

STATE OF NEW YORK

COUNTY OF ALBANY

X

THE CHIEF JUDGE'S HEARINGS ON CIVIL LEGAL
SERVICES, THIRD DEPARTMENT

X

PROCEEDINGS held in the
above-entitled matter on the 5th day of
October, 2010, at 10:00 AM at the Court of
Appeals, Albany, New York.

BEFORE: HON. JONATHAN LIPPMAN,
Chief Judge

HON. ANTHONY CARDONA,
Presiding Justice

HON. ANN PFAU,
Chief Administrative Judge

KATHRYN MADIGAN, ESQ.
New York State Bar Association

REPORTED BY: Cynthia A. West

P R O C E E D I N G S

JUDGE LIPPMAN: Good morning.

This is the third of four hearings on unmet civil legal services needs in New York.

I'll start out by telling you that no issue, is more fundamental to the Court's Constitutional mission than ensuring legal justice for all. The availability of affordable legal representation, for low income New Yorkers is indispensable to our ability to carry out that mission, and that's why we're here today. I'll introduce to you the panel, that is presiding over today's cases. To my right is presiding Justice Anthony Cardona, Presiding Justice of the Third Department, we're delighted that he could be here with us, to my left is Chief Administrative Judge Ann Pfau, who is responsible for the daily operations of the State Court System, and to my far right, is the former President of the State Bar Association, Kate Madigan, who I'm so pleased represents the Bar of the State of New York. This is the hearing really

1 presided over by the judicial leadership of
2 the State and leadership of the profession.
3 And the reason why we're all here is because
4 this is so important to what we do, and I
5 want to thank everybody who is here today,
6 witnesses, citizens, members of the task
7 force, Helene Barnett the Chair of the task,
8 where are you? Steve Banks is here,
9 somewhere, there he is, Camille Enders and
10 Willie LaVoy are here and I want to thank
11 all of them for being here, participating on
12 this task force.

13 What is clear is that the
14 economic collapse that we've had in this
15 state, and in this nation, has dramatically
16 effected the people that appear in the court
17 in our courts particularly, the most
18 vulnerable in society the poor, the elderly,
19 struggling families, the disabled, the
20 victims of domestic violence. There's been
21 a sharp rise in foreclosure proceedings,
22 evictions, debt cases, family offenses,
23 matrimonial conflict, and the premise of
24 these hearings and the cases we're going to
25 have to take to the Legislature, is that

1 when you're dealing with the very
2 necessities of life, the roof, the very roof
3 over people's heads, their livelihoods,
4 their well-being and that of their families
5 is, you must have a lawyer when you come
6 into Court. Amount 50 years ago, in Gideon
7 vs. Wainwright the US Supreme Court said
8 it's an obvious truth when someone is hauled
9 into a court in a criminal case and doesn't
10 have a lawyer, they cannot get a fair day in
11 court. They cannot get their day in Court.
12 And we think it's an equally obvious truth
13 almost 50 years later, that again when
14 someone comes into Court, without an
15 attorney, dealing with the very fundamentals
16 of life that they cannot get their day in
17 court without an attorney.

18 Last year over two million people
19 came into our courts, 2.3 million people
20 without an attorney, a real shocking number
21 if you think about it, 2.3 million people,
22 and despite the best efforts of our Bar and
23 I want to commend Kate and all the other Bar
24 Associations in the State that have
25 contributed over two million hours of pro

1 bono work, it is just not enough and what we
2 need to have, is stable, consistent state
3 funding out of the public to pay for civil
4 legal services. This is as important as all
5 the other things we prioritize in this
6 state. Whether it be the schools, or the
7 hospitals, or all the other things that are
8 the essentials of a civilized society. For
9 every person that civil legal service
10 providers take in take as clients, there are
11 another eight to ten that are turned away
12 and that's also a staggering number, it is
13 witness to the absolute need to provide
14 again, some kind of coherent way of dealing
15 with this. This is not something that we
16 can just leave and say gee, let's have
17 people just, you know, fend for themselves,
18 with the end result, is that society pays
19 the price. Both in terms of what it does to
20 the cohesiveness of the society and in terms
21 of the bottom line, that those people wind
22 up using the Social Services, that are so
23 costly and for a relatively small investment
24 I think the bottom line is also really we're
25 down to the benefit of the State. But first

1 and foremost, this is certainly a moral and
2 ethical obligation that we have, as a
3 judiciary and as a profession, and the
4 reason, and we have chosen to conduct these
5 hearings, and take a leadership role in this
6 is if not us who? If those who are
7 entrusted to provide equal justice to all,
8 all of us in the justice system, whatever
9 role we have, I'm not going to stand up for
10 that premise and that mission, who is? And
11 that's why these hearing are going to be
12 conducted. I believe in the end, we will
13 present to the Legislature the most
14 comprehensive report in the country on this
15 issue, chapter and verse, as to why it has
16 to be one of the priorities of our society,
17 and our government, and we are going to do
18 that in conjunction with the judiciary
19 budget request, and it is critically
20 important that and we were so pleased that
21 the Legislature did a joint resolution
22 endorsing the process that we've laid out
23 asking us to do that report, and asking us
24 how much money is needed, to close the gap
25 in civil legal services.

1 So, we have a full plate today, I
2 just want to introduce a few people, Judge,
3 my colleague, Victoria Grafio and I'm so
4 pleased she's here today sitting right up
5 front, Judge Malone, from the Appellate
6 Division, Judge Egan, from the Appellate
7 Division, and I'm so pleased that they are
8 all here today. And this is an important
9 event and being in Albany is particularly
10 important, and we have a full plate so what
11 I would ask the witnesses to do is, try to
12 stay on schedule. It's not necessary to
13 necessarily read your statement, by all
14 means you can, but we're trying to limit
15 each witness to approximately five minutes
16 and maybe five minutes of questions, but
17 don't get scared if the light comes on, it's
18 advisory and we're used to that here in the
19 Court, that but so we're trying to move
20 along. It's a very lengthy hearing and we'd
21 like to keep on time.

22 What is most important is we
23 would like to get the information that we
24 need to give our report to the Legislature
25 and I would also note that Judge Fern Fisher

1 the state wide Administrative Judge for
2 access to justice and the Deputy Chief
3 Administrative Judge in New York State,
4 Fern, where are you? Right over there. I'm
5 so pleased she's here and without any
6 further adeu let's get to our two witnesses.

7 Michael Breslin, the Albany
8 County Executive, and Kathleen Hogan the
9 District Attorney of Warren County. Hello.
10 We're so pleased to have both of you here.

11 MR. BRESLIN: Thank you very
12 much, Your Honor.

13 Judge Pfau, Mrs. Madigan, I'm the
14 County Executive and I'm here to define the
15 problems that we face in Albany County.

16 We're fortunate first of all to
17 have a number of exemplary civil legal
18 providers in the County, Legal Aid, Legal
19 Aid Project, Civil Justice Center,
20 Disability Advocates and Castle Program, all
21 of which contribute mightily to represent
22 people, but again, not enough. There are
23 over 50 lawyers that are employed by these
24 agencies providing these services. They are
25 providing services for those facing

1 homelessness, evictions, mortgage
2 foreclosure, domestic violence, old age,
3 disability claims. The Legal Aid is a
4 critical part of ours with the Department of
5 Social Services to prevent evictions or
6 forestall them to allow individuals to find
7 alternate housing, by making the process
8 work and giving them alternatives. The
9 intervention not only prevents individuals
10 from becoming homeless, but saves
11 significant tax payer dollars, by avoiding
12 stays in homeless shelters.

13 For example, in 2009 Legal Aid
14 forestalled evictions of some 75 families
15 and 27 individuals, with an estimated
16 savings to Albany County of \$702,000. As
17 well as a saving --

18 JUDGE LIPPMAN: County Executive,
19 let me stop you for a second, it's such an
20 important point that you're making. We
21 heard this testimony over and over again,
22 there's a feeling that gee, if we spend
23 money on civil legal services, it's still
24 another drain on our economy and what we
25 heard from people in the trenches like you

1 is that is exactly the opposite. By
2 spending the money on this, in the end, for
3 the local governments the state governments,
4 that the bottom line is an impact in a very
5 positive way.

6 MR. BRESLIN: That's correct. We
7 also do things with agencies like United
8 Tenants and other organizations that
9 actually counsel people beforehand to get to
10 them before legal type intervention that
11 maybe avoids the problem. But in the final
12 analysis, if that fails, there's a
13 significant money that we pay, as well as
14 where the people have to get bumped around
15 to -- in the homeless shelters because
16 that's not a nice place to be compared to
17 where people where being evicted from.

18 JUDGE LIPPMAN: And so beyond the
19 moral imperative?

20 MR. BRESLIN: Absolutely both.
21 In Albany County during 2008 which was the
22 last year we have real numbers for, there
23 were 5,986 petitions filed in the City of
24 Albany, coupled with Watervliet that amounts
25 to six thousand. Only three to four percent

1 of the tenants were being represented by an
2 attorney. While the majority of the
3 landlords in Albany, 55 percent Cohoes, 70
4 percent, Watervliet were represented by an
5 attorney. There's an approximate cost of
6 the Department of Social Services for
7 placements -- of individuals out of
8 evictions was a million six. Legal Aid
9 helps us in helping individuals with Social
10 Security disability benefits, their claims
11 both for SSI, and SSDI, were huge in Albany
12 County. They won 337 disability cases
13 generating over 400 thousand dollars, for
14 their clients. That is not only money --
15 client's money that's back to the community.
16 That is all part of our economy.

17 JUDGE PFAU: I would just add
18 the only -- the people that you are bringing
19 out that we heard before and when we focus
20 on representation in the courts and the
21 figures we talked about, there's a number of
22 people who appear without representation, so
23 much of the representation like you're
24 talking about, is before they get to the
25 Court. To avoid going to Court.

1 MR. BRESLIN: Yes, and in some
2 instances we do have other agencies that are
3 giving the non-legal stuff to make sure that
4 the people are doing what they've got to do
5 or if they really should be evicted or
6 ultimately will be evicted to find a place
7 to go. So the proceedings never happens,
8 but it's done in a way that the people get
9 to a better place.

10 JUDGE CARDONA: Do you have
11 conversations with the providers concerning
12 the people they can't represent because they
13 don't have adequate staff? Do you get
14 involved in that at all if they don't? My
15 understanding is they can't represent
16 everybody that has a need.

17 MR. BRESLIN: Providers in the
18 sense like social --

19 JUDGE CARDONA: I'm talking
20 about Legal Aid, Legal Services.

21 MR. BRESLIN: Absolutely there's
22 a finite amount of resources they have and
23 absolutely.

24 JUDGE CARDONA: That's a problem
25 because they don't have the resources, maybe

1 they or we can do a lot more in saving
2 money.

3 MR. BRESLIN: Absolutely.

4 There's no question of that and I mean, I'm
5 not going to sit here and say that every one
6 of those persons who is going to be evicted
7 needs legal representation or that it's
8 never going to happen, but there's a fair
9 measure of them that would, with legal
10 representation. We get to a much better
11 place and appropriately so not just to
12 delay, delay for the sake of delay.

13 MS. MADIGAN: Is there any sense
14 that a particular population of senior
15 citizens has far greater concerns at the
16 time of eviction, this -- that increase
17 costs or is there mitigation?

18 MR. BRESLIN: I don't know that
19 but --

20 MS. MADIGAN: County funds?

21 MR. BRESLIN: I don't know that
22 in the instance of the senior citizen that
23 will cost more because they're more frail
24 and likely into to need additional services
25 and the like. To say that's the problem is

1 focused more on seniors and I'm not able to
2 say that, but I will say when a senior it's
3 a much more, well, that and family with
4 young kids those too are the ones that cause
5 us the most distress and those are people
6 that generally wherever they have been,
7 they've been by their own volition and is a
8 better place that we can provide for them.
9 I mean we do our darndest.

10 JUDGE LIPPMAN: You do your
11 darndest at great cost and not necessarily
12 with something you desire.

13 MR. BRESLIN: In all cases where
14 they have been or are being pushed out, is
15 not going to be a better place. But we work
16 in that arena as well. And I'm not going to
17 have anything further with the specifics of
18 my testimony, but I mean I'm torn in these
19 times to figure out where does the money
20 come from? But I do know every time that we
21 have someone who generally needs those
22 services, that we get them off the margin,
23 whether it's their frailty or kids, and the
24 like, if we get them to a better place we're
25 all the better for it. Moreover as well as

1 dollars and cents those people bounce from
2 one -- from one thing to another and
3 another, and if we can get them in the first
4 instance, and I think that -- not only is it
5 legal aid in the sense of a lawyer assigned
6 to do a specific task, but it's other things
7 that we need to make sure that this will
8 those -- legal agencies that, it's United
9 Tenants is the biggest around in our area
10 who -- who sit down with people and find out
11 what the situation is, and not always to go
12 into Court, but to figure out, what the
13 better alternative is, but if necessary to
14 go to court, and judges have been very
15 receptive in allowing them to speak on their
16 behalf. We do very much need it and it
17 would benefit not only the individuals, but
18 all of us.

19 And I just say not simply dollars
20 and cents because, the alternatives,
21 ultimately are much more expensive in most
22 cases.

23 JUDGE LIPPMAN: Thank you County
24 Executive Breslin, I'm so pleased that
25 you're here today. I think it's important

1 that the people understand what the ground
2 level people like you are grappling with
3 every day, with the real problems that are
4 facing our citizenry.

5 MR. BRESLIN: Those are the real
6 numbers out of or Social Services Department
7 to define the alternatives.

8 JUDGE LIPPMAN: Thank you so
9 much. District Attorney Hogan so pleased
10 you're here today.

11 MS. HOGAN: Good morning, Your
12 Honor. Thank you for having me. I was very
13 honored when I was asked to speak here
14 today, because I am a career prosecutor. I
15 started in the Brooklyn D.A.'s office back
16 in 1988 and I can give you a perspective
17 from a metropolitan and rural viewpoint.

18 As the Warren County District
19 Attorney, someone from a small county, I am
20 a working D.A. and I handle cases. I see
21 day in and day out, a number of people who
22 are denied adequate civil legal
23 representation. And I specifically want to
24 share with you this morning the plight of
25 the domestic violence victim, survivor, I

1 should say. I see without a doubt, three,
2 four times a week, in a county that only has
3 65,000 people, that there is a strikingly
4 large number of the people who are going
5 into the Family Court arena without
6 representation. And I want to share with
7 you one case that we just resolved this
8 week. It started in January, on Martin
9 Luther King weekend, that Saturday night the
10 victim was beaten by her husband of seven
11 years and there has been violence throughout
12 the relationship. She was -- she had
13 substantial bruising around the face, she
14 never notified law enforcement, she took her
15 kindergarten daughter to school the
16 following Tuesday, and on the way to school
17 on Wednesday, the six year old said to her
18 mother, mommy, can you not bring me to
19 school any more? That child realized the
20 marks that were on her mother were
21 inappropriate and it was that moment when
22 that woman realized she needed to get out of
23 the relationship. She went to the Family
24 Court, and the Family Court judge was so
25 aghast at her physical condition, that he

1 said have you reported this to the police?
2 No, I haven't. He picked up the phone and
3 called me and said you need to begin a
4 criminal investigation. So it was that the
5 criminal court case started, and this
6 woman's the father-in-law, had money, he
7 hired an attorney for his son, and an
8 attorney for her. There was litigation,
9 there was a hearing, she was put through an
10 excruciating cross-examination, and I
11 question whether a Legal Aid attorney, would
12 have who is trained in the issue of domestic
13 violence, would have been a better
14 alternative for her. Because while she was
15 a person who had money, she did not have an
16 attorney that was experienced in that area
17 of law. Legal aid civil services in Family
18 Court give domestic violence, domestic
19 survivors a tremendous resource to be able
20 to withstand the Family Court proceedings,
21 where there is often a concurrent criminal
22 Court proceeding. In this particular case,
23 this woman went through such an arduous
24 cross-examination, that she literally made a
25 threat to her own life and said too I don't

1 want to go to forward with the criminal
2 case.

3 JUDGE LIPPMAN: Kate, District
4 Attorney Hogan, you make a --

5 MS. HOGAN: I prefer Kate, Your
6 Honor.

7 JUDGE LIPPMAN: Okay. This is
8 one justice system and I think sometimes
9 people fail to recognize how it is so
10 interrelated and the different parts of it,
11 and I think your testimony is so telling in
12 that regard, that it all fits together.

13 MS. HOGAN: Well, and I want to
14 commend the legal aid civil attorneys
15 because they do have expertise and I think
16 that more funding for them in the arena of
17 the Family Court, so that they can be the
18 advocate for whomever, whether it's the
19 mother or the father, and it doesn't have to
20 be someone who is a domestic violence
21 survivor, but it really is everyone who
22 comes into the Court system is supposed to
23 get a fair shake. You're not supposed to be
24 standing there on your own, and you surely
25 when you go in shouldn't have to run the

1 risk of losing your children because you
2 can't get counsel.

3 I had a chance to speak to one of
4 my colleagues here and she works in the
5 Family Court doing DV volunteer pro bono
6 that takes an enormous amount of time and
7 understanding these cases are -- that they
8 require an emotional stamina on the part of
9 the advocate and also an expertise, and I
10 think that it really is a disservice to
11 anyone who is put in the Family Court forum
12 that they're not, not given an opportunity
13 to file for civil legal services.

14 JUDGE LIPPMAN: What could be
15 more important when you are dealing with
16 your family, your safety, your very
17 well-being for you and your family?

18 MS. HOGAN: To echo what County
19 Executive Breslin said, there's a ripple
20 effect to all of this because if some child
21 is in an environment that is unhealthy
22 simply because that parent had the
23 wherewithal to have a better attorney in
24 Family Court, that child is not necessarily
25 going to be the citizen we need. I can see

1 early on in some of the kids in these
2 families that I suspect will become part of
3 the criminal justice system. And it's not
4 really something that is within their
5 control. The environment that they're in is
6 a dangerous one, so at the time when kids
7 are going to make maybe not so smart
8 decisions, a kid from that environment is
9 clearly going to have less of an ability to
10 make the right choice than other kids.

11 JUDGE LIPPMAN: I think it's fair
12 to say in so many areas of theoretically the
13 civil justice system, that the outcome of
14 not having legal services winds up giving
15 you a lot more customers later on.

16 MS. HOGAN: I would love to be
17 put out of business, I would, I want to
18 diminish my case loads and it's more
19 fundamental than wanting to -- to be
20 improving the criminal justice system when
21 you look in the eye of a woman who in this
22 particular case had seven years of a violent
23 marriage, and then she goes into the Family
24 Court, and she is not given a fair shake?
25 And that's what I said to her, you weren't

1 given a fair shake. Thank goodness we had a
2 great Family Court judge who saw right
3 through that and the right decision was
4 made.

5 JUDGE PFAU: We have heard at
6 the other hearings from that panel of
7 judges, talking about how difficult that is
8 to walk that line, not to be the advocate,
9 but to remain the judge, but yet when you
10 are in a situation like that with a victim
11 of violence, and you know that that victim
12 would be so much better served with legal
13 support.

14 MS. HOGAN: Exactly, Your Honor.
15 And I think that there is and again I want
16 to commend not just the Legal Aid Society,
17 but as in our county we have a domestic
18 violence community coordination counsel and
19 we have a lot of energy put into these
20 cases, to give emotional support to have a
21 domestic violence advocate. And we don't
22 have the critical component of an attorney,
23 as much as we want to be an advocate for the
24 domestic violence survivor, and if we don't
25 have someone in the well who knows the rules

1 of evidence, who knows what the Family Court
2 Act provides, who knows how to stand up and
3 argue or get the hearing adjourned so that
4 the witness is not so effected to sworn
5 testimony and cross-examination, that's
6 going to be later used in the criminal case.

7 JUDGE LIPPMAN: It would seem so
8 fundamental.

9 MS. HOGAN: It is fundamental, it
10 is fundamental and I think that is has an
11 enormous impact not just that quality of
12 that life, but in the community, because the
13 more we have people who are in a stable
14 environment --

15 JUDGE LIPPMAN: No question.

16 MS. HOGAN: Who have been handled
17 appropriately by the Family Court, I think
18 that the better off we all are.

19 JUDGE LIPPMAN: Societal
20 dysfunction, you know just, you know, is
21 counter to everything that we have to
22 achieve in our state, and in our government,
23 and it serves no ones interests and
24 certainly the lack of legal representation
25 contributes greatly to that. I think people

1 who sat in Family Court, and Judge Cardona
2 has a really good sense.

3 MS. HOGAN: Yes.

4 JUDGE CARDONA: I appointed an
5 attorney for everybody, and Mike used to pay
6 it.

7 MR. BRESLIN: I did.

8 MS. HOGAN: Thank you, Your
9 Honor.

10 JUDGE LIPPMAN: There's no
11 question, it's so fundamental.

12 JUDGE CARDONA: It's so
13 fundamental. People don't know, it's a
14 matter of fairness, we've got to do the
15 right thing.

16 MS. MADIGAN: And of course the
17 Family Court does have the discretion to
18 appoint counsel for the child. Does that
19 occur in your community?

20 MS. HOGAN: Yes it does, and the
21 issue isn't, I mean, I think that our Family
22 Court is doing a tremendous job, under very
23 adverse circumstances. Any time I walk down
24 into the Family Court I'm amazed at the
25 volume of the people that are there. The

1 waiting room is overflowing. This is one
2 area in the judicial system that I think
3 needs to be really funded in a much greater
4 way, and I am sure my colleagues in the
5 D.A.'s Association are going to be saying
6 what are you talking about, but it's the
7 Family Court.

8 JUDGE LIPPMAN: Without question
9 Kate.

10 MS. HOGAN: Is the need for more
11 funding.

12 JUDGE LIPPMAN: District Attorney
13 Hogan, thank you so much. And County
14 Executive thank you. You have been very
15 helpful and we appreciate your coming down.

16 Okay. Okay. Next we have a
17 panel of laymen of community leaders, Dennis
18 Hughes, Denise Berkley, Patricia Bentley,
19 Earl Eichelberger and Steven Longo. Would
20 you come up and sit at the witness table
21 please? I appreciate your all coming in, as
22 non-lawyers, don't get nervous. The white
23 light means theoretically you have two
24 minutes left. The red light means your time
25 is up, but we're not going to yank you off

1 the witness stand, just relax. Let's first
2 take the president of the New York State
3 AFL-CIO, Dennis Hughes.

4 MR. HUGHES: Good morning. My
5 name is Dennis Hughes and I'm the President
6 of the 2.5 million member New York State
7 AFL-CIO. I'd like to extend my thanks, my
8 thanks to Judge Lippman and today's panel,
9 for the opportunity to present my point of
10 view on this most important and urgent
11 issue.

12 My organization represents
13 working men and women from every sector of
14 our work force. Our members are the
15 backbone of the city, town and neighborhoods
16 and communities in the state, and as such we
17 are acutely aware of the effect political,
18 social and economic policies have had on the
19 every day lives of working people. It's my
20 belief that unmet civil legal services
21 throughout the state can be traced to public
22 policy decisions carried out over the last
23 three decades. These policies have greatly
24 influenced the lives and have negatively
25 impacted the lives of most men and women who

1 need these services the most. As a result,
2 most remaining businesses have latched onto
3 a race to the bottom, lower wages, reduced
4 health care and defined contribution rather
5 than defined benefit pensions that have
6 become the norm. While this strategy may
7 result in short term gains for those
8 employers, the economy as a whole falters.
9 As corporate profits may rise, workers have
10 less money in their pockets to spend and as
11 such small business overall suffer as a
12 result of fewer customers. The municipal
13 and tax base decreases and the sales drop
14 off. When these policies fail, we end up
15 with this low wage, high debt society. The
16 less money to spend most people rely on
17 borrowed money. So there is more credit
18 card debt and an increase in home equity
19 loans and as people go deeper into debt it
20 becomes -- it is increasingly more
21 difficult, to get out. They lose their
22 homes, their assets, and have nothing to
23 fall back on, and need good legal
24 representation more than ever.

25 JUDGE CARDONA: People that are

1 working, people out there working, they can
2 make 30, \$40,000, they have difficulties
3 getting access to the system, but I think
4 that's what you're talking about.

5 MR. HUGHES: That's what I'm
6 talking about, without going through this to
7 the end, you know we used to do most of the
8 legal -- a lot of the legal services that
9 working men and woman receive is through
10 their benefits structure and we have legal
11 service plans and other things of that
12 nature, that to a great degree come from
13 public employment as well as Taft/Hartley
14 funds and others. We've seen a tremendous
15 decrease in the extension of that benefit.
16 You know, when you go into the negotiation
17 and agreements, that's one of the first
18 things you let go because you're looking to
19 hold on to the benefits of health, pension
20 and wages. So, even as we have people
21 working at diminished levels, they have much
22 more need for legal aid.

23 JUDGE PFAU: Are you seeing
24 increased needs?

25 MR. HUGHES: I am.

1 JUDGE PFAU: Both across the
2 types of things that are needed,
3 foreclosures?

4 MR. HUGHES: Eviction,
5 foreclosure all the -- even so far as Wills
6 and Judge again legal services that people
7 put off over time because they don't have
8 the money to do it, and then when they get
9 into that situation it becomes a large legal
10 way to get out.

11 JUDGE LIPPMAN: Also part of this
12 puzzle, for a lot of people they think of it
13 as totally the indigent and then people that
14 can afford and there really is that in
15 between group that often is, as you said,
16 particularly in difficult times, what we
17 would categorize as the working poor to some
18 degree, and I know the Capital Women's Bar
19 and the legal project that targets that
20 particular group for pro bono efforts, but
21 it really is a problem. People who may be
22 working, but literally just getting by and
23 you get into a legal situation and it
24 involves things that are fundamental to
25 life, and you just can't afford it.

1 MR. HUGHES: And you can't afford
2 it. And these are about people that have
3 just stepped on the first ladder, you know
4 to the middle class, to some semblance of
5 economic security, an entry level, I would
6 say union jobs, public employment jobs that
7 are, they pay -- that's the 30 to 50,
8 \$50,000 if you are lucky and that type of
9 thing and that's the -- what they are really
10 what -- what we're talking about here. And
11 we have become more litigious in the way we
12 do business here and people have that need
13 of legal services or access to good legal
14 advice more than ever.

15 JUDGE PFAU: Its interesting in
16 Rochester talking about education and
17 hearing about the need to have a lawyer to
18 navigate the public education system.
19 Something as basic as that.

20 JUDGE LIPPMAN: And to navigate
21 the health system and all the others.

22 JUDGE PFAU: So you want to get
23 the basic services you're entitled to.

24 MR. HUGHES: Just to end up here
25 without taking more time, we realize the

1 situation, we're in here, this is a change
2 to the economy with needs that we've never
3 seen before. And it's very important to all
4 of us, to the State of New York, to my
5 members, to communities to everyone, that we
6 develop a mechanism where we have sure and
7 reliable funding for legal services in this
8 state. It is -- it's one of the things that
9 we must do as we move forward.

10 JUDGE LIPPMAN: Thank you so
11 much. I think you've identified the right
12 words, sure and reliable, consistent,
13 stable, funding that you can rely on because
14 really what happened in the IOLA crisis in
15 New York State highlighted for all of us the
16 problem when you are relying on unstable
17 sources of the funding where the interest
18 rates for obvious reasons in this economy
19 have gone way down and lawyers accounts, and
20 that particular problem threatened to close
21 down and some legal services providers, as a
22 direct reflection in the economy, rather
23 than if you had stable, consistent public
24 funding, that you know is going to be there,
25 in particularly difficult economic times.

1 MR. HUGHES: Can I say one more
2 thing if I can?

3 JUDGE LIPPMAN: Sure.

4 MR. HUGHES: Judge that we also
5 are fortunate to have a large membership
6 that are the lawyers, that actually perform
7 these services and you know it's hard to
8 hold on to competent people over a long
9 period of time when the funding goes up and
10 down and you don't know where you're going.
11 There's many parts to this, but not only do
12 we want legal representation, but we want
13 the best legal representation we can get and
14 we want to attract the best attorneys that
15 we can. So that's another aspect of the --
16 it's not sp much the level which we would
17 like to see much higher, but the
18 consistency.

19 JUDGE LIPPMAN: Okay. Thank you
20 so much, we appreciate your coming in.
21 Denise Berkley, the state wide secretary for
22 the Civil Services Employees Association,
23 CSEA.

24 MS. BERKLEY: Good morning, Your
25 Honor. Good morning. I'm honored to be

1 here this morning. My name is Denise
2 Berkley, and I am the state wide secretary
3 of the Civil Service Employees Association,
4 CSEA, New York's leading union.

5 As a union representing working
6 men and women and unions with a strong
7 commitment to community, CSEA is pleased to
8 offer its support for increased access, to
9 the legal services in New York State. CSEA
10 represents 295,000 New York State local,
11 municipal, County, state and private sector
12 employees and as a labor union, we hold
13 these values, as our working principles,
14 honesty, inclusiveness, full participation,
15 diversity, open communication,
16 accountability and fiscal responsibility.
17 We share these principles with the Office of
18 Court Administration and legal community.
19 Only when these principles are observed will
20 all New Yorkers have equal access to the
21 justice system.

22 While CSEA provides access to
23 free representation in most labor and
24 employee related disputes, it has as a
25 benefit to members to provide access to a

1 discounted legal service plan, many of our
2 members will find hiring any private
3 attorney, to be a prohibitive cost. Many
4 are eligible for free civil legal services.
5 For example, a family of four with an annual
6 gross income of \$44,100, would well be
7 eligible for free civil legal services. The
8 average salary, the average salary, of a
9 CSEA member is below \$40,000, a year. CSEA
10 is well aware of the many situations in
11 which there are not enough civil legal
12 services lawyers, to provide much needed
13 representation.

14 JUDGE LIPPMAN: And these are the
15 very people who are turned away often.

16 MS. BERKLEY: Exactly.

17 JUDGE LIPPMAN: Because they
18 don't have the funding to do it and that's
19 the problem and what we're trying to do is,
20 quantify what is the unmet need, and where
21 it is, what kinds of cases, what areas of
22 the state, and the dollars involved.

23 MS. BERKLEY: Yes.

24 JUDGE LIPPMAN: Because again for
25 every person there are just, there are

1 estimates all the way ranging from up to 8
2 to ten are turned away, whatever you want to
3 accept.

4 MS. BERKLEY: There are so many
5 that need the legal services providers, that
6 aren't able to meet the significant need.
7 Just what we just saying for civil legal
8 services with respect to the domestic
9 violence, and family law, foreclosure, and
10 threatened homelessness, senior citizens
11 needing representation, who try to maintain
12 an independent life. And we are aware that
13 the CSEA members throughout the state have
14 benefited from the limited legal services
15 program that exists and now indeed later
16 this morning, one of our members the Court
17 will hear from, Dorothy Medina, a CSEA
18 member who has been represented by the Legal
19 Project, in Albany New York.

20 JUDGE LIPPMAN: Just what we are
21 talking about, the working poor?

22 MS. BERKLEY: Exactly.

23 JUDGE LIPPMAN: Who can't afford
24 attorneys.

25 MS. BERKLEY: Exactly.

1 MS. MADIGAN: Do your members
2 find that if their civil and legal needs are
3 not being met and that that also results in
4 an increase in absenteeism and you add to
5 the cost of --

6 MS. BERKLEY: All of that adds to
7 the cost because there's an effect, how can
8 I come to work when I have other issues, I
9 have to deal with. It will cause
10 absenteeism and all the other areas that we
11 have to deal with. So it's an effect -- it
12 effects a domino effect.

13 JUDGE LIPPMAN: You've also got
14 a situation where people who are working
15 spending time in legal situations that don't
16 continue working that become a burden on
17 society rather than someone who has income.

18 MS. BERKLEY: That can't come to
19 work.

20 Yes.

21 JUDGE LIPPMAN: Yes.

22 MS. BERKLEY: Okay. Thank you.
23 Thanks so much.

24 Thank you.

25 JUDGE LIPPMAN: Our next speaker

1 is Patricia Bentley.

2 MS. BENTLEY: Thank you. Chief
3 Justice and members of the panel and
4 distinguished members of the audience, I
5 want to thank you for the invitation to
6 speak here about NYSUT support for legal
7 services throughout the state. I live in
8 the north country, and so I'm particularly
9 interested in access to --

10 JUDGE LIPPMAN: Explain what
11 NYSUT is?

12 MS. BENTLEY: New York State
13 United Teachers and I go on to stay that,
14 but New York State United Teachers. I'm
15 honored by the opportunity to be here. I
16 serve on the board of the directors of the
17 New York State United Teachers as a
18 representative for United University
19 Professions, which is the state-wide union
20 representing over 34,000 academic and
21 professional members working in state
22 operated campuses in the State University.
23 I just completed a six year term on the
24 national counsel of the American Association
25 of University Professors, and I wanted to

1 note that Judge Lippman's important 2010 law
2 day remarks, described a vision for the
3 future, of an unprecedented coalition of
4 judges and legal services providers, law
5 colleges and Bar groups who will work
6 together to secure permanent funding for
7 civil legal services. I'm hopeful and
8 confident that under your leadership New
9 York will realize that vision. So, I'm glad
10 to add labor's voice to this whole issue
11 seeking funding to increase access to
12 justice and I want to assure you that NYSUT,
13 takes its mission very seriously and among
14 the principles of our mission that tenent
15 that we work to improve the personal lives
16 of our members and their families, to
17 strengthen the institutions in which we work
18 and to further the cause of social justice
19 through the trade union movement.

20 I mentioned my work at the State
21 union level, my State wide work is very
22 important to me, but like all union members,
23 I live and work in a community that I care
24 deeply about. I have been a librarian at
25 SUNY Plattsburgh since 1977, I own a home in

1 Plattsburgh, and I'm a Rotarian and I'm an
2 elected member of the Plattsburgh City
3 School Board and I'm also the Vice President
4 of the Rural Law Center Board of Directors.

5 JUDGE PFAU: So you see the
6 tentacles of this in all of these different?

7 MS. BENTLEY: In a variety of
8 aspects, my services on the School Board
9 that's informed my union work, my union work
10 has informed that, my work with the Rural
11 Law Center has been extraordinary in
12 bringing me to a level of understanding and
13 I've also taken mediation training, so --

14 JUDGE PFAU: And what we have
15 been hearing in all of these different
16 areas, is really the crux has to be, a
17 consistent, stable funding stream, and
18 you're feeling that in your community?

19 MS. BENTLEY: As a matter of fact
20 I'm now running for City Council so, I do
21 take civil possibility and involvement
22 seriously and I understand the privilege
23 that I have as a union member, and a member
24 of the faculty of the State University. In
25 terms of that, NYSUT to further define that

1 has over six hundred thousand members in
2 every community across the state which makes
3 us available and observant in every
4 community. There's not a community in New
5 York State that doesn't have a school.
6 There's hardly a community that doesn't have
7 a NYSUT member. We represent teachers,
8 college faculty and professionals, school
9 bus drivers, custodians, secretaries,
10 cafeteria workers, work teacher assistants,
11 nurses, health care technicians and most
12 recently affiliated with my union, life
13 guards. Like me our members have deep roots
14 in the local community. We're an integral
15 part of New York social and educational
16 fabric and see what happens to families in
17 economic crisis and we see the members lose
18 employment, but we also see as public
19 servants what happens to all those in our
20 community who are in financial and legal
21 crisis. We are aware that in this economic
22 climate, as you stated already, families in
23 our communities constantly face issues like
24 homelessness, domestic violence, predatory
25 lending, foreclosures and denial due to our

1 ignorance of access to public benefits.
2 Naturally the labor movement cares about
3 jobs and employment, but we also care what
4 happens when someone loses his or her job
5 and cannot find another. I'm privileged, my
6 union membership entitles me to reduced
7 rates to legal services and I need just to
8 call my union representative, and I can have
9 access to an attorney, usually at at a group
10 rate. That person can represent me, advise
11 me and fight for my rights. Having a right
12 to legal counsel is the foundation of social
13 justice. Even if I did not have this union
14 benefit, I can afford to hire an attorney if
15 indeed I need to have one. This is not the
16 case for most low income New Yorkers and
17 many of our lower paid members. The only
18 defense against homelessness or illegal debt
19 collection, is a legal services attorney.
20 When a victim of domestic violence can only
21 be truly legally free from her batterer
22 through a divorce, it's a legal services
23 attorney who stands by her in the divorce
24 process. With a funding shortfall for legal
25 services in New York, IOLA, many of the

1 families in crisis have no one to turn to
2 and where's the foundation for social
3 justice for these people? What's the safety
4 net for children, woman and men? There are
5 other serious crisis that demand an attorney
6 as people lose their jobs and former
7 employers deny them the right to
8 unemployment insurance, it's a legal
9 services attorney who will fight for them to
10 gain that benefit. In fact, it is primarily
11 legal services attorneys who are trained in
12 the complexities of accessing all legal
13 benefits. In my own sector, higher
14 education, we see an exponential increase in
15 the number of qualified interested members
16 in part time contingent employment, who are
17 not only not employed with little notice,
18 but often are determined to be ineligible
19 for unemployment insurance due to laws
20 passed in the 1930's.

21 JUDGE LIPPMAN: Let me interrupt
22 you, when you talk about higher education we
23 heard testimony in Rochester, in
24 particularly community colleges, that you
25 get kids who are really on the cusp of

1 becoming useful members of the society who
2 use this gateway.

3 MS. BENTLEY: Absolutely.

4 JUDGE LIPPMAN: To get into legal
5 problems, that need representation and there
6 was a lot of testimony about when they don't
7 get that they then fall out just at the
8 point when they get over that hump and start
9 to earn a living, and wind up again being a
10 burden on society. Do you think that's
11 something that resonates with you.

12 MS. BENTLEY: It certainly does.

13 JUDGE LIPPMAN: At that level in
14 life, where you're just trying to, get your
15 education?

16 MS. BENTLEY: Certainly. Many of
17 our students, we have now over 400 Houseman
18 students in the statewide network, but in my
19 own experience, at the State University, we
20 have a couple of community colleges nearby,
21 often students at that age the traditional
22 age of eighteen to 24, but some are even
23 adults, do find themselves unable to meet
24 the obligations for their tuition and fall
25 in arrears, and can't continue their

1 education or --

2 JUDGE LIPPMAN: Drop out.

3 MS. BENTLEY: Drop out. They
4 become part time students, so they're really
5 kind of destined to continue in part time
6 under unemployment or low wage employment.
7 Some of our Social Services changes over the
8 last decade and a half, have also had some
9 serious bearing, on how persons on Social
10 Services can enter a higher education and
11 achieve a career or Bachelors degree. You
12 know when I think, there's little doubt,
13 that that degree a Bachelors or an
14 Associates degree doesn't give you a step
15 up, and a much higher earning potential in
16 your lifetime.

17 JUDGE LIPPMAN: Thank you.

18 MS. MADIGAN: Would you speak a
19 little bit about the unique challenges that
20 you face in your rural area in terms of
21 transportation? You mentioned in your
22 testimony particularly children and
23 transient families?

24 MS. BENTLEY: Exactly, and that
25 is something that came to me as a school

1 board member, it was something I was totally
2 unaware of and if you don't mind I'll just
3 summarize it or read it here. As a
4 Plattsburgh city school member we strive to
5 have the school programs that meet every
6 child's needs and capacity. We take pride
7 in our schools and their success, and I was
8 troubled that one of our schools was
9 identified as in need of improvement, when I
10 thought, all was well. A major factor in
11 identifying this finding was the number of
12 transient students who I assumed and I have
13 to admit to being ashamed of my
14 stereotyping, were the children of the
15 migrant seasonal workers who help bring in
16 our abundant crops of apples and other
17 produce which is not so transient, and in
18 our schools are those from families at
19 poverty level or below and perhaps on public
20 assistance, who live in area camp grounds or
21 parks in the Adirondacks during warmer
22 weather and move to Plattsburgh when the
23 weather becomes too cold to continue
24 camping. Children in these families are
25 routinely pulled from one school to another,

1 on a seasonal basis, as often as four to
2 five times in an academic year and if these
3 students need special services, special
4 education, which we strive to provide during
5 the Summer as well, that number may rise
6 again. It could be six times in a given
7 year. My school district and those around
8 us sometimes cobbled together transportation
9 and informal arrangements to get students
10 stable educational services, but
11 transportation local boundaries, state
12 funding and education law makes that
13 difficult. That is, when a student moves
14 from the Plattsburgh City School District to
15 the Peru School District because they're
16 able to stay in a privately owned camp
17 ground, perhaps with a pop-up trailer, they
18 move to another school district, and we
19 don't have a county wide transportation,
20 system. So one locating a student is
21 difficult, picking them up and getting them
22 to the school district is also hard, and the
23 school districts each have their own funding
24 based on a state education formula. Having
25 that student and have continuity of

1 education in one school district, is almost
2 impossible given the geographic and
3 demographic conditions in rural areas like
4 Clinton County and the Adirondacks. I think
5 that probably to summarize it as much I do
6 want to say that I believe that assuring
7 access to justice, and especially justice in
8 rural New York where population, distance
9 and demographics mitigate against access we
10 signal our commitment to social justice by
11 supporting State and federal rights and I
12 know that the members of New York State
13 United Teachers are committed to stable,
14 good education and in every one of our
15 communities regardless of the population.

16 It is hard, we see families and
17 students in these critical times
18 increasingly unable to come to school, come
19 to school distracted, perhaps even abused,
20 and while there are legal options for that,
21 if they're constantly moving or --

22 JUDGE LIPPMAN: It's very hard to
23 latch onto.

24 MS. BENTLEY: They're not getting
25 the education they need to be successful.

1 JUDGE LIPPMAN: Thanks so much.

2 MS. BENTLEY: Thank you.

3 JUDGE LIPPMAN: Earl

4 Eichelberger, Director of Catholic

5 Charities.

6 MR. EICHELBERGER: Good morning.

7 It's a pleasure to be here this morning. I

8 serve as the director the Catholic Charities

9 and New York State Catholic Charities

10 conferences, and we have a presence in all

11 62 counties in the state. We represent the

12 Catholic Bishops, and in all 8 dioceses in

13 matters of public policy.

14 Catholic Charities is the largest

15 non-profit provider of education, health

16 care and human services in the state. Two

17 years ago, Catholic Charities provided

18 services to one million persons of all

19 faiths, and of all age categories in the

20 state. We work closely with the 7.3 million

21 parishioners in churches across the state,

22 and in the fifteen hundred Catholic

23 parishes. We worked in recent years with

24 those who were trying to get a

25 standardization of services in public

1 defender offices across the state, trying to
2 set up a public defender commission and that
3 was something that we have been involved in,
4 in the Criminal Justice Project. And
5 recently we became aware of the even more
6 disparate services available in this arena,
7 those who need representation in civil
8 matters. We wanted to join and support this
9 effort, we have seen where Catholic
10 Charities has provided services to
11 individuals in rural areas and in urban
12 areas, and tried to avoid them being
13 rendered homeless as a result of the --

14 JUDGE LIPPMAN: Do you have
15 connections? How do you get parishioners to
16 -- over to legal service providers? How
17 does that happen and what are the
18 difficulties in doing that?

19 MR. EICHELBERGER: Well, Catholic
20 Charities in most areas gets involved
21 through referrals from the parish priest in
22 some instances.

23 JUDGE LIPPMAN: Then you connect
24 them to the providers in your county?

25 MR. EICHELBERGER: Yes, in Bath,

1 New York we have a project that I mentioned
2 in the testimony, where Catholic Charities
3 worked with rural New York and they provided
4 some of the social services, some of those
5 support services that individuals needed, to
6 avoid eviction or foreclosure, and then
7 legal services picked up and worked with
8 them.

9 As I noted in the testimony, they
10 have recently had their funding cut and they
11 were not be able to provide the services, at
12 the level they have in past.

13 JUDGE LIPPMAN: And all over
14 rural New York these run the gamut of legal
15 service providers who are really just
16 getting by, literally case to case, lawyer
17 for lawyer, and your average parishioner is
18 not necessarily able to connect?

19 MR. EICHELBERGER: That's true.

20 JUDGE LIPPMAN: To a provider
21 that will take them?

22 MS. MADIGAN: These services
23 aren't just for parishioners or it's a wide
24 based community services?

25 MR. EICHELBERGER: Yes.

1 Catholic Charities services all
2 individuals who come to their door, and who
3 the majority of them are not from parishes
4 necessarily. Brooklyn is the largest
5 Catholic Charities agency in the country,
6 and they serve all those, those individuals,
7 mainly the poor and vulnerable members of
8 the community.

9 JUDGE PFAU: Are you finding
10 that the parishioners that you're trying to
11 help that you are referring to legal
12 services are they able to get the services
13 they need, the legal services they need or
14 is there a lack of funding problem?

15 MR. EICHELBERGER: Often they are
16 not. Often there just aren't enough
17 services available, to meet the demand that
18 exists.

19 JUDGE CARDONA: Any particular
20 type of case that you've seen more than
21 that, where the needs are not being met?

22 MR. EICHELBERGER: Yes. In
23 recent years I think the housing problems
24 have surfaced, but there are domestic
25 violence cases, as have been previously

1 noted. They're also those instances where
2 involved in the Family Court. And in a
3 previous life I worked for the Division For
4 Youth and spent many a day in Family Court
5 where the individuals were represented by
6 Law Guardians, but that seems to be a
7 diminishing resource right now. And the
8 child may have a representative, but the
9 parent is often without representation.

10 MS. MADIGAN: You mentioned in
11 your submitted remarks about the
12 preventative programs you have been able to
13 put in place in some locations around the
14 state, particularly in regard to foreclosure
15 and what's the situation in terms of funding
16 for those programs that tend to be primarily
17 urban based programs?

18 MR. EICHELBERGER: There
19 throughout the state the programs that I
20 mentioned specifically in Bath, New York
21 which is a rural community.

22 MS. MADIGAN: Right, and are they
23 looking at significant funding cuts?

24 MR. EICHELBERGER: They are. As
25 County Executive Breslin mentioned United

1 Tenants here in Albany is a program we
2 support and they have experienced a similar
3 kind of cut, half of their funding has gone
4 away, because --

5 MS. MADIGAN: So much for the
6 ounce of prevention.

7 MR. EICHELBERGER: Yes.

8 JUDGE LIPPMAN: Okay.

9 MR. EICHELBERGER: Thank you.

10 JUDGE LIPPMAN: Thank you. We
11 appreciate it. Steven Longo, the Executive
12 Director of the Albany Housing Authority.

13 MR. LONGO: Thank you Chief
14 Justice Lippman. My name is Steven T. Longo
15 and I'm the Executive Director of the Albany
16 Housing Authority and I've served as the
17 director since 1990.

18 The Housing Authority here owns
19 and operates 24 hundred units of subsidized
20 housing. We also administer housing
21 rehabilitation programs, valued at 2.5
22 million dollars annually and we administer
23 the city Section 8 program, which subsidizes
24 over 2,200 additional households in the City
25 of Albany. The housing authority also

1 administers four privately financed home
2 ownership programs. So we're more than
3 providing housing, today we are offering
4 families a foundation they can use to build
5 successful lives inspiring the best in self
6 and in community through quality rentals and
7 home ownership and small business
8 opportunities. Again we're honored to
9 provide testimony to Chief Judge Lippman and
10 presiding Judge Anthony Cardona and to the
11 other respected members of the panel and we
12 thank you for convening this hearing in
13 Albany.

14 We have been very fortunate over
15 the years to partner with community
16 organizations including the Legal Aid
17 service providers, in order to fulfill our
18 mission to lead the community, with
19 professionalism and spirit in providing
20 quality housing for a diverse population of
21 the community and maximize social and
22 economic opportunity. As the largest
23 landlord in the City of Albany the housing
24 authority --

25 JUDGE CARDONA: You may be the

1 largest landlord in the City of Albany, but
2 from reading your testimony, it seems to me
3 that you're more interested in doing the
4 right thing, that you have seen through your
5 twenty years of experience, that mistakes
6 can happen, people need representation, and
7 we need to provide that. And I would like
8 to applaud you for that. In fact what do
9 you see, how many people are we meeting
10 their needs, what is the -- can we look at a
11 percentage? You're pretty specific as to
12 what your area is, is it really a battle?

13 MR. LONGO: Well, I feel strongly
14 that public housing in Albany is not housing
15 of last resort, our housing often in
16 neighborhoods is -- we are the best housing,
17 and we are very desired. We have 5,000
18 people on our waiting list, and when I go to
19 tenant association meetings and talk to the
20 resident population, their biggest concern,
21 is protecting them from, you know, making
22 sure that we're not knowingly letting
23 criminals in or letting existing residents
24 buy illegal trades, so they want to be safe
25 in their homes. So consequently the housing

1 authority adopted a very aggressive lease
2 enforcement campaign, and there are
3 standards to stay in public housing.

4 JUDGE CARDONA: If there should
5 be a problem, if a resident in the
6 particular apartment shouldn't be there, and
7 you move pretty aggressively?

8 MR. LONGO: Yes.

9 JUDGE CARDONA: Unless you have
10 an attorney, representing the tenant bad
11 things can happen?

12 MR. LONGO: Exactly.

13 JUDGE CARDONA: And you
14 recognize that?

15 MR. LONGO: And I don't think
16 anybody wins in that circumstance. They
17 would get pushed to the homeless provider
18 network which is already over burdened, and
19 whereas if a Legal Aid attorney was to come
20 in and stand shoulder to shoulder with the
21 housing authority counsel and work this out
22 and find ways to overcome the obstacles, and
23 allow them to stay, get the services they
24 need, and stay and not go into the homeless
25 situation, not causing the Housing Authority

1 the tremendous expense to turnover the
2 apartment, it's a win win for all of us.

3 JUDGE LIPPMAN: And so
4 interesting and instructive you're here
5 testifying, and when we were in New York, we
6 had the biggest real estate, rent
7 stabilization association, that came and had
8 exactly the same viewpoint that you did,
9 that it's in nobody's interests, for these
10 people not to have legal representation.
11 The consequences for everybody, socially,
12 morally, bottom line, it hurts everybody,
13 that people without legal representation,
14 it's just a mess. It's destabilizing for
15 society from the housing authority here in
16 Albany to the rent stabilization association
17 in New York City, it is really striking that
18 you're all on the same page in relation to
19 this issue, where it's counterintuitive that
20 you think that the landlord is interested in
21 gee, you know, they have a problem, a legal
22 problem, let's get them out of there and
23 that's not the best result whether you are a
24 profit making entity or whether you're the
25 Albany Housing Authority.

1 MR. LONGO: We also deal with the
2 legal service clinic before it gets to
3 eviction. Several nights during the month,
4 pro bono attorneys and other attorneys meet
5 at the Housing Authority and do free
6 consultations to residents that have all
7 types of issues that if they're not
8 addressed, they would be in the eviction
9 process and they could conceivably be
10 homeless.

11 JUDGE LIPPMAN: I join Judge
12 Cardona in applauding you as a public entity
13 too for taking that position, you're looking
14 at it from a holistic viewpoint rather than
15 a narrow landlord perspective.

16 MR. LONGO: Right. We want to be
17 fair.

18 JUDGE PFAU: You talked about
19 using pro bono attorneys and that they have
20 been so generous in their time, pro bono
21 time and for information to avoid going to
22 Court, is it your experience that this
23 wonderful pro bono effort is enough? Are
24 they meeting this kind of need you're seeing
25 among the tenants?

1 MR. LONGO: No, there's a long
2 wait. And I think in fact, you know, it
3 would be if more attorneys and we had more
4 of the evening law clinics that people are
5 there dealing with all types of issues in
6 employment and matrimonial and things that
7 often times without getting advice of an
8 attorney overwhelm them, and sometimes force
9 them and it's not always eviction for cause
10 and it's eviction for non-payment. 90% of
11 the time because of adverse conditions, that
12 are effecting people's lives that they fall
13 off the budget and one of the things that
14 gets behind is rent and the bottom line is
15 that the Housing Authority has to make its
16 payments, and rent is essential to be paid
17 and we pay on time.

18 JUDGE CARDONA: I think in the
19 Third Department that and I think and I'm
20 not here to testify, but the pro bono
21 efforts in the Third Department the
22 attorneys, really they contribute greatly to
23 the pro bono, but it's really, it doesn't
24 touch it, it's not enough. We have made
25 great improvements, our administrative

1 offices has a great of improvement in
2 getting more and more attorneys to
3 participate. We had numerous programs, the
4 Department, CLE's and all of that, but the
5 bottom line, there is not just not enough.
6 And people their needs, are not met, and
7 it's time that we do something more
8 aggressive. I would think I heard that only
9 about 20 to 25 percent of the people, that
10 need legal services actually get them, if
11 that figure is accurate, that's a pretty sad
12 thing for our State.

13 MS. MADIGAN: I heard it's as
14 low as fifteen and more recently ten
15 percent.

16 JUDGE CARDONA: Now I feel worse
17 than I did when I walked in.

18 MS. MADIGAN: The loss of a home
19 can be just as devastating as the loss of
20 freedom, but yet the Constitutional
21 protection of Gideon does not extend to loss
22 of your shelter.

23 MR. LONGO: And often times one
24 precedes the other and loss of employment,
25 and then to be going on a job interview and

1 not being able to tell the employer, you
2 have a stable address, is almost certain
3 that you're not going to get the job. It
4 comes back to stability of the home.

5 JUDGE LIPPMAN: Well, I thank the
6 panel, and one of the things that obviously
7 the task force is focusing on is trying to
8 quantify what that is. These hearings are
9 all about that and I thank you all for
10 contributing. I appreciate it. Thank you
11 for coming and our next panel will be a
12 judges panel of the Honorable Judith O'Neal,
13 Honorable Mark Powers, Honorable Michael
14 Conway, and Honorable Helene Heath Row.

15 Now we're turning the tables on
16 the four of you. The lights will come on,
17 so be timely.

18 MS. MADIGAN: I'm really
19 enjoying this in particular.

20 JUDGE LIPPMAN: Okay. Why don't
21 we start with Judge O'Shea, who is the
22 former Administrative Judge from the Sixth
23 District and -- and is from the Supreme
24 Court in Chemung County.

25 JUDGE O'SHEA: Thank you, Judge

1 Lippman and Judge Cardona, Judge Pfau, Ms.
2 Madigan, thank you for this opportunity to
3 comment on the impact that unrepresented
4 litigants have had on our court system.

5 My observations come from working
6 in the Courthouse in the 6th Judicial
7 District over the past thirty years.

8 JUDGE LIPPMAN: Including the
9 Family Court.

10 JUDGE O'SHEA: I was 9 years in
11 the Family Court bench in Chemung which is
12 one of the busiest Family Courts in that
13 district, I've completed 11 years in Supreme
14 Court, eight of which I also worked as the
15 AJ, and I also worked as a court attorney in
16 Schuyler County, a very rural county for the
17 three latter judges of which are Family,
18 criminal Court, Surrogates Court judge so I
19 feel that I have a good basis for the
20 comments I'm about to make.

21 There's no question and you all
22 know that the volume of cases in our courts
23 has expanded tremendously. The complicity
24 of the cases the numbers go up and up and
25 up. It's also quite apparent that the

1 number and the percentage of the
2 unrepresented litigants on those cases is
3 also increasing dramatically. I had the
4 Chief Clerk in Chemung pull the numbers for
5 me and in 2006 she tells me that there was
6 74 cases filed in the Supreme Court that had
7 one party, as an unrepresented litigant.
8 That represented 8 percent of the total
9 filings in the Supreme Court of that year.
10 In the first 9 months of this year, 2010,
11 there has been over -- 178 cases with one
12 party self-represented and that represents
13 almost 30% --

14 JUDGE LIPPMAN: 8 percent to 30?

15 JUDGE O'SHEA: 8 percent to 30.

16 JUDGE LIPPMAN: That is?

17 JUDGE PFAU: That is what we're
18 hearing.

19 JUDGE O'SHEA: Which means to me
20 as a sitting Supreme Court judge by the end
21 of year maybe, one third of my cases are
22 going to have unrepresented litigants. I
23 want to divide my comments into three
24 things, the effect of not having counsel on
25 the litigants and the effect on our court

1 system on the day-to-day operations and the
2 effect it has obviously on our judges that
3 are hearing the cases. First and foremost
4 unrepresented litigants the most important
5 thing is that, they really don't get a good
6 result as the people that show up with a
7 lawyer. It's just a fact of life, it's not
8 any one person's fault. I looked and use as
9 an example the foreclose cases I'm hearing.
10 I'm doing lots and lots of that in our
11 county of foreclosure conferences. The
12 people that come in that have taken
13 advantage of going to legal aid or going to
14 Catholic Charities, or meeting with someone
15 before they come have a much better chance
16 of having their mortgage renegotiated.

17 JUDGE LIPPMAN: And these are
18 people who have ordinary lives in rural New
19 York, trying --

20 JUDGE O'SHEA: They run the gamut
21 and we deal with some you might call the
22 chronic poor, public assistance, people,
23 they were able to buy a house, whatever.
24 There's another segment you call recently
25 poor and they've lost their job or some of

1 the people lose their mortgages, that's
2 escalating, when the payment is due they
3 don't have the money, any money. Then some
4 people come in with catastrophic illnesses,
5 my husband is very sick, our health
6 insurance lapsed, we have no money.

7 JUDGE LIPPMAN: So you run the
8 gamut.

9 JUDGE O'SHEA: They run the gamut
10 and they really do, it's not just poor
11 people, it's people that used to work and
12 something horrible happened.

13 JUDGE LIPPMAN: People that need
14 legal assistance in one fashion or another.

15 JUDGE O'SHEA: Right.

16 And it's not just the litigants,
17 let's look at the unrepresented parties vis
18 a vie the people that have counsel, that's
19 not easy either. The counsel maybe the
20 defense attorney we'll call them for
21 arguments sake, they sometimes feel that the
22 judge is standing on his head for the pro se
23 person, and their client feels like my God,
24 this is taking what should be five hours as
25 a fee, and it's been fifteen hours and we

1 have been to Court ten times and the judge
2 hasn't made a ruling because she keeps
3 giving that person that doesn't have a
4 lawyer an adjournment or what not. People
5 don't like that. They're aggravated.

6 Let's see the impact on the court
7 system. It starts on day one. It even
8 starts day one. It starts with people going
9 to the Court Clerk's office, I want my
10 unrepresented matrimonial packet, I want to
11 do my name change, I want to do all sorts of
12 things they do on their own and they
13 probably go the Court Clerk a couple of
14 times, they go to the Supreme Court library
15 a few times and they call my chambers lots
16 of times, and they send my chambers lots of
17 communication, that I can't read and I have
18 to send back. We try to set up conferences,
19 notices, well their address changes so much
20 it takes my secretary sometimes four and
21 five times to find a mailing address to get
22 them, all as a result there's no central
23 point, an attorney's office, Legal Aid
24 office, that we can even reach these people.
25 This is particularly a problem, a growing

1 problem because as you know, our court
2 staffs are operating with a lot of vacancies
3 and our staffs are getting smaller and
4 smaller, all these things take time and it
5 means that some of the papers that would be
6 usually processed a little more quickly are
7 sitting.

8 JUDGE LIPPMAN: Judge O'Shea, how
9 does this effect in the courtroom itself
10 what you do when you see them come in
11 without a lawyer? Is there any way that
12 you're able to connect them to a provider,
13 and assuming you can't, how does that effect
14 what happens in the courtroom?

15 JUDGE O'SHEA: Uhm -- I would
16 say usually they come in first in a motion
17 term, it's usually a default situation, or
18 a --

19 JUDGE LIPPMAN: Right.

20 JUDGE O'SHEA: Someone looking
21 for interim relief and the person is usually
22 unrepresented and they come in on a motion
23 term and make brief argument or whatever,
24 piles of paper, and I hired a debt
25 consolidation service to do this for me and

1 they have all these services and they have
2 done that and that's really not a defense so
3 I try to not to embarrass them the people
4 they're humiliated, you don't want a room
5 full of people and make them explain why
6 they can't pay their rent or whatever, and
7 we come up, and many times, I will oh
8 adjourn it to chambers which means I'll set
9 up a conference on a later date, which
10 sometimes the bank attorneys don't like or
11 whatever, they have to hire local counsel,
12 many of the defaults they're not local
13 attorneys, many of them. They go to legal
14 aid but so few of them get that, Catholic
15 Charities has been helpful, on the
16 foreclosure just setting people up, and as
17 many I'm sure we'll hear from other judges
18 many of the people come to Court on a
19 particular issue, that's really not the
20 biggest problem. They might come on a
21 foreclosure, but they have divorce problems,
22 domestic violence cases. And Family Court
23 is a perfect example of that person that
24 comes in.

25 JUDGE LIPPMAN: All needing legal

1 representation.

2 JUDGE O'SHEA: The Courts are a
3 reflection or a microcosm of everything that
4 happens in society. It aall comes in front
5 of us, and these people that have
6 representation make out better than the
7 people that don't.

8 JUDGE PFAU: And you're supposed
9 to stay neutral as opposed to reflect
10 justice, and -- and how do you that when you
11 have somebody clearly so needy on one side?

12 JUDGE O'SHEA: Well, I have to
13 tell them, what to do. And I do. I'm not
14 going to let somebody get run over by
15 someone who has counsel by somebody that
16 doesn't. But on the other hand you do walk
17 a fine line. One gentleman in Family Court,
18 he didn't have a lawyer, the person did that
19 had the child support thing, and I kept
20 hearing him mumble under his breath, I hear
21 a train, and I said what, and I heard, I
22 hear a train, and finally I said Mr. Smith,
23 there's no train, and he'd say I'm being
24 railroaded he says. And you don't want
25 people leaving the system feeling like

1 they've been miss treated or not treated
2 fairly, so it is stressful.

3 JUDGE CARDONA: We can't give up
4 on anyone, you can't give up. Because if we
5 do that, we might as well lock the door.

6 JUDGE O'SHEA: And that time
7 wise, some of the cases you can spend a
8 couple of hours trying to get the facts out
9 and stuff and that might be justice for that
10 case, but it's not justice for the ten
11 people waiting in the waiting room that get
12 no time.

13 MS. MADIGAN: And the impact on
14 your docket must be a nightmare.

15 JUDGE O'SHEA: Right, you have
16 met five times and it backs up so thank you
17 all for listening to me. You have a big job
18 in front of you and I hope you find a good
19 answer.

20 JUDGE LIPPMAN: Thank you Judge
21 O'Shea.

22 Judge Powers?

23 JUDGE POWERS: Thank you. I want
24 to of course thank you, Judge Lippman and
25 Judge Pfau and you Judge Cardona, my

1 immediate superior and Attorney Madigan. I
2 am a Schenectady County Family Court Judge,
3 and I'm also an Acting Supreme, and in which
4 I handle matrimonial actions for the last
5 two years, I have done a lot --
6 approximately 25 percent of the matrimonial
7 calendar and in the years before that, for
8 several years, I had as much as 50% of the
9 calendar.

10 As this panel may already be
11 aware, representation is provided in Family
12 Court proceedings, when it relates to abuse,
13 neglect, termination of parental rights and
14 by case law with regard to the custody
15 matters. The difficulty though is that
16 these issues are sometimes intertwined with
17 a divorce and what I noticed in particular,
18 with regard to divorce actions, is the
19 inability of litigants to navigate the
20 system. Try if you will to imagine a
21 litigant who is given a packet for an
22 uncontested divorce, even an experienced
23 attorney who does not practice in that area,
24 would of have difficulty with the packet and
25 what happens is, we send the submissions

1 back because at a minimum they have to
2 comply with the statute. There has to be
3 the requisite documentation, and on the 4th
4 or 5th occasion, we finally just about have
5 to give up and the poor litigant is at a
6 point where they have given up. To
7 alleviate this problem, I initiated a
8 program or asked several volunteer
9 attorneys, if they would be kind enough to
10 come in, twice a month, to meet with these
11 litigants in uncontested matters because I
12 had to define it that way in which their
13 sole purpose was to assist litigants with
14 the paperwork. What I have found was, there
15 was just too many. Secondly, the attorneys
16 who participated were telling me, look, it
17 was easier for me just to do the whole thing
18 so I wound up doing the whole thing on my
19 computer as a courtesy and I expressed my
20 gratitude to these people for what they have
21 done, but the need was so great, even in the
22 uncontested side. I have not discussed
23 contested issues that come before me. On a
24 contested we do assigned counsel for the
25 limited role as relates to custody. But

1 that leaves often equitable distribution,
2 maintenance, child support, and the issue of
3 child support is huge.

4 JUDGE LIPPMAN: They're
5 fundamental to the result.

6 JUDGE POWERS: They certainly
7 are, and I you can't think of a more
8 emotionally laden matter, than a divorce,
9 and outside of perhaps incarceration, and
10 these people are frustrated and as you know,
11 from what you read, what we testified to,
12 the litigants who come here often come away
13 thinking I didn't get a fair shake, I didn't
14 know what was going on. That attorney
15 serves a purpose of advising the litigant of
16 course and ensuring a just result. These
17 things require considerable explanation.

18 On October 12th we are going to
19 implement new legislation with regard to
20 maintenance, with regard to the attorneys
21 fees, no fault grounds for divorce, and
22 these litigants if it takes an attorney to
23 understand, imagine what they need to know
24 to be able to effectively have --

25 JUDGE LIPPMAN: Imagine their

1 perception of the justice system when they
2 leave, as you said.

3 JUDGE POWERS: Well, they think
4 it's skewed, to be frank, it's the system,
5 so to speak.

6 JUDGE LIPPMAN: It's unfair which
7 is just the opposite of what we want to do.

8 JUDGE POWERS: Exactly. So I
9 welcome the purpose of this task force. I
10 do want to acknowledge the efforts of
11 locally, of Mrs. Frear with the Legal
12 Project, of Mr. Malloy with the Legal Aid
13 Society who has always been a wonderful
14 assistant, you can call upon them, their
15 attorneys have specialized training
16 especially in matters of domestic violence,
17 which is a extremely helpful, so as to not
18 mistake acquiescence for ascent in those
19 occasions where it may be just part of the
20 continuing pattern and so forth. They're
21 trained in this and it really represents --

22 JUDGE LIPPMAN: And their
23 training is crucial, and you've hit on a
24 good point, it's not just providing
25 representation, which is obviously critical

1 but people who are trained to provide
2 representation in particular areas which
3 requires specialized knowledge that we can't
4 take a lawyer off the street and they're
5 willing to do so and say gee, represent this
6 person.

7 JUDGE POWERS: I'm grateful to
8 say that and I can tell you on one occasion,
9 it was so apparent to me that we had a
10 situation involving domestic violence, and
11 the Law Guardian has that training, and they
12 have I should say the attorney for the child
13 now, from the specialized training they
14 received and I remember the attorney for the
15 child telling me, you know the issue is of
16 domestic violence and this is off the
17 Richter Scale here, so it was unapparent to
18 the respondent's attorney, the control
19 issues and the like and it just wasn't fully
20 appreciated and it was lost on that
21 attorney. But I do want to reiterate the
22 need for representation.

23 JUDGE PFAU: Are you seeing this
24 need growing among particularly matrimonial
25 cases your --

1 JUDGE POWERS: Am I seeing what?

2 JUDGE PFAU: The needs growing?

3 JUDGE POWERS: Absolutely. And
4 that may be a direct relation to the
5 downturn in the economy, I found too often
6 what people are doing is they feel
7 compromised and their idea of a divorce
8 becomes an Order of custody from Family
9 Court and an Order of support, and they just
10 let it go. And then they keep trying to put
11 the papers in, and I want to be as
12 accommodating as I can, but I can have 4 or
13 5 submissions and it's clear it's not
14 appropriate. We're at the point where we
15 have to advise them, it's not doing us any
16 good to reconsider this matter when we can't
17 act upon them.

18 JUDGE PFAU: Thank you.

19 JUDGE LIPPMAN: Thank you so
20 much, we appreciate it. Judge Conway?

21 JUDGE CONWAY: Thank you, Judge.
22 Judge Lippman, Judge Cardona, Judge Pfau,
23 Ms. Madigan I am a Village Justice in the
24 Village of Nassau, Rensselaer County, a
25 position that I've had now for the past

1 eight years and also respectively been
2 appointed Town Justice to the Town of
3 Nassau, and I very much appreciate the
4 opportunity to appear before this panel and
5 testify on this very important issue. Also
6 my understanding is that I will be the only
7 Town and Village Justice in the State of New
8 York to be testifying before you, in any of
9 the Judicial Departments, and this is a
10 great honor.

11 JUDGE LIPPMAN: Not only that,
12 you see justice at the real level on an
13 every day basis.

14 JUDGE CONWAY: We're in the
15 trenches.

16 JUDGE LIPPMAN: You're really in
17 a position to tell us. Go ahead.

18 JUDGE CONWAY: In addition to my
19 experience as a Town and Village Justice, I
20 have appeared as an attorney in many of the
21 Town and Village Justice Courts in this
22 district, and had the opportunity to
23 interact with many Town and Village Justices
24 at our training sessions and magistrate
25 association events. I would like to think

1 as I appear before you as a representative
2 of the Town and Village Justices in this
3 state, I stand upon the shoulders of some
4 very qualified individuals. Lawyers and
5 non-lawyers who care a great deal about the
6 integrity of the courts where they sit.

7 During my tenure as a justice, I
8 was also privileged to be sitting as a
9 justice in City Court of Albany, Rensselaer,
10 Troy and Hudson, as well as town. In the
11 Third District, as many of you know, the
12 Third District includes Sullivan County, on
13 the Pennsylvania border, to Rensselaer and
14 Columbia Counties on the Vermont and
15 Massachusetts borders and within the 7
16 counties in this district they're 129 Town
17 and Village Courts, many of which are in
18 very rural areas where access to legal
19 representation can be quite limited.

20 As I indicated in the Village of
21 Nassau, the 2000 census of the Village of
22 Nassau which is approximately one square
23 mile and one traffic light has a population
24 of about 12 hundred people and the Town has
25 a population of about 5,000. In 2000 it was

1 estimated that approximately 8,000 or 8
2 percent of these people in the community
3 were below the poverty line, but anticipated
4 that the 2010 census percentage will
5 increase due to the recent economy downturn.
6 We don't have the high volume issues that --
7 that you heard about with the judges down
8 state, but that doesn't mean that the issues
9 that we encounter are any less important to
10 the litigants, and does not mean that the
11 impact and the absence of the legal
12 representation, of indigent litigants, is
13 any less cost prohibitive to the system,
14 namely to our Town and Village Justices to
15 ensure equal justice to the litigant. Town
16 and Village Justices and throughout this
17 state tend to have a great deal of pride in
18 the courts that they administer and want
19 unrepresented litigants to leave the system
20 feeling as though they'd a full and fair
21 opportunity to be heard, in a timely manner.
22 And that their concerns were given as much
23 due consideration, as those of their
24 opposition, even if the other side was
25 represented by counsel. Every litigant

1 matters to the Town and Village Justice and
2 he wants everybody to have a full, fair
3 opportunity to explain their side. But all
4 too often particularly in landlord tenant
5 matters, disparity between unrepresented,
6 under privileged, under educated, even
7 illiterate litigants against the experienced
8 sophisticated landlord who has counsel is
9 failing to assist him. As we know the Real
10 Property Actions and Proceeding Law has
11 hyper technical aspects that the Appellate
12 Court can wrestle with, and without
13 representation, the unassisted litigants are
14 at an obvious disadvantage.

15 JUDGE CARDONA: Judge Conway,
16 could you give me any percentage or an idea
17 about how many people are not being
18 represented in your Court?

19 JUDGE CONWAY: Sure, Your Honor.
20 You know, we -- I think in most part as in
21 most Town and Village Courts we don't keep
22 sophisticated --

23 JUDGE CARDONA: Ballpark?

24 JUDGE CONWAY: I can't think of
25 the last tenant that I had come in that was

1 represented and I would say most every
2 landlord is represented. Almost all the
3 landlords.

4 MS. MADIGAN: And that's
5 assuming that they come in. You mentioned
6 in your testimony, you have an awful lot of
7 defaults and what's your sense what happened
8 to those tenants and for those facing
9 eviction? Do they default, do they end up
10 homeless and what it costs to the town?

11 JUDGE CONWAY: We tend not to
12 follow them, but that's the usual result.
13 Obviously there's a perception of
14 intimidation out there if the landlord has
15 an attorney and their papers are in order
16 that the tenant and sometimes they didn't
17 even come in and they don't show up, they
18 fail to raise an issue that could be raised
19 that could have been important and could
20 have been raised or crossed on something and
21 sometimes they give up on their security
22 deposit and that can be the difference,
23 being an \$850 security deposit that could
24 mean the difference between being homeless
25 and being able to find another place to

1 live. Sure.

2 JUDGE CARDONA: You're sitting
3 there as a Judge, you know it's a very
4 uncomfortable position to be in.

5 JUDGE CONWAY: It is, Judge.

6 It is judge. The one thing I
7 want to talk about is the Town and Village,
8 Court system, the person who often gets the
9 questions or the inquiries in the court is
10 the Court clerk. And in our situation, it
11 was kind of an interesting situation that I
12 had a Court Clerk come to work with us who
13 had been in the banking industry for twenty
14 years and she had been used to helping
15 people in customer service and she would
16 when she started about 7 years ago she would
17 often call me up and say someone has come
18 in, it's a hard luck story, I want to help
19 them out, the landlord has a lawyer, the
20 papers are all in order and I want to be
21 able to tell them there are habitability
22 issues, they're things raised possibly even
23 to reach a better settlement and I would say
24 we can't do that, it's not our job. We're
25 neutral arbiters and she would say that's

1 not fair, we have to level the playing
2 field. And then I would say tell her --
3 tell her to get a lawyer.

4 JUDGE CARDONA: You have a court
5 clerk practicing law.

6 JUDGE CONWAY: Tell them to get a
7 lawyer and she can't afford it and I would
8 say give them the usual materials that we
9 have.

10 JUDGE LIPPMAN: What are the
11 usual materials?

12 JUDGE CONWAY: A pretty simple
13 packet, Your Honor. It is very helpful, it
14 provides good information and it's good
15 form, but is it no substitute for an
16 attorney, Your Honor.

17 JUDGE LIPPMAN: Do you ever
18 connect them with the legal service
19 providers? Are you able to? Are they out
20 there?

21 JUDGE CONWAY: I don't feel
22 comfortable with providing or feel
23 comfortable to tell them where to get free
24 representation.

25 JUDGE LIPPMAN: How in an area

1 like yours, how do they get that
2 representation?

3 JUDGE CONWAY: They don't.

4 JUDGE LIPPMAN: Is it easy or
5 they just don't do it?

6 JUDGE CONWAY: I think they tend
7 not.

8 JUDGE LIPPMAN: It's not
9 available or they don't know how to do it or
10 both?

11 JUDGE CONWAY: They're at Legal
12 Aid Society, and I have actually had Albany
13 Law School have a disability law clinic and
14 I had some disabled people come in and they
15 had representation that they have found, but
16 I don't connect them. I don't feel that's
17 appropriate and that's stepping beyond our
18 role as a neutral arbiter.

19 JUDGE LIPPMAN: Part of this
20 whole -- one of the purposes of having a
21 judicial panel is that there's different
22 roles in the justice system, and that one of
23 them is lacking.

24 JUDGE CONWAY: Yes.

25 JUDGE LIPPMAN: The judge -- we

1 may have an attorney on one side, but often
2 we don't have the attorney on the other side
3 and I would assume and we've talked about
4 that a little bit, you're put in an awkward
5 situation.

6 JUDGE CONWAY: Well, I am and
7 attorneys I feel are to help people
8 typically --

9 JUDGE LIPPMAN: You want to tell
10 people that as an attorney and as judge and
11 as a person, but in your judicial role, you
12 know, it creates real problems and you are
13 walking a line.

14 JUDGE CONWAY: Sure. Often times
15 people may walk out of the courtroom, maybe
16 they got the same result they would have had
17 if they had an attorney representing them,
18 but they're still walking out bewildered and
19 confused and that isn't the same result.
20 We're not helping society at all if we're
21 sending people out the door, you know, in
22 that sort of situation. We can't ever
23 ensure that every litigant will be
24 satisfied. We've got winners and losers,
25 and we can't prevent them from blaming the

1 Court, but what we can do is endeavor to
2 ensure that everyone is appropriately
3 represented, and that everybody is given --
4 given a fair opportunity to understand the
5 legal system issues that are present and
6 the assistance of counsel. They can in fact
7 apply the facts to the law, present
8 evidence, call into question contrary
9 evidence and wind up a timely adjudication
10 of a legal dispute.

11 And I want to give you a quote
12 that Eleanor Roosevelt said that justice
13 cannot be for one side, it must be for both
14 and that seems sort of overly obviously or
15 self-evident, but when I look at the basic
16 fundamental principles like this when in
17 this society, civil litigants are left to
18 wander through the Town and Village Courts,
19 without representation, and leave frustrated
20 by the experience because they never
21 understood what was taking place even if
22 they did show up and didn't have a fair
23 opportunity to explain their side with the
24 assistance of counsel.

25 JUDGE LIPPMAN: Sometimes worse

1 and frustrated and they find themselves in
2 serious trouble.

3 JUDGE CONWAY: It's frustrating
4 for us when we see unjust results walking
5 out the door.

6 JUDGE LIPPMAN: Thank you Judge
7 Conway. Judge Heath Rolald?

8 JUDGE HEATH ROLAND: Good
9 morning, thank you. Good to see everyone
10 here. Thank you all for your time, and for
11 the invitation to present testimony to this
12 panel. Also I want to thank Judge Fisher
13 perhaps as well for her involvement with the
14 panel and good morning Judge Pfau, Judge
15 Lippman, Judge Cardona and Attorney Madigan.

16 As you know I serve in very a
17 busy City Court, and it's an area of
18 practice, landlord/tenant area, which is
19 extremely busy in my Court and I am here to
20 talk about that primarily. I do serve in
21 the civil part where we see a number of
22 litigants come before the Court without
23 legal representation. I see many low income
24 litigants in this very type of proceeding,
25 particularly in the housing eviction area.

1 The focus of my testimony today
2 will be on how the lack of attorney
3 representation in landlord tenant summary
4 proceedings impacts litigants and the Court.
5 I will say that from hearing the other
6 panelists, certainly the City Court judge,
7 the expectation, pretty much from day one
8 when I took the bench in 2005, is that
9 people will not have an attorney coming into
10 Court. Certainly I want to tell you --

11 JUDGE LIPPMAN: We have and it
12 would seem counterintuitive and what could
13 be more important in society than literally
14 the roof over ones head it seems like an
15 area that is, almost the most graphic in
16 terms of the consequences, lack of legal
17 representation, you know, is that a given
18 when you come in and you think that they're
19 not going to be represented or does that
20 strike you as odd that the people coming
21 into the courtroom don't have
22 representation?

23 JUDGE HEATH ROLAND: Well, I
24 just --

25 JUDGE LIPPMAN: What percentage

1 do you have?

2 JUDGE HEATH ROLAND: 5 percent of
3 the tenants.

4 JUDGE LIPPMAN: What about the
5 landlords?

6 JUDGE HEATH ROLAND: About 50% I
7 would say, 50.

8 50 and they I also find they're
9 defaults that --

10 JUDGE PFAU: The people don't
11 show up because they're so overwhelmed?

12 JUDGE HEATH ROLAND: They don't
13 show up and the problem is there Judge Pfau
14 if you have an attorney present and make a
15 phone call and we get in a tenant after the
16 Court calendar and it's something like my
17 child fell ill, I wasn't feeling well, I was
18 sick or I had to go take care of a family
19 emergency, of course if there was an
20 attorney present, you have the attorney able
21 to give some kind of proof, some showing of
22 a good case reason. So, there's preparation
23 up front to deal with that.

24 JUDGE LIPPMAN: We've had a lot
25 of testimony that the landlord side wants

1 there to be representation on the tenant
2 side, it's not something that they desire to
3 come into Court and have this unbalanced
4 situation because in the end the well-being
5 of the landlord as well as the tenant is
6 also served by coming to some kind of an
7 agreement that keeps the tenant in place.

8 JUDGE HEATH ROLAND: I think that
9 varies in my experience, in my courts,
10 they're lawyers that are so -- and landlords
11 that are so frustrated with a lack of
12 tenants paying rent, of maybe 2, 3, 5 months
13 into it and they come into the courtroom,
14 and the tenant doesn't show up, and they can
15 get a warrant.

16 JUDGE CARDONA: That's a private
17 landlord?

18 JUDGE HEATH ROLAND: Private.

19 JUDGE CARDONA: But the public
20 landlord?

21 JUDGE HEATH ROLAND: And I was
22 very pleased to hear Steve Longo's
23 testimony, I think as you both Judge Lippman
24 and Judge Cardona pointed out, they work --
25 they work hard to make sure that tenants

1 have the assistance they need to see that
2 they can come up with a plan to save
3 housing.

4 JUDGE LIPPMAN: The real estate
5 industry as a whole feels that way to be
6 sure, obviously you have particular cases
7 and particularly with private landlords,
8 that's not the case.

9 JUDGE HEATH ROLAND: That figure
10 of 4,454 summary proceedings filed last year
11 in my court are not Albany Housing.
12 Unfortunately, 17 hundred of the Albany
13 Housing evictions we see, 200, so I see more
14 of the private landlord and I have a few of
15 the other specific examples where lack of
16 representation impacts litigants with the
17 Court process. The increase in amount of
18 time that the judge spends, that I spend
19 explaining the Court process, giving
20 direction to unrepresented litigants, about
21 the effect of the warrant that I'm signing
22 or the effect of a default on payment, the
23 agreement they're reaching, often extends
24 the morning calendar which in turn delays
25 the beginning of the 10:30 trial that we

1 have regularly trials of the morning to
2 begin after the calendar call. Warrants of
3 Eviction on default are issued frequently
4 due to the tenants failure to appear in
5 court, and again as I said earlier too,
6 there may be all kinds of good cause and
7 reasons that have happened and we see an
8 increase of defaults issued and an increase
9 in the Orders to Show applications that are
10 filed. The office staff, Court Clerk's
11 office staff, and Court Attorneys spend a
12 great deal of time assisting pro se
13 litigants in the filing of these
14 applications, and other court documentation.
15 In response to the high volume of the orders
16 to show applications we had to develop --
17 have developed an Order to Show Cause form,
18 so that there's an understanding that you
19 have to show, there's a good cause reason
20 for your absence and one of the merits of
21 your claim in terms of a defense. The other
22 problem I have and I didn't put this in this
23 written testimony, but one of the examples
24 to me is very important is how unrepresented
25 litigants where they fall down so to speak,

1 they may have a landlord that tells them
2 outside of court, you don't have to show up,
3 just give me the money or pay it, and we
4 have an agreement and all is good, don't
5 worry about coming to Court and low and
6 behold they don't come to court and maybe
7 the landlord had a change of heart or maybe
8 it's because the money wasn't received
9 exactly two o'clock the next day, or the day
10 before, but the bottom line is if you have
11 an attorney that represents you, you would
12 never allow your client to make some kind of
13 oral agreement outside of the court and not
14 reduce that to writing and then cancel a
15 court appearance on the word of the other
16 side. That it's okay and that all will be
17 taken care of and they don't have the
18 benefit of counsel and that really impacts
19 the opportunity to settle a case.

20 JUDGE LIPPMAN: What's the
21 situation in the rural area in terms of
22 providers taking landlord/tenant cases and
23 legal service providers?

24 JUDGE HEATH ROLAND: Their
25 involvement, the extent of that legal

1 services?

2 JUDGE LIPPMAN: Yes? Do they
3 have funding, the ability to take large
4 numbers of these cases? I gather not from
5 the stats, right?

6 JUDGE HEATH ROLAND: You have a
7 Legal Aid Society of Northeastern New York
8 that come in for some cases, again it
9 doesn't reach higher than about 5 percent,
10 maybe 7 percent, but about 5 percent.
11 They're many cases where they're there like
12 to be involved and it's important that
13 they're involved, but I don't see them in
14 large numbers because of their case load and
15 -- no.

16 JUDGE LIPPMAN: Is there public
17 information about the providers that are out
18 there? A lot of the people try and don't
19 get representation or is it that they just
20 don't know that might be available to them?

21 JUDGE HEATH ROLAND: I know I've
22 given a large number of litigants that we
23 see there, so they know there is some
24 information at the Clerk's office and I
25 believe and/or the table that's outside of

1 the court or right in the inside of the
2 courtroom that you can make some phone
3 calls.

4 JUDGE CARDONA: Pamphlets?

5 JUDGE HEATH: Yes. I asked the
6 lawyers and litigants do you know where the
7 United Tenants Association is, where there
8 is no attorney present, and we have a
9 benefit of having that advocate in court
10 regularly and that doesn't -- that doesn't
11 take the place obviously of a tenant
12 advocate or the place of a lawyer.

13 JUDGE CARDONA: I understand.
14 That volume of cases that comes into your
15 court every day, but let's just take the
16 case the tenant shows up and the landlord
17 says well, they haven't paid and that sort
18 of thing, and the tenant says well, wait a
19 minute, I don't have any heat or this other
20 problem or whatever it is, what generally
21 happens to that -- to that case?

22 JUDGE HEATH ROLAND: A perfect
23 example of what may happen on a first
24 appearance. The goal is set to it down for
25 a hearing which is you know has to come in

1 on summary proceedings within ten business
2 days, because I hear if there's a factual
3 dispute, I don't allow for the tenant's
4 claim or that there either wasn't -- that I
5 have receipts, that there's money, but I
6 don't have it with me, but there's money, I
7 did pay, a warrantability issue or a
8 condition a problem with the apartment, I
9 hear a little bit to make sure there's some
10 basis to be setting it down for trial and we
11 absolutely will set down a matter, and that
12 raises that type of a significant factual
13 dispute for a hearing and --

14 JUDGE CARDONA: Will the tenants
15 be told that obviously are not represented,
16 to pick up the pamphlet and the pamphlet
17 that people may be able to help and again,
18 we don't meet everything, but in some cases?

19 JUDGE HEATH ROLAND: I don't
20 necessarily at that point talk about that.
21 You have an opportunity to call a lawyer, I
22 more often because of the representative
23 that's in the courtroom often at that time,
24 a couple days a week if not more she is
25 literally standing in the back and she can

1 often -- she sees a tenant on the way out
2 and will probably say to them I guess and I
3 can certainly -- that's kind of wonderful
4 idea of and I'm thinking is not that not
5 only is to point out there's the advocate
6 that is even there or often there, if you
7 don't already, there's also an opportunity
8 to look into legal representation, but I
9 think I probably don't say that because I am
10 making my judgment that they're not going to
11 necessarily, there's not going to be the
12 resources needed to obtain.

13 JUDGE CARDONA: That's a
14 problem.

15 JUDGE HEATH ROLAND: It's not
16 going to happen the -- especially the
17 expectation that you will call a lawyer.

18 MS. MADIGAN: In your submitted
19 materials you mention they're two steps that
20 we can take to address lack of counsel, just
21 briefly summarize those for us?

22 JUDGE HEATH ROLAND: Sure. It
23 had to do with the lack of counsel,
24 certainly the need for the increased
25 resources and I commend this panel and Chief

1 Judge for focusing on that need and because
2 without greater legal resources people often
3 miss their opportunity to raise a defense or
4 they will default and don't take the steps
5 to come to Court to fill out an Order to
6 Show Cause and they don't raise their claims
7 in the proper manner and all the other
8 problems.

9 I focused on something that was
10 what I started to say a minute ago and that
11 was some more funding even for the non-legal
12 advocates and that's probably because of the
13 fact that I see that assists more regularly
14 in my court, and it provides a lot of good
15 help to the non-profit tenants association
16 and at least in the mean time without
17 getting greater attorney --

18 JUDGE LIPPMAN: It's all part of
19 the puzzle. Is informational service, if
20 you will, full scale legal representation,
21 lots of pieces to this, pro Buono, they're
22 providers that must be part of it, so it's
23 part of a total picture, that certainly from
24 where you sit and I think where all the
25 others testified from the bench this morning

1 than certainly see it on an every day basis.

2 JUDGE HEATH ROLAND: I think the
3 other thing I mentioned and although again
4 not to take away from the need clearly for
5 the legal representation funding, is judges
6 I mean and I feel like a I have a little
7 speciality after being a City Court Judge of
8 how you explain things in the layman terms,
9 how you deal with the person that is
10 formulating a defense, but they don't really
11 now how to get that out and you have to be,
12 the judge has to sensitive to where is the
13 lack of understanding, what's my line that I
14 can't cross, but at the same time we hear
15 all the time from my front office staff is
16 challenged more than I am and I think in
17 certain respects to make sure they're not
18 giving legal advice at the window, but there
19 are some areas where I was struck by my
20 colleague to my right here, Judge Conway,
21 where he said I may not feel comfortable
22 even saying to a litigant, do you know
23 there's a Legal Aid society, here's a
24 number, and I think that's maybe some
25 discussion that we can have around that a

1 little bit more and with direct --

2 JUDGE LIPPMAN: All of the
3 Judges are certainly challenged by the lack
4 of legal representation.

5 JUDGE HEATH ROLAND: I think the
6 other important point to talk about just
7 very briefly, is that issue that I know you
8 want to us to think about Judge Lippman, and
9 how we make sure we don't cross that line of
10 giving advice during trials, trials are so
11 challenging because there is no attorney or
12 other attorney and the landlord, but you
13 have to probe and you need to find the facts
14 to make your decision, and that's where
15 again that becomes a specialized skill, if
16 you will, and you have to as a judge, we
17 need lawyers much more to work with those
18 units and the tenants associations and
19 advocates.

20 JUDGE LIPPMAN: Thank you all. I
21 appreciate very much to hear from the
22 judicial side of the equation. Now we will
23 have our rural panel, on -- to focus on the
24 rural areas and Susan Patnode, Paul Lupia,
25 Jeanne Noordsy and Christopher Layo and I'd

1 ask you to come up to the witness table?

2 MS. PATNODE: While you settle
3 in, I was debating but while I travel the
4 rural roads, and get gas and I'm always in
5 one of those stores and people are in line
6 to get the scratch off lottery tickets and I
7 got one today and there's a better chance of
8 winning with this ticket, than there is of
9 getting legal services in New York, so --

10 JUDGE LIPPMAN: Okay. Susan why
11 don't you start?

12 MS. PATNODE: My name is Sue
13 Patnode and I'm the Executive Director of
14 the Rural Law Center of New York. And we
15 are a legal services organization that
16 serves 44 counties that are rural in New
17 York and we are located in Plattsburgh, but
18 we have offices in St. Lawrence County,
19 Hamilton County, and on the native American
20 reservation and in Franklin County and in
21 Essex County.

22 JUDGE LIPPMAN: Susan, give me a
23 ballpark figure, are you successful in what
24 you do? Do you feel that you can reach out
25 to the need? What's the need in those

1 counties?

2 MS. PATNODE: Okay.

3 JUDGE LIPPMAN: How much of that
4 need in the broadest strokes can you meet?

5 In terms of simple legal
6 services?

7 MS. PATNODE: Well, we work in
8 tandem with other civil legal services that
9 work in rural New York.

10 JUDGE LIPPMAN: What's the total
11 picture in rural New York?

12 MS. PATNODE: Well, it's not
13 even, as I said in my notes, rural New York
14 is the size of Virginia, it has a population
15 of Connecticut, 26 of the 44 counties have
16 legal services, the rest of those counties
17 have nothing.

18 JUDGE LIPPMAN: Don't have
19 anything.

20 MS. MADIGAN: Can you give us
21 having been in legal services for a long
22 time, can you help us quantify what your
23 sense is in terms of have you unmet needs
24 for the work that you do?

25 MS. PATNODE: In the counties

1 that don't have legal services I would say
2 it is probably 80 to 90% because people
3 don't have salaries, we have people who call
4 us and we take referrals in, and our first
5 question is, have you called the legal
6 services office in your area? And we only
7 take people who have been rejected and
8 because of funding, not because they don't
9 want to serve, because of funding and you
10 know it's just and there's some very
11 specific rural problems. All the legal
12 services programs are centered their main
13 center is in a metropolitan area, and it's
14 not their fault that they can't, they have
15 to play a numbers game. So when you take
16 the aggregate amount of these unserved
17 counties, it's phenomenal and then predatory
18 lending is a tremendous problem, domestic
19 violence is a tremendous problem, we have
20 people who pay on a land contract for two or
21 three years and then think they own a house.

22 JUDGE LIPPMAN: When you do
23 provide services, what percentage do you
24 think it is in the counties that you do have
25 a presence in?

1 MS. PATNODE: Well --

2 JUDGE LIPPMAN: Well, all the
3 different programs that you integrate with?

4 MS. PATNODE: We work in tandem
5 with Legal Aid in the county I live in and I
6 would say we probably we meet -- maybe one
7 in 8.

8 JUDGE LIPPMAN: One in 8?

9 MS. PATNODE: Of the people that
10 call us.

11 JUDGE LIPPMAN: That's with --

12 JUDGE CARDONA: That's people
13 that call you?

14 MS. PATNODE: What?

15 JUDGE CARDONA: That's people
16 that call you, right? That you know about?

17 MS. PATNODE: Yes, they're many.

18 JUDGE CARDONA: That's people
19 that go into court every day, and they go in
20 and their case is somehow disposed of and
21 maybe not fairly and I'm not blaming the
22 Judges and I am not blaming the --

23 MS. PATNODE: I had a Family
24 Court private practice in Clinton County
25 before and I saw the numbers of people that

1 were there without anyone to help them and
2 most people are working poor, who have
3 absolutely no access at all, and I did want
4 to make the point though I was glad to see
5 Justice Conway here and the Town and Village
6 Court Justices work very hard and they try
7 very hard.

8 JUDGE LIPPMAN: It's very
9 difficult.

10 MS. PATNODE: But there is
11 discrimination based on place in New York
12 because in a city, if it has over 20,000,
13 there's at least going to be the judge who
14 is an attorney in a room. And in those all
15 those other areas there's no attorney in the
16 room and they don't have the training and I
17 know judges that show up to court, paid very
18 little, that love there community, and they
19 come to the courtroom on a tractor, and they
20 do. And but yet they don't know the
21 procedure and -- and they don't know that an
22 attorney could probably just for the phone
23 call, make a difference. So, I hope that
24 you will consider place and not just numbers
25 when you're looking at this.

1 JUDGE LIPPMAN: We're at looking
2 at all of that.

3 MS. PATNODE: And I really look
4 forward to working with you, but I think
5 it's a huge unmet need.

6 JUDGE LIPPMAN: We certainly
7 encountered that to be sure. Thank you and
8 hopefully the lottery ticket will do a lot
9 more in providing --

10 MS. PATNODE: I was going to give
11 it to you, but then I thought it was an
12 ethical violation, so I'll send you a
13 picture of my winning.

14 JUDGE LIPPMAN: Absolutely.
15 Okay. Paul Lupia?

16 MR LUPIA: Good morning, my name
17 is Paul Lupia, and I'm an Executive Director
18 of the Legal Aid Society of Mid New York.
19 We are a 13 county program, we are counties
20 that range from the Canadian border in the
21 north Jefferson County, to the Pennsylvania
22 border in the south Delaware and Broome
23 Counties.

24 JUDGE LIPPMAN: So covering a
25 broad --

1 MR. LUPIA: 13,000 square miles
2 and 24 attorneys to cover that entire area.

3 JUDGE LIPPMAN: 24 attorneys?

4 MR. LUPIA: Correct.

5 JUDGE PFAU: How many clients
6 would each attorney have? I mean 24
7 attorneys over the huge swatch of the state?

8 MR. LUPIA: Judge, depending on
9 the type of case, but that's something we
10 look at all the time in terms of our
11 management of our attorneys, I will say
12 about one hundred cases at any time we would
13 expect the average attorney to close, 200 to
14 150 cases a year, depending.

15 JUDGE LIPPMAN: Do you turn away
16 a lot of people?

17 MR. LUPIA: Yes, we do.

18 JUDGE LIPPMAN: How do you do
19 that?

20 JUDGE CARDONA: You get a phone
21 call and somebody calls you and some
22 mother's got three kids and is being
23 evicted, and has got domestic issues and all
24 of that, I mean, I understand why you have
25 to do it, but it must be awful to have to

1 say, no I can't help you?

2 MR. LUPIA: It's one of the
3 toughest jobs was the job of receptionist
4 who has to do that. And what we feel --

5 JUDGE CARDONA: You reach a
6 point and you say okay, the next 20 people
7 that call?

8 MS. MADIGAN: You do triage.

9 MR. LUPIA: We do a triage and
10 what we have done, we've tried to use
11 technology, especially the 7 counties where
12 we do not have a physical presence, we've
13 began something called the help line, it's
14 an intake system where anybody within the 13
15 counties can call in giving everyone equal
16 access to our system, and I emphasize to the
17 in-take system where everyone at least gets
18 counsel and advice. On occasion we have to
19 even shut down the help line. For example
20 yesterday we shut it down and we had 50
21 calls by noon, and --

22 JUDGE LIPPMAN: You shut it down?

23 MR. LUPIA: We had to shut it
24 down for the day and anybody that called had
25 to call back the next day. Even with that

1 technology we're not able then to serve
2 people fully and not able to provide them
3 with in-court representation. We looked at
4 in 2009 judge we closed twenty-six percent
5 of our cases with in-court representation,
6 but when you break that down County by
7 County, the results are striking and
8 somewhat sobering. In the counties --

9 JUDGE LIPPMAN: They're both
10 important, right? That you get people
11 before they get to court that's interfacing
12 with the basic entities that we all deal
13 with, health, housing, you know, whatever it
14 is without having a court case, that's
15 really important too, right?

16 MR. LUPIA: It is.

17 JUDGE LIPPMAN: How do you
18 balance that?

19 MR. LUPIA: It's partial services
20 and partial services can mean partial
21 justice and that's something that none of us
22 want.

23 JUDGE LIPPMAN: What about where
24 did you get your money from?

25 MR. LUPIA: Our primary federal

1 legal services organization we have over 42,
2 and as of last week we got 44 grants and
3 funding sources.

4 JUDGE LIPPMAN: So it's kind of
5 an important issue, particularly in rural
6 New York, it's kind of a hodge podge, right?
7 You get it when you can get it, but there's
8 no stable funding source coming out of the
9 public that you can go and hire your lawyers
10 and know you're able to continue in
11 business, your always kind of catching as
12 catch can, is that what it's about?

13 JUDGE PFAU: And you're applying
14 for grants obviously.

15 Much of your resources is in
16 trying to get resources and applying for
17 grants?

18 MR. LUPIA: That's right. The
19 grants well are difficult to keep those, and
20 where you don't have a physician presence,
21 we had to close our Oneonta office, in May
22 of 2009, that office was just one attorney
23 and one paralegal, one support person that
24 covered Otsego and Delaware counties.
25

1 JUDGE LIPPMAN: You couldn't
2 continue funding it then?

3 MR. LUPIA: We lost the only two
4 local grants that we had in the area, a
5 United Way grant who told us she didn't want
6 to fund us any more as we weren't going to
7 have an office and there was another grant
8 in Delaware County that -- that represented
9 seniors, and the letter I received that was
10 telling, the director of that agency praised
11 the work that we did, then went on to say,
12 that he decided he was going to terminate
13 the contract based upon the barrier of time
14 and distance, because we were trying to
15 serve that county out of Utica, which is an
16 hour away.

17 JUDGE LIPPMAN: What do you pay
18 your people? Can you pay them a competitive
19 wage and what needs to be done?

20 MR. LUPIA: I recently saw a
21 survey done and I forget by whom so you have
22 to forgive me, but I know that legal
23 services attorneys are the lowest paid in
24 the -- in the -- in my office, we start
25 someone right out of law school at \$38,000 a

1 year, far below the national average.

2 JUDGE LIPPMAN: So you are really
3 competing with the people you're
4 representing who we call the working poor
5 before that may include the lawyers who work
6 for the legal services provider.

7 MR. LUPIA: I believe the
8 national average is \$40,000 according to the
9 Legal Services Corporation and we are
10 somewhat below the national average and in
11 fact, we just raised that it. We were
12 paying \$33,000 a year.

13 JUDGE LIPPMAN: Can you get
14 people who can give you a kind of
15 representation?

16 MR. LUPIA: You get people.

17 JUDGE LIPPMAN: Or just dedicated
18 people?

19 MR. LUPIA: You get them judge,
20 but it's hard to keep them. Many of them
21 are burdened with law school.

22 JUDGE LIPPMAN: So at some
23 point --

24 MS. MADIGAN: Who want to buy a
25 house maybe?

1 MR. LUPIA: Start a family? And
2 all of that factors into people leaving. So
3 what we did --

4 JUDGE LIPPMAN: So you are
5 dealing with specialized areas that require
6 people that do have an expertise?

7 MR. LUPIA: The greatest area of
8 need judge that we have seen particularly
9 with our rural areas.

10 JUDGE LIPPMAN: What is the
11 particular discipline?

12 MR. LUPIA: I think that's
13 increased over the last couple of years, are
14 domestic violence issues, housing issues,
15 evictions, foreclosures and we've seen a
16 huge increase in unemployment insurance
17 requests and none of that is surprising
18 given the current state of the economy.

19 JUDGE LIPPMAN: It's interesting
20 too, there's such a need in both you see in
21 the big metropolitan areas in the state is
22 tremendous and the need and all of the
23 problems, but it is equally as striking the
24 inadequacy not in terms of what you do
25 provide, but what you can't provide in

1 representation in rural New York is every
2 bit as compelling, as what you have in the
3 big metropolitan areas.

4 MR. LUPIA: When it come to
5 indigent representation, in-Court
6 representation, legal service corporation
7 told us that the national average in 2009
8 was 21 percent of the cases closed, overall
9 we do 26 percent, but in the counties where
10 we don't have a physical presence, it was
11 only 11 percent, and it was 28 percent in
12 the counties where we have a physical
13 presence. The bottom line is that nothing
14 can substitute for a physical presence in
15 the counties.

16 JUDGE LIPPMAN: And rural New
17 York I guess is more challenging in that
18 regard in that the geographic --

19 MS. MADIGAN: Just
20 transportation.

21 JUDGE LIPPMAN: Just makes having
22 a presence not so easy in certain parts?

23 MR. LUPIA: It's not -- many of
24 our clients have unreliable personal
25 transportation or vehicles and simply are

1 not reliable. And it's not realistic to ask
2 someone down in Otsego County, to be able to
3 get a bus, to go to Utica to speak to one of
4 our attorneys.

5 JUDGE PFAU: If you had
6 consistent funding, you know, year to year,
7 at least some stability in it, would you be
8 able to better plan how to -- do you have a
9 presence in those other counties or reach
10 out to counties?

11 MR. LUPIA: We would, and that
12 would be one of the priorities that we would
13 do or use new funding for, it would be to
14 try to restore services, to more acceptable
15 levels in this county.

16 JUDGE LIPPMAN: Thank you.

17 JUDGE CARDONA: Have you ever
18 done a study or this is difficult -- how
19 many attorneys or staff you would need to
20 meet the demands assuming the people meet
21 the standard for representation? When you
22 say you have 20 some attorneys or staff, I
23 assume, you mean, go to the Legislature and
24 say you know to do the right thing, to be
25 fair, to treat people the right way, it's

1 going to cost a lot of -- a lot of money.

2 MR. LUPIA: Off the top of my
3 head I don't know that.

4 MS. MADIGAN: Well --

5 JUDGE CARDONA: It's an
6 interesting thing, everyone agrees it's a
7 crisis we're not meeting, the needs, it's
8 easy I think, but the question is, what are,
9 could we do what about it, what will it
10 cost, you know, how many lawyers and staff,
11 will we need, how do we spread it out? I
12 guess that's the task force problem.

13 MR. LUPIA: I know at one point
14 the Legal Services Corporation used to have
15 a goal of two attorneys per every 10,000
16 poor people and I know that goal has not
17 been met.

18 JUDGE LIPPMAN: If we doubled
19 your staff would you able to meet the need?

20 MR. LUPIA: No, no judge. I
21 think most legal services providers would
22 say, they need triple the staff and that
23 would not meet all the needs.

24 JUDGE LIPPMAN: I bet. I bet.

25 MS. MADIGAN: Talk a little bit

1 about the technology issue; do you have the
2 technology access to do a remote access if
3 you went to BOCES in Oneonta could you talk
4 on a screen with one of your attorneys say
5 in Utica and they're in Binghamton or
6 Syracuse?

7 MR. LUPIA: The technology we did
8 purchase hardware and it was a call center
9 based software to allow us to have this help
10 line and in-take system. And that does
11 allow for anyone within the 13 counties to
12 try to be able to gain access to the in-take
13 system and whether you live in Syracuse or
14 down in Delaware County. I would add
15 technology is not free and that system cost
16 us \$225,00 and we're now faced with updating
17 the software at a cost of \$25,000, and we
18 received grants from the New York Bar
19 Foundation, and received a special grant
20 from the Legal Services Corporation a
21 technology initiative grant, and it's --
22 those funds are hard to find.

23 JUDGE LIPPMAN: Yes, all part of
24 the puzzle, right? Putting together and
25 providing county representation you would

1 like to provide and the benefits of
2 representation. So thank you. Jeanne
3 Noordsy?

4 MS. NOORDSY: Good afternoon
5 Your Honor, and all the members of the
6 panel, and I thank you for this opportunity
7 to testify. I represent the Domestic
8 Violence Project of Warren and Washington
9 counties, a program of Catholic Charities.
10 I am taking note, I'm not the only voice
11 here today emphasizing the issue of domestic
12 violence and while certainly it's
13 disheartening to note the prevalence of
14 domestic violence in our state, it is
15 heartening to know that others are also
16 aware and speaking to the needs of our
17 attorneys and domestic violence victims.

18 JUDGE LIPPMAN: How is it
19 possible that we don't provide
20 representation to that kind of position?
21 How is that possible there is no vehicle to
22 provide representation in those kinds of
23 cases? It would seem obvious that you would
24 need a lawyer.

25 MS. NOORDSY: Yes and --

1 JUDGE LIPPMAN: Is this an
2 imbalance already?

3 MS. NOORDSY: I think what
4 happens is, you know one of the most
5 valuable programs legal services program to
6 us, programs that have attorneys that are
7 geared to take domestic violence cases such
8 as the Domestic Violence Legal Assistance
9 that's Legal Aid in New York and that
10 separates, that's a very valuable service to
11 us. One of the members of the panel said a
12 few minutes ago, a person needs not only an
13 attorney, but an attorney that understands
14 the particular issues they're facing and I
15 think one of the things I am going to
16 emphasize this morning is simply the
17 incredible need for quality legal services
18 specialized for domestic violence, because
19 there are certainly the public defender's
20 office, and assigned counsel programs that
21 are county run, they're attorneys in private
22 practice who take pro bono cases, but none
23 of that meets the needs in terms of volume
24 or necessarily in terms of specialization.

25 JUDGE PFAU: Are you seeing an

1 increase in the numbers for instance?

2 MS. NOORDSY: Seen a need?

3 JUDGE PFAU: In the number of
4 incidents, a need for your services? Have
5 they grown?

6 MS. NOORDSY: I have been doing
7 this work for twenty years and we have been
8 very busy for twenty years, so I don't know
9 there, you know I don't know if we've made a
10 dent in domestic violence in reducing. I
11 don't know if necessarily whether it's
12 increased, but I know we have been extremely
13 busy at our shelter and it has been more
14 full and I'm not sure if that's because
15 we're making some positive strides with
16 domestic violence in making services known,
17 but you know there's a very large need.
18 Most of our clients cannot afford their own
19 attorney. One of the issues is when the
20 battering spouse happens to have more money
21 and can afford to hire his own private
22 attorney and in some of the Family Courts,
23 the party may not apply for assigned counsel
24 at the first hearing and so they may be
25 unrepresented at the first hearing while

1 he's already --

2 JUDGE CARDONA: I don't
3 understand that, if you must file a petition
4 in Family Court, okay? Would not the judge
5 assign counsel right at that point, to the
6 petitioner in?

7 MS. NOORDSY: Not always. If
8 there was, if he's the judge is already
9 bringing her in ex parte, he may ask her at
10 that moment can or does she want to apply.

11 JUDGE CARDONA: That's for a
12 temporary Order or something like that, but
13 I'm saying, on the first return date, when
14 the respondent comes in, okay, and let's say
15 that it's just the first appearance, that
16 that litigant has not appeared before the
17 Judge for a temporary Order, generally
18 speaking, aren't the judges then appointing
19 an attorney, for that petitioner?

20 MS. NOORDSY: What I'm hearing
21 from a lot of my co-workers who are in court
22 on a routine basis with our clients is that
23 there are times when the opportunity to
24 request the attorney didn't happen until
25 both parties are already present for the

1 first time.

2 JUDGE LIPPMAN: Initial
3 appearance.

4 MS. NOORDSY: And if the batterer
5 in this case was already represented because
6 he can afford to hire his own attorney,
7 she's already at a disadvantage at that
8 first hearing and you're saying?

9 JUDGE CARDONA: The better
10 approach would be when somebody files a
11 petition they did fill out the necessary
12 forms to try to get assigned counsel before
13 the initial appearance.

14 MS. MADIGAN: Because there are
15 clearly decisions being made and --

16 MS. NOORDSY: Yes uh-huh and --

17 JUDGE CARDONA: Because they
18 will ultimately hopefully get an attorney.

19 MS. NOORDSY: Yes.

20 JUDGE CARDONA: At that first
21 appearance, so why not do it beforehand?

22 MS. NOORDSY: Sometimes some of
23 the things that have already happened, even
24 on a temporary order at that initial
25 hearing, and the children are represented

1 and there may not be --

2 JUDGE CARDONA: That may put the
3 person at a disadvantage.

4 MS. NOORDSY: Right, with respect
5 to matrimonial matters, there are little to
6 no legal services available, to assist low
7 or no income victims of divorce, and I know
8 divorce may seem like a non emergency, but a
9 couple of things --

10 JUDGE LIPPMAN: These aren't the
11 high profile court cases that you read about
12 where people who have money to drive each
13 other crazy, you know, that's part of the
14 game, these are people going through the
15 necessity of life.

16 MS. NOORDSY: To be able to move
17 on with her life and not be legally tied to
18 him any more so she may start a matrimonial
19 action so she will end up in that forum
20 whether she can afford it or not. I checked
21 with our Supreme Court this week, and I was
22 correct in that they're not able to assign
23 counsel, if it's a matrimonial matter unless
24 the custody also gets transferred over,
25 so --

1 MS. MADIGAN: I know the private
2 Bar has stepped up in our region, we have a
3 number of lawyers that actually hired
4 interns to assist with handling uncontested
5 divorces, that are a couple of years behind
6 in terms of meeting that need.

7 MS. NOORDSY: I think as we see I
8 think when working with poor victims of
9 domestic violence that can't or didn't
10 qualify for the assignment of counsel, but
11 can't really afford a retainer for an
12 attorney, I believe there will victims who
13 are actually not using the Courts. It's too
14 scary and possibly dangerous to face the
15 person, that batterer, in court if she is
16 attempting to represent herself and she may
17 not come to court at all or may not go
18 beyond the initial Petition in an attempt to
19 go forward unrepresented, you know facing a
20 lot of risk and not being able to convey
21 facts. Certainly such an attorney to
22 present the facts and not be adequately
23 portrayed she is at risk of not getting an
24 Order of Protection or not getting custody
25 and we see victims of domestic violence

1 losing custody to the batterer which you
2 think is totally not what you expect to see
3 happen, but and I think that members of the
4 Bar and community and Judges generally
5 understanding of domestic violence, but may
6 not be understanding of some of her survival
7 strategies like having to leave in an
8 emergency and maybe not being able to take
9 the children with her in an emergency then
10 trying to go back and get the children, but
11 not being understood, and she needs an
12 attorney to be able to convey to the Court
13 those actions and that she needed to take in
14 an emergency and we have seen woman not get
15 custody back, in situations like that, where
16 we have to leave in an emergency and we have
17 seen woman that were represented by
18 attorneys especially attorneys trained in
19 domestic violence where it helped that case
20 significantly to have that representation.

21 JUDGE LIPPMAN: Okay. Thank you.

22 Thank you very much.

23 Okay. Yes, sir. Christopher

24 Layo?

25 MR. LAYO: Uhm -- today, I came

1 here after a four and a half hour ride from
2 North Fork, New York, in St. Lawrence
3 County, and I need the assistance of the
4 legal services for a case, again the
5 Department of Health, the Department
6 wouldn't let my workers drive me any more,
7 with my vehicle anywhere, although they
8 would let them do that before. They're
9 personal carriers. And because of a rural
10 area if you don't have access to a vehicle
11 and I can't drive, so, they would have to do
12 that, and you know you can't get around very
13 well. There's not much that you can do
14 about it. Legal services we fought for
15 about six months and we were able to win my
16 case and everything was good. My experience
17 with legal services, has really been there's
18 no basically, in three main ways, the first
19 is that of course they're free, and because
20 I'm disabled and I'm on disability, so I'm
21 on a fixed income. The second is that how I
22 was treated, they treated me very well.
23 They did a very good job and went ahead and
24 did more than they'd to. My attorney drove
25 to my house, during the middle of winter

1 when I had to sign the paperwork and I
2 couldn't pay for it, finally I filed for
3 benefits and they really worked hard to
4 actually really make it, and it was a huge
5 difference in my life and --

6 JUDGE LIPPMAN: What would you
7 have done without the representation?

8 MR. LAYO: Well, I probably
9 wouldn't have been able to do anything, you
10 have to have a lawyer to do anything when it
11 comes to the State, and government, and
12 stuff like that.

13 JUDGE LIPPMAN: Did you go in to
14 court with him?

15 MR. LAYO: Luckily we were able
16 to have it resolved before it went that far.

17 JUDGE LIPPMAN: So a lot of this,
18 I think you're a good example of it's not
19 necessarily what we envisioned the lawyer
20 going into court to represent somebody, it's
21 often dealing with large governmental
22 entities or health entities, or education
23 institutions or whatever it might be.

24 MR. LAYO: Yes. Also, like my
25 life has been really bad or would be badly

1 altered that I wouldn't have, and I also
2 like what they did for me, I remember every
3 day, every day when I go places, you know, I
4 remember that, legal services did that for
5 me and it's not something that wasn't like
6 over and done with. It's a long run and in
7 a life changing in a way. And also, like
8 you know geographic isolation up in my area,
9 is like really it makes it important to be
10 able to have, you know, offices and legal
11 services offices located in like in the
12 area, because I'm about two hours away from
13 the large area of Plattsburgh and I'm not
14 really -- it's four and a half hours from
15 here, and also in my area, it's a very low
16 income area there and really not very much
17 money at all, and they can't afford a
18 lawyer, and they probably can't afford to
19 travel you know to a --

20 JUDGE LIPPMAN: How did you get
21 in touch with them? How did you know they
22 would be able to help you?

23 MR. LAYO: Well, originally what
24 happened was, I went through and got ahold
25 of a lawyer or disability advocate and he

1 referred me to the Legal Aid Society because
2 they're in my area, and that would be a lot
3 easier than trying to travel down here. And
4 like basically like, the recommendation that
5 they would really help legal services is
6 trying to possibly get more funding or more
7 lawyers, because up in my area it's just so
8 much poverty and other things and a lot of
9 people are suffering, and you know the
10 funding might be able to help people, and
11 there are more people like me in a similar
12 situation, that are really totally effecting
13 your lives and it's not very much they can
14 do about it. And but all in all it's a very
15 positive experience, and it was very helpful
16 and that's about really all I can say about
17 it unless you have any more questions for
18 me?

19 JUDGE LIPPMAN: Number one, I
20 want that thank you for making the long trip
21 here because your case graphically
22 illustrates the need for funding for civil
23 legal services, particularly in rural New
24 York that's hard to get around, a large
25 geographic distance, you make a compelling

1 case for you know, for --

2 MR. LAYO: Right.

3 JUDGE LIPPMAN: Consistent,
4 stable funding for civil legal services all
5 around this state. And again not always,
6 what you picture getting a lawyer like going
7 to Perry Mason with you in the courtroom,
8 but someone who will deal with your problem.

9 MS. MADIGAN: And how to
10 coordinate services to remain at home with
11 dignity and your story is really
12 inspirational and we wish you the best of
13 luck as you pursue your college education
14 and look forward to hearing you as an
15 important voice in the future.

16 MS. PATNODE: Maybe you want to
17 go to law school.

18 JUDGE LIPPMAN: God willing.
19 Thank you all, we appreciate it. Next we
20 have a clients panel, which is the final
21 panel for today. Lauren E. Raffe, Dorothea
22 Medina and Anne Knapp and Ronald. Would you
23 all come up? Okay. So first we're going to
24 hear from Lauren Raffe, a client of Legal
25 Aid Society of Northeastern New York,

1 accompanied by Judy Chercheveski.

2 THE WITNESS: Just Judy is fine.

3 JUDGE LIPPMAN: Okay. Lauren, go
4 ahead.

5 MS. RAFFE: Well good afternoon,
6 Your Honor, thank you so much for hosting us
7 this afternoon, we appreciate it.

8 JUDGE LIPPMAN: Our pleasure.

9 MR. LAYO: The opportunity too
10 for our voices to be heard. Obviously I'm
11 speaking for my son, Aiden, who is seven who
12 will do his best to be playing with leggos,
13 and be a good boy. Good afternoon. That's
14 good. I'm here today representing Aiden
15 Raffie who is seven-years-old and Aiden
16 suffers from a severe medical issue, and is
17 awaiting a multiple organ transplant. Aiden
18 takes nothing by mouth and relies obviously
19 on a system or technology of feeding tubes
20 and a pump and that's why he's in this chair
21 most of the time. He takes all his fluids,
22 nutrition and medication by that pump.
23 Aiden is confined to a wheelchair, while
24 attached to the pump. He's on the pump, 20
25 to eighteen hours a day and it just depends

1 on his medical state at that time.

2 In January of 2008, shortly after
3 my returning from law enforcement, my
4 husband Michael became unemployed. At the
5 time we lived in Ithaca, New York, where
6 both of our children attended local public
7 schools with no problem. After a full year
8 of unemployment it was clear that we needed
9 to move our family from Ithaca back to the
10 capital district to pursue a business
11 opportunity that I had here. We at that
12 time moved very specifically for the Spring
13 of 2009 during the April break, so that the
14 boys could be enrolled at the local public
15 school. We went and we met with the Senior
16 Administrator of the school district prior
17 to signing a real estate contract for
18 property in the suburbs because we knew
19 there was going to be a big list for the
20 school district. We wanted to be sure that
21 the district was able and willing to provide
22 services for our two disabled sons, and they
23 were aged twelve and five at that time. The
24 district officials assured us that they were
25 able and willing to provide the complex and

1 high level of services that the boys
2 required, and the entire move was
3 coordinated around the new district
4 deadlines for review and granting of Summer
5 special education services for both of the
6 boys. It's important, it was important to
7 all of us that the boys have continuity of
8 services through the family transition, we
9 had to move, we are changing schools and we
10 wanted to keep things as normal as possible.

11 So, classes started up after
12 Spring break and my older son was able to
13 attend the middle school, but my younger
14 son, Aiden, was not admitted to the
15 kindergarten of the local elementary school.
16 Once we brought Aiden and the home care
17 nurse, who is in attendance today, to meet
18 with the elementary faculty and staff, the
19 administration backed away from their prior
20 assurance and continuously delayed his
21 admission. The reasons for delay and denial
22 changed rapidly depending on the excuse of
23 the day. Aiden's doctor had issued clear
24 orders for actions that should be taken by
25 the attending nurse to deal with Aiden's

1 various health needs. The district declared
2 that doctors orders would not be followed.
3 When pressed for an explanation, the
4 district responded that their attorneys had
5 advised them, that the care for my son, that
6 he needed, was not permissible on school
7 property. And that he would have be home
8 schooled. Once the district invoked their
9 legal counsel, I looked for representation
10 for Aiden. A friend referred me to Legal
11 Aid specifically the Children's Law Project.
12 The intake process was quick and I was soon
13 speaking to a competent and experienced
14 attorney, who was familiar with the
15 education law, and Aiden's issues which was
16 just totally critical for this case and our
17 attorney was able to sort through the
18 barriers the district was presenting. Soon
19 after she became involved Aiden was admitted
20 to his local elementary school under a
21 temporary compromise that allowed his home
22 care nurse to be present in the school, but
23 not in the classroom. The stipulation at
24 that time was that Aiden be removed from
25 school property, and treated by the home

1 care nurse on an adjoining public property,
2 should there be a medical emergency. As
3 time passed, our attorney pointed me to our
4 resources available to advocate for Aiden
5 and we were relentless in contacting
6 oversight agencies such as VESPID and the
7 New York State Licensing Bureau and as
8 pressure grew the district was beginning to
9 communicate with us even through their legal
10 counsel. After our attorney researched
11 education law, and the Nursing Practice Act,
12 she contacted the elementary middle school
13 and secondary continuing education school
14 health department, and State Nursing
15 Department, for a written opinion. She
16 presented the information to the school
17 attorney, and in the end we did prevail and
18 the school district acknowledged they were
19 in fact responsible for Aiden's safety. The
20 attorneys drafted an individualized health
21 plan which not only provided one-on-one
22 nursing services for Aiden, but also
23 required that all nurses in the district to
24 be trained on how to reinsert a feeding
25 tube. This health plan allowed Aiden to

1 participate in school. The Legal Aid
2 Society allowed my family access to
3 resources and expertise in a timely and
4 professional manner. The phrase justice
5 delayed is justice denied, is on point for
6 this case, because a medically fragile child
7 has only a small window of opportunity to
8 experience normal community life. Aiden
9 spends so much time in medical facility that
10 every minute of school with typical children
11 is precious. The Children's Law Project
12 protected and ensured Aiden's right to a
13 free and appropriate public education. At
14 the same time, the Legal Aid Society has
15 enriched our community by allowing Aiden to
16 participate in normal daily activities. If
17 the Legal Aid Society, Children's Law
18 Project had not represented Aiden, he would
19 be confined to home school, with no chance
20 for a normal education and social
21 development. I hope that there will be
22 funding for the legal service providers so
23 that all disabled children will experience
24 education success. Thank you for taking
25 your valuable time to consider the important

1 question of access to counsel for all New
2 Yorkers, and I hope you do all that you can
3 to ensure access to justice, not just to the
4 building, but to the services.

5 JUDGE LIPPMAN: Do you have any
6 doubt that Aiden would not be in the school
7 he's in today without the help of legal
8 services?

9 MS. RAFFE: I would have had to
10 absolutely have home schooled him, and had
11 to solve the problem that way, not to have
12 to deal with the messiness of his medical
13 condition in the school environment.

14 JUDGE PFAU: And not just legal
15 services, but somebody who really knew how
16 to navigate that system.

17 MS. RAFFE: That's exactly on
18 point, Your Honor, and as you know, that the
19 attorney that knows the law, and knows who
20 to contact, what to cite, and what to argue,
21 because in this case it's a medically
22 fragile child and there's a lot of issues
23 and it's not a regular typical disability,
24 if you will, that's well tried. This is new
25 ground so you've got to move quick.

1 JUDGE LIPPMAN: It's a very
2 compelling case that you make for an issue
3 that we're holding the hearing on and we
4 greatly appreciate your coming in and
5 telling us your story and we greatly
6 appreciate Aiden being here.

7 MS. RAFFE: He thought he was
8 important, because he's representing a lot
9 of children.

10 JUDGE LIPPMAN: Absolutely.
11 Thank you so much. Dorothea Medina?

12 Client of the Legal Project
13 accompanied by Lisa Finch.

14 MS. MEDINA: Thank you to Chief
15 Judge Lippman and the task force for holding
16 these important hearings on the need for and
17 the future of civil legal services in New
18 York State.

19 My name is Dorothea Medina and I
20 am here to speak as a former client of the
21 Legal Project here in Albany. I know that
22 New York State is in a financial crisis and
23 I know how hard it must be to determine what
24 gets funded and what doesn't, but I must
25 tell you that the civil legal service

1 organizations like the Legal Project, are
2 the once that simply cannot be cut. By not
3 having programs like these you are putting
4 lives in danger. Without the Legal Project
5 there will more people that women feel
6 hopeless and scared to leave their abusive
7 relationships and this is because they will
8 not have the money to hire an attorney to
9 guide them through the many complicated
10 steps it takes to get a divorce or to
11 establish custody of their children. I am
12 an example of somebody who often falls
13 through the cracks in terms of getting
14 assistance. I am 33, a single mother of two
15 daughters and a son. My daughters are 13
16 and 8, my son is three. I am CSEA member
17 and worked at the Department of Motor
18 Vehicles for the last 11 years.

19 In 2005 I met a man who I thought
20 was perfect for me. He accepted me and
21 treated my daughters as his own. So in 2007
22 I ended up marrying him and this is where my
23 story begins. In February of 2008 after
24 having experienced a history of abusive and
25 controlling behavior by my husband, we got

1 into a huge argument and I told him that I
2 no longer wanted to be with him. He must
3 have realized that -- how serious I was
4 because he became enraged and started
5 screaming and he sent me to the basement to
6 get a bag to pack his things and leave. But
7 unfortunately he followed me and continued
8 to argue, my husband then grabbed an
9 electrical cord and wrapped it around my
10 neck and started to strangle me. I was able
11 to remove it, but from there I was punched,
12 kicked, slapped, for the next 40 minutes or
13 so, just when I thought it was over, he took
14 the same cord and wrapped it around my neck
15 again. Before this all happened I never
16 understood the phrase, my life flashed
17 before my eyes. Believe me when you know
18 that you are on life's past moments, your
19 life truly does pass your before your eyes.
20 I could see my daughters and my son crying
21 at my funeral and I could see my husband on
22 the News claiming that somebody broke in,
23 and killed me, and that he was a loving
24 husband that found me dead. Actually it was
25 that thought that gave me the strength to

1 fight and maneuver myself out of his hold.
2 He wasn't just trying to scare me this time,
3 he was actually trying to kill me. I never
4 saw anybody look so evil before. He decided
5 that the next round would be to put a box
6 cutter to my neck and to have me move my
7 hands so he could get a good clean cut.
8 That took about five minutes for me to
9 accept my fate and I removed my hands.
10 Fortunately though he left because there was
11 no blades in it. Around 8 o'clock that next
12 morning, I came up with an excuse to go
13 downstairs without him and once I was down
14 there I ran to the police station and from
15 there to the hospital. That's the last time
16 I saw my husband. He was captured a year
17 later and is currently serving seven years.

18 At the time I remember speaking
19 to a representative from the Equinox
20 Domestic Violence Program concerning my
21 financial situation and I explained to her I
22 had already spoken to an attorney
23 previously, but I couldn't afford her
24 services. This is where I found out about
25 the Legal Project. When I called I couldn't

1 believe how fast it was and I was able to
2 start the process of getting my life back.
3 I was assigned an attorney so I can
4 establish sole custody of my son. Once that
5 was taken care of I was assigned an attorney
6 for the divorce procedure. If I didn't have
7 the Legal Project, I would still be married
8 to a man who tried to take my life. There
9 is absolutely no way I would have been able
10 to afford a divorce attorney and understand
11 the legalities of the legal system. My
12 attorney in the Legal Project was able to
13 break things down and explain step by step
14 and she had nothing but patience and
15 understanding of the events that almost took
16 my life. It's women like me that would be
17 devastated without this funding. Like I
18 said before, unfortunately I always seem to
19 fall between the cracks. I am a single
20 mother of three that works for the State. I
21 make too much money to receive assistance
22 like Section 8, Social Services, or Legal
23 Aid, but yet I don't make enough to live
24 decently. The Legal Project has a program
25 -- has a program that helped people like me

1 that can't afford legal assistance. What I
2 don't understand is why there even is a
3 question for the need for funding for that
4 program? Please do all that you can do to
5 make sure that the funding is always there
6 for these programs. They need to be able to
7 do the important work they do without always
8 worrying about cutting services, otherwise
9 women like me would have no way out. The
10 Legal Project gave me the gift of freedom
11 and that is priceless. Without that help I
12 may not be here today to tell my story.
13 Thank you for taking the time to listen to
14 me.

15 JUDGE LIPPMAN: Thank you for
16 coming in, we appreciate it and certainly
17 the Legal Project is a classic example of
18 the kind of programs we need in this state,
19 to provide absolutely necessary legal
20 services. What would you have done?

21 MS. MEDINA: Honestly I would
22 still be married right now. And I'd
23 probably be just dreading the time he gets
24 out. I probably wouldn't have the courage
25 to go through the Family Court, and the

1 divorce on my own.

2 JUDGE LIPPMAN: And you go out
3 you work every day and you?

4 MS. MEDINA: Yes.

5 JUDGE LIPPMAN: Try to be a
6 useful member of society, and someone whose
7 doing their share, and get you the needed
8 help with the legal representation.

9 MS. MEDINA: Yes, I wouldn't have
10 been able to do it without them.

11 JUDGE LIPPMAN: It's a great
12 program, and we appreciate your coming in.
13 Thank you. Thank you Legal Project. Okay.
14 Anne Knapp and Ronald from the Empire
15 Justice Center.

16 MS. KNAPP: This is Ronald, he's
17 the newest member of our family. We've
18 known Ronald for about five years. We began
19 the process of adopting a six year old from
20 Haiti and we have 3 other children, but came
21 to know a tremendous need for children
22 without homes, so we started to adopt then a
23 two-year-old. So we have known Ronald
24 because we travel back and forth to the
25 orphanage for several years and we realized

1 what happened with him. He was brought to
2 the orphanage by his father, brought there
3 as he lived in a province outside of Haiti
4 in a very poor village. When Ronald turned
5 twelve years old his father realized there
6 was something wrong with him, and brought
7 him to an orphanage in the City of Port Au
8 Prince where the owner of the orphanage, was
9 able to find a cardiologist an American
10 cardiologist who diagnosed Ronald with
11 mitral valve disease and said that Ronald
12 will die if he didn't get to the States for
13 surgery. We were able to arrange a host
14 family, a doctor, to coordinate a pediatric
15 cardiologist here at Albany Medical and
16 Ronald came and had the mitral valve
17 surgery. A family that wanted to adopt him
18 once they learned that Ronald was returned
19 permanently to Haiti wouldn't get the
20 cardiac care he need. Unfortunately, his
21 medical visa expired before he could be
22 adopted -- before the adoption would be
23 completed so he had to return to Haiti to
24 the orphanage. He returned there, and about
25 eighteen months later while still in the

1 process of pursuing an adoption, the mitral
2 valve replacement failed, and that time we
3 were visiting the orphanage and Ronald was
4 50 pounds lighter than you see him now. He
5 was on oxygen, near death, and the orphanage
6 was desperately trying to get a visa to get
7 him to the States to get it repaired, but
8 unfortunately the embassy down there would
9 not process an adoption visa at the same
10 time as the medical visa, so they basically
11 told him he will die in Haiti. Fortunately
12 those of us involved in the process here in
13 the States cried pretty loudly to our
14 Congressman and sent and made enough
15 pressure to get the US Embassy to issue a
16 visa. He returned here last year, 2009, to
17 Albany Med, where he had finally had
18 successful mitral valve replacement done,
19 but in April returned with a double
20 pneumonia and we visited him and prayed for
21 him and the doctors told us it would be a
22 matter of time to figure out if he was going
23 to die of the pneumonia and heart failure.
24 Ronald survived and he was able to undergo
25 the heart surgery. He had congenital heart

1 failure before. Just before the surgery by
2 this doctor here in Albany he donated all of
3 his services and saved Ronald's life. Ron
4 was to return to the family, the family also
5 had three multiple handicapped children and
6 that they have adopted. Ronald's medical
7 needs and the difficulty with the other
8 children made this family begin to really
9 struggle. His medical visa expired October
10 of last year, and again, legally he would
11 have to return to Haiti. The cardiologist
12 told the family that he will die if he
13 returns to Haiti without the medical care he
14 needs, he's on Coumadin, and he goes to
15 cardiologists and doctors regularly. At
16 this point it was too overwhelming for the
17 family as they didn't know what they were
18 going to do, they couldn't find legal
19 representation or find a way to keep Ronald
20 in the United States, without paying an
21 exorbitant fee. Then we heard something
22 called temporary protective status, but
23 could not find any legal service that would
24 help them. At that point they were
25 beginning to pursue institutional placement

1 for Ronald, but because we knew Ronald and
2 well, we care about him. We decided to have
3 him come live with us, so Ronald came to
4 live with us in May, and I began the search
5 to find out what this temporary protective
6 status is and I have to tell you, I have a
7 degree in English and I could not understand
8 what I had to do, to get temporary
9 protective status. I called and called, and
10 first I was told that Ronald -- that Ronald
11 was given a humanitarian role and after the
12 earthquake and that turned out not to be
13 true. So I continued to search, I was
14 finally told by a private attorney they
15 would do the process of temporary protective
16 status in early June, but it had to be
17 completed by July 20th, and she would do
18 that for about \$2,000, 25 hundred dollars.
19 We have five children, I'm a teacher and my
20 husband is a farmer, we couldn't afford it.
21 So we began to make phone calls to see if we
22 can find donations and in the mean time I
23 called another attorney, and it was at this
24 point I spoke with receptionist that was
25 kind enough to tell me about a place called

1 Empire Justice Center. I took Roland to the
2 Empire Justice Center in June, and Barbara
3 Winger an attorney in two hours had us
4 apply, waived her fee, the court fees and
5 had them waived for us, and had our
6 application for temporary protective
7 services finished, and in the mean time she
8 had found us an attorney who told us we can
9 adopt Ronald and we're pursuing that, and
10 that attorney will do that for a reasonable
11 cost that we can afford. But without the
12 Empire Justice Center, and that referral, I
13 never would have been able to do that.
14 Quite frankly we know Ronald knows that he
15 could never return to Haiti, unless things
16 change dramatically in the medical system.
17 He needs to be here in New York, close to
18 his cardiologist. So, thanks to the Empire
19 Justice Center, he can now be here legally
20 and he won't have to go back. And, that's
21 our story.

22 JUDGE LIPPMAN: Well, that speaks
23 for itself, the story. And we commend you
24 Ronald and especially the Empire Justice
25 Center, for pursing and being persistent,

1 and I think the whole story certainly
2 demonstrates the enormous value and societal
3 value in civil legal services, and what it
4 means in translation in terms of human
5 beings and their lives and happiness and
6 their future. So, it's great to have Ronald
7 and thanks for coming in. Thank you.

8 We the appreciate your coming in
9 and all your efforts.

10 I do want to close by saying
11 thanking this panel and close by saying I
12 think it's clear from this particular
13 hearing the breadth of life that civil legal
14 services touches. Every day whether it be
15 the boss, domestic violence, eviction, debt
16 collection, housing, education, employment
17 health, in the cities and in rural New York,
18 I mean civil legal services is essential to
19 our way of life here in New York and
20 essential on so many levels and critical to
21 our society and health of New York. So, I
22 think that it's only appropriate this
23 hearing has been held in the high Court of
24 our State, in this beautiful courtroom, that
25 has such history to it and such majesty too

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C E R T I F I C A T I O N

I, CYNTHIA A. WEST, a Shorthand
Reporter and Notary Public in and for the
State of New York, do hereby CERTIFY that
the foregoing record taken by me at the time
and place noted in the heading hereof is a
true and accurate transcript of the same, to
the best of my ability and belief.

Cynthia A. West

Dated: October 6, 2010