

STATE OF NEW YORK

SUPREME COURT

THIRD DEPARTMENT

X

THE CHIEF JUDGE'S HEARING ON CIVIL LEGAL  
SERVICES

X

PROCEEDINGS held in the  
Court of Appeals in the above-entitled  
matter on the 3rd day of October, 2011, at  
10:00 AM at the New York State Court of  
Appeals, Eagle Street, Albany, New York.

BEFORE: HONORABLE JONATHAN LIPPMAN,  
Chief Judge

HONORABLE ANN PFAU,  
Chief Administrative Judge

HONORABLE THOMAS MERCURE,  
Acting Presiding Justice

VINCENT DOYLE,  
President of NYS Bar Association

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P R O C E E D I N G S

JUDGE LIPPMAN: Good morning.

It's a delight to see all of you and to be here at the Court of Appeals, my favorite place. And this as you know is the second year of our annual hearings on the -- and really this was put together by the Task Force to expand civil legal services in our state. The chair of our Task Force is Helaine Barnett who is sitting right over there. Helaine, stand up so we can see you? The former head of the legal services corporation and the Task Force has been so instrumental in preparing for the hearings and we thank you, Helaine. We're really here because we recognize that we here in the judiciary and the profession, that our fundamental Constitutional obligation, responsibility and our professional obligation is to foster equal justice for all in this state. And certainly our view is if not the judiciary and the profession to stand up for civil legal services for the poor and indigent in this state, if not us,

1           who? I will recognize that these hearings  
2           are really conducted by the judicial and  
3           judicial leadership and leadership of the  
4           professions in the state and with me are to  
5           my right, Tom Mercure the Acting Presiding  
6           Justice of the Third Department, here in  
7           Albany, to my left is Chief Administrative  
8           Judge Ann Pfau, and to my far right, is  
9           Vincent Doyle, the President of the State  
10          Bar Association.

11                    So, these hearings really do  
12          represent again the judicial and  
13          professional leadership of the Bar in this  
14          state, and we recognize, that it's not  
15          enough to just keep our Courthouses open,  
16          but inside those Courthouses everyone must  
17          get fair and equal justice.

18                    These are difficult times, and  
19          particularly in these difficult times, the  
20          least advantaged in our society, are the  
21          ones most at risk in our legal system. As  
22          you've all I'm sure been aware as of late  
23          the recent statistics on poverty is mind  
24          boggling. In New York City, 20% of the  
25          population is living at or below the poverty

1 level and outside of New York State outside  
2 of New York City almost 15% of the State, is  
3 living at poverty level. And all of those  
4 people, the people who have the most  
5 difficult times are faced as all of us are  
6 with legal problems, really effecting the  
7 necessities of life and we certainly  
8 recognize aside from our constitutional  
9 mission and professional responsibilities  
10 that we have a moral and ethical obligation  
11 to support civil legal services, for the  
12 poor. Every civilized society, going back  
13 to biblical times, recognizes that it is  
14 judged by how it treats its most vulnerable  
15 citizens and certainly it's no different  
16 then. It's not only the right thing to be  
17 doing, it also serves the bottom line, of  
18 our institutions here in New York and other  
19 society and state government.

20 Civil legal services is a good  
21 investment for every dollar that the Task  
22 Force found last year at hearing that every  
23 dollar spent on civil legal services in this  
24 state, five dollars are returned to the  
25 State, returned back to the State which

1 reduces social services, homelessness,  
2 incarceration and increased federal benefits  
3 coming to New York. When we allow the most  
4 vulnerable to fall off the cliff, we also  
5 suffer, that is something that was made  
6 abundantly clear to the hearing last year.  
7 This is the third year and this year we have  
8 one in Manhattan, one in Westchester and  
9 this is the third hearing here in Albany.  
10 Our last hearing will be Thursday in  
11 Buffalo. The Task Force remains active in  
12 preparing its report for this year based  
13 upon the hearings, and it's our independent  
14 research.

15 The job at these hearings is to  
16 measure the current state of legal services  
17 in New York and the gap in civil legal  
18 services that we have in New York State, and  
19 particularly as it relates to the essentials  
20 of life, the roof over someone's head, their  
21 personal safety, the well-being of the  
22 family, their livelihood, and their  
23 entitlement to subsistence, income and  
24 benefits. The criteria in New York that we  
25 have set and the Task Force has recommended

1 we have accepted civil legal services 200  
2 people living at 200 percent of the poverty  
3 level or below to give you a sense of  
4 context. 200 percent of the population  
5 level is a family of four earning \$44,000 a  
6 year. When people in that kind of economic  
7 circumstance run into a legal problem  
8 effecting again the essentials of life,  
9 \$44,000 in a year to feed four people, to  
10 house four people, to meet their basic  
11 needs, is a very difficult task.

12 Last year, we through the Task  
13 Force, we established a process in New York,  
14 and pursuant to a joint resolution of the  
15 legislature where we hold public hearings we  
16 determined the unmet legal needs in the  
17 State and how do we eliminate that or narrow  
18 the gap. We put that money in the judiciary  
19 budget and then the legislature and the  
20 governor act. I think that's a very good  
21 template for New York, to provide a  
22 systemic, consistent, dependable stream of  
23 civil legal services that last year enabled  
24 us to obtain 27 and a half million dollars  
25 in the judiciary budget for civil legal

1 services, fifteen of which we turned over to  
2 IOLA, whose moneys had been reduced through  
3 the low interest rates today, from 36  
4 million dollars to 8 million dollars in one  
5 year, so 15 million given to IOLA and  
6 another twelve and half millions dollars was  
7 given to 56 providers through a grant  
8 process, in the New York State Court system.  
9 So, those monies were greatly helpful when  
10 you tend to do the exact same thing this  
11 year too -- figure out the gap, in civil  
12 legal services and put it in the budget.

13 The report last year was  
14 comprehensive in terms of civil legal  
15 services. We received testimony at our  
16 hearings from clients and business people,  
17 people from the banks, from landlords, from  
18 hospitals, attesting to the fact not only of  
19 the great need, but also that again it comes  
20 to the bottom line on each of those  
21 institutions and on society to provide civil  
22 legal services for the poor.

23 We also learned a tremendous  
24 amount about civil legal services in the  
25 State. In New York City, for every one



1 person accepted for civil legal services 8  
2 or 9 people are turned away. Outside of the  
3 city it's not that much better. Last year  
4 over 2.3 million people, appeared in the  
5 courts of New York, without representation.  
6 Including 98 percent of tenants in eviction  
7 cases, 99 percent of borrowers in consumer  
8 credit transactions, 95 percent of parents  
9 in child support matters, and up until  
10 recently, a majority of people who come in,  
11 in foreclosure proceedings. 70% of the  
12 cases in New York, deal with the essentials  
13 of life, the necessity of life. And that  
14 includes family law, consumer credit,  
15 landlord/tenant and foreclosure cases.

16 We certainly are learning a lot  
17 more this year, and expect to learn a lot  
18 from the hearings today. We will hear  
19 testimony from a representative of the  
20 Attorney General, from Mike Cocco the  
21 Deputy Chief Administrative Judge from the  
22 Courts outside New York, from a business  
23 leaders panel, from a judge's panel, and a  
24 strategic partnership panel here about  
25 technology and civil legal services and of

1 course, a clients panel to tell us what  
2 directly will benefit civil legal services,  
3 to the individuals involved. Certainly  
4 there's nothing more important to the  
5 judiciary and profession than meeting our  
6 Constitutional and ethical obligation to  
7 support civil legal services and equal  
8 justice in this state. That's the spirit in  
9 which these hearings proceed. I mentioned  
10 that Fern Fisher is here, the Deputy Chief  
11 Administrative Judge for the New York State  
12 Courts and heads our access to justice  
13 initiative state wide, Fern, I thank you for  
14 all your terrific work and being here today.  
15 Lillian Moy provided such a great assistance  
16 in putting together today's panels, and has  
17 been so active and productive here in the  
18 Albany area in terms of this whole issue of  
19 civil legal services.

20 There are other members of the  
21 commission here, who I want to thank for  
22 being here, I thank each and every one of  
23 you for being here, and I hope you all  
24 recognize that we're going to move these  
25 hearings along in a very direct way. We

1 have your full written testimony and when  
2 you see that the red light goes on, it means  
3 get a little nervous those that are lawyers,  
4 but don't get too nervous, we are among  
5 friends and family here, and what we want to  
6 do is learn about what our problems are with  
7 civil legal services, what the gaps are, and  
8 so don't be upset if we interrupt your  
9 testimony because we also want to ask you  
10 some questions, and we're going to proceed  
11 in this beautiful majestic place, and we  
12 have done this hearing here for the reason  
13 that I think the Court of Appeals with all  
14 its majesty and history, symbolize what this  
15 Court system is all about. And I want to  
16 tell you, what it's all about is equal  
17 justice. We pursue justice every day, in  
18 our respective roles, you know in the Bible  
19 the old testament speaks of justice, as  
20 shining pursuit for rich and poor, high and  
21 low alike and that's what we do, every day,  
22 and that's what every one member of the  
23 legal profession does, and we cannot do  
24 that, unless there is a steady, dependable  
25 consistent funding stream for civil legal

1 services and that funding, in large measure,  
2 has to come out of the public fist and  
3 that's why we put that into the judiciary  
4 budget and last year and this again year.

5 So without any further  
6 discussion, let me ask Martin Mack, who is  
7 the Executive Deputy Attorney General for  
8 Regional Affairs to testify on behalf of the  
9 Attorney General.

10 MR. MACK: Your Honor, shall I  
11 come up here?

12 THE COURT: Sure, absolutely,  
13 front and center Mr. Mack.

14 MR. MACK: Thank you. Thank you  
15 for allowing me to be here.

16 Thank you, Your Honor.  
17 Mr. Doyle, good morning. My name is Marty  
18 Mack and thank you for inviting Attorney  
19 General Schniederma to address the hearings  
20 on access to the civil legal services in New  
21 York State. Unfortunately, the Attorney  
22 General is unable to attend today, but I'm  
23 honored to speak on this critical issue on  
24 behalf of our office. Attorney General  
25 Schniederma would like to thank Judge Pfau,

1 Judge Mercure and the New York State Bar  
2 Association and Vincent Doyle for their  
3 leadership. And I would especially like to  
4 thank Chief Judge Lippman for providing the  
5 impetus for these hearings.

6 Judge Lippman's efforts on these  
7 issues, has been nothing short of  
8 extraordinary. The history of the legal  
9 services movement in our country, began as a  
10 reflection of the widespread recognition by  
11 the legal professional, that we had a  
12 special obligation to ensure that justice  
13 was accessible to all, regardless of  
14 economic status.

15 For decades, legal services  
16 lawyers helped achieve major victories in  
17 every aspect of the fight to protect the  
18 rights of the disadvantaged and they brought  
19 in one cases affirming the Constitutional  
20 rights of the poor, and help them enforce  
21 their right to government benefits, the  
22 honest treatment of consumers and access to  
23 health care, and they advocated for  
24 legislative changes if the courts could not  
25 help. This all began to change in the

1 1980's, when the legal services corporation  
2 saw its funding slashed and mandate  
3 attacked. The budget for LSC had been cut  
4 and the same time the need for these  
5 services has grown. Today, the great  
6 recession has caused the ranks of the  
7 working poor and the need for the legal  
8 services to grow even faster. When the loss  
9 of a job or foreclosure on ones home or  
10 custody of ones child is at stake, justice  
11 demands nothing less than adequate  
12 representation. As the Task Force to expand  
13 access to the civil legal services, so  
14 clearly and ably illustrated in its report  
15 to Chief Judge Lippman last year, we are  
16 falling short of this ideal in New York  
17 state.

18 Nationwide the LSC estimates that  
19 for every client served by an LSC funded  
20 program another person who seeks help is  
21 turned down because of insufficient  
22 resources. Here in New York the Office of  
23 Court Administration estimates that more  
24 than 2.3 million New Yorkers are under  
25 represented as they attempt to navigate our

1 legal system. The funds for modern report  
2 for courts states in 2009 almost 3 million  
3 low income New Yorkers face at least one  
4 legal problem without representation and 1.2  
5 million face three or more matters without  
6 access to counsel.

7 Let me focus for a moment on one  
8 issue that our office is working on  
9 resolving; the mortgage crisis that lead to  
10 tens of thousands of New Yorkers battling to  
11 keep their homes. Every foreclosure  
12 represents a threat to these futures. New  
13 Yorkers threatened to foreclosure has only  
14 the promise of a fair legal system protect  
15 them from being homeless and having their  
16 American dream, die an unjust and unkindly  
17 death. And yet we know that all too often  
18 the system is not fair. Too many home  
19 owners have to go it alone when facing a  
20 foreclosure objection action because of lack  
21 of legal counsel. Even with State and  
22 special state legislature funding for  
23 foreclosure prevention services and the  
24 surrogate pro bono assistance across the  
25 state, 44 percent of the New Yorkers facing

1 foreclosures lack legal representation. The  
2 lack of individual representation, in  
3 foreclosure actions is one reason why we  
4 have a systemic abuse of the legal system,  
5 by lenders and debt collectors. We have all  
6 heard harrowing terms and tales of abuse,  
7 including foreclosure actions brought  
8 against home owners actually up-to-date on  
9 their mortgage payments. A recent preview  
10 of bankruptcy filings in the Federal  
11 District Court for the Southern and Eastern  
12 Districts of New York by the New York Post,  
13 found that 92% of the creditors, asserting a  
14 right to foreclosure against bankrupt  
15 families lack the proper chain of title for  
16 the property they were seizing. For every  
17 abusive case uncovered, there are dozens  
18 upon dozens of home owners and former home  
19 owners who have been steamrolled because  
20 they did not have adequate representation.  
21 Abuses such as robo signing, sewer service,  
22 and improper legal documentation, only  
23 happen because lenders and debt collectors  
24 are able to assume that the overwhelming  
25 majority of home owners won't have attorneys



1 to fight back. The recent reforms enacted  
2 by Judge Lippman, Judge Pfau, requiring  
3 lawyers or leaders to affirm that they have  
4 taken reasonable steps to verify the  
5 accuracy of their papers and residential  
6 foreclosures, were needed in large part,  
7 because of a lack of private counsel in  
8 individual cases, to identify, and object to  
9 false filings and to the surprise of no one,  
10 the newly enacted acted reforms dramatically  
11 reduced foreclosure filings in New York.  
12 Our office looks forward to being involved  
13 in the defense of this group. But we must  
14 do more. The threat of foreclosure remains  
15 all too real for many home owners. The  
16 Federal Reserve Bank of New York reports  
17 that as of March of this year, roughly ten  
18 percent of the residential mortgages in New  
19 York City, and 9 counties of the Hudson  
20 Valley and Long Island, are either in  
21 foreclosure, or are more the 90 days  
22 delinquent and the pain is acutely  
23 concentrated in some of the poorest areas of  
24 our state, where the need to provide civil  
25 legal success is greatest. One of our

1 offices top priorities, is to restore New  
2 Yorkers faith in their public sector  
3 institution. We believe firmly that one of  
4 the best ways to restore a faith in a our  
5 state government is to ensure that the tax  
6 payers dollars are well spent and that we  
7 route out waste wherever that exists. Every  
8 public dollar wasted, is a dollar lost for  
9 critical services like health care and  
10 housing. That's why Attorney General  
11 Schniederman established a new tax payer  
12 protection bureau in the Office of the  
13 Attorney General to target contractors,  
14 pension con artists and large scale tax  
15 cheats who rip off New York State government  
16 and its tax payers. Legal service attorneys  
17 are a vital partners in the effort to save  
18 tax payer dollars, supporting them is a  
19 wise, long term investment for New York. As  
20 they help to make our judicial system more  
21 efficient and to achieve better results for  
22 all parties. With the aid of counsel, cases  
23 are resolved and are growing. Unnecessary  
24 adjournments are avoided and costly trials  
25 are averted. Judges and court personnel

1 spend less time explaining procedural  
2 matters to parties with counsel than to  
3 those who represent themselves pro se.  
4 Effective civil counsel for the indigent and  
5 the working poor also has direct and  
6 tangible benefits for state and local  
7 governments. Preventing eviction and  
8 foreclosure helps to avert homelessness.  
9 Keeping families together avoids costly  
10 foster care placements. And obtaining  
11 federal disability benefits in unemployment  
12 insurance, can reduce or supplement state  
13 and local public assistance benefits.

14 New York State is quite literally  
15 leaving hundreds of millions of dollars on  
16 the table, every year, in unclaimed federal  
17 benefits to which our citizens are  
18 rightfully entitled. Our state loses over  
19 400 million annually, because under  
20 represented New Yorkers lose their rights to  
21 access federal programs like veterans  
22 benefits and disability payments.

23 Finally it is our offices duty to  
24 defend the State and its agencies in a wide  
25 area of actions and proceedings. Often our

1 office finds itself in an adversarial  
2 posture with legal service lawyers. While  
3 we may not always agree on the merits of a  
4 given dispute they are able and worthy  
5 opponents and their involvement in the  
6 process results in better outcomes for all  
7 parties. Our office has worked opposite  
8 legal service lawyers to achieve settlements  
9 and positive policy solutions, for this  
10 state and its citizens in areas such as  
11 juvenile justice, mental health and prison  
12 reform and legal service lawyers are not  
13 only our adversaries, but they are also our  
14 partners. Lawyers working on the ground in  
15 the community serve as the eyes and ears of  
16 our state government, including the office  
17 of the Attorney General. They help us to  
18 identify systemic problems in the community  
19 throughout the State and they provide early  
20 warning systems for emerging problems.  
21 Lawyers in our service routinely work with  
22 legal service attorneys developing  
23 affirmative cases. Our office's Labor  
24 Bureau receives complaints from lawyers  
25 about of violations of worker rights and

1 discrimination of the workers and attorneys  
2 in our Civil Rights Bureau work with legal  
3 aid lawyers to identify unlawful  
4 discrimination in the workplace, housing and  
5 schools. And our Health Care Bureau  
6 receives fits and leads to help to address  
7 the systemic problems in health care  
8 delivery. Often it is information from  
9 legal service lawyers, that enables us to  
10 identify and address patterns of wrongdoing  
11 before the problems become widespread.

12 Thank you for giving our office  
13 and me this opportunity to testify today.  
14 We must ensure that all New Yorkers in cases  
15 involving the fundamental struggles in  
16 society can gain meaningful access to the  
17 legal system.

18 On behalf of the attorney General  
19 Schneiderman we look forward to working with  
20 the Task Force to expand access to legal  
21 services, with our understandings, colleague  
22 Chief Judge Lippman and our -- with our  
23 partners in law and the legal profession and  
24 Legislature, to achieve this noble goal.

25 JUDGE LIPPMAN: Thank you

1 Attorney General for your very interesting  
2 testimony. I think it's so important that  
3 the chief legal officer in the state, comes  
4 in and testifies about important civil legal  
5 services. Let me ask you first something  
6 that I think you were every eloquent about  
7 in your remarks, you would think that the  
8 Attorney General as would so many other  
9 people who -- or legal people who represent  
10 people in Court would rather not have an  
11 opponent and that people, without  
12 representation, and you win. Why is it  
13 important that, that everyone be  
14 represented? Why is the result better when  
15 people are represented?

16 MR. MACK: Well the bottom line  
17 is that, let's take the example of the  
18 mental health hearings. So much is at  
19 stake. The retention hearings where we  
20 retain an individual against their will. We  
21 deliver medicine against their will, you  
22 know, basic fundamental liberty is at stake.  
23 And an efficient hearing and proper outcome  
24 and a full airing of all issues could only  
25 be accomplished with the legal service

1 attorneys. We're in court almost every day  
2 throughout the state, and such a retention  
3 hearing could only work, and the rights of  
4 the individual only be protected, with  
5 Mental Hygiene Legal Services.

6 THE COURT: So everyone's rights  
7 is protected when there's a level playing  
8 field?

9 MR. MACK: That's right. There's  
10 no -- there may be a situation of the  
11 individual, whose liberty is at stake.

12 JUDGE LIPPMAN: Thank you. On  
13 the foreclosure issue which is so important  
14 and I know the Attorney General has been so  
15 active on that issue nationally, in terms of  
16 a foreclosure impact on people, why is it  
17 that you think that the requirement that we  
18 put into place in New York, has resulted in  
19 a decrease in foreclosure filings? Talk to  
20 me in the context of when so many of the  
21 people until recently -- recently had no  
22 representation, you know, again in these  
23 foreclosure proceedings.

24 MR. MACK: Well, I think it's  
25 pretty clear, Your Honor, I think the result

1 is, the result is the effect of the cause  
2 and the cause here is that, the review of  
3 title, the filing of the documents, the  
4 service on individuals who are parties for  
5 foreclosure proceedings, has all been very  
6 faulty, and once they realize that there is  
7 light being shed on the proceedings that the  
8 attorneys who are pursuing these cases are  
9 individually responsible for the accuracy of  
10 the documents being submitted, then I think  
11 that it gives them pause, it requires them  
12 to review all the documents and what they  
13 are finding in this review, are many gaps in  
14 the process.

15 JUDGE LIPPMAN: So basically  
16 without -- without the strongest of the  
17 Attorney General, in the area, without the  
18 kind of requirements that we put into place  
19 in New York you can have a situation, where  
20 you have a foreclosure proceeding, the  
21 person against whom that proceeding doesn't  
22 have representation, it can go through and  
23 really there's no basis for gravitas to  
24 the --

25 MR. MACK: Absolutely correct and



1 I think basic jurisdiction of having good  
2 title and the right to bring the foreclosure  
3 is in question in some of these actions.

4 JUDGE LIPPMAN: You can lose the  
5 roof over your head and what is more  
6 essential and yet there could be nothing  
7 less.

8 MR. MACK: The consequence is  
9 huge and over time, it will become more  
10 obvious, how industrial and mechanized this  
11 foreclosure system became, with the few  
12 players, you know, pushing mortgages  
13 through, without paying attention to the  
14 basic fundamentals of recording.

15 JUDGE LIPPMAN: It's so  
16 important and I note what we are trying to  
17 do across the State is to make sure that  
18 everyone, at these proceedings, first of all  
19 make sure that the proceedings are real, and  
20 that once they come into court that everyone  
21 has legal representation, to help them  
22 because, even on the foreclosure  
23 proceedings, that do have a solid basis, the  
24 bank doesn't want the property back, they  
25 want to work something out, wouldn't you say

1           that's the case?

2                       MR. MACK: Absolutely. The  
3           interesting thing in what you say and you  
4           don't see as many foreclosures in community  
5           banks simply because they hold on the paper,  
6           they need the customers where, and they  
7           monitor and deal with their customers and  
8           because they don't want the foreclosure. It  
9           is the huge banks that put in the mortgages  
10          and bundle them, that's the foreclosure,  
11          they didn't care about the customers, and  
12          they didn't pay attention to the basis of  
13          real property transfers.

14                     JUDGE LIPPMAN: Thank you.

15                     JUSTICE PFAU: Can I ask one  
16          question and it was just so interesting to  
17          hear your testimony, from your various  
18          statewide view of all the different things  
19          that the Attorney Generals Office is  
20          involved in then usually when you talk about  
21          the fundamental right to legal services, you  
22          think about a criminal sense, this basic  
23          right if you're in a criminal proceeding to  
24          be represented. From your perspective,  
25          looking at all those different areas that

1           you cover, would you say that there is as  
2           significant rights at stake on the civil  
3           side, when you're talking about your  
4           foreclosure and mental hygiene and all the  
5           areas that you touched on?

6                   MR. MACK:  Even more so in the  
7           sense too there are more people involved in  
8           the civil controversy and civil problem and  
9           the criminal justice system obviously  
10          liberty is at stake in the criminal justice  
11          system, but livelihood is at stake and an  
12          ability to have a secure future, is at stake  
13          to care for your children is at stake.  And  
14          all these civil litigations at stake.

15                   JUDGE LIPPMAN:  So you can have  
16          something that is even more precious, if  
17          that were possible, than your liberty, at  
18          stake in the civil proceedings?

19                   MR. MACK:  I would think so and  
20          if you ask a parent what's more precious,  
21          their liberty or their child, it would be  
22          their child and they would overwhelmingly  
23          decline the necessary services and needing  
24          -- that the the child needs during the  
25          administrative proceedings.

1 JUDGE LIPPMAN: Thank you.

2 Greatly appreciate your testimony Attorney  
3 General.

4 MR. MACK: Thank you.

5 JUDGE LIPPMAN: And thank the  
6 Attorney General. We greatly appreciate  
7 that.

8 While Deputy Chief Administrative  
9 Judge Coccoma is coming up I also note that  
10 I see Ann Erickson from the Empire Justice  
11 Center and Steve Banks from the Legal Aid  
12 Society, both of whom have done terrific  
13 work on the Task Force and appreciate their  
14 being here today.

15 Judge Coccoma, it's terrific to  
16 see you.

17 JUDGE COCCOMA: Good morning.

18 JUDGE LIPPMAN: Do you want to  
19 begin your testimony?

20 JUDGE COCCOMA: Yes and since as  
21 you point out, Chief Judge Lippman that our  
22 testimony has been submitted in advance, I  
23 would like to just highlight portions of my  
24 testimony, which I wish to comment on this  
25 morning.

1                   First of all, good morning to you  
2                   Chief Judge Lippman, Judge Pfau, Judge  
3                   Mercure and President Doyle. I wish to  
4                   begin my remarks with a quote, "there can be  
5                   no legal justice where the kind of trial a  
6                   man gets depends on the money he has,"  
7                   Honorable Hugo Black, United States Supreme  
8                   Court Judge, circa 1964. Having been a  
9                   judge for nearly 17 years including 13 years  
10                  as as multi-bench County Judge, I have had  
11                  contact with many unrepresented litigants  
12                  that appear before my Court. My remarks are  
13                  based upon my personal experiences from the  
14                  bench, as well as the administrator of the  
15                  trial Courts of the 57 counties, outside the  
16                  City of New York.

17                  I will divide my remarks in two  
18                  parts: First my personal observations from  
19                  the bench, and second a summary and comment  
20                  upon the efforts so far to meet the demand  
21                  for civil legal services to the poor. The  
22                  seriousness of the problem this committee  
23                  seeks to address cannot be underestimated.  
24                  The Courts which I supervise are rural,  
25                  suburban as well as urban counties. They

1 consist of county, family, surrogate courts  
2 as well as Supreme Court. I am also  
3 involved in the supervision and education of  
4 town and village justices. And although the  
5 character of the community that these courts  
6 are located in may differ, the challenges to  
7 the litigants who appear in these courts  
8 unrepresented, remain the same. Often their  
9 entry into the civil court system is fraught  
10 with confusion, frustration and in many  
11 cases, fear. We all know that we are in  
12 unprecedented times in our state, in this  
13 nation, with unemployment as its highest  
14 level, evictions and foreclosures rampant  
15 and social problems related to the economic  
16 downturn being at an all time high. And  
17 it's no surprise here that more and more  
18 people are turning to the Courts for access  
19 to justice, and to protect their basic human  
20 rights.

21 To put the issue of  
22 representation in perspective over two  
23 million litigants appear without attorneys  
24 in our New York Courts annually. And you  
25 will hear during the course of your public

1           hearings across the State, from litigants  
2           who have been put in this position. We'll  
3           hear of their pleas of helplessness and  
4           distress, confusion and frustration, when  
5           facing Court proceedings, on their own.  
6           From my own perspective and I believe I  
7           speak for judges throughout the state, a  
8           case that comes before me involving a party  
9           who is unrepresented, presents an added  
10          challenge. Unfamiliarity with the Court  
11          proceedings, the Court processes, and most  
12          importantly, a lack of understanding of the  
13          substantiative law itself, creates an  
14          impediment to the unrepresented individuals,  
15          which is impossible to overcome. It is  
16          simply not a level playing field. My first  
17          comment in Court to an unrepresented  
18          individual is to advise that person, of  
19          their right to be represented by counsel and  
20          their right to a reasonable adjournment so  
21          they can speak with, and reappear with, an  
22          attorney. However, these words carry little  
23          comfort if there are no attorneys available,  
24          either through a pro bono program, or a  
25          civil legal services program. In most cases

1 and especially in matters of consumer debt  
2 collection and foreclosure, a litigant will  
3 come back to my Court after having received  
4 that reasonable adjournment to obtain  
5 counsel, only to inform the Court that they  
6 were unable to secure the service of an  
7 attorney. And so, they must then proceed  
8 without counsel. Just like most judges  
9 throughout the state, I must then take the  
10 time to explain the court procedure to them,  
11 how to subpoena witnesses, how to ask a  
12 proper question, on both direct and  
13 cross-examination of witnesses. And how to  
14 serve papers. This extra time taken by the  
15 judge to try to be fair to the unrepresented  
16 party has the cases back up. And with  
17 increased case loads eventually this will  
18 reach critical mass in our Courts. In fact,  
19 it has in some courts. As a result of the  
20 reduction in force of staffing in our  
21 courts, further delays in the processing of  
22 cases only creates a bottleneck. Of grave  
23 concern to me as Administrative Judge  
24 outside the city, is the impact on the  
25 family courts throughout New York State,



1           which are struggling with maximum case  
2           loads, lack of judges and inadequate staff  
3           to manage these cases. Although 18 (b)  
4           attorneys and attorneys for the children  
5           assignments do provide services to a number  
6           of unrepresented individuals, in many cases  
7           there are not sufficient numbers of  
8           attorneys participating in the program. We  
9           need additional funding to train and recruit  
10          these attorneys. Unrepresented litigants  
11          present an ethical dilemma for the Judge as  
12          well. While the judge must take the time to  
13          explain the law, and its applicability in a  
14          case, there is a fine line that a trial  
15          judge must walk to be fair and neutral to  
16          both sides and to not give the appearance of  
17          favoring the unrepresented litigant. In  
18          addition, given the time and ethical  
19          constraints on the Judges the explanation of  
20          the procedural and substantive law that  
21          the unrepresented receives, is cursory at  
22          best.

23                           JUDGE LIPPMAN: Judge Coccoma,  
24                           let me ask you a question in your particular  
25                           area, you -- your home base is Cooperstown?

1 JUDGE COCCOMA: Yes.

2 JUDGE LIPPMAN: How many  
3 providers are there in that area or is it  
4 easy to get legal representation for the  
5 Court?

6 MR. COCCOMA: That's a very good  
7 question judge, there's no resident  
8 providers in Otsego County.

9 JUDGE LIPPMAN: Where do they  
10 come from?

11 JUDGE COCCOMA: Utica or  
12 Binghamton or Albany.

13 JUDGE LIPPMAN: Is that easy for  
14 people in general?

15 JUDGE COCCOMA: No, it's easy an  
16 hour drive to Binghamton, hour and a half to  
17 Utica or Albany.

18 JUDGE LIPPMAN: These are  
19 generally poor people?

20 JUDGE COCCOMA: Our local Bar  
21 does have some pro bono programs  
22 attorney-for-the-day type program, but it's  
23 not enough. I was in court last Friday  
24 afternoon and a litigant in a Supreme Court  
25 matter was unrepresented, I gave that

1 individual the adjournment, the two week  
2 adjournment to obtain counsel. So, access  
3 to legal services in the rural areas is --

4 JUDGE LIPPMAN: And I  
5 particularly want to focus and forgive me  
6 for interrupting you, I want you to  
7 personalize this, when you see a -- when you  
8 talk about the judge in the difficult  
9 position, when he has someone who is  
10 unrepresented and you have been there.

11 JUDGE COCCOMA: Yes.

12 JUDGE LIPPMAN: Not just in the  
13 Supreme Court.

14 JUDGE COCCOMA: Family Court as  
15 well.

16 JUDGE LIPPMAN: You know it's  
17 first hand, what happens to you, your role  
18 as you started to say is the impartial  
19 arbiter of disputes as opposed to being  
20 neutral, what happens when you are asked by  
21 someone in a serious case, that let's say  
22 this effects their livelihood, the roof over  
23 their head, their family, their safety, what  
24 do you have to do, how do you meet that  
25 obligation as neutral arbiter when you have

1           somebody just who has no representation and  
2           you know there's something very vital at  
3           stake for that person?

4                   JUDGE COCCOMA: Well recently let  
5           me give you an example, I had recently, in a  
6           Supreme Court matter, there was a litigant  
7           defendant who was brought in on a contempt  
8           proceeding for failure to answer an  
9           Information Subpoena, on a consumer debt  
10          matter.

11                   JUDGE LIPPMAN: Which is very  
12          common today.

13                   JUDGE COCCOMA: Very common, and  
14          they don't understand, what these subpoenas  
15          are. There was an attorney representing the  
16          plaintiff bank, the defendant was  
17          unrepresented. I gave him his rights and he  
18          told me he tried to secure an attorney, was  
19          unable to do so because it was contempt,  
20          which would have you know dealt with his  
21          rights, not necessarily incarceration, but  
22          he was subject to a fine. I felt I was  
23          within my rights to assign him an attorney.  
24          And I looked around the Courtroom, saw a  
25          local attorney and asked him if he was

1 available take an 18 (b) assignment and he  
2 said he was. I asked the defendant to fill  
3 out a financial affidavit, make sure that he  
4 met the guidelines and he filled it out in  
5 the courtroom room and I assigned the  
6 attorney, adjourned the matter for a half  
7 hour and put it at the bottom of the  
8 calendar and when he came back in front of  
9 me, the 18 (b) attorney had worked it out  
10 with the plaintiff's attorney, the motion  
11 was going to be held in abeyance, the  
12 information subpoena was going to be  
13 finished within a number days and the matter  
14 was resolved. Having this other attorney  
15 involved brought about a resolution of the  
16 matter. And I didn't have to write a  
17 Decision and the case was resolved.

18 JUDGE LIPPMAN: You didn't have  
19 to be in effect the lawyer, for the -- when  
20 you are not supposed to be the lawyer for  
21 either side.

22 JUDGE COCCOMA: Right. When they  
23 are unrepresented as I pointed out, that's  
24 the ethical challenge for the judge.

25 JUDGE LIPPMAN: As to whether you

1 can stand there and let someone's basics of  
2 life be impacted and yet, you are not  
3 supposed to be their attorney and what do  
4 you do? That's the ethical dilemma that  
5 you're talking about?

6 JUDGE COCCOMA: Yes, you know you  
7 are looking at the other side and you can't  
8 help but say to yourself, am I the neutral  
9 judge hear or am I --

10 JUDGE LIPPMAN: Or the lawyer.

11 JUDGE COCCOMA: Lawyer. So the  
12 appearance for the trial judge the  
13 appearance of impropriety, that's the fine  
14 line.

15 JUDGE LIPPMAN: How you walk that  
16 line.

17 JUDGE COCCOMA: Yes.

18 JUSTICE MERCURE: Judge Coccoma,  
19 you administer the courts in 57 counties?  
20 Is that correct?

21 JUDGE COCCOMA: That's correct.

22 JUSTICE MERCURE: Rural and  
23 suburban, would you say the problems is  
24 greater in rural areas because of the lack  
25 of providers in this?

1 JUDGE COCCOMA: Well, I think  
2 what Judge Lippman pointed out, Judge  
3 Mercure the lack of providers, to the rural  
4 counties, the inability to go across the  
5 street into the office of the legal services  
6 office, is an added problem. And as I said  
7 in my County one would have to drive to  
8 Utica, Binghamton or Albany or to meet with  
9 them to see if they take the case.

10 JUDGE LIPPMAN: Either way you  
11 can't win. If you're in the big urban  
12 center, they turn people away left and right  
13 and if you're in the rural area, you can't  
14 find a provider acceptable to allow you to  
15 have representation, so it's real is a Catch  
16 22.

17 JUDGE COCCOMA: It is, and you  
18 know we have to rely upon the private Bar,  
19 to participate in a pro bono activity, to  
20 try to meet that and they do a great job,  
21 but essentially it's just not enough given  
22 the number and that's what we're seeing come  
23 into the courtroom, when I sit on special  
24 term motion calendar in Supreme Court it's  
25 -- I'd venture a guess that one third of the

1 people in there are unrepresented.

2 JUDGE LIPPMAN: I think it's fair  
3 to say, I'll say for a fact and I you know  
4 you would agree, that in this economy, you  
5 see more and more people coming into the  
6 Court without representation.

7 JUDGE COCCOMA: Without a doubt.

8 JUDGE LIPPMAN: And I think what  
9 we found at the hearings, if you had  
10 representation, a lot of times you never get  
11 into court because the matters are worked  
12 out before you even get to court. So it  
13 really it is this economic distress that we  
14 felt in our state and country, has made this  
15 issue of civil legal services, so much more  
16 critical.

17 JUDGE COCCOMA: Yes.

18 JUDGE LIPPMAN: And now that we  
19 disturbed you from you statement is there  
20 anything else you want to say?

21 JUDGE COCCOMA: Well I see my red  
22 light is on.

23 JUDGE PFAU: Judge one of the  
24 things we hear about and you touched on in  
25 the rural area issue we think of the case



1           loads in the urban Courts, the Family Court  
2           in the city. But what about the multi-bench  
3           court that you administer, there are so many  
4           of them. What happens to case loads there  
5           in the intersection between rising case  
6           loads with one judge hearing everything and  
7           an increase in the lack of representation.

8                   JUDGE COCCOMA: Well, if I can  
9           use this as an example, Franklin County up  
10          in Malone, New York, Judge Bob Mane, is the  
11          -- he's the one judge in the County, he's  
12          the multi-bench Judge. He just does it all,  
13          and yet I have grave concerns as a colleague  
14          and as a judge to take on way too much and  
15          we have an inability to get Judges up here  
16          to handle cases and with the increase in  
17          numbers and in a rural county such as  
18          Franklin, he's getting further and  
19          further --

20                   JUSTICE PFAU: The increases  
21          aren't just in the urban areas.

22                   JUDGE COCCOMA: They're in rural  
23          areas without a doubt too, especially in the  
24          Family Courts in the rural area.

25                   JUDGE LIPPMAN: Which we will see

1 later on in the testimony, having the  
2 attorney means so much to the individual  
3 involved and you saying that from the  
4 perspective now of the judge and you will --  
5 you see the business panel and you can see  
6 judges appearing on an every day basis and  
7 these cases and again you come back to the  
8 individual whose life is at stake in so many  
9 ways and yet no representation.

10 Now Judge Coccoma, whatever else  
11 you'd like to say?

12 JUDGE COCCOMA: Let me wrap up my  
13 testimony, with a few other comments. First  
14 of all, I urge and I recommend that you  
15 consider new ideas, to help stem the tide  
16 which is overwhelming the civil legal  
17 representation of our most needy citizens.  
18 In that regard, I would propose, and I  
19 discussed this with Judge Fisher, I would  
20 perhaps the creation of a perhaps a  
21 committee a statewide committee, chaired by  
22 myself and Judge Fisher, to look into  
23 implementing the ideas that this Task Force  
24 recommends throughout the state, taking into  
25 account how the law is practiced in the

1 various regions around the state, and to try  
2 to implement and simplify the processes that  
3 you may be recommending such as the forms,  
4 the preparation of forms, etc. When I hear  
5 of an increasing number of recent law school  
6 graduates unable to find jobs I asked  
7 myself, why could we not develop a funding  
8 stream, a steady funding stream, of programs  
9 which would provide an opportunity for these  
10 attorneys, who are eager to put their skills  
11 to work in public service programs to  
12 provide legal services to the poor. Perhaps  
13 this Task Force could recommend, that in  
14 exchange for a two or three year commitment  
15 to such a program, those lawyers would  
16 receive a reduction in their student loans,  
17 similar perhaps to the AmeriCorp program  
18 that we see many college students enter  
19 where public health provide participants  
20 with the assistance of the medical school  
21 tuition. This is idea which I believe  
22 should be considered and pursued, and  
23 recommend to the Legislature for appropriate  
24 funding.

25 As my time draws to a conclusion,

1 I again thank you for the opportunity to  
2 highlight some of my concerns, to give you a  
3 small piece of the puzzle that you must put  
4 together into a clearer vision for the  
5 future. I believe New York can be a leader  
6 on this issue of civil legal services, for  
7 only we as trained judges and lawyers, can  
8 truly understand and appreciate how  
9 important it is, that a Court system truly  
10 provide a level playing field for all who  
11 enter through the Courthouse doors.

12 So let me close and emphasize  
13 with the words of US Supreme Court Justice  
14 Lewis Powell, Jr., when he served as  
15 President of the American Bar Association,  
16 "equal justice under the law is not merely a  
17 caption on the facade of the Supreme Court  
18 building. It is perhaps the most inspiring  
19 ideal of our society. It is one of the ends  
20 for which our entire legal system exists.  
21 It is fundamental that justice should be the  
22 same, in substance, and in availability  
23 without regard to economic status."

24 Thank you very much. It's been a  
25 privilege to appear here this morning.

1 JUDGE LIPPMAN: Judge Doyle?

2 (Laughter)

3 MR. DOYLE: I wasn't going to  
4 correct you judge.

5 JUDGE LIPPMAN: President Doyle.

6 MR. DOYLE: Judge Coccoma, thank  
7 you for coming and for your testimony. Two  
8 things I'm glad you did touch on the some of  
9 the -- on your suggestions and solutions, in  
10 your testimony and I found that very  
11 interesting. Two things, first of all, to  
12 your suggestion that some of these exchanges  
13 need to be implemented statewide and there  
14 are a variety of conditions in different  
15 parts of the state. The State Bar  
16 Association would love to work with you, and  
17 Judge Fisher, on that. We have members  
18 across the State outside the state as well,  
19 but we certainly would love to work with you  
20 on the simplifying and making standards and  
21 forms and things like that. So, the State  
22 Bar absolutely supports you and would love  
23 to assist you on that.

24 JUDGE COCCOMA: We welcome the  
25 State Bar Association's participation in

1           that.

2                   MR. DOYLE:    Terrific.  The other  
3           thing is all of the ideas that you talk  
4           about you mentioned whether it's the forms,  
5           help center, do-it-yourself programs, the  
6           lawyer for a day program pro bono efforts  
7           are all wonderful ideas, but they take  
8           funding as well and that's one point I want  
9           to make about these do-it-yourself or help  
10          centers and they have to be funded and they  
11          have to be set and run and organized by  
12          someone and that is, it's not a cost free  
13          solution.  Pro bono in addition as you  
14          mentioned I'm glad you said it and we heard  
15          it from the other witnesses that as generous  
16          as lawyers are even if we ask them to be to  
17          more generous there's no way that generosity  
18          alone will solve the unmet legal needs of  
19          this State.  I think we all agree on that.  
20          In addition to that, we need to keep in mind  
21          the pro bono programs do cost money, it  
22          takes money and time to organization them,  
23          to coordinate them, you have insurance  
24          issues, it's not just a lawyer devoting his  
25          or her own time out there.  You have costs

1           that are associated with that, connecting  
2           them with the right program with the right  
3           clients, making sure the work is done, done  
4           properly, making sure the lawyer is  
5           protected, so all of these solutions as  
6           wonderful as they are they take money as  
7           well.

8                   JUDGE COCCOMA: I agree, I mean,  
9           in order to manage a good pro bono program  
10          you need an administrator and a staff to  
11          organize and in one of the projects we did  
12          in our County a few years ago with the  
13          assistance of the Rural Law Center out of  
14          Plattsburgh, New York, we provided free CLE  
15          programs to attorneys who get up to two free  
16          CLE credits who take one pro bono case for  
17          the year. And to organize that, we needed  
18          the administrative assistance of the Rural  
19          Law Center which is a civil legal services  
20          agency that needs funding.

21                   JUDGE LIPPMAN: Thank you Judge  
22          Coccoma. I might add in relation to  
23          President Doyle's remarks, that it is a  
24          puzzle, and that we need civil legal service  
25          providers in this state to keep their doors

1 open, and to be funded through the public  
2 fists, but that being said, there isn't  
3 enough money in the world to be able to meet  
4 all the needs, through that public funding  
5 that's where the very generous and really  
6 spectacular efforts of the Bar have come in  
7 on the pro bono side. It's really the  
8 different part of this vast undertaking that  
9 we have to have in this State, and we need  
10 that steady dependable, consistent funding,  
11 public funding and we need the generosity  
12 and professionalism of the Bar. So thank  
13 you Judge Coccoma and appreciate your time.

14 JUDGE COCCOMA: Have a good day.

15 JUDGE LIPPMAN: Thank you, you  
16 too. The next group and you might say well  
17 why are we having a business leaders panel  
18 and what does that have to do with the civil  
19 legal services? It's somewhat  
20 counterintuitive and what does the business  
21 community care? Well, we will find out  
22 right now. Do you want to come up?  
23 Buckmaster DeWolf, general counsel of GE  
24 Global Research, F. Michael Tucker,  
25 President and CEO of the Center For Economic



1 Growth and James Barba, President and CEO of  
2 Albany Medical Center.

3 Mr. DeWolf, if you would like to  
4 start?

5 MR. DE WOLF: Yes, sir. My name  
6 is Buck de Wolf and I'm here for General  
7 Electric and I would just like to let you  
8 know, that I'll give my prepared remarks so  
9 I don't take others time. So on behalf GE I  
10 want to thank --

11 JUDGE LIPPMAN: Move that mic a  
12 little closer to you.

13 MR. DE WOLF: I've got one, can  
14 you hear me okay?

15 JUDGE LIPPMAN: Perfect.

16 MR. DE WOLF: I want to thank you  
17 Chief Judge Lippman and the Task Force to  
18 expand access to civil legal services for  
19 inviting us to share our thought on the pro  
20 bono legal services. This is a wonderful  
21 effort in partnership of many of New York  
22 State pro bono service providers to bring us  
23 together to discuss this critical issue. We  
24 are all public interest advocates in some  
25 fashion. Some of us are full time public

1 interest advocates who otherwise strive to  
2 maintain a balance between more commercial  
3 pursuits and our pro bono commitments. We  
4 are, as part of that pro bono community, we  
5 can learn from each other. For me, my  
6 commitment to pro bono services and my work  
7 as general counsel still, as a corporation,  
8 are not at odds. Rather they inform and  
9 enrich each other. These days there is a  
10 great deal of cynicism about big business.  
11 And I believe that that actually ignores  
12 both the socially useful benefit of business  
13 and in turn the value that social  
14 responsible activities like pro bono can  
15 bring in the business side. At GE we  
16 consciously work on our own and with other  
17 major companies to find a practical way of  
18 applying the aspirations of the universal  
19 declaration of human rights, the UDHR in the  
20 business context and urging other businesses  
21 to do the same. In essence the UDHR demands  
22 that we respect the dignity of every  
23 individual and contains several provisions  
24 which address the issue of equality and  
25 access to justice and we strive to live by

1           that principal because you have a commitment  
2           to the values imbedded in that declaration  
3           and also too we believe that, a fair, just  
4           and stable society, one anchored in the rule  
5           of law is frankly better for business. In  
6           the same vein one of the most important  
7           aspects of my position, is addressing  
8           compliance issues. Compliance with legal  
9           and ethical requirements these days is an  
10          area of growing complexity and an area for  
11          all in-house general counsel. Compliance,  
12          however, is more than simply not doing the  
13          wrong thing. It is also very much about the  
14          firm doing the right thing. Taking ethical  
15          actions because this compliance not only  
16          helps to resolve problems with individuals  
17          and communities, it also increases the  
18          company's long term value. Pro bono and  
19          other forms of volunteerism along with  
20          transparency, diversity and sustainability,  
21          should be a core value of all responsible  
22          and thoughtful institutions and aligns well  
23          with the societal value and the business  
24          value. I have found the several pro bono  
25          matters which I have been involved in

1 including fair housing, disability rights,  
2 juvenile issues, immigration issues,  
3 criminal rights and intellectual property to  
4 become a most interesting and professional  
5 enriching experience in my career and I hope  
6 all lawyers, young and old, are able to  
7 enjoy and learn from those pro bono  
8 opportunities the same way that I have.

9 JUDGE LIPPMAN: Let me ask you  
10 this.

11 MR. DE WOLF: Please.

12 JUDGE LIPPMAN: I hear two things  
13 here, and let's see if you can separate  
14 them, and one theme is that the stability of  
15 communities in this State, and community  
16 right here, contribute to the bottom line,  
17 to the well-being of the company, the other  
18 theme is that it's the right thing to do,  
19 and as a company that prides itself on its  
20 values, we want to do the right thing.  
21 Let's talk about the first one; how does  
22 having civil legal services, having people  
23 represent you, having the fiber of the  
24 community stay together, not having people  
25 fall off the cliff, how does that help you

1 in terms of your business side?

2 MR. DE WOLF: It's an excellent  
3 question, there was a press interview  
4 apparently held at two very similar times  
5 and they were not colluding and they asked  
6 Bill Gates and Warren Buffet what's the most  
7 important thing for any country from an  
8 economic perspective, and both stated the  
9 rule of law. And it's the stability that's  
10 provided by the rule of law, that allows an  
11 economy to thrive and individual companies  
12 to thrive and that setting is no different.  
13 And for us, a culture and a society, that is  
14 guided by legal principles and access to  
15 justice is really the most important thing  
16 for us.

17 JUDGE LIPPMAN: So if people stay  
18 in their home, stay in this jobs, have their  
19 family well-being, their livelihood intact,  
20 that helps GE make more money?

21 MR. DE WOLF: It's a more stable  
22 society, it's a better work force, it's a  
23 better customer base, all of these things,  
24 GE is really dependent on the community to  
25 survive and to thrive, and as they survive,

1 so do we. So the one --

2 MR. DOYLE: Mr. De Wolf, have  
3 you read the American Bar Associations rule  
4 of law project, the report card they  
5 produced?

6 MR. DE WOLF: I have, but not to  
7 speak intelligently about it.

8 MR. DOYLE: It's very much what  
9 you're talking about, the American Bar  
10 Association actually generates a report  
11 every year, grading every country's  
12 adherence to the rule of law, and I'm aware  
13 that many businesses use this report, in  
14 addition to other information, that you're  
15 talking about to assess a particular country  
16 and what their adherence to the rule of law  
17 is, in terms of whether they wish to invest  
18 in that country and have a presence there  
19 and this speaks very much to what you're  
20 talking about. And of course one of the  
21 main principles of adherence to the rule law  
22 is representing a persons rights and giving  
23 them an opportunity to access justice and to  
24 be represented, if they need be.

25 MR. DE WOLF: Yes, we find that

1           that's the case globally, and it's one of  
2           our main tenants in compliance and integrity  
3           and the need to give our employee the  
4           opportunity to raise issues and all of that  
5           is, access to justice, that's key for the  
6           success of the movement.

7                    JUDGE LIPPMAN:  Why is it  
8           important as to the second prong, why is it  
9           important to do the right thing?

10                   MR. DE WOLF:  It's interesting,  
11           you look at a company like General Electric  
12           which has been around for a long, long time  
13           and -- and we have lots of big buildings and  
14           lots of employees and lots of valuable  
15           things, but the most valuable thing we have,  
16           is our name.  Our brand is the most valuable  
17           thing we have and the only way to protect  
18           that is by doing the right thing, and  
19           maintaining our representation.  And that's  
20           about participating and actively being in  
21           the community and being a good member of the  
22           community.

23                    JUSTICE MERCURE:  You indicate  
24           it's your goal to achieve 50% participation?

25                    MR. DE WOLF:  Yes.

1 JUSTICE MERCURE: Are you able  
2 to achieve that goal?

3 MR. DE WOLF: Yes. As I  
4 understand it, I was pushing on that to make  
5 sure that I was comfortable with that, yes,  
6 it's -- yes we have there's a big place so  
7 that's really a US metric, because the laws  
8 and rules are different in other countries,  
9 and yes, it's -- it's very important for us,  
10 to allow our employees you have the legal  
11 the freedom to spend time, on pro bono and  
12 to do it right and in a professional way, as  
13 appropriate for our clients.

14 JUDGE LIPPMAN: Thank you Mr. De  
15 Wolf for coming in. Mr. Tucker, President  
16 and CEO of the Center for Economic Growth.

17 MR. TUCKER: Thank you. Chief  
18 Judge Lippman, Judge Pfau, Justice Mercure,  
19 President Doyle, as a member of the Bar and  
20 representative of the legal community, it's  
21 an honor and privilege to testify before you  
22 today. I want to thank you and commend you  
23 and the Task Force, on your leadership in  
24 addressing these critical issues and for  
25 holding these hearings again this year to



1 keep and focus on this issue. In these  
2 difficult economic times, the Task Force  
3 findings are as relevant as they were when  
4 released last Fall. For more than two  
5 decades the Center For Economic Growth has  
6 been at the forefront of economic and public  
7 policy discussions, effecting 1.1 million  
8 residents of the capital region. Stability,  
9 efficiency, and quality of judicial system  
10 and fairness, equity and accessibility are  
11 important considerations for businesses,  
12 when they are considering investing,  
13 expanding or locating in any community.  
14 Tech Valley in New York's capital region are  
15 become globally recognized as a hub for  
16 technology clusters and the regions  
17 reputation and character are more crucial  
18 now more than ever in the business of  
19 development and attraction efforts.  
20 Confidence in our legal system should be one  
21 of our global strengths. Access to justice  
22 at all socioeconomic levels is fundamental  
23 to a vibrant economy and it effects our  
24 community, it's quality of life and enables  
25 us to attract business to the area and to

1 encourage investment by existing business,  
2 to growing standards. The unmet need for  
3 legal services burdens the economy as a  
4 whole, individuals and business alike will  
5 suffer from the consequences that lack of  
6 the legal services access creates, because  
7 legal services are an essential part of our  
8 social network. Equitable access to civil  
9 legal services is not about giving people a  
10 sense of entitlement or a means to avoid  
11 contractual obligations to landlords or  
12 business owners, but about integrating all  
13 individuals, into the social order, on an  
14 equal basis. The lack of legal services is  
15 no longer just an issue just for the abject  
16 poor, there are now newly poor and temporary  
17 poor individuals in our society,  
18 particularly with the recent floods and  
19 natural disasters in our area. They're  
20 increased needs of these services. Offering  
21 access to legal services is a sure path to  
22 help jump start the economy and make the  
23 family productive again. Governor Cuomo  
24 made it clear that New York is open for  
25 business. Our state cannot be positioned to

1 do this without a proper access to legal  
2 services because that system is just as  
3 important as assets like new construction  
4 and human capital. Access to the legal  
5 services by all New Yorkers is fundamental  
6 to a vibrant economy and it effects our  
7 community, quality of life and our ability  
8 attract business.

9 JUDGE LIPPMAN: Thank you. Let  
10 me ask you a question; in this economy what  
11 is the fallout for business, when you have  
12 people going onto Social Services, losing  
13 their jobs, losing their homes, foreclosure  
14 or evictions, what's the fallout or the --  
15 how does the -- what we have been lead to  
16 believe by the business community is a  
17 direct relationship to the bottom line of  
18 business in this State, is that the case?

19 MR. TUCKER: Certainly it is,  
20 Your Honor. When individual families are  
21 suffering financially there's tremendous  
22 stress, not only on the individual, but  
23 their spouse, their children, and that  
24 transcends into education issues, work  
25 issues and an ability to get to your job on

1 time be able to perform. It also prevents  
2 you from owning or continuing to own a home,  
3 open a bank account and to be a productive  
4 member of the community. It adds tremendous  
5 pressures on Social Services agencies and  
6 health care institutions. And then, of  
7 course, the downstream effect of crime,  
8 domestic violence, and other social issues,  
9 that really it's incumbent on the business  
10 community to ensure that these services are  
11 provided so that people can get back on  
12 their feet and get the education and  
13 training they need to get back into the work  
14 force and become a part of the society.

15 JUDGE LIPPMAN: What Mr. De Wolf  
16 called the stability of the community is  
17 obviously at stake, if people don't have  
18 access to legal representation in all of  
19 these essential areas of their lives.

20 MR. TUCKER: Beyond the added  
21 cost to business owners, and who are -- and  
22 other tax payers, who have to absorb the  
23 costs. If we pay for legal services civil  
24 legal services up front over the long term  
25 there will be a bottom line issue and save

1 all the tax payers money and provide  
2 opportunity for individuals throughout the  
3 state, to do better in their lives and their  
4 community.

5 JUDGE LIPPMAN: Thank you.

6 JUSTICE PFAU: Just one question  
7 Mr. Tucker, you talk about stability it's  
8 not just for the economic growth business  
9 here, but it's important as and for  
10 attracting new business is what I'm hearing  
11 you say?

12 MR. TUCKER: You may be familiar  
13 with the opportunity that we have here in  
14 the capital region and not because of the  
15 expansion of GE, of also, the fact that  
16 we're now a semi conductor, nano technology  
17 cluster of tremendous growth and opportunity  
18 with the Global Foundries project to attract  
19 countries all over the world and they not  
20 only want to see a rule of law, they want to  
21 also see the opportunity to ensure that the  
22 individuals in the community and the  
23 employees that they're going to hire have  
24 stability throughout the Social Services  
25 network, legal services, quality of life.

1 JUSTICE PFAU: Thank you.

2 JUDGE LIPPMAN: Thank you,  
3 Mr. Barba.

4 MR. TUCKER: Thank you Judge  
5 Lippman.

6 THE COURT: So what does the  
7 Albany Medical Center have to do with civil  
8 legal services?

9 MR. BARBA: Good afternoon.

10 JUDGE LIPPMAN: Tell us?

11 MR. BARBA: Thank you, Judge  
12 Lippman, Judge Pfau, Mercure, President  
13 Doyle. I've had the privilege to be  
14 President and CEO of the Medical Center for  
15 over sixteen years and during that time I've  
16 seen a good deal. And against that  
17 backdrop, I appear here today first thanking  
18 you for the opportunity, to be able to  
19 testify, about the need for civil legal  
20 services for the poor and underserved.  
21 Those of us who are in health care, now  
22 recognize that these times, are like no  
23 others in memory, due in great part for sure  
24 to the economy, but for the poor life's  
25 complexities already are aggravated, and

1 often debilitating leaving many without hope  
2 and in fact despair. At Albany Medical  
3 Center we see far more of the poor, than the  
4 regions other health care facilities. We  
5 depend on the services of the Legal Aid  
6 Society of Northeastern New York because we  
7 recognize that underlying the patient  
8 illness are issues that exacerbate the  
9 illness and prevent healing.

10 Let me begin if I may, quickly,  
11 by just putting the Medical Center in  
12 context. Our mission is the only academic  
13 health science center in New York that  
14 distinguishes us in the 25 counties and the  
15 three million people we serve. We are the  
16 regions leading health care provider with  
17 more than half a million outpatient visits a  
18 year, and 32,500 in-patient discharges, last  
19 year. We are the number one Medicaid  
20 provider in the twenty-three New York State  
21 counties in our service area. In the last  
22 ten years, Medicaid discharges from those  
23 counties, have increased by an astounding  
24 50%. We also have a generous charity care  
25 policy. Last year we budgeted more than 45

1 million dollars, to provide medical services  
2 for which we will not be reimbursed. So we  
3 see hundreds and hundreds of patients, who  
4 are the poor, underserved, and working poor.  
5 These stunning statistics have a face, and  
6 remind me as I was thinking about this  
7 testimony of words that I actually wrote and  
8 delivered in 1969, at the centennial  
9 celebration at Notre Dame Law School. I  
10 said all those years ago, law becomes  
11 justice, only when it is made available to  
12 all, on equal terms. But now, I understand  
13 there's a corollary to that thinking. It is  
14 this, delivering health care, means more  
15 than delivering health care services. It  
16 absolutely requires sharing our knowledge,  
17 that could lead to justice.

18 As an academic Medical Center we  
19 are productively involved in the community  
20 and understand increasingly how health care  
21 and the social determinants of health imply.  
22 At Albany Med College an alumnus and a  
23 gentleman who is a social professor of the  
24 college today, operates a clinic in one of  
25 Albany's poorest neighborhoods, here is what



1 he observed to me recently, if I may,  
2 "people's inability to access justice, leads  
3 them from frustration to hopelessness, and  
4 finally to despair." One of the biggest  
5 battles I face he said, is to help our  
6 patients overcome the overwhelming  
7 temptation to just give up. And so --

8 JUSTICE MERCURE: Can I ask you  
9 essentially it's your testimony that your  
10 patients certainly have significant medical  
11 issues, but they also have very significant  
12 legal issues?

13 MR. BARBA: Absolutely.

14 JUSTICE MERCURE: That's why  
15 you're concerned about this case?

16 MR. BARBA: The two combined and  
17 legal issues often prevent us from truly  
18 helping solve the medical issue.

19 JUDGE LIPPMAN: Let me ask you  
20 another question, Judge Mercure raised an  
21 issue which seems very obvious to us which  
22 is that they're attendant problems that  
23 surrounds an illness or whatever the medical  
24 problem is, what about your bottom line, I  
25 assume you want to treat everybody who is

1 coming in, and that needs healing, that's  
2 your job and you want to do that, isn't the  
3 fact that a lot of people come in, and they  
4 don't know how to access entitlement health  
5 benefits, that they have through whatever,  
6 the federal government, the State, private,  
7 is that an issue that your people come in,  
8 who just are divorced and they have no idea,  
9 how to pay you, or to pay for this health  
10 service?

11 MR. BARBA: Judge Lippman, it's  
12 an issue for us every single day. And I can  
13 give you anecdotally some examples. First  
14 of all, Medical Center Hospital is over 160  
15 years old, and during that entire span of  
16 time, it is been our mission the mission of  
17 which I'm very proud, to take care of all  
18 who seek care from us, irrespective of  
19 ability to pay. So for example, if a  
20 patient presents to our Emergency  
21 Department, the busiest in upstate New York,  
22 today, the first question that patient is  
23 asked is, do you need care? And if the  
24 answer is yes, we then begin an immediate  
25 series of questions with respect to illness

1 or the injury. Much later on in the process  
2 quite frankly the issue of ability to pay  
3 comes up. And when we find out that there's  
4 no ability, or that perhaps the patient may  
5 be Medicaid eligible but not a Medicaid  
6 patient, we begin then to have our social  
7 worker who frankly has been trained by the  
8 Legal Aid Society of Northeast New York to  
9 intercede with the patients to assist them  
10 in any way that we're able to assist.

11 JUDGE LIPPMAN: The bottom line  
12 is, well I know, your commitment to heal the  
13 sick you are not a charitable organization,  
14 you have to keep going, is that not correct?

15 MR. BARBA: At the end of the  
16 day, if we do not operate the Medical Center  
17 as a business, we would go out of business,  
18 that is.

19 JUDGE LIPPMAN: Exactly.

20 MR. BARBA: That 45 million  
21 dollars that we have budgeted for 2011, we  
22 will spend comes right off the bottom line.  
23 In other words, had we not these issues the  
24 money would flow right to the bottom line  
25 and I'd be able to re-invest in the

1 community, but it's gone it's because we  
2 have to provide free care to a large and  
3 increasingly large pool of indigent  
4 patients.

5 JUDGE LIPPMAN: The bottom line  
6 that I hear from all of you, is that yes, we  
7 want to do good deeds within our society and  
8 do what we're supposed to do, but also civil  
9 legal services for the poor, helps our  
10 business, our institution keep the economy  
11 in each of your individual cases, and the  
12 good of the State, keeps it going and keeps  
13 it successful and allows it to continue to  
14 perform services. Judge Pfau?

15 JUSTICE PFAU: I was going to  
16 say particularly where in your health care  
17 facility are you feeling it twice? There's  
18 a number of times today where we hear the  
19 legal issues are killing us, the stress of  
20 this and often people's health is suffering  
21 and your patients, with health related  
22 issues because of the stresses on them not  
23 having lawyers and you're also trying to  
24 help them access their medical rights and  
25 they don't have a lawyer, so you're getting

1                   caught in the middle?

2                   MR. BARBA: Absolutely, as I said  
3 earlier, and I mean this very sincerely,  
4 we're not in the assistance of legal aid.  
5 Lillian Moy and her folks and Legal Aid of  
6 Northeastern New York we probably would not  
7 be able to battle our way through those  
8 issues and those choices.

9                   JUDGE LIPPMAN: Okay. Thank you  
10 all for your services to the community, and  
11 for coming in today.

12                   We now have the Judge's panel the  
13 Honorable Leslie Stein from the Appellate  
14 Division Third Department, Honorable Timothy  
15 Breen from the Warren County Family Court,  
16 and Honorable Christine Clark from  
17 Schenectady County Family Court. Judges  
18 all, welcome.

19                   JUDGE STEIN: I've never sat in  
20 this seat before.

21                   JUDGE LIPPMAN: It's not easy  
22 being a witness; watch for the red light.  
23 Go ahead.

24                   JUDGE STEIN: As you know, I  
25 currently serve as a Supreme Court Justice

1 sitting in the Appellate Division for the  
2 Third Department and I want to thank you,  
3 Chief Judge Lippman, Chief Administrative  
4 Judge, Judge Pfau, Presiding Judge Mercure  
5 and President Doyle for the opportunity to  
6 present testimony at this hearing, on this  
7 very important topic.

8 I applaud the Chief Judge and the  
9 Task Force, for there groundbreaking work in  
10 investigating the need for civil legal  
11 services in New York, and for recommending a  
12 means to increase resources for such  
13 services.

14 After I served as law clerk to  
15 the Schenectady County Family Court judge  
16 after law school, where my colleague now  
17 sits, I practiced matrimonial and family law  
18 in the capital district for more than ten  
19 years before I was appointed to the bench.  
20 I have served as a judge since 1997, when I  
21 was appointed to the Albany City Court. In  
22 2002 I became a Justice of the Supreme  
23 Court, and in 2008 I was appointed to the  
24 Appellate Division. And as you might  
25 imagine, I have witnessed the need for civil

1 legal services, from a variety of  
2 perspectives throughout my career. As a  
3 practitioner I found when the adverse party  
4 was unrepresented, there often would be  
5 delays in the proceeding, negotiations,  
6 settlement and trials. This type of delay  
7 made representation of my own clients more  
8 time consuming difficult, and --

9 JUDGE LIPPMAN: So you didn't  
10 like it, when you had no opponent and you're  
11 dealing with a pro se?

12 JUDGE STEIN: No at all. I would  
13 do everything within my power to steer the  
14 other party to a good lawyer.

15 JUDGE LIPPMAN: But you don't do  
16 your job unless there's someone to talk to  
17 and understand the legal context?

18 JUDGE STEIN: My partner and I  
19 used to say, in the matrimonial field that  
20 if we had a good lawyer on the other side we  
21 can settle the case in about twenty minutes,  
22 the rest of the work was about convincing  
23 ours client that was a good settlement for  
24 them. So, yes.

25 JUSTICE MERCURE: Could you

1 focus on the civil appeals pro bono pilot  
2 program?

3 JUDGE STEIN: Yes absolutely, and  
4 this is something that I just recently came  
5 to learn about, the civil appeals pro bono  
6 program, yes, and I learned about it in  
7 preparing for this testimony, that the Legal  
8 Project, here in the Albany, as well as New  
9 York State Bar Association, and the Rural  
10 Law Center joined together to administer  
11 this program. It is a family law appeals  
12 project and in the Third Department, during  
13 its pilot period that project approximately  
14 had 36 applications and I'm told so far and  
15 has provided appellate representation to six  
16 litigants in Family Court, family law  
17 matters. And you know, I want to add that  
18 this is a tremendous program, because I  
19 think that often times people don't realize  
20 the really the need for representation in  
21 appellate matters, and also that you know,  
22 we heard today already I am sure you heard  
23 around the State about you know well about  
24 the scarcity of resources, but I think that  
25 those resources are even more scarce in our



1 Appellate Courts.

2 JUDGE LIPPMAN: Judge Stein, I  
3 think that, just for the benefit of the  
4 audience that in Family Court some people  
5 are represented and that's the State  
6 requirement that the People have to have  
7 representation in certain kinds of  
8 proceedings.

9 JUDGE STEIN: Correct.

10 JUDGE LIPPMAN: Others it  
11 doesn't.

12 JUDGE STEIN: Right.

13 JUDGE LIPPMAN: And the  
14 particularly related problems that come into  
15 Family Court, on appeal matters which is  
16 what you're talking about, generally would  
17 not have a right to representation.

18 JUDGE STEIN: Right. Often times  
19 we will get applications for poor person  
20 status in the Appellate Division and the  
21 most that we can do for the litigants is to  
22 reduce their filing fees, or reduce the  
23 number of briefs and records that they have  
24 to submit. But otherwise you know they're  
25 on their own, and you know these cases

1           involve worker compensation cases,  
2           unemployment compensation, we have many,  
3           many inmate grievance, and disciplinary  
4           matters, and these folks just simply are on  
5           their own, with very little direction.

6                    JUDGE LIPPMAN:  They're some  
7           programs that try to represent the indigent,  
8           you know all of those different kinds of  
9           people, but few and far between?

10                   JUDGE STEIN:  Absolutely, yes.

11                   MR. DOYLE:  Judge, if I might  
12           first of all, Justice Stein welcome and  
13           thank you for mentioning the civil appeal  
14           pro bono pilot project that is the first  
15           year that the State Bar worked with the  
16           Rural Law Center, and the legal project, and  
17           we certainly appreciate the Third Department  
18           in the consideration and administration and  
19           the leadership of the Third Department and  
20           is very helpful in helping us get that up  
21           and running.

22                   As you mentioned, there were  
23           these 6 screened and the number of  
24           applicants 6 litigants were able to arrange  
25           services for and I'm happy to report on the

1           six cases six of them resulted in favorable  
2           decisions on appeal, so those are six people  
3           who, you know, four people justice was  
4           served on appeal who otherwise may not have  
5           been able to pursue an appeal and Judge  
6           Lippman you'll be pleased to know just last  
7           week the Executive Committee of the State  
8           Bar voted on the recommendation before  
9           running this program, to expand it, to seek  
10          permission from the Fourth Department to  
11          expand it into the Fourth Department and to  
12          expand it beyond family law into other areas  
13          of the essentials that you talked about,  
14          housing and benefits and things like that.  
15          So, thank you Judge Stein for mentioning  
16          that.

17                   JUDGE LIPPMAN: Thank you.

18                   JUDGE STEIN: You know when you  
19                   talk about housing and those types of  
20                   matters I can say this, that for the  
21                   majority of five years in the Albany City  
22                   Court where I presided over civil,  
23                   commercial and small claim matters.

24                   JUDGE LIPPMAN: You did housing?

25                   JUDGE STEIN: Yes.

1 JUDGE LIPPMAN: And how many  
2 people where there are evictions proceedings  
3 were people represented in general?

4 JUDGE STEIN: The vast majority  
5 of the tenants were not represented.

6 JUDGE LIPPMAN: What problems  
7 does that cause for you?

8 JUDGE STEIN: Well --

9 JUDGE LIPPMAN: Aside from the  
10 problems to the individual?

11 JUDGE STEIN: Right. Well for  
12 the most part, the problem really is that,  
13 the unrepresented tenants were often had  
14 legitimate defenses to the eviction  
15 proceedings which they either were unaware  
16 of or unable to articulate, and as I think  
17 Judge Coccoma mentioned earlier, that puts  
18 the judge in a very difficult position,  
19 because we want to preside impartially but  
20 of course we had to see that justice is  
21 done. So that, that makes things difficult  
22 and certainly prolongs proceedings. I was  
23 very fortunate in the Albany City Court to  
24 have a number of pro bono attorneys through  
25 the Legal Aid Society and this is something

1           that I don't think has been mentioned yet,  
2           alternative dispute resolution which is I  
3           had almost every day, a mediator a volunteer  
4           mediator, who was present and available to  
5           sit down with all litigants in all sorts of  
6           cases in my court, but including eviction  
7           proceedings, and I found that very often  
8           tenants that might otherwise not be able to  
9           achieve the best outcome were able to do so,  
10          through the efforts of a mediator. So that  
11          was very helpful.

12                    JUDGE LIPPMAN: Thank you, Judge  
13                    Stein. Have you got anything else to say?

14                    JUDGE STEIN: No. The only other  
15                    thing I guess I would add to that would be,  
16                    there has been some discussion about consume  
17                    credit cases and foreclosure and I think  
18                    that foreclosures have gotten a lot of  
19                    attention lately, but consumer credit cases  
20                    are equally significant to the debtor  
21                    involved.

22                    JUDGE LIPPMAN: Especially as of  
23                    late, huh?

24                    JUDGE STEIN: Especially as of  
25                    late. And I experienced that in a very big

1 way in City Court with certain banks and you  
2 know their processes, that were very  
3 automated and very difficult for the debtor  
4 to deal with, and it's an area that merits  
5 very serious consideration.

6 JUDGE LIPPMAN: And very much  
7 within what we call the necessities of life.

8 JUDGE STEIN: Very much so.

9 JUDGE LIPPMAN: Thank you Justice  
10 Stein. We appreciate that. J. Timothy  
11 Breen, the Honorable, Warren County Family  
12 Court, you're on.

13 JUDGE BREEN: Thank you. Good  
14 morning everybody, good afternoon. I want  
15 to thank Judge Lippman, Judge Pfau, Judge  
16 Mercure and President Doyle. And I want to  
17 thank Judge Lippman and in particular Chief  
18 Administrative Judge Pfau and the  
19 chairperson of the Task Force, Ms. Barnett,  
20 for giving me the opportunity to testify  
21 today, on this very important topic.

22 There is a continuing unmet need  
23 for civil legal services in the State of New  
24 York, and the time for the legislature to  
25 provide stable funding for them is now. The

1           judiciary has spoken and it unequivocally  
2           continues to maintain that civil legal  
3           assistance is required, for the most  
4           vulnerable low income New Yorkers who are  
5           facing the loss of their family, their  
6           shelter, their personal safety, and their  
7           economic resources. The purpose of my  
8           testimony today is not to repeat the same  
9           testimony that you heard last year from  
10          judges in support of the four findings that  
11          were stated in the report of the Task Force  
12          in 2010; however, one cannot dispute that  
13          our current status quo is not acceptable.

14                   As you mentioned Judge Lippman in  
15          your opening remarks, the number of  
16          Americans that are currently living in  
17          poverty is increasing annually. That means  
18          more business for the Family Court system in  
19          particular.

20                   JUDGE LIPPMAN: You feel it every  
21          day.

22                   JUDGE BREEN: Yes.

23                   JUDGE LIPPMAN: The fact that the  
24          economics in your courtroom?

25                   JUDGE BREEN: I do, I do. And

1                   sometimes I feel like the ship is sinking  
2                   because the volume is increased so much.

3                   JUSTICE MERCURE:     Judge Breen,  
4                   you have been a Family Court judge for 12  
5                   years?

6                   JUDGE BREEN:     13, I have been a  
7                   support magistrate for fourteen years and I  
8                   have 27 years in the Family Court system,  
9                   and I have been an acting Supreme Court  
10                  Justice for 11 years.

11                  JUSTICE MERCURE:     So the  
12                  problems now in Family Court, are far worse  
13                  than they've ever been?

14                  JUDGE BREEN:     Yes.   First of all  
15                  the numbers are up significantly, during my  
16                  tenure in the Family Court of 27 years.  
17                  It's dramatic the increases of time.  We  
18                  have very little time any longer to  
19                  conference cases, the bench calendars need  
20                  to be moved.

21                  JUDGE LIPPMAN:    What's the  
22                  economy do -- you see these people every  
23                  day?

24                  JUDGE BREEN:     I do.

25                  JUDGE LIPPMAN:    What does the



1 economy do to the people's lives that bring  
2 them to court?

3 JUDGE BREEN: Well, I think one  
4 of the statistics that just came out in the  
5 New York Times article that you mentioned in  
6 the census report, there was a specific  
7 quote from the Director for the Institute of  
8 Research and Poverty at the University of  
9 Wisconsin, at Madison, and he talked about  
10 the fact that he believed we're risking a  
11 new underclass. That young less educated  
12 adults, mainly men, can't support their  
13 children and form a stable family because  
14 they're jobless. I see those men every day.  
15 I try to put the cement together because I  
16 need two parents to raise children. These  
17 men are angry, they're very angry in the  
18 courtroom because and frankly I don't think  
19 they understand what's going on and this is  
20 a common problem with pro se litigants, and  
21 some reactions instead of questioning with  
22 anger and as you know security is a problem  
23 in the Family Court system. I'll say that  
24 all the --

25 JUDGE LIPPMAN: Security and

1 time.

2 JUDGE BREEN: Certainly. One of  
3 the things I want to draw to your attention  
4 and it's been mentioned in general, how much  
5 more complex the Family Court proceedings  
6 have become over the years. And I gave you  
7 an example in my testimony, which may sound  
8 a bit outlandish, but it's actually from a  
9 fact pattern where a mother of four children  
10 in her care recently separated from the  
11 husband, she files a paternity petition,  
12 naming two to three men as the putative  
13 father of a new born child. She then had to  
14 name her husband because of the presumption  
15 of legitimacy in the paternity action and  
16 she also filed custody, child support,  
17 family offense petitions, because of the  
18 alleged DV in the home. The husband  
19 counter-files with his custody, child  
20 support and family offense petition, due to  
21 the domestic violence allegations which we  
22 ordered an investigation about the child the  
23 protective people stepped in and eventually  
24 neglect proceedings were brought and under  
25 Article 10 by the Department. My point was

1 to stress to you this becomes such a  
2 complicated affair, at the time of the  
3 arraignment of the neglect petitions there  
4 could be possibly 21 people involved in this  
5 case scenario. There are 11 parties  
6 present, ten attorneys. The day and age of  
7 Family Court mom and dad doesn't exist any  
8 more. We have intervenors and grandparents  
9 and in 90% of our cases these days  
10 grandmothers are raising many children and  
11 they often step in to serve as a custodial  
12 resource in neglect proceedings. Many of  
13 these people if not all we find are indigent  
14 and entitled to counsel. Unfortunately when  
15 we call these cases we find in my small  
16 courtroom I have three tables and three  
17 microphones for the 21 people. Be that as  
18 it may, many of the people even though they  
19 have been arraigned and advised of their  
20 right to counsel do not obtain counsel.  
21 There sometimes is a resistance and a  
22 simplicity and some of these people they  
23 think we are going to fix the problem. The  
24 idea that we are working in an adversarial  
25 system where the rules of law will apply

1 sometimes goes right over their head. And  
2 as much as we can allocute, and make knowing  
3 waivers, people seem to not want to --

4 JUDGE LIPPMAN: Even when people  
5 have a right to counsel.

6 JUDGE BREEN: They decline it.

7 JUDGE LIPPMAN: Often you don't  
8 have it and the court, I would assume it  
9 leads to not necessarily just results  
10 sometimes and some chaos in the proceedings?

11 JUDGE BREEN: Chaos certainly and  
12 I think there's no question that a pro se  
13 litigant without counsel results are often  
14 poor.

15 JUDGE LIPPMAN: Why don't you  
16 explain for everybody, in a nutshell, when  
17 are people in Family Court entitled to  
18 counsel? When they are not in the broadest  
19 stroke.

20 JUDGE BREEN: Well, the Family  
21 Court Act provides a very generous direction  
22 as to assignment of counsel to indigent  
23 parties. We can afford indigent parties the  
24 assistance of counsel in cases involving  
25 abuse, neglect, domestic violence, custody,

1 and parenting time, foster care and  
2 permanency planning proceedings, contempt  
3 proceedings, adoption and paternity, but  
4 there is a problem, if you read the statute  
5 and the authority under the Family Court Act  
6 for instance, in a paternity proceeding only  
7 the putative father is afforded counsel.  
8 Not the petitioner, this can actually result  
9 in a pro se petitioner failing to prove,  
10 sometimes a paternity case, resulting in the  
11 lack of a stability and/or support for a  
12 child.

13 JUSTICE MERCURE: When you have  
14 such a situation, there's often a tension  
15 between remaining neutral and trying to see  
16 that justice is done?

17 JUDGE BREEN: Sure this is a  
18 balancing act that all Judges talked about  
19 and we constantly balance our role. I do  
20 think that I've become of the mind in Family  
21 Court over these many years, I think we have  
22 particularly in that Court a great  
23 obligation to communicate, and the effort to  
24 communicate become more and more important  
25 but there's a line that needs to be drawn,

1 but when you try to explain to a pro se  
2 litigant well this may take a trial with a  
3 Tropea analysis under relocation or this is  
4 a Bennett/Jeffries case when you explain  
5 that to a grandmother obviously they have no  
6 idea what I'm talking about and I can't go  
7 any further, but I do try to stress to them  
8 the seriousness of the proceeding that will  
9 require a trial with evidence to be  
10 presented, and sometimes sort of not to  
11 scare them but to let them know the reality  
12 that counsel has become important if they're  
13 going to proceed. They come to court  
14 sometimes on a first appearance and think  
15 the case is going to be heard, and --

16 JUDGE LIPPMAN: Resolved.

17 JUDGE BREEN: And everything will  
18 be resolved. I often say to people I'm a  
19 judge, not a social worker and I'm not a  
20 counselor and I'm not a psychologist. We  
21 have to apply the law. I think people come  
22 with a misconception.

23 JUDGE LIPPMAN: Let me ask you a  
24 question about domestic violence.

25 JUDGE BREEN: Sure.

1 JUDGE LIPPMAN: We read about it  
2 in the paper, and graphics in terms of the  
3 you know what you hear about, would you say  
4 it's the case that most domestic violence  
5 victims have a whole host of attendant legal  
6 problems that go along with the narrow issue  
7 of the domestic violence, whether it be  
8 housing related, occupational, family, some  
9 other respect under domestic violence?  
10 Aren't domestic violence questions,  
11 particularly for the victim, don't they  
12 overflow into so many, many other areas?

13 JUDGE BREEN: They do judge.

14 JUDGE LIPPMAN: That require  
15 legal representation?

16 JUDGE BREEN: They do and we are  
17 very pleased that Lillian Moy's program  
18 provides and often they do come in on an  
19 Article 8 and we are required to hear ex  
20 parte applications immediately. They're put  
21 right on the calendar, which becomes  
22 somewhat difficult on a busy day, but often  
23 times at that first appearance they do not  
24 have counsel and it's only a --

25 JUDGE LIPPMAN: It's complicated.

1 JUDGE BREEN: But yet, we do have  
2 authority under Article 8 to immediately  
3 address issues of child support and custody,  
4 even on an ex parte basis, but you're right  
5 the people do have multiple problems and  
6 issues, and just by the mere fact there's a  
7 victim of domestic violence, is that level  
8 playing field that we want to achieve, it's  
9 not there when you have a victim of  
10 violence.

11 JUDGE LIPPMAN: Okay. Thank you  
12 judge.

13 JUSTICE PFAU: Just one more, I  
14 assume that I know from your court like all  
15 Family Courts, do you see cases that if the  
16 parties both have attorneys, their issues  
17 could be resolved before they come to court  
18 and that the people tend to as a knee jerk  
19 reaction come to Family Court as you say as  
20 the place to solve the problems? Could your  
21 calendars be reduced if you had lawyers and  
22 things might get resolved without that  
23 thinking that they have to come to Family  
24 Court?

25 JUDGE BREEN: I think judge, I'm



1 not sure if the access before coming to  
2 Court the counsel that you're talking about,  
3 but clearly the impact would be that the  
4 petition process would be dramatically  
5 improved. Our petition process is  
6 deteriorating as I speak, petitioners are  
7 not literate and they are incomprehensible  
8 often times because they're pro se petitions  
9 and we waste a lot of time and lawyers get  
10 involved in amending pleadings or going  
11 through motion practice because some are  
12 subject to immediate dismissal for a failure  
13 to set forth a cause of action and that  
14 would be an immediate benefit and speed the  
15 process up when that's available to us.

16 JUDGE LIPPMAN: Okay. Thank you  
17 judge.

18 JUDGE CLARK: Good morning.  
19 Chief Judge Lippman, Judge Pfau, Justice  
20 Mercure, President Doyle, I'm here today to  
21 express my support for increased funding  
22 stability for civil legal services. I  
23 appreciate the opportunity to participate in  
24 the hearing and I want to thank Judge  
25 Lippman and the Task Force for making this

1 issue a priority in New York.

2 It's crucial that we increase  
3 access for the rising number of people  
4 coming to court. This not only supports the  
5 idea of equal justice, but also makes a  
6 tremendous difference in the ability of a  
7 court system to function effectively. I  
8 have seen many unrepresented individuals,  
9 over the past six years in my role first as  
10 City Court Judge and now as Family Court  
11 Judge. Self-represented litigants have a  
12 severe disadvantage when appearing against a  
13 represented party. The self-represented  
14 litigant doesn't know the law or understand  
15 the burden of proof, the rules of evidence.  
16 As a judge as we talked about I find it  
17 difficult when I have an unrepresented party  
18 or the self-represented party appearing in  
19 front of me and I have to be careful to  
20 ensure that the unrepresented party's rights  
21 are not violated by the represented party  
22 while making sure that I remain neutral. As  
23 a City Court Judge I handle both civil and  
24 criminal matters, but in the civil part it  
25 was mostly in the landlord tenant area that

1 I saw the unrepresented individuals. We had  
2 monthly housing cases, and we have landlord  
3 tenant matters and every day eviction  
4 proceedings. In those eviction proceedings  
5 the tenants were almost always without an  
6 attorney and the tenants had no idea of  
7 their rights and we were fortunate in  
8 Schenectady to have Schenectady Community  
9 Action Program, which is able to send a non  
10 attorney, to court, to help explain the  
11 eviction process to those tenants and in the  
12 most egregious cases they were able to link  
13 up to the Legal Aid Society. As a first  
14 year law student I worked for the Legal Aid  
15 Society for Northeastern New York York so I  
16 can tell you first hand the number of  
17 individuals that apply for those services  
18 and the number that seek assistance and it's  
19 so greatly outweighed and there's not enough  
20 attorneys to take the cases. I had one  
21 particular case that came to mind and I have  
22 an outline in the testimony where I had a  
23 young man who was living in housing that he  
24 had been in for years and years, a new  
25 management company came in and they started

1 the eviction process. This young man was  
2 severely special needs and had no attorney,  
3 and no idea, what was happening to him. And  
4 it was only because I knew that there was an  
5 attorney in our community who takes pro bono  
6 cases such as this that I was able to have  
7 my court staff call her and say can you come  
8 down and help this young man. And it was  
9 only by her ability to speak with this  
10 management company, and set out a whole new  
11 system where he actually the man mailed the  
12 rent to the attorney the attorney got it to  
13 the management company and that young man  
14 would have ended up homeless, and had  
15 extreme special needs, and would have become  
16 a huge burden with nowhere else to live. As  
17 a Family Court Judge I can assign counsel in  
18 many proceedings and I do; however, the  
19 guidelines for assignment of counsel at the  
20 poverty level I see many individuals who  
21 work, but are living hand to mouth, that  
22 have no disposable income and they cannot  
23 retain a private lawyer. Schenectady is  
24 like many upstate cities and facing trying  
25 economic times.

1                   Judge Lippman, you brought up the  
2                   issue of domestic violence. A case that I  
3                   had seen as a Family Court Judge was a young  
4                   woman who came in on an ex parte motion for  
5                   an Order of Protection and I had never seen  
6                   someone in all my years even as an Assistant  
7                   District Attorney, so terrified, of what was  
8                   going to happen to her for even coming to  
9                   Court. Her alleged perpetrator had abused  
10                  her, on several occasions, and had most  
11                  recently broken her nose, and she was living  
12                  in the home that he owned, she had a job but  
13                  when she told me how much her income was I  
14                  knew she was wasn't going to be able to  
15                  afford an attorney and I'm thankful that we  
16                  have a legal project here in the Capital  
17                  District who I was able to say, to her, she  
18                  also had a domestic violence advocate with  
19                  her, I said speak to your advocate about the  
20                  legal project.

21                   JUDGE LIPPMAN: That's typical as  
22                   we talked about, a typical problem, someone  
23                   comes in with a domestic violence situation,  
24                   that has so many tentacles to it in terms of  
25                   other legal problems that they are facing.

1 JUDGE CLARK: I see it every day.

2 JUDGE LIPPMAN: It's the common,  
3 it's the norm, right?

4 JUDGE CLARK: I mean she is  
5 relying on this person although she had --  
6 she was relying upon him financially she was  
7 going to lose the home that she was in,  
8 because that's where she was living, in her  
9 situation she didn't have children, but I  
10 see many with children and they find  
11 themselves filing for a neglect proceeding.  
12 So, the one domestic violence issue can just  
13 cascade to the entire life.

14 JUDGE LIPPMAN: So the legal  
15 funding that goes to a group like the Legal  
16 Project, you feel that funding directly in  
17 your courtroom?

18 JUDGE CLARK: I do. If I  
19 didn't --

20 JUDGE LIPPMAN: And an ability to  
21 provide representation again on matters  
22 involving clearly the necessities of life.

23 JUDGE CLARK: When I have  
24 somebody who is working poor who works but I  
25 can't assign counsel to if I didn't have the

1 legal project, that woman, in this instance,  
2 would have had to have a family offense  
3 trial against a man that she couldn't even  
4 look at because he beat her.

5 JUDGE LIPPMAN: Okay. Thank you  
6 all. I appreciate your testimony, from the  
7 judicial point of view. I note that my  
8 colleague, Victoria Graffeo, is here and  
9 Judge Graffeo I am so pleased to see you and  
10 Judge Egan from the Third Department, glad  
11 to see you Judge Egan and so thank you all,  
12 appreciate it, your testimony really is  
13 illuminating and shows from every different  
14 perspective how civil legal service impacts  
15 on the Court system and obviously on  
16 people's lives. Thank you.

17 We will now have testimony from a  
18 strategic partnership panel which includes  
19 Debra Sullivan, former Capital District  
20 Paralegal Association board member, and  
21 chair of the pro bono committee. Debra  
22 Schimpf, Schenectady Community Action  
23 Program, Julie A. Davie, North County  
24 Mediation Rural Law Center, and Professor  
25 Joseph M. Connors, Director Albany Law

1 School Clinic and Justice Center. Ms.  
2 Sullivan, we're going to start with you?

3 MS. SULLIVAN: Good morning Judge  
4 Lippman, Judge Pfau, Judge Mercure and  
5 President Doyle. My name is Debra Sullivan  
6 and I'm a paralegal and former pro bono  
7 Chair of the Capital District Paralegal  
8 Association. My testimony at the Chief  
9 Judge hearings and the civil legal services,  
10 is on behalf the Capital District Paralegal  
11 Associate CDPA and in accordance with the  
12 social commitments, to pro bono activities  
13 with the community. The pro bono committee  
14 works on contacting various not-for-profit  
15 agencies to determine a need for our  
16 membership to bundle pro bono activities.  
17 The committee works closely with the various  
18 organizations in making the necessary  
19 arrangements to involve our membership.  
20 CDPA prides itself in involving members in  
21 pro bono activities and encourages all  
22 members to be involved to assist those  
23 members of the community, who cannot  
24 otherwise afford to pay for legal services.  
25 Our goal is to use our knowledge and provide



1           our services, to assist those people who  
2           need it most. We have proven that when it  
3           comes to assisting the public, the CDPA is a  
4           very strong alliance of members and  
5           continues to be.

6                   JUDGE LIPPMAN: Did you find the  
7           need greater today, than early in a time?  
8           Basically you base it on the economy?

9                   MS. SULLIVAN: Well, the areas  
10          that we work with are really a lot -- we  
11          work very closely with the legal project, so  
12          any activity that we have, we do contact  
13          them and they contact us and we do become  
14          involved in that. As far as the divorce  
15          clinic and also in the legal clinic and case  
16          coordinator there and we work for the Albany  
17          Law School for their Senior Law Day so those  
18          types of area that we are involved in at  
19          present.

20                   JUDGE LIPPMAN: Okay.

21                   MS. SULLIVAN: Members of the  
22          association have volunteered for pro bono  
23          activities conducted by the Albany County  
24          Bar Association, such as the Run For  
25          Domestic Violence and Law Day Clinic. We

1 have an excellent working relationship with  
2 the legal project, and are ready to assist  
3 with their various projects. We also  
4 volunteer our time at the Albany Law School.  
5 The association has increased its  
6 involvement significantly with the legal  
7 project for various projects including the  
8 divorce clinic. Our members attend training  
9 at Albany Law School and assist the public.  
10 Through my involvement with the legal  
11 project I became the legal clinician  
12 coordinator for the legal project at the  
13 Mechanicville location. The legal clinic is  
14 an excellent program and helped so many.  
15 There are clinics held in several locations  
16 in different locations throughout the year  
17 and the Mechanicville clinic consists of two  
18 attorneys and maybe three depending on the  
19 need. Community members in need contact the  
20 legal project to make an appointment and  
21 appear on a scheduled day to meet with the  
22 attorney so people can call for an attorney  
23 to discuss virtually any legal topic such as  
24 employment, credit, bankruptcy, health,  
25 landlord/tenant, personal injury or family

1 law. The attorneys meet with the individual  
2 and provide advice to those that would not  
3 otherwise be able to afford an attorney and  
4 this is a valuable service to the entire  
5 community. Through my experience with and  
6 in speaking with people who come to me for  
7 private consultations, they're very  
8 appreciative of the clinic and what it  
9 stands for. To some it may be a simple  
10 matter, but for them they are seeking  
11 guidance and can't afford the legal system.  
12 Time and time again I have been told that  
13 the clinic is such a great program and they  
14 are so happy with the services they offer.  
15 One person recently wrote on this  
16 evaluation, the appointment with the lawyer  
17 was so helpful I now know what my next step  
18 is. I feel like I now can do something  
19 about my situation. Thanks for the peace of  
20 mind. We hear comments like this all the  
21 time and see the sense of relief and I see  
22 it in the faces that those we try to help.  
23 The most valuable thing about the legal  
24 clinic is the fact they provide legal --  
25 early legal intervention in the people's

1 lives. And information is truly power and  
2 letting people know what options they have  
3 and if in fact additional legal services are  
4 necessary, can make a tremendous difference  
5 in avoiding a major crisis in life. It is  
6 also critical that the clinics are open in  
7 the community. The legal project does not  
8 do a full intake when people call for  
9 assistance because they are meeting with a  
10 pro bono attorney, which avoids the problem  
11 of legal conflict. This way people can feel  
12 comfortable in coming in to ask a legal  
13 question no matter what the situation.  
14 Anonymous evaluations are provided post  
15 consultation at the law clinic and an income  
16 level is asked for at that time. At least  
17 90% of those that attend the clinic are  
18 considered over 200% of poverty and would  
19 not dream of going to a private bar for  
20 help.

21 The clinic levels the playing  
22 field by those people that have no access to  
23 legal information and this is critically  
24 important too especially in the economic  
25 period of people literally on the edge. The

1 pro se support program is a wonderful way  
2 that we can connect our volunteer with low  
3 income people in the community who need an  
4 uncontested divorce and we hear all the time  
5 from Judges that so many people come to  
6 court with incomplete or incorrect  
7 paperwork, when they are seeking a divorce,  
8 and they get turned away from the court and  
9 they are wasting everyone's valuable time  
10 and frustrating those that are seeking to  
11 use a process friendly to the layperson.  
12 Unfortunately so many people are confused by  
13 the paperwork and struggle to get through it  
14 all, only to be stymied by the process.  
15 With this program we use non-attorney  
16 paralegals along with students from Albany  
17 Law School, who are trained to understand  
18 the paperwork and guided by two or more  
19 attorneys in the legal project on site to  
20 literally sit with the individual and help  
21 them complete this paperwork; what an  
22 amazing difference this makes. People leave  
23 feeling calm and more in control of their  
24 situation and more aware of the process that  
25 lies ahead. The Courts are very happy with

1 the results, finding more people are  
2 prepared with less paperwork ready to move  
3 ahead.

4 JUDGE LIPPMAN: So basically what  
5 you do is, collaboration with the legal  
6 project with Albany School, and together be  
7 able to impact on the legal services.

8 MS. SULLIVAN: With the paralegal  
9 association, through them, yes.

10 JUDGE LIPPMAN: Thank you. Thank  
11 you for the work that you do. And Debra  
12 Schimpf, Executive Director, Schenectady  
13 Community Action Program which we have heard  
14 a little bit about.

15 MS. SCHIMPF: Thank you, Your  
16 Honor. Chief Judge Lippman and  
17 distinguished members of the panel. Thank  
18 you for the opportunity to testify, on the  
19 important topic of civil legal services, in  
20 downstate New York. My name is Debra  
21 Schimpf and I am the Executive Director of  
22 the Schenectady Community Action Program  
23 which serves Schenectady County. SCAP's  
24 mission is to eliminate the symptoms or to  
25 eradicate poverty as we serve the low income

1 population of Schenectady County, and in  
2 particular, the City of Schenectady. We  
3 face a daunting poverty rate of 20.7 percent  
4 in the city, one of the highest in  
5 northeastern New York. In addition, our  
6 total poverty population, of 15,826 people,  
7 is consistently at risk of losing the  
8 essentials of life: Income, housing,  
9 safety, health care and education. We have  
10 always been and continue to be an  
11 anti-poverty agency and we share that  
12 mission with the colleagues at the Legal Aid  
13 Society of Northeastern New York. SCAP  
14 offers an array of services including Head  
15 Start, transitional and permanent housing  
16 for homeless families, crisis intervention  
17 for individuals and family, not able to meet  
18 their basic needs, case management for the  
19 low income people, budgeting, income tax  
20 services and employment services.

21 JUDGE LIPPMAN: How did you  
22 interact, with the provider, civil legal  
23 service provider? How do you go about what  
24 you do together?

25 MS. SCHIMPF: We do it in a

1           number of ways. Judge Clark had mentioned  
2           that we are present, in the city eviction  
3           Court every single day, we have a case  
4           manager there.

5                    JUDGE LIPPMAN: When there's not  
6           a lawyer there nor the hope to get a lawyer  
7           there.

8                    MS. SCHIMPF: We're there.

9                    JUDGE LIPPMAN: You provide some  
10          information.

11                   MS. SCHIMPF: We can give them  
12          basic information, and we can offer them  
13          assistance with some of the economic issues  
14          but frankly, still so many of them are not  
15          represented by the attorney. Last year  
16          alone, we provided about 2,000 interventions  
17          for evictions and I would say between  
18          fifteen and 20% maximum we're able to  
19          actually defer to Legal Aid and that's  
20          significant.

21                    JUDGE LIPPMAN: How do you do  
22          that? You have a working relationship?

23                    MS. SCHIMPF: We have a close  
24          relationship with them and have for more  
25          than fifteen years. Two days a week we have



1 two attorneys in our office there Thursday  
2 and Friday, so there's a very, very close  
3 working relationship between our coordinator  
4 Donna Gonzales and the two attorneys. We  
5 also have a direct line to them, we contact  
6 them.

7 JUDGE LIPPMAN: The bottom line  
8 is, with all your good work, with all their  
9 good work, still most of the people lined up  
10 in the end are not necessarily with legal  
11 representation, without representation?

12 THE WITNESS: That's correct. We  
13 will do triage because services are limited,  
14 and they really take on a lot more than they  
15 really should, given the time there. There  
16 we still --

17 JUDGE LIPPMAN: If there were  
18 more funding, you know for both of you,  
19 obviously more people could be represented  
20 and?

21 MS. SCHIMPF: That's correct, the  
22 funding is significantly inadequate. Two  
23 out of five days a week doesn't begin to  
24 handle the situation, and in the end toward  
25 the end of 2009, we started seeing an uptick

1 in the number of people being evicted, and  
2 that has stayed steady for us and we are  
3 really overwhelmed.

4 JUSTICE MERCURE: You could use  
5 their assistance five days a week?

6 MS. SCHIMPF: Absolutely.

7 JUSTICE MERCURE: 7 days a week  
8 perhaps?

9 MS. SCHIMPF: Probably 7 days a  
10 week except I think we wouldn't be able --  
11 we'd be exhausted. We're doing everything  
12 we can do.

13 Yes.

14 JUDGE LIPPMAN: Yet you need  
15 assistance of having lawyers or the ability  
16 to actually represent people as you can go  
17 only up to a certain point.

18 MS. SCHIMPF: That's correct.  
19 For more than fifteen years we have engaged  
20 in a variety of formal and informal  
21 partnerships with Legal Aid, these are --  
22 they include the basic referral  
23 relationship, as well as a formal funded  
24 partnership, and Schenectady County  
25 residents that are suffering from

1           homelessness received rental assistance as  
2           well as legal assistance and we work with  
3           the Legal Aid Society in a local homeless  
4           prevention and rapid rehousing project and  
5           this partnership includes several other  
6           not-for-profit community based agencies  
7           along with SCAP and Legal Aid. This  
8           partnership places two legal aid attorneys,  
9           available for intake at our offices on  
10          Thursdays and Fridays, as I mentioned, in  
11          addition our long term housing coordinator  
12          is stationed at the city eviction Court  
13          every day. Our coordinator regularly  
14          screens many people at risk for  
15          homelessness, providing information and  
16          referrals to SCAP. She can then link  
17          tenants to financial assistance from SCAP.  
18          At the same time Ms. Gonzales refers low  
19          income people who have received a threat of  
20          eviction or court papers to a Legal Aid  
21          attorney. Typical landlord/tenant issues  
22          referred to Legal Aid include those tenants  
23          who are being evicted illegally, who have  
24          never received or been served Court papers,  
25          who have serious code violations, especially

1 vacate orders or who are trying to protect  
2 their extremely valuable public housing or  
3 Section 8 tenancy. Through this partnership  
4 they have been able to maximize the  
5 resources available to Schenectady County  
6 clients. SCAP administers rental and  
7 utilities subsidies and provides information  
8 to clients with simple evictions as well as  
9 public assistance advocacy and case  
10 management. Finally to the clients who need  
11 an attorney in order to prosecute a standard  
12 defense a referral is made to the Legal Aid  
13 Society. And I really want to add we  
14 triage, so unfortunately it's a most extreme  
15 case that we have a referral.

16 JUDGE LIPPMAN: Yes, that's true.

17 MS. SCHIMPF: SCAP and LASNNY  
18 jointly address common issues with DSS, and  
19 these can include clients with an emergency,  
20 who are turned away, because they arrived  
21 too late, clients would have a written  
22 eviction turned away, because they can stay  
23 in the apartment, and/or are told to come  
24 back when the Sheriff locks you out or you  
25 are told to come back when you received

1 court papers. In Schenectady County,  
2 regrettably non-English speakers are  
3 sometimes turned away by DSS as they did not  
4 bring their own interpreter or DSS has no  
5 interpreter available. We also address  
6 untimely possessing of emergency and ongoing  
7 applications. Legal Aid lawyers provide  
8 invaluable legal assistance on all of these  
9 issues. Our partnership with the Legal Aid  
10 society is powerful in our community. In  
11 addition to resolving the housing cases,  
12 Legal Aid can also represent our clients in  
13 a variety of other legal issues that  
14 preserve the essentials of life. These  
15 include unemployment insurance appeals,  
16 social security disability, appeals,  
17 divorce, adoption, custody, child support,  
18 wills, immigration, foreclosure, real  
19 property, bankruptcy and debt collection.  
20 We know that the Legal Aid Society has  
21 similar partnerships throughout New York.  
22 Funding for civil legal services is  
23 necessary to allow low income people to  
24 maintain the essentials of life. This  
25 society is committed to partnering with

1 community agencies like SCAP, training  
2 non-attorneys to give resourceS, provide  
3 information, case management, and financial  
4 assistance, and attorney resources can be  
5 preserved for clients with the most pressing  
6 legal issues. Legal Aid Society attorneys  
7 also are trained by SCAP and other agency  
8 staff to recognize appropriate legal issues,  
9 for referral to Legal Aid. I hope that the  
10 chief judge Task Force will again recognize  
11 what all that legal services agencies like  
12 the Legal Aid Society of Northeastern New  
13 York have done to partner with non-legal  
14 providers to meet the needs of low income  
15 people sufficiently. Thank you.

16 JUDGE LIPPMAN: Thank you and  
17 thank you for the work you do. And it's  
18 instructive on how you work seamlessly with  
19 the Legal Aid Society and all part of again  
20 we talk about the puzzle, putting this  
21 together, certainly you're a part of the big  
22 part of that.

23 MS. SCHIMPF: Thank you.

24 JUDGE LIPPMAN: Julie Davies,  
25 from the North Country Mediation Rural Law

1 Center.

2 MS. DAVIES: Good morning Judge  
3 Lippman, Judge Mercure, Judge Pfau and  
4 President Doyle, thank you so much for the  
5 opportunity to speak with you today about  
6 the funding of civil legal services. My  
7 name is Julie Davies, and I am the Director  
8 of the North Country Conflict Resolution  
9 Services, that's a program of the Rural Law  
10 Center of New York, and we're part of the  
11 OCA funded Community Dispute Resolution  
12 Program, and our territory in that is the  
13 five northern most counties in New York,  
14 probably the most rural and probably among  
15 the most economically disadvantaged.

16 JUDGE LIPPMAN: So how do you fit  
17 into this puzzle that we're talking about?

18 MS. DAVIES: Our program does  
19 over 13 hundred cases a year, in those five  
20 counties, and we are in 54 courts with  
21 regular mediation services. There's no  
22 question, that there is an acute need for  
23 services we see in our work every day. We  
24 feel that mediation services and other forms  
25 of alternative dispute resolution, can free

1 up some of the resources that need to be  
2 used in more critical cases, and in  
3 instances where civil legal services  
4 attorneys can step in.

5 JUDGE LIPPMAN: So you could  
6 resolve these matters, and we sort of  
7 obviate the necessity for having an attorney  
8 because you've been able to kind of in a  
9 mediation context to resolve the issue?

10 MS. DAVIES: Sure, if there  
11 obviously needs to be in-take to determine  
12 whether their cases are appropriate for  
13 mediation, but when cases were deemed  
14 appropriate for mediation, then there's a  
15 tremendous possibility to include mediation,  
16 in that sort of continuum of services.

17 JUDGE LIPPMAN: Other cases go  
18 straight to the provider I assume so you can  
19 have -- there is a --

20 MS. DAVIES: Exactly. I think we  
21 feel that the need is so great there needs  
22 to be, sort of --

23 JUDGE LIPPMAN: Options, right.

24 MS. DAVIES: Yes, I mean starting  
25 at the very basic legal information and then



1 self-help materials and probably in the  
2 middle of that is a need for mediation  
3 alternative dispute resolution and direct  
4 legal representation. And it's sort of --  
5 it operates as a triage, and in that way,  
6 cases that are appropriate to be resolved by  
7 mediation will save resources for other.

8 JUSTICE MERCURE: You offer  
9 mediation across the vast spectrum in terms  
10 of the types of cases?

11 MS. DAVIES: We absolutely do.  
12 Like almost everyone of the CDRC community  
13 program, we have mediation services, in  
14 Family Court issues, special education, our  
15 program has an agricultural -- we do have  
16 some real very subsistence level farming in  
17 our county.

18 The debt issue that's come up  
19 around that on a regular basis, to me the  
20 issue is really an appropriate way to find a  
21 resolution to some of those issues, and  
22 perhaps save some of these farms. Besides  
23 the work that we do in the town and village  
24 courts, and that work is heavily into  
25 housing issues and consumer debt issues, we

1 have programs as you said, a very wide range  
2 of civil matters.

3 JUDGE LIPPMAN: Okay. Thanks so  
4 much. We appreciate it and again, very much  
5 a part of the puzzle. Thank you for your  
6 good work. Professor Connors?

7 MR. CONNORS: Thank you for this  
8 opportunity.

9 And thank you to the Task Force  
10 for this opportunity. I'm a former legal  
11 services attorney from Monroe County legal  
12 assistant in the late 80's, early 90's, and  
13 I bring that perspective as well as the  
14 perspective of a clinical law professor at  
15 Albany Law School since the early 90's to  
16 this discussion.

17 My comments today will talk about  
18 a reform movement in legal education that  
19 impacts the availability of using law  
20 students to help close the gap and access to  
21 justice, what Albany Law School is doing,  
22 but in the end the reality is that we're  
23 only one piece of the puzzle.

24 JUDGE LIPPMAN: You know we do  
25 always hear don't you get the law schools

1           involved? The could be helpful if the law  
2           schools, the kids who can't just go out and  
3           can't get a job. Tell us how law schools  
4           are involved?

5                   MR. CONNORS: Law schools are  
6           involved, Albany Law School has in-house  
7           clinical programs that work in collaboration  
8           with the Legal Aid Society of Northeastern  
9           New York and the legal project and the  
10          Empire Justice Center, not competing for  
11          limited funds, but working together so that  
12          we're not duplicating services. Some of our  
13          joint initiatives include health law  
14          initiative, and advocacy for working with  
15          families effected by HIV and AIDS and  
16          preventative matters, with their doctor, so  
17          we can avoid legal problems down the road,  
18          working with family to set up emergency  
19          plans for the future care of children,  
20          working with individuals to set up health  
21          care directives, working with the families  
22          in a wholistic way to make referrals to  
23          non-legal providers to hopefully avoid legal  
24          problems down the road. We will have  
25          domestic violence initiatives with Legal Aid

1 and the Legal Project, beyond their -- if  
2 there's any service in a wholistic manner  
3 that's training law students to become  
4 future service providers. Lorraine  
5 Silverman of the Legal Project is a former  
6 clinic student and Alejandro Taylor is  
7 currently at the Legal Aid Society and works  
8 with our program. So these joint  
9 initiatives are very important. We also  
10 have a tenant foreclosure initiative, to  
11 represent tenants being evicted by the  
12 mortgage crisis and there's a plan in  
13 collaboration to provide, not to compete,  
14 but to address on that need that unmet need.  
15 I made a special point to as a side note as  
16 to the Legal Empire Justice Center as a  
17 young legal services attorney, I found this  
18 training to be invaluable and as a professor  
19 I still rely on their great web sites today  
20 as well as the web site of the other backup  
21 legal centers at the Western New York Law  
22 Center website. The programs at Albany Law  
23 School also is proud of our loan repayment  
24 assistance program and while we can't serve  
25 everyone, they're limited, but there's still

1 a need for additional statewide support for  
2 that. Pro bono activities like that, I  
3 started to list in my written comments some  
4 of the professors who are actively involved  
5 in the community, but you realize that  
6 really this would be too long as most of our  
7 professors work or are involved in some sort  
8 of pro bono service, be it through  
9 continuing legal education, training or  
10 direct advocacy or appellate advocacy,  
11 sometimes working alone, sometimes working  
12 with law students.

13 JUDGE LIPPMAN: So there's really  
14 is synergy between the law school and the  
15 providers and pro bono efforts?

16 MR. CONNORS: Certainly. Not  
17 competition, but trying to join forces, to  
18 address the matter.

19 JUDGE LIPPMAN: Is that a  
20 recognition professor that such an amount of  
21 funding is able to be provided?

22 MR. CONNORS: It's not meeting  
23 the needs even with the current coordinated  
24 system. I can speak for the Law Clinic in  
25 this case as we turn away about 20

1 individuals away per week, with meritorious  
2 claims and approximately 600 individuals a  
3 year that we want to serve, about half of  
4 that is extended representation, but a lot  
5 of it is limited representation where we're  
6 giving free counsel.

7 JUDGE LIPPMAN: Like everyone  
8 else, it's a limited amount of resources for  
9 which --

10 MR. CONNORS: So, part of the  
11 solution has to be increased permanent  
12 funding to make it all work.

13 JUSTICE MERCURE: What  
14 percentage of matters are you looking to  
15 extend?

16 MR. CONNORS: About half of the  
17 people that call us we can help.

18 JUDGE LIPPMAN: That's pretty  
19 good in terms of the statewide perspective  
20 whereas you know, in parts of the state for  
21 every one, 8 or 9 are turned away.

22 MR. CONNORS: Right.

23 JUDGE LIPPMAN: Right.

24 MR. CONNORS: Part of that is  
25 through a referral mechanism which we set up

1 through the Legal Project so they know what  
2 type of cases to refer to us.

3 MR. DOYLE: Mr. Connor, s in your  
4 written submission you make the point that  
5 you talk about and seek change in the legal  
6 education, to reform efforts and you  
7 mentioned some of the State Bar work in that  
8 field, but to the extent that there could be  
9 reevaluation, in some of the accreditation,  
10 some of the admission standards to be more  
11 accepting of clinical work and practice  
12 orientated education, that would fit in,  
13 that would allow for more work from law  
14 students directed toward these types of  
15 unmet legal needs.

16 MR. CONNORS: Right. That  
17 definitely deserves further study and  
18 reevaluation. Currently the number of  
19 clinical or special credits allowed in  
20 Albany Law School is limited by Court of  
21 Appeals Rule 620. Each of our clinics are  
22 of six credits up to -- so if a student  
23 wants to take a clinical opportunity, for  
24 four in the three years that would be 24  
25 credits right there. And in terms of

1 admission to the Bar, it's a bigger issue,  
2 but more prep consideration and practical  
3 experience being a factor, so that graduates  
4 are practice ready and committed to exercise  
5 their professional judgment necessary to  
6 recognize the needs of the most  
7 disadvantaged members of our community.

8 JUDGE LIPPMAN: Okay. Thank you  
9 all. Appreciate it. Thank you for your  
10 efforts, in support of the legal system.  
11 Thank you. Michael Hertz, Chief Marketing  
12 and Business Development Officer, White &  
13 Case.

14 MR. HERTZ: Good morning or good  
15 afternoon I guess. Thanks for the  
16 invitation.

17 Thank you. Thanks for the  
18 invitation to give a talk today. Judges and  
19 the panel, and obviously I have just  
20 returned from England so it's really great  
21 to see the work that you've done, and doing  
22 on this issue and resources to add resources  
23 to the problem. Just to give you and I'm  
24 not going to go through my background in  
25 detail, but I have experience in the big law



1 firms, both the practitioner and more  
2 recently in senior management roles, all of  
3 which involve extensive uses of technology  
4 to, to run the law firms effectively and as  
5 efficiently as possible. There's probably  
6 and most relevant to this, I founded or  
7 co-founded Pro Bono Net, back in the late  
8 90's, with some help from a couple of other  
9 big law firms in New York City. And Pro  
10 Bono Net continues to be on the Pro Bono Net  
11 and it continues to grow and evolve and we  
12 work close with the Courts and the Legal Aid  
13 community and the Bar, the law schools,  
14 really across the State just communities and  
15 not just in New York, but across the  
16 country, deeply involved in various parts of  
17 my life in some of these issues, and just to  
18 go through I think the headline why I think  
19 technology can really help expand as there  
20 are three key areas in that and one is  
21 that's around efficiency and the second is  
22 around protocol and effectiveness and the  
23 third is, around immigration. So there are  
24 ways we can just use technology in  
25 indefinite ways to reach the people with

1           some help.

2                     So, let me just address each of  
3 those three and I wont go through the  
4 testimony that I submitted.

5                     JUDGE LIPPMAN: Fine.

6                     MR. HERTZ: On the efficiency  
7 point, you know there are basic fundamental  
8 building blocks that need to be addressed  
9 for functioning organizations to have in  
10 terms of technology today and so when I look  
11 at both the way the private Bar approaches  
12 the technology and the way that the Legal  
13 Aid community groups also approaches  
14 technology as you might expect there's a big  
15 gap in the investment that Legal Aid  
16 organizations are able to make. For a  
17 variety of reasons in their basic just in  
18 their basic platform that they use to  
19 collaborate with other Legal Aid, and access  
20 to justice organizations. One thing I would  
21 just urge the Task Force to look at is to do  
22 a little study on how we might approach that  
23 differently, and try to assess what are the  
24 basic fundamental building blocks in the  
25 Legal Aid organization.

1 JUDGE LIPPMAN: Do you think that  
2 to some degree, technology would be as  
3 important as adding lawyers or support  
4 staff?

5 MR. HERTZ: I think they go hand  
6 in hand, I don't think -- I don't think you  
7 want to create a kind of zero sum gain  
8 there. I think, that technology needs  
9 skilled advocates behind it.

10 JUDGE LIPPMAN: Right. The  
11 technology can to some degree, as it does in  
12 all institutions can maybe make it less  
13 labor intensive to do what we have to do.

14 MR. HERTZ: Yes.

15 JUDGE LIPPMAN: And whether you  
16 call it efficiency or money well spent,  
17 technology is very important to the legal  
18 services.

19 MR. HERTZ: I think it's  
20 absolutely critical if you look at the gap  
21 that we're facing there's no way to bridge  
22 that gap without doing something that is,  
23 innovative, and we can fund more lawyers, we  
24 can fund more creative delivery mechanisms  
25 and all those things and we also need to

1 find a way to reach --

2 JUDGE LIPPMAN: It's even more  
3 important than in the more rural areas where  
4 you're spread out over a large --

5 MR. HERTZ: There's a good  
6 example of technology being used today with  
7 support from the grants and legal services  
8 corporations as we go through the years,  
9 with more urban Legal Aid programs and court  
10 programs are able to reach rural populations  
11 with help and part of that is just  
12 information, so giving access through  
13 libraries, through social services and DSS  
14 agencies up in the rural areas where this --  
15 where somebody can access the information  
16 about you know various different civil legal  
17 services issues, but also actually accessing  
18 lawyers using technology to connect a  
19 volunteer lawyer and a Legal Aid lawyer in a  
20 urban area, with somebody, whose living in a  
21 rural location and some business that we're  
22 talking about across the country, and I'm  
23 sure that this is absolutely true in New  
24 York State as they are backed, they're the  
25 population that has the need and lawyers and

1           advocacy there to serve them I think this as  
2           there's been reductions in funding a lot of  
3           rural programs have been hit hard.

4                   MR. DOYLE:    Mr. Hertz, have you  
5           in the funding part, as a lawyer, in private  
6           practice who has been involved in his own  
7           efforts to see technology grow and operate  
8           and being involved in the State Bar  
9           Association, a large organization,  
10          technology upgrades are expensive.

11                   MR. HERTZ:    Yes.

12                   MR. DOYLE:    Time consuming and  
13          require a lot of the skill, and attorneys  
14          knowledge which lawyers are not known for  
15          having necessarily technological skills. I  
16          hear from your testimony what you've already  
17          said you suggest that there may be ways that  
18          the Task Force can help provide some type of  
19          economy or scale or at least investigate the  
20          economy of scale for the providers the small  
21          provider in rural areas that perhaps they  
22          can together join and invest in some general  
23          platform that would be more cost effective  
24          for them.

25                   MR. HERTZ:    Some of that is

1           happening already and some of the work there  
2           was in the New York Law Center, it has done  
3           along those lines and definitely, pooled  
4           their recourse resources and built tools  
5           together so that one they're not building  
6           multiple tools, and Pro Bono Net was based  
7           on that concept as well. It's absolutely  
8           the right way to go about it. No single  
9           entity or provider can be kind of or do the  
10          continuous investment that is needed. So  
11          I'm absolutely sure that that's the right  
12          approach so I recommend that. I guess it  
13          creates more incentives for that  
14          collaborative approach to invest in  
15          technology with the continuous --

16                    JUDGE LIPPMAN: Quality issues,  
17                    how does the technology impact on the  
18                    quality of representation?

19                    MR. HERTZ: It's critical -- so  
20                    really playing in the big law firms that  
21                    firms that's in England that firm was trying  
22                    to support and train lawyers up to a certain  
23                    level across the world. Same thing is true  
24                    in the Legal Aid community and it's one of  
25                    the founding principles of Pro Bono Network

1 is that if we're going to get more lawyers  
2 involved in doing volunteer work we need a  
3 to bridge one of the main obstacles that the  
4 lawyers indicated, and has been from doing  
5 that lack of training in the area of  
6 expertise where the self legal services were  
7 needed. So getting lawyers both Legal Aid  
8 lawyers who are here during this whole time  
9 and volunteer lawyers up to speed, and  
10 delivering the service that the right  
11 quality level is something that technology  
12 can help with. On line-line training you  
13 know, materials and practice, virtual  
14 training materials, just very simple  
15 technology, list serving, just a very simple  
16 technology that allows people to be on  
17 E-mail distribution lists and talk to  
18 others.

19 JUDGE LIPPMAN: Particularly this  
20 training I can see that, on the pro bono  
21 side all -- you have so many lawyers that  
22 don't work in certain areas, but they want  
23 to dedicate as they go on more and more of  
24 their time to the pro bono type of  
25 activities, I can see how technology really

1 can be very important in that.

2 MR. HERTZ: A lot of it's  
3 changing quite a bit so that you know in a  
4 lot of ways that, lawyers now support  
5 themselves and this has been true  
6 historically, but now that technology makes  
7 it lighting fast. To reach out and to a  
8 peer who has done that before or had that  
9 experience before so it's not text book  
10 training, it's saying you go, excuse me, I  
11 saw that you did a tape of this recently can  
12 you walk me through what you did there and  
13 technology is extremely valuable for that.

14 MR. DOYLE: And as the court  
15 system moves as it should towards e-filing  
16 and electronic and other means of using  
17 technology, appearances, video conferencing  
18 and that legal service providers are going  
19 to need to be up-to-speed with that in order  
20 to participate.

21 MR. HERTZ: Absolutely, so  
22 there's actually again you know, we're  
23 sitting on the tip of the iceberg now. The  
24 Legal Aid groups Pro Bono Net the Court  
25 system in New York, in California, a number



1 of court systems around the state and  
2 country work together on building on-line  
3 document assembly technology where mostly in  
4 an assisted environment from there someone  
5 is sitting with a person in front of a  
6 computer going through, you know, questions  
7 and answers, and at the end of that, the  
8 system generates the proper forms and  
9 filings. And somebody reviews it before  
10 that goes in. But to then try to do  
11 electronic filing to have more sophisticated  
12 filing systems to give some triage, and I  
13 think it also has a huge potential again all  
14 of these things, I think have a huge  
15 potential, but require more.

16 JUDGE LIPPMAN: What's the latest  
17 in the technology to legal services state of  
18 the art?

19 MR. HERTZ: I think the  
20 technology that we're starting to experiment  
21 with is huge and the potential if it's  
22 deployed correctly, I think it could be you  
23 know, a barrier to being deployed badly.  
24 But if it's deployed with the help from law  
25 students, and private attorneys, the Legal

1 Aid lawyers and other people that are or  
2 that have access to the justice system, I  
3 think that has a potential to help people.

4 JUDGE LIPPMAN: Again in terms of  
5 funding, it would be a wise investment to  
6 invest in the newer and innovative ways to  
7 base this for anyone, but us in particular  
8 obviously for organizations trying to serve  
9 wide populations with not enough resources.

10 MR. HERTZ: Sure I think that's  
11 right.

12 And I think the other thing just  
13 to look at perhaps in the work that your  
14 doing is, setting up something similar in  
15 New York State to what the -- what the Legal  
16 Services Corporation set up, and ran for the  
17 last twelve years and still running which is  
18 a technology innovation grant program. And  
19 if you look at that program the expert of  
20 that program, the former President of the  
21 LLC here, but that program is relatively  
22 small dollars and has generated a huge  
23 amount of innovative approaches and great  
24 collaboration across the -- across and state  
25 justice community. If you we were to look

1 at that program and think about building a  
2 New York State version of that, I think it  
3 would have benefits.

4 JUDGE LIPPMAN: Realistically we  
5 will have to do that because it's a landline  
6 to you and your firm too. Now Legal  
7 Services Corporation funding is under siege,  
8 and who knows what will survive there and  
9 that's why we're trying hard to create a  
10 permanent, dependable, consistent funding  
11 stream here in New York out of the public  
12 fist, but technology is certainly a piece of  
13 the puzzle and we appreciate your coming in.

14 MR. HERTZ: Thank you for  
15 inviting me.

16 JUDGE LIPPMAN: Appreciate it we  
17 will finish off our hearing today with a  
18 client panel, that includes Arthur Demar,  
19 Jr., a client of the Legal Aid Society of  
20 Northeastern New York, accompanied by Robert  
21 Vanderbles, Dana P, a client of the Legal  
22 Project, accompanied by Lorraine Silverman  
23 and Rassan Kellam a client of the Legal Aid  
24 Society of Northeastern New York accompanied  
25 by Robert Vanderbles.

1 Mr. Demar, did you want to start?

2 MR. DEMAR: Good afternoon.

3 My name is Arthur Demar Jr., and  
4 I'm fifty-eight years old and I live on  
5 social service disability, and I'm disabled  
6 and have been for four years. I currently  
7 live in Keesville, New York. Beginning of  
8 May, when the flooding occurred at Lake  
9 Champlin, Plattsburgh, I was living on the  
10 second floor of an apartment called Lake  
11 Side Apartments. And when the flooding  
12 reached its peak on May 7th, May 8th, my  
13 apartment complex was condemned because of  
14 the electrical was going to be flooded, but  
15 at that time I was over in Mary Fletcher  
16 Hospital as I just received cancer surgery.  
17 So when I was released from the hospital on  
18 May 9th, I didn't even have a place to go  
19 to. I didn't have an apartment, nothing, I  
20 had to go to a Social Services that day  
21 first thing I come out, and I was set up in  
22 a hotel room for a couple weeks. At that  
23 point in time, Department of Social Services  
24 told me that there was a Legal Aid  
25 representative at the shelter that they'd

1 set up, that was the first day that shelter  
2 was open, and I met with a representative  
3 from the Legal Aid on the 12th and once I  
4 got my strength up and was able to move  
5 around. And they give me the option of  
6 having a letter sent to my old landlord  
7 because he wanted to keep part of my money  
8 for my rent because of the fact that I  
9 couldn't get my stuff out. And because of  
10 the flooding, the Plattsburgh City Police  
11 Department would not allow us to go in the  
12 building after dark and because of my  
13 medical condition it was hard for me to turn  
14 around and to get my stuff out. So I was  
15 able to get my stuff out on the 21st, but  
16 the landlord wanted to keep part of my rent  
17 from the time of May 8th to the 21st because  
18 I couldn't get my stuff out. I met with the  
19 current representatives from Legal Aid  
20 Society, I met an in-take officer on the  
21 12th, and then I met with Dan Alley numerous  
22 times between the time that my old landlord  
23 said I wasn't going to get all my money back  
24 and we ended up going to small claims court,  
25 and Mr. Alley, the only thing he had to do

1 other than, you know, go by the letter of  
2 the law was just change a few numbers and I  
3 got a partial refund, but he still wanted to  
4 keep the 3 days worth of rent because I  
5 couldn't get my stuff out until the 21st.  
6 We ended up going to small claims court,  
7 where at this point in time my old landlord  
8 finally decided to put up the money that he  
9 owed me, and settle out, and because of  
10 that, I didn't have to ask social services  
11 to help me in relocating. They offered me a  
12 months security, a months rent for a voucher  
13 and I told them I didn't need it. I was  
14 able to get my money back, between my  
15 resources and the other resources that I  
16 had, I didn't need them. Basically Legal  
17 Aid not only turned out and got me my money  
18 back and did what they were supposed to do  
19 and also saved Clinton County about fifteen  
20 hundred dollars. I didn't need any help.

21 JUDGE LIPPMAN: You know the  
22 point we were making is the point that you  
23 made. That civil legal services can very  
24 much decrease dependance of people on social  
25 services.

1 MR. DEMAR: Yes.

2 JUDGE LIPPMAN: Thereby making  
3 the government more stable, and decrease  
4 those costs.

5 MR. DEMAR: Yes, sir. Yes, sir.  
6 And in fact that in my case you know, I  
7 saved the county, between twelve and fifteen  
8 hundred dollars.

9 JUDGE LIPPMAN: And so, other  
10 than going to legal services you would have  
11 no ability to deal with this problem?

12 MR. DEMAR: No, I paid up all my  
13 bills at the beginning of the month, I went  
14 into the hospital on the 4th and I had my  
15 operation on the 5th and I was released on  
16 the 9th, and I didn't have any money in the  
17 bank. I had 35 dollars in the bank and that  
18 was it.

19 JUDGE LIPPMAN: Okay. Thank so  
20 much, appreciate it, appreciate your story.  
21 Dana, for the legal project do you want to  
22 tell us how legal services helped you?

23 DANA P: Thank you for having me  
24 here today. My name is Dana and I am  
25 forty-years-old and I have taught special

1 education for 22 years, I have two children  
2 that I single parent with no financial  
3 support. Apart from my college years in  
4 Rochester, I have lived in Troy my entire  
5 life. I was married in 1996 to a man who I  
6 thought would be a wonderful husband and  
7 father. I knew that he had a terrifying  
8 childhood. He told me that when we were  
9 first together, he witnessed his father  
10 repeatedly and horribly beat his mother  
11 right in front of him and he even saw his  
12 father on occasion put a gun to his mother's  
13 head and play Russian Roulette. On more  
14 than one occasion after that he told me he  
15 hated his father, and that he would never  
16 ever want to be like him. At first he was  
17 gentle and kind and he showed no inclination  
18 of the man that he was to become. He was a  
19 good dad, a loving husband.

20 I don't know what happened, but  
21 after about 9 years of marriage that has  
22 changed. He began to drink, to excess, and  
23 his health deteriorated. He was diagnosed  
24 with diabetes, but continued to drink and  
25 the alcohol defeated the medication. Then



1 he just keep getting sicker. His behavior  
2 towards me and our children took a drastic  
3 change. He began calling me vulgar and  
4 racist names and threatening me with sexual  
5 assault and that he could kill me. He  
6 refused to allow me to go to church or spend  
7 any free time with others except for my time  
8 at work. He threatened to take my children  
9 away from me, and I stayed with him because  
10 I thought he needed me and I kept hoping  
11 that I kept hoping to help him get back to  
12 the man he once was. This went on for four  
13 years and got progressively worse day by  
14 day. Our children were experiencing so much  
15 stress they were getting terrible headaches  
16 and stomach pain and then having trouble  
17 sleeping and hence concentrating in school.  
18 I tried to get help for my husband but he  
19 refused help. Things got worse and worse.  
20 I knew that I had to leave him and get help  
21 for myself and my children.

22 I didn't want to break up the  
23 family, but I felt like I had no choice.  
24 However, he chose that he would not let me  
25 go on and flatly told me there will be no

1 divorce, you cannot leave me. He threatened  
2 to torture me, rape me and kill my family.  
3 He began to stalk me, cutting my phone lines  
4 so I cannot call out for help and on more  
5 than one occasion he sabotaged my car, he  
6 secretly added fluid to the brake line so  
7 that the car that I drove, the mini van for  
8 my children, and did not even care, that  
9 they too would be or could be harmed and/or  
10 killed. He threw fits of rage in the home  
11 and in the neighborhood for anyone that may  
12 try to help me and then threatening to  
13 massacre my father and brother if they tried  
14 to intervene. He threatened to kill himself  
15 and leave a note for my children blaming me  
16 for his death.

17 So I knew I had to get away from  
18 him only though I barely had enough money to  
19 take care of my family since my husband was  
20 no longer bringing in enough supplemental  
21 income and I hired a lawyer and 2008, so  
22 that I can file for divorce. My husband  
23 found out about this attorney, when he was  
24 checking my cell phone, and called the  
25 number that he told me and then he told the

1 lawyer, he had better watch out and he would  
2 never let me leave him. Then he increased  
3 his stalking and controlling behavior,  
4 escalating the threats of harassment. He  
5 wrote me horrible letters that would shock  
6 and sicken you if you saw them. Some  
7 pretended to be anonymous stating that he  
8 would come and rape me and kill me in my  
9 sleep or tell me that I should just kill  
10 myself quick and get it over with. I got an  
11 Order of Protection from Family Court, but  
12 he just kept on violating it, and increasing  
13 his threats and intimidation. He wrote my  
14 first lawyer a letter so bizarre and  
15 frightening he withdraw from my case. I was  
16 again left with no one to help me after I  
17 spent \$3,000 that I did not have on that  
18 attorney. He could no longer stay on the  
19 case. In the mean time my husband's  
20 behavior escalated even more and in November  
21 of 2008 he was witnessed pouring brake fluid  
22 all over my mini van and keying the van and  
23 placing nails under the tires to flatten  
24 them while parked in a public lot, all in  
25 violation of the Order of Protection. He

1 was finally arrested and placed in jail  
2 where he kept writing me frightening  
3 letters. His probation officer was  
4 concerned that he was going to kill me if he  
5 wasn't stopped. I tried to hire another  
6 attorney, but I simply didn't have the money  
7 that they required. Honestly, none of the  
8 them were willing to take on my case, out of  
9 fear that my husband would do what he had  
10 promised and it would be too long of a  
11 difficult case. So his behavior was worse  
12 after arrested. He broke windows out of the  
13 police car, punched his head through a wall  
14 in the courtroom, threatened the police, the  
15 Court officers and even a judge. His  
16 probation officer, Sunny Mills, was  
17 wonderful. She was quite worried about my  
18 safety. She was the first one who referred  
19 me to the Legal Project, which I knew  
20 nothing about. But he threatened to kill  
21 her too and blow up the whole Probation  
22 Department and the building and everyone  
23 that was there. So, she was taken off the  
24 case as well. He threatened to kill the  
25 judge then and she was removed from the case

1 after retirement. I felt like I had no one  
2 to help me. Ironically all this time my  
3 husband was given the benefit of an assigned  
4 attorney while I was struggling to find a  
5 way a way to afford the help that I needed  
6 for me. Even more ironic was the fact that  
7 my husband became the man that he most hated  
8 and he was like his own father. Thankfully  
9 I have to say that I did call the Legal  
10 Project, like Mrs. Loomis suggested. I am  
11 so incredibly grateful that I was told about  
12 the Legal Project, that they were willing to  
13 take my case. I don't know if I ever could  
14 have gotten free of my husband and the abuse  
15 if it wasn't for their help. I feel like  
16 the Legal Project was a blessing. My  
17 attorney, Lorraine, empowered me to know  
18 freedom, fight for my family rights and  
19 stand up with and face with courage that  
20 happened during domestic abuse. I could not  
21 have afforded more traditional legal  
22 representation. I pay all of my own bills  
23 while my ex-husband sits in prison planning  
24 his next revenge. Lorraine is trained to  
25 know how to guide her clients in the light

1 of peace and justice.

2 My husband is currently -- my  
3 ex-husband, delightfully at Marcy  
4 Correctional Facility, but he will be out  
5 way too soon. But with the help of Lorraine  
6 and the Legal Project I was able to finally  
7 be divorced from him in January of 2011,  
8 after three long hard years of fighting to  
9 get free. I never would have been able to  
10 achieve that without them. The Legal  
11 Project gives all woman the strength to make  
12 a better life even when they have no  
13 financial means. They truly do God's work.  
14 Please do all you can to make sure every  
15 victim has someplace like the Legal Project  
16 to turn, when there is no one else to help  
17 them. Thank you for you time.

18 JUDGE LIPPMAN: Thank you. It's  
19 a compelling story, clearly when you're  
20 dealing with ones physical safety, and  
21 well-being of your family, and I don't think  
22 there's anything more necessary in life and  
23 that's what civil legal services provides  
24 and doing in particular the good work of the  
25 Legal Project. So --

1                   DANA P:  There's an assumption  
2                   that when you're a professional and you're a  
3                   professional for a determined amount of  
4                   years it will all be okay because on paper  
5                   it may appear that, I'm more well-off than  
6                   you are, and in the case being I haven't  
7                   received very few child support payments so  
8                   if it wasn't for the ability to take them --  
9                   for them to take me under the program that I  
10                  got in, I can't think of where I would be  
11                  because if it wasn't for their legal  
12                  representation also and support, and  
13                  everything that I needed, and caring for  
14                  again my children, and getting them into a  
15                  safer environment.

16                 JUDGE LIPPMAN:  Well thank you.  
17                 So it's so telling in terms of why we're  
18                 here today and so thank you so much.  And  
19                 Rassan Kellam whose a client of Legal Aid of  
20                 Northeastern New York.

21                 MR. KELLAM:  Good afternoon, Your  
22                 Honor.  My name is Rassan Kellam and I'm  
23                 fifty-eight-years-old, and I speak today as  
24                 a former client of the Legal Aid Society of  
25                 Northeastern New York, but for the past six

1 years I have been stably housed, employed  
2 and clean and sober. I was able to achieve  
3 this despite twenty-two years of abusing  
4 alcohol, Marijuana and Cocaine, multiple  
5 instances of homelessness and a short time  
6 in jail. After four different stays in city  
7 missions, I hope to never be homeless again.  
8 Through the assistance of the variety of  
9 community agencies I have been given the  
10 opportunity to put my life on the right  
11 track, a 12 step program helped me surrender  
12 to my own addiction. The drug court program  
13 and half way house assisted me with  
14 obtaining employment. I now work at Time  
15 Warner Cable in marketing for the past four  
16 years. Opportunities have provided me with  
17 Mohawk Opportunities have provided me with a  
18 rental supplement and case management  
19 services as they do for a number individuals  
20 with disability. I recently have been  
21 dismissed from the program because I am  
22 exceeding the financial guidelines.

23 I owe my thanks to many people  
24 for these successes and I thank the Legal  
25 Aid Society for helping me, to protect these



1 gains that have transformed my life.  
2 Recently my landlord tried to evict me for  
3 the nonpayment of rent. I admit that I owed  
4 one months rent, and with my next paycheck I  
5 planned to pay my landlord what was due. I  
6 asked my landlord to give me until the next  
7 day, after court, when I received my pay  
8 check to pay him. My landlord was  
9 unwavering and would not agree to give me  
10 that one day that I needed, that extension.  
11 I was afraid of becoming homeless again. I  
12 didn't know how the system worked. Through  
13 the affiliation of a personal acquaintance  
14 who also shared her story of hardship and  
15 overcoming and learning of this individuals  
16 overcoming with the assistance of the Legal  
17 Aid Society, I was forwarded to the Legal  
18 Aid Society for assistance. I contacted the  
19 Legal Aid Society of Northeastern New York,  
20 at the SCAP office, and met with Rob the  
21 next day. Mr. Vanderbles saw that the  
22 landlord had not given me a ten day notice  
23 to cure followed by a 30 day termination  
24 notice and even though he had agreed to do  
25 so in the lease we signed. Mr. Vanderbles

1 represented me in court, and moved to  
2 dismiss the case, because my landlord had  
3 not followed the termination procedure, we  
4 had agreed to in the lease. Mr. Vanderbles  
5 also moved to strike the demand for \$150 of  
6 late fees, because there was no lease term  
7 allowing late fees. All I wanted was one  
8 day to pay my landlord, with the next pay  
9 check. With the defense raised by  
10 Mr. Vanderbles the landlord agreed to use  
11 the next paycheck to pay my landlord and we  
12 were able to stop my eviction. The Legal  
13 Aid Society enabled me to help myself and  
14 preserve the stable lifestyle I had worked  
15 so hard to obtain. From the beginning the  
16 Legal Aid Society guided me through the  
17 process and gave me peace of mind, and in a  
18 highly professional manner. My best  
19 interests was always their priority. If I  
20 had been evicted I would have lost my  
21 housing, my rental supplement, my job, and  
22 perhaps my sobriety. Returning to  
23 homelessness would have been a lifestyle  
24 change that I could not have coped with. In  
25 court Rob took the time to discuss strategy

1 and guidelines for avoiding this situation  
2 again. I now budget my income to ensure  
3 that I pay rental on time every month, so  
4 that I would not be at risk of homelessness  
5 again. I am grateful to the Legal Aid  
6 Society and hope that you do all you can to  
7 ensure that Legal Aid have the staff and the  
8 resources to help people like me maintain  
9 their housing, their jobs and keep their  
10 lives stable and on track. Thank you.

11 JUDGE LIPPMAN: Thank you  
12 Mr. Kellam. Fair to say, Legal Aid Society  
13 had a dramatic effect on your life and  
14 pulling it together for you. It's a story  
15 to be repeated a hundred times over in  
16 addition to our three witnesses today.

17 So, thank you all, obviously  
18 thank you to the Legal Aid Society of  
19 Northeastern New York and the Legal Project  
20 for helping, the three of you with life  
21 issues that we all have. So thank you so  
22 much, and at this point I'm going to end the  
23 hearing and I think it's on an appropriate  
24 note, that all of the witnesses that we've  
25 heard today, representative of the Attorney

1           General, the judges, business leaders, the  
2           partners, the technology partners, all go to  
3           support the services that impact on people's  
4           lives. And I think that your stories not  
5           only demonstrate that, but also the  
6           underlying point that we tried to make, that  
7           by saving people's lives, we also help our  
8           society, our State government, our State  
9           government in terms of the reduced costs for  
10          Social Services, homelessness,  
11          incarceration, increased federal benefits  
12          and other benefits coming to New York.

13                   The bottom line is that I think  
14          these hearings demonstrate over and over  
15          again, from so many different perspectives,  
16          that civil legal services are a wise  
17          investment for New York. Not only in terms  
18          of the moral and ethical obligation that we  
19          have to help those who need assistance, but  
20          also in terms of the bottom line of our  
21          society, the institutions of that society,  
22          that are all served by helping people  
23          helping and our community stay stable, and  
24          stopping people from falling off the cliff  
25          and sometimes during some of the worst

1 moments of their lives.

2 So, thank you all, thank  
3 everybody for coming to these hearings and  
4 we greatly appreciate it and I thank the  
5 Task Force for doing the hard work to  
6 prepare us all for the hearing.

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1 Thank you again. Have a good  
2 day.

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4 (Whereupon, the proceedings  
5 concluded in the above-entitled matter).

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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.

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Cynthia A. West

Dated: October 3, 2011