, RDAC and Legal Services
15 of the Hudson Valley have worked
16 together to insure that home owners,
17 recent foreclosure have assistance and
18 representation. There is only so much
19 that we can do as HUD-approved housing
20 counselors to assist the situation.
21 We're more of the touchy-feely with
22 the home owners to get them through
23 what we need to do, but we run into
24 the same walls that the homeowners do
25 on their own, so to have legal

1 representation makes a huge
2 difference.

3 Now working in conjunction with
4 each other, and with Orange County
5 Supreme Court, we can reach more
6 Orange County families in a more
7 efficient way. Since the project
8 began August 1st, the court has
9 referred 19 homeowners to RDAC. The
10 organization also receives a list of
11 foreclosures filed from Legal Services
12 of the Hudson Valley via Orange County
13 Supreme Court, and evaluates
14 sustainability of the home and the
15 eligibility for a loan modification.
16 So, with these weekly lists that come
17 in, myself and my housing counselors
18 are able to go through and evaluate
19 the sustainability and start
20 streamlining some of that process.

21 Our partnership with Legal
22 Services of the Hudson Valley and the
23 private bar has provided us with a
24 vital resource for our clients which
25 has allowed us to also -- we can't

1 tell somebody to file for bankruptcy
2 or if that's in their best interest,
3 but it also gives us that direct
4 connection and that referral source to
5 be able to answer those legal
6 questions. We have helped homeowners
7 in Orange County for years, and we are
8 very good at it. My program that,
9 since we started in February of 2009,
10 has assisted over 25 homeowners come
11 to sustainability solutions, but now
12 we have access to Legal Services of
13 the Hudson Valley to carry the ball
14 further. And together, we are making
15 a difference.

16 Thank you, Judge Lippman, for
17 focusing on our community of Orange
18 County, and for the opportunity to
19 collaborate in foreclosure your pilot
20 program.

21 CHIEF JUDGE LIPPMAN: Well,
22 thank you, Faith.

23 CHIEF ADMINISTRATIVE JUDGE PFAU:
24 Can I ask one question?

25 CHIEF JUDGE LIPPMAN: Sure.

1 CHIEF ADMINISTRATIVE JUDGE PFAU:
2 You receive a list of those who are
3 being faced with foreclosure. Do you
4 reach out to them to make the contact?

5 MS. PIATT: We do, and we've
6 started to come up with some
7 innovative ways, because the list does
8 not always come with a current phone
9 number. As we all know, people are
10 changing their cell phone numbers and
11 cell phones right now, so we've come
12 up with some ways to reach out to them
13 and offer our services, because
14 through our funding, we do not charge,
15 nor is it legal to charge for any
16 foreclosure assistance.

17 CHIEF JUDGE LIPPMAN: Anybody
18 else?

19 Okay, the next to testify is
20 Barbara Strauss, who's the immediate
21 past president of the Orange County
22 Bar Association, and who I had the
23 pleasure of working with when she was
24 in that role. And Barbara, so pleased
25 to have you here today.

1 MS. STRAUSS: Thank you so much,
2 Chief Judge Lippman, for inviting me
3 to speak before this important panel
4 on the future of legal services in New
5 York. With so many people lacking
6 such services in Orange County and
7 elsewhere in the state, your emphasis
8 on this issue could not be more
9 welcome.

10 As a member of the legal
11 profession for more than 30 years and
12 as a former president of the Orange
13 County Bar Association, and I'm also a
14 former Senior Assistant District
15 Attorney in Orange County, I know how
16 the lack of legal representation has
17 the potential to devastate people's
18 lives. I also recognize the value of
19 recruiting local attorneys to work
20 alongside legal services providers to
21 assist in providing representation for
22 individuals facing a financial or a
23 personal crisis. Pro bono efforts,
24 however, cannot be effective without
25 the leadership, training and

1 coordination provided by local civil
2 legal service projects.

3 In Orange County, as in many of
4 the suburban rural counties, the
5 economic downturn has increased the
6 challenges faced by legal services
7 providers. But as you know, the
8 reason we have this panel here is that
9 the most profound problem that we've
10 been seeing is this foreclosure
11 crisis. Our proximity to jobs in the
12 metropolitan area has created enormous
13 housing development in the last few
14 decades in Orange County, but most of
15 that seemingly affordable housing has
16 been financed by the kinds of loans
17 that borrowers couldn't handle when
18 the economy turned, and they started
19 having increasing difficulty making
20 their payments. And as a result, the
21 foreclosure filings have soared and a
22 crisis has persisted. Many, if not
23 most of the homeowners facing
24 foreclosure, cannot, as you know,
25 afford the legal representation that,

1 as John Lindstrom mentioned, and as
2 we've been talking about this morning,
3 is so important in protecting their
4 rights against lenders who always have
5 lawyers in court proceedings, and many
6 ordinary citizens find these
7 proceedings incredibly difficult to
8 understand.

9 As you know, I was president of
10 the Orange County Bar Association in
11 February 2010 when I heard that you,
12 Chief Judge Lippman, had named Orange
13 County as one of the two counties in a
14 pilot project to offer representation
15 in settlement conferences for
16 homeowners facing foreclosure, and I
17 think it's because our numbers were so
18 high. And I thought that, we were
19 just so pleased that we were going to
20 be part of that pilot project and
21 contacted you and your office to see
22 what we could do to help. Because you
23 had recently given an address to the
24 Orange County Bar Association, I felt
25 comfortable calling directly and

1 saying how excited we were, and how
2 could we best contribute so that we
3 could get actively involved right from
4 the get-go. We spread the word to
5 attorneys through our email network,
6 and we stayed in close communication
7 with legal services providers working
8 on behalf of low income persons in our
9 community, and we immediately had a
10 group of lawyers signed up to attend
11 the training programs necessary to be
12 pro bono contributors to the pilot
13 project, because of course it doesn't
14 do you any good to have a lawyer who
15 doesn't have any expertise.

16 The Orange County Bar
17 Association was particularly eager to
18 support the project because the entire
19 community has been hard hit by the
20 foreclosure crisis. While protecting
21 our neighbors from the terrifying
22 prospect of losing their homes drives
23 our involvement, we are likewise
24 concerned that the rise in
25 foreclosures has had a ripple effect

1 throughout Orange County. As
2 foreclosures have become more common,
3 foreclosure sales have likewise
4 increased. Homes sold in this way
5 tend to sell for less than the
6 prevailing market value. Even ten
7 years ago a below-market value
8 foreclosure sale would have
9 comparatively little impact on
10 community home values, but nowadays,
11 with sophisticated online databases
12 like Zillow.com, which calculate home
13 values based on recent local sales,
14 mean that just a few foreclosure sales
15 can have a drastic effect on the value
16 of neighboring homes. Thus, depressed
17 home values, driven in no small part
18 by the rise in foreclosures, have had
19 a significant negative impact, even on
20 those not immediately at risk of
21 foreclosure.

22 Here's one example of the ripple
23 effect caused by the rise in
24 foreclosures from my own practice.
25 I'm a matrimonial attorney. In a

1 large number of divorce proceedings I
2 handle, the parties owe more on their
3 mortgage than their home is currently
4 worth. And then when we're sitting
5 down at the table, we have a terribly
6 difficult problem, even when you're
7 lucky enough to have a situation where
8 a couple wants to work together to
9 resolve their divorce, they have to
10 make some complex calculations. If
11 they sell, will the bank accept a
12 short sale. We know that they have
13 not been. Should one of them stay in
14 the home, wait a few years and hope
15 that the market recovers and pay every
16 last dime of that child support for
17 this mortgage for a house that's worth
18 less than the mortgage, or do they
19 have no choice or not enough support
20 but to let the mortgage go into
21 default and to lose their home.
22 Dividing marital assets in a mutually
23 acceptable way is always difficult,
24 but it's become even more challenging
25 in the current market environment, the

1 current economic environment.

2 With alarming frequency, parties
3 facing foreclosure hit a point where
4 they utterly give up. I don't know
5 how many people have come to tell me
6 that they've been served or the
7 envelopes are coming in the mail and
8 they're not opening them. They bring
9 me envelopes that they've not opened.
10 They don't want those scary envelopes,
11 and sometimes what happens is, they
12 just abandon their homes. They think
13 they obviously can't afford all these
14 back payments plus the legal fees and
15 everything that they're being asked
16 for.

17 CHIEF JUDGE LIPPMAN:

18 Essentially, give up.

19 MS. STRAUSS: They give up,
20 right. Dedicated attorneys can help
21 these men and women realize they have
22 other better choices. Even slowing
23 the foreclosure process by a few
24 months can make a tremendous
25 difference in the lives of those

1 affected, perhaps providing them an
2 opportunity, as we've talked about, to
3 accumulate some savings, either to
4 save their home, or so that they can
5 seek alternate housing. Others may
6 have the opportunity to modify their
7 loan at a lower interest rate or a
8 longer term. By showing those facing
9 foreclosure that they have more
10 options than they thought, families
11 are kept in their homes, communities
12 are preserved, and our local economy
13 is protected. And the homes, of
14 course, look better for the community
15 that they're in, for the neighborhood.
16 So, it does have that ripple effect.
17 Without representation, foreclosures
18 cause even greater harm than the
19 consequence of a loss of real estate
20 investment. Credit is ruined. It
21 becomes difficult to find alternative
22 housing because of lack of credit.
23 Anyone who's ever seen, knows someone
24 applying for an apartment, knows the
25 first thing they do is check your

1 credit rating. Neighborhoods falter,
2 businesses serving the neighborhoods
3 lose money, and the funding of local
4 schools decreases. It's generally
5 scary.

6 When it comes to foreclosures, a
7 coordinated effort with our local
8 civil legal services organization, the
9 Orange County Bar Association and the
10 Orange County Women's Bar, housing
11 counselors and the courts, is the best
12 possible means to insure better
13 decisions are made and rights are
14 protected at a time when so many have
15 so much to lose.

16 Thank you for this opportunity
17 to speak to you and for your
18 extraordinary and very moving efforts
19 to provide many needed legal services
20 for people facing foreclosure.

21 CHIEF JUDGE LIPPMAN: Thank you,
22 Barbara. Appreciate it.

23 Let me ask you a question. What
24 is generally, has the bar been in
25 Orange County, do you find them

1 responsive? What motivates members of
2 the bar to do these kinds of pro bono
3 efforts that really, obviously
4 supplement the efforts of the legal
5 service providers who can only do so
6 much? And what we've gathered through
7 the hearings last year, from our own
8 studies, that obviously you need a
9 combination of the fully-funded
10 providers and the volunteer efforts of
11 the bar. Have they been responsive in
12 your county? And what motivates them
13 to participate?

14 MS. STRAUSS: Let me say that I
15 have never heard anyone not be
16 supportive, certainly verbally.
17 Certainly, they want to see this
18 happen. They felt very positive and
19 good about this project here in Orange
20 County. The problem comes when we
21 say, well, would you like to be a
22 volunteer in a foreclosure project,
23 and they say, like me, I know nothing
24 about foreclosure. I don't know how
25 to answer their question. I wouldn't

1 know what to say if they said, should
2 I go bankrupt, should I save the
3 money, should I pay off credit cards,
4 and that's why we're so appreciative
5 of legal services and of the efforts
6 of the housing counselors and the
7 groups that have put together the CLE
8 for attorneys who are going to do this
9 pro bono work, because without that,
10 it wasn't going to happen. And I hope
11 that as more people are doing the work
12 and say, hey, I learned a lot working
13 with this project that actually helped
14 me in my practice with my own clients,
15 we're going to get even more people
16 volunteering.

17 CHIEF JUDGE LIPPMAN: So, the
18 message is, basically, they want to be
19 helpful, they want to do their part,
20 and often, they don't know how.

21 MS. STRAUSS: Exactly.

22 CHIEF JUDGE LIPPMAN: And once
23 they do it, it's kind of a
24 word-of-mouth effect, because it's
25 satisfying, and other people want to

1 get involved and be helpful, because I
2 think it's fair to say that with all
3 our efforts in funding civil legal
4 services, there isn't enough money in
5 the world to fund everybody who needs
6 civil legal assistance. So, we need
7 the bar to step up to the plate, and
8 as witnessed by -- we have the
9 President Elect of the State Bar on
10 the panel today, that we all recognize
11 that that needs to be done, but a lot
12 of it is, what's the logistics to get
13 the bar involved, because often
14 they're ready, willing but not
15 necessarily able, because they don't
16 know that particular area of the law,
17 so --

18 MS. STRAUSS: Without the civil
19 legal services program, it won't
20 happen. And I wish I can say that
21 there could be a pro bono program of
22 lawyers, and there would be no need
23 for paid civil legal services
24 attorneys; it just isn't true.

25 CHIEF JUDGE LIPPMAN: But it's a

1 partnership, I think. Clearly, we
2 need both. As we said, I think that
3 with everything that we have going in
4 New York, at least as last year's
5 report, and we're going to see what it
6 looks like this year, we're meeting,
7 at best, 20 percent of the needs.
8 That's an awful big undertaking that
9 we still have left.

10 But thank you, Barbara, and
11 thank you for your leadership in the
12 Orange County Bar and for the bar's
13 efforts as part of this program where
14 we are finding that around the state,
15 there are programs in virtually each
16 county, of the providers, the bar
17 interested organizations that pull
18 together in this particular area which
19 is one of crisis today, the
20 foreclosure. I think it's reasonable
21 to say, a foreclosure crisis in the
22 United States that's reflected here in
23 New York in our own communities.

24 So, the next one to speak on the
25 subject will be Boris Raishevich and

1 the chair of Legal Services of the
2 Hudson Valley, accompanied by, in
3 addition, Ndukwe Agwu.

4 MR. RAISHEVICH: Thank you for
5 the opportunity. My name is Boris
6 Raishevich. I'm a home owner in
7 Orange County. I've been in my home
8 for 25 years.

9 CHIEF JUDGE LIPPMAN: Client of
10 Legal Services. Go ahead.

11 MR. RAISHEVICH: Correct. I
12 have lived in my home for 25 years.
13 I'm currently defending a foreclosure
14 action in the Orange County Court, and
15 I'm convinced that if I were not
16 represented by Legal Services of the
17 Hudson Valley, I would have been gone
18 long ago.

19 THE COURT: How long have you
20 owned your home?

21 MR. RAISHEVICH: 25 years. And
22 I've been in this foreclosure for
23 about almost three years.

24 CHIEF JUDGE LIPPMAN: Seems like
25 25, right?

1 MR. RAISHEVICH: Yeah. About
2 four years ago, I lost my job as a
3 manager in a food packaging facility,
4 and then my wife had lost her job
5 after 25 years at a newspaper, you
6 know, about two years ago. You know,
7 we do any kind of work to support our
8 family. I have four kids, one of
9 which has graduated college and is out
10 of the house. I have three other
11 children that are still in the house.
12 They range in age from 27 to seven.

13 I began to get phone calls from
14 the mortgage company before they even
15 served me the papers. They tell me to
16 sell my house. They never tell me how
17 to save my house, or that they will
18 modify my mortgage. They keep telling
19 me too that I'm denied and to seek
20 other options, such as short sale or,
21 you know. My attorney Ndukwe Agwu
22 from the Legal Services has been in
23 court with me on many occasions.

24 CHIEF JUDGE LIPPMAN: How did
25 you get to him?

1 MR. RAISHEVICH: I went to a
2 counselor, like a homeowner counselor.

3 CHIEF JUDGE LIPPMAN: And they
4 suggested you go to Legal Services of
5 Hudson Valley?

6 MR. RAISHEVICH: Yes. When the
7 bank refused to do anything, I figured
8 I'd better get something. They have
9 pressured the bank to offer me a
10 modification, but, you know, there's
11 always some kind of reason for denial.
12 They never tell me how to save my
13 house.

14 CHIEF JUDGE LIPPMAN: Do you see
15 an end to the proceeding?

16 MR. RAISHEVICH: I'm not sure.
17 I don't know. It's been so long. I
18 have hope because Legal Services, you
19 know, give me hope. They keep telling
20 me that they're going to do something,
21 you know, but, you know, I'm hoping.

22 CHIEF JUDGE LIPPMAN: Anything
23 more important to you than your home?

24 MR. RAISHEVICH: No. I
25 immigrated here 36 years ago looking

1 for an American dream, and, you know,
2 basically, I see it disappear in front
3 of me. I've been in court at least 20
4 times in the last two and a half years
5 or so, but somehow, you know, my
6 attorney always convinced the Hearing
7 Officer that I should be given a
8 chance to pay the mortgage, and we
9 continue to try to get them to give me
10 a modification agreement.

11 CHIEF JUDGE LIPPMAN: I'd ask
12 your attorney, what do you think the
13 prospects are?

14 MR. RAISHEVICH: They tell me,
15 it's good, you know. I should be
16 getting modification, but seems like
17 every month the bank requests the same
18 paperwork over and over again. In
19 many cases on a day that I'm in court
20 bringing them the paperwork, I receive
21 a letter in the mail that requests the
22 same information. They call me two,
23 three times a day sometimes. They
24 call me every day.

25 CHIEF JUDGE LIPPMAN: The bottom

1 line is, without your attorney, you
2 wouldn't be in the house today?

3 MR. RAISHEVICH: No, absolutely
4 not.

5 CHIEF JUDGE LIPPMAN: Thanks so
6 much. Appreciate it. It brings to
7 life the problems of needing civil
8 legal services.

9 Alavita Williams, a client of
10 the Legal Aid Society, accompanied by
11 Sumani Lanka.

12 MS. WILLIAMS: Good morning. My
13 name is Alavita Williams, and I am
14 currently a client of the Legal Aid
15 Society. I would like to share with
16 you my story and describe how the
17 accuracy and the work of the Legal Aid
18 Society helped me save my home from
19 foreclosure. I hope that my story
20 will demonstrate the need for
21 continued and increased funding for
22 the Legal Aid Society and other civil
23 legal services programs. These
24 programs are available for New Yorkers
25 who cannot otherwise enjoy legal

1 representation or assistance --

2 CHIEF JUDGE LIPPMAN: Move the
3 mike a little closer to you so we can
4 hear you.

5 MS. WILLIAMS: I'm sorry.

6 CHIEF JUDGE LIPPMAN: That's
7 okay.

8 MS. WILLIAMS: -- but
9 desperately need access to such
10 services. I currently reside in
11 Queens Village, New York with my
12 14-year-old daughter. I have lived in
13 my home for over ten years. Over the
14 years, I have spent considerable money
15 maintaining and repairing this home.
16 I am a retired member of the
17 Correction Officers' Benevolent
18 Association Union, and I have worked
19 for the New York City Department of
20 Correction. If my daughter and I were
21 to lose this home, it would be
22 extremely difficult for us to find
23 another place to live, particularly
24 with a foreclosure on my credit
25 report.

1 After purchasing my home in
2 March 2001, I ended up falling behind
3 on my mortgage payments due to
4 extensive repairs that needed to be
5 done on the home. I tried many
6 differently ways to get current on my
7 mortgage, including applying for a
8 loan modification and looking for a
9 refinancing option. In April 2006 a
10 mortgage broker contacted me about
11 refinancing my home with what I've
12 learned was a hard money lender; an
13 individual who looks for people who
14 need immediate help and tries to loan
15 them money at very high interest
16 rates. But at the time, through
17 assurances from the broker, I believed
18 I was refinancing my home with a
19 30-year mortgage at an affordable
20 interest rate. I was told that I
21 didn't need my own lawyer at the
22 closing because an attorney would be
23 there to represent me. However, at
24 the closing in May 2006, I met an
25 attorney for the first time, and I was

1 instructed to sign many loan documents
2 that were not clearly explained to me.
3 Without knowing it, I had transferred
4 the deed to my home to a sham LLC
5 created in the property address' name,
6 of which I was the sole managing
7 member, and I ended up with two
8 mortgages under the LLC's name. One
9 mortgage was an approximately
10 seven-year interest only adjustable
11 rate of \$250,800.00 with an interest
12 rate starting at 15 percent, and a
13 balloon payment of 250,800 due at the
14 end of seven years. I later learned
15 through the Legal Aid Society that
16 such a mortgage violated many consumer
17 protection laws and that the lender
18 transferred the deed to the LLC in
19 order to evade these laws. The second
20 was a junior mortgage of \$6,160.20 to
21 be paid off in one year at a 15
22 percent annual interest rate. Also
23 unbeknownst to me, the lender took
24 \$37,620.00 of equity from my home and
25 put it into escrow to pay itself

1 monthly mortgage interest-only
2 payments of \$3,135.00 for almost a
3 year.

4 Less than a year later, in March
5 2007, the same mortgage broker
6 contacted me again and arranged a
7 second refinance of my loan with
8 another lender, although I didn't
9 understand why I had to refinance my
10 loan again. At the closing I was
11 instructed again to sign many loan
12 documents without any explanation,
13 which included a deed transfer from
14 the sham LLC back to my name. Because
15 the transaction happened so quickly, I
16 was unaware that I was taking out a
17 30-year adjustable rate mortgage of
18 \$282,750.00, starting at a high
19 interest rate of 10.5 percent, with a
20 monthly mortgage payment of \$2,896.00.
21 Because the loan was so unaffordable
22 at the outset, I ended up falling
23 behind soon thereafter in August 2007
24 after depleting my savings in making
25 the first three monthly mortgage

1 payments. Furthermore, as a result of
2 the May 2006 and May 2007 refinance
3 transactions, over \$85,000.00 of
4 equity was taken from my home.

5 In late 2008, I was referred by
6 another not-for-profit organization to
7 contact the Legal Aid Society for
8 assistance with my case. Although I
9 was not currently in foreclosure, I
10 had received the 90-day notice, and I
11 feared that foreclosure proceedings
12 were imminent. After speaking with a
13 staff attorney in the Foreclosure
14 Prevention Unit at the Legal Aid
15 Society, she carefully reviewed my
16 case and informed me of my legal
17 rights. She further advised me that I
18 had legal claims against the lenders
19 and other parties involved in the
20 May 2006 and May 2007 refinance
21 transaction. She also informed me
22 that there was several other cases
23 pending throughout New York and New
24 Jersey against the same hard money
25 lenders for similar predatory lending

1 practice.

2 The Legal Aid Society agreed to
3 represent me in an affirmative
4 litigation case against the fraudulent
5 parties in the Eastern District of New
6 York in hopes that they will be able
7 to save my home and protect the rights
8 of other home owners in similar
9 circumstances. As a result of Legal
10 Aid's direct representation, I was
11 able to reduce the principal amount
12 due on the loan and modify the
13 mortgage by reducing the monthly
14 mortgage payment by more than
15 \$1,400.00 per month.

16 I am so grateful that the Legal
17 Aid Society agreed to represent me in
18 this case, because otherwise I have no
19 doubt that my daughter and I would be
20 without a home. I consider myself
21 very lucky because I now have an
22 affordable monthly mortgage payment,
23 and no fear of foreclosure. However,
24 I know that there are still many New
25 Yorkers out there who also need this

1 kind of advocacy and assistance. I
2 cannot stress enough the importance of
3 funding the Legal Aid Society and
4 other civil legal service programs
5 because they are an extremely
6 significant resource for New Yorkers
7 who otherwise lack the ability to
8 obtain the representation or gain
9 legal assistance in a variety of civil
10 litigation issues. I am here in
11 support of continued and increased
12 funding for civil legal services in
13 New York. Thank you.

14 CHIEF JUDGE LIPPMAN: Thank you,
15 Alavita. How did you get yourself
16 into such a situation? Did it occur
17 to you when you started to do this
18 that, gee, maybe I ought to get a
19 lawyer to help me with all of this?

20 MS. WILLIAMS: Your Honor, I
21 really didn't know what I was getting
22 myself into.

23 CHIEF JUDGE LIPPMAN: They
24 assured you that you were being well
25 treated?

1 MS. WILLIAMS: Right. I put my
2 faith, I trusted these people. That's
3 what happened.

4 CHIEF JUDGE LIPPMAN: Did it
5 almost appear to you now that it was
6 kind of a scam, that you should have
7 had alarm bells ringing in your head
8 and saying, gee --

9 MS. WILLIAMS: Correct. Thank
10 you, Sumani and the Legal Aid Society.
11 It's like, it was like I graduated
12 from a real estate college. It is.

13 CHIEF JUDGE LIPPMAN: But your
14 life has turned around?

15 MS. WILLIAMS: Yes, it has. It
16 really has.

17 CHIEF JUDGE LIPPMAN:
18 Foreclosure is such a devastating,
19 devastating thing.

20 MS. WILLIAMS: Of course.

21 CHIEF JUDGE LIPPMAN: Thank you,
22 and thank you all. I think it really
23 gives a real vivid picture of what,
24 when they talk about the foreclosure
25 crisis in this country and in this

1 state, it really brings down to an eye
2 level as to what it's all about, so
3 thank you all. Appreciate it. And
4 thank you for sharing your stories
5 with us. Thank you.

6 Next, we have to get the red
7 light ready, because we have the
8 judge's panel coming. And they're
9 used to the red light, so we're going
10 to have, I'd ask Judge Anthony
11 Scarpino, the Honorable Lori Currier
12 Woods and the Honorable Janet C.
13 Malone to come down to the witness
14 table. They're not used to being
15 witnesses; they usually take
16 testimony.

17 Judge Scarpino is the Surrogate
18 of Westchester County, an Acting
19 Supreme Court Justice and the
20 Supervising Judge for fiduciary
21 matters in the Ninth Judicial District
22 and the co-chair of the Ninth Judicial
23 District Pro Bono Action Committee.
24 And Surrogate Scarpino, it's great to
25 see you, and you're our lead-off judge

1 witness.

2 JUDGE SCARPINO: Thank you very
3 much, Judge Lippman.

4 Judge Lippman, Justice Prudenti,
5 Judge Pfau, Mr. James, thank you for
6 the opportunity to come here today and
7 to discuss civil legal services for
8 the needy. I'm honored to be here.
9 This is an area that I have tremendous
10 amount of concern for.

11 CHIEF JUDGE LIPPMAN: Let me
12 say, we're honored to have you here,
13 and the other judge witnesses, to take
14 your time out on an issue that we know
15 first hand in the judiciary is so
16 important. Thank you.

17 MR. SCARPINO: I've had the
18 privilege of serving as a trial judge
19 now for 28 years, and I've had the
20 chance to sit in many of the courts
21 that we have, City Court, County
22 Court, Supreme Court, and the last
23 11 years as Surrogate, and I've had
24 the chance to witness the inequities
25 and difficulties that are faced by pro

1 se litigants. I've also witnessed the
2 increase in the number of pro se
3 matters that appear to be coming to
4 the courthouse. My main concern, of
5 course, I've provided you with a
6 written statement, I just want to
7 summarize some of my main concerns.
8 They fall into two categories.

9 First, we have the inequality to
10 the pro se litigants themselves, and
11 second is the effects on the court
12 system and all the litigants that come
13 into the court system, whether they're
14 involved with litigation that deals
15 with a pro se litigant or in a matter
16 that deals with everyone being
17 represented. Simply put, pro se
18 litigants generally lack the ability
19 to prove or defend their respective
20 cases, and we as judges, as you are
21 well aware, are forbidden to provide
22 them with the assistance they need.

23 This is very difficult for us as
24 judges. I listened to your opening
25 statements, Judge Lippman, where you

1 cited Deuteronomy, comes up around
2 now, Parsha Shoftim in the Torah,
3 where we talk about justice, justice
4 that the judges are supposed to
5 follow. Parsha Shoftim is about the
6 judge's responsibility, yet, we sit
7 here as judges and watch cases in
8 front of us on a regular basis where
9 we sense a potential inequality and
10 the frustration, the inability to
11 assist them because you know that we
12 are guided by the rules that prevent
13 us from assisting them. And in
14 essence, under case law, we are to,
15 they are expected to appear before us
16 and maintain the same level of
17 competence as attorneys, which is
18 pretty ludicrous.

19 My first experience with pro se
20 litigants occurred in City Court in
21 Mount Vernon where I had the chance, I
22 served for five years, two years as
23 supervising judge, and I had thousands
24 of pro se litigants come in front of
25 me on the landlord-tenant calendar,

1 the apartment had no heat. It was a
2 horrible story, and I asked her, did
3 she bring any pictures. She said no,
4 Judge, I don't have any pictures. I
5 said, do you have any evidence to
6 support you? She said, well, can't
7 you see I'm telling you the truth? Of
8 course, I was having someone on the
9 other side giving another argument,
10 and then she finally said, well,
11 Judge, I just expected you to get down
12 off the bench and we were going to go
13 to my apartment, and you were going to
14 inspect my apartment. And I looked
15 out into the courtroom where there had
16 to have been 50 other apartment
17 evaluations I was going to have to do,
18 and I knew I couldn't do it.

19 CHIEF JUDGE LIPPMAN: You feel
20 kind of helpless sitting there?

21 JUDGE SCARPINO: I felt helpless
22 about it. I would have loved to have
23 done that, but I wasn't a building
24 inspector. It's just impossible to
25 do. This result, it was very, very

1 frustrating.

2 In addition, I knew that the
3 bulk of these tenants that were
4 unrepresented were going to leave the
5 courthouse with a negative impression
6 of the judges and the system. They've
7 come there for justice, and they
8 obviously, when they leave, they feel
9 that they have not received it.

10 I saw a similar result in my
11 years as a Supreme Court Justice when
12 I was sitting as an IAS Matrimonial
13 Judge in the late 1990's, the
14 Supervising Judge for two years, from
15 2006 to 2010. I routinely handled all
16 the post-judgment matters at that
17 time, and as I said, routinely felt
18 that many of the litigants were quite
19 disappointed in the result. They were
20 not understanding of the ethical
21 restrictions that were placed upon me
22 as presiding judge and the court
23 staff. They believed that the court's
24 failure to help them was based upon
25 some bias or prejudice or ignorance or

1 even corruption.

2 Pro se litigants also affect the
3 court system in general, including all
4 the litigants that appear at the
5 court. Having handled thousands of
6 these matters, unrepresented
7 litigants' cases take three to four
8 times the amount of time and resources
9 of the judge and the staff that have
10 to handle them.

11 CHIEF JUDGE LIPPMAN: Everyone
12 suffers when you're spending three,
13 four, five times more than you should.
14 The other people on the calendar
15 are --

16 JUDGE SCARPINO: Absolutely.
17 They're not even involved in a pro se
18 litigation, but they're feeling it
19 because justice delayed is justice
20 denied. The fact of the matter is, I
21 estimated, this is not scientific, I
22 estimate it's three or four times. If
23 you speak to the members of my staff,
24 they feel it's even higher.

25 So, with these factors in mind,

1 the members of the Ninth Judicial
2 District Pro Bono Action Committee,
3 which I've been co-chair since 2005,
4 in Westchester County, we have
5 recruited over 500 lawyers to assist
6 Legal Services of the Hudson Valley.
7 We've set up satellite committees. We
8 have some representatives here. We've
9 recruited an additional 400. So,
10 throughout the district we've
11 recruited 900 attorneys to work
12 through Legal Services of the Hudson
13 Valley to assist people in
14 landlord-tenant matters, matrimonial
15 matters, domestic violence,
16 foreclosures, Family Court, consumer,
17 elder law, and many, many other areas.

18 CHIEF JUDGE LIPPMAN: Do you
19 have trouble recruiting people or
20 basically --

21 JUDGE SCARPINO: Surrogate's
22 Court doesn't have that much trouble
23 recruiting people. I don't know about
24 other judges, but I've been very
25 confident, I've been able to recruit

1 many, many lawyers in that regard.

2 CHIEF JUDGE LIPPMAN: I have no
3 doubt.

4 JUDGE SCARPINO: Unfortunately,
5 these efforts over the past six years
6 now seem to make me feel that we're
7 facing the possibility of them being
8 almost for naught with the loss of
9 funding for the pro bono coordinator
10 position in the Legal Services of the
11 Hudson Valley. It was a position that
12 probably paid 40 to \$50,000.00, but
13 we've lost that.

14 I'd like to highlight briefly
15 two programs that we've lost because
16 of the loss of this pro bono
17 coordinator. We had established a
18 program called Project FAIR PLAN. It
19 stood for Family Attorneys in Rockland
20 Providing Assistance Now. It was
21 envisioned as a partnership between
22 the court system, Legal Services of
23 the Hudson Valley and local attorneys
24 in Rockland. We were training
25 attorneys to give advice and counsel

1 in the context of limited scope
2 representation; upward modifications,
3 downward modifications. But as time
4 went on, it was starting to expand.
5 It was housed in Rockland Family
6 Court, overseen by the Legal Services
7 of the Hudson Valley. We had this
8 pilot program going. They recruited
9 approximately 35 attorneys to
10 participate in it. They were staffing
11 a help desk once a week, and it was
12 really taking off. In addition, it
13 caught and attracted the interest of
14 the Dutchess County Pro Bono
15 Committee. They were looking to
16 implement a similar program in
17 Dutchess County Family Court. Both
18 programs had to be put on indefinite
19 hold.

20 In the area of landlord-tenant,
21 we had a project called APARTMENT
22 SAVE. It was a similar pilot program
23 to assist unrepresented litigants of
24 landlord-tenant matters in the City
25 Court of Mount Vernon, that was where

1 we started, but we were hoping to go
2 to New Rochelle, White Plains and
3 Yonkers. This program also had to be
4 put on a hiatus. We haven't been able
5 to implement, and the thing is, these
6 are programs that we were identifying
7 needs that were required. But every
8 day something new occurs. Just this
9 week, Judge Prudenti will be aware
10 that Mental Hygiene Legal Services has
11 expressed to us a concern because of
12 recent funding cuts that they are
13 looking to get out of serving Court
14 Article 17A matters. Article 17A, if
15 you're not familiar with them, deal
16 with developmentally disabled mentally
17 retarded guardianship cases. Who is
18 more needy of assistance than the
19 developmentally disabled and mentally
20 retarded? It's their responsibility,
21 Mental Hygiene Legal Services, in the
22 past they interview the families, make
23 a determination that people fall
24 within Article 17A, they make a
25 recommendation to the Court. If we

1 lose them, which their budget cuts are
2 indicating, they're asking to get out
3 of a fair portion of, who's going to
4 pick up that slack? Well, maybe our,
5 through our pro bono committee we
6 could do it, but we're down a person.
7 I'm fearful that's not going to work.
8 I'm not sure how we're going to do it.
9 We are exploring it right now. But
10 this is something new that just popped
11 up, probably no one's mentioned to
12 you. This is something new. Every
13 day some other new area -- the flavor
14 of the year has been foreclosure, then
15 we just, it just, every year it's
16 going to be something different.

17 We all recognize there are
18 financial costs of maintaining a
19 successful pro bono program, and these
20 are very difficult economic times.
21 But the funding cuts that we see,
22 these are very hard numbers. Easy to
23 identify and to publish, but the
24 tremendous consumption of judicial and
25 staff time, the resources that are

1 gobbled up dealing with pro se
2 litigants, and the delay in services
3 to all that come to the courts for
4 redress are impossible to calculate,
5 as is the cost of the general loss of
6 positive perception of our legal
7 system. If my experience means
8 anything to you, these soft costs far
9 exceed the savings we have by the
10 shard costs of cutting some of these
11 positions.

12 Simply said, sometimes you have
13 to spend a few dollars to save a lot
14 of money, and I think this would be a
15 wonderful area for us to focus on and
16 to increase adequate funding for civil
17 litigation, civil needs of the needy.

18 I'd be happy to answer any
19 questions.

20 CHIEF JUDGE LIPPMAN: Thank you,
21 Judge Scarpino. I think your
22 experience, your wide experience in
23 the court system shows this problem
24 permeates litigation and the state
25 court system here in Westchester and

1 throughout this Second Department and
2 the state. You know, I think the
3 problem is that some of the programs
4 that you mention and the difficulties
5 we've had that, in every way the
6 funding that used to be the envelope
7 which supported civil legal services
8 is drying up in this bad economy, and
9 that's the reason why we've been so
10 intent at trying to figure out a
11 dependable, consistent funding stream
12 through the state that could save the
13 position such as you're talking about
14 that makes such a difference.

15 JUDGE SCARPINO: These providers
16 like Legal Services of the Hudson
17 Valley, they are the link between the
18 court system that tries to help
19 recruit the attorney and the people in
20 need. Without them, the whole system
21 breaks down, and that's why it's so
22 important for us to do.

23 CHIEF JUDGE LIPPMAN: Thank you,
24 Judge Scarpino. I think, I note that
25 all the different panels, we haven't

1 had one legal service provider
2 testifying, because I think everyone
3 understands that they need resources,
4 and what we're trying to do, just what
5 Judge Scarpino is saying, is looking
6 at all the different pieces of the
7 system and how they see the necessity
8 for this funding in order for the
9 entire system to function.

10 So, thank you, and really
11 appreciate your leadership in this
12 area.

13 And I'd ask that Judge Lori
14 Currier Woods now begin her testimony.

15 Thank you for taking the time to
16 come and testify.

17 JUDGE WOODS: Thank you for
18 inviting me.

19 Good afternoon, Judge Lippman
20 Judge Pfau, Justice Prudenti and
21 Mr. James. It's a privilege to be
22 able to testify on such an important
23 and vital issue to the court system.

24 As a Family Court Judge, I do
25 not know how I would function on a

1 daily basis without civil legal
2 services. We are fortunate to have
3 legal aid services, 18-B services,
4 court-appointed children's attorneys
5 as well as agency attorneys through
6 the Children's Rights Society.

7 The Court, as you know, can be a
8 very difficult place to navigate for
9 someone in a pro se situation. In
10 many instances, I have people that
11 have difficulty even getting their
12 foot in the door. They come two,
13 three, four court appearances, and
14 they just don't know how to get the
15 other side served with the papers to
16 even start the matter, which takes up
17 a lot of time and a lot of energy.
18 It's frustrating for both them and
19 myself. They would like me to explain
20 the whole system and how to find this
21 person and locate them and serve the
22 papers on them, and it is very
23 difficult.

24 In support matters, often times
25 there is no appointed counsel for

1 those matters, and recently I had a
2 respondent appear in court. It was a
3 father in this case, and he had a
4 Family Court matter that day as well
5 as an appearance in front of the court
6 magistrate. He didn't have any
7 understanding of the system. He
8 appeared in Family Court, and then he
9 left. He thought the whole matter was
10 over and to find that he had a default
11 judgment then issued against him,
12 which then takes more court time, more
13 money, more legal services to undo
14 that problem.

15 CHIEF JUDGE LIPPMAN: So in
16 Family Court, there is a system where
17 some representation is provided
18 through the state, and yet there are
19 gaps in that system, right?

20 JUDGE WOODS: There are a lot of
21 gaps in that system.

22 CHIEF JUDGE LIPPMAN: Where
23 people aren't represented?

24 JUDGE WOODS: We have a lot of
25 pro se litigants, particularly in the

1 area of custody matters. It's
2 difficult enough when you have two pro
3 se litigants in a custody matter, but
4 it's even harder when one is
5 represented by counsel and the other
6 is not.

7 CHIEF JUDGE LIPPMAN: When you
8 talk about the necessities of life, is
9 there anything more important than
10 one's children?

11 JUDGE WOODS: Than one's
12 children or whether they're going to
13 get custody of them, visit with them
14 and have a relationship with them.
15 Often a Family Court Judge is put in
16 the position of that case of either
17 attempting to assist the other person
18 to get the relevant evidence in so I
19 have a record on which to make a
20 determination in the child's best
21 interest, or, in that instance, if you
22 do choose to assist or ask questions
23 or try to help them get photos in,
24 things of that nature, you're put in a
25 position where you almost think you're

1 unfair, where you're helping this
2 person and maybe not that person.
3 It's a difficult balance, and you want
4 to make the best decision for the
5 children that come in front of you.

6 CHIEF JUDGE LIPPMAN: You want
7 to help people, and you want to help
8 families and children, but you also
9 have another role in this process,
10 right?

11 JUDGE WOODS: That's correct.
12 And I almost wear another hat.

13 I have one of the satellite
14 offices under Judge Scarpino as the
15 (inaudible) of my county and as the
16 Chairman of the Pro Bono Committee in
17 Orange. As you said earlier with
18 Ms. Strauss, the Orange County Bar has
19 really stepped up to the plate, and
20 they're willing to do a lot of pro
21 bono work. Our problem now is with
22 Legal Services of the Hudson Valley
23 losing their coordinating position, as
24 Judge Scarpino mentioned, that there's
25 no one to match the people, coordinate

1 it and offer the support system needed
2 to use the lawyers that we have signed
3 up for this program, which makes it
4 extremely difficult to operate.

5 PRESIDING JUSTICE PRUDENTI:
6 Judge, excuse me just for a second.
7 Just so I have a clear understanding,
8 so when people are probably in the
9 most difficult times in their lives,
10 they'll call your bar association, you
11 have a referral service? Is that
12 correct?

13 JUDGE WOODS: We have a referral
14 service, and we have the pro bono
15 program that's offered by Legal
16 Services of the Hudson Valley. It's
17 coordinated so those people are
18 directed to that program. And when
19 they get to that program, they need
20 someone to take in their financial
21 data --

22 PRESIDING JUSTICE PRUDENTI: Now
23 that there's no longer a coordinator,
24 those people have nowhere else to go;
25 is that what you're telling us this

1 morning?

2 JUDGE WOODS: There is no where
3 else to go, and the wait time is
4 considerable because of the lack of
5 coordinator. Imagine the people with
6 their situation and the appropriate
7 lawyer to handle that problem. We
8 also, we're looking into a program for
9 veterans and seniors to have lawyers
10 go out on particular dates and times
11 to do little seminars for people to
12 address certain issues of that
13 population for veteran's benefits and
14 legal issues and for seniors with
15 possibly wills and trusts and estates.
16 Someone that can give a little talk to
17 them as a lawyer and explain the
18 procedure and help them in that
19 situation more in a group process, as
20 opposed to a one-on-one type of
21 process, and we were looking into
22 following Rockland's Family Court
23 Lawyer of the Day, because I think
24 that resulted in less filings, better
25 understanding of what needed to be

1 done, and it was maybe somewhat of a
2 stop at the door, gap at the door of
3 stopping cases that maybe should not
4 be coming in the system. All the pro
5 se litigants tend to take up a lot
6 more time and a lot more valuable
7 court time now that we're under a
8 crunch to not go into overtime or
9 anything. It's very difficult to feel
10 that you're working with them and
11 having justice prevail in these
12 situations without being rushed or not
13 able to really have people that
14 understand what's going on. Many
15 times you go through the whole
16 process, and the look on the people's
17 faces, you can tell, they don't really
18 understand exactly what happened
19 there.

20 CHIEF JUDGE LIPPMAN: Let me ask
21 you a question. During this period
22 where, especially we've had this
23 fiscal crisis which you referred to,
24 we had to shorten the day sometimes,
25 and it's so important that we keep the

1 courthouses functioning and open, but
2 without representation, the people in
3 the courtrooms, when you have the
4 people in front of you, is it kind of
5 an empty promise that we're running
6 the court, but can we do justice
7 without having people be, people
8 representing their interest, other
9 than the judge, as you say, doing
10 things they're really not supposed to
11 be doing in terms of being the neutral
12 in this process?

13 JUDGE WOODS: Right. I think
14 it's very difficult to do that without
15 appearing that you're bias in one way
16 or the other, or assisting someone
17 that maybe you should not be
18 assisting. Sometimes I feel more like
19 I'm the social worker instead of the
20 judge.

21 PRESIDING JUSTICE PRUDENTI: One
22 final question, Judge. What's your
23 case load at the present time?

24 JUDGE WOODS: I believe it's
25 probably in the range of, I would

1 estimate 350 open cases at any given
2 time.

3 PRESIDING JUSTICE PRUDENTI: How
4 many of those cases do you think you
5 have pro se litigants appearing in?

6 JUDGE WOODS: I would say, half,
7 in Orange. At least half.

8 PRESIDING JUSTICE PRUDENTI:
9 Thank you.

10 CHIEF JUDGE LIPPMAN: Okay,
11 thank you, Judge. Thank you for
12 taking the time to come in and
13 testify.

14 Again, the judges can give us a
15 bird's eye view of what is happening
16 in the trenches.

17 So, now we have Judge Janet
18 Malone, also from the Family Court.
19 Judge?

20 JUDGE MALONE: Chief Judge
21 Lippman, Judge Pfau, Justice Prudenti,
22 President Elect James, and my District
23 Judge in the back, Judge Scheinkman.
24 Good afternoon. My name is Janet C.
25 Malone. I'm a Westchester County

1 Family Court Judge with an Acting
2 Justice of the Supreme Court
3 designation.

4 Chief Judge, thank you for the
5 invitation to speak at this hearing
6 about the burgeoning need for funding
7 for civil legal services.

8 I have practiced in the state
9 and local courts of New York and the
10 United States District Courts for the
11 Southern and Eastern Districts of New
12 York and as an Assistant District
13 Attorney, as a private practitioner,
14 and as an assigned counsel for the
15 First and Second Departments. I have
16 seen the need for quality legal
17 representation for the disenfranchised
18 up close. These are people who
19 typically have a negative view of the
20 legal system and who feel that they
21 have no say in the legal process that
22 will impact their life. I remember as
23 a young prosecutor being in a
24 courtroom when a criminal defendant
25 told the judge in a loud baritone

1 voice that he wanted his appointed
2 lawyer fired, and that he wished to
3 represent himself. The Judge
4 patiently asked the defendant his
5 highest level of education and whether
6 he was familiar with courtroom
7 etiquette, trial procedures and the
8 rules of evidence he would have to
9 know. Most importantly, he asked the
10 defendant if he understood that if he
11 did not prevail in the case, his
12 liberty would be at stake.

13 That day, I learned the value of
14 legal services. After all, I was
15 fresh out of law school, the rules
16 against perpetuity still causing me
17 nightmares and my knees still shaking
18 after being the first Assistant
19 District Attorney in the class of 1989
20 in the Manhattan District's office to
21 have a trial under her belt. I wanted
22 to scream to him that it's not as easy
23 as they make it look on T.V., but when
24 the young man said that he could not
25 do worse than his attorney going up

1 against the system that was already
2 against him, I realized he was angrier
3 at the system than at his attorney.
4 The Judge denied the defendant's
5 application to relieve his attorney.
6 The defendant in my story would have a
7 jury to decide his fate, but what does
8 a Judge do when she is the jury,
9 charged with being an impartial
10 arbiter for both parties, as well as
11 custodian of the court record, the
12 mover of cases, and adhere to the
13 strict time constraints.

14 Since 2003, I've been assigned
15 to the Yonkers Family Court, first as
16 a Support Magistrate to hear and
17 determine issues of financial support
18 and to establish paternity, and now as
19 a judge. I reside over cases
20 involving juvenile delinquents, PINS,
21 persons in need of supervision,
22 domestic custody, child custody and
23 visitation, negligence and abuse and
24 aspects of paternity and support. My
25 court services the City of Yonkers,

1 the largest city in Westchester
2 County, and the fourth largest city in
3 New York State, after New York City.
4 That's all five borrows, Buffalo and
5 Rochester. I am told the Yonkers
6 Family Court has the largest case load
7 outside of New York City Family
8 Courts.

9 In my courtroom, I meet the
10 teenage mother alleged to have
11 neglected her newborn. The mature
12 woman alleging domestic violence at
13 the hands of her partner. The father
14 in jail seek parenting time with his
15 child. The teenager exposed to the
16 Family Court maybe for the first time
17 as a person in need of supervision and
18 as a juvenile delinquent on a
19 petition. The parties are educated
20 and not so educated. English speaking
21 and non-English speaking. Rich and
22 the not so rich, or somewhere in
23 between.

24 Regardless of the parties'
25 socioeconomic status, I meet them when

1 they are vulnerable, angry, sad,
2 frustrated and confused. We would not
3 want our doctor or even our judge
4 exhibiting or performing under this
5 type of emotional stress, so why
6 should we expect untrained parties in
7 Family Court to represent themselves
8 under these times of emotional stress.
9 Yet, pro se parties who appear in the
10 Family Court are expected to step back
11 and view their emotional, volatile and
12 even life-altering circumstances
13 through an objective lens, while
14 having the mirror of rules, procedures
15 and evidentiary rulings reflect back
16 at them.

17 This weak economy has driven the
18 median household income down, hitting
19 the poor, the young and minorities the
20 hardest in 2010 with the middle class
21 not so far behind. The Census Bureau
22 said last week on September 13, 2011
23 that the median household income fell
24 2.3 percent to \$49,445.00 in 2010 and
25 dropped seven percent since 2000 after

1 adjusting for inflation. Also, the
2 number of people living in poverty hit
3 2.6 million, the highest level since
4 1993. And unfortunately, I could not
5 find the number of children who are
6 now living in poverty.

7 As such in these harsh economic
8 times, funding for our civil legal
9 services is needed more than ever.
10 Child support arrears and filings,
11 domestic violence reporting, which
12 unfortunately seem to go hand-in-hand
13 with the downturn in the economy, loss
14 of homes through foreclosures, all
15 leading to displaced children, are at
16 an all time high. College and
17 retirement funds have disappeared and
18 families are living off their credit
19 cards to make ends meet. These are
20 the folks who need, desperately need
21 civil legal services.

22 However, although parties are
23 advised that they have the right to be
24 represented by counsel of their own
25 choosing in my courtroom, the right to

1 have an adjournment to confer with
2 counsel, and the right to have counsel
3 assigned by the Court if they are
4 financially unable to pay for an
5 attorney, parties often appear twice,
6 three times without hiring an
7 attorney, or without even asking the
8 Court for the assignment of counsel.
9 Why is this? Shame? Embarrassment
10 because of the financial reduction?
11 Or just plain misinformation? Were
12 you aware that there are some in the
13 legal and non-legal communities that
14 believe that if your gross income is
15 \$35,000.00, you don't qualify for the
16 assignment of counsel? I have this in
17 my courtroom. I have private
18 attorneys who would challenge my
19 assignment of counsel on that number.
20 I have yet to find in writing where it
21 says \$35,000.00 in earned income,
22 especially here in Westchester County,
23 disqualifies a party for the
24 assignment of counsel.

25 Nonetheless, as set forth in the

1 American Bar Association survey of
2 nearly 1,200 State Trial Judges around
3 the country, another result of the
4 weak economy is an increase in the
5 number of litigants representing
6 themselves in foreclosures, domestic
7 relations, consumer issues and
8 landlord-tenant housing matters. Not
9 surprising, the judges say that
10 litigants are doing a poor job as they
11 burden the courts already hurt by
12 cutbacks. I concur with the majority
13 of those judges in the survey that
14 unfortunately, self-representation
15 results in worse outcomes for
16 litigants, with the greatest number
17 being failure to present necessary
18 evidence, procedural errors in
19 effective witness examination, and
20 failure to object to evidence.
21 Clearly, we must fund legal services
22 sufficiently to provide access to
23 justice to all parties who enter the
24 court seeking justice.

25 Recently, I had a case where the

1 respondent father had traveled to New
2 York to respond to an application by
3 petitioner mother for an Order from my
4 court exercising temporary emergency
5 jurisdiction over the parties' child.
6 The petitioner mother was represented
7 by counsel, and the respondent father
8 was unrepresented. I advised the
9 respondent of his right to counsel and
10 his right to request the assignment of
11 counsel if he could not afford to pay
12 for an attorney, but I did say this
13 was an emergency application. The
14 respondent, who had a stutter,
15 rejected the offer, confident he could
16 prove his case alone. As the
17 respondent flipped through the pile of
18 papers, I asked him if he had a pen.
19 No, he replied. I gave him a pen. Do
20 you have a pad of paper? No, he
21 replied. I gave him a pad of paper.
22 Do you have the Order to Show Cause
23 that brought you before the court? He
24 could not find it in the papers now
25 spread out before him on the table. I

1 then explained the Unified Child
2 Custody Jurisdiction Enforcement Act,
3 commonly known as UCCJEA, and the
4 powers of the Court if the petitioner
5 mother prevailed, and I saw his eyes
6 glaze over. Should I have let an
7 unrepresented father go up against the
8 mother's attorney on his own? Would I
9 get all the information I need from
10 the father, who came to court without
11 a pen or a pad, and whose stutter
12 became more pronounced as he became
13 anxious? Would I have learned about
14 the Temporary Order of Custody already
15 issued in the child's home state? I
16 needed answers quickly in this
17 emergency situation that I squeezed
18 onto my already tight calendar. I
19 assigned an attorney off the court
20 floor for the limited purpose of
21 representing the father on the Order
22 to Show Cause.

23 A Judge must act at all times in
24 a manner that promotes public
25 confidence in the integrity and

1 impartiality of the judiciary.
2 However, when one or both parties are
3 unrepresented, a trial judge in a
4 non-jury part should not have to walk
5 a tight rope, balance on a thin rope
6 of objectivity and justice while
7 tethering above a net of advocacy, a
8 search for the truth, the best
9 interest of the child, court delays
10 and congested calendars.

11 When parties come before the
12 Family Court, they want an objective
13 court, a court that will listen, will
14 be compassionate and fair, and will
15 meaningfully deliberate on their
16 issues to a fair resolution. When
17 they leave, they might not always
18 receive what they want, but I want
19 them to leave my courtroom knowing
20 that they came in front of an
21 impartial judge, and I was able, if
22 they could not afford to hire an
23 attorney, to provide them with a
24 strong legal advocate at their side.

25 I thank you for this

1 opportunity, and you know what they
2 say in the newspaper world, if you can
3 confirm one piece of information with
4 three sources, then I guess it's the
5 truth. So, I guess here lies, herein
6 lies the truth. Thank you for this
7 opportunity.

8 CHIEF JUDGE LIPPMAN: Thank you,
9 Judge, and I think that is the case.
10 I think you all really had a common
11 theme, which is, the judge has a
12 certain role in our system of justice,
13 and certainly in the civil cases and
14 all the different forms that they
15 take, the judge is caught between
16 their constitutional duties, their
17 responsibilities, and yet, the
18 humanity of what they see in front of
19 them, and it's very hard to walk that
20 line at a time when civil legal
21 services is experiencing drastic cuts
22 in funding. And again, that's the
23 whole purpose of what we're trying to
24 do here; to assure, at least in New
25 York, that we have a dependable,

1 consistent systemic way of funding
2 this that's not subject to the whims
3 of a particular fee that goes down
4 that year or interest rates, IOLA
5 accounts. We need to be funding this
6 directly as a priority in our state
7 and in our society, so thank you, it's
8 really been very helpful.

9 CHIEF ADMINISTRATIVE JUDGE PFAU:
10 Can I just ask a practical question?
11 Particularly in Family Court where
12 you're seeing so many unrepresented
13 litigants, do you think if there was
14 representation on both sides, so many
15 those issues could be resolved without
16 getting to your court? That they
17 would be able to address some of their
18 problems together, so it might affect
19 the case load that you are seeing?

20 JUDGE MALONE: Yes.

21 JUDGE WOODS: I would agree, or
22 it would shorten it because they could
23 work out some of the information that
24 they're asking me to work out outside
25 the courtroom.

1 JUDGE MALONE: Because the
2 parties are coming from an emotional
3 standpoint. The attorneys are the
4 ones that step back -- legally, that
5 can't happen. The judge isn't going
6 to hear about the beginning of your
7 relationship. They are not going back
8 20 years. This is what we have to
9 focus on, focus on the issues, move
10 forward, and let the parties know, and
11 I think it's incumbent upon the
12 attorneys especially to let the
13 parties know of our time constraints
14 that the court, not that the court
15 doesn't want to hear from anyone, we
16 want to hear the stories, but not all
17 the stories are relevant. They are
18 not all based in evidence. And to
19 narrow the issues and move along.

20 Our case load, Judge Pfau,
21 you've been to the Yonkers Family
22 Court, as has Judge Scheinkman. You
23 understand our case load. You
24 understand the difficulties of our
25 facility. I won't go there, but it

1 adds to the burden of the case load
2 when people come in, how they're
3 received into the courthouse, where
4 they have to sit, where they have to
5 wait.

6 CHIEF ADMINISTRATIVE JUDGE PFAU:
7 That it affects not only the cases
8 before you, but it affects the volume
9 of the cases.

10 JUDGE MALONE: It's very
11 important to conference the case and
12 have the attorneys have the ability to
13 conference, but they need somewhere to
14 conference those cases before they
15 come in. Our court attorneys can't
16 always conference the cases.

17 JUDGE SCARPINO: Judge Pfau, I
18 would say in other areas of consumer
19 credit, landlord-tenant and all the
20 other areas, the early intervention of
21 counsel will, I'm convinced, will stop
22 many cases from even proceeding to
23 court and getting before a judge,
24 which we can't gauge that, we can't
25 estimate that, but I'm convinced that

1 would be the most, in a perfect world,
2 that would be just wonderful. That's
3 why we need this.

4 CHIEF JUDGE LIPPMAN: Okay --

5 JUDGE WOODS: I was going to
6 say, particularly in custody cases
7 with the pro se litigants on the first
8 appearance, it may be two or more
9 months before they come back, they're
10 trying to get a temporary order in a
11 case, I would love if when I ask them
12 a point blank question they would give
13 me a point blank answer to the
14 question and not their whole life
15 story.

16 CHIEF JUDGE LIPPMAN: Judges,
17 thank you, we appreciate it.

18 Okay, our last panel in talking
19 about schedules and going over, we are
20 exactly on schedule. So, the
21 business, religious and government
22 leaders panel don't mess this up.
23 Okay.

24 Reverend Hausch, Terri Torchio
25 and Bill Savino, come on up. So,

1 you're the last witnesses between this
2 group and lunch. That's always an
3 important role, and so we're going to
4 start with Reverent Adrienne Flipse
5 Hausch, Esquire, partner in Carway and
6 Flipse.

7 REVEREND HAUSCH: Good morning,
8 Judge Lippman, Judge Prudenti, Judge
9 Pfau, Mr. James. It's a pleasure to
10 be here. Indeed, I am an attorney as
11 well as a minister ordained in the
12 Reformed Church of America. I'm
13 currently a partner in a small Long
14 Island firm and serve as Minister for
15 Congregational Care of the Community
16 Church in Douglaston. That church
17 services congregants who live as far
18 west as Bayside, and as far south as
19 Bellerose, Floral Park and Elmont, on
20 both sides of the border between
21 Nassau and Queens, as well as the
22 northern tier of Nassau, including
23 Great Neck and Manhasset. The
24 population clearly is economically and
25 culturally diverse.

1 I'm also a member of various
2 panels which provide pro bono legal
3 services supported by the staff at
4 Nassau-Suffolk Legal Services. And as
5 a prior witness said, we too lost our
6 attorney coordinator and the impact of
7 that is just being felt. Those
8 services are now being conducted by a
9 secretary, who's wonderful but doesn't
10 have the skills to do what is needed
11 there.

12 We worked with the civil legal
13 services office to insure
14 representation for poor people
15 primarily in the areas of
16 landlord-tenant and matrimonial law.
17 Over the course of the first year, I
18 was the first pro bono chair when we
19 started to build a pro bono panel. We
20 developed screening processes specific
21 to pro bono representation, as well as
22 forms for almost everything we would
23 need to proceed with a pro bono case,
24 including retainer agreements. Some
25 years later with the assistance of an

1 attorney, a Supreme Court Justice, the
2 matrimonial clerk's staff and two law
3 students, we eliminated a three-year
4 plus backlog in less than one year.
5 The Judge, I will name, is Judge
6 Sandra Feuerstein, who volunteered her
7 time and her staff after hours,
8 without compensation, to process 375
9 matrimonial actions in nine months.
10 This was a good model of cooperative
11 work that can be done when resources
12 are flush and community members are
13 engaged, but could not have been
14 workable or efficient without the
15 direct services and support of legal
16 services, who provided all of the
17 forms that we needed and the help in
18 the training of the law students that
19 we could process all these things.

20 Most of my own parish knows I am
21 an attorney, but I am often approached
22 by total strangers who are not so much
23 in need of prayer as they are in need
24 of an attorney. Because I am an
25 attorney, I know what services are

1 available and how to refer that. As a
2 pastor, this is something I should
3 know. I believe that clergy are a
4 natural conduit for connecting legal
5 services and those who are in need of
6 those services.

7 I was approached by a young
8 woman who advised she needed pastoral
9 counseling. She was married and had
10 three young children. Although
11 trained as a secretary, she had been
12 out of the job market for a number of
13 years, raising her children, was
14 totally dependent on her husband. For
15 more than a year, her husband had kept
16 her on a short leash. He purchased
17 food for the family and gave her no
18 cash at all. He put a minimal amount
19 of gas in the tank of the car for
20 emergencies and monitored her mileage
21 and questioned her as to where she had
22 been. Recently, a wrong answer to
23 where she had been resulted in a
24 physical beating. On that occasion,
25 the eight year old witnessed the

1 attack. With no place to go, she
2 asked if I could meet with her
3 sometime during the day during the
4 week when her husband was working.
5 Since she lived within walking
6 distance of the church, he would not
7 know that she had come. After a
8 relatively brief interview, I referred
9 her to the Coalition Against Domestic
10 Violence and the Nassau/Suffolk Legal
11 Services Volunteer Lawyers Program.
12 These programs then referred her to
13 the proper Queens domestic violence
14 programs.

15 In my other life, I have also
16 found an effective and willing network
17 of knowledgeable, educated individuals
18 who can serve as backup and referral
19 system. Most clergy are trained in
20 counseling and social services, and it
21 is likely that the clergy would know
22 more counselors, doctors and even
23 lawyers than the lawyers in their
24 neighborhoods know. In addition,
25 there is a coercive factor in

1 obtaining volunteers if you are clergy
2 that does not exist among you
3 civilians. These individuals can form
4 the backbone of a volunteer network
5 that can enhance and enrich the
6 services offered by any civil legal
7 service office that provides support,
8 knowledge and expertise in all areas
9 of legal need.

10 We are here because many legal
11 service agencies are stretched, but
12 were we to pursue programs that could
13 efficiently pull in more volunteer
14 lawyers and members of the community,
15 I believe, as the techies say, there
16 is still band width in the legal
17 profession and many of the related
18 fields upon which we can rely. Clergy
19 opine that God never gives you more to
20 handle than you can manage. As a
21 minister, I believe in the simple
22 principle of doing unto others as they
23 would do unto you. As an attorney, I
24 know the value of legal counsel both
25 to individual litigants and to the

1 proper functioning of the legal
2 system. I listened to the judges just
3 before me and nodded my head in
4 agreement on every point. As a member
5 of the community, I believe it would
6 be fiscally sound to engage all
7 skilled members of society to insure
8 representation of the most vulnerable.

9 My church has a bulletin that is
10 distributed to those who attend
11 worship services. We have a monthly
12 newsletter that is mailed to anyone
13 who wishes to receive it. It includes
14 public service announcements, stories
15 of interest. It is also published on
16 our website. Many churches
17 communicate to their congregants in
18 this way and others. Our church
19 building is used by numerous community
20 groups for meetings and programs. We
21 host informational programs by our
22 local councilman, State Senator and
23 member of the Assembly.

24 We also have a local clergy
25 commission that meets and discusses

1 the needs of the greater community.
2 My denomination, the Reformed Church
3 in America, has regional groups called
4 classes. Each class is geographically
5 the size of a Roman Catholic
6 Archdiocese. Its members, which are
7 clergy and elders from each church in
8 the zone, meet regularly. They also
9 meet regularly with all denominational
10 clergy and cooperate in programs of
11 interest to the community. They
12 respond to crises worldwide. The RCA
13 is just one small denomination with
14 access to just the people we need to
15 reach, both to provide resources and
16 to reach our target population. Other
17 denominations have similar
18 denominational structures and
19 communication media. All hold
20 eleemosynary activities as their
21 second priority after worship.

22 My church also houses a
23 counseling center, another safe place
24 to supply information and other
25 resource material for the distribution

1 of information. Many church-based
2 counseling centers offer services on a
3 sliding scale. Almost all take a
4 holistic approach and try to connect
5 patients to necessary services. I
6 receive calls regularly from our
7 counselors seeking referrals for
8 lawyers, accountants, rental agents
9 and even spiritual advisors.

10 In Nassau County, the Bar
11 Association holds countless programs
12 and seminars for the community at
13 which attendees are given practical
14 advice in a variety of areas,
15 including avoiding foreclosure, what
16 to do if you are foreclosed,
17 bankruptcy, matrimonial proceedings
18 and immigration issues. An absolute
19 inert way of increasing the
20 information flow is to permit clergy
21 counselors and other professionals
22 serving indigents to attend CLE
23 programs without charge on a
24 space-available basis.

25 I believe that basic and

1 bridging the gap CLE programs should
2 be made available to clergy and other
3 professionals working in religious
4 institutions and not for profits. As
5 the judges said, the more information
6 the litigants have, even if they show
7 up pro se, the easier it will be for
8 them to understand. If a litigant
9 knows what they have to bring in to
10 prove their case, it will save a lot
11 of time and resources.

12 I believe that community forums
13 and workshops should be offered and
14 sponsored by houses of worship.

15 I believe community-based
16 organizations should be encouraged to
17 work with local clergy and attorney
18 organizations to promote their
19 programs and gain trust, respect and
20 visibility in the community. The
21 judge from the Family Court testified
22 about when she was a prosecutor and an
23 individual not trusting his lawyer.
24 That's a problem that I see all the
25 time, and people trust me as a lawyer

1 a lot because I'm a minister, and they
2 figure that's a trustworthy
3 profession, and the legal one isn't.

4 CHIEF JUDGE LIPPMAN: Reverend,
5 we're running out of time. In summing
6 up, why is civil legal services,
7 providing them or referencing them,
8 consistent with the clerical function?
9 What's the connection?

10 REVEREND HAUSCH: Because our
11 job is to deal with the person as a
12 whole. People can't say, God's
13 against me, and because I'm losing my
14 house, I'm losing my family, I'm
15 losing my kid; that has nothing to do
16 with it. All those things are because
17 you need a good lawyer, and you need
18 to go to court and use the system
19 that's available when the people can't
20 afford it.

21 CHIEF JUDGE LIPPMAN: Is it hard
22 for people to have faith when they
23 just don't have services to help them
24 contend --

25 REVEREND HAUSCH: Yes, it's very

1 difficult, and they go hand in hand.
2 You can't tough your way through your
3 living situation and say, God will
4 provide for me, but it's really hard
5 when you can't feed your children and
6 you can't figure out how to go to
7 Family Court and get the support that
8 you're entitled to receive.

9 CHIEF JUDGE LIPPMAN: Thanks,
10 counselor.

11 REVEREND HAUSCH: You're very
12 welcome.

13 CHIEF JUDGE LIPPMAN: Teri
14 Torchio is the Director of Economic
15 Independents, Department of Social
16 Services, Orange County, on behalf of
17 Commissioner David Jolly.

18 MS. TORCHIO: Good morning.
19 Thank you for providing us with this
20 opportunity to address the panel today
21 on civil legal services in New York.

22 The need for access to civil
23 legal services is essential in many
24 areas for our most vulnerable
25 consumers. Today I just wanted to

1 focus on two of those areas, which
2 would be housing and domestic
3 violence.

4 For many of our working poor and
5 under employed families, they have
6 very limited access to social welfare
7 services, and they remain just above
8 the poverty level in many cases.
9 Access to legal services become
10 essential as they experience
11 difficulties with housing, day care,
12 employment and disability assistance,
13 and these things require obviously a
14 high technical level of expertise in
15 order to access.

16 One of the most important areas
17 that has been facing our residents as
18 the economic recession has continued
19 is that the rental market, where far
20 too many of our consumers live, is
21 becoming increasingly complex to
22 navigate and access, and affordable
23 units are at an all time high.
24 Consumers have found themselves in the
25 rental market, and this has driven up

1 prices in our area in Orange County.
2 In years past, when people have been
3 late in their rent, we've been able to
4 negotiate in many cases with the
5 landlord, because they really wanted
6 to keep them in their rental units.
7 Now that they are able to get a higher
8 rental amount, they're not as willing
9 as they used to be to negotiate.
10 During these times landlords are not
11 as patient with families as they
12 struggle to figure out which bills to
13 pay first with their limited
14 resources. Many of our consumers have
15 limited knowledge of their rights in
16 the marketplace and are easily taken
17 advantage of.

18 In most cases, our families
19 facing eviction in Orange County are
20 hard-working families living on the
21 brink of financial disaster or making
22 decisions of how to pay their rent are
23 topics at the dinner table each night.

24 In the area of housing
25 assistance, access to legal services

1 is essential in Orange County as we
2 struggle with limited resources.
3 Housing assistance must be a priority
4 over other forms of assistance. For
5 our homeless population access to a
6 safe, healthy rental unit will be
7 almost impossible to achieve. In many
8 of these cases, again, creating a
9 situation where a homeless population
10 remains at great risk.

11 In Orange County we have a
12 unique and creative way to serve our
13 homeless families with legal services
14 and is an essential part of the work
15 that we do. We've moved to develop a
16 more progressive system for the
17 following reasons: 45 percent of our
18 homeless population has mental health
19 and/or substance abuse issues,
20 26 percent are homeless as a result of
21 an eviction, and 18 percent have a
22 chronic illness. All of these issues
23 make it very difficult for them to
24 navigate the system on their own. For
25 our homeless clients, access to legal

1 services is the link in the chain that
2 will allow them to find permanency in
3 housing. Some of the partnerships
4 that we have formed with legal
5 services include eviction prevention,
6 lease provisions and tenant awareness.
7 We have found that eviction
8 proceedings can result in significant
9 changes in the rental market, as high
10 quality legal services tend to have a
11 ripple effect in the community. When
12 access legal service during eviction
13 proceedings is viable, the landlords
14 in the area have a greater willingness
15 to work with us and with the tenant
16 who's at risk of eviction.

17 We run ten awareness workshops
18 several times a year, and we run these
19 in conjunction with landlords and
20 civil legal providers. They have a
21 major impact on the behaviors of both
22 the tenants and the landlords.
23 Sometimes a simple understanding of
24 the rules, both for the tenants and
25 landlords, help to alleviate future

1 problems in the marketplace as tenants
2 and landlords gain a better knowledge
3 of what each other's needs are, and
4 they're more willing to work together.

5 In Orange County, Legal Services
6 of the Hudson Valley has been
7 instrumental in assisting the
8 Department of Social Services with
9 implementing tenant awareness
10 workshops across the county, which is
11 a testament of the impact that civil
12 legal services can have within the
13 community. Eviction prevention,
14 tenant awareness and leaseholder
15 protections are the most important of
16 the civil legal services available in
17 Orange County at present, but access
18 to each of these services is very
19 limited at this time. The combination
20 of services is the key. We need to
21 work together to encourage change in
22 the individual family while protecting
23 their legal rights.

24 County governments currently
25 make the investment in the social

1 change, but we need a greater
2 investment in legal services in the
3 State of New York.

4 Victims of domestic violence
5 face significant challenges as they
6 begin to make the decision to leave an
7 abusive relationship when safety,
8 social and child welfare services are
9 available, but access to legal
10 services remain a critical challenge
11 for most victims. Safety for the
12 family depends on access to legal
13 services to secure an Order of
14 Protection, advice and legal expertise
15 that can outline a path through the
16 legal maze, and to independence and
17 safety, which are always our goals.
18 Additionally, victims of domestic
19 violence find themselves in need of
20 assistance across systems. They need
21 to be able to access public
22 assistance, mental health centers,
23 substance abuse treatment, housing
24 crisis, including eviction and
25 foreclosure. Civil legal services is

1 struggling to assist families and
2 individuals to stabilize by securing
3 access to benefits and programs that
4 will help them keep healthy, safe, and
5 sheltered in the midst of a crisis.

6 CHIEF JUDGE LIPPMAN: Teri, is
7 the bottom line of what you're saying
8 that the, at the local level, county
9 government can't do its job without
10 having civil legal services as a
11 partner for you in trying to achieve
12 the things that you'd like to achieve?

13 MS. TORCHIO: We very much rely
14 on them to partner with us to help us
15 achieve, you know, the safety for
16 victims of domestic violence, safety
17 for our homeless consumers that are
18 trying to move into decent housing, to
19 protect the rights that -- what I see
20 most often are families being evicted
21 for not just cause, and really they
22 have, they don't know where to turn,
23 and they don't know what their rights
24 are --

25 CHIEF JUDGE LIPPMAN: And I take

1 it that the county, at the county
2 level, you don't have the funding
3 ability to be able to support those
4 kinds of services on their own?

5 MS. TORCHIO: No, they are not.
6 And they are essential services for
7 us.

8 CHIEF JUDGE LIPPMAN: Thank you.
9 Our last witness is Bill Savino, who's
10 the managing partner at Rivkin Radler
11 LLP, and a member of the Board of Long
12 Island Association, and who I've had
13 the pleasure of dealing with in the
14 Nassau County Bar Association.

15 It's great to see you here,
16 Bill. You're on.

17 MR. SAVINO: Thank you, your
18 Honor. Chief Judge Lippman and other
19 distinguished panelists, thank you for
20 this opportunity to provide testimony
21 today on what clearly is an acutely
22 important topic; namely, access to
23 civil legal services. In other words,
24 access to justice.

25 I am the managing partner of a

1 large law firm. I've also served as
2 president of a wonderful bar
3 association, the Nassau County Bar
4 Association. I've also had another
5 perspective from my services as the
6 immediate past chairman of the United
7 Way of Long Island. And also, I've
8 founded the Long Island, with others,
9 the Long Island Insurance Community
10 that has raised more than \$3 million
11 to help those in need across Long
12 Island. And as your Honor has
13 indicated, I serve as a board member
14 of the LIA, the Long Island
15 Association, Long Island's largest
16 business community. Also, I would
17 like to thank you for focusing
18 attention on what is a, again, vitally
19 important topic. And what I'd like to
20 try to do, because I've read the past
21 testimony, and I've listened today,
22 and I'd like to try to tie it all
23 together and explain why the provision
24 of civil legal services is good
25 business. Not only is it the moral

1 and ethical thing to do, but it is
2 good business.

3 Long Island is a critically
4 important economic component here in
5 New York State. Its 2010 gross
6 metropolitan product, a measure of its
7 output of its goods and services
8 exceeded an astonishing \$120 billion,
9 as set forth in the Long Island
10 Association's fact book. Excluding
11 New York City, Long Island accounts
12 for two thirds of the combined output
13 of New York's metropolitan areas. And
14 according to the census bureau, we
15 have approximately 1.4 million people
16 in Nassau County, and another 1.5
17 million people in Suffolk County.
18 Without question, and it is my Long
19 Island pride, it is a wonderful place
20 to live and to do business, and to
21 care for our fellow citizens.

22 As the Long Island Association
23 will note in its fact book, Long
24 Island is fortunate to have a very
25 highly educated and talented work

1 force matched, I might add, by a
2 strong array of small businesses that
3 have shown great agility in the face
4 of these recessionary times, a great,
5 if you will, entrepreneurial know-how,
6 especially in these unpredictable and
7 rapidly changing business conditions.
8 The Long Island business community, as
9 I've mentioned, is comprised mainly of
10 small businesses. Almost two thirds
11 of Long Island's business
12 establishments employed one to four
13 persons in 2009. Many of them
14 recipients of the kinds of legal
15 services that you wish to bring forth
16 by these hearings. Almost 90 percent
17 of these businesses employed fewer
18 than 20 people; again, many of them
19 recipients of the kinds of legal
20 services that we're discussing here.

21 Of the 96,000 businesses located
22 in Nassau and Suffolk counties, 93,000
23 of them have less than 100 employees,
24 and I won't repeat it again, but I
25 must say, they too need these civil

1 legal services. An estimated
2 109,000 -- I want to set the table
3 here -- 109,000 and growing
4 Nassau/Suffolk residents were
5 unemployed in 2010. And that does not
6 count those who were not included in
7 the survey, because they become what
8 we call, discouraged workers. They
9 don't show up on anyone's radar
10 screen, but they remain unemployed.

11 The Department of Labor here in
12 New York says from August 10th to
13 August 11th, Long Island lost
14 somewhere upward of 13,000 jobs. In
15 early August of this year Newsday
16 reported there are 43,000 Long
17 Islanders who have exhausted their
18 extended unemployment benefits in the
19 past 17 months, increasing pressure on
20 a strained economy and tight
21 governmental budgets.

22 On Long Island from 2008 to
23 2011 -- I'll repeat what others have
24 said here by example -- foreclosure
25 filings have increased from upwards to

1 36 of every 1,000 homes, just think
2 about that, as reported by the Empire
3 Justice Center, with data current
4 through September 2010. Suffolk
5 County leads New York State with the
6 most loans in foreclosure. But think
7 about this. They have an equal
8 number, if not a greater number of
9 loans that are right now in the
10 crucible of falling into foreclosure.
11 Nassau-Suffolk Law Services, an entity
12 that Minister Flipse has referenced,
13 cites that in 2009, turning away from
14 foreclosure for a moment, that the
15 cities of Long Beach and Glen Cove,
16 and all of the District Courts in
17 Nassau and Suffolk County, handled a
18 total of nearly 20,000 evictions.

19 And I would like to quote from a
20 law services report, because I think
21 it's much more compelling, frankly,
22 than anything that I could say here to
23 you today. Please allow me.

24 CHIEF JUDGE LIPPMAN: Sure.

25 MR. SAVINO: We know from our

1 staff's frequent presence at
2 landlord-tenant calendar calls, where
3 I personally have appeared over the
4 years, that the vast majority of those
5 were residential evictions, each of
6 which involving a family facing a loss
7 of its home and the frightening
8 prospect of homelessness, said Law
9 Services. This does not even include
10 the cases from the Town Justice Courts
11 in eastern Suffolk County, which
12 handle all of the evictions for the
13 five eastern-most towns on Long
14 Island. At 10,000 cases, Suffolk
15 County had more eviction cases than
16 any locality in the state outside of
17 New York City, exceeding Buffalo by
18 some 2,500, and Nassau County was
19 third on that list.

20 This, I thought, was a
21 penetrating statement, perhaps a
22 critical one, but one that I thought
23 you should hear and take back to
24 others. The court's law services
25 concluded, the (inaudible) of

1 unrepresented tenants pushing through
2 on the morning calendars, which may
3 contain over 100 cases, and
4 determining the fate of a family,
5 unrepresented, in a few short minutes.

6 All of law services' projects
7 combined provided legal assistance
8 through the dint of their own efforts
9 for upwards of 2,600 landlord-tenant
10 matters last year, mostly with
11 volunteer lawyer services from within
12 the counties. 1,475 of them, in some
13 instances, there were multiple and
14 consecutive cases brought against them
15 by the same landlord involving the
16 same families, but services, law
17 services was successful. They went
18 on, in their report, to tell us that
19 they prevented eviction of 580
20 households comprised of 1,680 persons,
21 which when you consider, they say, the
22 cost of placing individuals,
23 especially families in emergency
24 shelters as described above, is not
25 only a benefit of vital importance to

1 households themselves, but a cost
2 effective means of reducing the
3 burden, law services concluded on the
4 public fisc.

5 I won't go on, but I thought
6 that that testimony offered by them in
7 their report was revealing. But
8 compounding all of that, is this. In
9 the past decade alone, Nassau added
10 1,100 households and Suffolk added
11 30,000, but what was notable about
12 that and why the delivery of legal
13 services to these new households is
14 critical is because there was a huge
15 increase in those new households in
16 single-parent households, particularly
17 female-headed households with children
18 under age 18. Non-family households
19 as well increased. Generally, these
20 are composed of individuals who are
21 living alone. Again, a surge. Many
22 of those who live alone, these
23 non-family households, are seniors who
24 are living alone and need the
25 assistance of legal services.

1 Long Island United Way, a great
2 organization on Long Island, has
3 sponsored Project Warmth over so many
4 years. What it does is raise money in
5 the community so that a person does
6 not have to choose between food on the
7 table and heat in their homes. There
8 has been a surge, a spike in the
9 number of applicants that we've
10 received at United Way for Project
11 Warmth assistance. I might add,
12 matched only by the inquiries that
13 United Way gets, much like you may get
14 in your parish. What do I do? The
15 public utility has just stopped my
16 power.

17 So, the point of all of this is
18 that when coupled with governmental
19 budgetary constraints and even tighter
20 allocations for Long Island's many not
21 for profits, one thing is clear: The
22 safety net for a growing number of us
23 on Long Island, those who are less
24 fortunate, the safety net, it's
25 shrinking. Inevitably, these Long

1 Island dynamics, as I call them, will
2 surely convert to an increased need
3 for civil legal services by those
4 adversely impacted.

5 So, of course, let me add my
6 voice as another to those who have
7 preceded me in exclaiming that access
8 to justice is vital to Long Island's
9 economic health, its business
10 well-being. If Long Island is to
11 fully exploit the wonderful
12 competitive advantages that it has,
13 granted we know we've got to keep our
14 taxes down and reduce the traffic and
15 improve transportation and schooling,
16 but there must also be assured to Long
17 Islanders that there will be
18 sufficient funding that will be
19 available to those less fortunate so
20 that they can have access to legal
21 services. To do so is fully consonant
22 with a thriving Long Island economy.

23 And I want to put proof behind
24 my words. The Federal Reserve Bank,
25 when I was researching for my

1 testimony here today, the Federal
2 Reserve Bank of Boston recently
3 reported on foreclosures, price
4 depressing spillover effects on local
5 properties. I'm going to summarize my
6 brief comments, make them briefer
7 because I know the hour's getting
8 late, but they said that there are
9 spillover effects such as these that
10 result from foreclosure. Lowering
11 property values, reducing local
12 property tax base, increase in blight
13 and crime, and discrepant basic local
14 ties, things that businesses that want
15 to thrive, abhor. You can't make
16 money in a business in the midst of
17 blight and disruption of social ties.
18 These problems on Long Island, I am
19 convinced, as a practicing lawyer and
20 a managing partner and a member of the
21 not-for-profit community, can be
22 better managed and certainly reduced
23 if appropriate legal assistance was
24 introduced early in the process, not
25 when legal entanglements cause people

1 to look at the sign behind you, that
2 says In God We Trust, and they trust
3 nothing.

4 To respond further to a question
5 that you asked Minister Flipse. The
6 spillover effect will certainly have
7 negative financial implications, the
8 Reserve Bank's report says, for small
9 businesses that rely on a stable work
10 force, that rely on stable social
11 ties, stable property values and a tax
12 base that won't crumble right beneath
13 their feet, causing them to leave the
14 State of New York because they can't
15 afford to live here and do business
16 here any longer. In the mortgage
17 meltdown, the report of the justice
18 system, proof behind my words, they
19 said that housing counseling saves
20 homes, that homeowners are 1.7 times
21 more likely to save their homes with
22 the assistance of legal
23 representation, and they list in their
24 report, which I've referenced in my
25 testimony, how that happens, I'm not

1 going to repeat it here, and it is in
2 my written submission. And in sum,
3 the challenges that face Long Island
4 are identical to those that you've
5 outlined in your November 2010 report.
6 The need for access to civil legal
7 services, to state the obvious, grows
8 as our economic conditions worsen. We
9 hope they'll get better. But as I was
10 trying to figure out a way how I would
11 conclude these remarks today, I came
12 up with two, and if you'll allow me,
13 because I hope that they'll leave you
14 with an important and indelible
15 impression. But one was not from a
16 lawyer, a comment that I read, but it
17 was from a doctor. One that we all
18 grew up with. Dr. Seuss, who so often
19 in so few words made such powerful
20 statements about the human condition.

21 Dr. Seuss once said, unless
22 someone like you, and he's talking
23 about us, cares a whole awful lot,
24 nothing is going to get better, he
25 said, it's not.

1 So, let me further conclude,
2 because as I sit here, I look at the
3 flag, and I'm going to invoke some
4 American pride. We as fortunate
5 citizens, everyone here, as fortunate
6 citizens of a great nation, we rise,
7 we take our hats off, we stand, we put
8 our hands across our heart, and we,
9 with pride and reverence and
10 commitment, in the presence of that
11 flag, we recite the pledge of
12 allegiance. And I'm going to
13 emphasize, if you will, an important
14 part of that oath. I pledge
15 allegiance, to the flag, of the United
16 States of America, and to the
17 republic, for which it stands, one
18 nation, under God, indivisible, with
19 liberty, and then these important
20 words for these hearings, and justice,
21 for all.

22 So now, especially now, in these
23 times, we pause and urge that without
24 access, we will have left justice in
25 the pledge as a mere word, not a

1 tangible, valuable business and
2 community benefit that functions in
3 harmony, in harmony with a thriving
4 business economy. Thank you very
5 much.

6 CHIEF JUDGE LIPPMAN: Thank you,
7 Bill, for that impassioned testimony,
8 and thank the panel. And I do want to
9 stress that what Bill was talking
10 about on Long Island is really
11 prototypical of the rest of the state.
12 Every place here in the Second
13 Department and in this state, and I
14 think only emphasizes, I think the
15 multiple reasons, all of the testimony
16 today, including our last three
17 panelists, our lead-off witnesses,
18 Janet DiFiore and David Boies, the
19 client panel, foreclosure panel, the
20 judge's panel, and finally, this panel
21 of leaders of government, religion and
22 business, that there are multiple
23 reasons why we must have a consistent,
24 dependable systemic way to fund civil
25 services. And it starts off, and Bill

1 emphasized it when he talked about
2 justice, it starts off with, as a
3 judiciary, and as a legal profession,
4 and as a society, we are committed to
5 equal justice for all. That's who we
6 are. Certainly, we can't, in the
7 courts, perform our constitutional
8 mission without providing equal
9 justice. That's our very reason for
10 being.

11 Second, the ethical and moral
12 responsibilities that we all have to
13 help, again, the most vulnerable among
14 us, to be a society that, as any
15 civilized society, is the best of
16 civilized society, that treats the
17 most vulnerable in the best and most
18 humane possible way. And finally, to
19 get off our pontificating about doing
20 good deeds, and why it's the right
21 thing to do, why it's our mission, it
22 goes one step further. And I think
23 that critical. And what we've been
24 trying to do is make everyone
25 understand that this is about the

1 well-being of society, and I don't
2 only mean in terms of the social
3 fabric of society, and help prevent
4 people from falling off the cliff, I
5 also mean the bottom line of society,
6 the financial well-being of our state,
7 and our communities, there's a very
8 direct pragmatic reason why this makes
9 sense for us, because our institutions
10 in this state cannot thrive without
11 having a civil legal, a vibrant civil
12 legal services community and providers
13 that help people with the necessities
14 of life, because we not only help
15 those individuals, but we help our
16 society as a whole from the highest
17 ethical aspect of that to the most
18 basic financial well-being, the sound
19 financial health of our state.

20 So, it cuts in every different
21 direction. Yes, we believe that in
22 doing good deeds and helping the poor,
23 it's what America, it's what all
24 civilized society is about, but we're
25 helping the poor, helping those

1 individuals, and helping our
2 government, our society, and the
3 well-being of that society in every
4 respect. And I think that holds true
5 for the Second Department and around
6 the state, so we're very pleased with
7 what we accomplished last year in
8 terms of having additional significant
9 funding for civil legal services in
10 the state, but I remind you that our
11 findings last year, and believe me,
12 while we made progress, last year we
13 found that we're only meeting at best
14 20 percent of the need for civil legal
15 services for the poor in this state.
16 So, we've got plenty of work to do
17 together, and I thank everybody for
18 testifying at these hearings. I thank
19 all of the people who attended, the
20 task force, for all of your wonderful
21 work and preparation.

22 The next hearing is in Manhattan
23 in the First Department. I believe
24 that's Monday. And we continue, and
25 Helaine Barnett is sitting there

1 taking copious notes as the chair of
2 the task force, and believe me, we
3 will incorporate all of this testimony
4 in this year's report. And we
5 continue to, again, try to get through
6 to our leaders in the legislative and
7 executive branches that in
8 prioritizing what is important to our
9 state, this is every bit as important
10 as our schools and our hospitals and
11 everything that matters to us.

12 Just as was indicated by Bill's
13 final testimony and the beginning of
14 our testimony by the D.A. and David
15 Boies, one of our most notable
16 attorneys in this country, justice is
17 a distinctive commodity. It's not
18 something that's just the same as the
19 other. Everything's important, and we
20 know that, but justice is a
21 distinctive element of our society,
22 and certainly distinctive to this
23 judiciary and the legal profession in
24 this state.

25 (Continued on next page.)

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So, thank you all, and we
greatly appreciate you being here.
Thank you.

* * * * *

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accurate transcription of the
within proceedings.

CAMI LANDAU
Senior Court Reporter