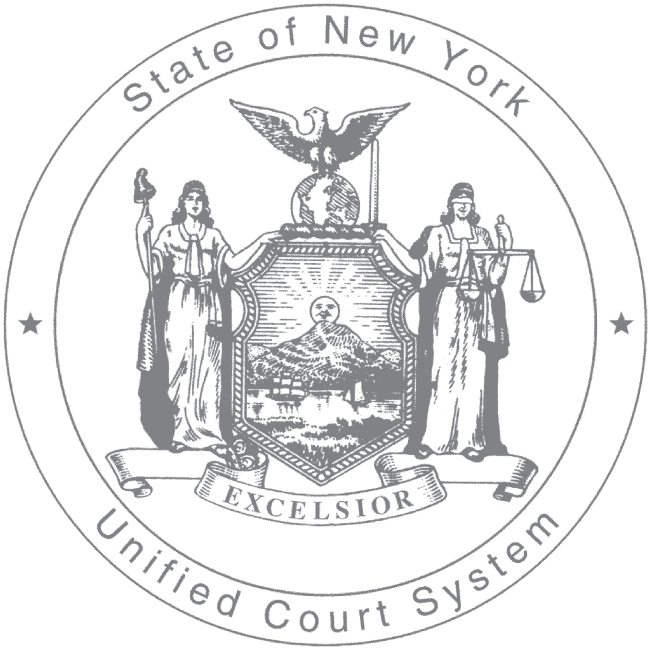
APPENDICES

The Task Force to Expand Access to Civil Legal Services in New York

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK



NOVEMBER 2011

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APPENDIX 1:

A Listing of those who provided *pro bono* assistance to the Task Force

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Acknowledgment of Law Firm Pro Bono Assistance to the Task Force

Sullivan & Cromwell LLP
Robert J. Giuffra Jr. (Partner, Task Force Member)
Jessica Klein (Head of Pro Bono)
Matthew A. Schwartz (Associate)
Lara J. Loyd (Associate)
Scott W. Schwartz (Associate)
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Ron Tabak (Special Counsel)
Rosemarie Barnett (Associate)
Kelly Schulz (Associate)
Elliot Choi (Associate)
David Sadder (Associate)
Paul Wolpert (Associate)

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Betsy B. Plevan (Partner, Task Force Member)
David A. Picon (Partner)
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Harlene Katzman (Pro Bono Counsel and Director)
David Edwards (Associate)
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Sonya Mirbagheri (Associate)

APPENDIX 2:

Request for Proposals (RFP) from the Oversight Board

The Oversight Board to Distribute Judiciary Civil Legal Services Funds in New York

2011-12 Request for Proposal

APPLICATION FORMS AND INSTRUCTIONS

June 1, 2011

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A. Client Financial Eligibility Guidelines
B. Client Grievance Procedures
C. Case Acceptance Policy and Procedures
D. Certificate of Professional Liability Insurance
E. Minutes of the Last Four Meetings of the Board of Directors
F. Audited Financial Statement from the Most Recently Ended Fiscal Year
G. Most Recent Annual Report (if available)
H. Resumes of Principal Staff and Proposed Project Staff
I. Affirmative Action/EEO Policy
J. Documentation of Current NY Charities Registration
K. Documentation of Taxpayer Identification Number (TIN)

Also Included:

- Poverty Population and Judicial Department Map (See accompanying PDF)
- Poverty Guidelines (See accompanying PDF)

I. Background Information and Instructions

A. The Task Force to Expand Access to Civil Legal Services in New York

The current deep economic downturn has clearly increased the need for civil legal services in New York State. Recently released federal poverty data shows that the number of children and adults living at 200 percent of the federal poverty level or below in New York has increased from 5.6 million in 2008 to 6.3 million in 2009. The lack of resources to provide civil legal assistance to meet this need has created a growing crisis in the Courts of New York. Last year alone, more than 2.3 million New Yorkers try to navigate the State's complex civil justice system without a lawyer. This crisis of the unrepresented adversely impacts everyone in our State. Because Judges and court personnel must spend thousands of hours assisting the unrepresented in navigating the complexities of the court system, the courts have become less efficient and the quality of justice has suffered for every New Yorker. The State's economy loses hundreds of millions of dollars because unrepresented New Yorkers lose their right to obtain federal funds, from disability payments to veteran benefits. This not only adversely impacts the most vulnerable New Yorkers, but adds substantial costs for State and local governments.

Chief Judge Jonathan Lippman appointed the Task Force to Expand Access to Civil Legal Services in New York. The Chief Judge charged the Task Force with assisting him in organizing the first ever Judiciary hearings in all four Judicial Departments of the State to evaluate the unmet need for civil legal assistance, and with preparing a report including recommendations for immediate steps to improve access to justice.

B. Findings and Recommendations of the Task Force

Based on the Judiciary Hearings testimony, and after conducting a comprehensive review of access to civil legal services in New York, the Task Force made the following key findings:

Finding 1: ***The substantial number of unrepresented litigants in civil legal matters adversely impacts the quality of justice for all parties in the Courts of New York State, increases the amount of litigation, and undermines the rule of law.***

Finding 2: ***Providing civil legal assistance increases federal benefit payments for low-income New Yorkers, and reduces the need for State and local government assistance payments.***

Finding 3: ***The unmet need for civil legal assistance in New York State is profoundly impacting vulnerable New Yorkers and costing taxpayers millions of dollars by increasing homelessness, failing to prevent domestic violence, and increasing poverty.***

Finding 4: ***In these difficult economic times, current funding is inadequate to meet the critical need for civil legal assistance in our State of nearly 20 million people.***

The Task Force also made a number of recommendations to address these findings, including the establishment of a reliable source of funding for civil legal services. For the Fiscal Year

beginning April 1, 2011 and ending March 31, 2012, the Task Force recommended the allocation of $25 million dollars in new civil legal services funding targeted for the provision of civil legal assistance to address matters involving the "essentials of life" across the State.

To ensure that these resources can be allocated quickly, this first year, the Task Force decided to use the Interest On Lawyer Account Fund of the State of New York's ("IOLA") model. The Task Force recommended the establishment of an Oversight Board consisting of the Chief Administrative Judge of the Courts (or other designee of the Chief Judge), the Chair of the Chief Judge's Task Force, and the Chair of the IOLA Board, to oversee the process for the allocation of this additional funding. The parameters for the funding and the mechanism for distributing funds were adopted by the Chief Judge in response to the Task Force's Recommendations. In the final Judiciary Budget for fiscal year 2011-2012, $12.5 million was allocated for this purpose.

C. Requirements for the Oversight Board's Request for Proposal

The Oversight Board will award Judiciary Civil Legal Services funds ("Judiciary CLS Funds") for the period from the date the awards are announced to March 31, 2012.

Awards will be made to qualified organizations which are non-profit entities, tax-exempt under the Internal Revenue Code and eligible to receive funds for the provision of civil legal services without charge to poor persons within a geographical area in New York State

In addition, an applicant must have an audit mechanism that provides accountability for "Judiciary CLS Funds". All applicants for funding should provide certified financial statements. A recipient must agree to satisfy, on a timely basis, all of the Oversight Board's reporting requirements.

Priorities for the Provision of Civil Legal Services

The most urgent need is to provide additional civil legal assistance in matters involving "the essentials of life." The Chief Judge and the Oversight Board have adopted the Task Force's findings **that these highest priority "essentials of life" matters most often involve legal problems in the areas of housing (including evictions, foreclosures, and homelessness), family matters (including domestic violence, children, and family stability), access to health care and education, and subsistence income (including wages, disability and other benefits, and consumer debts**). It is also clear that such matters are often interrelated with other legal problems that must be addressed in order to remedy the presenting legal issue. **Furthermore, the provision of preventive and early intervention legal assistance, including expanded community legal education initiatives, should be emphasized as part of the array of client services that are needed.**

Persons with incomes below 200% of the Federal Poverty Guidelines are eligible for client services. Please refer to the Poverty Guidelines included with this application package.

Applicants must have staff with the requisite training, knowledge and experience to resolve client problems in the most effective and efficient manner.
The Oversight Board will make their grants in accordance with these priorities.

The Oversight Board will grant awards using the number of people living at or below 200% of poverty according to the latest available figures from the U.S. Census Bureau.

If providers serve a geographic area that covers more than one Judicial Department, the applicant need only submit one application which allocates the percentage of funds to be used in each of the Judicial Departments served.

D. Factors Considered in Awarding Grants

The Oversight Board will consider the following when making grant awards:

- A clear statement, supported by community characteristics, demographic and statistical data, of the problems to be addressed by the proposed activities and services.
- Evidence of the organization's strong ties to the community to be served by the proposed activities and services.
- Evidence of organizational capacity to carry out the proposed activities and services.
- Legal expertise and other professional qualifications for carrying out the proposed roles.
- Evidence of effective and efficient strategies that can be implemented quickly upon receipt of the grant award.
- Evidence of cooperative efforts currently in place to ensure the increased usefulness of grant funds and to avoid duplication of services.
- Evidence of methods to ensure quality control of services, including appropriate systems for client intake, case assignment, case management and supervision, training of staff and volunteers and technical support for the project for which funding is sought.
- Evidence of a governing board that will undertake priority setting, ensure program accountability and assume leadership in the development of program resources for the project for which funding is requested.
- Description of the Applicant's current and planned uses of technology in all facets of the project for which funding is requested.

E. Application Review and Grant Award Process

Applications for Judiciary CLS funds are subject to a two-tier review and award process:

1. IOLA Staff establishes eligibility of the applicant pursuant to the Oversight Board's guidelines; determines compliance with the Oversight Board's reporting requirements; ascertains accuracy and completeness of the applicant's information; reviews budget and financial information; and prepares a proposal summary. In preparing the proposal

summary, the information set forth in the following sections of the application will be reviewed:

Section	Weight
III. Description of Applicant Organization	20%
IV. Proposal: Needs/Services/Methods/Outcomes and how proposal relates to Oversight Board Priorities	50%
VI. Expenditures	10%
VI. Use of Technology	10%
VI. Staffing	10%

2. The Oversight Board reviews all summaries and proposals. It will determine the award of grants and contracts, including the amount to be awarded and the terms under which the award of grants and contracts will be made.

The Oversight Board reserves the right to award an amount different from that requested by an applicant and to impose any special conditions on the grant award that it, in its discretion, determines will improve services or performance by the grantee over the grant period.

Oversight Board members are required to file conflict disclosure forms prior to voting on grant awards and are required to disclose current affiliations with applicants, and they are precluded from voting on grants involving those organizations. A list of all applicants will be circulated to the Oversight Board with Conflict of Interest Disclosure Forms, which must be filed prior to Oversight Board meetings in which grant decisions are made.

F. Application Submission Procedures

Step One: Complete the Grant Application Forms

Please follow the formatting instructions and page limits. Applications must be single-spaced with one inch page margins (not including attachments, financial forms and data tables) using a 12 point font. Please submit electronic files in Word and Excel only. Do not use WordPerfect or PDF files. Please do not attach any additional materials.

An Application includes the Application Cover Sheet, Description of the Applicant Organization (for applicants who did not apply for an IOLA grant for Fiscal Year 2011-2012 or applicants whose previously filed information with IOLA has changed), Narrative Proposal, Excel Data Packets, Forms and Attachments.

The grant period will start the date the Oversight Board announces its decisions and run through March 31, 2012.

Step Two: Assemble the Following Attachments:

A. Client Financial Eligibility Guidelines
B. Client Grievance Procedures
C. Case Acceptance Policy and Procedures
D. Certificate of Professional Liability Insurance
E. Minutes of the Last Four Meetings of the Board of Directors
F. Audited Financial Statement from the Most Recently Ended Fiscal Year
G. Most Recent Annual Report (if available)
H. Resumes of Principal Organization Staff and proposed Project Staff
I. Affirmative Action/EEO Policy
J. Documentation of Current NY Charities Registration
K. Documentation of Taxpayer Identification Number (TIN)

Step Three: Deliver the Forms and Enclosures

Deliver a signed, hard copy original of the Application to the Oversight Board addressed as follows:

Oversight Board to Distribute Judiciary Civil Legal Services Funds
Attention: Joanne Pantin
C/O IOLA Fund of the State of New York
11East 44th Street, Suite 1406
New York, NY 10017

and e-mail an electronic copy to Joanne Pantin at **jpantin@iola.org**.

Please include a stamped, self-addressed post card with the hard copy of your application so that we can confirm its receipt. If you are unable to submit the application by e-mail or experience difficulty doing so, contact Joanne Pantin. If the application includes a document that cannot be transmitted in electronic form, be sure to include it in the hard copy submission and note that you are submitting hard copy only. Applications cannot be sent via fax.

It is requested that Applications, including paper and electronic versions, be delivered to the Oversight Board care of the IOLA Fund on or before 4:00 pm, June 22, 2011.

II. Application Cover Sheet

A. General

Name of Applicant Organization:	
Address:	
Contact Person's Name and Title:	
Phone:	
Fax:	
E-mail:	
Web Site Address:	
Federal Tax Identification Number (TIN):	
* New York State Charities Registration Number:	
* Exempt from requirement to have Charities Registration Number because:	

** New York State prohibits payments to be made without this number. If exempt, please explain.*

B. Proposal Submitted

Please provide a brief description of which of the "essentials of life" your organization will address, indicating which counties and departments will be served. If serving more than one department, indicate the amount requested by department.

1. Check Department(s) Served	Amount Requested
#1	$
#2	$
#3	$
#4	$

Total Request:

2. List Counties Served:

C. Required Signatures

Program Director	
Signature	

Board Chair	
Signature	

III. Description of Applicant Organization

The questions in this section are to be answered *ONLY BY*:

(1) Those applicants which did not apply for an IOLA Grant for Fiscal Year 2011-2012, OR

(2) Applicants for Fiscal Year 2011-2012 IOLA Grants whose previously filed information has changed. (In that case, submit only that which has changed.)

PAGE LIMIT: Twelve single-spaced pages.

A. Principal Activities

Briefly describe **all** of the organization's principal activities, including the provision of civil legal services to low-income persons.

B. Service Delivery Methods

Please check the methods used to deliver legal services.

	Staff delivery using attorneys and paralegals
	Organized pro bono programs
	Specialized law units
	Evening clinics
	Pro se training
	Mediation/alternative dispute resolution
	Supervised non-lawyer advocate
	Other

C. Geographic Service Area

State the area (counties, cities or neighborhoods) served by the organization.

D. Clients with Special Needs

Describe any measures used to facilitate access to services for clients with the following needs:

Primary language other than English:	
Physically or mentally disabled:	
Lacking transportation to your office location:	
Institutionalized clients:	
Low-income working clients (extended office hours, etc.):	
Other needs particularly applicable to your clients:	

E. Quality Control Mechanisms

Describe provisions for assuring quality of services.

1. **Methods for case and/or work assignment:**

2. **Procedures for reviewing/supervising work:**

3. **Provisions for backup and technical support for paralegals, volunteers, law students and other non-attorneys involved in legal service delivery:**

4. **Provisions for ensuring client confidentiality:**

F. Private Attorney Involvement

The Task Force Report recognized the extraordinary efforts by the private bar in New York State. The Oversight Board will seek to leverage the impact of its grants by funding applicants who will involve the bar through pro bono and other programs. If the organization involves private attorneys in the delivery of legal services, please complete the following:

1. Check all activities that apply.

	Pro Bono - Client Services
	Pro Bono - Support Services (e.g., training, mentoring)
	Other methods of private attorney involvement

2. Briefly describe each activity checked above.

G. Involvement of Non-Attorney Volunteers

If the organization involves volunteers other than attorneys in the delivery of legal services, please describe and explain how attorney supervision is provided.

H. Legal Services Achievements in Last Fiscal Year

1. Summarize in 100 words or less the organization's most significant achievements during last fiscal year, including:

- Numbers of people who benefited;
- Dollar benefits obtained for clients;
- Significant developments that affected the capacity to deliver legal services.

2. Definition of "case" used for statistical reporting purposes

Please check below that which best describes the organization's definition of a "case" for statistical reporting purposes. Check ONE only:

	We use the IOLA Fund's definition of a "case," which is as follows: A "case" is defined as the provision of legal assistance to an eligible client with a legal problem, or set of closely-related legal problems, accepted for assistance supported by IOLA or non-IOLA funds.
	We use a different definition, which is as follows (briefly describe below):

3. Examples of typical cases

Please provide brief narrative examples, or snapshots of typical cases.

Example 1:

Example 2:

4. Services other than case services

Please describe any legal services provided for low-income people in addition to direct legal representation.

IV. Narrative Proposal

PAGE LIMIT: Twenty single-spaced pages.

1. **Brief summary of the proposal**
   Indicate which of the priorities defined herein as the "essentials of life" will be addressed with the help of Judiciary CLS funds, and the amount of funding requested. Describe the kinds of services to be provided, to whom they will be provided and where the recipients of those services reside. Indicate the provision of preventive and early intervention legal assistance, including expanded legal education initiatives in an effort to keep cases out of court and avert protracted litigation.

2. **Target population and problems to be addressed**
   Provide a clear statement, supported by community characteristics, demographic and statistical data, of the problems to be addressed by the proposed activities and services.

3. **Geographic service area**
   Describe below the geographic area proposed to be served, including the name of the county served. If only a portion of a county is served please indicate the portion of the county served.

4. **Proposed methods for addressing the problem**
   Provide an overview of the legal services or other activities planned for addressing the needs identified above.

5. **Intake process**
Indicate where people will come to apply for service and describe the process for handling their requests. Indicate staff involved in each step e.g., receptionists, paralegals, lawyers, etc. Please do not exceed 50 words.

6. **Intake schedule**
Describe briefly the hours during which intake is open to clients. Describe any special arrangements (for example, weekend and evening hours) made for accommodating low-income working people.

7. **Anticipated impact of this grant**

a. Number of clients to be provided with direct legal services.
Approximately how many persons will be served during the period of this grant, assuming the total proposed budget is available?

In addition, if possible, please provide an estimate of the number of cases that through early intervention will be kept out of court or avoid protracted litigation.

Level of Service Provided:	**Estimated Number of Persons:**
Community Legal Education	
Brief Advice and/or Information	
Assistance in Completing Forms or Applications	
Representation in Court and/or Administrative Proceedings	
Representation in Appeals or Other Complex Matters	
Cases diverted from Court	
Other Legal Assistance (Specify)	

b. Longer-term impact
What impact, if any, will remain after this grant is over? Please do not exceed 50 words.

8. **Outreach**
How will potential clients be made aware of the availability of proposed services? Indicate how the proposed outreach methods address any special problems of the target population, for example, language barriers, physical disabilities, etc. Please do not exceed 50 words.

9. **Cooperative efforts**
Identify other legal services providers, private bar organizations, and partnerships and collaborations with non-legal entities that provide services to clients, including social services agencies, medical providers, schools and community-based organizations, which will actively participate under this proposal. Provide an overview of their roles in carrying out the purposes of this grant. Describe arrangements with other legal service providers in your area to avoid duplication of effort.

10. **Technology**
Describe how you propose to use technology to enhance the impact of your proposal.

V. Organizational Data Packet

Use supplied Excel document

VI. Proposal Data Packet

Use supplied Excel document

VII. Forms

Form 1

Grant Assurances

Assurances Given by Applicant as Conditions for Receipt of a Judiciary CLS Grant

Applicant assures that:

1. *It will restrict the use of Judiciary CLS funds to law-related activities within the Oversight Board's priorities described in this proposal and that are charitable or educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954.*

2. *It will not discriminate on the basis of race, creed, religion, marital status, color, national origin, sex, age, disability, or sexual orientation, or as otherwise prohibited by the laws of the United States and the State of New York, against (1) any person applying for employment or employed by the applicant with respect to any personnel action proposed or taken concerning the applicant or employee; or (2) any person seeking participation in, or the benefits or proceeds of, the program or projects supported in whole or part by this grant.*

3. *It will, upon request, cooperate with all data collection and evaluation activities undertaken by the Oversight Board and give any authorized representative of the Oversight Board access to any copies of all financial records, books, papers, or documents, provided that the Oversight Board shall not have access to any reports, records, or information subject to the attorney-client privilege.*

4. *It understands and agrees that the Oversight Board may, in its sole discretion, grant funds in greater or lesser amounts and/or for greater or lesser periods of time than requested in this application.*

5. *It understands and agrees that the application, once received by the Oversight Board becomes the property of the Oversight Board, and any or all ideas contained therein may be used by the Oversight Board.*

6. *It will provide, upon request, periodic written reports detailing the use of Judiciary CLS funds in light of the proposed use described in the grant application.*

I have read these assurances and understand that if this application is approved for funding, the grant will be subject to these assurances. I certify that the applicant will comply with these assurances if the application is approved.

Program Director	**Board Chair**
Signature:	Signature:
Date:	Date:

Form 2

Board of Directors Roster

Board Member Name	Term Expiration Date	Service (Years)

Please indicate if the Board has a conflict of interest policy.

_____ Yes _____ No

VIII. Attachments Checklist

Please place an X in each box for the document that is submitted.

	A.	Client Financial Eligibility Guidelines
	B.	Client Grievance Procedures
	C.	Case Acceptance Policy and Procedures
	D.	Certificate of Professional Liability
	E.	Minutes of the Last Four Meetings of the Board of Directors
	F.	Audited Financial Statement from the Most Recently Ended Fiscal Year
	G.	Most Recent Annual Report (if available)
	H.	Resumes of Principal Staff and proposed staff for the project
	I.	Affirmative Action/EEO Policy
	J.	Documentation of Current NY Charities Registration
	K.	Documentation of Taxpayer Identification Number (TIN)

2009 New York Population Below 200% of the Federal Poverty Level By Judicial Department and County*

Statewide Total	5,654,614

First Department	
Bronx	680,527
New York	500,518
	1,181,045

Second Department	
Dutchess	52,498
Kings	1,067,829
Nassau	179,488
Orange	87,506
Putnam	13,423
Queens	703,922
Richmond	102,972
Rockland	66,792
Suffolk	217,660
Westchester	177,733
	2,669,823

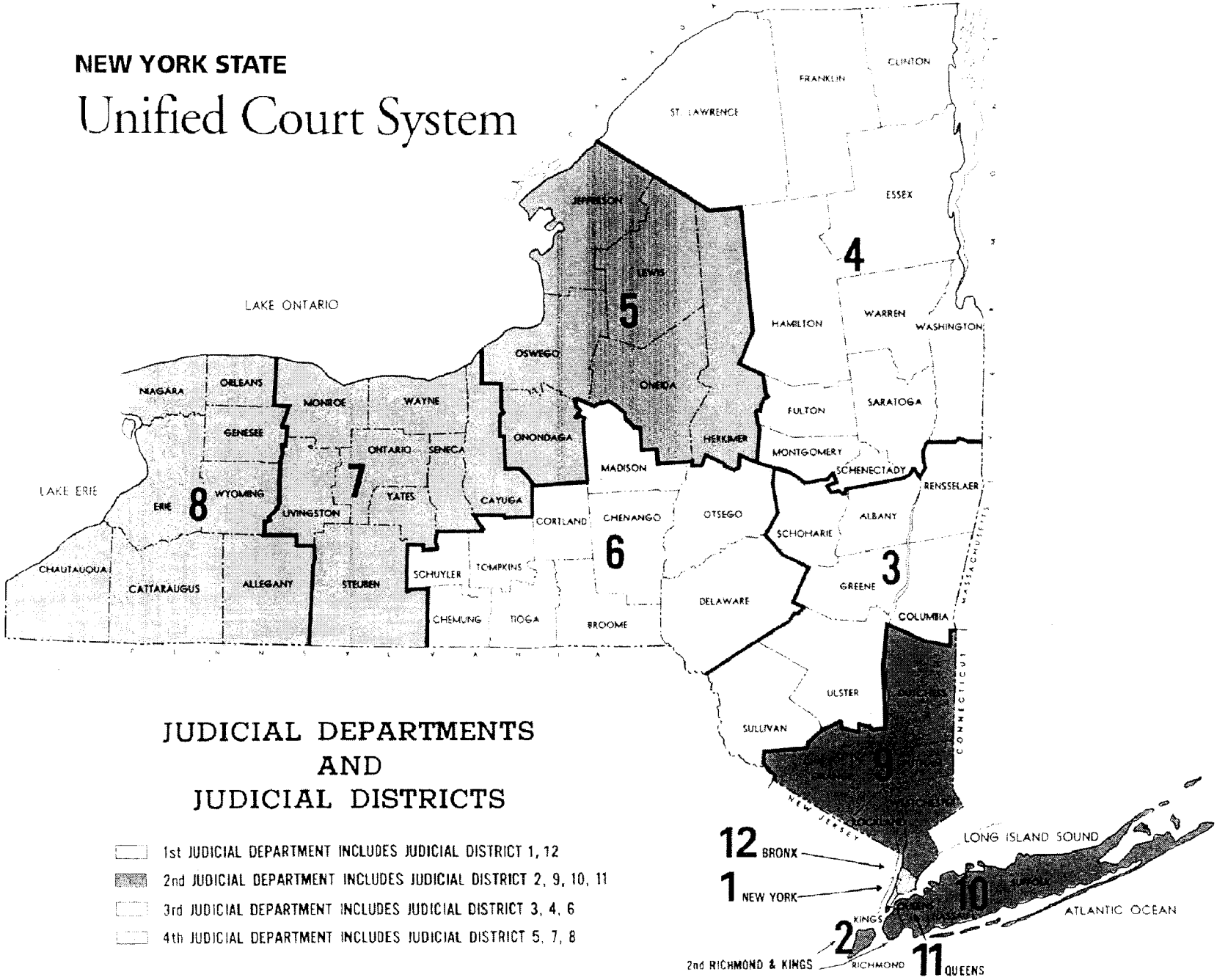
Third Department	
Albany	71,885
Broome	62,920
Chemung	29,398
Chenango	17,322
Clinton	22,227
Columbia	15,230
Cortland	14,648
Delaware	16,217
Essex	11,155
Franklin	15,792
Fulton	20,220
Greene	14,419
Hamilton	1,408
Madison	17,851
Montgomery	17,166
Otsego	21,201
Rensselaer	38,217
Saratoga	38,077
Schenectady	37,422
Schoharie	8,369
Schuyler	6,317
St. Lawrence	36,912
Sullivan	25,109
Tioga	13,970
Tompkins	31,756
Ulster	45,251
Warren	16,917
Washington	18,422
	685,798

Fourth Department	
Allegany	17,556
Cattaraugus	29,524
Cayuga	23,210
Chautauqua	48,302
Erie	265,821
Genesee	16,924
Herkimer	21,348
Jefferson	40,068
Lewis	9,989
Livingston	15,346
Monroe	202,935
Niagara	61,426
Oneida	72,530
Onondaga	127,651
Ontario	23,716
Orleans	12,688
Oswego	40,405
Seneca	10,524
Steuben	33,579
Wayne	25,383
Wyoming	11,012
Yates	8,011
	1,117,948

* *2009 Poverty Estimates*, U.S. Census Bureau, American Community Survey.

NEW YORK STATE

Unified Court System



JUDICIAL DEPARTMENTS AND JUDICIAL DISTRICTS

- 1st JUDICIAL DEPARTMENT INCLUDES JUDICIAL DISTRICT 1, 12
- 2nd JUDICIAL DEPARTMENT INCLUDES JUDICIAL DISTRICT 2, 9, 10, 11
- 3rd JUDICIAL DEPARTMENT INCLUDES JUDICIAL DISTRICT 3, 4, 6
- 4th JUDICIAL DEPARTMENT INCLUDES JUDICIAL DISTRICT 5, 7, 8

200% Federal Poverty Guidelines

Size of household	Income Level
1	$21,780
2	29,420
3	37,060
4	44,700
5	52,340
6	59,980
7	67,620
8	75,260
For each additional member of the household in excess of 8, add:	7,640

APPENDIX 3:

Notification of the issuance of the Request for Proposals published on June 1, 2011

New York State | State Agencies

Search all of NY.gov

NYSCR | NEW YORK STATE CONTRACT REPORTER LOG-OUT

Empire State Development

YOUR OFFICIAL SOURCE FOR NEW YORK STATE CONTRACTING OPPORTUNITIES

User: mceppi@courts.state.ny.us

This solicitation is scheduled to appear in the **6/1/2011** issue of the NYSCR and will be be available for editing until 11:59pm the night prior to publication

Category: Grants

Contract Number: UCS/IOLA-FY11-12

Contract Title: Civil Legal Services

Description:

The Oversight Board to Distribute Judiciary Civil Legal Service Funds In New York is soliciting sealed proposals to award funds for the provision of civil legal services to the indigent. The Request for Proposal will be available on Wednesday, June 1, 2011 on the Office of Court Administration website at http://www.courts.state.ny.us as well as The Interest on Lawyer Account Fund of the State of New York ("IOLA") website at: http://www.iola.org/grantees. Please read the instructions carefully. In order for your application to be considered for funding please:

· Deliver a signed original copy to the IOLA office.
· E-mail electronic copies of all parts of the application to jpantin@iola.org.

(If the paper application includes a document that cannot be put in electronic form, be sure to make a note of that fact in the electronic submission and include the document when submitting the hard copy.)

· **Return completed forms in their original electronic format; please do not convert into a PDF.**

Funds will be awarded during Fiscal Year 2011-2012 beginning on the date of award. Each applicant should base its funding request on the best estimate of the needs of its organization.

Minority Sub-Contracting Goal: n/a%

Women Owned Sub-Contracting Goal: n/a%

Due Date: 6/22/2011 5:00 PM

Contract Term: From date of award to March 31, 2012

Location: New York State

Contact 1:
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AGENCY LINKS

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- Manage Accounts
- Manage Locations
- Manage Announcements
- Manage News and Events
- Post Agency Reports (Qtrly/Semi-Annual)
- Post Bid Results
- NYS Finance Law
- Reports Schedule
- FAQ
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- Agency Home
- Procurement Information
- Manage Subaccounts

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- Open Solicitations
- Archived Solicitations
- Bid Results
- Search
- Manage My Account
- Agency Report Listings
- Home
- Help

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- News Letter Sign-up
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APPENDIX 4:

Grants Awarded by the Oversight Board for Judiciary Civil Legal Services Funds in New York for 2011-2012

2011-2012 Grants Awarded by the Oversight Board for Judiciary Civil Legal Services Funds in New York						
	Applicant	**First Dept.**	**Second Dept.**	**Third Dept.**	**Fourth Dept.**	**Total**
1	Advocates for Children of New York	8,470	16,530			**25,000**
2	Albany County Bar Association Pro Bono Program			55,000		**55,000**
3	Asian American Legal Defense and Education Fund	15,500	20,300			**35,800**
4	Association of the Bar of the City of New York / City Bar Justice Center	57,000	87,000			**144,000**
5	Bronx Defenders	76,000				**76,000**
6	Brooklyn Bar Association Volunteer Lawyers Project		70,180			**70,180**
7	CAMBA Inc. / Camba Legal Services		346,000			**346,000**
8	Capital District Women's Bar Association Legal Project			92,000		**92,000**
9	Catholic Migration Services		29,000			**29,000**
10	Center for Family Representation	57,000				**57,000**
11	Central American Legal Assistance	11,500	34,800			**46,300**
12	City University of New York Law School Foundation	34,200	52,200			**86,400**
13	Empire Justice Center		98,000	73,014	107,036	**278,050**
14	Erie County Bar Association Volunteer Lawyers Project				112,860	**112,860**
15	Farmworkers Legal Services of New York			55,000	43,000	**98,000**
16	Frank H. Hiscock Legal Aid Society				153,066	**153,066**
17	Goddard Riverside Community Center	38,000				**38,000**
18	Housing Conservation Coordinators	38,000				**38,000**
19	inMotion	28,649	43,500			**72,149**
20	Latino Justice PRLDEF	15,500	5,800			**21,300**
21	Legal Aid Bureau of Buffalo				121,000	**121,000**
22	(The) Legal Aid Society	397,000	961,462			**1,358,462**
23	Legal Aid Society of Mid New York			49,000	23,500	**72,500**
24	Legal Aid Society of Northeastern New York			627,000		**627,000**
25	Legal Aid Society of Rochester				229,000	**229,000**
26	Legal Aid Society of Rockland County		85,000			**85,000**
27	Legal Assistance of Western New York			133,000	523,175	**656,175**
28	Legal Information for Families Today - LIFT		86,000			**86,000**
29	Legal Services for the Ederly, Disabled or Disadvantaged of Western New York				126,000	**126,000**
30	Legal Services New York City	423,000	915,960			**1,338,960**
31	Legal Services of Central New York			159,000	275,017	**434,017**
32	Legal Services of the Hudson Valley		613,000	115,000		**728,000**
33	Lenox Hill Neighborhood House	57,000				**57,000**
34	Make the Road of New York		101,000			**101,000**
35	MFY Legal Services	273,600	288,500			**562,100**
36	My Sisters' Place		41,777			**41,777**
37	Nassau/Suffolk Law Services Committee		507,500			**507,500**

2011-2012 Grants Awarded by the Oversight Board for Judiciary Civil Legal Services Funds in New York						
	Applicant	**First Dept.**	**Second Dept.**	**Third Dept.**	**Fourth Dept.**	**Total**
38	Neighborhood Legal Services				433,914	**433,914**
39	New York Lawyers for the Public Interest	29,000	29,000			**58,000**
40	New York Legal Assistance Group	182,400	591,600			**774,000**
41	Northern Manhattan Improvement Corporation	380,000				**380,000**
42	Pace University Women's Justice Center		78,300			**78,300**
43	Partnership for Children's Rights		60,900			**60,900**
44	Prisoner's Legal Services			48,000		**48,000**
45	Queens Volunteers Lawyers Project		116,000			**116,000**
46	Richmond County Bar Association Volunteer Lawyers Project		58,000			**58,000**
47	Rural Law Center			55,000	29,000	**84,000**
48	Safe Horizon	53,200	81,200			**134,400**
49	Sanctuary for Families	59,280	141,520			**200,800**
50	Urban Justice Center	114,000	174,000			**288,000**
51	VERA Institute of Justice, Guardianship Project	199,500	101,500			**301,000**
52	Volunteer Lawyer for a Day Consumer Credit Consortium	38,000	57,640			**95,640**
53	Volunteer Legal Services Project of Monroe County				86,000	**86,000**
54	Volunteers of Legal Services	25,000	8,700			**33,700**
55	Western New York Law Center				194,000	**194,000**
56	Workers' Rights Law Center of New York			55,000	14,750	**69,750**
	TOTAL *	**2,610,799**	**5,901,869**	**1,516,014**	**2,471,318**	**12,500,000**

* The Judiciary Civil Legal Services Funds of $12.5 million were distributed by Judicial Department, according to poverty population.

APPENDIX 5:

Summary of Preliminary Status Reports on the Judiciary Civil Legal Services Grants

Judiciary CLS Funds Preliminary Status Report - November 1, 2011		
Essentials of Life Service Area	**Department**	**Clients Served 8/1/11 - 11/1/11**
Housing	1st	6,258
	2nd	7,854
	3rd	860
	4th	1,612
Family Matters	1st	4,359
	2nd	6,237
	3rd	866
	4th	1,187
Subsistence Income	1st	5,455
	2nd	6,671
	3rd	3,267
	4th	1,525
Access to Healthcare and Education	1st	1,309
	2nd	3,599
	3rd	111
	4th	95
Department Totals	1st	17,381
	2nd	24,361
	3rd	5,104
	4th	4,451
Grand Totals		**51,297**

Number of Cases Diverted from Court	**8,813**

APPENDIX 6:

Witness Lists for the Chief Judge's four Hearings

The Chief Judge's Hearings on Civil Legal Services

FIRST DEPARTMENT HEARING

Monday, September 26, 2011

WITNESS LIST

1- COST SAVINGS PANEL

Jeffrey L. Baliban *(Managing Director, Navigant Consulting, Inc.)*
Geeta Singh *(Principal, Cornerstone Research)*

2- Hon. Christine Quinn *(Speaker of the New York City Council)*

3- BUSINESS AND COMMUNITY LEADERS PANEL

Deborah C. Wright *(Chairman and CEO, Carver Federal Savings Bank)*
Craig L. Reicher *(Vice Chairman, CB Richard Ellis)*
Donna Cirolia *(Vice President, Coca-Cola Refreshments)*
Samuel W. Seymour *(President, New York City Bar Association)*

4- CLIENTS PANEL

Eneyda Maldonado *(Client of The Legal Aid Society, accompanied by Jack Newton)*
Yves Gebhardt *(Client of Legal Services NYC, accompanied by Mallory Curran)*
Virginia Norman-Acevedo *(Client of The Legal Aid Society, accompanied by Judith Goldiner)*
Tracy Smith *(Client of the Urban Justice Center-Community Development Project, accompanied by Sadia Rahman)*
Natalie Jones *(Client of Legal Services NYC, Domestic Violence Unit, accompanied by Lenina Trinidad)*

5- JUDGES PANEL

Hon. David Kaplan *(Housing Court Judge)*
Hon. Tanya R. Kennedy *(Acting Supreme Court Justice and Civil Court Judge)*
Hon. Douglas E. Hoffman *(Acting Supreme Court Justice and Supervising Judge, Family Court)*

6- CONTINUING UNMET NEED AND RECOMMENDATIONS FOR COURT SIMPLIFICATION

Hon. Fern Fisher *(Deputy Chief Administrative Judge for the New York City Courts; Director of the New York State Courts Access to Justice Program)*

The Chief Judge's Hearings on Civil Legal Services

SECOND DEPARTMENT HEARING

Tuesday, September 20, 2011

WITNESS LIST

1- **Hon. Janet DiFiore** *(Westchester County District Attorney)*

2- **David Boies** *(Managing Partner, Boies, Schiller & Flexner LLP)*

3- **CLIENT PANEL**

Alina Saez, mother of Justin Rosario *(Client of Legal Services of the Hudson Valley, accompanied by Gina DeCrescenzo)*
Esther Jimenez *(Client of Staten Island Legal Services, accompanied by Nancy Goldhill)*
Tara Grisby *(Client of Legal Aid Society of Rockland County, Inc., accompanied by Alexander Bursztein)*
Kathleen DeNezzo *(Client of Nassau/Suffolk Law Services Committee, Inc., accompanied by Denise Snow)*

4- **FORECLOSURE PANEL**

John Lindstrom *(Court Attorney-Referee, Supreme Court, Orange County)*
Faith Piatt *(Executive Director, Orange County Rural Development Advisory Corporation)*
Barbara J. Strauss *(Immediate Past President, Orange County Bar Association)*
Boris Raishevich *(Client of Legal Services of the Hudson Valley, accompanied by Ndukwe Agwu)*
Alavita Williams *(Client of Legal Aid Society, accompanied by Sumani Lanka)*

5- **JUDGES PANEL**

Hon. Anthony A. Scarpino, Jr.*(Westchester County Surrogate, Acting Supreme Court Justice, and Supervising Judge for Fiduciary Matters, Ninth Judicial District; Co-Chair, Ninth Judicial District Pro Bono Action Committee)*
Hon. Lori Currier Woods *(Acting Supreme Court Justice and Family Court Judge, Orange County)*
Hon. Janet C. Malone *(Acting Supreme Court Justice and Family Court Judge, Westchester County)*

6- **BUSINESS, RELIGIOUS AND GOVERNMENT LEADERS PANEL**

Rev. Adrienne Flipse Hausch, Esq. *(Partner, Carway & Flipse)*
Terri Torchio, *(Director of Economic Independence, Department of Social Services, Orange County, on behalf of Commissioner David Jolly)*
William M. Savino *(Managing Partner, Rivkin Radler LLP; Member of the Board, Long Island Association)*

The Chief Judge's Hearings on Civil Legal Services

THIRD DEPARTMENT HEARING

Monday, October 3, 2011

WITNESS LIST

1- **Martin J. Mack** *(Executive Deputy Attorney General for Regional Affairs, on behalf of Eric Schneiderman, Attorney General of the State of New York)*

2- **Hon. Michael V. Coccoma** *(Deputy Chief Administrative Judge for Courts Outside New York City)*

3- **BUSINESS LEADERS PANEL**

Buckmaster de Wolf *(General Counsel, GE Global Research)*
F. Michael Tucker *(President and CEO, Center for Economic Growth)*
James J. Barba *(President and CEO, Albany Medical Center)*

4- **JUDGES PANEL**

Hon. Leslie E. Stein *(Appellate Division, Third Department)*
Hon. J. Timothy Breen *(Warren County Family Court)*
Hon. Christine M. Clark *(Schenectady County Family Court)*

5- **STRATEGIC PARTNERSHIPS PANEL**

Debra Sullivan *(Former Pro Bono Director and Member, Capital District Paralegal Association)*
Debra L. Schimpf *(Executive Director, Schenectady Community Action Program)*
Julie A. Davies *(North Country Mediation/Rural Law Center)*
Prof. Joseph M. Connors *(Director, Albany Law School Clinic and Justice Center)*

6- **TECHNOLOGY**

Michael Hertz *(Chief Marketing and Business Development Officer, White & Case)*

7- **CLIENTS PANEL**

Arthur Demar, Jr. *(Client of Legal Aid Society of Northeastern New York, accompanied by Robert Vanderbles)*
Dana P. *(Client of The Legal Project, accompanied by Lorraine Silverman)*
Rasaan Kellam *(Client of Legal Aid Society of Northeastern New York, accompanied by Robert Vanderbles)*

The Chief Judge's Hearings on Civil Legal Services

FOURTH DEPARTMENT HEARING

Thursday, October 6, 2011

WITNESS LIST

1- CLIENT PANEL

Karen and Bernard Dent *(Clients of Western New York Law Center, accompanied by Joseph Kelemen)*

Michelle Kilian *(Client of Neighborhood Legal Services, Inc., accompanied by William J. Hawkes)*

Gabrielle Threet *(Client of Erie County Bar Association Volunteer Lawyers Project, accompanied by Robert M. Elardo)*

Jack Hagen *(Client of Legal Services for the Elderly, Disabled or Disadvantaged of Western New York, Inc., accompanied by William W. Berry)*

2- COLLABORATIONS AND SHARED COSTS PANEL

Arthur A. Russ, Jr. *(President, Bar Association of Erie County; Of Counsel, Phillips Lytle LLP)*

Justin L. Vigdor *(Chair, Telesca Center Capital Campaign; Past President, New York State Bar Association and Monroe County Bar Association; Senior Counsel, Boylan Code LLP)*

Bryan D. Hetherington *(President, Monroe County Bar Association)*

Stephen L. Johnson *(Member, Bond, Schoeneck & King, PLLC)*

3- LAW SCHOOL DEAN

Makau W. Mutua *(Dean and SUNY Distinguished Professor, University at Buffalo Law School)*

4- JUDGES PANEL

Hon. Paula L. Feroleto *(Administrative Judge, Eighth Judicial District; Co-Chair, Eighth Judicial District Pro Bono Committee)*

Hon. Deborah H. Karalunas *(Supreme Court, Onondaga County)*

Hon. E. Jeannette Ogden *(Buffalo City Court; Acting Judge, County and Family Courts)*

APPENDIX 7:

Transcript of the Second Department Hearing held on September 20, 2011

SUPREME COURT OF THE STATE OF NEW YORK
SECOND DEPARTMENT
- -x

THE CHIEF JUDGE'S HEARING

ON CIVIL LEGAL SERVICES

- -x

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

BEFORE: HON. JONATHAN LIPPMAN
Chief Judge

HON. GAIL PRUDENTI
Presiding Justice

HON. ANN PFAU
Chief Administrative Judge

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

CAMI L. LANDAU
Senior Court Reporter

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

We're here today, the genesis of these hearings is the recognition on our part, the judiciary and the profession, that it is our fundamental constitutional and ethical mission to provide equal justice in this state with the, again, clear view on our part that we, the judiciary and the profession, must take the lead in this area. We recognize that it's not enough to keep our courthouses open and functioning, but that beyond that, what happens inside those courthouses, inside our courtrooms, is the, really, the essential issue in terms of the courts of this state and in this country, and that equal and fair justice is, obviously, is our first and foremost priority.

We recognize that these are

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

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

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

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

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

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

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

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

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

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

that you're here with us today.

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

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

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

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

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

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

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

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

So, this is a continuing

problem. We estimated last year in the report, which I saw some of them out in the hallway, which I believe is the most comprehensive report of its kind in the country that the task force put out, that we are, at best, meeting 20 percent of the need for civil legal services for the poor and indigent in this state. So, this is, again, a problem that continues on that we've really just begun to scratch the surface of. The report was based on hearings last year, where we heard first-hand testimony from clients as to what it means to have civil legal services, from business leaders, landlords, hospitals, banks, judges, clergy, the law enforcement community, prominent lawyers, all while coming to the same conclusion; that this is a problem that affects us all.

This year we intend to focus, among many other things, on the foreclosure crisis in the country, on

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

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

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

judges, business people, religious people and government leaders.

We learned a lot last year from the hearings. What we learned is, in some parts of the state, for every person who signs on, who is able to have a civil legal services provider represent him, eight to ten people are turned away. Think about that. For every person who gets civil legal representation, eight to ten people in many parts of the state are turned away. Last year, 2.3 million litigants appeared in the state courts without representation. 99 percent of tenants in eviction cases, unrepresented in the State of New York. 98 percent of borrowers in hundreds of thousands of consumer credit cases, unrepresented. 97 percent of parents in child support matters, unrepresented. And until very recently, and I think we made great progress in New York, over 60 percent of people come in in

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

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

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

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

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

for being so helpful and making these hearings a reality.

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

District Attorney, a pleasure to have you.

DISTRICT ATTORNEY DIFIORE: Thank you. Good morning, Chief Judge Lippman, Justice Prudenti, Judge Pfau, President Elect James. Thank you for allowing me the opportunity to appear here this morning.

Our Constitution guarantees the right to counsel for defendants who

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

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

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

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

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

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

domestic violence.

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

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

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

While the Family Justice Center has successfully met the counseling and emergency needs of nearly every client who has been processed for service, it frequently has not been able to meet the needs of those clients and their families for legal services. Of the Family Justice Center clients who needed civil legal assistance, 58 percent did not receive the legal services their circumstances suggested they needed. The need for legal services outstrips the resources that are available to provide those services. This predicament can mean

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

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

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

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

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

rate for seniors is higher than the national rate.

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

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

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

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

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

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

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

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

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

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

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

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

insuring that these men and women have the tools necessary to rebuild their lives and live within and abide by the law. While these public/private partnerships have been effective in reducing recidivism and enhancing public safety, they lack the necessary resources to accomplish the mission. It is tragic that we are creating all of these effective means to enhance public safety and the quality of life of our citizens, and then we find ourselves short of the resources that are necessary to turn these effective models into broader practices. With a smart investment of the appropriate resources, we can achieve significant improvements in the quality of life for the victims of domestic violence, including children, for our seniors, and for overall community safety.

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

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

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

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

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

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

DISTRICT ATTORNEY DiFIORE: Without question, and I think the areas of domestic violence, the work that we do protecting seniors and prosecuting people who commit crimes against seniors and our very important re-entry work on the back end of our cases could not be done without the assistance of these providers and the partnerships.

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

CHIEF JUDGE LIPPMAN: Of course.

PRESIDING JUSTICE PRUDENTI: District Attorney DiFiore, from your unique perspective of a former family court judge as well as Westchester County District Attorney, I heard you, and I listened very carefully to your testimony this morning where you

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DISTRICT ATTORNEY DiFIORE: Well, thank you.

CHIEF JUDGE LIPPMAN: Good to see you.

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

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

So, so pleased that you are here.

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

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

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

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

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

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

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

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

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

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

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

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

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

have a functioning, well-funded court system.

In New York, we are fortunate. We do not face some of the most severe problems that are faced in other states. But the problems and the dangers are real. The extent of demands on our judges and our court personnel, our facilities are already stretched. We need more resources, we need more facilities, we need better technology, we need a lot of things that cost money. At the same time, not providing legal services to people who can't afford it stretch those resources unnecessarily more. The litigant without representation when they get to court is a litigant that takes much more of our judicial system's scale's resources. It takes much more of the judge's times. It takes much more of the court personnel time.

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

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

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

had legal services. Legal services are often able to resolve matters without the necessity of litigation. And when you have people who are unrepresented, first, they come to court more often, and second, when they come to court, they take more time and more expense and more personnel than they would if they had legal services. So, the consequences of not providing legal services to people who need it are that not only do they impose costs on the side, not only do we deprive them from protection that I believe we have a constitutional, ethical duty to provide them, but we damage our justice system ourself by diverting scarce resources at a time that we do not have extra scarce resources. Thank you.

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

questions for you.

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

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

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

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

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

costing us money. Even if we ignore it, the constitutional and ethical guarantee, even if we ignore the cost to society at large, it is a bad deal for our court system to deprive people of legal services because that just costs all of us money and costs every litigant an opportunity to have their case decided in an expeditious way. Every litigant, rich or poor -- in fact, I would say, the wealthier you are, the more the court system is important to you, and the more efficient, quick justice is important to you. So, I would say that the bigger the corporation, the more wealthy the individual, the more you have a stake in providing legal services to the poor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. BOIES: Thank you.

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

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

Okay, client panel, come on up.

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

MS. SAEZ: Good morning.

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

MS. SAEZ: Yes.

CHIEF JUDGE LIPPMAN: Good to see you.

JUSTIN SAEZ: You too.

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

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

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

We then had an administrative hearing that was scheduled to determine my son's guilt or innocence and his potential punishment. At that hearing I was not represented by counsel, and the counsel for the district encouraged me to sign a stipulation of settlement admitting my son's guilt, waiving my right to a hearing and waiving my right to a manifestation review, the determination by the CSE team whether the behavior is a manifestation of Justin's disability.

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

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

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

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

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

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

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

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

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

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

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

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

MS. SAEZ: Nothing.

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

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

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

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

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

MS. SAEZ: Yes.

CHIEF ADMINISTRATIVE JUDGE PFAU: If I could ask your attorney, how many Alina's do you have to turn away that come to your office with these kinds of stories that you can't help because you don't have the resources to do it; would you say?

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

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

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

So, thank you again, Alina.

MS. SAEZ: Thank you.

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

(Testifying through Todd Burrell, the Spanish Interpreter.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. GRISBY: Hi, good morning.

CHIEF JUDGE LIPPMAN: Good to

have you.

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

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

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

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

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

program would have worked in his favor.

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

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

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

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

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

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

his life together?

MS. GRISBY: Absolutely.

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

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

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

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

MR. JAMS: Because you were able to continue with your housing, he was able to rehabilitate himself?

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

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

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

MS. DENEZZO: Accompanied by Denise Snow.

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

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

CHIEF JUDGE LIPPMAN: You look much younger.

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

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

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

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

At the fair hearing, a representative from Social Services and an Administrative Law Judge was present at the proceedings. The representative asked the Judge if we could step out of the room so she could explain things to me. She told me I made too much money so the health insurance money would be deducted from my benefits. She told me I should be able to live off $763.00 a month. I explained my story to her, and she told me I could move to Albany or someplace cheaper. I could not believe it. I'm a life-long resident of Long Island, and why should I move? Why should I move to live? We returned to the courtroom, and the Judge could see that I was very upset. He told me not to worry. He told me that he would direct me to people that would help me. For the record, the representative from Social Services told her story, and then I told mine. Finally, the judge said, okay, I've

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

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

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

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

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

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

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

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

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

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

REFEREE LINDSTROM: Good morning, your Honors.

CHIEF JUDGE LIPPMAN: Pleasure to have you, John.

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

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

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

REFEREE LINDSTROM: The purpose of our part --

CHIEF JUDGE LIPPMAN: Why are people coming in there?

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

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

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

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

great, and I'm very proud of that. I think that that number could be bigger if we had more people represented by counsel appearing before me.

20 percent of the people who come before me are represented by counsel. 80 percent are not.

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

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

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

CHIEF JUDGE LIPPMAN: Sure, go ahead.

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

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

MR. RAISHEVICH: Mine is more drastic.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

bankruptcy --

PRESIDING JUSTICE PRUDENTI: Excuse me, what do you do when people ask you all of these questions?

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

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

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

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

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

District is really supporting our part and helping us out.

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

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

CHIEF JUDGE LIPPMAN: Thank you.

REFEREE LINDSTROM: Happy to answer any questions.

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

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

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

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

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

CHIEF JUDGE LIPPMAN: Modification means?

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

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

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

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

representation makes a huge difference.

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

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

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

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

CHIEF JUDGE LIPPMAN: Well, thank you, Faith.

CHIEF ADMINISTRATIVE JUDGE PFAU: Can I ask one question?

CHIEF JUDGE LIPPMAN: Sure.

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

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

CHIEF JUDGE LIPPMAN: Anybody else?

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

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

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

coordination provided by local civil legal service projects.

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

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

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

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

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

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

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

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

current economic environment.

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

CHIEF JUDGE LIPPMAN: Essentially, give up.

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

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

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

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

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

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

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

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

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

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

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

MS. STRAUSS: Exactly.

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

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

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

CHIEF JUDGE LIPPMAN: But it's a

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

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

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

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

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

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

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

THE COURT: How long have you owned your home?

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

CHIEF JUDGE LIPPMAN: Seems like 25, right?

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

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

CHIEF JUDGE LIPPMAN: How did you get to him?

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

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

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

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

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

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

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

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

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

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

CHIEF JUDGE LIPPMAN: The bottom

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

MR. RAISHEVICH: No, absolutely not.

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

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

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

representation or assistance --

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

MS. WILLIAMS: I'm sorry.

CHIEF JUDGE LIPPMAN: That's okay.

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

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

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

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

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

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

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

practice.

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

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

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

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

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

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

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

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

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

CHIEF JUDGE LIPPMAN: But your life has turned around?

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

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

MS. WILLIAMS: Of course.

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

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

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

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

witness.

JUDGE SCARPINO: Thank you very much, Judge Lippman.

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

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

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

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

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

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

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

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

where the tenants were claiming they were denied basic services. Claiming breaches of warranty of habitability, that their appliances weren't working, no heat, the ceilings were crumbling, there were dangerous situations. And although there was a staff attorney there for Legal Services of the Hudson Valley, who I actually saw here earlier, who assisted some of these tenants, they had to turn away the bulk of those folks, and the results were drastically different. Those litigants that were represented routinely were able to resolve their matters by stipulation in pretty quick fashion with the restoration of services and even sometimes rental abatements. Those without counsel either defaulted or went to trial and routinely were unable to prove their case or defend their case.

I distinctly remember one trial I had where the tenant was claiming that the ceiling was falling down and

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

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

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

frustrating.

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

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

even corruption.

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

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

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

So, with these factors in mind,

the members of the Ninth Judicial District Pro Bono Action Committee, which I've been co-chair since 2005, in Westchester County, we have recruited over 500 lawyers to assist Legal Services of the Hudson Valley. We've set up satellite committees. We have some representatives here. We've recruited an additional 400. So, throughout the distinct we've recruited 900 attorneys to work through Legal Services of the Hudson Valley to assist people in landlord-tenant matters, matrimonial matters, domestic violence, foreclosures, Family Court, consumer, elder law, and many, many other areas.

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

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

many, many lawyers in that regard.

CHIEF JUDGE LIPPMAN: I have no doubt.

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

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

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

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

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

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

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

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

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

I'd be happy to answer any questions.

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

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

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

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

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

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

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

Thank you for taking the time to come and testify.

JUDGE WOODS: Thank you for inviting me.

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

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

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

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

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

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

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

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

CHIEF JUDGE LIPPMAN: Where people aren't represented?

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

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

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

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

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

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

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

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

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

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

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

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

morning?

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

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

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

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

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

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

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

estimate 350 open cases at any given time.

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

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

PRESIDING JUSTICE PRUDENTI: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

have an adjournment to confer with counsel, and the right to have counsel assigned by the Court if they are financially unable to pay for an attorney, parties often appear twice, three times without hiring an attorney, or without even asking the Court for the assignment of counsel. Why is this? Shame? Embarrassment because of the financial reduction? Or just plain misinformation? Were you aware that there are some in the legal and non-legal communities that believe that if your gross income is $35,000.00, you don't qualify for the assignment of counsel? I have this in my courtroom. I have private attorneys who would challenge my assignment of counsel on that number. I have yet to find in writing where it says $35,000.00 in earned income, especially here in Westchester County, disqualifies a party for the assignment of counsel.

Nonetheless, as set forth in the

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

Recently, I had a case where the

respondent father had traveled to New York to respond to an application by petitioner mother for an Order from my court exercising temporary emergency jurisdiction over the parties' child. The petitioner mother was represented by counsel, and the respondent father was unrepresented. I advised the respondent of his right to counsel and his right to request the assignment of counsel if he could not afford to pay for an attorney, but I did say this was an emergency application. The respondent, who had a stutter, rejected the offer, confident he could prove his case alone. As the respondent flipped through the pile of papers, I asked him if he had a pen. No, he replied. I gave him a pen. Do you have a pad of paper? No, he replied. I gave him a pad of paper. Do you have the Order to Show Cause that brought you before the court? He could not find it in the papers now spread out before him on the table. I

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

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

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

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

I thank you for this

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

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

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

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

JUDGE MALONE: Yes.

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

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

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

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

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

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

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

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

CHIEF JUDGE LIPPMAN: Okay --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We also have a local clergy commission that meets and discusses

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

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

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

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

I believe that basic and

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

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

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

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

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

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

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

REVEREND HAUSCH: Yes, it's very

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

CHIEF JUDGE LIPPMAN: Thanks, counselor.

REVEREND HAUSCH: You're very welcome.

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

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

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

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

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

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

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

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

In the area of housing assistance, access to legal services

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

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

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

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

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

In Orange County, Legal Services of the Hudson Valley has been instrumental in assisting the Department of Social Services with implementing tenant awareness workshops across the county, which is a testament of the impact that civil legal services can have within the community. Eviction prevention, tenant awareness and leaseholder protections are the most important of the civil legal services available in Orange County at present, but access to each of these services is very limited at this time. The combination of services is the key. We need to work together to encourage change in the individual family while protecting their legal rights.

County governments currently make the investment in the social

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

Victims of domestic violence face significant challenges as they begin to make the decision to leave an abusive relationship when safety, social and child welfare services are available, but access to legal services remain a critical challenge for most victims. Safety for the family depends on access to legal services to secure an Order of Protection, advice and legal expertise that can outline a path through the legal maze, and to independence and safety, which are always our goals. Additionally, victims of domestic violence find themselves in need of assistance across systems. They need to be able to access public assistance, mental health centers, substance abuse treatment, housing crisis, including eviction and foreclosure. Civil legal services is

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

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

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

CHIEF JUDGE LIPPMAN: And I take

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

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

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

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

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

I am the managing partner of a

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

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

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

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

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

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

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

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

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

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

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

CHIEF JUDGE LIPPMAN: Sure.

MR. SAVINO: We know from our

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

So, let me further conclude, because as I sit here, I look at the flag, and I'm going to invoke some American pride. We as fortunate citizens, everyone here, as fortunate citizens of a great nation, we rise, we take our hats off, we stand, we put our hands across our heart, and we, with pride and reverence and commitment, in the presence of that flag, we recite the pledge of allegiance. And I'm going to emphasize, if you will, an important part of that oath. I pledge allegiance, to the flag, of the United States of America, and to the republic, for which it stands, one nation, under God, indivisible, with liberty, and then these important words for these hearings, and justice, for all.

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

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

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

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

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

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

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

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

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

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

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

(Continued on next page.)

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

* * * * *

Certified to be a true and accurate transcription of the within proceedings.

CAMI LANDAU
Senior Court Reporter

APPENDIX 8:

Transcript of the First Department Hearing held on September 26, 2011

In The Matter Of:

THE CHIEF JUDGE'S HEARINGS v.
ON CIVIL LEGAL SERVICES

September 26, 2011

New York Supreme Court - Civil Branch
60 Centre Street - Room 420
New York, New York 10007
646-386-3050

Original File 92611HEARING.txt
Min-U-Script® with Word Index

SUPREME COURT OF THE STATE OF NEW YORK

-- FIRST DEPARTMENT --

- X

THE CHIEF JUDGE'S HEARINGS

ON CIVIL LEGAL SERVICES

- X

7 Madison Avenue
New York, New York

September 26, 2011

B E F O R E:

HONORABLE JONATHAN LIPPMAN,
Chief Judge

HONORABLE ANN PFAU,
Chief Administrative Judge

HONORABLE LUIS A. GONZALEZ,
Presiding Justice, First Department

VINCENT E. DOYLE, ESQ.,
New York State Bar President

ANGELA TOLAS, and
ROBERT PORTAS,
Official Court Reporters

WITNESS LIST:

HON. CHRISTINE QUINN,
Speaker of the New York City Council

DEBORAH C. WRIGHT,
Chairman and CEO, Carver Federal Savings Bank

CRAIG L. REICHER, Vice Chairman, New York Tri-State Region, CB Richard Ellis

DONNA CIROLIA, Vice President, Coca-Cola Refreshments

SAMUEL W. SEYMOUR, President, New York City Bar Association

GEETA SINGH, Principal, Cornerstone Research

JEFFREY L. BALIBAN, Managing Director, Navigant Consulting, Inc.

ENEYDA MALDONADO, Client of the Legal Aid Society, accompanied by Jack Newton

YVES GEBHARDT, Client of Manhattan Legal Services, accompanied by Mallory Curran

VIRGINIA NORMAN-ACEVEDO, Client of The Legal Aid Society, accompanied by Judith Goldiner

TRACY SMITH, Client of the Urban Justice Center Community Development Project, accompanied by Sadia Rahman

NATALIE JONES, Client of Manhattan Legal Services, Domestic Violence Unit, accompanied by Lenina Trinidad

HON. DAVID KAPLAN, Housing Court Judge

HON. TANYA R. KENNEDY, Acting Supreme Court Justice and Civil Court Judge

HON. DOUGLAS E. HOFFMAN, Acting Supreme Court Justice and Supervising Judge, Family Court

HON. FERN FISHER, Deputy Chief Administrative Judge for the New York City Courts; Director of the New York State Courts Access to Justice Program

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JUDGE LIPPMAN: Good morning. Everybody is hiding there in the peanut gallery, or whatever you want to call it. It's good to see my colleague here. I see my colleague Judge Ciparick from the Court of Appeals. It appears that she is able to make it beyond the Task Force.

And Judge Acosta, my former colleague from the Appellate Division, and he's here, a member of the Task Force.

And I saw Judge Melones was here. Judge Melones a former member of this Court hiding really in the corner behind the camera, he's camera shy. It's good that he's here too, and also doing great work on behalf of Civil Legal Services.

And I also recognize right off the bat Elaine Barnett, the Chair of the Task Force, who has really done a spectacular job with a terrific team.

But Elaine Barnett is the former head of the Legal Services Corporation in Washington, and has lead just a stellar group, I think the best in the country in terms of devising a game plan really to promote Civil Legal Services in this state. So thank you, Elaine, for being here.

And I can introduce everyone in that section, but I won't because then we're not going to get started. But I will introduce Chris O'Malley who is the director of IOLA which certainly is a large founder of civil legal services

in this state. And IOLA does a terrific job. And again I will not introduce everybody there, although I want to.

So it's terrific to see you all. And this is the second series of hearings on Civil Legal Services in New York.

The genesis of why we are here is because the judiciary and the legal profession in this state understand that our fundamental constitutional mission is to provide equal justice for all. And that certainly includes the poor, the indigent, the working poor in our state.

We recognize that it's not enough to just keep our courthouses open, but that we really need to foster equal justice within those courthouses and within those courtrooms.

We have today on the panel, we have really the leadership of the legal and judicial system in New York. On my right is the person who normally sits in this middle chair. I left it to him when I left the Appellate Division, and that is the Presiding Justice of the Appellate Division, First Department, my good friend, the Honorable Luis Gonzalez.

And I want to thank Judge Gonzalez not only for being here to help preside over this hearing, but also for lending us this spectacular courtroom. There is only one other courtroom in the state that I can say without

hesitation rivals it, judge Gonzalez. I'm not saying that it exceeds it because it's hard for anything to exceed this beautiful courtroom. That other courtroom is the Court of Appeals in Albany. But thank you, Judge Gonzalez, for all you do in the pursuit of justice in the Court. Again giving us this fantastic courtroom for this hearing.

And on my left is Judge Ann Pfau who is the Chief Administrative Judge of the Courts of the State of New York who runs the day to day operations of the Courts and sees that everything functions well. And as I indicated equal justice is the norm in New York State.

And to her left is Vincent Doyle, Junior, who is the President of the State Bar Association. And I guess he runs the day to day operations of our legal profession in this state the same way that Judge Pfau runs the Court. So, Vince, thank you for being here. And he has a distinguished career as a mostly criminal defines lawyer in Buffalo in the western part of our state. I'm so glad that Vince is here representing the legal profession and the leadership of that profession.

The times are difficult. We recognize that these are very difficult economic times for our state and our country with record poverty levels not seen in decades. In New York alone in one year we went from 5.6 million people at poverty level to 6.3 million and rising.

The moral and ethical obligations that we have as a judiciary, as a legal profession, are clear. That is that all of us, every single part of society is judged by how it treats its most vulnerable citizens, certainly from the judiciary and legal profession perspective.

If not us, who is going to stand up for those who cannot help themselves who come into our legal system without representation and need to interface with the various bureaucracies in our state and our country.

And so we have a moral and ethical obligation to speak out and to provide funding for legal representation. We have a constitutional mission to do so, as I indicated, to provide equal justice. And I think there is also a bottom line for our society and for its well-being, that it is so important that there be equal justice and the people be represented.

And last year we certainly had testimony from banks and businesses, landlords and hospitals that indicated that their own bottom line are affected if the poor do not have legal representation.

So it's not only this ethical obligation that we have, it's not only this constitutional obligation that we have, but the bottom line, the well-being of society, and the financial well-being of our state, is dependent upon not letting the poor, the indigent, in these difficult fiscal

times fall by the wayside, fall between the cracks of our society and institutions.

Last year recognizing this was the first year that we had held these hearings, and we appointed a Task Force that Elaine Barnett heads, and this set of hearings had really dramatic results in terms of the funding for Civil Legal Services in this state.

The present state of Civil Legal Services we found in the Task Force that Elaine Barnett heads meets approximately 20 percent, if that, of the Civil Legal Services needs of the poor and the indigents in New York.

And I'm talking about the very basic essential necessities of life that people need. When I talk about legal representation, we're not talking about someone who trips in front of the courthouse and maybe needs a lawyer. We're talking about the roof over a person's head, their personal safety, the well-being of their family, their livelihood, their subsistence, income and benefits that everyone is entitled to.

And we're talking about making eligible for Civil Legal Services anyone really at 200 percent of the poverty level. And to put that in perspective for you, 200 percent of the poverty level is a family of four earning $44,000 a year. And if you have a major legal problem, go hire a lawyer and be able do what you need to do for yourself and

for your family on $44,000 a year for a family of four.

So last year given the hearings and given our efforts, which I think we have at least in part succeeded, to create a permanent, systemic, dependable system of funding Civil Legal Services in the state, coming out of the public fiscal we were able to obtain 27 and a half million dollars for Civil Legal Services. Fifteen of which we turned over to IOLA, and which they used to fund to hire and 12 and a half million which we gave out directly through the State Court system through our Oversight Board headed by Elaine Barnett and Judge Pfau and Benito Romano, the Chair of IOLA.

So those monies, at least the $12 and-a-half million given out of the court system funded 56 different providers. And in the time of great economic stress for the court system for our state where the court system itself has cut $170 million in its budget, and 400 layoffs in the State Court system, we were so pleased that we were able to obtain the $27 and-a-half million dollars in the judiciary budget where it belongs. Because, again, it is our responsibility to insure that Civil Legal Services is funded in this state.

The process that we've created pursuant to a joint resolution of the legislature is to hold hearings to determine the gap in Civil Legal Services, putting funding in the judiciary budget to either eliminate or narrow that

down, and then have the legislature and the governor act on that request.

Now more than ever is the time that we need this funding. We certainly don't say that times are bad so we're not going to have public schools this year, or we're not going to have hospitals to treat our sick, or we're not going to have police on the streets to insure justice.

Justice for all, pursuing justice for rich and poor, high and low alike, it has to be a priority of our society and our government.

And we cannot say, just like we can't say that any of those things can be put by the wayside, we can't say we're not going to provide Civil Legal Services for the poor and the indigent because times are tough. It's when times are tough that that funding is most needed. And it is so essential now more than ever.

Justice is a distinctive commodity. It is unique. There is a distinctiveness in the courts, in the judiciary, in the justice system, in delivering justice.

So last year in pursuit of justice, we issued, the Task Force issued, I believe, the most comprehensive report of its kind in the country. We saw firsthand clients, and we'll see that today, who have been seeing the benefits of Civil Legal Services.

We had testimony again from banks, from landlords,

from businesses, from hospitals, from judges, from clergy, from law enforcement, all testifying as to the need to fund Civil Legal Services. This year we will focus on foreclosures on the cost and benefits of providing Civil Legal Services.

In fact, our first panel, in a minute or so the Chief Judge will stop pontificating, we will have testimony on that issue on the cost saving, on simplification of court processes. That we will have Fern Fisher, the Deputy Chief Administrative Judge, her access to justice, and the Deputy Chief Administrative Judge in charge of the New York City Courts who is committed with so much passion and energy and access to justice in our state will testify as the last witness on that subject. And she's sitting right there in front of us. Thank you, Fern, for the terrific job that you do.

Today we'll not only of course have the panel, we'll have the speaker for the New York City Council, Christine Quinn, again to grace us with her presence and testimony. We'll have business and community leaders. A client's panel, a Judge's panel, and again then Judge Fisher's testimony.

Last year we learned that for every person who is accepted for Civil Legal Services here in New York City by the Legal Aid Society, eight or nine are turned away.

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We learned that 2.3 million people came into the courts last year without legal representation. We learned that 99 percent of tenants in eviction cases in New York City are unrepresented. Ninety-nine percent of the borrowers in eviction cases in New York City are unrepresented. Ninety-seven percent of parents in child support matters are unrepresented.

And the great majority, at least I think we've changed that to a significant degree over the last year, but the great majority of people subject to foreclosure proceedings were unrepresented without legal assistance last year.

Seventy percent of civil matters in the New York State Courts involve family law, consumer credit, landlord tenant and foreclosure cases. The essentials of life, the necessities of life, where everyone deserves representation.

And what we concluded last year was that for every dollar spent in providing that representation, $5 are returned to the State in terms of decreased expenses, and costs of social services, incarceration, homelessness, and more federal benefits brought to New York.

We expect to learn much more next year. We learned that the IOLA monies that are dependent on lawyers' interest accounts went from $36 million before the financial crisis to $8 million in one year.

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So dramatic need is what we found. And obviously we're going to learn a lot more this year. And this hearing is very much a part of that systemic process.

I want to thank Steve Banks, the head of the Legal Aid Society, for coordinating today's hearing and getting so many of our witnesses in place.

But the bottom line is, make no mistake, the judiciary and the legal profession in New York is committed to nothing more, nothing more important in our heads and our hearts, than meeting our constitutional and professional obligation, and ethical obligations to foster equal justice in the state. That is the spirit in which these hearings are being held and will proceed.

Don't be taken aback those of you who are providing testimony today. If I interrupt you a little bit, we're on a kind of a tight schedule. But the hearing will take place between 10:00 to 1:00 o'clock. So we need to get a lot of testimony in.

We'll keep you on schedule. There are lights. When that red light goes on, it means you're in big trouble, that's the bottom line. But don't be nervous. We know that you're here in the spirit of these hearings. So thank you for coming. Thank you for your testimony in advance. And we're going to also try and leave some time for questions.

So with no further ado, we're going to start the

hearing. And would the first panel, the cost savings panel, please come forward. Jeffrey Baliban, Managing Director of Navigant Consulting, Inc., and Geeta Singh, Principal of Cornerstone Research. Come up to the table.

Mr. Baliban, are you going to start?

MR. BALIBAN: I will.

JUDGE LIPPMAN: Okay. Welcome.

MR. BALIBAN: Judge Lippman, and members of the panel, good morning. As you said my name is Jeffrey Baliban, I'm the Director at Navigant. It is a consulting firm that specializes in expert services focused in accounting, economics and finance.

First I wish to thank the Task Force for the opportunity to participate in this most worthwhile endeavor, and for this panel for taking time in allowing me to present these findings.

My work typically as an economist is in evaluation of businesses or in estimating economic impact of particular actions or inactions of certain parties on others embroiled in complex commercial litigation.

The skills developed in 34 years of that work are highly transferable to the situation at hand. Estimating the dollars and cents impact of a fictitious but preferable but for world, one in which domestic violence is prevented.

Such violence places a burden on society, a cost

in the sense that it absorbs scarce resources rather than creates them. And the costs created by society are always borne by the members of society by direct payments of certain members as well as by indirect allocation of those costs through taxation, federally and state funded medical insurance programs, higher private insurance premiums, higher costs for public safety and general health care, the loss of beneficial output by otherwise productive members of society, and a host of many other negative externalities associated by society.

While methods and scope differ among the many studies that I analyze, none indicated that an increase in funding for Civil Legal Services to low income households did not result in even greater reduction of overall societal costs of domestic violence.

My work, therefore, has been to outline the framework by which available data can be used to estimate at least a portion of the cost of domestic violence on our society here in the State of New York.

There are a number of sources from which data on incidents can be gathered. However, applying their results proved difficult for a number of reasons. First there is a general lack of consensus of even a definition of domestic violence. It can include child abuse, elder abuse, and intimate partner violence, or IPV.

Even looking solely at IPV the researcher uses a definition such as physical and sexual violence will produce a lower occurrence in costs than one who also includes stalking and other forms of psychological abuse.

Second, there are gaps in data collection. Because no national or statewide system exists for ongoing data collection about IPV, estimates are often drawn from other sources.

For example, hospitals collect information about victims to provide care and for billing purposes, but may record few details about the violence itself, the perpetrator or perpetrators relationship with the victim. On the other hand police will collect data to apprehend the perpetrator that will focus a little on the victim.

Third, there is a widely recognized reluctance to report victimization. This is especially pertinent in IPV cases where the victim may fear but still depend on the perpetrator, or the victim may love and wish to protect the perpetrator.

Fourth, reports about IPV often do not clearly indicate whether they relate to the number of incidents or the number of victims. This is especially problematic due to the repetitive nature of IPV.

In 1994, the CEC and the National Institute of Justice co-funded an effort by two researchers to develop a

survey designed to collect sufficient information about the nature and extent of IPV related incidents applied to a large enough sample to reliably estimate current IPV related injuries to the US population.

What was developed was the National Survey of Violence Against Women, or NVAWS. This generated information about the incidents, prevalence, characteristics and consequences of physical assault, rape and stalking, perpetrated against women ages 18 years and older by all partners, including intimate partners.

In 1999 the NVAWS survey results were applied to US Census figures to estimate the incidents and prevalence of IPV related injuries among women. As the CDC report states before estimating the cost of intimate partner violence, one needs to know how many women were injured non fatally as a result of IPV.

That is how many women used medical and mental health care services after IPV victimization, and how many women lost time from paid work or performing household services after IPV. The NVAWS provided that information.

Of the female NVAWS respondents, 7.7 percent had been raped by an intimate partner, 4.8 percent had been stalked by an intimate partner, and 22.1 percent reported being physically assaulted by an intimate partner at some point in their lives.

The NVAWS also analyzed that of those victims .2 percent reported being raped, one half of one percent reported being stalked, and 1.3 percent reported being physically assaulted within one year of the survey date.

(Continued on following page.)

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MR. BALIBAN: (Continuing) Table One shows a calculation of our cumulative total avoidable costs. The 2010 U.S. Census reported there were 7,768,878 women living in New York State aged 18 years and over. Applying these rates, 2.688 million women have suffered or will suffer in their lifetime rape, physical assault or stalking at the hands of an intimate partner. Table One shows estimates of the annual occurrences. All studies of prevalence of IPV showed greater proportion of such violence among lower income households. A Bureau of Justice statistics special report called "Violence Against Women Estimates From The Redesigned Survey" indicates that of female IPV victims 66.44 percent are below 200 percent of the federal poverty level. Applying this factor reduces the estimate to account for this.

Finally, several studies in analyzing the impact of civil legal services on domestic violence and IPV look to civil protective order issuance as a proxy variable. The recent 2006 study funded by the State Bar of Wisconsin analyzes the benefits and costs of proposed domestic abuse grant program. Civil protective orders were ineffective in preventing further violence between 20 and 60 percent of the time. Using that mean ineffective rate of 40 percent I assume civil protective orders could be effective 60 percent of the time.

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Obviously this is a hypothetical exercise, but the greater the number of incidents avoided, the greater the cost savings.

JUDGE LIPPMAN: So there are basically, as I understand it, to put this in easily understandable mode, so you're basically saying that if there were legal representation for domestic violence victims, many of whom are in low income households, number one you can avoid a lot of the incidents altogether, and, translated, when you avoid the incidents, you avoid a lot of these associated medical costs that go along with -- and I'm sure social service costs that go along with domestic violence.

MR. BALIBAN: That's right. So we estimate the number of expected or potentially avoidable incidents based on the survey results which were robust enough to extrapolate to the U.S. --

JUDGE LIPPMAN: And the incidents translate to a -- medical costs and social services and things that go along with --

MR. BALIBAN: Correct.

JUDGE LIPPMAN: -- domestic violence incidents.

MR. BALIBAN: Correct.

JUDGE LIPPMAN: Okay.

MR. BALIBAN: In fact, this is a listing of the -- at least the direct medical costs we included in our

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analysis. This is an example of one of the calculations for rape victims. And we included in our direct medical costs emergency department visits, out-patient visits, overnight hospital stays, doctor visits, dental visits, ambulance and paramedic services and physical therapy visits.

Obviously allocation of these services is per communization and not per victim. Cost allocations are based on victimization percentage distributions of medical care among U.S. adult female IPV victims.

This is another example of some of the National Violence Against Women survey. It's showing -- for instance, in each circumstance where an IPV victim used physician services they in fact used 5.2 units or had 5.2 visits on average to physicians, or 2.3 visits to the dentist office. We needed those units so we can extend them by unit costs.

These provided numbers of -- as I said, the cost units. These units were then costed out based on data from New York State Temporary Assistance for Needy Families, or TANF for short, showing Medicaid expenditures for selected categories of services by selected categories of eligibility.

A similar analysis was done for mental healthcare costs. This shows the NVAWS estimates of

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percentages and costs of victims who will seek the care of a psychologist, psychiatrist or other mental health professional. These national rates in 2003 are brought forward to 2011 dollars and adjusted for New York medical healthcare cost of living indexes.

Finally, we have an analysis reporting indirect costs, that is a loss of productivity. The survey results showed these various percentages of victims reporting days lost and the mean number of days lost per victim for both aide work as well as household services.

In valuing these services I used a minimum wage rate, which results in inherently underestimated costs. As you yourself, Judge Lippman, pointed out, this analysis is indicative of Medicaid eligibility where a family of four could earn up to $14,637 annually and still be eligible for Medicaid. However, that same family of four, as you pointed out, could earn roughly three times that amount for up to 44,700 a year and still be at 2 percent of federal poverty level.

All this shows a potential, direct or indirect cost savings about -- of about 85 million a year.

JUDGE LIPPMAN: $85 million a year?

MR. BALIBAN: Yes.

On closing, it is important to clearly describe what this analysis does not do as potentially avoidable

costs. This does not attempt to value the pain and suffering experienced by victims of IPV, although there are several studies that --

JUDGE LIPPMAN: But I think what's so interesting is that, you know, you've put it in a -- in a numerical assessment or a numbers, but I -- but, you know, in a clinical way that clearly is meant to -- you know, kinds of dollars you're talking about to have an impact, but of course there's so much impact in the events themselves that the horror of it all, that -- that at the very least to have legal representation is so significant, putting aside all of this. And then when you play in the numbers and the financial costs to society, it kind of doubles that impact of the events themselves being so horrible. And seeing it --

MR. BALIBAN: Right.

JUDGE LIPPMAN: -- how it plays out in terms of the costs to society is striking.

MR. BALIBAN: In fact, there are some studies that attempt to statistically correlate pain and suffering awards by juries on various criminal instances of domestic violence, and they can come up with amounts ten to twelve times the amount of the actual direct costs.

MR. DOYLE: Mr. Baliban, can I ask you a question? The direct and indirect medical and mental health treatment

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figures, that is for the victim; is that right?

MR. BALIBAN: That is for the victim.

MR. DOYLE: Your figures don't take into account the mental or medical consequences to children or other family members of victims; is that right?

MR. BALIBAN: That's correct. In fact, I'm about to make that very point.

MR. DOYLE: Sorry.

MR. BALIBAN: I was going to say there are a number of other cost areas that are significant and have a continuing drain on society resources related to IPV. It has been shown that abused women experienced -- abused women themselves experienced more physical health problems and have a higher incidence of depression, drug and alcohol abuse and suicide attempts than do women who are not abused.

Further, as you point out, children living in households where domestic violence is prevalent and who witness these incidents suffer from a greater level of physical, emotional, psychological and behavioral difficulties, which of course they tend to take with them into childhood.

So my thanks to all who contributed their time in helping me with this analysis, and to the panel for taking part of their Monday morning to listen to these

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findings.

JUDGE LIPPMAN: Let me ask you another question: How does one go about -- when one of -- one of our issues, we're trying to collect information that makes clear that legal representation is a good investment, that legal representation for the poor is not -- again, as I indicated in my opening comments -- is not just because it's the right thing to do. You know, there are lots of things that are right things to do, and we think this is a high priority, but to make the point that it goes beyond that, that it goes to the financial well-being of our State. Your analysis really is about domestic violence. How do you equate -- I know it's not necessarily your area of expertise, but how do you equate that one area to the other necessities of life that we've been talking about if you have these kinds of savings, when you're dealing with domestic violence and representing the poor and the indigent involved in these kinds of situations? How many times over--and, again, without analysis, I understand it's difficult--when you take into account housing, homelessness, consumer credit transactions, family issues relating to children, the costs I would guess are almost incalculable in terms of what the savings are by providing legal representation without looking at, I think in the narrow perspective that some people do, "Gee, we're

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spending $25 million in civil legal services," is it fair to -- would you guess it's a fair judgment to say that the costs are many, many times over what you're finding in domestic violence?

MR. BALIBAN: Certainly. I mean, what I'm finding here is these limited -- this narrow view of these particular costs, just the medical out-of-pocket costs are many times over what's -- what is being spent in civil legal services and what could be saved as a result of that investment. Obviously any other issues, as I've pointed out, difficulties these women may have beyond this particular -- these particular out-of-pocket expenditures, the children, families themselves, go on for years and years. And with the additive, as well, it would be the homelessness issues, a variety of those things would be additive to the numbers I have.

JUDGE LIPPMAN: All right, thank you so much. And now your next task is to go into the housing area, into the -- consumer credit, because I think these kind of analyses that you've done for domestic violence are so instructive in terms of what we're talking about, and the payoff in more than good deeds of civil legal services but for that it is a wise investment.

So thank you so much. Appreciate it. Before Ms. Singh comes up I'm going to ask -- I see that the

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Speaker of the City Council has come in and I'm going to ask her to come up and provide her testimony now.

Thank you so much.

MR. BALIBAN: Thank you so much.

JUDGE LIPPMAN: Speaker Quinn, it's a delight to see you here.

SPEAKER QUINN: Well, thank you very much, Judge Lippman. We very much appreciate the opportunity to come back. And, if I can, just before I give my testimony, I want to thank you and in particular Judge Pfau for all of your help this past July in implementing the first day of marriage equality. We literally would have been sunk without all of the Judges that we had. And the Judges showed up en masse. I have to tell you, more New Yorkers than I can count have told me how lovely and wonderful all of the Judges were that day. So thank you guys very, very much.

JUDGE LIPPMAN: We're very proud of the judiciary. The city -- we thank you for saying that. And thank you for coming back for the second year in a row.

SPEAKER QUINN: Absolutely.

JUDGE LIPPMAN: We hope to make this an annual event, Speaker, that you will --

SPEAKER QUINN: Absolutely.

JUDGE LIPPMAN: -- that you will come and testify.

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SPEAKER QUINN: Absolutely.

JUDGE LIPPMAN: Thank you.

SPEAKER QUINN: Just one last thanks to the court officers who were superterrific that day in July, too. They didn't get enough thanks.

But we will be back every year, Judge, that you call us, because we really believe that this task force already in the first year has made major strides and has shown really an unyielding commitment to equal access to justice in every way possible. And your report was incredibly thorough and really showed a real review of broad-based testimony data analysis and other sources. But, as you indicated in saying it's a yearly thing, the work really has just begun.

Unfortunately the task this year is going to be harder, because the number of poor people living in New York City is now at its highest level since 2000. According to recent census data, in one year alone from 2009 to 2010, city -- 75,000 city residents were added to the city's poverty roll. We now have more than 1.6 million city residents who are poor, and the percentage of New Yorkers living below the official poverty level has risen to 20.1 percent, the highest since 2000.

Obviously because of that the need for legal

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services for the poor has grown. This increase means more New Yorkers are facing eviction, more New Yorkers need food stamps and other benefits, more New Yorkers, coupled with other reasons, face foreclosures on their home and have creditors filing action for payment of loans that they can no longer afford.

The demand for civil legal services has risen as the economy has struggled. For example, Legal Aid had 30,000 civil legal cases in fiscal year 2008 and 43,000 in fiscal year 2011, an increase of over 40 percent. But this is just the tip of the iceberg; for every civil legal case represented by legal services lawyers, unfortunately, by no fault of their own, another eight cases at least are turned away. And there are even more people who don't even know that they could call legal services to try to get help. Therefore, the task force goal of a reliable funding force -- source for legal services is critical. And we in the council strongly support legal services for the poor and also support kind of delineating that in different ways that are targeted with a level of expertise, whether it's around housing or domestic violence or foreclosures, but obviously city funding is below -- not the lowest level in importance, but federal, state, local, as it all gets cut back it is in some ways the least stable.

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Well, that said, we have made civil legal services funding a priority. The City of New York, as we all know, provides representation for indigent defendants in criminal cases and in Family Court. Now, the struggle for funding for that is a story in and of itself as well, but none is quite mandated, if you will, for civil legal cases.

The Council at times, many years, has been the only source among local funding for civil representation. Unfortunately Council funding for programs raging from general civil legal representation, to anti-eviction cases, to benefit advocacy has fallen from 12.7 million in 2008 to less than half that level in the current fiscal year, fiscal year '12, and it was a fairly Herculean task to even keep it at that level, it's now at 6--- $6.035 million.

In addition, we funded legal services on top of that for in-group communities and for victims of domestic violence, but those programs have also been cut and we've confronted even larger cuts to city agency core services which only makes the problem of having less legal services more significant.

Nonetheless, taken together, funding for civil legal services still remains the single largest Council-funded initiative in our work additions to the

budget every year, which I think speaks to the significance our council members hold this funding in. Why do they hold it in such high regard? Because they're seeing the people who are coming into their offices asking for legal assistance that a district office cannot provide and they're seeing the diversity of that need.

The Council's funding and the financial and other generous support that the private bar and foundations provide is, no matter how well intentioned, no substitute for sustained reliable funding for legal services statewide by the state. We all know the IOLA account has proven an unreliable source for funding as interest rates have dropped. And, according to your report, the account produces a fraction of the funding for legal services that it has in the past.

Judge Lippman, you've advanced the goal of sustained institutional funding by including it in the court's budget, and this in turn, we believe, will improve fairness and efficiency in the courts for all litigants and also help us in the Council. If there is kind of a stable funding stream in the court's budget, then it allows us to add on what we see specifically in a borough, a neighborhood. New York would allow Nassau to do the same for Westchester, for us to respond to particular local issues as opposed to taking on the

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entire -- you know, entire effort.

Now that we have new data from the 2010 Census and we have -- we can use it to analyze where legal services are particularly needed in a unique way I think the work of the task force is going to be even more important. For example, the census data tells us that a total population of 8.2 million residents in New York City, 5.3 million of them are renters, which certainly is a fact that indicates an ongoing need for housing-related civil services. Over a million New Yorkers are over 62 years of age, another relevant fact as it relates to legal services. 334 households have income and benefits less than $10,000 a year, which is a stark fact on a lot of different levels, but particularly as it relates to your work.

We -- and I'm glad to hear you saying this, the yearly thing, because we really do hope the task force will continue its work and also continue its work on simplifying the legal process. The reality is that 98 to 90 percent of poor litigants are unrepresented in the essentials of life cases. Even with a dramatic increase in funding, even if you're as successful as your wildest dreams, that number is never going to be as low as we would want it to be, which is why making your way through the courts as easy as possible is another, you know,

important part of all of this work.

The Council and city agencies we believe can play an important role in this. For example, if there is significant systemic issues in federal and state benefits, the city can be a place to help advocate for changes in that in a broad way.

I'll just give you, you know, a couple of examples: The Council has used litigation to address issues of broad concern, working hand and hand with a lot of legal services organizations who are here. In 2009 we filed an amicus brief in the "Roberts versus Tishman Spire" case which resulted in a ruling that all tenants living in buildings with J-51 are entitled to stabilized rents. The council recently passed litigation to protect tenants who are unrepresented and also give tenants standing in Housing Court if they're being harassed.

So just in conclusion, I thank the Court for its attention on this. I thank you for your recognition that funding is important, and it is really in some ways the only way to get lower income and poor New Yorkers what they need. I also appreciate your focus on trying to get it into the foundation of the budget, which will then give us local elected officials the opportunity to target in specific ways and also afford the effort of making the court system smoother and easier for people. And that if

there are ways we can add to your work on that through advocacy at higher levels of government, please let us know, because we stand at the ready.

And I say, I heard you were asking the witness right before me about domestic violence. I came from the Brides' March in northern Manhattan, which is an unfortunate yearly event which notes the date of a woman who was supposed to be married on September 26th and instead she was murdered by her former boyfriend. But one of the things that's notable about the vast majority of family-related homicides in New York City in 2010, the vast, vast majority of those, I think over 70 percent, had no interaction with law enforcement and no orders of protection. So the issue of domestic violence and legal services really goes hand and hand with that issue that we're trying so desperately to combat. But without stable general funding, we're never going to be able to have additional programs that can target things like that. So thank you very much.

JUDGE LIPPMAN: Thank you, Speaker Quinn. And just a couple of questions: What we get a lot in today's economy is this idea that times are tough and we just cannot afford to increase or even to keep civil legal services funding for the poor at present level. How do you answer that in city where you have kind of a -- a ground

birdseye view of what goes on?

SPEAKER QUINN: You know, whether it's the court, the city, the state, your house, there is no document that is a more clear statement of your priorities than your budget, what you spend your money on, what are your most scarce resources, says what you care about. And so the budget is never easy, but it's always a set of choices about priorities. And although I have not been able to keep the funding as high as I would have liked it, it's our largest funding initiative. And I think that speaks to us seeing this in the council as a priority. Because, look, you can't have everything you want out there program wise in a tough economy, but keeping people in their homes, keeping seniors with the benefits they deserve, getting people on to food stamps, getting people out of homes where they are being battered, those really aren't extras, those are foundational services without which people will lose their connection to the things they need, safety, food, their homes, maybe, you know, things relating to their jobs. Without that, it's very hard to even get to a place where you can contemplate the extras if you think about it.

So, in some way, you know, representation of people in court, I don't know exactly how it becomes this idea of an extra. But, really, who would, with all due respect, in their right mind walk into a court alone?

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You know, when you're at the table, you know, bringing a court case, it's an incredibly vulnerable, powerless position, and you really need someone there with you who knows how to work it.

So I think, you know, the answer is some things are core. And having something in the court's budget sends that message: This is core. That's part of the reason why we've worked so hard on base-lining things in the city's budget, because that will help change how we think about this.

JUDGE LIPPMAN: Now, I think we're exactly on the same -- on the same page on that, that these are the very essentials of life --

SPEAKER QUINN: Right.

JUDGE LIPPMAN: -- and this isn't some, "Gee --" some luxury that "Maybe we can do it this year, maybe we can't."

How do you view this whole dynamic? I know you -- you mentioned it in relation to the state and local funding, which, again, I think makes total sense, and that's what we're trying to do, create this kind of systemic, consistent, dependable level of funding at state level and then, as you indicated and you made such a priority in the city's -- priorities in spendings on civil legal services so you can target certain areas --

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SPEAKER QUINN: Right.

JUDGE LIPPMAN: -- what do you make of what's going on in Washington when you have the Legal Services Corporation which Elaine Barnett, who is the head of our task force, was the head of at one point, that they are fighting in Washington over something as essential as this? How does that play into this whole dynamic?

SPEAKER QUINN: It's very destabilizing. You know, and -- and, look, we are not a branch of government that can print money. There is only one branch of government that can print money. And that does not mean to say you do that irresponsibly or without great thought, but when there is this level of focus on cutting back, on the federal level, when there is no ability from the states and the cities to do anything but balance our budget -- and, remember, we in New York City, because of the fiscal crisis are held to the tightest budgeting standards in the country. We have to be balanced on generally acceptable accounting principles, we have to be balanced on every order. We have no room for error or margin. To have the one branch of government that has ability to on the highest level articulate priorities, the highest level to send a message and in the greatest way create funding that will be both stimulating to the economy and also stabilizing to people's lives, you know, it makes you very nervous if

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you're at another level of government.

And the thing that is shortsighted is, so let's say there's massive federal cuts to legal services, the people who need the services are not going to go away, they're not going to walk into some white shoe law firm and hire another lawyer and have their matters work out in court; they're simply going to end up in a worse situation with worse choices, which is only going to be a greater drain on the local governments --

JUDGE LIPPMAN: Exactly.

SPEAKER QUINN: -- which is not going to help support, you know, I think what some of the folks in the federal government want to get at.

(Continued on the following page.)

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JUDGE LIPPMAN: I think that's exactly right. One last question. Do you accept the premise that we have come to the conclusion, at least from the first years hearing and the report which I know your familiar with, that for every dollar invested at the local and state level, that it's actually a benefit from a fiscal perspective to local and state government and obviously society as a whole; do you accept that?

SPEAKER QUINN: Absolutely. I mean, it's hard to quantify. That's why that argument gets lost in the budget process, right, because you want to be able to say: We have to cut this amount of money, here's how I cut it. You can't put the point you just made always in the budget in that way but it's without a doubt true.

JUDGE LIPPMAN: It is a ripple effect.

SPEAKER QUINN: Absolutely. Homelessness is growing in New York City right now at levels that are much higher than in recent years.

If people lose their homes because they went in unrepresented, and let's not forget landlords by their right, and good for them, are, a vast majority of the time are represented.

The tenants that lose their homes, they are going to end up swelling the ranks of homeless in New York City which is only going to cause us to spend more money from the

Department of Homeless Services, or HRA, or whoever it is.

If people who qualify for food stamps or federal benefits don't get them because of paper work mistake or a misunderstanding, that is not only a worse situation for them first and foremost, that's federal money that it is their right to have that will stay in Washington and not be here.

Which has a further ripple effect, particularly as it relates to food stamps and benefits. Because people not having their money in their pocket means they are not spending that money at their local bodega or their local supermarket or their local clothes store, not creating some level of economic activity out there.

Studies have always shown that when low income folks get those benefits, they really are spending it because it's on things they need, not extras in their life. So it's without a doubt.

In truth think about it as it relates to Medicaid or medical insurance that you may not end up getting. If our Health and Hospitals Corporation doesn't get that money which they are owed, it's even a further drain on the system. It's performing as well as it can, but with little resources.

JUDGE LIPPMAN: Thank you, Speaker Quinn, for your testimony, and thank you for your leadership on this issue

on making a priority of the Civil Legal Services for the Court which we believe, and I know you do, is so important not only to the justice system and the legal profession, but to the well-being of our society, our city and our state. And thank you for taking a leading role in this issue.

SPEAKER QUINN: You're very welcome. And I want to thank you and everyone else who has been part of the Task Force. Also I want to thank our partners in this, the Legal Aid Society, Legal Services, all of the various community groups that are working on this. We're really just supporting their work as the local government. They're the ones doing it every day.

JUDGE LIPPMAN: They're the ones in the trenches, we salute them.

SPEAKER QUINN: Absolutely. Thank you, Judge.

JUDGE LIPPMAN: Thank you, I appreciate it.

Next is Geeta Singh, Principal of the Cornerstone and Research.

While you're getting set up, I will recognize Sam Seymour who is here. I see Sam in front of us who is the President of the City Bar Association. And so, please, thank you for joining us, Sam.

Are you ready?

MS. SINGH: Yes.

JUDGE LIPPMAN: Okay, you're on.

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MS. SINGH: Chief Justice, and distinguished members of the panel.

JUDGE LIPPMAN: Speak into the mike.

MS. SINGH: Chief Justice, and distinguished members of the panel. Thank you for giving us this opportunity to talk about our research and analysis.

I'm Geeta Singh, I'm a principal of Cornerstone Research. And I'm here with my colleague Atay Kiailaslan. And as a Cornerstone Research employee with a financial education. This experience work has given us the ability to address the issue of cost savings that are achieved by preventing eviction from providing legal services in that context.

So I will talk about the analysis and research we have done on this topic. I sort of see three places where cost savings can be achieved because of legal services provided to prevent eviction.

JUDGE LIPPMAN: So you're going to do sort of the same kind of analysis that Mr. Baliban did for domestic violence.

MS. SINGH: Right, it's similar in spirit and details.

JUDGE LIPPMAN: So we can take this off his ticket.

MS. SINGH: Right.

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JUDGE LIPPMAN: Go ahead.

MS. SINGH: All right. So the first aspect of the cost savings that we have considered is cost savings that come out of shelter costs that's prevented from preventing evictions.

So when families or individuals are evicted, they are likely to go to a shelter, either directly after eviction or after staying first with friends and family for some time.

If the eviction is prevented, those shelter costs are prevented, and we talk about the shelter costs in details.

Two other important costs that we need to consider is a fact of homelessness on education outcomes for children, and how in the long run it effects their earning capacity.

And the next point on that issue would be the medical costs that are avoided because you are preventing homelessness. And the research has showed that homelessness has a big impact on health of individuals and family members.

So let's start with a shelter cost, an estimation of cost. There is a basic methodology that we have used. We consider the number of cases or individuals who were helped in the past year 2010 through provision of legal

services.

Not all of these individual's families end up in a shelter. Some would have gone to a friend or found other ways of getting shelter, but not have gone to an emergency shelter. So we consider that proportion.

For other people who would have gone to a shelter, we see what would have been the cost of using a shelter. Now there are two components to the cost. There is a component where we consider how many nights they would have stayed in the shelter. And we have some estimate for that. And it varies for individuals, it varies for families, and it varies for different parts of the state.

The other component is the per night payment or expense that's incurred by the shelter. And again that varies whether the shelter housing is provided to individuals or provided to families. It also varies across different parts of the state.

So combining those elements of sort of the average cost of providing shelter with the number of people who avoided going to a shelter because legal services were provided to them, we're able to get an estimate of cost savings achieved at this time.

I also note that this analysis is preliminary in that we are still waiting to get data from certain parts of New York State, and a complete analysis will be incorporated

into the final report that we submit.

So data for this analysis is coming from various sources. New York City has a more organized structure of tracking this data, and that may be the reason why past studies are focused on New York City.

What the big effort that we did this time around as different from what was done last year is to actually reach out to all the counties outside New York City.

And this meant sort of calling up individuals in various counties and getting them to provide us information on evictions, on shelter use, on the cost of shelter use, and then using that to come up with numbers for cost savings at the very fundamental level for the counties outside of New York City.

Where data is incomplete we have used certain assumptions that are statistically valid in terms of filling in the holes, and are consistent with the best practices of doing an appropriate statistical analysis.

In terms of results, we will show data in a second, but I want to highlight at a high level the points. Data has shown that there is a 14 percent increase in clients that are being kept over last year, and this includes both families and individuals.

The point that I mentioned about not all the people who are helped, not all the people who are evicted,

taking a step back, would end up in a shelter. Data showed that about 43 percent of the evictees ended up using a shelter in New York City. The number is different for suburban areas and Upstate New York, 13.6 and 32 percent respectively.

The average shelter cost is highest in New York City. It's $25,000. This again reflects two components. The per night rate is high in New York City, as well as average length of stay is much higher in New York City as well as outside New York City.

For suburban areas the number is about $8,000 and it reflects a length of stay --

JUDGE LIPPMAN: What do each of those figures represent, $25,000 for what?

MS. SINGH: It's an average cost of stay in the shelters by household, whether the household could be an individual or it could be for a family.

JUDGE LIPPMAN: For how long?

MS. SINGH: It varies. For New York City, numbers have shown that the stay is as high as 250 days a year.

JUDGE LIPPMAN: So the average cost for a stay for a New York City family is $25,000?

MS. SINGH: Yes. And it reflects the per diem cost, the per night cost, and the average length of stay.

For suburban areas the length of stay turns out is

quite similar to New York City. And the suburban areas includes Westchester, Nassau, Suffolk.

JUDGE LIPPMAN: Why does that cost less? Is the stay shorter?

MS. SINGH: Slightly shorter. The per night costs are less, and that ends up making the different figures.

And then in Upstate New York per night costs are also lower, as well as the stays are very much shorter.

And one of the things that we discovered as part of this research and talking to people and collecting this data, that they are constrained in terms of space.

So it's almost that, yes, there would be families that could stay longer, but then they move them on to permanent housing or other forms because they are limited in their ability to keep people in the shelters.

So this analysis is using a methodology that is more refined than the methodology that was used last year, and it uses more detailed data.

And the calculations show that there is a saving of about $126 million for New York City, and $10 million from suburban and upstate areas. So that a total of $136 million savings achieved.

JUDGE LIPPMAN: A total savings by what? If they had had legal representation, and they had not?

MS. SINGH: Yes, exactly. So if the legal

representation had not been provided, individuals who had been evicted would have some proportion they would have ended up in a shelter and incurred these costs.

JUDGE PFAU: This is the avoidance if they had not gone to the shelter; is that right?

MS. SINGH: Yes, yes. So this is a table that sort of lays out the details of the calculation to arrive at the $136 million number. You can see the number of cases helped in different parts of the state is about 10,000, and New York City 3,000, and suburban areas is 5,000 in upstate, New York.

The cases translate into a number of people estimate, that's NOB. Of these people, a certain percentage would have gone to the shelter, and that's presented and you'll see.

So if you consider that percentage, the number of people for whom you avoided homelessness is presented in number D, in row D. And then there is the cost that we talked about. So these calculations end up in a saving of $136 million.

MR. DOYLE: So this figure is the avoidable cost, that they had been provided counsel.

MS. SINGH: The cost was avoided because these people were provided legal care.

MR. DOYLE: I'm talking about the bottom line

under F, the estimated cost savings in row F. The estimated savings for taxpayers that takes into account the people provided counsel.

MS. SINGH: Yes.

JUDGE LIPPMAN: You are saying these savings were achieved?

MS. SINGH: Yes.

JUDGE LIPPMAN: Because?

MS. SINGH: Because Legal Aid was provided.

JUDGE LIPPMAN: Right. You're saying representation because they did not have to go into the shelter?

MS. SINGH: Exactly.

JUDGE LIPPMAN: This is the cost. I think it bespeaks to the really critical nature of the roof over one's head, how important that is in our society, and the amount of dollars that it costs to help people that can be a small fraction that can be put into Civil Legal Services.

MS. SINGH: Absolutely. And what we did here, the table represents aggregate numbers for different reasons, but the analysis was done at county level. And total savings were aggregated because we see a lot of differences in patterns, expenses across counties, and this we felt was important to incorporate that in our analysis.

JUDGE LIPPMAN: It's particularly impressive the

dollars that you're talking about.

MS. SINGH: Right. Just to give a context the savings that were reported last year were a little over a hundred million, so this is a 20 percent increase in the dollar number, besides the 14 percent increase of the number of cases that Legal Services helped out to prevent eviction.

So next I want to sort of talk a little bit about other impacts of homelessness that are harder to quantify, but my sense is the impact is much -- is already high in terms of all the values. And the two that we will emphasize impact on education outcomes, and impact on medical, on health outcomes.

So the housing instability and homelessness affects the development outcome for children. There is a lot of literature that talks about how education performances are affected both in terms of graduation rates, as well as the performance in class.

The fact that you get evicted means you may be moving from your home to a shelter, then to another place of housing, and then it results in frequent changes of schools, and that itself has an impact on education outcomes.

Besides the short term impact of what is happening in the classroom, that leads to a long term impact on both your ability to earn in the future, and the flip side of that is that you are more than likely to be using government

programs in the future. So that's a real cost that comes out in the long run from eviction that impacts housing.

JUDGE LIPPMAN: Right, sure.

MS. SINGH: And there has been research also to show that, there is plenty of research to show use of education proficiency results in reduced income for the households.

On the health front there is literature that's showing how there is an impact on the health outcomes of individuals that are homeless.

A greater proportion of them end up in hospitals, they are in hospitals for longer periods of time, and they come back with greater frequency.

So on all those fronts, there is an impact on homelessness in terms of medical costs that society has to bear.

Finally I just want to sort of --

So the calculation of savings that we have presented in this reflect in the savings that are coming from shelter use because that's a most concrete savings that can be captured.

JUDGE LIPPMAN: But there is lots of other tentacles?

MS. SINGH: Lots of other things, but that itself is an under estimate because of certain reasons in that in

the remote part of the state there are no emergency shelters. They use a lot of motels and hotels. This data doesn't incorporate that. And to that extent becomes an under estimate of cost savings.

And then the additional under estimate of total savings comes from the fact that there is education and medical impacts that cannot be captured.

So in conclusion this is important legal services that are provided to prevent eviction, providing valuable services, and providing savings in many ways that some of which we can capture and some we can't.

JUDGE LIPPMAN: I think it's interesting that when you talk to like Speaker Quinn, or we talk about some of the -- we know there are these hundreds of millions of dollars of savings, but it's so helpful to see it in a concrete way how you get to that number, and really recognize even the kind of numbers we're talking about are probably just a small kernel of the ripple effect of having legal services for again the essentials of life.

MS. SINGH: Absolutely. I think in talking to the people during the course of sort of gathering this data, we're privileged to talk to people directly in the field who are running the shelters, who talked about the challenges of the homeless people, challenges of providing shelters for the homeless people, and last but not least tracking data

that's essential to evaluate Legal Services that they felt that it's a lot of effort and they are very appreciative to the Legal Task Force in this particular hearing and this data will come to a larger audience.

And I wanted to thank them for their cooperation, and for this opportunity and the privilege of talking to you.

JUDGE LIPPMAN: No, thank you. I think that it's incumbent upon us and the Task Force and the hearings to be able to quantify in black and white, you know, what the consequences are not having civil legal representation.

And I want to thank so much Jeffrey Baliban from the Managing Director of Navigant Consulting and Geeta Singh as Principal for Cornerstone Research for doing this pro bono, which in legal terms means gratis, non legal terms means for free, for doing this for the public good, and to I think demonstrate publically the physical consequences in just a small, two designs in two particular areas that I think are a piece of really that bigger savings that we talked about when we estimated probably for every dollar in New York State spent on Civil Legal Services that $5 are returned to the state. I think even that may be a conservative view.

So I thank you both for your pro bono assistance and, you know, it really is very helpful. So thank you, I

appreciate it.

MS. SINGH: Thank you.

JUDGE LIPPMAN: The next panel that we're going to have is the business and community leaders panel. And we have Deborah Wright, the Chairman and CEO of Carver Federal Savings Bank; Craig Reicher, the Vice Chairman of CB Richard Ellis; Donna Cirolia, the Vice President of Coca-Cola refreshments; and Samuel W. Seymour, President of the New York City Bar Association. Okay. And an impressive group it is.

And we're going to start out with Deborah Wright, the chairman and CEO of Carver Federal Savings Bank. Ms. Wright, thanks for coming. We're going to take the red light off, you didn't even start yet. You couldn't be over your time yet. Okay, let's go. Go ahead.

MS. WRIGHT: Good morning. And thank you very much for the opportunity to testify today on the need for expanded access to legal assistance in civil cases. I commend the Chief Judge, and the Panel for the foresight and leadership on this issue.

JUDGE LIPPMAN: Thank you.

MS. WRIGHT: Carver is the holding company for a federally chartered bank which is headquartered in Harlem. It's the nations largest African American and Caribbean-American operated bank something in the country

with approximately $700 million in assets and 140 employees. Carver operates nine branches in New York City in the three boroughs. All of our branches are located in inner city communities representing many of the communities Steve and others focus on.

Including my current role as CEO of Carver I have worked to strengthen inner city neighborhoods for more than 20 years.

During law school, I was a summer intern in the Dallas Legal Services where I learned firsthand the vital role of legal representation for the poor.

In my roles as the Commissioner of the Department of Housing Preservation and Development and the head of the upper Manhattan empowerment zone, I also saw the urgent need for civil legal assistance in low income communities.

New York City's economic vitality requires a well functioning judicial system that works for everyone. Failure to insure access to representation for all New Yorkers undermines efforts to make this a city of economic opportunity and stability. Increasing access to counsel in civil matters will instill greater confidence in the fairness of our justice system and in character of our city.

This in turn will contribute to the stability needed to attract new business investment and grow our economy. The communities in which Carver's branches are

located desperately need more jobs for its residents.

Our city and most of its business sectors are rebounding from the global recession, but recovery has yet to reach most low income New Yorkers. And we see this dramatically in our branches. Statistics released earlier this year show New York State's poverty rate climbed to 20.1 percent in 2010, the largest increase in nearly two decades.

Recent studies by the FDIC and the City of New York also document that as many as 60 percent of the residents of the communities that Carver serves are unbanked or underbanked. That means individuals do not have a bank account, or if they do they are of limited usage.

Not surprisingly the recession and increasing conditions of poverty have resulted in an increase in the number of New Yorkers seeking free and discounted civil legal assistance, obtaining unemployment and disability benefits, fleeing domestic violence, and preventing evictions, foreclosures, and homelessness.

For example, I understand the number of struggling families and individuals who seek civil help at the Legal Aid Society has increased dramatically during the economic down turn, and the Society, which is the oldest and largest in the country now has to turn away eight lower income New Yorkers for every one client that it can help.

Providing legal services to lower income New

Yorkers is not just the right thing to do, it's also a good investment. As we seek solutions for the difficult fiscal problems faced by both our city and state, we should all keep in mind that these legal services have potential to save government millions of dollars a year in averting homelessness and domestic violence, and obtain federal benefits in place of city and state public assistance payments.

A fair and just legal system is essential to sustain the confidence of businesses in our city and our state, and to encourage investment growth and stability. This is why insuring adequate legal health for lower income New Yorkers in dealing with our civil legal system is so vital to the economic future and well-being of our entire city.

I want to thank you for allowing me to appear today and I'm happy of course to be here.

JUDGE LIPPMAN: One question for you: How does it hurt your bank as a business person, how does it hurt you when people fall through the safety net, because if they don't have legal representation, they wind up losing their homes, going into homelessness, social services; how does it hurt you?

Why is a business person, you, interested in this as a banker?

MS. WRIGHT: Well, when your bank is only invested in poor and poor communities, Harlem and Bed Stuy and Crown Heights are not what they used to be, they are much more diverse economically, and I think that's a good thing.

But we have seen a dramatic impact on people who were in lower income marginal jobs, so to speak, where they could piece together lives for their families. Maybe they didn't have large savings, but that didn't matter to Carver because that's our core constituency.

But we have seen a dramatic fall off in that population, and believe it or not in the middle income sector of our customer base, where people are losing their homes to foreclosure, where even the churches who are part of the stronger fabric of our community have had a very difficult time, because contributions are down well over 30 percent even in that sector.

And so our company has been severely impacted. In fact, we had to raise capital to continue to stay in business and keep fighting the good fight in our communities. We're not going to change our mission.

But to your point, your Honor, the impact financially on our customers and the larger community cannot help but impact our business. And obviously for those like us who want to actually expand and invest in more branches and other communities that we're not serving, it is very

difficult to do so when there are not the deposits and other assistance to make that sustainable.

JUDGE LIPPMAN: So when poor people, the working poor, don't have legal representation, it actually hurts your bottom line financially, and that of the communities you serve.

MS. WRIGHT: Absolutely. We have lost money, significant money over the last two years. But I would say one bright light of something created we did during this period in digging down to understand what was happening to our community, we were actually encouraged and we moved forward on creating a check cashing product line to try to say to those families don't rush out of the banking system.

And, in fact, many of you who are not, 60 percent as I testified, we'd like to encourage you to come into the system and we'll meet you where you are today, and hope that by getting familiar with banking and when you come back we can encourage you and teach you how to save. So it's a very difficult time, and we're all doing as best we can.

JUDGE LIPPMAN: So you don't need money when people are on welfare, and in shelters, or anything else. It's not good for you.

MS. WRIGHT: That's not how we make our money. We make our money on people trusting us with their savings and investing those in housing. We want people to be housed

well, either through homeownership, or landlords. And no surprise to everyone here, homeowners are struggling, and so are landlords particularly in our communities.

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JUDGE LIPPMAN: Craig Reicher, vice chairman, CB Richard Ellis.

MR. REICHER: How are you today?

JUDGE LIPPMAN: Thank you for coming.

MR. REICHER: My name is Chris Reicher, I'm a vice chairman of CB Richard Ellis; we're a public Fortune 500 S&P 500 company, about 31,000 employees around the world. I appreciate coming here today. The last time I was here was almost 25 years ago when I was sworn into the bar, so it's a good second showing for me.

And we, too, feel -- strongly believe that legal access is important for all New Yorkers no matter how much money they have or don't have. Unlike a lot --

JUDGE LIPPMAN: How is it important to your business?

MR. REICHER: Well, I think that the answer for us, because everyone else today is really focused on cost savings and how much -- for every dollar you spend how much are you saving. I think we've looked at it from a different point of view. Obviously we're a little bit more distant in the real estate business than some of the others who have presented some other subjects. But for us a key component to the city and the city economy is job growth and the linkage between job growth and real estate. I can share some of the statistics with you; it just tells you

where we were kind of prerecession.

You know, in December 2006 unemployment was 4.3 percent and commercial availability in Manhattan was 8.5 percent. You speed ahead to January 2010, unemployment goes up to 10.4 percent and you see real estate availability spike to 14.3 percent. We're a little bit better today, 8.7 percent unemployment, and we're just shy of 11 percent of availability.

So for us this linkage between jobs and real estate availability really ties perfectly together. I mean, the lines are moving in sync with one another.

JUDGE LIPPMAN: So when people fall off a cliff, you know, out of the safety net, you feel it.

MR. REICHER: We definitely feel it. And I think the city feels it, too. Because if you look at city tax revenues, real estate is just shy of 49 percent of all city tax revenues.

JUDGE LIPPMAN: Right.

MR. REICHER: So for us, as you see that availability rate going up and down, those are real revenues coming into -- coming into the city. And these -- the savings numbers I think are important, as you heard on the homelessness and violence, but the numbers for real estate related taxes to the city are much different, over $19 billion of real-estate-related tax dollars that are

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coming into the city. We're on the commercial side of things here in the city, but the largest component of that is close to 17 billion are for real property taxes. A lot of that are from commercial buildings, but obviously a lot of that comes from residences as well. And as you're having foreclosures and bank problems you're going to see those drop. That can only hurt the overall city economy we think dramatically.

MR. DOYLE: Mr. Reicher, in your written testimony you said something that we've heard a couple of times. I just want to ask: You said that providing legal services for low income New Yorkers would prove to be a prudent investment as it would stabilize communities and help promote an environment of job creation.

MR. REICHER: Yes. And we strongly believe that.

MR. DOYLE: Why?

MR. REICHER: The linkage -- the linkage that you can show between unemployment rates and commercial availability rates is so clear. I think it becomes tougher to show -- to show the linkage that we feel exists between providing legal services to people on these civil cases, because we know that that has to promote stronger communities, better environments for businesses. When you have a better environment for businesses, they're going to grow, they're going to look for people to hire, it's going

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to be much easier to hire people who are not in the midst of foreclosure cases or in shelters. It seems like it all ties together well. You know, maybe as a study for next year someone could get to that secondary piece of it that we know is there but within our statistical category we just don't -- we don't capture right now.

So that's really the crux. We're focused more on the revenue side.

JUDGE LIPPMAN: No, terrific. I think it brings home graphically why we had in last year's hearing where we think we demonstrated in our report and this year's hearing this kind of counterintuitive where people say, "Oh, this is all about, you know, giving a hand to the poor people and that's a good thing and a nice thing and the right thing, but, gee, we can't afford to do that." And I guess the answer is from this kind of thing, we can't afford not to do that.

MR. REICHER: That's probably correct.

JUDGE LIPPMAN: Okay. Thanks so much.

Donna Cirolia, vice president of Coca-Cola. Thank you for coming.

MS. CIROLIA: Thank you. Thank you.

Good morning, Chief Judge Lippman, distinguished members of the panel, ladies and gentlemen. Thank you for the opportunity to testify before you today. We

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applaud your work and the task force work on working to protect and expand the access to civil legal services in New York.

My name is Donna Cirolia and I am regional vice president for public affairs and communications for Coca-Cola here in the northeast.

In New York State Coca-Cola employs over 3200 men and women, many of which are hourly employees. We have two production facilities and ten sales and distribution centers located throughout New York State. Coca-Cola is made up of people who live in our neighborhoods, send their kids to our schools and want to see their communities thrive. They represent a diverse cross-section of our communities who you see every day, driving our red trucks, stocking and merchandising store shelves and working our production facilities.

Coca-Cola defines sustainability as creating meaningful benefits for society as we manage and grow our business. We are working to embed sustainability into every aspect of our business. We are committed to developing the capabilities of our employees and ensuring that our system, associates, our stakeholders, customers and consumers are engaged in a stable business environment.

Part of supporting the sustainable community and

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a sustainable business environment is understanding the needs of those who are most vulnerable among us. As we've come to learn, when the least fortunate among us are unable to gain access to the judicial system because they cannot obtain legal help with their civil legal problems, the impact is broad in our community and in the stability of that community. When a family struggling to get by is not aware of their civil legal rights or unable to exercise those rights, it can tear into their economic future. Particularly with respect to children, lack of access to essential legal assistance in such matters as foreclosures and child support can lead to significant declines in a child's economic well-being, health and future academic success. Indeed, we are especially concerned that the lack of access to civil legal help can pose a clear threat to health and safety for women and children who cannot escape from domestic violence without legal representation.

We recognize these difficult economic times, but we all depend on sustainable communities, from business to individuals who are less fortunate. We hope by testifying today we've added to the base of information needed to make the decision on the civil legal services provided in New York State.

Thank you.

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JUDGE PFAU: So what you're really saying is interesting, is the business community relies on stable communities to have a foundation to build a business, to grow a business.

MS. CIROLIA: To grow our business and have a stable workforce environment. Yes. And for future generations to come. Absolutely.

JUDGE LIPPMAN: Thank you. We appreciate it.

Sam Seymour. Delighted to have you here.

MR. SEYMOUR: Thank you, Chief Judge. And thank you to all of you for having me here today. I'm president of the Bar Association, so I'm representing the legal profession here. And I must say it's a privilege to be with the business community, and your task force did a great job of representing our business community by having a finance, real estate and Coca-Cola. I think that makes a very nice --

JUDGE LIPPMAN: All good things.

MR. SEYMOUR: All good things.

I'm president of the New York City Bar Association, one of many Bar Associations in New York State, but one of the largest, with 23,000 members. And we do what Bar Associations do: We study the law, we meet, we have committees. But we also have an affiliate called The City Bar Justice Center which does pro~bono

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work and especially reaches out to low income persons who need representation in civil cases. We do not do criminal work, we do civil work. And that civil work really translates into the areas of personal bankruptcy, landlord/tenant eviction cases, benefits cases of all kinds, including particularly for veterans who are seeking federal benefits from Veterans Administration. We're doing foreclosure work for people who are finding themselves facing foreclosure, and also a great deal of domestic violence work and immigration work.

All of that work together -- we served 20,000 clients last year -- gives us as the Bar Association a sort of a birdseye view of -- or perhaps more accurately a worm's eye view of the work in providing civil legal services. We're seeing a huge uptake in the demand for our services, we're seeing more and more cases filed, more and more of those involve unrepresented persons, and we're seeing that, despite all the efforts of the private bar to provide a funding for this organization and provide volunteers, more importantly, to work in those cases, there's not enough.

JUDGE LIPPMAN: How does it fit together? The funding for the civil legal services provided and the pro~bono efforts of the great organization like the city bar, how do those things -- what's the relevance to each

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other? Is it a -- is it part of a puzzle? How does it work?

MR. SEYMOUR: They work together very neatly. And there are organizations that provide staff attorneys to do civil legal work. There are other organizations that are sort of clearing houses for volunteers that work together.

JUDGE LIPPMAN: You're doing -- your program, you're talking about what you do directly, right?

MR. SEYMOUR: We do both. We do both. We have a staff. Some of our employees of the justice center will go out and represent people, they bring great expertise. Some of these areas are very technical, very complex.

JUDGE LIPPMAN: And some work for the providers?

MR. SEYMOUR: And some work for the providers and some work with the providers. We partner up. It's a seamless -- for the most part, a very seamless enterprise. We train lawyers. We have a lot of young lawyers, people right out of law school who want to do something to help; we train them, show them how to do these cases, we take them out there.

But, as well as that group works together and seamlessly as all that fits together, it doesn't begin to cover the need. We turn people away every single day despite the thousands of people we work with and for.

So we're here to support the efforts of this

task force and of Your Honor and others in the state who are pointing out the great need for funding for civil legal services for the poor.

A great deal of testimony today has been about the economic, the sort of financial arguments, and I'm just a barefoot Wall Street lawyer. I don't have a Ph.D. in economics like the other witness, so I can't say a whole lot about that. But I do want to say one thing about the point Your Honor made at the very outset, which is it's the right thing to do. And I don't think that point should be left behind.

Our legal system is -- is beautiful because it has the capacity to change. It's a funny paradox that our legal system is based on precedent, which is doing things the way they've always been done, and change and trying to find new ways to do things. And it wasn't that long ago in our country that cases involving criminal exposure --

JUDGE LIPPMAN: Right.

MR. SEYMOUR: -- you didn't have a right to a lawyer. And the courts found a way to say these are important rights. These are important rights where you really should have a lawyer. An appearance in court in a case of a certain type without a lawyer is really not a meaningful access to the courts.

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That was the courts. The legislative branch also has the power to change. You saw New York State, the same sex marriage last year take a wonderful leadership role, they chose to see that something was going to happen anyway and it was time to do it and it was the right time and right thing to do.

Civil legal services is the same thing; these are rights, the house you live in, your entitlement to benefits, your entitlement to programs that you simply can't demonstrate your right to it because you don't have a lawyer to navigate you through that.

We're not serving justice by turning people away. Yes, they fall back into the safety net and it costs our economy more, but it's also the right thing to do to have our legal system say -- we're not determining the person should get the rights, we're determining we want them to have a fair hearing, to find out.

Gideon wasn't about making sure every defendant was acquitted; it was about making sure you had a lawyer to find out whether justice can be done. We're in the same way here, and I strongly -- on behalf of the New York City Bar, I strongly applaud Chief Judge, the court system and this task force for pushing this issue forward. It will happen and we hope it happens this year.

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JUDGE LIPPMAN: Thank you, Sam. Thank you for the terrific work that the city bar does. And I think you demonstrate in the point that you just made really that the -- the legal profession is a noble profession. And I think it's our very reason for being is to promote equal justice in our city, in our state, in our country. And for us this is everything. This is -- this is what we should be doing. And to see the legal profession step up to the plate on this issue and then to recognize the broader community, the business community, our basic institutions all not only -- having two sides of the coin, that were intent upon showing that this is a good investment from a bottom-line perspective, and I think all of us, not just the legal profession, but certainly our businesses, our institutions also recognize that it's all of our reason for being and not just the legal profession to help those who can't help themselves.

I think I used the -- I don't know who first said it, I think it was maybe Churchill or somebody, that every civilized society is judged by how it treats its most vulnerable citizens. And I think it's up to all of the institutions within that society to -- to recognize that. And we feel in the legal profession, I know many of you are lawyers, that it's our special obligation, but I think it's everybody's obligation.

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So this is a great panel and we appreciate each of you coming by to talk to us. Thanks so much.

MR. SEYMOUR: Thank you.

MS. CIROLIA: Thank you.

JUDGE LIPPMAN: We're now going to have a clients' panel, which is people who have really been helped by civil legal services. And I'd ask Eneyda Maldonado, a client of the Legal Aid Society, accompanied by Jack Newton; Yves Gabhardt, a client of Legal Services NYC, accompanied by Mallory Curran; Virginia Norman-Acevedo, a client of the Legal Aid Society, accompanied by Judith Goldner; Tracy Smith, a client of the Urban Justice Center Community Development Project, accompanied by Sadia Rahman; and Natalie Jones, a client of the Legal Services NYC Domestic Violence Unit, accompanied by Lenina Trinidad.

I was just wondering how all of you were going to fit at this table. If we need more chairs we can do that, too.

(Brief pause.)

JUDGE LIPPMAN: We have plenty of chairs.

MISS MALDONADO(Through Spanish Interpreter): Good morning. My name is Eneyda Maldonado.

JUDGE LIPPMAN: Hold on. This is Eneyda Maldonado, right? The Legal Aid Society. Accompanied by Jack Newton.

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Okay, go ahead. Now you're up.

MISS MALDONADO(Through Spanish Interpreter): I was born in Mexico. I first encounter the society of legal assistance through the center, the family center -- Justice Family Center in the Bronx, a center that gives counseling and services -- provides counseling services, legal services for victims of domestic violence.

That meeting has changed my life and the lives of my children in ways that I could never have imagined. With the assistance of the Legal Aid Society I have been able to free myself from my husband's physical abuse and economic control. Now I am able to decide how I spend the money I earn on my family and economic control.

Since that first meeting I have received assistance from the Legal Aid Society in almost every aspect of my life: Immigration, work authorization, divorce, custody, benefits and medical debt.

I came to this country in 1990 at the insistence of my husband who was living here at the time. From the very beginning of our marriage my husband beat me, forbade me to speak to others, insulted me and told me I was worthless because I was a woman. He hit, punched, kicked and slapped me. When he was angry he would throw chairs or shoes at me or destroy things in the house. Once he even threw a metal pipe at me, hitting me in the

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face.

I was terrified of my husband and believed that he would indeed kill me some day. I was also afraid to call the police because my husband frequently threatened to have me deported and even told me the police would deport me. I was terribly afraid of being separated from my American-born daughter, and I had no idea how I could... I had no idea how I would support my children if I were ever forced to return to Mexico. I worked ten to twelve hours per day as a nanny and a housekeeper while he stayed home and monitored my comings and goings.

My husband largely refused to work, instead relying on me to provide not only for the entire family, including at times his brothers and other relatives outside of our immediate family, but also for his own substantial and often selfish needs.

Finally after nearly twenty years of abuse, something in me snapped. After a particularly severe beating by my husband in the summer of 2009 I called 911. A few days later my husband was arrested while I was at work. My husband was charged with assault, menacing and harassment, although I was very afraid and lost many nights sleep, I kept my resolve and cooperated fully with the police and District Attorney in the prosecution of my husband. My husband eventually pled guilty to harassment

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and I received a final order of protection against him that is valid until May 2012.

While all of this was going on, my husband sued me for visitation with the children. I did not know what to do. I had no money to pay for a lawyer. The District Attorney assigned to my case suggested I go to the Bronx Family Justice Center to see if I might be able to get civil legal advice regarding custody. This is how I first came to the Legal Aid Society.

I went to the Bronx Family Justice Center in May 2010. The attorney who conducted the screening that day happened to be a lawyer from the Legal Aid Society, Mr. Jack Newton. I told Jack that I was looking for help in keeping custody of my children. During our interview I told Jack about the years of abuse I had suffered and about my husband's arrest the prior year.

To my great astonishment Jack advised me that both my older daughter and I might be eligible for something called a U-visa. I had never heard of such a thing. I was astonished to hear the news. He also asked me if I wanted a divorce from my husband and he explained the process to me.

For the next few months Jack and his colleague, Mrs. Michael -- Mr. Michael....

MR. NEWTON: "Miss Michal Katcher."

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MISS MALDONADO(Through Spanish Interpreter): Miss Michal Katcher prepared the new visa applications on my daughter's and my behalf, along with applications for employment authorizations. Both applications required many hours of interviews and lots of paperwork. In May 2011 we were notified that both our visas and work permits were granted.

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MS. MALDONADO: (Through Spanish Interpreter)

Receiving a new visa and work authorization has also had an immeasurable impact on my life.

Now that I have my work authorization, the family for whom I am working increased my weekly pay by 60 percent and gave me a two week paid vacation. I can't remember the last time I had a paid vacation, which is a chance to spend time with my children. Since receiving my work authorization, I feel as if my employer has treated me with more respect and dignity.

Recently my youngest daughter became extremely ill requiring hospitalization for several days. Before having a work authorization, I think that I would have been fired for taking time off and staying in the hospital with my daughter.

I believe that my U-Visa status and newfound respect for my employer gave me the strength and courage to tell my employer that I needed some time off instead of merely asking and expecting that I would be fired.

Although I am pleased that I am being treated better by my employer, I am looking for another job that challenges me in different ways. That is the wonderful thing about obtaining U-Visa status. The opportunity to improve my life and my daughter's life.

I feel safe and secure in my home now. I know

longer fear being forced to return to Mexico where I see no future for my children, and where I would receive no protection from my violent husband.

The Legal Aid Society is also going to help me get a divorce if from my husband. Once again I will never be able to afford to hire an attorney to file the required papers.

I felt trapped in a miserable marriage for over 20 years, and getting a divorce would be tremendously liberating for me, yet another step in my journey to independence. I can't wait to sever all legal ties from my husband.

Legal Aid has also provided me with advice relating to the custody of my children. My children are my priority, and the advice I have received has been invaluable. Even after applying for Medicaid, Legal Aid continues to help me. While my daughter received her Medicaid card promptly, mine has not yet arrived, and my medical bills are piling up.

I told Jack and Michael about this issue, and they connected me with the Legal Aid's Health Unit. Now Legal Aid is assisting me to make sure that I do not oh anything dating back to the time I applied for Medicaid.

I was very worried about the mountain of medical bills until I spoke with my attorneys in the health law

unit.

I never in my wildest dreams imagined that all of this would come true. I really appreciate all the legal representation and advice that Legal Aid has been able to provide me regarding immigration, work authorization, divorce, custody, benefits, and medical debts.

The services Legal Aid provides to victims of domestic violence like me is simply invaluable. With my husband out of my life and having U-Visa status I now view the world a little differently.

I am able to decide my own future, both economically and emotionally. Since my first meeting with Legal Aid around one and-a-half years ago, I walk a little taller, and I dream a little bigger than I ever did before.

JUDGE LIPPMAN: Thank you. I think it is a vivid demonstration that having legal representation, in this case the Legal Aid Society, can literally transform someone's life. We see this happen. So thank you so much for coming.

MS. MALDONADO: Gracias.

JUDGE LIPPMAN: Yves Gebhardt, client of Legal Services NYC, accompanied by Mallory Curran.

MR. GEBHARDT: Good morning, your Honor. Good morning distinguished panel members. Ladies and gentlemen, my name is Yves Gebhardt. Thank you for giving me the opportunity to speak with you today.

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I am a 59 year old man who moved to New York in 1980 and have called the city my home ever since. In 2002, I was diagnosed with stage four cancer and HIV. I was given 20 percent chance of surviving the cancer.

I had several biopsies, surgery, chemotherapy. Also I have been in remission from cancer since 2003. I experienced an avalanche of other medical conditions related to HIV and its treatment.

Prior to my illness, I was the manager of a Manhattan restaurant where I had worked for over 20 years. No longer able to work, I focused for several years on regaining my health, learning about the community supports available to me, and becoming an advocate for both myself and others with disabilities.

Currently I am a volunteer community liaison with the Manhattan HIV Care Network. Through my own experiences and my volunteer work, I understand firsthand the crucial importance of Legal Services to low income people.

People living with HIV are people like everyone else. They have the same trials and tribulations of life as others. Most people with HIV are low income. And so like other low income people, they have legal problems related to issues like housing, access to benefits, immigration, domestic violence, consumer problems, just to mention a few.

However, having HIV adds another layer of

complexity. Due to illness, severe side affects from a highly active antiretroviral medication regiments and other challenges, people with HIV often lack the financial resources, strength and physical vitality to fight problems with the focus and determination needed to overcome barriers.

I have been a client of Legal Services on several occasions. I cannot overstate the importance of having a lawyer for both solving my legal problem, and also maintaining my health. For people with HIV, having a low viral load and a high CD4 count is an important indicator of health.

When I and others in my community experience the stress of an unresolved legal problem, our viral load increases precipitously and our CD4 count plummets. Access to legal services is literally of life and death importance to us.

This summer, my neighbors and I received a shocking and unwelcome visit from the emergency placement unit of a city agency. They told us that because the owner of our building was going into bankruptcy, the building would be transferred.

They said that we should move within two weeks because the building was at risk of being totally shut down and locked up. Moving with two weeks notice, ladies and

gentlemen, is awful for everyone. For myself and my neighbors, all of whom have significant disabilities, it was horrifying.

The first thing I did upon receiving this news was to contact Manhattan Legal Services, a program of Legal Services in New York City. They responded immediately, as I recall, within 15 minutes.

Together with their colleagues from South Brooklyn Legal Services, and other Legal Services from the New York City program, the attorneys at Manhattan Legal Services brought our plight to the attention of anyone and everyone who could help save our building, including the Mayor's office, Human Resource Administration, also known as HRA, Housing Preservation and Development, also known as HPD, Housing and Urban Development, also known as HUD, the building managers, the previous contract holders, and the bankruptcy trustees.

In less than two weeks, and without going to court, the problem was resolved. A new contract was signed for the provision of social services, and all tenants were able to stay in the building, catastrophe was averted.

In my experience that's what Legal Services do. They provide timely, effective problem solving, helping low income people to do things like avoid evictions, maintain health insurance, access safety net services, or move along

the path towards citizenship.

Ultimately they help us, people with HIV, maintain our health in the face of a precarious financial situation. In short they are our lifeline. They have been my lifeline as I die slowly.

Thank you again for inviting me to speak today. I will be happy to answer questions. And if I may give it straight when I say because Legal Services promptly interceded on my behalf, subsequently I was able to complete 40 hours of training with the New York City Department of Health.

JUDGE LIPPMAN: Thank you. That again demonstrates how Legal Services can be a lifeline for people with all the different stresses and difficulties of all of our lives. And thank you for telling your story.

Okay, Virginia Norman-Acevedo, Client of the Legal Aid Society, accompanied by Judith Goldiner.

MS. NORMAN-ACEVEDO: Good morning, ladies and gentlemen. My name is Virginia Norman-Acevedo.

I've been blind since I was 18 years old. And I live at 135 West 23rd Street with a blind little boy which I am his legal guardian.

But my help with Legal Aid came since the '80's. When I came to this country I was kind of lost, I didn't know what to do. And I then applied to talk to somebody to

get legal advice.

And I found great lawyers like Betty McManus and Peggy McDonnell. They advised me how to work with the procedures, and what I had to do.

And in 1990 -- excuse me, 1988, I became with, you know, my green card which allowed me to move freely and continued doing trainings at the same time. I also through the years I became also a US citizen with Legal Aid's help.

In 2004 I met Orlando Acevedo at the Jewish Guild for the Blind. And I used to go for trainings. And Orlando used to go with a little boy, which his name is Orlando Cheng. His mother abandoned him. And Orlando at that time was taking care of him. He used to take him to trainings at the Guild. They have training for blind and young kids.

And Orlando became trained to talking about, you know, how he could help the child. And, you know, I had much more experience. And he was a private person. He didn't know really how much to deal with. I used to give him advice and we became very close.

And the year 2006 I asked -- he asked me to be engaged. And the year 2007 we became legally married. And, you know, unfortunately he became very ill with throat and lung cancer. And in the year 2010 he passed.

So I was really devastated. I didn't know what to do. What am I going to do with this little boy? I've never

been involved in legal guardian things. And I don't know how I'm going to petition.

So my daughter and I went through Family Court and we filled out some papers. And, you know, I met with the Judge, and then also met with Peter Hahn and a social worker Ellen Robles which they have been very great help. They guided me and told me, you know, how to deal. And this is also a child that has other issues.

And I felt like, you know, I got so much that I have been given that I wanted to give something, you know. And I felt like taking care of that blind little boy, you know, not let him fall into the system with the problems that he has. You know, it was going to be hell.

So I spoke with Legal Aid, and as always, you know, they advocate for me. At the same time I obtained a petition in December of 2010, I became his legal guardian.

Then I requested New York City Housing, which I was living then, but I have to come out of the lease because I have to live in, you know, with a little boy. And New York Housing told me that I have to take my family wherever I have to go, because my family was not on the list for a long time, and if I moved out I have to take my family with me.

And I came and, you know, talked to Peter Heart and Anna Laura and I told them that I need some help.

Because I can see that the Housing is trading me that I got to put my daughter and my two grand kids which they have special needs and I couldn't see them, and I didn't want to leave that little by into the system.

So with the help of Legal Aid, you know, we came to some hearings in the housing, and we finally, you know, they finally called my daughter that she has been approved to sign the lease. So, you know, one more time Legal Aid came through for me.

So I, you know, hope that that will help to continue providing services so they can advocate for others the same way that they advocate for me. Thanks.

JUDGE LIPPMAN: Thank you very much, and thank you for coming and for your story. And again Legal Services can be so instrumental in saving people's lives and helping them get well. So thank you.

Tracy Smith, Client with the Urban Justice Center Community Development Project, accompanied by Sadia Rahman.

MS. SMITH: Hello. Hello. Can you hear me?

JUDGE LIPPMAN: Yes.

MS. SMITH: My name is Tracy Smith. And I'm truly honored to be here for this opportunity to tell you about the legal assistance that I received from Legal Services of New York, a/k/a LSNY, and the Urban Justice Center as well which is a/k/a UJC.

Attorneys from these agencies saved me from eviction in three different cases brought within two years by my landlord.

In 2009, April, Hayco Realty Company, the owners of my building, sent me a demand for rent which stated that I owed approximately $2,000. At this point I was withholding my rent because the owners refused to make repairs in my apartment, my daughter and I were living with horrendous conditions and violations. However, I knew that I owed far less than $2,000.

In response to this rent demand, I sent the owners a letter after many unanswered phone calls. I informed them that I was withholding the rent because of repairs. I listed the most dangerous conditions that needed to be fixed immediately, and as a gesture of good faith I enclosed a partial payment of $400.

Hayco did not respond to my request for repairs. The very next month I was sued for nonpayment of rent. I didn't know what to do or where to turn.

At the first court date, the owner's lawyer called my name, took me into the hallway of the courthouse, and stated that he would give me four to five weeks to come up with the $2,000. He was talking fast and was very intimidating.

All I could say to him was I wasn't comfortable

with signing anything without a lawyer to look at it. His response was, "You don't need a lawyer, just take the deal." But I knew that was inaccurate, and I didn't sign anything.

In July, 2009, a lawyer from LSNY was sent to represent me. She interviewed me and assessed the paperwork in my case. She concluded that the owner's were trying to get money from me that they were not entitled to.

From that moment forward, I felt relieved and realized that I do have the right to defend myself as a tenant. The lawyer from LSNY gave me the confidence, and provided much needed support when I was nervous about the case.

While the case was pending, the landlord started to harass me. In particular after a court date on July 7, 2009, the landlord sent the super to my apartment. He started to ring my doorbell nonstop. I had not walked into my apartment for ten minutes before my doorbell began to ring.

When I did not respond, my landlord called me. When I did not respond, my phone rang. My landlord was calling me. I refused to answer. I refused to answer my doorbell and the phone. For 30 minutes the phone and doorbell continued to ring. Then one of the owners of the building left a threatening message on my answering machine.

At the end of July, 2009, the Housing Court Judge

ordered me to pay $560 to Hayco, as opposed to the $2,000. I paid the $560 dollars in full on August 31, 2009.

In September, 2009, less than ten days after Hayco received my payment, they took me back to court for an alleged illegal washer dryer.

On October 10, 2009, the same LSNY attorney and I were back in Housing Court. This case was in court from 2009 through April 5, 2010.

Finally on that court date in April the Judge stated to the owner's lawyer that they had no proof that the washer dryer was illegal, and no case, and therefore I was entitled to keep my appliances.

However, the Judge did not stop there. He even awarded me $100 to be paid by the owners for the inconvenience of having me come to Court to defend this baseless case.

That same spring I started to talk to my neighbors about the landlord's conduct, and it became apparent to me that many of my other, my lovely neighbors was were also not getting their repairs done.

I started to organize a tenants' organization and invited attorneys from the Urban Justice Center to help us bring an action against the landlord.

However, within a few days of holding our first tenant's meeting, I received a dispossession letter opened

taped to my door from the landlord. This letter was for my neighbors to read. I believe that this was an attempt to humiliate me, and to harass me, and to undermine my position as the co-president of the tenant association of my building.

The letter stated I owed $3,400 in rent arrears. By May, 2010, I was sued again for nonpayment of rent. This time the Urban Justice Center represented me in Housing Court. I was able to provide proof of payment for every month rent since my last case had been dismissed.

The landlord claimed that they never received four of these money orders. So I agreed to trace the payments. It turns out that three out of four of these had, in fact, been cashed by the landlord within days of receiving them. With the help of the UJC, I was able to reissue the fourth money order to settle the case, and settled the case.

As to the repairs, the Urban Justice Center brought a case against the landlord on behalf of 15 tenants living in the building. During this case, we were able to get approximately 100 violations addressed in our building.

I'm extremely grateful for the many hours of work that the Legal Services of New York and Urban Justice Center dedicated to my cases. There is no way I could have reached a successful resolution of this matter on my own.

LSNY and UJC enabled me to remain in my home and

remove a major source of stress in my life. Now I'm able to focus on myself and my life. Without a stable home I literally do not know if I would have made it through this story.

It truly breaks my heart to think there are many other New Yorkers every year who need the kind of help that I received, but who do not receive it because of insufficient state funding of legal services.

I urge all of the branches of the New York government to come together and find a fair and permanent solution to the problem of inadequate funding for Civil Legal Services in our state.

Thank you once again for the opportunity to testify.

JUDGE LIPPMAN: Thank you so much. Again a different area where Legal Services was helpful in a domestic relations case, health issues, and certain other housing issues which was so critical.

Our last member of the panel, Natalie Jones, a client of Legal Services, New York City Domestic Violence Unit, accompanied by Lenina Trinidad.

(Continued on following page.)

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MISS JONES: Good morning. My name is Natalie Jones and I thank you for inviting me to speak today. I am a low income single mother and I immigrated to New York --

JUDGE LIPPMAN: Speak into the -- bring that mic closer to you.

MISS JONES: I'm a low income single mother and I immigrated to New York from Jamaica as a young woman. I am a survivor of domestic violence. In 2007 I gave birth to my son. My ex-husband physically abused me, choked me and threw me out of our apartment. By the time I was able to return home he had left the state with our baby.

I was able to get my son back and file a police report. I also filed a custody hearing for an order of protection from the Family Court. My husband was arrested but my ordeal had only just begun.

My husband hired lawyers and filed for custody of our son. I had no money to hire a lawyer and I didn't know what to do. On top of that, my husband had taken all of my immigration documents. I had no identification documents, no way to prove who I was and no way to get a job to take care of my baby. My case was being heard in the Integrated Domestic Violence Court where it was referred to Manhattan Legal Services. I met with an attorney, Lenina Trinidad, and things began to change for me.

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The criminal case against my husband was dismissed, which gave my husband more motivation to pursue custody. I was terrified that my abuser would win custody of my baby and I would not be able to protect him. After many court dates, and my husband refusing to agree to my having custody of our son, the Judge said we have to have a trial.

I spent many hours with my baby in my arms at my lawyer's office getting ready for court. I had a team. I had a lawyer, her supervisor and a paralegal working hard to prepare for my case. My lawyer spoke to my witnesses and went over evidence with me and explained what was going to happen in court.

My case finally went to trial. I testified in court to everything my husband had done to me, about the bruises I had and how afraid I was for myself and my son. Over the course of five or six two-trial dates my husband's lawyer tried to make me look like a liar. Over -- but because of the work of my legal services, the Court decided to issue a five-year order of protection for me and my son against my abuser husband.

Even after the Judge gave me the order of protection my husband still wanted to get custody of the baby. Two false trial neglect claims were called in against me to the Administration For Children's Services.

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Legal Services New York City through Manhattan Legal Services' offices again helped me through the process of getting the investigation completed without any problems for me and my child. The charges were unfounded or found to be untrue. We finally settled the custody case with a detailed written order. I got custody of my baby and we were finally safe. I was able to get child support in my Family Court. This helped me put my child in daycare so I was able to enroll in college. I got an apartment and I was able to get my green card and work authorization replaced. Now that I'm in college I want to help children and women in my situation. Thanks to Manhattan Legal Services I was able to protect my son and make a better life for us. I know if I didn't have a lawyer, things would have gone very differently for me and my baby.

Thank you again for inviting me here today.

JUDGE LIPPMAN: Thank you. We really appreciate, I think, Natalie, your story and the other clients here again graphically illustrating what the services in terms of one's life and dealing with the essentials of life, which you all, again, so demonstrated to all of us, and why this is important.

So thank you all. Appreciate it. You've been great, and thank you. And thank you for all your

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lawyers, too.

We're running just a little behind schedule, but our next panel are always very short on words and brief in their comments: Judges, an essential piece of our judicial system. And we're going to have the Honorable David Kaplan from the Housing Court, the Honorable Tanya R. Kennedy, acting Supreme Court Justice and Civil Court Judge, the Honorable Douglas Steve Hoffman, acting Supreme Court Justice and Supervising Judge in the Family Court. And this crew knows what the red light is, so, okay.

David, why don't we start with you, because I think you know so well about the roof over someone's head and how important it is and how important legal services are.

JUDGE KAPLAN: Good afternoon. And thank you for affording me the opportunity to address the need for further access to legal services in Housing Court.

Over 90 percent of the tenants and many landlords in Housing Court appear without the benefits of counsel every day. This is generally not by choice, but a stark economic-based reality. These unrepresented litigants are routinely at a disadvantage as they lack the tools and the knowledge to properly assert their rights and navigate the system. This has saddled the

Court with systemic problems including voluminous case loads where time spent addressing the needs of unrepresented litigants exceeds the time spent of delving into the myriad of legal issues that arise every day.

JUDGE LIPPMAN: David -- Judge Kaplan, what happens when they come into court, you're hearing a case, you see that it's not even, the playing field? What do you do as a Judge and how does it affect what you think you should be doing when one side is unrepresented and the other one is, particularly when you're dealing with, again, eviction or something like that?

JUDGE KAPLAN: It's not an enviable position that we want the Court in, but the Court has an obligation by case law and statutory mandate to review agreements and make sure that not only are we impartial, obviously, but that there's a level playing field where everybody has an opportunity to be fairly heard and --

JUDGE LIPPMAN: How does your life change as a judge if both sides are represented, particularly in a tenant-landlord situation?

JUDGE KAPLAN: It would make my life a lot easier. I would have time to -- more time to conduct hearings, I'd have more time to hear arguments on motions, I would have more time to focus on the legal issues, rather than missing the entire day, especially in a resolution part -- a

resolution part in the Housing Court is spent going over stipulations and helping make sure that the unrepresented litigants understand what's going on that they're not forfeiting legal rights just based solely on the fact that they don't have equal access to justice.

JUDGE LIPPMAN: Overwhelmingly tenants are unrepresented in eviction proceedings?

JUDGE KAPLAN: Well, over 90 percent. I don't have the exact statistics, but I think everybody can agree with that.

JUDGE LIPPMAN: Would justice move more quickly and I guess more fairly if there was representation on both sides?

JUDGE KAPLAN: Both. It would be the calendars would be lighter, people wouldn't have -- would have an opportunity to get right to the issues rather than dealing with all the tangential issues of what they have to do in terms of navigating social service programs, finding out availability to different benefits, and the attorneys are able to help them with those -- with those systems so they can come to court and let us know what's going on, rather than the Court having to get involved with finding out why there were these delays which is plaguing our system right now.

JUDGE LIPPMAN: When people don't have legal

representation and they're evicted, what happens to them? You know, when they leave your courtroom, where do they go from there?

JUDGE KAPLAN: I don't know. I only know the people that come back. And not everybody comes back.

And I should also point out that a lot of people get evicted before they even come to court for the first time, it's not just they were there and then got evicted. And that often has to do with poor service of papers, it has to do with people not understanding the proceedings. So more information upfront would do a lot to avoid that. For the people who have been evicted, some of them end up in shelter systems, some of them end up on the streets, on occasion they can get back into their apartment, but that's a lot easier to be done when somebody has the assistance of counsel.

JUDGE LIPPMAN: Thank you.

Judge Kennedy.

JUDGE KENNEDY: Good afternoon, Judge Lippman, Judge Pfau, Judge Gonzalez and Mr. Doyle. I am an acting Supreme Court Justice assigned to Civil Court and I thank you for giving me this opportunity to testify regarding the need for increased funding to ensure equal access to justice for the indigent in civil matters based upon my recent observations while presiding over the Consumer Debt

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Part here in New York County.

JUDGE LIPPMAN: What do you see in that part? Are those people overwhelmingly unrepresented also?

JUDGE KENNEDY: Each and every defendant is unrepresented.

And I'd like to put this into context: My most recent assignment was from mid-April to July. And during that time period there were 1,731 cases on the calendar for either a conference or a trial. There were 605 cases on the calendar scheduled for motions. At the end of my assignment, 426 cases were resolved. So that leaves 1305 cases still remaining on the calendar.

And although the Court system has done an excellent job in creating the Volunteer Lawyer For a Day Program, developing the Do-It-Yourself Forms, the question is these volunteers can't handle that caseload, so more resources are needed. About two or three years ago you wouldn't see as many professionals as you do now --

JUDGE LIPPMAN: Yes, sure. That's their --

JUDGE KENNEDY: Yes. We're seeing increasing numbers of professionals due to corporate downsizing and layoffs, and we're also seeing small business owners, entrepreneurs whose revenues have declined because of the increasing economy. And it's my belief that the numbers

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will only increase in light of the worsening economy.

JUDGE LIPPMAN: How would your life be different and the lives of the litigants who appear in front of you if they were represented, let's say overwhelmingly?

JUDGE KENNEDY: Well, let me say more cases would be disposed of, there wouldn't be so many adjournments. A lot of my time is spent explaining procedural matters to the defendants.

JUDGE LIPPMAN: You can't really do the job you're supposed to be doing as a neutral arbiter because you're kind of not being a lawyer for them but giving them the basics to even allow them --

JUDGE KENNEDY: Correct.

JUDGE LIPPMAN: -- to function in your courtroom.

JUDGE KENNEDY: That's correct. Many times motions are adjourned, litigants do not respond because they don't read the papers, and that's because perhaps they do not read or speak English, perhaps they have limited education, or perhaps they can't understand the legal concepts that's set forth in the papers.

JUDGE LIPPMAN: You could even have -- you know, a lot of people think that everyone in New York who gets legal representation from legal service providers are necessarily uneducated or really don't, you know, have any idea what to do because their education. I would bet a lot

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of people come in, as you said, in this economy where you have people of -- who have a higher education, they still don't have a clue as to what to do in a courtroom to protect their own livelihood and their own well-being because they need a lawyer.

JUDGE KENNEDY: That's true.

JUDGE LIPPMAN: I don't mean to put words in your mouth. Is that your conclusion?

JUDGE KENNEDY: That is my conclusion. And in my written testimony I even indicated, you know, that many of the defendants often resemble a deer in headlights because they just have no concept.

JUDGE LIPPMAN: Even they could be college educated beyond --

JUDGE KENNEDY: Doesn't matter.

JUDGE LIPPMAN: -- it's the same thing.

JUDGE KENNEDY: Doesn't matter. It's the same thing.

JUDGE LIPPMAN: So I ask you the same question I asked Judge Kaplan: In the end, what is legal -- what would legal representation do? Is it ultimately justice what it's all about? Is it the speed of justice? What is it that would be different if in the Civil Court, and today, as you say, a different world from maybe not that long ago in the number of these kinds of consumer credit

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cases, the type of people now from all walks of life we get in those cases, how would justice be different, this elusive idea that we're supposed to be dispensing? How would that change?

JUDGE KENNEDY: Judge, it's really going to level the playing field for all litigants, whether you are represented, whether you are unrepresented. And that's really the charge that we have. We have the charge to ensure equal justice for all, regardless of your income status. And I think that Judge Cahn [phonetic], he said it best when he said that if we are to really have a democracy -- and I'm paraphrasing here -- that there is one commandment, and that is that we are not to ration justice. And that's the charge that we have.

JUDGE LIPPMAN: And sometimes -- Again, don't let me put words in your mouth, but sometimes we feel like we're rationing justice, don't we?

JUDGE KENNEDY: Unfortunately, yes.

JUDGE LIPPMAN: And legal representation, I think it's fair to say you're seeing it today from all the different angles, but you have the client who sees what it does for their lives, and you see a Judge who can sit there and almost feel helpless because you know that the cards are stacked in one direction but you don't have the time or the ability, given your role, to make it right and to

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foster, as you say, equal justice and not ration justice.

JUDGE KENNEDY: That's it.

JUDGE LIPPMAN: So, thank you, appreciate it --

JUDGE KENNEDY: You're welcome.

JUDGE LIPPMAN: -- so much for coming, Judge Kennedy.

Our next speaker is Judge Hoffman. And you're going to talk about the Family Court today?

JUDGE HOFFMAN: Yes. In part.

JUDGE LIPPMAN: Tell us the same kind of answers to the -- what Judge Kaplan was talking about in Housing Court and Judge Kennedy was talking about the Consumer Credit Part in Civil Court, how does the lack -- A lot of your customers aren't represented either, right?

JUDGE HOFFMAN: Right. And actually --

JUDGE LIPPMAN: What happens? What's the impact of that?

JUDGE HOFFMAN: It's a tremendous impact.

First of all, thank you, panel members, and Elaine Barnett, Task Force Chair, for permitting me to testify today.

As you may know, I think you may recall, I worked with the civil division of Legal Aid Society for thirteen years prior to becoming a Housing Court judge for several years, and now, believe it or not, almost

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nine years have been in Family Court.

So I want to emphasize how interconnected the courts are, Housing Court and Family Court, for so many of the same litigants who are unrepresented in Family Court are unrepresented in Housing Court. Not just people from similar backgrounds, but the very same litigants.

JUDGE LIPPMAN: And they have multiple legal problems?

JUDGE HOFFMAN: Absolutely, all the time. People are forever going from Family Court to Housing Court and vice-versa. And it's something that has a tremendous impact on what we do in Family Court.

Essentially it's the question of a meaningful opportunity to be heard. In Family Court we -- most litigants are not represented till they get to court, and that has a tremendous impact.

JUDGE LIPPMAN: And certain -- let's --

JUDGE HOFFMAN: Yes.

JUDGE LIPPMAN: -- let the audience understand one thing: There are certain cases in Family Court -- right? -- that there is, by law -- at least in New York, representation is provided; right?

JUDGE HOFFMAN: Actually the majority of cases in Family Court there is representation once you get to court.

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Predominantly in certain -- if you're the petitioner of a paternity proceeding or most litigants in support cases, which are about 89,000 or 250,000 cases annually, do not have entitlement to counsel. What happens is they get themselves in trouble first. In other words, initially not paying child support or not being able to present evidence in a child support hearing. There could be an order of support which is too onerous for many of the low income litigants, because they don't know the exceptions they can present.

JUDGE LIPPMAN: So --

JUDGE HOFFMAN: Yes.

JUDGE LIPPMAN: -- really by the time people get representation, they're already --

JUDGE HOFFMAN: It's too late often in Family Court.

JUDGE LIPPMAN: So what do we need in Family -- what do we need that we don't have in terms of legal representation?

JUDGE HOFFMAN: If there were a right to counsel --

JUDGE LIPPMAN: That's not mandatory.

JUDGE HOFFMAN: Right. If there were a right to counsel in the paternity and support cases to the extent there is not now, that would be extremely beneficial. But

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the issue is civil legal services, people having access before they get to Family Court.

JUDGE LIPPMAN: So they're not in the fix that you find them at the time.

JUDGE HOFFMAN: Correct. But it's not just that. You heard, I think the first client who testified as to the extreme domestic violence happening in her household, the issue of child custody, the issue of support. We have many people who don't leave domestic violence --

JUDGE LIPPMAN: Explain that testimony. To understand that, when you have a domestic violence case and someone is prosecuting you or whatever for domestic violence it's one thing. What's related to these domestic violence cases?

JUDGE HOFFMAN: Well, in the domestic violence cases, you may not have the ability to leave the household. You have many women who stay in a domestic violence relationship because they don't know they can get an order of protection, they don't know they can get an order of child custody, and they don't know, very importantly, that they can get the orders of support needed in Family Court to do that.

JUDGE LIPPMAN: The only time they find out the system is after they've been beaten and --

JUDGE HOFFMAN: Quite frequently, yes, they don't

know that. And since many people stay in the relationship because the person who is committing the domestic violence is the one who has the most income in the household and they don't know they can get support, people stay in that relationship too long to the detriment of the children and also, of course, to the other person in the household who needs to survive the domestic violence.

JUDGE LIPPMAN: In the first instance that they realize there was a real problem they can really be helped by having representation.

JUDGE HOFFMAN: Yes. That would be extremely helpful. And we have a correlation between the need for civil legal services in a comprehensive way, because we have people who suffer from domestic violence and --

JUDGE LIPPMAN: And they have all these other problems.

JUDGE HOFFMAN: Right. And then when the batterer is out of the home you often have non-payment proceedings, or if children are removed from the home you often have the non-payment proceedings. So there's direct correlation between the types of proceedings we see in Family Court and --

JUDGE LIPPMAN: You can have a housing problem or a debt problem, right? You can have all kinds of issues related to a domestic violence case.

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JUDGE HOFFMAN: That's right. Let me just give you an example we see every day: We have children who are either removed in which, let's say in an abuse and neglect case or domestic violence situation, and we have a situation we're trying to reunify the family and we need to arrange visitation. What happens is often the household income decreases to such an extent, or the rental allowance decreases, that people face the eviction proceedings and are evicted from their home while the Family Court proceeding is pending. That tremendously complicates the issue of arranging for visitation and arranging for reunification of the household. People drop out as they go to the shelter system from services, issues in Medicaid prevent issues in services which prevent reunification of families.

So it's very interconnected, Family Court and Housing Court, in terms of the issues, the need for really access to legal services before any litigation commences and certainly after litigation has started in the courts.

JUDGE LIPPMAN: And what would be your wish in terms of this whole issue of representation? What would you like to see happen?

JUDGE HOFFMAN: Well, certainly a greatly increased funding for civil legal services so that people

have full access to legal services. And those legal services can advise people not just to the individual problem that, say we would get appointment of counsel in Family Court on a neglect case or a domestic violence case, but someone who can take a comprehensive view of everything, refer you to appropriate services and see your family and you on a holistic basis.

JUDGE LIPPMAN: Well, thank you. I think it's so -- really it does complete the picture to see how the Judge views it, you know, rather than the client, the provider. I think the Judge has a unique perspective on need for civil legal services. And thank you, the three of you, from different parts of the puzzle so to speak. And I think what's clear, and I think you'd all agree, is that in this terrible economy in the so many different ways it impacts on the courts and the people who come into the courts and the lack of legal representation for those who really can't afford it, I think is so elevated during these difficult times, and the impact on our society, both the human beings and just the well-being of society and people in it are so affected.

So, thank you so much. You're a terrific panel and terrific Judges, and we appreciate you being here.

JUDGE KAPLAN: Thank you.

JUDGE KENNEDY: Thank you.

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JUDGE HOFFMAN: Thank you.

JUDGE LIPPMAN: No red light for them. They don't need a red light. They're on the money.

And, talking about being on the money, our last speaker is the -- Fern Fisher, the Honorable Fern Fisher, the Deputy Chief Administrative Judge for New York City courts who oversees the courts, the Judges who were just here, and the statewide director, the head of the Access to Justice for the state. And Judge Fisher is a passionate advocate for civil legal services, and we're so pleased to have you here today, Judge Fisher.

JUDGE FISHER: Thank you, Chief. I left my name tag.

JUDGE LIPPMAN: That's all right. We know who you are. You can't hide. Go ahead.

(Continued on the following page.)

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JUDGE FISHER: Good afternoon, Presiding Justice Gonzalez, Chief Judge Jonathan Lippman, my Chief Administrative Judge Ann Pfau, and President Doyle.

Thank you again for the opportunity to offer testimony to you on this vital issue. The success of the hearings last year which resulted in additional funding must be celebrated.

The additional funding will result in more services for low income people at a time when New Yorkers continue to be faced with severe economic challenges.

However, our job is not complete. The New York Times reported last week that one in five New Yorkers live in poverty, the highest numbers since 2000. The numbers of unrepresented litigants --

JUDGE LIPPMAN: Judge Fisher, say that again. How many people live in poverty?

JUDGE FISHER: One in five.

JUDGE LIPPMAN: One in five is really quite a staggering number if you think about it. Go ahead, I'm sorry.

JUDGE FISHER: Well, the numbers of unrepresented litigants continue to flood our courts with life altering cases. The desperation that I described last year continues. In fact, we had a suicide of a tenant recently when the marshal came to the door.

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You have already heard from our Judges on the difficulties that they see in their courtrooms of litigants who are trying to handle their cases, usually poorly, without an attorney. You have also heard from clients on the difference an attorney can make.

We must now move forward to increasing the success of the funding obtained this year, to increasing substantially the amount next year.

This year at the request of the Task Force I am focusing my remarks on a topic other than the increase of funding.

And let me say that the Task Force has done a remarkable job, and particularly the subcommittee on simplification of court processes lead by Bob Giffer.

The Task Force is recommending the simplification of Court procedures and processes.

JUDGE LIPPMAN: Why is that important, Judge Fisher? I know you're going to say it in your prepared remarks, but explain in short why does it matter?

JUDGE FISHER: In a perfect world everybody would have full representation. We're such a long way from a perfect world. There will still be litigants without attorneys who will need to navigate our Court system.

In addition, if we simplify our processes it will make it easier also for Legal Services attorneys and pro

bono attorneys also to navigate our system, but also equal access to justice requires uniformity. And we're long from being uniform in our State with respect to our policies.

JUDGE LIPPMAN: So in the simplest terms no matter how much we achieve in terms of getting funding, the average person has to be able to navigate the courts without a detailed road map that should be kind of in front of them and easy to do.

And that saves not only their own time, effort, and hopefully contributes positively to their lives, but also the justice that we can administer in the courts is so much better if it is simpler and easy, and you don't have a maze of people wandering all over the place and not knowing how to proceed.

JUDGE FISHER: Exactly, Chief. And even the United States Supreme Court in the new case Turner has recognized the need for the Courts to provide information and to explain procedures. It was a child support case.

So in order to move this along, because I know we're at an end, and the rest of it will be in my written testimony, the Task Force has determined that there are starters on the road to simplification. They have a wish list. But there are some starters.

Most individuals would not attempt to play a sport, play a game such as chess, take an exam, fill out an

instruction, without knowing the rules. But we expect litigants without lawyers to know the rules. We, in fact, hide the ball when they are playing the game. It's time that we stopped hiding the ball.

And so we are suggesting that unrepresented litigants be given rules and instructions and necessary tools when they are attempting to navigate the courts.

I'm skipping, Judge.

JUDGE LIPPMAN: Okay, you use your judgment.

JUDGE FISHER: The Task Force is setting forth for consideration four proposals: Standardization and simplification of forms and procedures; improvement of the Court website; expansion of outreach; and a study of Court scheduling and the town and village justice courts.

And as a Director of access to justice, I think these are very well considered suggestions and they are doable without a lot of expense.

In order to achieve a major step forward and access to justice, standardization and simplification of forms and procedures is an effort we must embrace and get done.

New York is already a national leader in DIY computer programs for unrepresented litigants. I think we have 15 now. And the DIY programs assist litigants in filling out our Court forms using a computer tutorial

program.

However, that effort will eventually be stymied unless statewide we standardize and simplify forms and processes. Recently we're preparing a DIY program for minor name changes for Upstate.

My staff learned that depending on the county a family resided in, the family may be charged one fee for changing the names of all the children in the family, or in a different county a separate fee for each child. Which, of course, is clearly more expensive.

In some counties a fee depended on who was at the counter at the time. In some counties three copies of the forms were required, and in other counties less than three.

Some counties required a petition, other counties did not. A2J cannot move forward with these discrepancies. Justice should not be more expensive or complicated depending on which county you reside. Moreover, justice shall not be, should not be stymied by obstacles that we can cure.

In New York City, tenants are given access to a check off list for available defenses in housing cases. And in consumer cases New York City clerks are instructed to require affidavits from plaintiff debt collectors which establish chain of custody of books and records, assignments, and statute of limitations, similar to the

foreclosure requirements that you put in, Judge.

JUDGE LIPPMAN: Right.

JUDGE FISHER: In the City the Court mails out notices to response and defendants in both housing and consumer cases before default judgments are entered.

In housing a large percentage of tenants come in to answer the cases stating that the only notice they received was the one mailed by the Court. It's the same in consumer cases.

And, in fact, in consumer cases we get a number of the notices back, thousands back, saying bogus address, the address does not exist, or addressee unknown. We do not issue default judgments in those cases. Plaintiffs are free to make a motion, but, curiously, none of them do.

These procedures do not exist outside of New York. Equal access to justice demands uniformity throughout the state.

The Task Force proposes in general standardization procedures, and more standardized simplified forms and instructions, and that everything be translated into other languages besides English.

Some specific suggestions are improvement and simplification of the divorce process and the pro se divorce packet, affidavits of net worth, pro se court forms where making defenses clear, contested and uncontested divorce,

check list, Article Six custody visitation forms for people who are not biological parents, petition for orders of protection, custody, child support, as well as summonses, need to be in simpler language with clearer instructions.

Forms and instructions on service of process, filing deadlines, pleading requirements, process the request for an interpreter, what to bring to Court, and tenant's rights, and consumer rights with respect to defenses.

Standardization of forms and procedures will assist in increasing limited scope representation. Legal Services advocates and pro bono counsel and clinics could provide more limited services by assisting litigants by filling out simplified forms.

More could be trained to assert common defenses if common forms were used and common procedures were used throughout the state. A by-product of simplifying the courts will be the reduction of litigation costs for all, including plaintiffs.

Without training of clerks to utilize and embrace new forms and procedures, efforts to standardize and simplify will not -- will hit brick walls.

Another recent inquiry by my office turned out a startling revelation. In one county a clerk indicated that there were no forms to vacate a tenant's default, and that she had never seen a tenant move to vacate a default

judgment.

In another county the clerk who had been with the court system for a long time had only seen five in his entire career. We have miles to go in some places, and not only to develop forms and procedures, but to educate the public and train court personnel.

Judges must be encouraged to accept simplified forms and procedures, but also to feel comfortable in explaining procedures and defects in pleadings when rejecting those pleadings.

In the absence of sufficient attorneys, health centers, it is -- justice requires that the Judges do participate. And naturally the concept of the Judge setting forth these procedures, explaining why a pleading is inadequate, and construing pleadings liberally is taking hold.

And as I indicated, even the United States Supreme Court mentioned this, New York should be at the head of the movement for changing the Judge's role.

As we move further and further into the internet age websites become the conduit for information, and information is clearly a pathway to increasing access to justice.

The Task Force has proposed various improvements to the website which will be fully vetted in the final

report.

For purposes of brevity today I highlight just a few suggestions. The Court help and local websites should be linked. All Court forms should be in a central place on the website, not scattered all over as they are now, and also organized so they can be easily found. And all local courts should direct users to the central location for forms and legal information.

All local Court sites should be uniform, the websites should be translated into numerous language, and we need better search engines.

Under the simplification subcommittee mandate, they also looked at outreach. And included under outreach the committee is recommending expansion of volunteer lawyer for the day programs and other volunteer programs.

There are many operating already in the Civil Court, Family Court, and foreclosures within the City of New York, but those programs are not as well entrenched outside the City of New York.

These programs which are all limited scope representation will allow pro bono attorneys to serve easily, will allow our emeritus attorneys to provide assistance, and will increase access to justice. But it will also allow the legal services advocates to handle the more complicated cases that require full representation,

leave the slightly easier cases to volunteers.

The Task Force strongly recommends that the emeritus program be expanded, and that is a pool of attorneys that I believe will be extremely helpful to the access of justice movement.

The Task Force also requires additional mobile Court help centers similar to the Court's help center that NYLAG will be launching soon. And they suggest that a partnership of nonprofit organizations, Task Force members and law firms, foundation grants, donations, and other support can get more than that one van on the road, and I think we can do it.

Expand the use of teleconferencing and video conferencing. We believe that litigants who are unable to come to Court because of disabilities or finances or geographic location can benefit from video conferencing and teleconferencing.

In addition, if attorneys are on the case teleconferencing and video conferencing can keep their time in court down. And they're advocating using that more often with some caveats, which I won't go into. It will be in my written testimony.

With respect to the other issues that the Court, the Task Force would like us to look at is court scheduling, staggered court schedules, so individuals don't have to sit

in court the entire day, so they don't miss work, they don't have problems picking up their children, but also attorneys who are Civil Legal Services attorneys also can't afford to sit in court all day. And so we should look into court scheduling.

And of course it will vary from court to court and from jurisdiction to jurisdiction, each district a little bit different, and it has to be tailored to each court district. And we believe we should be looking at that now and figuring out how to do that.

And finally, although it was not the Task Force subcommittee on simplification's responsibility, they are emphasizing that we need to look at the town and village Justices with respect to their resources, their training and what goes on there.

JUDGE LIPPMAN: Judge Fisher, let me ask you one kind of summing up question. You've been doing this so long, interested in this issue so passionately for so many years.

Where do you think we are today on Civil Legal Services given the great impact that the economy, this terrible economy has had in New York and around the country, putting together federal, state, local efforts, our own efforts here, the Bar's voluntary programs, the programs we do in the courts, the simplification issues that you talked

about today. Where are we? Is this the -- has the economy made this even more daunting than it was just a few years ago?

JUDGE FISHER: Our finger is still in the hole of the dike holding the water in, Judge. It is not getting any better.

JUDGE LIPPMAN: The need is so overwhelming?

JUDGE FISHER: It is extremely overwhelming. And any decrease in federal aid certainly affects us here in New York State. The numbers of individuals coming into the court is not abating. Some of the filings have gone down, but not enough to make a difference. But the percentages of unrepresented litigants have not gone down at all.

And the problems are getting more and more complicated as people are getting more and more desperate. We are the place of last resort for some people.

And as you can see from our numbers and from some of the stories that you have heard, people are desperate. People are losing their lives. And it's our responsibility as a Court when they have legal problems to make sure we do the best we can to make sure they get access to justice.

I believe that some of the things that we're proposing for simplification requires the backing of the presiding Justices, the Chief Judge, the Chief Administrative Judge, Judge Coccoma and I, the New York

State Bar, the City Bar, to get it done.

But I am confident that some of the measures that we are proposing today and in the report can get done. It just takes a partnership, and it takes a little elbow grease, and it takes a little hope.

JUDGE LIPPMAN: Thank you, Judge Fisher. Thank you again for your work in this area, your passionate work for so many years, and for the efforts that you're talking about in terms of simplifying.

I think this kind of all comes together if you look at the testimony that we've had today, the whole idea that the cost issue cuts all the other way from this issue about, gee, times are terrible, how could we spend it on just doing good.

But this does more, Civil Legal Services does more than doing good and helping people which should be reason enough. But it saves money to the State, it brings money to our communities and to our society.

The political support that we see today from the speaker of the City Counsel as she indicated making the first priority of the City Counsel is Civil Legal Services in terms of their funding.

The business and community leaders who recognize that the well-being of everybody, including these basic institutions that fuel our economy are, whether it be banks

or big businesses or real estate, are all very much dependent upon people getting legal representation when it comes to the essentials of life.

The individual stories that we heard today from clients, which cover again all of the necessities from a roof over one's head to their physical safety to that of their families', to their livelihoods, to being able to have meaningful lives.

The Judges look at it from a perspective of sometimes just wondering how they can do their jobs when you look at the different courts and you see people come in in a fashion that presents a skewed playing field where everyone can't get equal justice.

And again looking at inside the courts, how we can do things to allow people to navigate the courts, again without some kind of convoluted road map, I think it all goes to what is clear, or should be, to everyone at this point which is that the courts, the legal profession, everyone presiding here today recognize that it is particularly our mission, both professionally and from a constitutional perspective of insuring equal justice. That there is an ethical and moral obligation as a society that we have to pursue justice for all, fair, equal justice.

And again the point we've been making that the well-being, the bottom line of society aside from the moral

imperatives involved, it just makes sense for our communities, for our society, to help those who cannot help themselves; the poor, the indigent, the working poor in this State, who are so impacted by the economy and whose lives can be saved if we can provide them with Civil Legal Services for the poor.

That is why we have tried to develop this systemic approach to the question of Civil Legal Services to have a dependable, continuing, ongoing funding stream for Civil Legal Services that come out of the public flask and that recognizes how important it is to our way of life, to our society, to the individuals involved. It's critical. I think these hearings today were very helpful.

There are two more hearings that will be held in the near future, one in Albany at which the Chief Law Enforcement Officer of the State, Eric Schneiderman, will be testifying. And one in the western part of our State in Buffalo which has had it's -- that part of the State, Upstate, has had its economic problems, again which has made an impact of a lack of legal representation even that much greater.

So thank you all for coming. We go forward and continue to try to determine the unmet legal needs so that we can make a substantial presentation to legislature and the governor, and to insure that all of us in this State are

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pursuing justice for again the most disadvantaged and the most vulnerable in our society. Thank you so much. I appreciate your coming.

* * *

CERTIFIED TO BE A TRUE AND CORRECT
TRANSCRIPT OF THE FOREGOING PROCEEDINGS.

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ANGELA TOLAS, OFFICIAL COURT REPORTER

_____
ROBERT PORTAS, OFFICIAL COURT REPORTER

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APPENDIX 9:

Transcript of the Third Department Hearing held on October 3, 2011

Contents

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

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,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JUDGE LIPPMAN: Thank you

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

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

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

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

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

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

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

is, the result is the effect of the cause and the cause here is that, the review of title, the filing of the documents, the service on individuals who are parties for foreclosure proceedings, has all been very faulty, and once they realize that there is light being shed on the proceedings that the attorneys who are pursing these cases are individually responsible for the accuracy of the documents being submitted, then I think that it gives them pause, it requires them to review all the documents and what they are finding in this review, are many gaps in the process.

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

MR. MACK: Absolutely correct and

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

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

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

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

that's the case?

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

JUDGE LIPPMAN: Thank you.

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

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

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

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

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

JUDGE LIPPMAN: Thank you. Greatly appreciate your testimony Attorney General.

MR. MACK: Thank you.

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

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

Judge Coccoma, it's terrific to see you.

JUDGE COCCOMA: Good morning.

JUDGE LIPPMAN: Do you want to begin your testimony?

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

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

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

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

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

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

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

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

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

JUDGE COCCOMA: Yes.

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

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

JUDGE LIPPMAN: Where do they come from?

JUDGE COCCOMA: Utica or Binghamton or Albany.

JUDGE LIPPMAN: Is that easy for people in general?

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

JUDGE LIPPMAN: These are generally poor people?

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

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

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

JUDGE COCCOMA: Yes.

JUDGE LIPPMAN: Not just in the Supreme Court.

JUDGE COCCOMA: Family Court as well.

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

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

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

JUDGE LIPPMAN: Which is very common today.

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

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

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

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

JUDGE LIPPMAN: As to whether you

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

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

JUDGE LIPPMAN: Or the lawyer.

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

JUDGE LIPPMAN: How you walk that line.

JUDGE COCCOMA: Yes.

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

JUDGE COCCOMA: That's correct.

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

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

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

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

people in there are unrepresented.

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

JUDGE COCCOMA: Without a doubt.

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

JUDGE COCCOMA: Yes.

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

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

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

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

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

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

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

JUDGE LIPPMAN: Which we will see

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

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

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

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

As my time draws to a conclusion,

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

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

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

JUDGE LIPPMAN: Judge Doyle?

(Laughter)

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

JUDGE LIPPMAN: President Doyle.

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

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

that.

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

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

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

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

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

JUDGE COCCOMA: Have a good day.

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

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

Mr. DeWolf, if you would like to start?

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

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

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

JUDGE LIPPMAN: Perfect.

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

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

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

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

JUDGE LIPPMAN: Let me ask you this.

MR. DE WOLF: Please.

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

in terms of your business side?

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

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

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

so do we. So the one --

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

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

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

MR. DE WOLF: Yes, we find that

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

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

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

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

MR. DE WOLF: Yes.

JUSTICE MERCURE: Are you able to achieve that goal?

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

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

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

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

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

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

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

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

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

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

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

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

JUDGE LIPPMAN: Thank you.

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

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

JUSTICE PFAU: Thank you.

JUDGE LIPPMAN: Thank you, Mr. Barba.

MR. TUCKER: Thank you Judge Lippman.

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

MR. BARBA: Good afternoon.

JUDGE LIPPMAN: Tell us?

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

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

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

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

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

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

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

MR. BARBA: Absolutely.

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

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

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

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

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

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

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

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

JUDGE LIPPMAN: Exactly.

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

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

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

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

caught in the middle?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JUSTICE MERCURE: Could you

focus on the civil appeals pro bono pilot program?

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

Appellate Courts.

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

JUDGE STEIN: Correct.

JUDGE LIPPMAN: Others it doesn't.

JUDGE STEIN: Right.

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

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

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

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

JUDGE STEIN: Absolutely, yes.

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

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

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

JUDGE LIPPMAN: Thank you.

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

JUDGE LIPPMAN: You did housing?

JUDGE STEIN: Yes.

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

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

JUDGE LIPPMAN: What problems does that cause for you?

JUDGE STEIN: Well --

JUDGE LIPPMAN: Aside from the problems to the individual?

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

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

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

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

JUDGE LIPPMAN: Especially as of late, huh?

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

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

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

JUDGE STEIN: Very much so.

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

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

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

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

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

JUDGE LIPPMAN: You feel it every day.

JUDGE BREEN: Yes.

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

JUDGE BREEN: I do, I do. And

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

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

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

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

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

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

JUDGE BREEN: I do.

JUDGE LIPPMAN: What does the

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

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

JUDGE LIPPMAN: Security and

time.

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

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

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

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

JUDGE BREEN: They decline it.

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

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

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

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

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

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

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

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

JUDGE LIPPMAN: Resolved.

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

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

JUDGE BREEN: Sure.

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

JUDGE BREEN: They do judge.

JUDGE LIPPMAN: That require legal representation?

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

JUDGE LIPPMAN: It's complicated.

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

JUDGE LIPPMAN: Okay. Thank you judge.

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

JUDGE BREEN: I think judge, I'm

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

JUDGE LIPPMAN: Okay. Thank you judge.

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

issue a priority in New York.

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

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

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

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

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

JUDGE CLARK: I see it every day.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JUDGE LIPPMAN: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. SCHIMPF: We do it in a

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

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

MS. SCHIMPF: We're there.

JUDGE LIPPMAN: You provide some information.

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

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

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

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

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

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

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

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

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

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

MS. SCHIMPF: Absolutely.

JUSTICE MERCURE: 7 days a week perhaps?

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

Yes.

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

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

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

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

JUDGE LIPPMAN: Yes, that's true.

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

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

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

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

MS. SCHIMPF: Thank you.

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

Center.

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

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

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

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

JUDGE LIPPMAN: So you could resolve these matters, and we sort of obviate the necessity for having an attorney because you've been able to kind of in a mediation context to resolve the issue?

MS. DAVIES: Sure, if there obviously needs to be in-take to determine whether their cases are appropriate for mediation, but when cases were deemed appropriate for mediation, then there's a tremendous possibility to include mediation, in that sort of continuum of services.

JUDGE LIPPMAN: Other cases go straight to the provider I assume so you can have -- there is a --

MS. DAVIES: Exactly. I think we feel that the need is so great there needs to be, sort of --

JUDGE LIPPMAN: Options, right.

MS. DAVIES: Yes, I mean starting at the very basic legal information and then

self-help materials and probably in the middle of that is a need for mediation alternative dispute resolution and direct legal representation. And it's sort of -- it operates as a triage, and in that way, cases that are appropriate to be resolved by mediation will save resources for other.

JUSTICE MERCURE: You offer mediation across the vast spectrum in terms of the types of cases?

MS. DAVIES: We absolutely do. Like almost everyone of the CDRC community program, we have mediation services, in Family Court issues, special education, our program has an agricultural -- we do have some real very subsidence level farming in our county.

The debt issue that's come up around that on a regular basis, to me the issue is really an appropriate way to find a resolution to some of those issues, and perhaps save some of these farms. Besides the work that we do in the town and village courts, and that work is heavily into housing issues and consumer debt issues, we

have programs as you said, a very wide range of civil matters.

JUDGE LIPPMAN: Okay. Thanks so much. We appreciate it and again, very much a part of the puzzle. Thank you for your good work. Professor Connors?

MR. CONNORS: Thank you for this opportunity.

And thank you to the Task Force for this opportunity. I'm a former legal services attorney from Monroe County legal assistant in the late 80's, early 90's, and I bring that perspective as well as the perspective of a clinical law professor at Albany Law School since the early 90's to this discussion.

My comments today will talk about a reform movement in legal education that impacts the availability of using law students to help close the gap and access to justice, what Albany Law School is doing, but in the end the reality is that we're only one piece of the puzzle.

JUDGE LIPPMAN: You know we do always hear don't you get the law schools

involved? The could be helpful if the law schools, the kids who can't just go out and can't get a job. Tell us how law schools are involved?

MR. CONNORS: Law schools are involved, Albany Law School has in-house clinical programs that work in collaboration with the Legal Aid Society of Northeastern New York and the legal project and the Empire Justice Center, not competing for limited funds, but working together so that we're not duplicating services. Some of our joint initiatives include health law initiative, and advocacy for working with families effected by HIV and AIDS and preventative matters, with their doctor, so we can avoid legal problems down the road, working with family to set up emergency plans for the future care of children, working with individuals to set up health care directives, working with the families in a wholistic way to make referrals to non-legal providers to hopefully avoid legal problems down the road. We will have domestic violence initiatives with Legal Aid

and the Legal Project, beyond their -- if there's any service in a wholistic manner that's training law students to become future service providers. Lorraine Silverman of the Legal Project is a former clinic student and Alejandro Taylor is currently at the Legal Aid Society and works with our program. So these joint initiatives are very important. We also have a tenant foreclosure initiative, to represent tenants being evicted by the mortgage crisis and there's a plan in collaboration to provide, not to compete, but to address on that need that unmet need. I made a special point to as a side note as to the Legal Empire Justice Center as a young legal services attorney, I found this training to be invaluable and as a professor I still rely on their great web sites today as well as the web site of the other backup legal centers at the Western New York Law Center website. The programs at Albany Law School also is proud of our loan repayment assistance program and while we can't serve everyone, they're limited, but there's still

a need for additional statewide support for that. Pro bono activities like that, I started to list in my written comments some of the professors who are actively involved in the community, but you realize that really this would be too long as most of our professors work or are involved in some sort of pro bono service, be it through continuing legal education, training or direct advocacy or appellate advocacy, sometimes working alone, sometimes working with law students.

JUDGE LIPPMAN: So there's really is synergy between the law school and the providers and pro bono efforts?

MR. CONNORS: Certainly. Not competition, but trying to join forces, to address the matter.

JUDGE LIPPMAN: Is that a recognition professor that such an amount of funding is able to be provided?

MR. CONNORS: It's not meeting the needs even with the current coordinated system. I can speak for the Law Clinic in this case as we turn away about 20

individuals away per week, with meritorious claims and approximately 600 individuals a year that we want to serve, about half of that is extended representation, but a lot of it is limited representation where we're giving free counsel.

JUDGE LIPPMAN: Like everyone else, it's a limited amount of resources for which --

MR. CONNORS: So, part of the solution has to be increased permanent funding to make it all work.

JUSTICE MERCURE: What percentage of matters are you looking to extend?

MR. CONNORS: About half of the people that call us we can help.

JUDGE LIPPMAN: That's pretty good in terms of the statewide perspective whereas you know, in parts of the state for every one, 8 or 9 are turned away.

MR. CONNORS: Right.

JUDGE LIPPMAN: Right.

MR. CONNORS: Part of that is through a referral mechanism which we set up

through the Legal Project so they know what type of cases to refer to us.

MR. DOYLE: Mr. Connor,s in your written submission you make the point that you talk about and seek change in the legal education, to reform efforts and you mentioned some of the State Bar work in that field, but to the extent that there could be reevaluation, in some of the accreditation, some of the admission standards to be more accepting of clinical work and practice orientated education, that would fit in, that would allow for more work from law students directed toward these types of unmet legal needs.

MR. CONNORS: Right. That definitely deserves further study and reevaluation. Currently the number of clinical or special credits allowed in Albany Law School is limited by Court of Appeals Rule 620. Each of our clinics are of six credits up to -- so if a student wants to take a clinical opportunity, for four in the three years that would be 24 credits right there. And in terms of

admission to the Bar, it's a bigger issue, but more prep consideration and practical experience being a factor, so that graduates are practice ready and committed to exercise their professional judgment necessary to recognize the needs of the most disadvantaged members of our community.

JUDGE LIPPMAN: Okay. Thank you all. Appreciate it. Thank you for your efforts, in support of the legal system. Thank you. Michael Hertz, Chief Marketing and Business Development Officer, White & Case.

MR. HERTZ: Good morning or good afternoon I guess. Thanks for the invitation.

Thank you. Thanks for the invitation to give a talk today. Judges and the panel, and obviously I have just returned from England so it's really great to see the work that you've done, and doing on this issue and resources to add resources to the problem. Just to give you and I'm not going to go through my background in detail, but I have experience in the big law

firms, both the practitioner and more recently in senior management roles, all of which involve extensive uses of technology to, to run the law firms effectively and as efficiently as possible. There's probably and most relevant to this, I founded or co-founded Pro Bono Net, back in the late 90's, with some help from a couple of other big law firms in New York City. And Pro Bono Net continues to be on the Pro Bono Net and it continues to grow and evolve and we work close with the Courts and the Legal Aid community and the Bar, the law schools, really across the State just communities and not just in New York, but across the country, deeply involved in various parts of my life in some of these issues, and just to go through I think the headline why I think technology can really help expand as there are three key areas in that and one is that's around efficiency and the second is around protocol and effectiveness and the third is, around immigration. So there are ways we can just use technology in indefinite ways to reach the people with

some help.

So, let me just address each of those three and I wont go through the testimony that I submitted.

JUDGE LIPPMAN: Fine.

MR. HERTZ: On the efficiency point, you know there are basic fundamental building blocks that need to be addressed for functioning organizations to have in terms of technology today and so when I look at both the way the private Bar approaches the technology and the way that the Legal Aid community groups also approaches technology as you might expect there's a big gap in the investment that Legal Aid organizations are able to make. For a variety of reasons in their basic just in their basic platform that they use to collaborate with other Legal Aid, and access to justice organizations. One thing I would just urge the Task Force to look at is to do a little study on how we might approach that differently, and try to assess what are the basic fundamental building blocks in the Legal Aid organization.

JUDGE LIPPMAN: Do you think that to some degree, technology would be as important as adding lawyers or support staff?

MR. HERTZ: I think they go hand in hand, I don't think -- I don't think you want to create a kind of zero sum gain there. I think, that technology needs skilled advocates behind it.

JUDGE LIPPMAN: Right. The technology can to some degree, as it does in all institutions can maybe make it less labor intensive to do what we have to do.

MR. HERTZ: Yes.

JUDGE LIPPMAN: And whether you call it efficiency or money well spent, technology is very important to the legal services.

MR. HERTZ: I think it's absolutely critical if you look at the gap that we're facing there's no way to bridge that gap without doing something that is, innovative, and we can fund more lawyers, we can fund more creative delivery mechanisms and all those things and we also need to

find a way to reach --

JUDGE LIPPMAN: It's even more important than in the more rural areas where you're spread out over a large --

MR. HERTZ: There's a good example of technology being used today with support from the grants and legal services corporations as we go through the years, with more urban Legal Aid programs and court programs are able to reach rural populations with help and part of that is just information, so giving access through libraries, through social services and DSS agencies up in the rural areas where this -- where somebody can access the information about you know various different civil legal services issues, but also actually accessing lawyers using technology to connect a volunteer lawyer and a Legal Aid lawyer in a urban area, with somebody, whose living in a rural location and some business that we're talking about across the country, and I'm sure that this is absolutely true in New York State as they are backed, they're the population that has the need and lawyers and

advocacy there to serve them I think this as there's been reductions in funding a lot of rural programs have been hit hard.

MR. DOYLE: Mr. Hertz, have you in the funding part, as a lawyer, in private practice who has been involved in his own efforts to see technology grow and operate and being involved in the State Bar Association, a large organization, technology upgrades are expensive.

MR. HERTZ: Yes.

MR. DOYLE: Time consuming and require a lot of the skill, and attorneys knowledge which lawyers are not known for having necessarily technological skills. I hear from your testimony what you've already said you suggest that there may be ways that the Task Force can help provide some type of economy or scale or at least investigate the economy of scale for the providers the small provider in rural areas that perhaps they can together join and invest in some general platform that would be more cost effective for them.

MR. HERTZ: Some of that is

happening already and some of the work there was in the New York Law Center, it has done along those lines and definitely, pooled their recourse resources and built tools together so that one they're not building multiple tools, and Pro Bono Net was based on that concept as well. It's absolutely the right way to go about it. No single entity or provider can be kind of or do the continuous investment that is needed. So I'm absolutely sure that that's the right approach so I recommend that. I guess it creates more incentives for that collaborative approach to invest in technology with the continuous --

JUDGE LIPPMAN: Quality issues, how does the technology impact on the quality of representation?

MR. HERTZ: It's critical -- so really playing in the big law firms that firms that's in England that firm was trying to support and train lawyers up to a certain level across the world. Same thing is true in the Legal Aid community and it's one of the founding principles of Pro Bono Network

is that if we're going to get more lawyers involved in doing volunteer work we need a to bridge one of the main obstacles that the lawyers indicated, and has been from doing that lack of training in the area of expertise where the self legal services were needed. So getting lawyers both Legal Aid lawyers who are here during this whole time and volunteer lawyers up to speed, and delivering the service that the right quality level is something that technology can help with. On line-line training you know, materials and practice, virtual training materials, just very simple technology, list serving, just a very simple technology that allows people to be on E-mail distribution lists and talk to others.

JUDGE LIPPMAN: Particularly this training I can see that, on the pro bono side all -- you have so many lawyers that don't work in certain areas, but they want to dedicate as they go on more and more of their time to the pro bono type of activities, I can see how technology really

can be very important in that.

MR. HERTZ: A lot of it's changing quite a bit so that you know in a lot of ways that, lawyers now support themselves and this has been true historically, but now that technology makes it lighting fast. To reach out and to a peer who has done that before or had that experience before so it's not text book training, it's saying you go, excuse me, I saw that you did a tape of this recently can you walk me through what you did there and technology is extremely valuable for that.

MR. DOYLE: And as the court system moves as it should towards e-filing and electronic and other means of using technology, appearances, video conferencing and that legal service providers are going to need to be up-to-speed with that in order to participate.

MR. HERTZ: Absolutely, so there's actually again you know, we're sitting on the tip of the iceberg now. The Legal Aid groups Pro Bono Net the Court system in New York, in California, a number

of court systems around the state and country work together on building on-line document assembly technology where mostly in an assisted environment from there someone is sitting with a person in front of a computer going through, you know, questions and answers, and at the end of that, the system generates the proper forms and filings. And somebody reviews it before that goes in. But to then try to do electronic filing to have more sophisticated filing systems to give some triage, and I think it also has a huge potential again all of these things, I think have a huge potential, but require more.

JUDGE LIPPMAN: What's the latest in the technology to legal services state of the art?

MR. HERTZ: I think the technology that we're starting to experiment with is huge and the potential if it's deployed correctly, I think it could be you know, a barrier to being deployed badly. But if it's deployed with the help from law students, and private attorneys, the Legal

Aid lawyers and other people that are or that have access to the justice system, I think that has a potential to help people.

JUDGE LIPPMAN: Again in terms of funding, it would be a wise investment to invest in the newer and innovative ways to base this for anyone, but us in particular obviously for organizations trying to serve wide populations with not enough resources.

MR. HERTZ: Sure I think that's right.

And I think the other thing just to look at perhaps in the work that your doing is, setting up something similar in New York State to what the -- what the Legal Services Corporation set up, and ran for the last twelve years and still running which is a technology innovation grant program. And if you look at that program the expert of that program, the former President of the LLC here, but that program is relatively small dollars and has generated a huge amount of innovative approaches and great collaboration across the -- across and state justice community. If you we were to look

at that program and think about building a New York State version of that, I think it would have benefits.

JUDGE LIPPMAN: Realistically we will have to do that because it's a landline to you and your firm too. Now Legal Services Corporation funding is under siege, and who knows what will survive there and that's why we're trying hard to create a permanent, dependable, consistent funding stream here in New York out of the public fist, but technology is certainly a piece of the puzzle and we appreciate your coming in.

MR. HERTZ: Thank you for inviting me.

JUDGE LIPPMAN: Appreciate it we will finish off our hearing today with a client panel, that includes Arthur Demar, Jr., a client of the Legal Aid Society of Northeastern New York, accompanied by Robert Vanderbles, Dana P, a client of the Legal Project, accompanied by Lorraine Silverman and Rassan Kellam a client of the Legal Aid Society of Northeastern New York accompanied by Robert Vanderbles.

Mr. Demar, did you want to start?

MR. DEMAR: Good afternoon.

My name is Arthur Demar Jr., and I'm fifty-eight years old and I live on social service disability, and I'm disabled and have been for four years. I currently live in Keesville, New York. Beginning of May, when the flooding occurred at Lake Champlin, Plattsburgh, I was living on the second floor of an apartment called Lake Side Apartments. And when the flooding reached its peak on May 7th, May 8th, my apartment complex was condemned because of the electrical was going to be flooded, but at that time I was over in Mary Fletcher Hospital as I just received cancer surgery. So when I was released from the hospital on May 9th, I didn't even have a place to go to. I didn't have an apartment, nothing, I had to go to a Social Services that day first thing I come out, and I was set up in a hotel room for a couple weeks. At that point in time, Department of Social Services told me that there was a Legal Aid representative at the shelter that they'd

set up, that was the first day that shelter was open, and I met with a representative from the Legal Aid on the 12th and once I got my strength up and was able to move around. And they give me the option of having a letter sent to my old landlord because he wanted to keep part of my money for my rent because of the fact that I couldn't get my stuff out. And because of the flooding, the Plattsburgh City Police Department would not allow us to go in the building after dark and because of my medical condition it was hard for me to turn around and to get my stuff out. So I was able to get my stuff out on the 21st, but the landlord wanted to keep part of my rent from the time of May 8th to the 21st because I couldn't get my stuff out. I met with the current representatives from Legal Aid Society, I met an in-take officer on the 12th, and then I met with Dan Alley numerous times between the time that my old landlord said I wasn't going to get all my money back and we ended up going to small claims court, and Mr. Alley, the only thing he had to do

other than, you know, go by the letter of the law was just change a few numbers and I got a partial refund, but he still wanted to keep the 3 days worth of rent because I couldn't get my stuff out until the 21st. We ended up going to small claims court, where at this point in time my old landlord finally decided to put up the money that he owed me, and settle out, and because of that, I didn't have to ask social services to help me in relocating. They offered me a months security, a months rent for a voucher and I told them I didn't need it. I was able to get my money back, between my resources and the other resources that I had, I didn't need them. Basically Legal Aid not only turned out and got me my money back and did what they were supposed to do and also saved Clinton County about fifteen hundred dollars. I didn't need any help.

JUDGE LIPPMAN: You know the point we were making is the point that you made. That civil legal services can very much decrease dependance of people on social services.

MR. DEMAR: Yes.

JUDGE LIPPMAN: Thereby making the government more stable, and decrease those costs.

MR. DEMAR: Yes, sir. Yes, sir. And in fact that in my case you know, I saved the county, between twelve and fifteen hundred dollars.

JUDGE LIPPMAN: And so, other than going to legal services you would have no ability to deal with this problem?

MR. DEMAR: No, I paid up all my bills at the beginning of the month, I went into the hospital on the 4th and I had my operation on the 5th and I was released on the 9th, and I didn't have any money in the bank. I had 35 dollars in the bank and that was it.

JUDGE LIPPMAN: Okay. Thank so much, appreciate it, appreciate your story. Dana, for the legal project do you want to tell us how legal services helped you?

DANA P: Thank you for having me here today. My name is Dana and I am forty-years-old and I have taught special

education for 22 years, I have two children that I single parent with no financial support. Apart from my college years in Rochester, I have lived in Troy my entire life. I was married in 1996 to a man who I thought would be a wonderful husband and father. I knew that he had a terrifying childhood. He told me that when we were first together, he witnessed his father repeatedly and horribly beat his mother right in front of him and he even saw his father on occasion put a gun to his mother's head and play Russian Roulette. On more than one occasion after that he told me he hated his father, and that he would never ever want to be like him. At first he was gentle and kind and he showed no inclination of the man that he was to become. He was a good dad, a loving husband.

I don't know what happened, but after about 9 years of marriage that has changed. He began to drink, to excess, and his health deteriorated. He was diagnosed with diabetes, but continued to drink and the alcohol defeated the medication. Then

he just keep getting sicker. His behavior towards me and our children took a drastic change. He began calling me vulgar and racist names and threatening me with sexual assault and that he could kill me. He refused to allow me to go to church or spend any free time with others except for my time at work. He threatened to take my children away from me, and I stayed with him because I thought he needed me and I kept hoping that I kept hoping to help him get back to the man he once was. This went on for four years and got progressively worse day by day. Our children were experiencing so much stress they were getting terrible headaches and stomach pain and then having trouble sleeping and hence concentrating in school. I tried to get help for my husband but he refused help. Things got worse and worse. I knew that I had to leave him and get help for myself and my children.

I didn't want to break up the family, but I felt like I had no choice. However, he chose that he would not let me go on and flatly told me there will be no

divorce, you cannot leave me. He threatened to torture me, rape me and kill my family. He began to stalk me, cutting my phone lines so I cannot call out for help and on more than one occasion he sabotaged my car, he secretly added fluid to the brake line so that the car that I drove, the mini van for my children, and did not even care, that they too would be or could be harmed and/or killed. He threw fits of rage in the home and in the neighborhood for anyone that may try to help me and then threatening to massacre my father and brother if they tried to intervene. He threatened to kill himself and leave a note for my children blaming me for his death.

So I knew I had to get away from him only though I barely had enough money to take care of my family since my husband was no longer bringing in enough supplemental income and I hired a lawyer and 2008, so that I can file for divorce. My husband found out about this attorney, when he was checking my cell phone, and called the number that he told me and then he told the

lawyer, he had better watch out and he would never let me leave him. Then he increased his stalking and controlling behavior, escalating the threats of harassment. He wrote me horrible letters that would shock and sicken you if you saw them. Some pretended to be anonymous stating that he would come and rape me and kill me in my sleep or tell me that I should just kill myself quick and get it over with. I got an Order of Protection from Family Court, but he just kept on violating it, and increasing his threats and intimidation. He wrote my first lawyer a letter so bizarre and frightening he withdraw from my case. I was again left with no one to help me after I spent $3,000 that I did not have on that attorney. He could no longer stay on the case. In the mean time my husband's behavior escalated even more and in November of 2008 he was witnessed pouring brake fluid all over my mini van and keying the van and placing nails under the tires to flatten them while parked in a public lot, all in violation of the Order of Protection. He

was finally arrested and placed in jail where he kept writing me frightening letters. His probation officer was concerned that he was going to kill me if he wasn't stopped. I tried to hire another attorney, but I simply didn't have the money that they required. Honestly, none of the them were willing to take on my case, out of fear that my husband would do what he had promised and it would be too long of a difficult case. So his behavior was worse after arrested. He broke windows out of the police car, punched his head through a wall in the courtroom, threatened the police, the Court officers and even a judge. His probation officer, Sunny Mills, was wonderful. She was quite worried about my safety. She was the first one who referred me to the Legal Project, which I knew nothing about. But he threatened to kill her too and blow up the whole Probation Department and the building and everyone that was there. So, she was taken off the case as well. He threatened to kill the judge then and she was removed from the case

after retirement. I felt like I had no one to help me. Ironically all this time my husband was given the benefit of an assigned attorney while I was struggling to find a way a way to afford the help that I needed for me. Even more ironic was the fact that my husband became the man that he most hated and he was like his own father. Thankfully I have to say that I did call the Legal Project, like Mrs. Loomis suggested. I am so incredibly grateful that I was told about the Legal Project, that they were willing to take my case. I don't know if I ever could have gotten free of my husband and the abuse if it wasn't for their help. I feel like the Legal Project was a blessing. My attorney, Lorraine, empowered me to know freedom, fight for my family rights and stand up with and face with courage that happened during domestic abuse. I could not have afforded more traditional legal representation. I pay all of my own bills while my ex-husband sits in prison planning his next revenge. Lorraine is trained to know how to guide her clients in the light

of peace and justice.

My husband is currently -- my ex-husband, delightfully at Marcy Correctional Facility, but he will be out way too soon. But with the help of Lorraine and the Legal Project I was able to finally be divorced from him in January of 2011, after three long hard years of fighting to get free. I never would have been able to achieve that without them. The Legal Project gives all woman the strength to make a better life even when they have no financial means. They truly do God's work. Please do all you can to make sure every victim has someplace like the Legal Project to turn, when there is no one else to help them. Thank you for you time.

JUDGE LIPPMAN: Thank you. It's a compelling story, clearly when you're dealing with ones physical safety, and well-being of your family, and I don't think there's anything more necessary in life and that's what civil legal services provides and doing in particular the good work of the Legal Project. So --

DANA P: There's an assumption that when you're a professional and you're a professional for a determined amount of years it will all be okay because on paper it may appear that, I'm more well-off than you are, and in the case being I haven't received very few child support payments so if it wasn't for the ability to take them -- for them to take me under the program that I got in, I can't think of where I would be because if it wasn't for their legal representation also and support, and everything that I needed, and caring for again my children, and getting them into a safer environment.

JUDGE LIPPMAN: Well thank you. So it's so telling in terms of why we're here today and so thank you so much. And Rassan Kellam whose a client of Legal Aid of Northeastern New York.

MR. KELLAM: Good afternoon, Your Honor. My name is Rassan Kellam and I'm fifty-eight-years-old, and I speak today as a former client of the Legal Aid Society of Northeastern New York, but for the past six

years I have been stably housed, employed and clean and sober. I was able to achieve this despite twenty-two years of abusing alcohol, Marijuana and Cocaine, multiple instances of homelessness and a short time in jail. After four different stays in city missions, I hope to never be homeless again. Through the assistance of the variety of community agencies I have been given the opportunity to put my life on the right track, a 12 step program helped me surrender to my own addiction. The drug court program and half way house assisted me with obtaining employment. I now work at Time Warner Cable in marketing for the past four years. Opportunities have provided me with Mohawk Opportunities have provided me with a rental supplement and case management services as they do for a number individuals with disability. I recently have been dismissed from the program because I am exceeding the financial guidelines.

I owe my thanks to many people for these successes and I thank the Legal Aid Society for helping me, to protect these

gains that have transformed my life. Recently my landlord tried to evict me for the nonpayment of rent. I admit that I owed one months rent, and with my next paycheck I planned to pay my landlord what was due. I asked my landlord to give me until the next day, after court, when I received my pay check to pay him. My landlord was unwavering and would not agree to give me that one day that I needed, that extension. I was afraid of becoming homeless again. I didn't know how the system worked. Through the affiliation of a personal acquaintance who also shared her story of hardship and overcoming and learning of this individuals overcoming with the assistance of the Legal Aid Society, I was forwarded to the Legal Aid Society for assistance. I contacted the Legal Aid Society of Northeastern New York, at the SCAP office, and met with Rob the next day. Mr. Vanderbles saw that the landlord had not given me a ten day notice to cure followed by a 30 day termination notice and even though he had agreed to do so in the lease we signed. Mr. Vanderbles

represented me in court, and moved to dismiss the case, because my landlord had not followed the termination procedure, we had agreed to in the lease. Mr. Vanderbles also moved to strike the demand for $150 of late fees, because there was no lease term allowing late fees. All I wanted was one day to pay my landlord, with the next pay check. With the defense raised by Mr. Vanderbles the landlord agreed to use the next paycheck to pay my landlord and we were able to stop my eviction. The Legal Aid Society enabled me to help myself and preserve the stable lifestyle I had worked so hard to obtain. From the beginning the Legal Aid Society guided me through the process and gave me peace of mind, and in a highly professional manner. My best interests was always their priority. If I had been evicted I would have lost my housing, my rental supplement, my job, and perhaps my sobriety. Returning to homelessness would have been a lifestyle change that I could not have coped with. In court Rob took the time to discuss strategy

and guidelines for avoiding this situation again. I now budget my income to ensure that I pay rental on time every month, so that I would not be at risk of homelessness again. I am grateful to the Legal Aid Society and hope that you do all you can to ensure that Legal Aid have the staff and the resources to help people like me maintain their housing, their jobs and keep their lives stable and on track. Thank you.

JUDGE LIPPMAN: Thank you Mr. Kellam. Fair to say, Legal Aid Society had a dramatic effect on your life and pulling it together for you. It's a story to be repeated a hundred times over in addition to our three witnesses today.

So, thank you all, obviously thank you to the Legal Aid Society of Northeastern New York and the Legal Project for helping, the three of you with life issues that we all have. So thank you so much, and at this point I'm going to end the hearing and I think it's on an appropriate note, that all of the witnesses that we've heard today, representative of the Attorney

General, the judges, business leaders, the partners, the technology partners, all go to support the services that impact on people's lives. And I think that your stories not only demonstrate that, but also the underlying point that we tried to make, that by saving people's lives, we also help our society, our State government, our State government in terms of the reduced costs for Social Services, homelessness, incarceration, increased federal benefits and other benefits coming to New York.

The bottom line is that I think these hearings demonstrate over and over again, from so many different perspectives, that civil legal services are a wise investment for New York. Not only in terms of the moral and ethical obligation that we have to help those who need assistance, but also in terms of the bottom line of our society, the institutions of that society, that are all served by helping people helping and our community stay stable, and stopping people from falling off the cliff and sometimes during some of the worst

moments of their lives.

So, thank you all, thank everybody for coming to these hearings and we greatly appreciate it and I thank the Task Force for doing the hard work to prepare us all for the hearing.

Thank you again. Have a good day.

(Whereupon, the proceedings 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.

Cynthia A. West

Dated: October 3, 2011

APPENDIX 10:

Transcript of the Fourth Department Hearing held on October 6, 2011

SUPREME COURT OF THE STATE OF NEW YORK

- FOURTH DEPARTMENT -

* X

THE CHIEF JUDGE'S HEARINGS

ON CIVIL LEGAL SERVICES

* X

Ceremonial Courtroom
Old County Hall
92 Franklin Street
Buffalo, New York
October 6, 2011

B E F O R E:

HONORABLE JONATHAN LIPPMAN,
CHIEF JUDGE

HONORABLE ANN PFAU,
CHIEF ADMINISTRATIVE JUDGE

HONORABLE HENRY J. SCUDDER,
PRESIDING JUSTICE OF THE FOURTH DEPARTMENT

PAUL MICHAEL HASSETT, ESQ.
PAST-PRESIDENT OF THE NEW YORK STATE BAR ASSOC.

THE CHIEF JUDGE'S HEARING ON CIVIL LEGAL SERVICES

THE FOURTH DEPARTMENT, OCTOBER 6, 2011

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THE CHIEF JUDGE'S HEARING ON CIVIL LEGAL SERVICES

(Proceedings commenced at 11:06 A.M.)

JUDGE LIPPMAN: Good morning. Pleasure to see all of you at this fourth hearing on civil legal services in New York this year. You know, these hearings are the second year that we are trying to figure out the gap in civil legal service representation for the court. The genesis of the hearings is really because we in the judiciary and the legal profession understand that it is our constitutional mission to foster equal justice for all in the state, that it is the professional obligation of the bar to do so, and essentially if not us, who is going to do this? The judiciary and the profession feel that this is, again, essential in terms of the civil justice system, that the poor, that the working poor have representation in matters affecting the necessities of life, the roof over someone's head, freedom from domestic violence, their livelihood, consumer debt cases, entitlements that subsistence -- entitlement that people are supposed to have, all of these things require a lawyer, and in our courthouses and in our courtrooms, if we can't foster equal justice, a level playing field, then we might as well close those courthouse doors.

This is particularly important in the difficult economic times that we are facing in New York and around the country. As you know, the recent poverty statistics

tell us that 15 percent of our citizens in New York State are under the poverty level, living under the poverty level. More in many parts of the state. And this is certainly a moral and an ethical imperative to provide representation, to stop people from falling off the cliff. Every civilized society is really judged by how it treats its most vulnerable citizens, and providing legal representation in matters affecting, again, the very essence of life is fundamental to the well-being of a society.

And we have had, in the early hearings, testimony from business groups, landlords, hospitals, banks, saying that not only is it the right thing to do, but that their own bottom line are served by having people represented in those foreclosure proceedings that you see today: the banks don't want the properties back, they want to work things out, and I think that's systematic of all of our major institutions, would rather have people represented and have, again, a level playing field, and be able to help people and at the same time help our basic institutions in this state.

These hearings have been put together by the Task Force to Expand Civil Legal Services. The chair of that Task Force is Helaine Barnett who is the former chair of the Legal Services Corporations. And Helaine, would

you just stand up for one second? And Helaine, thank you, Helaine. Helaine and the Task Force have done a spectacular job in putting into these hearings independent research around this whole issue of providing civil legal services for the poor and figuring out, again, the gap.

We have determined in last year's report that, at best, we're meeting 20 percent of the civil legal service needs in New York. We're talking about eligibility for people at 200 percent of poverty level, that's for a family of four, approximately $44,700 a year. Our goal is to provide a permanent, dependable, systemic way of funding civil legal services. Last year we were able to obtain $27 and a half million for civil legal services. Coming out of these hearings, and the judiciary budget, there is a legislative resolution that asked to hold these hearings and to submit to the Legislature our recommendations.

You'll see that at today's hearings, you'll hear from clients whose lives have been salvaged by having representation; you'll hear about collaboration and a shared costs in terms of providing civil legal service representation; you'll hear from the dean and SUNY distinguished professor at University at Buffalo law school, Makau Mutua; and you'll hear from a judge's panel that will tell you the problems that the judges have when

there is an uneven playing field and when people are unrepresented and come into their courtroom.

We've learned from these hearings that in many parts of the state, for every person accepted for civil legal services, eight or nine people are turned away. We've learned that 98 percent of people in eviction cases are unrepresented, 95 percent of litigants in child support matters are unrepresented, and until recently, two-thirds of homeowners in foreclosure proceedings were unrepresented.

Seventy percent of civil matters in New York involve family law, consumer credit, landlord-tenant and foreclosure cases, again, the essentials of life, and the bottom line is, again, that civil legal services is a good investment for New York. For every dollar spent on civil legal services, five dollars come back to the state in terms of decreased costs of Social Services, incarceration, homelessness, and increased dollars that come into New York from federal funding entitlements.

I think that the situation around the country is such that the Federal Legal Service Corporation is under seize, the IOLA funds which typically came from interest-bearing accounts that lawyers maintain or escrow accounts is way down, from $32 million to now about $6 and a half million. And these hearings are basically

conducted under the premise that you all should understand, make no mistake about it, nothing is more important to the judiciary and the profession than to meet our constitutional mission, our ethical obligation, to foster equal justice. So that's the spirit of these hearings.

Don't be taken aback, on the people who are testifying, if we interrupt you, maybe ask you some questions. We have your written statements so it's not necessary to read your statement, we want you to tell us, you know, why you're here and what you have to say. I will ask you some not-too-intimidating questions, but this panel that you have here is an intimidating one.

On my right is Judge Scudder who is the Presiding Justice of the Appellate Division-Fourth Department. Judge Scudder is withering in his cross-examination so be very careful when Judge Scudder asks a question.

To my left is Judge Ann Pfau who is the Chief Administrative Judge of the State Court System, and she may not look like she's tough but you wait until she asks you questions.

And then really the most difficult one among us is at the end, Paul Michael Hassett, who is the prior head -- president of the State Bar Association in New York

and who has a long history of being involved in the affairs of certainly the western part of our state.

And together we represent the judicial -- the leadership of the judiciary and the profession in this state and we think important, at the very least symbolically, that this kind of a panel, including myself as the Chief Judge of the state, preside over these hearings.

There is a red light that can go on if you overstate your time, and take it with a grain of salt, no one's coming in to arrest you if you go over the time. But we're going to keep a relatively tight schedule, and if the Chief Judge will stop talking, maybe we'll be able to do that.

So we're going to start with our witness list, and I ask Karen and Bernard Dent, clients of the Western New York Law Center, accompanied by Joseph Kelemen; Michelle Kilian, client of Neighborhood Legal Services, accompanied by William J. Hawkes; Gabrielle Threet, client of the Erie County Bar Association Volunteer Lawyers Project, accompanied by Robert M. Elardo; and Jack Hagen, a client of Legal Services for the Elderly, Disabled or Disadvantaged of Western New York, I think, accompanied by William F. Berry. Would you all come up, please? Okay. So take your time.

All right. Mr. Russ, you're going to start us off? Oh, I'm sorry, Mr. Dent. Karen or Bernard Dent.

MR. BERNARD DENT: Good morning. I'm Bernard. My wife isn't here today.

JUDGE LIPPMAN: You're going to carry it alone.

MR. DENT: I'm sorry?

JUDGE LIPPMAN: You're going to carry it alone.

MR. DENT: Yes, I think I can handle it.

JUDGE LIPPMAN: Okay, go for it. You're up.

MR. DENT: My name is Bernard Dent, I live in Cheektowaga, I was born and raised in Buffalo, New York, I have three children, and an elderly mother that also stays with us.

Around 2009, I spent -- I just want to back up. I spent most of my career in the banking industry. My last position in that field was regional manager/ vice-president of the bank. Unfortunately I got laid off, and since then it's been an ongoing struggle. Did have some temporary work as a manager in the census when that was here, and off and on I've been working temporary jobs and trying to find something substantial.

In the meantime, my mortgage fell behind. It was two months behind when I sent a payment to the mortgage company. They sent it back to me. They said we want everything or we're going to put your house in

foreclosure. I spent some time trying to borrow the money, they gave me a short deadline, four days to get it, I was unable to get it at that time so they put my -- foreclosure proceedings began. So when they contact -- I contacted them, they wanted all the past due payments plus $5,000 in legal fees. Trying to negotiate with them, I was definitely in -- not in a position of power. They wanted the entire amount, even though no legal proceedings had begun.

So I tried to negotiate with them, they said they would get back to me. Sent me a modification paperwork. I sent it in, a couple weeks went by, I called them and I asked them did they receive it. They said, yeah, we're working on it, we'll get back to you.

A couple weeks passed, I called them again, they said they lost my paperwork and I had to send it in again.

So at this, fees are still accumulating on my account, they would not accept any monthly payments, so they re-sent the modification paperwork to me again, we filled it out, sent it in again. This time I waited a week and I called them, they said they hadn't received it. Even though I had someone's -- had someone sign for it, they said they didn't have it, and I had to send the paperwork again.

So they sent the modification paperwork out a

third time, I sent it back in, waited a week, I called them, they said they're working on it. I continuously followed up with them. Somehow my paperwork got lost again. So it was very frustrating at this point --

JUDGE LIPPMAN: You think this is a frustration that a lay person rather than a lawyer often feels when they're dealing with essentially a legal problem with a big institution?

MR. DENT: Absolutely. I felt you need an attorney with expertise to deal with them and I thought, you know, reasonably intelligent person, educated person, I worked in the banking industry for many years, I felt --

JUDGE LIPPMAN: This is who you're dealing with.

MR. DENT: And I'm dealing with the bank, I thought that I would be able to negotiate a reasonable settlement, but that didn't happen.

So at a certain point now, it was -- because they wouldn't take any payments while this is going on, so at this point my house was about five months past due.

JUDGE LIPPMAN: Right.

MR. DENT: Right.

JUDGE LIPPMAN: You know you're in trouble but you can't go out and get it.

MR. DENT: So I'm on the Internet, I'm searching. Like I said, my mom is elderly, my dad is -- I

don't have anyone to borrow money from and I had exhausted our savings with a daughter in college and two young children, you know, I had exhausted our savings trying to keep them in school and trying to keep the house afloat so I really had no one. So finally, I was searching on Internet and I came across the Western New York Law Center and I decided to give them a call.

Oh, excuse me, let me back up a bit. One last time I called the bank and I said is there anything you can do, can we negotiate, you know, different fees, something to bring me current. They said, well, we'll get back to you. Three days later they sent me paperwork, and instead of my mortgage payment being $900 a month, they said give us $4,000 for all the legal -- they reduced the legal fees at that point, give us $4,000, plus all the back payments, and your new payment's going to be around $1,800 a month. And I said, well, right now this is the situation, I've having trouble paying the $900 a month, there's no way I -- I can sign this agreement with you but there's no way I can realistically maintain it. They said that's all we're going to do for you, take it or leave it. So I said, unfortunately, I can't sign this in good faith because I'm not going to be able to pay this.

So that's when I contacted the Western New York Law Center and I spoke to an attorney named Amy and she

worked on our behalf with the mortgage company. They -- she was able to reduce the legal fees by about 800 or $900, she also got them to eliminate the $4,000 immediate down payment that they wanted, she also got them to readjust my interest rate, instead of having a variable rate, the Western New York Law Center got me a fixed rate, and I was able to resume my payments. And even though I'm still struggling to find a position -- a permanent position as far as employment, I'm able to maintain the mortgage with my unemployment. They were invaluable. I don't think --

JUDGE LIPPMAN: Basically the world changed for you once you had legal service representation.

MR. DENT: Absolutely.

JUDGE PFAU: And did the banks start treating you differently?

MR. DENT: Yes. It was unwavering, their -- how rude and abrupt they were when I was trying to negotiate. And I thought to myself, I've been in the banking industry for 15 years, I know the banks don't want my house.

JUDGE LIPPMAN: But that's the point, they don't want your house, they really don't.

MR. DENT: But they were acting as if they did.

JUDGE LIPPMAN: Because you needed a lawyer to talk their language.

MR. DENT: To speak on my behalf. And once they spoke on my behalf, everything changed. When the bank would call me, the mortgage company would call me, they had a different attitude.

JUDGE LIPPMAN: And let me ask another question, you know, and I don't mean this in a way to embarrass you, but people think when we're talking about civil legal services for the poor in the state, that we're talking about -- only about people who are walking the streets without a home or whatever it is and have no way to put a dollar in their pocket, they're living in shelters. We're talking about regular people who have regular jobs and in this difficult economy are having a problem right now, put yourself in that category, not an uneducated person who, you know, has held a job for a long time and yet you find yourself in this predicament, just like me and you and everybody in this room, we're not just talking about, gee, the outcasts of society, you know.

MR. DENT: No. Your Honor, absolutely right. I never would have imagined a few years ago --

JUDGE LIPPMAN: That you would be in that --

MR. DENT: -- that I would be in this position, but I am. And if you pretty much have anyone unemployed long enough, they're going to feel the crunch. And at a certain point, because it's been off and on since 2009, I

maintained it as long as I could but we're talking about regular people.

JUDGE LIPPMAN: Let me ask you one more question. Is there anything more important to you than this house and the roof over your head?

MR. DENT: No, absolutely, it's the most important thing that I had. I felt not only it was my frustration very high, you know, I was worried about what's going to happen to my children, what's going to happen to my elderly mother, she can't take care of herself and, you know, as a man, we're supposed to take care of our family and I didn't feel like I could do that. So, you know, they were -- the Western New York Law Center was a Godsend for me.

JUDGE PFAU: If you didn't have them, do you think you would have your house today?

MR. DENT: No. The only other option would have been maybe bankruptcy, I don't know, but other than that, no, if I did not have them, I would not have my house today.

JUDGE LIPPMAN: But, again, and not to gild the lily or beat a dead horse, but you take a person who has a responsible job, who thinks they know how to deal with the basic things that one deals with in life, and yet when you're dealing with the legal problem, you really need a

person trained.

MR. DENT: Yes, you need an attorney, absolutely, Your Honor, you need an attorney. They didn't want to talk to me, even though some of the things I knew they were telling me was untrue because I worked in the bank, I'm in no position to say, hey, that isn't true. They want what they want. And until I got an attorney to represent me, that's when everything changed.

JUDGE LIPPMAN: Okay. Thanks so much, appreciate it.

Michelle Kilian. You're on, Michelle.

MS. MICHELLE KILIAN: My name is Michelle Kilian. I am 29 years old and I'm the mother of a beautiful two-and-a-half-year-old daughter named Eva.

In April of 2010, while my now ex-husband was away for the weekend for military training, I packed up my belongings, myself and my one-year-old daughter Eva and sought refuge at the Haven House --

JUDGE LIPPMAN: Michelle, put that mike a little closer.

MS. KILIAN: -- at the Haven House, a domestic violence homeless shelter, because I was a victim of domestic violence. I had no money, no safety plan, and I was in a panic and worried about the life I would be able to provide for my daughter now that I left my abuser. All

I took from my marital home were my material possessions, my child, and my damaged self-esteem.

Once at the shelter, they instructed me to apply for public assistance and food stamps. I went and applied. After 30 days I received my public assistance grant of $90 a month for me and my daughter. I also received $45 a month in food stamps for the both of us.

My stay at the shelter was challenging and scary and I was always concerned about our personal safety. I wanted to get out and try to make a go of it on my own, and after being at the shelter for two-and-a-half months, I finally found permanent housing in Cheektowaga.

I vigorously continued my job search because I did not want to be reliant on the public assistance system. I had never been on public assistance before, and although I was grateful for the assistance when I needed it, I really wanted to get off public assistance and work. After months of searching, the temporary agency finally found me a place at Neighborhood Legal Services.

My income from employment quickly affected my public assistance grant and my case was closed due to excess income in about two months after I started working. Although it felt like a success to get out of shelter and off public assistance, once off public assistance, I faced many economic challenges that made it difficult to make a

successful transition from welfare to work. That's what I would like to talk to you about today.

Without the assistance of Neighborhood Legal Services, it is likely that I would have been unable to maintain my housing, utilities and day care, and thus my employment, and would have then been forced back on to public assistance. I truly feel that God has placed me in this position at NLS for a reason. Because if I weren't at NLS, I would never have gotten the legal advice that I needed to get off and stay off public assistance.

I was in a tenuous financial position once my rent came off voucher. I fell behind on my rent. I did not know that DSS helped with rent arrears. NLS informed me that DSS has a legal obligation to help prevent the eviction. NLS represented me in court and was able to stop the eviction. NLS was able to help me get the rent arrears from DSS and the eviction was avoided. I was able to stay in my home.

My next financial crisis occurred when I fell behind on my utilities. Although I was working, the gas bills in Buffalo in the winter are really high and I could not afford to pay the entire bill each month. I fell behind on my utilities and received a shutoff notice from the gas and electric company. I did not know that DSS could help with utility arrears and shutoffs. NLS advised

me about the availability of HEAP and emergency HEAP. I applied for both of these benefits and was found eligible. The shutoff was ultimately avoided and I was able to stay in my apartment with my daughter.

I was barely staying afloat financially and my child's father was not helping us financially at all. He never paid any child support. Previously, I had been advised by a private attorney that I was not eligible for child support from my ex-husband because I was a public assistance recipient at the time of the divorce. NLS advised me that that was not correct and the family law attorney from NLS advised me of my legal rights to obtain child support. She helped me fill out the necessary paperwork in order to get the support that I needed. I was granted the support award and I'm now getting money from my child's father.

My third economic crisis occurred when I received a notice threatening to discontinue my child care benefits because I was no longer receiving public assistance. DSS sent me the notice stating that because I was no longer participating in a DSS work program, I was no longer eligible for child care benefits. I was not participating in DSS work program because I was employed at the time. I told my worker that I was employed and I provided documentation regarding my employment.

Nonetheless, DSS tried to discontinue my child care benefits. NLS informed me that this was an illegal discontinuance. They contacted DSS on my behalf, advocated that the discontinuance be withdrawn, and as a result, I continued to receive my child care without interruption so that I could maintain my employment.

Recently, I received another notice from DSS threatening to discontinue my child care benefits again, this time due to excess income from employment. Without a subsidy from DSS, my child care costs would have been prohibitive and would have forced me to quit my job at NLS in order to care for my child. The day care center would have charged me $800 a month. My net pay every two weeks is $699. After paying for child care, I would only have about $564 to pay for the cost of living, rent, food, diapers and utilities. I could not have paid day care and worked. I would have had to make a choice. NLS advocated on my behalf. They contacted DSS and told that the discontinuance was illegal and they had not evaluated me for transitional child care. DSS withdrew their notice and issued a new one, agreeing to provide me with the transitional child care benefits that I am legally entitled to. Although I pay a parent share of $318 each month, I am able to keep my job.

JUDGE LIPPMAN: Michelle, let me ask you a

question. The basic idea that you're telling us is you're a domestic violence victim but what comes along with that is a lot of other legal problems, it's not so simple as saying the victim is taken out of that daily threat to, you know, violence and life is then going to be perfect. Life has all kinds of tentacles and complications. And for someone like you, was there any place that you could have turned on any of these issues? No, you don't have a lawyer, what would you have done?

MS. KILIAN: Without NLS, I don't really know where I would be right now.

JUDGE LIPPMAN: Or where your child would be.

MS. KILIAN: With my -- right. I -- I can't fathom the thought of it because I didn't know where to turn. I was fighting with Social Services at every turn and I'm smart and I was fighting with them, I handed in my paperwork on time, and --

JUDGE LIPPMAN: And you had told them you wanted to work, you wanted to be a contributing member of society.

MS. KILIAN: Yes.

JUDGE LIPPMAN: But you have all these legal problems and that you don't have the ability to deal with them.

MS. KILIAN: Yes.

JUDGE LIPPMAN: Is that the long and the short of it?

MS. KILIAN: Um-hum.

JUDGE LIPPMAN: And, you know, so I hear the bottom line is, your life would be very, very different today without civil legal services to help you.

MS. KILIAN: Yes, I would be on public assistance still and not be able to work because I have no family here, I'm just by myself. So --

JUDGE LIPPMAN: Instead of having a job where you're a contributing member of society.

MS. KILIAN: Yes. And even if I was on public assistance, I still wouldn't be able to make it because you don't -- you can't really survive on it.

JUDGE LIPPMAN: I know. Thank you, Michelle.

MS. KILIAN: Thank you.

JUDGE LIPPMAN: That was really instructive, I think, in terms of how civil legal services can change someone's life in so many different ways.

Gabrielle Threet.

MR. ROBERT ELARDO: Your Honor, Gabrielle Threet is not able to be here this morning. I'm Bob Elardo, the managing attorney from the Erie County Bar Association Volunteer Lawyers Project, and with your kind permission, I can quickly summarize what she would have said.

MR. ROBERT ELARDO (ON BEHALF OF GABRIELLE THREET)

JUDGE LIPPMAN: Why don't you summarize what her issues were and how legal services helped.

MR. ELARDO: Okay. She came to us for a problem with unemployment insurance benefits. She had worked for three years in a clerical job at Erie Community College and --

JUDGE LIPPMAN: Let me stop you for one second. But that's a common problem, right, with civil legal services, that people are entitled to certain things but yet can't access it, they don't know how to do it.

MR. ELARDO: Absolutely.

JUDGE LIPPMAN: They don't know how to interface with the institutions that --

MR. ELARDO: Yes.

JUDGE LIPPMAN: -- determine their fate.

MR. ELARDO: And I think this is a perfect example, this case. As you'll see from the facts of what happened, she was told originally that her position was eliminated, and she was laid off, but then when she applied for unemployment, her employer said that she was actually discharged for misconduct for falsifying time records.

And what happened is that she had gone out for surgery, she had had surgery at Roswell Park Cancer Institute and was out of work for a couple of weeks.

The -- and during those weeks, she did, on her handwritten time sheets, put down hours that she had worked. Seems like a slam dunk for the employer. A misconduct in these cases, as you probably know, is doing something that you knew or should have known could get you fired.

JUDGE LIPPMAN: Right.

MR. ELARDO: I mean, that's basically the standard. And the employer had an experienced attorney representing them at the hearing, seems like she should lose. She shouldn't have done that.

We got a young pro bono lawyer to represent her in the hearing and that lawyer really put a lot of time into this. He was able to establish -- he subpoenaed records from the employer, responded to their subpoenas, and represented her at the hearing and was able to establish that, first of all, the employer allowed flex time, although it was very unclear as to how that was supposed to work.

JUDGE LIPPMAN: Right.

MR. ELARDO: The time sheets didn't have any place to mark that it was flex time. Her supervisor who -- he actually got the supervisor in there to testify to these things, the supervisor had actually told her to write the time sheets out that way and he had allowed her to work extra hours before she went out on surgery and

extra hours after she came back to make up for those hours, and he testified that that's his understanding of what flex time meant there and that's how he had been doing it for a couple of years.

And so the ALJ on the case found that what the employer said about her time sheets was absolutely true, but the additional facts that the pro bono lawyer was able to bring out --

JUDGE LIPPMAN: And explain.

MR. ELARDO: -- and explain meant -- made the entire difference and he awarded her benefits, and I think rightfully so.

And what Miss Threet wanted to tell you is that without that lawyer, she would have been in a terrible spot. You know, because she had the lawyer and she continued her benefits, she did not lose her home, her and her young child stayed in her home, they didn't have the gas, electric or water shut off like this lady was talking about. The shutoff notices, you know, can be very threatening to a family, especially here in Buffalo in the winter. She was able to keep her job -- I mean -- I mean her car, wasn't repossessed, and she was basically able to stay afloat while she continued to look for work. And now, even before finishing receiving all of the benefits that she was entitled to, she's found work, and

better-paying work. She's actually an ideal candidate for explaining what we're trying to do in legal services, to keep families afloat and productive in society. She actually now has not only found a job, she's actually found two jobs and they're better jobs than she had before.

JUDGE LIPPMAN: Literally her life was dramatically altered for the better --

MR. ELARDO: Absolutely, Your Honor.

JUDGE LIPPMAN: -- by the simple act of a relatively small investment -- at least we think so -- in civil legal services, to have a lawyer who could represent her with what we're calling the necessities of life, the very basics. You know, she wouldn't have been able to have those necessities, and then you become a burden on society and with all the attendant costs that go with that.

MR. ELARDO: Right. She would have been showing up at the Department of Social Services, requesting public benefits and food stamps and she might have ended up in a homeless shelter, it goes on and on.

JUDGE PFAU: And she was represented by a volunteer lawyer --

MR. ELARDO: Yes.

JUDGE PFAU: -- who took on her whole case. Not

just a lawyer but really stayed with her for the whole case, which is wonderful, shows the partnership that has to happen between civil legal services and the bar which is really so special up here, I think up in Upstate New York.

MR. ELARDO: Yes, I totally agree. You know, every year we have about 400 lawyers in this community handle about a thousand cases pro bono for our clients, and it really makes a difference to supplement what the staff lawyers are doing.

JUSTICE SCUDDER: Is that growing all the time or not, as far as the number of lawyers that will participate in pro bono?

MR. ELARDO: In the last few years it's stayed pretty level for us, and we are trying to work on ways to increase it all the time.

JUSTICE SCUDDER: I was going to ask that. Have you come upon ways that -- that have worked to increase it?

MR. ELARDO: Well, the best way for us is to do trainings, to entice the lawyers in, and to have a staff member, who is a lawyer, who is out there talking to the lawyers in the law firms about the opportunities for pro bono, the -- what they can get out of it, not only in terms of training but, you know, just in terms of human

satisfaction for having helped someone. And I -- you know, the lawyers are very responsive in this community to hearing that, and more and more we're working, and we have been for many years, to change the culture in the bar. It's not a quick fix, it's a long-term commitment to change the culture.

JUDGE LIPPMAN: I think what he's trying to explain is clearly the civil legal service providers have to carry a great weight of this and, you know, the bulk of the representation, but even with all of the efforts that we've all made, you know, there just isn't enough money certainly in this economy to cover the whole need and that there needs to be this component of pro bono representation, volunteer representation by the bar that fits in to this -- this puzzle, really, of how to provide civil legal services for the poor. So the bottom line is we need a permanent, dependable, consistent public funding, and then we need this volunteerism by the bar to sort of complete the package, and at best, even with the -- you know, the funding that we've gotten and all of the efforts, we're meeting, at best, 20 percent of the needs of civil legal services of the poor in this state and that's why we need to hear these stories and understand what exactly this is for.

So thank you so much, and you've been very

helpful.

MR. HASSETT: I'm sorry. As you know, Bob, I had the privilege to serve on the pro bono committee which was part of ProBonoNY and the funding for that program died; along with it, the services of the coordinator which the program paid for. Was that -- I assume that was very helpful to you and the other counties in the Eighth District in providing pro bono volunteers.

MR. ELARDO: Absolutely. The coordinator was an employee of our program, because we're the biggest pro bono program in the district, but she worked to help the programs in the entire district to recruit, train and support lawyers, and was really initially concentrated mostly in the rural areas that needed the most help and was making a huge difference there.

JUDGE LIPPMAN: We've had this in other locations, where the coordinators have gone with the decrease in funding and it just makes it that much more difficult to get done what needs to be done.

Okay. Thanks so much.

Jack Hagen.

MR. JACK HAGEN: Thanks. Thanks, Your Honor.

JUDGE LIPPMAN: Thank you.

MR. HAGEN: I would like to thank you personally, all of you, for that statement you made in the

beginning. I didn't realize the size of the numbers, the 20 percent number of people who are represented but really the 80 percent who aren't. It's pretty stunning. I would say that I was lucky to find representation.

I was diagnosed with leukemia in 1999 and I had two transplants at Roswell Park. I was covered by my employer's health insurance for several months -- or actually I think 29 months after I was diagnosed and left the company, but my health insurance ran out and I had to find either a private health insurance or -- or none.

My main problem after both transplants was the cost of my drugs, the cost of the drugs to protect me from various issues, primarily what's called Graft versus Host disease in which the -- anyone who has a transplant -- I had a blood transplant, I had leukemia -- faces the possibility that almost anything, because of your weakened immune system, can attack your body. And most people who die as a result of transplants, whether they are blood transplants or what we think of normally as transplants, livers or kidneys, that sort of thing, die of Graft versus Host disease. The drugs are incredibly expensive.

Initially after -- after the transplants, my monthly bills were in the range of $6,000. Those diminished over time but not actually much, not that much, let's say. I had -- after my second transplant, I was

helped by the assistant attorney general who was located at Roswell Park to get Medicaid qualification in order to pay for -- or assist me in paying for my drugs. After about four or five years, five years of being helped by Medicaid in Niagara Falls where was my permanent residence, my permanent legal residence, they decided -- I had moved in with my mother during my convalescence, she helped me with a lot of things, things like she drove me to Roswell every day essentially immediately after each of my transplants in order to obtain follow-up treatment, and many other things that -- she cooked dinner for me. You know, it's a tremendous number of things that you need that you're unable to deal with.

Once DSS in Niagara Falls realized that I was actually not physically living in Niagara Falls -- my mother lives in Tonawanda -- they decided that I don't qualify for Medicaid in Niagara Falls, that I should be in Erie County. Well, except the problem was that my legal residence was in Niagara Falls.

JUDGE LIPPMAN: That's right.

MR. HAGEN: And I happened to be talking to my lawyer -- my mother and I went to have our wills done -- and he mentioned he -- Tom Keefe is his name -- turned out to be the president of Legal Services for the Elderly and Disabled, and he suggested that I talk with Legal Services

for the Elderly and Disabled and see if they could help me in dealing with DSS which wanted to discontinue my Medicaid.

I talked to them, I met Bill Berry, and we filed an appeal with the DSS, went to a hearing, fair hearing it's called, and they couldn't prove in any way that I didn't live -- or my permanent residence was actually in Niagara Falls and that I fully intended to move back there once I was able to recover. So we won that case and my Medicaid was continued.

Several more years went by during which Medicare Part D was enacted, January of 2006, and that helped me tremendously in paying for the drugs and also reduced vastly the amount of money that Medicaid in Niagara Falls had to pay. So I thought this -- I'm in pretty good shape.

About -- in 2010, DSS in Niagara Falls changed everybody, and decided once again that since I did not live in Niagara Falls, I was unqualified for their Medicaid. I went back to Bill and we said -- I said, let me just change my residence to Erie County. Erie County, it turns out, where actually I thought this would be a simple piece of paperwork but it wasn't because Erie County does things differently than Niagara County does, which I was totally unaware of, and I was actually told

that they do things differently than the rest of the state does. I'm not -- I don't have the facts on that but it was interesting. But they didn't want to accept me either and Bill got into negotiation with my representative there, significant negotiations that I -- I may -- also take one step back.

In the five years, in the last five years or so, I've been having recurring issues with my skin on my head, (Mr. Hagen removes hat) and for whatever that's worth. It's very debilitating for me. It also requires drugs that are, again, pretty significant in addition to the ones that I still have, even though I'm in remission from the leukemia.

We worked -- we didn't work it out, Bill worked it out. Legal Services for the Elderly supported me in this situation and got me reaffirmed and approved for Medicaid in Erie County. Had it not been for that, the drugs that I have to take now, I'm still in the classification, even with Part D, of having to pay several thousand dollars a month for drugs, with part -- or with Medicaid support, I get -- I get ex -- what's called extra help for Medicare Part D which reduces the copays that I have to pay. In addition, I don't have to pay the so-called doughnut hole money which is about $3,000. Without that money, I would be in a position -- or without

that aid, even though they don't pay much money, Medicaid, but their support of me allows me to get the extra help which reduces my --

JUDGE LIPPMAN: But the bottom line, though, is really, in a different sense dealing with a medical condition, the same thing as everybody else's story.

MR. HAGEN: It is.

JUDGE LIPPMAN: What would you have done, these are benefits that you're entitled to but you just could not figure out or deal with the bureaucracy that determines, again, your fate. Is there any other -- anything other than civil legal service assistance that could have helped you through this, this literally life-threatening crisis?

MR. HAGEN: Not to my knowledge. I -- as I say, I was very lucky that my -- my lawyer happened to be, at the time, the president of this organization. And I had no idea that it existed and/or -- I mean, I --

JUDGE LIPPMAN: Jack, let me ask you one thing. So when you take a case like yours, we're not talking about someone who tripped on the street and wants to bring a lawsuit. We're talking about someone who is confronted with a life-threatening situation, with no way out, without -- because it's really a legal problem, it's being able to access the benefits that you're entitled to and as

a lay person, as a non-lawyer, you just don't know how to do it.

MR. HAGEN: Yes, exactly.

JUDGE LIPPMAN: Very few of us in this room know how to do it without a trained person who understands that they're dealing with someone's very survival, and that without the assistance, there's no life.

MR. HAGEN: My choice would have been to not take the drugs that have kept me alive for the last ten years, and it's really as simple as that, I couldn't have afforded them.

JUDGE LIPPMAN: It's a very graphic description of what this is all about. Each of you in your own story, really, has defined what this is all about when we talk about civil legal services that will affect the necessities of life. Not, gee, maybe I want to bring a lawsuit about something. But about being able to live and be -- you know, have a meaningful role in our society and in our local community.

So I thank all of you for your --

JUDGE PFAU: If I could just add, it's interesting, generally we think of civil legal services in the context of representing you in court, and we've had this whole panel this morning with all of the different life situations and none of them have been court cases.

They've all been accessing the things that you either have a right to or negotiating with a bank, but none of them fall within what one would think stereotypically of what civil legal services are for but they've totally changed your lives. So it's been a very interesting panel. Thank you.

JUDGE LIPPMAN: Thank you all, appreciate it greatly.

MR. BERRY: Thank you.

MR. ELARDO: Judges all, thank you very much for being here.

JUDGE LIPPMAN: Thank you for the good work that you're doing.

The next panel is Collaboration and Shared Costs Panel, and I would ask Arthur Russ, Jr., president for the Bar Association of Erie County; and of counsel to Phillips Lytle LLC;

Justin L. Vigdor, the chair of the Telesca Center Capital Campaign; the past president of New York State Bar Association and Monroe County Bar Association; and senior counsel, Boylan Code LLP;

Bryan Hetherington, president of Monroe County Bar Association;

And Stephen Johnson, member of Bond, Schoeneck & King, PLLC.

So Arthur Russ, do you want to get started?

MR. ARTHUR RUSS: I would like to say good afternoon.

JUDGE LIPPMAN: Good afternoon. And thank you so much for coming here and for representing the Erie County Bar.

MR. RUSS: Thank you for the invitation.

I am counsel at Phillips Lytle, and current president of the Bar Association of Erie County. We have 3,800 members -- over 3,800 members here in Erie County. I am also a former board member of the Erie County Bar Association Volunteer Lawyers Project and a current member of the New York State Bar Association House of Delegates.

I want to thank Judge Lippman and the Task Force for conducting these hearings and raising the awareness of the overwhelming need for civil legal services for low-income people.

With such overwhelming need, collaborations and cost sharing efforts are essential for making every dollar go further. This is especially true here in Buffalo where there's such a high level of poverty. Buffalo, the second largest city in the state and the third poorest large city in the nation, with 30 percent of its population running below the poverty level, 38 percent of Buffalo children under the age of 18 are living below the poverty line here

in Buffalo.

Here in Buffalo we have five legal services and pro bono programs serving the eight counties at the western end of the state, including the Cities of Buffalo, Niagara Falls, Lockport, Jamestown, Albion and Dunkirk. The area is both urban and rural. Erie County is the largest county in the region, with a population of over 900,000. It's 91 percent rural -- I'm sorry, 91 percent urban and 9 percent rural.

I want to tell you about some of the terrific collaborations occurring here in the Buffalo area.

Some of the best collaborations have included the courts as a partner, like the Volunteer Lawyers Project and Neighborhood Legal Services, representing low-income tenants facing eviction, and the Eighth Judicial District Pro Bono Committee which works to recruit, train and support pro bono attorneys. It's my understanding that Judge Feroleto, administrative judge for our district, will be describing those efforts so I will concentrate on other efforts.

JUDGE LIPPMAN: Yes, she will.

MR. RUSS: The five local programs are:

Legal Services for the Elderly, Disabled and Disadvantaged, this was incorporated in 1978 to provide free legal services to seniors, disabled and low-income

people in the six-county area and the Seneca Nation of Indians reservation. They also provide guardian services to an additional 67 elderly and disabled individuals, and are trustees for another 300 disabled persons utilizing the Western New York Coalition Pooled Trust. Their goal is to use the legal system to help their clients live independently and with dignity. Their current priority areas are health care, housing, veterans' support, income maintenance, grandparent's advocacy and elder abuse.

The Erie County Bar Association Volunteer Lawyers Project has a dual mission: To provide quality free civil legal services for low-income people and similar not-for-profit groups; and also to effectively involve volunteers in the delivery of those services. VLP recruits, trains and coordinates the efforts of pro bono attorneys, its staff attorneys and volunteers to provide representation in a wide array of civil legal services cases. All of the VLP services are available in Erie County, while an increasing array of its services are now available to clients throughout the entire Eighth Judicial District.

Further, the Western New York Law Center is a nonprofit legal organization established in 1996 that provides legal and technology assistance for the benefit of low-moderate income clients and legal assistance

organizations. The Law Center engages in fair lending advocacy and direct representation of homeowners facing foreclosure and has initiated class actions on behalf of public assistance recipients in Western New York whose benefits are illegally being delayed or denied.

Fourthly, Neighborhood Legal Services provides legal services to the poor and disabled in the five-county region of Erie, Niagara, Wyoming, Genesee and Orleans. Services are provided in the areas of family law, including custody matters, domestic violence, divorce, and legal assistance to victims of HIV or cancer; housing law, including landlord-tenant, public housing, and housing discrimination; public benefits advocacy for people cut off or denied government benefits, including public assistance, food stamps, Medicaid, Social Security Disability and SSI. Neighborhood Legal Services also provides community education and training to over 3,000 clients, attorneys and community advocates each year.

Finally, the Legal Aid Bureau of Buffalo was founded 100 years ago and provides free legal services, representation for children and criminal defense work for low-income people. Their civil unit handles family law, housing and unemployment cases.

These five programs work together to keep people out of homeless shelters by providing an eviction defense

and mortgage and tax foreclosure defense. They keep people off the welfare rolls by helping people with SSI benefits, unemployment insurance claims and child support cases. They keep kids out of expensive -- the expensive foster care system by handling adoptions, representing grandparents and other relatives that step in to seek custody when families becomes dysfunctional, and parents, for setting up standby guardianships so when they become incapacitated or die, the standby guardian seamlessly becomes the guardian. They help people with fresh starts financially and emotionally by providing assistance with bankruptcies and divorces, including victims of domestic violence.

These programs cumulatively served more than 11,000 low income and elderly clients last year. These efforts saved taxpayers an estimated $7 and a half million in tax dollars by keeping people out of homeless shelters through representation in evictions, mortgage foreclosure and tax foreclosure, and by getting people off the welfare rolls by winning SSI benefits and unemployment benefits.

In addition to taxpayer savings, our five local programs resulted in an estimated at least $9 million coming into the pockets of low-income people by winning these SSI benefits, unemployment insurance benefits, and child support cases. I cannot overemphasize the

importance of bringing that money into our local struggling economy. Putting extra money into the hands of low-income people immediately stimulates a wide variety of sectors of the local economy. Low-income people cannot afford the luxury of saving. Studies suggest that such lower income and credit-constrained recipients increase their spending substantially more than the typical recipient.

One reason that the local programs are able to serve so many clients is that four years ago, all five programs co-located in one building here in downtown Buffalo. Three of the organizations share common space, including a library, a student/volunteer clinic room, two conference rooms, a reception area and a lunch room.

They also share a telephone system, and all of the organizations share various types of technology. The shared telephone system is administered in-house, long-distance billing is allocated between the organizations sharing the system. At that time each of the three programs was in need of an updated telephone system. The system they bought collectively is at the same level as they would have each needed individually. So the phone system alone, they collectively saved over $45,000.

They have taken their collaboration, though, to

another level. As the three organizations are now also on a shared phone bill which saves $5,000 a year, share Internet bandwidth, saves another $1,200 a year. The shared phone system not only saves costs, but is convenient in connecting misdirected calls to other agencies.

By working together, they were able to raise special funding to buy all the shared equipment and furniture. This special funding allowed them to pay for the build-on costs of the new shared space which amounted essentially prepaying over $120,000 in rent and thus reducing their rent over the life of the ten-year shared lease. All these cash savings allow the programs to put more dollars into hiring more staff to represent more clients in need. All of the organizations are exploring other cost-savings ventures, such as joint purchase of supplies, insurance and audit services.

In addition to the cash savings, there are other several benefits that flow from this arrangement. Because all of the organizations are housed in the same building, clients have been provided a one-stop option. The organizations maintain and share referral lists by organization and by case type. Clients who walk in asking for assistance are quickly directed to the next correct organization so that they don't have to go from

organization to organization seeking its services.

The five programs' lawyers and paralegals all being in one building facilitates the advocates from different programs working together on issues and cases. Rather than having to spend time going across town to meet, they can simply go down the hall or up the elevator to work together.

In addition, VLP has a wonderful collaboration within our local bar association. Each year about 400 lawyers handle about 1,000 pro bono cases through Volunteer Lawyers Project. The collaboration with these pro bono lawyers complements the efforts of the staff lawyers to provide more and better service for their clients.

However, even with all these superlative efforts and collaborations, the need remains overwhelming. Statistics gathered over a sample two-month period indicate that 40,000 low-income clients in the Buffalo area per year are being turned away and facing their important legal civil problems without the help of a lawyer. It's a black eye on the principles of justice that we hold so dear, that people in need are being denied access to justice concerning basic human needs such as housing, public benefits and family matters.

In conclusion, I want to close by thanking the

Chief Judge and the Task Force for your exemplary efforts and results. In these difficult economic times, the state must be more vigilant, more active and more aggressive in making sure that people in need do not fall prey to the denial of life-sustaining benefits, loss of their home, or further injustice. I think you just heard examples of that in the testimony preceding. Your leadership is expanding our investment in civil legal services, ensuring greater access to justice.

Access to justice, funding for legal services, is not a special interest. Providing legal assistance to the poor and the elderly is a fundamental public interest.

Thank you.

JUDGE LIPPMAN: Thank you for your very interesting testimony.

You know, this model that you have here and we've seen in Rochester in the Telesca Center, there's obviously one that makes so much sense in terms of pooling resources and being able to work together to meet the need. With all of the efforts that you've made, it seems what's consistent here in the western part of the state, and particularly here in the Buffalo area, is that we still are meeting only a relatively small swath of what we need to do, is that a fair estimate? With everything that you've done, with all of the collaborations, we still need

more dollars in the end to make this work?

MR. RUSS: When we're turning away 40,000 potential clients and poor individuals, you certainly do.

I would also like to say that under my term, my one-year term as Bar Association president, one of the things that I'm trying to do is to show both the bar and the public, to the extent that I can, of how lawyers in our community are giving back, that it's not the big accident cases that everyone reads about. We're trying to show the people that dedicate their lives to giving back. And as Vince Doyle said at his inauguration, "Lawyers, that's what we do for a living, we give back". Well, we also have to give back to the well if we're going to take from the well.

JUDGE LIPPMAN: There's no question, and lawyers do, and I think we've demonstrated at these hearings that the pro bono efforts are an absolutely vital, necessary complement to the providers; that, you know, it goes together, that there's no question about it.

One final question for you, that one of the points we've been heard at these hearings and that we've made in last year's Task Force report is that an investment in civil legal services is a wise investment, that the bottom line, aside from the judiciary and, in fact, profession's obligation to foster equal justice,

aside from the ethical and moral imperative that we have to help those who can't help themselves, that the bottom line is that society, local and state government, gain money by investing in civil legal services rather than its just money, you know, put out there into the -- into the -- a worthy cause but it has no return. You agree from your -- I gather from your testimony, from your experience, that that's the case, that it's an investment that brings far more than we give to it?

MR. RUSS: There's no question about that. It's a very efficient investment because what we're doing is those dollars get leveraged so that we're not using tax dollars or the welfare dollars to take care of these people, where they want to take care of themselves, and we're giving them the ability to do that and it's a very, very, efficient use of taxpayer funds.

JUDGE LIPPMAN: Thank you so much for your testimony.

MR. RUSS: Thank you.

JUDGE LIPPMAN: And now I'm going to ask someone who has such a rich history in this area and who has contributed so much to this -- to his community and to this state, in particular in regard to this issue with regard to access to justice and equal justice for all, so Justin Vigdor, it's an honor for you to come and testify

in front of us today.

MR. JUSTIN VIGDOR: Chief Judge, it is really my honor to appear before you and Presiding Judge Scudder, Judge Pfau, Past President Paul Hassett. And thank you so much for your kind words.

I have had many years the pleasure and stimulation and gratification of being involved in pro bono activities of the bar. I was chair of the IOLA fund from the time of its creation for five years, I co-chaired with Judge Vincent Marrero Judge Wachtler's special committee to study mandatory pro bono, I chaired a special task force of the state bar, all of which I think have made real contributions to the provision of legal -- civil legal services for the poor. But as you've observed in your remarks, truly, only a dent has been made in the overwhelming need. We have all known that a very small percentage of the need has been served.

My task today is evidently to talk about the origin of the Telesca Center in Rochester, New York and I'm very, very happy to do that.

Bryan Hetherington, who is here at the table, I gather will also speak about the operations of the Telesca Center, and chances are we will, to some extent, overlap and I hope we'll be forgiven for that.

JUDGE LIPPMAN: You will be, I guarantee it.

MR. VIGDOR: The Telesca Center is the realization of a vision that Monroe County bar leaders and legal service providers in Monroe County have had for several decades. Monroe County -- if I may be permitted to boast a bit -- statistically had, and I think may perhaps still, has the largest percentage of volunteer lawyers serving the needs of the poor. But we knew that efficiency was lacking for a variety of reasons. One of the most vocal proponents of bringing all of the providers together was Hanna Cohn, whom some of you may remember her, she was the founder and original head of the Volunteer Legal Services Program in Monroe County which has several hundred lawyers acting for the poor, and is now headed by Sheila Gaddis who is a member of your Task Force.

JUDGE LIPPMAN: Yes.

MR. VIGDOR: For years the providers in Monroe County were scattered around the city in really quite shabby quarters because that was all that they could afford. Very old buildings, many times lacking -- well, I've been told by some of them that they did not have enough heat in the winter and that there were rodents in some of the facilities. They did not present the very attractive site for poor people to come to. And the poor people coming to them were faced with the problem of going

around town by shuttle, by buses, and finding when they got somewhere, that they were in the wrong agency. Because of the variety of funding sources, each agency was limited to providing only certain types of legal services. So unfortunately, someone might come to one and find that they have to get on a bus and go to another. And this was a dreadful situation.

When I was president of the county bar in 1977, we thought we might be able to get at it by creating a telephone intake system, and we established that, but it really did not prove to be very effective. People were encouraged to call a central number and told where to go, that didn't work very well and eventually discontinued. Our providers were very eager to cooperate and they met annually to discuss their programs and to address problems and see how they could solve them collectively, but that did not work very well.

In 2005, the Monroe County Bar Association, which is a very old bar association, goes back to 1896, moved to a ten-story building right at the four corners in the center of downtown Rochester, which was quite functional, and nearly vacant. It had only a bank on the first floor and a tenant on one other floor, so that basically about eight floors were vacant. The thought was that the bar and the bar foundation and the providers

could all move into that building if they could negotiate leases with the owner. Now this gave them a great deal of leverage because of the vacancy in the building. And they were able to negotiate very attractive 15-year leases with the owner of the building which contained two very important provisions: One, the owner of the building would front the renovation costs and the build-out of about $500,000, $550,000; and secondly, would give us the right to name the building.

Fortunately and serendipitously, the leases of all of the providers were about to expire or had expired, or they were there on month-to-month basis in their old quarters, and we were able to take advantage of that bargaining position, negotiate those leases, and arrange to move into the building.

The providers and the bar, bar headed by Mary Corbitt Lowenguth, who most of you know and who was a dynamic person, met and decided to see, could the money be raised to repay the owner the $550,000, and $200,000 in move-in costs, relocation costs. The agreement was that if we could repay the $550,000, we would lock in a $10 per square foot rental for 15 years, which is really quite a remarkable sort of rental anywhere these days.

They decided that a -- a feasibility should be investigated, conducting a capital campaign to raise that

money, and I was asked -- I was honored by being asked to chair a campaign for that fund. I had chaired a similar campaign for not-for-profit agencies in the collaborative co-location scheme a number of years ago and I was glad to do it.

We formed a campaign cabinet, we began planning to create what we hoped would be a unique national model for delivery of legal services. We started by drafting a very formal partnership agreement among the providers, the Bar Association and the Foundation, in which each agreed to suspend their own fundraising for the period of the campaign, to contribute solicitors to the campaign, to share their existing donor bases, to provide whatever assistance in personnel would be needed during the course of the campaign, and we had all of the board and all six of the entities approve and sign a partnership agreement.

We had an allocation formula in the agreement so that the first 550- would go to reimbursement of the owner of the building, the next would go to the moving and relocation costs of the agencies, and then we provided $200,000 for campaign costs, and the balance would be going to the Foundation. The Foundation, being a 501(c)(3) entity, and was used as a conduit for the funds so that contributors would have a tax deduction.

That being done, we thought we needed to give

the building a compelling identity. And we asked our senior federal district court judge, who I'm sure all of you know, Michael Telesca, for permission to name the building in his honor. His life's work has epitomized equal justice. He is, I think, admired and respected by all of the practitioners in Monroe County and in Western New York. Finally, he agreed to allow us do that, we renamed the building the Telesca Center For Justice.

We engaged a consultant to do the feasibility study which confirmed that we could be successful in the campaign. We proceeded to design a campaign structure and named chairs and committees to solicit the various categories of potential donors, that in large law firms, medium-size law firms, small law firms and individual practitioners, corporations, banks, title companies, the boards of each of the parties, local foundations, well-known philanthropists, and friends of Judge Telesca.

And with the enormous dedication of the staffs and executives of the providers and of the Bar Association, we proceeded with the remaining groundwork. We designed a campaign solicitation which contained a statement of the case, pledge forms, news releases, frequently asked questions, history of the agencies, and other material. We held training meetings of solicitors, and we moved forward to raise the funds.

Within a year or so, a year or two, from among the members of the cabinet, the law firms behind those members of the cabinet, their boards, and friends of Judge Telesca, we received pledges of approximately $600,000. I'm happy to say that 400,000 of that 600,000 was from the legal community, because we felt the legal community had a stake and an interest, before we went to corporation and banks and others. By -- in January of 2007, we went public, so to speak, and we launched a public phase of the campaign. We raised the goal to 1.2 million. By the end of 2009, we had raised $1.8 million. I'm delighted to say that we had support from corporations, from banks, from local foundations, from individual philanthropists, from friends of Judge Telesca, the New York IOLA fund gave us $200,000, the New York State Bar Foundation gave us $25,000. We had enthusiastic support from the Mayor of Rochester, the County Executive of Monroe County, the Rochester Business Alliance, and the Rochester Downtown Development Council. They were very pleased about the fact that we converted a virtually vacant building --

JUDGE LIPPMAN: Right.

MR. VIGDOR: -- into an income-producing busy center with over 100 lawyers and paralegals in a part of town that they were worried about that was loosing tenancies.

MR. JUSTIN VIGDOR

The Telesca Center has exceeded all expectations. Providers have up-to-date facilities, numerous efficiencies have been realized, Bryan will talk more about it. It's also a centralization. There is a Center for Education in the building which can seat up to 125 people, it's used for CLE, for community forums for training purposes. Each agency, importantly, has access to the donor banks that resulted from this campaign, and now an annual ongoing planned giving program is now contemplated.

I'm pleased to report that we received the American Bar Association's Harrison Tweed Award in recognition of extraordinary achievement to develop or significantly expand access to legal services for low-income and indigent people. We have been visited by other bar associations who seek to replicate the Telesca Center and we have seen happen what we had hoped would happen.

Lastly, let me report that the fund raising has continued. We've received several hundred thousand dollars in state grants which have been obtained for technology within the building and for renovation of the building's lobby which was not part of the original plan. The total committed to date is approaching $2.4 million.

We are very grateful to you, Judge Lippman and

the Task Force, for focusing the spotlight so intensely on the need for expansion of civil legal services, and we pledge in Monroe County to continue to work with you in this endeavor.

JUDGE LIPPMAN: Well, thank you so much. And the Bar Association and the providers in Monroe should be very, very proud, I think, of Telesca which I've seen in action, it's quite a place.

Let me just ask you, do you think it's a certain size community, type of community that this kind of approach works? We see that here in Erie, they've replicated to a significant degree the same kind of approach that you have in Telesca. What makes it work and how transferable is it or replicable around the state?

MR. VIGDOR: Well, I certainly am not an expert on that, Judge, but my guess is, that if you have a very committed bar, it can be done in most communities. Maybe the level and the scale would vary, but I think if you have --

JUDGE LIPPMAN: Yes, clearly.

MR. VIGDOR: But I think you have a real organized bar that is truly committed, I think the smaller cities in the state can do something very much like it.

JUDGE LIPPMAN: And it doesn't have to be every provider.

MR. VIGDOR: No.

JUDGE LIPPMAN: It can still be a center of gravity that's going to work in terms of sharing services and costs, you know, and everything else.

So, again, I salute the Monroe bar and your efforts with Telesca, and particularly, again, thank you for all of your efforts in this area. We've just begun, you know, we're just getting warmed up so you've got a lot more to do. Okay? We've got a deal, right.

MR. VIGDOR: Yes, indeed.

JUDGE LIPPMAN: Okay.

The next speaker is also from Monroe County, is Bryan Hetherington, and you're on.

MR. BRYAN HETHERINGTON: Thank you.

JUDGE LIPPMAN: We'll forgive him for talking, I'm not sure so be careful.

MR. HETHERINGTON: Really. He can be my truth squad, Judge.

JUDGE LIPPMAN: Go ahead, I'm only kidding.

MR. HETHERINGTON: Chief Judge Lippman, Presiding Justice Scudder, Justice Pfau and President Hassett, it's an honor to appear before you as president of the Monroe County Bar Association to talk about the fruits of the effort that --

JUDGE LIPPMAN: Right.

MR. HETHERINGTON: -- Justin has described to you, because that effort bore good fruit and we've --

JUDGE LIPPMAN: And I might say, not to interrupt you, but just to be there and see it is graphically all one needs to see the fruit its borne.

MR. HETHERINGTON: Absolutely. And we've really had four kinds of outcomes from it that -- that have made things better for clients and the lawyers who are trying to do pro bono services.

First, the co-location allows us to provide better services to individuals who are seeking help, and better quality services to people who are receiving help. It has saved an immense amount of money for the providers which then allows us to invest those savings into additional staff and additional services.

We have structured this to promote pro bono participation, make pro bono recruitment and training and service easier for members of the bar, and this has allowed the legal services providers to obtain additional funding because of the co-location that they would not have individually been eligible to receive, thereby providing additional services.

JUDGE LIPPMAN: So you kind of piggyback on each other, right?

MR. HETHERINGTON: Absolutely. Because

collectively, we can do more than any of the providers could do individually.

JUDGE LIPPMAN: Particularly with the bar as the centerpiece already there at the heart of this.

MR. HETHERINGTON: Absolutely. And Justin so ably led this effort and brought everybody together.

JUDGE LIPPMAN: But you know what, but every community doesn't have a Justin Vigdor, I think that's -- that's what we need to replicate and get some people who can put these things together.

MR. HETHERINGTON: No community has a Justin Vigdor of Rochester.

JUDGE LIPPMAN: I stand amended, go ahead.

MR. HETHERINGTON: But every community has a lawyer of stature who other lawyers --

JUDGE LIPPMAN: I agree with you.

MR. HETHERINGTON: -- listen to --

JUDGE LIPPMAN: I agree with you.

MR. HETHERINGTON: -- and who can serve as the honest broker who brings everybody together in this kind of cause.

JUDGE LIPPMAN: That's exactly right.

MR. HETHERINGTON: He or she will have a different name.

The four legal services providers who are now

co-located each provide services to low-income people in different areas of the law and have long done that. And as Justin explained before co-location, clients needed to go to different places, they needed to call different phone numbers, they would spend long times telling their problem to the wrong receptionist who would then send them to tell their problem to the right receptionist and they would spend more time doing that. Now all of the telephone systems are connected. Indeed, the receptionists sit in the same area and your call is randomly answered by one of the receptionists --

JUDGE LIPPMAN: It's quite striking, it really is.

MR. HETHERINGTON: -- by one of the receptionists and if you call the wrong number, what you are told is: I'm sorry, the Legal Aid Society of Rochester does not do that; however, one of the partners here in the Telesca Center does, would you like to be connected to the person who talks to their new clients? And if the answer is yes, which it is 99 percent of the time, then it's a direct connection. It's not, here, you know, call another thing, call between 3 and 5 on Tuesdays and be the third caller at, you know, this number to get some services.

And there were savings in that. Before we all

had receptionists, every single one of the providers had a receptionist and one had two. Now two and a half receptionists can handle the calls for the entire building which is a substantial savings.

In addition, the clients receive better services, better quality services, because -- because each of the providers was specialized, when problems occurred outside of the specialty that the provider provided representation in, there were glitches in the need to talk to people who you didn't know and the difficulties of that. Now that everybody is co-located, it is, as the former head of the executive director of the IOLA fund said, you are like a large law firm with many departments.

JUDGE LIPPMAN: Do you have people wandering in off the street just saying this is a place we know we can get help, they have no idea what the different groups do?

MR. HETHERINGTON: Absolutely. And Mary Lowenguth, our executive director at the bar tells this compelling story of walking into the lobby of the Telesca Center one day and three's a mom and she's got one kid in a stroller, one kid in her hand, and a five- or six-year-old kind of running around, and she was looking for legal services, and Mary said, well, I'll take you up to the reception area for all of the legal service providers in the community, I'm sure they're going to be

able to help. And the mom said, oh, I am so grateful, I was afraid that maybe nobody would be able to help me and I would have to take my kids across town to someplace else to get help. And that's, you know, what we are trying to, through the co-location, avoid.

One conversation with one person, the savings then come back. And because people are working in their areas of expertise and working together, like you heard earlier in the testimony from the client, somebody who has an eviction problem that is being caused by a Social Services problem, an incorrect withholding of Social Services benefits. Back in the old day, the Legal Aid Society, who would represent the people in the evictions, would need to connect with somebody from Monroe County Legal Assistance Center who represents people --

JUDGE LIPPMAN: And we found that most of these people have multiple problems, I mean, that's clear.

MR. HETHERINGTON: Absolutely. And this allows us to put together teams of lawyers and paralegals across the organizations to provide seamless high quality services to the clients.

Because of the below market rents and because of the shared space and because of the economies that you heard about in Art's testimony, joint purchasing and those kind of things --

JUDGE PFAU: Has it also had a spill-over effect on the bar because you're collated with the bar association so that it's had an impact on the pro bono response from the bar?

MR. HETHERINGTON: Absolutely, Judge Pfau. And what we have done is to put the pro bono office, Volunteer Legal Services, which is really one of the finest pro bono programs in the nation, we put them right next to the Rubin Education Center where we hold our continuing legal education events, and we did that mindfully, deliberately, and we did it so that it would be easier for their recruiters to walk next door and if they needed, you know, more lawyers to do wills for people with HIV disease, they could come next door to a T & E section meeting and say, hey, we need folks, would somebody sign up, and it's a visual reminder, every time you come in to CLE, if you haven't taken a case recently, you have to walk right by the office, the guilt hits you.

JUDGE PFAU: A little guilt isn't so bad.

MR. HETHERINGTON: Guilt is very good, guilt is good for us. And you can go on in and -- and they will sign you up right then and there on your lunch hour while you're getting your next CLE with your next case assignment. So it has promoted that. It has made it easier because in our community, much of the training for

the attorneys who are doing the pro bono representation is actually done by attorneys who are employed by the other providers who are expert in those areas of law, it has made it easier for that support.

JUDGE LIPPMAN: And training is so important to this effort.

MR. HETHERINGTON: Absolutely. Because we don't want to give low-income people who are being represented by pro bono lawyers lesser services. Those lawyers need to be trained to give them high quality service.

JUDGE LIPPMAN: You can have a well-meaning and generous member of the bar who has no idea how to do this particular kind of work, whatever is necessary.

MR. HETHERINGTON: And the foreclosure prevention work is an excellent example of that.

JUDGE LIPPMAN: Yes, it is, exactly.

MR. HETHERINGTON: Judge, we, you know, have traveled all throughout the state providing training to attorneys, and I remember one of the attorneys employed by Empire Justice Center going to a bar-sponsored training at the beginning of the foreclosure crisis and raising her hand at the end of the training and said, excuse me, but nobody's talked about any defenses to foreclosures in this training, and being told by the trainer, oh, there are no defenses to foreclosure, that's why we haven't talked

about it. Well, there were and there's -- and training is now being provided to volunteer lawyers and staff lawyers throughout the state.

And then the final way that this has benefitted all of us in the Telesca Center is that it has allowed the organizations in the Telesca Center to be eligible for funding that they would not have been able to receive otherwise. Many of the funding sources are for representation of categories of clients: Veterans, people with HIV disease --

JUDGE LIPPMAN: Right.

MR. HETHERINGTON: -- people who are homeless, and they want to provide a full range of legal services. Well, none of the providers did that --

JUDGE LIPPMAN: Themselves.

MR. HETHERINGTON: -- in and of themselves so the alternative was to ask lawyers to do cases in areas where they weren't an expert and it would take them longer and they would do them worse, or to work collaboratively, and by being in the Telesca Center, we can now give people the highest quality of representation most effectively, and there are at least six funding applications that had been approved for services, for collaborative services that probably would not have been able to be done if the co-location hadn't occurred. So this is all great.

And, you know, our community has done a fabulous job and our lawyers raise over $235,000 a year for the legal service providers, they have contributed generously to the campaign, the providers have worked with the bar to get out all the efficiencies that we can possibly get out, and yet, as in Erie, every day if you were to go and sit in that waiting room, you would hear that there are people who cannot be served.

JUDGE LIPPMAN: And again, I assume you would agree that the bottom line of all of this is that it's wonderful to have a generous bar, it's wonderful to have all the pro bono work that our members do around the state, but that we need a permanent system of funding civil legal services out of the public fisc in order to make this, to even begin to address this problem, and then we can combine with the pro bono efforts and the generosity, the private bar and all of that.

MR. HETHERINGTON: Absolutely. And I think it's also really important to recognize that there needs to be funding for the infrastructure of the pro bono system.

JUDGE LIPPMAN: Yes, clearly.

MR. HETHERINGTON: So even when you talk about -- about, you know, those folks who say, well, the solution here is in expanding pro bono, we all ought to work to expand pro bono and we have over 1,500 lawyers in

our community who are on the VLSP panel, and that's an extraordinary number, the highest, you know, per capita --

JUDGE LIPPMAN: You've done good work.

MR. HETHERINGTON: But we need people who can screen those clients, determine which ones -- cases have merit.

JUDGE LIPPMAN: Yes.

MR. HETHERINGTON: Because you don't want to assign cases without merit to pro bono lawyers, that gets them into a place where they don't feel good and don't want to come back and volunteer again. We need people to supervise them and support them and be experts to them and train them and make sure that the cases actually get done, because that's important, too, so we need resources even on the pro bono side, as well as on the staff side, to make this work as a Telesca.

JUDGE LIPPMAN: Judge Scudder.

JUSTICE SCUDDER: One of the things I was talking to Sheila Gaddis before was, as you know, I'm from Bath, New York, Steuben County, and I'm sure there is a lot of attorneys that would do pro bono work but exactly what you're talking about, we don't have, in Steuben County, there is no structure for them to go and give their services to people that really need it, and I have -- unfortunately, I believe that's got to be a

function of money, you have to have the money to put those people in place so that the lawyers can help out. And I look at it like in Monroe and Erie, you're so lucky that you have the numbers to be able to structure and to fund that in order to do that, and I just think that looking at the outlying counties, they ought -- there ought to be a way to help them as well.

MR. HETHERINGTON: I absolutely agree with you, Presiding Justice. And I think the trick here is you have three things: You have recruitment, you have matching, and then you have support. And the system, if we want our attorneys to step up to and be successful in their pro bono obligations, we have to deal with all three of those and those have to be funded activities. You know better than I do that we cannot ask our rural bar associations to take on that as an additional voluntary activity. They are small, they have no resources, they have no paid staff. These are activities that our court system, our justice system, has to fund that in order to achieve that access to justice --

JUDGE LIPPMAN: I think --

MR. HETHERINGTON: -- that I talked about.

JUDGE LIPPMAN: I think this whole idea, too, I think Judge Scudder is commenting on, there has to be a hub of -- that's able to weal out services even, you know,

beyond the geographic areas, certainly in conjunction with the areas, you know, around, you know, a particular community, a particular city.

MR. HETHERINGTON: And we have to address the fact that some of the types of cases are ones that are -- just don't work for pro bono lawyers. The Social Services cases --

JUDGE LIPPMAN: Absolutely without question.

MR. HETHERINGTON: -- as the Second Circuit has observed, that the law is more Byzantine than the tax code, so asking generalist practitioners, whether in Bath or Rochester, to make that deep dive into, you know, statutes that are 602-823(b)(4)ii --

JUDGE LIPPMAN: Of course what we've also learned, and you're entirely right, that you need providers in certain types of cases. In the more rural areas in the state, the wide geography, you know, the large areas result in people have to travel -- lawyers have to travel great distances, or the client, to get serviced, and it's very difficult, and in some areas of the state civil legal providers are few and far between and how you get it from the hubs, again --

MR. HETHERINGTON: That's right.

JUDGE LIPPMAN: -- where you maybe have the people and the resources and how you get it out to the

most rural areas of the state is very, very difficult, and some of our providers in the most rural areas are really having a terrible time. In fact, they have so little money that the attorneys who work for some of our rural providers qualify as the working poor, you know, and barely above poverty level.

But thank you and I thank the Monroe County bar, I thank the Erie County bar for all of your wonderful efforts and for this whole concept of sharing resources among the providers.

And now I ask Stephen Johnson from Bond, Schoeneck & King.

MR. STEPHEN JOHNSON: Good afternoon. I would like to report on our efforts in Syracuse, New York and the One Roof Committee that we have. At the request of Judge Lowe, a couple of years ago, I agreed to serve as counsel to this committee that's become --

JUDGE LIPPMAN: Who's sitting right there, I note.

MR. JOHNSON: Yes, he is. He actually called me in 1990 on a matter and he keeps calling me in Syracuse, I have a lot of fun working for him.

So the members of our committee are the president of the Bar Association, the coordinator for the Onondaga Bar Association's Volunteer Projects, a

representative of the Syracuse University College of Law's clinical programs, a representative of the Federal Court Bar Association for the Northern District of New York, and the executive directors for the legal services providers in Central New York: The Hiscock Legal Aid Society, Legal Services of Central New York, and Legal Aid Society of Mid-New York.

Now, two of these offices are now located in one building and the others are scattered. And for years, I think Judge Lowe and others had wanted these entities to be in one building. And we did visit Justin Vigdor and his son about a year ago and received the report that you received today, very impressive, and that gave us impetus to keep going. Each of the boards of directors has passed a resolution endorsing this concept, we've received advice on how to put the space together and have it shared. We aren't as fortunate, however, on the expiration of the leases. The leases expire in 2014, we're hoping to do it in 2015 but we have one going on.

JUDGE LIPPMAN: So logistical issues to really get them --

MR. JOHNSON: It is. And we are still working on a request for proposal, we certainly could go to the landlord of that one building and get a proposal. We do think we can put a proposal together, we think we can get

the proposal out, I think we'll get responses, but then we come to the Justin Vigdor factor, how do we put the money together to cover moving expenses and build-out costs.

JUDGE LIPPMAN: Not so simple.

MR. JOHNSON: So even though we've been at it for a while, we're at the beginning and we're going to continue forward.

JUDGE LIPPMAN: But you buy into this concept that --

MR. JOHNSON: We absolutely do.

JUDGE LIPPMAN: -- that the goal of providing civil legal representation for the poor would be so enhanced if you're able to share costs, resources, and be in just for convenience purposes.

MR. JOHNSON: Absolutely.

JUDGE LIPPMAN: Yes. So I think that the -- this part of the state, the Fourth Department, Judge Scudder's bailiwick, are certainly -- all seem to be of a like mind in terms of how to get this job done and, again, Erie, Monroe and Onondaga certainly are at the forefront of this new, I guess, piece of this, which is we're so much stronger when we collaborate and do things together on every level, not just the courts, but also what you're doing for the -- what you can put back into the clientele that we're serving.

So I'm greatly appreciative to all of you, all of your efforts, and thank you for being here and you're all terrific and I say that with total sincerity. Thank you so much.

And now I'm going to ask Dean Mutua to come up and testify.

Dean, it's a delight to have you with us today and so pleased that you've come here to testify at the hearing.

DEAN MAKAU MUTUA: Thank you very much, Judge. Am I alone here, am I going to face the four judges by my lonesome?

JUDGE LIPPMAN: You're it, and Judge Scudder is very difficult so be careful, Dean.

DEAN MUTUA: Well, thank you very much, sir, for calling these hearings. I think that all of us, you know, law schools, the bar, the bench, the state, have a responsibility to provide legal services to our neediest citizens. In my view, no democracy can succeed and flourish without a functional legal services infrastructure that is well supported and well funded, because not all citizens can afford to pay for legal services out of their pockets.

But I just wanted to say that we, all of us, have different roles to play in this process. And I just

want to focus my attention today on law schools, and in particular on what UB Law is doing in this area.

But before I do so, let me just say that lawyers start their journey in the profession in law school. That's where they get their values, that's where they get their training, and that's where they're taught how to think and act like lawyers. So in a sense, as law schools, we have a unique obligation as the people who sit at the front line of the pipeline in the legal profession to imbue in our students particular values of empathy --

JUDGE LIPPMAN: Do you think the generation -- I know this is a generalization -- but the law school population of today gets it? That they have an obligation beyond earning money?

DEAN MUTUA: Well, I think that there's always a risk of looking back in one's generation and blaming the current or the future generations for not getting it, certainly that's what parents do with their children. But I do think there is something to be said of a certain sense of loosening of social obligations in society today that I think makes our citizens today, both young and not so young, feel less indebted to their fellow human beings.

I also think that with the emergence of all these technologies that really, you know, they alienate, they are called social networkings, you know,

infrastructures, but they also alienate people from one another and I think that we have to work hard to make sure our students do not fall prey to those influences.

But I think, you know, as law schools, we have an obligation to impart certain values to our students, and I think the most important one, in my view, is to teach our students that both also in our lived examples as professors, as deans, as educators, to teach them that, you know, the law lives at the intersection of power and powerlessness and that the law should be just but it cannot exist in a vacuum. It must do justice. And that it must do justice I think for the least of our citizens, otherwise our system would lose its credibility as a democracy. And so even as we try to keep the scales of justice even, I think we have to teach our students that they must have a social conscience, and that they have obligation to society to serve the least among us.

JUDGE LIPPMAN: Dean, do you think that the -- the great debt that many law students have when they come out of law school makes it difficult to get them to focus on, as you say, their social obligation that they have to those less fortunate? Does the economics of going to law school today work against having our -- the new lawyer come out and either work in the public sector, helping the poor, or meet their pro bono obligations as lawyers?

DEAN MUTUA: Well, I think, you know, unfortunately, of course I don't tell you anything new when I say that the cost of education, legal education, law schools has gone through the roof, it's very, very high. Now admittedly in a law school like mine, we are still well priced for our students and we're very happy about that.

JUDGE LIPPMAN: Yes.

DEAN MUTUA: But even then, people still feel that burden is to high to carry. I know that in some other law schools, the costs are very prohibitive, and so when a person graduates from law school, they carry enormous burden, sometimes in excess of $200,000 in debt. And so there's a compulsion, I think, for people to feel that they've got to go to the highest paid jobs to pay back, you know, these debts.

JUDGE LIPPMAN: You think you get more people going to -- wanting to get into UB because the cost isn't so staggering --

DEAN MUTUA: We certainly have --

JUDGE LIPPMAN: -- in this economy?

DEAN MUTUA: Yes, that is happening, you know, but I think students tend to choose law schools not purely for the cost, but for where they think are the best, you know, legal education to place them in good position to

get a good job, to make a living. You know, I think that is what is happening.

But just to go back to your earlier question, I think what students do after law school really depends pretty much on the kind of legal education they get and the kind of values that get imparted to them.

I will just, you know, let you know that I went to Harvard Law School myself and I do remember, you know, you will expect a lot of students there to go to high paying corporate jobs but actually a lot of us went into public interests after law school, and that was because of what we're taught by people like Gary Bellow, who was a professor there and who headed up the clinics at Harvard, and so, you know, I think there is a great deal of that that is happening because of what law schools do.

I just wanted to say that at UB Law, we believe that we have an obligation to produce a lawyer who has or feels they owe a duty to society, to the public good, to serve the public in whatever capacity they are functioning as a lawyer, whether as a judge or, you know, a prosecutor, a private lawyer in a law firm, one can find a way to provide legal services to our citizens in a pro bono capacity, as a member of the bar or otherwise. And we try to incubate these values and through our various legal skills and the clinical programs at UB Law.

And, you know, with your permission, I would like to just, you know, mention some of those. You know, but before I do so, let me just, you know, say a few things about why I think what you are doing is so important in these hearings.

I want to state very clearly for you, Judge, and for the fellow judges and the audience, that I think there is a dire need for both political and financial support for programs and initiatives in this state that enhance the ability of New Yorkers to access our courts. I think that need is clear, it's demonstrated and it's urgent. Many of our citizens cannot afford to pay for legal services. The consequences, at least for them and for their inability to pay for legal services, are dire. Sometimes, you know, the consequences could mean the difference between life and death. And as I said earlier, the ability of our democracy to function effectively to give meaning to the lives of our citizens depends on their ability to vindicate their rights. But those rights cannot be vindicated unless ordinary people, you know, ordinary moms and dads and others have access to legal services. And, you know, that's why I believe that raising awareness on all these obligations that we have on ourselves, because I consider law schools, the bar, the bench, to be very fortunate, we have a singular obligation

to our fellow citizens.

Let me just say what we are doing on our part at UB Law to help with this process. We have, like most law schools, a clinical legal education program, and our clinical legal education program is one of the most robust in the state, if not the country. It allows our students to study law while providing needed free legal services to individuals and organizations throughout this community.

I know that, Judge, you'll be very interested in the notion of outcomes for legal education, you know, how law schools train lawyers and how prepared they are to become lawyers. We believe that experiential learning environments in law schools are extremely important to produce lawyers who are able to function effectively once they graduate, and our clinical legal education program is designed to do that. But a great benefit of these clinics is that they can provide live client assistance to our citizens and so our clinics are organized to utilize the need in our community to teach our students to provide those services. And I will just outline a number of the clinics so that you have a sense of what we do.

The Women, Children & Social Justice Clinic places students in supervised community placements and projects, and these include placements in government agencies, legal service agencies, law enforcement

agencies, social service agencies and community outreach programs throughout Western New York.

In addition, we have the Domestic Violence Task Force that has traditionally assisted with onsite legal assistance program at Haven House here in this community, and the Haven House is the largest local shelter for female victims of domestic violence and their children. We are very deeply involved with Haven House.

The William and Mary Foster Elder Law Clinic provides services through a working agreement with Legal Services for the Elderly, Disabled or Disadvantaged of Western New York. The clinic handles individual cases of clients who walk in. At clinics, student attorneys are responsible for all aspects of such cases, of course under the supervision of a professor who is an attorney. They participate in client counseling, informal advocacy in the negotiation to settle problems.

And then we have one of our most successful, I think, clinics which has received national recognition and the support of many law firms and lawyers in this community, and that's the Affordable Housing Clinic which I think is well known to some of you, and that clinic works with local organizations to create, you know, needed housing for the elderly, for the disabled, and for the homeless. I think at last count we had built homes or

participated in building homes to the tune of $200 million over the past 15 years for this community.

We have a Community Economic Development Clinic which assists community development corporations and other non-profits with legal transactions, with particular emphasis on child care policy and helping low-income families build assets, because we believe that unless one, you know, can earn a livelihood, you know, their ability to vindicate and protect themselves in the legal system will be compromised.

And then, of course, we have Environmental Policy Clinic. The environment is a big thing these days and we will not be left behind. This clinic focuses on environmental policy issues that have direct impact on this community. It deals with hazardous waste problems and solid waste landfills formerly used by defense sites or defense contractors, and which are under the jurisdiction of the New York State Department of Environmental Conservation Region 9 which is comprised of Niagara, Erie, Wyoming, Chautauqua, Cattaraugus and Allegany Counties.

And then Mediation Clinic -- and I'm coming to a close -- Mediation Clinic which works on cases referred to by local courts or other mediation agencies, and students in my school help resolve disputes in a context of this

clinic in family law, small claims and other small questions.

Our students also serve many organizations and individuals seeking justice through our externship program, as well as our judicial clerkship program. Placements that we have made through our externship programs in the recent past include the Empire Justice Center in Rochester, the Legal Aid of Buffalo, the Monroe County Public Defender, the New York State attorney General's Office, and the US Attorney's Offices.

But we also have, you know, a community-based, law school-based fund raising effort called the Buffalo Public Interests Law Program in which we leverage resources from professors, from staff, and from members of the bar mostly through an auction that we hold every year. I think many lawyers in this community have come there to bid for items and to raise money to be able to support fellowships and grants for students. And every year we have supported at least 25 students through that particular effort.

Finally, you know, the law school does emphasize pro bono opportunities in a number of ways. We publicize pro bono opportunities through e-mail, through postings, information tables in the law school lobby and, for example, we have something we call the Law Student and

Action Projects which is an Equal Justice Works program that, you know, holds frequent information sessions at the lobby of our law school to educate students about opportunities in pro bono work. We also publicize the Volunteer Lawyers Project which is a program of Erie County Bar Association with postings for assistance who are able to take on some of our students.

And, of course, we work with Neighborhood Legal Services which is an important provider for legal assistance in our community.

My belief as dean is that, you know, our clinical efforts are modest but they do make an important contribution. But I think our efforts alone are like a drop in the ocean because I think the needs that we face in this community are just vast and they're huge, and that's why I don't think that any one of us is able to tackle this issue by themselves. I think it's very important that our Legislature in particular funds the programs that provide civil legal services.

I think -- obviously I appreciate the fact that we live in difficult times, the economy has been severely damaged but, you know, I think that it is at moments like these when we can measure the soul of a country, and in my view, the soul of a country is measured not by how the country treats its most powerful citizens but how it

treats its most vulnerable citizens, and I think the people who are served by pro bono and other Legal Aid services are most vulnerable citizens and the moments like these in particular, we owe them a special obligation, so I thank you.

JUDGE LIPPMAN: Thank you, Dean. And I congratulate the law school on having so many -- and you personally, on putting together so many programs that I think, as you say, teach law students to the values that they have should and the understanding of what you just said, that every society is basically, in the end, judged by how it treats its most vulnerable citizens.

In terms of the clinical programs that the bar -- that the law schools put together, do you think their ultimate value, and maybe it's both obviously, is the actual work that they do while they're students, or the fact that doing that work, then sort of they carry that with them when they go out to their communities and into the bar? And what's the real value of the clinical program?

DEAN MUTUA: So I -- clearly our mission is to educate great lawyers, to produce prominent lawyers. And I think, Judge, you've had our graduates appear before you and I would like to think that you can testify to their, you know, great skills.

JUDGE LIPPMAN: I can, yes.

DEAN MUTUA: Yes, thank you. I think that, you know, as a law school, what we try to teach students is to think, you know, like lawyers, in a very complex way, to apply obviously, you know, the law to the facts, to segregate issues from non-issues, you know, but to do so in a context.

JUDGE LIPPMAN: Yes.

DEAN MUTUA: Because you see, Judge, the law doesn't exist in a vacuum, it can never exist in a vacuum, and that's why, in my own view, I think when you expose students to a real live situation where they can see a client, you know, who maybe is a battered spouse, maybe it's a person who has lost a home, you know, maybe it's a person who has been abused by authorities, whatever the case is, where you put them in that situation, I've often found that it is transformational, it transforms, it -- it reminds them why they came to law school. You didn't come to law school to go make a lot of money, I like to tell my students that, and I tell them that openly, you came to law school to learn how to be a good citizen, to support our democracy.

JUDGE LIPPMAN: So you can't necessarily, and I guess this is what I was driving at, in your terms, to teach the law students to have a soul, or more directly,

to have a commitment to equal justice, you can't necessarily learn that in a lecture room.

DEAN MUTUA: No. No. And I think it's actually a huge mistake to think that we can do that solely in a classroom room. You know, we send students as far away as London and Cape Town and Sao Paulo to work with pro bono lawyers in other countries, it's not just in this country, because we believe that is really the nexus between -- it's like a higher moment, you get there and you see what's going on with real live people and it never leaves you, whether you become a judge --

JUDGE LIPPMAN: Exactly.

DEAN MUTUA: -- whether you become a prosecutor, it just never leaves you. So I think that, you know, I know that you've been a part of discussions about, you know, pushing law schools to create a more --

JUDGE LIPPMAN: Exactly.

DEAN MUTUA: -- how shall I put it, outcome-based, you know, legal education program in place in which students are taught, you know, actual skills, and I think there is no better place to teach them those skills than in clinics.

But also in addition to that, I just want to say that as they learn that experience and they get transformed by that experience, they also do some good,

because they're affecting a real life in that process.

JUDGE LIPPMAN: They do some good and it stays with them.

DEAN MUTUA: They do some good and it stays with them.

JUDGE LIPPMAN: So thank you, Dean. We really appreciate you coming in, and again, appreciate your work in the law schools and recognizing this tie-in between this academia and this pursuit of equal justice that I think we're all involved in that's so central to what the law school is about, what the profession is about, and what the judiciary is all about.

DEAN MUTUA: Thank you, Judges, and thank you Chief Judge. We are at your service and whenever you need us, we shall do what's necessary.

JUDGE LIPPMAN: Thank you so much. Greatly appreciate it.

DEAN MUTUA: Thank you so much.

JUDGE LIPPMAN: Pleasure to have you.

DEAN MUTUA: Thank you.

JUDGE LIPPMAN: Our last panel for the day is the judges' panel.

I'd mention before I do that that the other members of the Task Force who are here today, Bob Convissar is here, and Steve Banks is here, all the way

from New York City, and Sheila Gaddis is here, and C. Bruce Lawrence is here, all on the Task Force, along with the Chairperson Helaine Barnett and all doing a spectacular job, and I know that firsthand what a great job this Task Force does.

And I also know firsthand what a great job our judiciary here does and we have the privilege of having Paula Feroleto, who is the administrative judge of the Eighth Judicial District, and the co-chair of the Eighth Judicial District Pro Bono Committee; Honorable Deborah Karalunas from the Supreme Court, Onondaga County; and the Honorable Jeannette Ogden, E. Jeannette Ogden from the Buffalo City Court, an acting judge in the County and Family Courts, to come up and tell us about how being a judge intersects with this obligation that we have to foster equal justice in our state and our courtrooms.

Okay. And Judge Feroleto, we're delighted to have you here, and you want to start off the proceedings, at least for the judges' panel?

JUDGE PAULA FEROLETO: Absolutely. Thank you very much. And thank you and the Task Force for conducting these hearings and elevating the court's -- the level of the court's role in ensuring access to justice and raising awareness of the overwhelming need for the civil legal services for low-income people.

JUDGE LIPPMAN: Let me ask you in a general way, just like you do on the bench before the lawyer can get a word out of their mouth, you know, we ask them a question. You think judges here in this judicial district are conscious each and every day that what they're doing in the courtroom is all about equal justice? That that being our constitutional mission, that sometimes I think we all as judges have a tendency to get so lost in a particular legal issue or, you know, whatever is the order of the day that we're carrying out, do we, all of us, and I ask you as the administrative judge who is speaking for the judiciary here in this room, do we get that if in our courtrooms there isn't a level playing field, that there isn't a commitment to equal justice above all other things, that we're not doing our job?

JUDGE FEROLETO: Oh, absolutely. And I think all of the judges here are very aware of how to deal with pro se litigants when they come in because it happens very frequently. Just in our Erie Supreme Court I know that we had over 2,000 unrepresented litigants last year, I asked my clerk for a census, and that's the Supreme Court. Obviously in our city courts and rural courts the numbers are much higher than that.

So as I go through, I think the judges realize when pro se people come in, they're aware of how much

longer the proceedings take, making sure that the witness is able to get the testimony out and --

JUDGE LIPPMAN: And that makes your job hard, right?

JUDGE FEROLETO: It makes it much harder from a judge's perspective. In terms of even trying to negotiate a case, if you were in the Supreme Court where you have a pro se litigant and an attorney, you want to make sure that everything is on the record instead of being able to have the attorneys in and speaking.

JUDGE LIPPMAN: But what's the judge's role? The judge is supposed to be a neutral. What do you do in a situation where you -- one side has an attorney, the other side doesn't, you're the neutral in these proceedings, you're not supposed to be the lawyer for the, you know, person who doesn't have one. How do you deal with that? What's the impact on the justice system on equal justice when the judge is kind of caught in this dilemma?

JUDGE FEROLETO: It makes the proceeding go much slower. Many times you will grant an adjournment for them to try and get an attorney, or politely suggest that they should do some research or checking or come back or consult with someone before they come back again, or instead of trying to ask themselves questions when they're

testifying, it's so much easier to have someone else in an attorney there representing them.

In this district we are lucky to have the cooperation of many local legal services and pro bono programs. For more than 15 years here in Erie County, the Volunteer Lawyers Project and Neighborhood Legal Services have worked cooperatively with Buffalo City Court to operate the Attorney of the Morning Program.

JUDGE LIPPMAN: Which I saw this morning, there's such a great program that really so obviously works on a very basic level, you know.

JUDGE FEROLETO: Absolutely. We -- both you and Judge Pfau were over there this morning and it was a typical morning, the attorney from Buffalo Municipal Housing Authority was there, he had started the morning with 120 cases, by the time Judge Pfau and I were there at 10:30, because there were attorneys there, he said he only works with attorneys and he makes sure there's going to be an attorney there when he's there with his cases, they were down to 40 cases. One hundred twenty pro se people in front of a judge would not have been done in an hour and a half.

JUDGE PFAU: Judge Feroleto, you cover not just urban Buffalo but a lot of very, very rural counties. How does this work in a rural county where you must have -- I

would guess, but you would know better than I do -- the same increasing number of unrepresented litigants, probably one judge and not the same kind of network of pro bono services available?

JUDGE FEROLETO: Unfortunately we don't have the same network available in all our counties. We were fortunate some time ago to have a pro bono coordinator who was helping us with our outreach to our more rural communities. When she was working with us, we were able to do outreach to Chautauqua County and we managed there to get a pro se divorce clinic going as well as coordinate services with Southern Tier Legal Services. But it was the help of a person who'd coordinate the attorneys there who knew there was a need.

In fact, I sat on the bench there for two years and I had been a practicing attorney here in Buffalo before I was assigned to Mayville and was very familiar with the Volunteer Lawyers Project since I was the coordinator for our pro bono services in my law firm with Mr. Hassett at Brown & Kelly, and I got there and I had a consumer credit transaction and I said this person needs an attorney, is there a Volunteer Lawyers Project here, I need to assign somebody, and they said, no, there is no such program there. So I immediately realized the need for a program and for attorneys to assist.

We attempted to get a group of attorneys together that we could then call on where you felt that there was a need for an attorney to try and ask them to represent them but it's so much easier if you have a concerted effort, for example, with the Volunteer Lawyers Project, they can give ethics credits as well for service which makes it very attractive to the attorneys.

So it is as you mentioned, Judge, much harder in the rural communities because they're so far apart. While you have people willing to serve, they don't know how to go about it.

I can give you an example, though, in Chautauqua County through the efforts of the pro bono coordinator and what we did with the judges and offering free LEs -- free CLEs, someone else mentioned you want someone to know what they're doing, so we did CLE on basic handling matrimonial, we did a CLE on landlord-tenant matters so that these attorneys could get educated on how to do it and then they agree to take a case. And we got 33 attorneys from Chautauqua County, after a letter writing campaign, who all agreed to take cases and it worked out very well there.

I would point out in Allegany County, we're also making some strides, and that is very rural, very close to where Judge Scudder's from. With Judge Parker and our new

court building down there, there's going to be space where we're going to dedicate a room to a Volunteer Lawyer Project where the attorneys will have set hours and litigants will be able to come in and work with the attorney in terms of completing paperwork for either Family Court or Supreme Court matters where they need to consult with an attorney, it makes it so much easier for the courts where the paperwork is actually done correctly when it comes in, it saves a lot of time.

JUDGE PFAU: And it saves a lot of time for the judge --

JUDGE FEROLETO: Absolutely.

JUDGE PFAU: -- who even though it's rural, has a very big calendar.

JUDGE FEROLETO: Because then the judge doesn't spend the time going through the papers and having them sent back.

So I guess in short what I would say is, yes, we do have a need in our -- oh, I wanted to mention, too, our in rem proceedings that we also did here in Buffalo last week and that was also another project coordinated with all of the volunteer legal service providers here. In one week we were able to work out orders on almost 1,500 cases, and that meant during that one-week time frame before Buffalo did its tax foreclosure sale, 1,500 people

came into the courts in a one-week period of time, dealt with attorneys for the City and they all had access to a volunteer lawyer, either through Neighborhood Legal Services or the Volunteer Lawyers Project, got orders taking their property off the in rem list and we were able to save their homes from tax foreclosure. It was an amazing effort with no overtime.

JUDGE PFAU: Thank you.

JUDGE FEROLETO: So I think I really just want to thank you all so much for highlighting the need for pro bono legal services, and while we are truly blessed here in Buffalo and Western New York area with so many attorneys who will volunteer and are willing to take the time, it is so very helpful to have a core group of legal service providers who can help channel and funnel that energy so it gets in the places where it needs legal services.

JUDGE LIPPMAN: Well, thank you, Judge Feroleto, for your leadership in this area. I think what's clear is that in the western part of the state, there really is a partnership among the providers, the bar, the judiciary, that and academia -- the dean was here -- where I think that, you know, I was asking before, do we get it, and I asked the different players do they get it, I think pretty much everyone up here gets it. I think the issue is that

we need, as a foundation, for all of these collaborative efforts, not only in the state courts, in the federal courts and with our friend Judge Lowe here who, you know, who has done such good works, we need a core of funding for the providers that provides the -- the center of which all these other things can spin around, that needs to be a publicly-funded endeavor that recognizes that -- that that funding is repaid, you know, so many times over because of the consequences of not funding civil legal services.

So thank you for your central role in this kind of team and partnership that we have here.

And I now ask Judge Karalunas --

MR. HASSETT: Can I just say --

JUDGE LIPPMAN: Sure.

MR. HASSETT: -- my former partner here, Judge Feroleto, I think in all honesty that she was the instigator of the pro bono program at Brown & Kelly when she was our partner and it's continued to today largely because of what she started.

You mentioned the pro bono coordinator, and I mentioned earlier in a different context, but what that coordinator was able to do in Chautauqua County points out the difference between Monroe, Onondaga, Erie and the infrastructure that we already have in place here and what doesn't exist in the rural areas where the pro bono effort

is probably -- the attorneys are willing to do it but it takes somebody to start it, and that program that you were part of in Chautauqua County is an example of the necessity, not just in the urban areas of New York State, but particularly in the rural areas, to have some source of continuing reliable funding for services for the poor in the civil area, so thank you.

JUDGE FEROLETO: Thank you. And I should also bring up, and we were talking about public defenders as well at arraignments, it's a shame that we don't, even in many of my city courts in this district, not have public defenders available at the time of arraignments.

JUDGE LIPPMAN: Yeah, and I think that, you know, it's so important, and as you know, we've been talking about that, particularly this last Law Day, and making sure that there is representation at arraignment, and I think it ties together the criminal issues, you know, as the clarion call of Gideon versus Wainwright, that people have criminal representation as a constitutional right, and even with that we sometimes fail in our mission and the execution of that right. But I think sometimes, and this was pointed out at some of the other hearings, that on the criminal side, where we say that loss of liberty, one's loss of liberty is so severe a consequence that you have a constitutional right to

representation, the issues that we're talking about are the necessities of life: the roof over one's head, freedom from physical violence, your livelihood, your family's subsistence benefits, the consequences can be even as great or greater than the loss of liberty in the civil area and that's why I think we all make this effort to raise the public's consciousness of the consequences of not having representation in the civil matters that sometimes deal with just life itself, just as the loss of liberty on the criminal side.

So anyway, Judge Karalunas, you're up.

JUDGE DEBORAH KARALUNAS: Thank you.

Good afternoon, Chief Judge Lippman, Chief Administrative Judge Pfau, Justice Scudder, and Mr. Hassett. Thank you for inviting me to give testimony today on the topic of access to civil justice.

As you may know, for 20 years I practiced law with Bond, Schoeneck & King and George Lowe, large upstate law firm. During that time, primarily through clinics organized by the Onondaga County Bar Association and the Central New York Women's Bar Association, I devoted many hours representing the poor in civil legal matters. For the most part, those were the good years. Families were more stable, unemployment was low, foreclosure actions were sparse, and the economy was stronger.

I also am very active in an urban Syracuse church whose mission is to serve and assist members of our community who live in poverty, are undereducated, and face unique physical or mental health challenges. I believe in the goodness of people and the strength and power of community. I believe in helping people help themselves.

In 2002 I was elected Supreme Court justice in the Fifth Judicial District. For my first two years on the bench I was assigned to the matrimonial part. In that part I dealt with issues of divorce, child custody, and equitable distribution.

JUDGE LIPPMAN: Let me ask you to stop for a second, Judge. You know, in Family Court we know that we have certain areas where people are entitled, at least under New York statutory law, to representation. In a matrimonial proceeding for divorce which is, you know, in the Supreme Court, is there any such right to representation?

JUDGE KARALUNAS: Well, certainly there are the law guardians who are representing the children in those cases.

JUDGE LIPPMAN: But what about the person who comes in and is seeking a divorce?

JUDGE KARALUNAS: In the Fifth Judicial District, to my knowledge, we didn't have people who were,

through one of the agencies, provided with legal services.

With that said, I would say in less than five percent of the matrimonial actions that I presided over, contested matrimonial actions where the individual's, one of the party's unrepresented.

JUDGE LIPPMAN: And they got representation from a provider when they didn't have money?

JUDGE KARALUNAS: In the matrimonial context, in the absence of a custody dispute, no.

JUDGE LIPPMAN: No.

JUDGE KARALUNAS: They were unrepresented.

JUDGE LIPPMAN: Um-hum.

JUDGE KARALUNAS: In the uncontested divorce proceedings, the number was significantly -- significantly greater.

JUDGE LIPPMAN: Right.

JUDGE KARALUNAS: In January 2005, I was assigned to the general civil part. I continue in that part, although I now also serve as the commercial division judge for Onondaga County. My cases include business disputes, a variety of tort claims, and foreclosure and consumer debt actions. Generally, the parties who appear before me are represented by counsel.

JUDGE LIPPMAN: Would you say that's typical in the higher courts, you know, at least within our court

structure, that there are more people represented than, let's say, in the City Court and the Family Court?

JUDGE KARALUNAS: My experience has only been in the Supreme Court. I would certainly surmise, and based on conversations with other judges in the Family Courts and City Courts, agree with that, Judge Lippman, that in the Supreme Court we are less likely to see people who are unrepresented. The exceptions or the cases where we see people who are unrepresented are generally people seeking ex parte applications for name change -- changes, petitioners seeking early access to structured settlements awards, defendants in foreclosure and consumer debt actions.

In the latter categories, the pro se litigants generally do not dispute the validity of the underlying loans or debts, they simply are unable to make the required payments.

New York's current economic condition is poor. Indeed, the budget of the Executive and Judicial branches of government and many governmental and nonprofit organizations have been slashed. Nonetheless, the Legislature has imposed many unfunded mandates on the court, and increasingly, we are being used to resolve pressing social issues. The judiciary is asked to do more with less, so too are the three organizations in Central

New York that represent the poor in civil legal matters.

These organizations, the Hiscock Legal Aid Society, the Legal Aid Society of Mid-New York, and Legal Services of Central New York, are staffed with quality lawyers who provide quality legal services. Those organizations and the Volunteer Lawyers Project which we have run by our Onondaga County Bar Association, similar to what's in Erie County, work tirelessly to ensure justice for the people that they serve. Traditionally, these organizations were funded by federal, state, county, local governments, various grants, the United Way, IOLA, and private contributions. More recently, however, some of those funding sources have been cut or slashed. For example, I understand that in the last year, the state pulled most, if not all, of the funding for the Hiscock Legal Aid Society.

JUDGE LIPPMAN: And IOLA has gone from 32 million to 6 and a half million dollars, and the Legal Services Corporation in Washington is having its trouble, constantly under seize.

JUDGE KARALUNAS: Yes. While I support access to legal services in civil matters involving the essentials or necessities of life, I have concerns about increasing the role of the courts in funding and administering programs to meet that challenge. The

judiciary is a separate and coequal branch of government. Generally the role of judiciary has been to protect private interests and the role of the Legislature is to safeguard broad public interests. In other words, the judiciary's empowered to determine the rights and obligations of parties in discrete cases and controversies and the Legislature is empowered to make policy decisions and to allocate limited public dollars consistent with those policy decisions. By taking on responsibility to fund and administer civil legal services, the judiciary assumes the policy-making role of the Legislative branch and the managerial role of the Executive branch. Moreover, when the judiciary pays for a lawyer to represent one of the two sides in our dispute, I believe our role as a neutral arbitrator is severely compromised.

With that said, as I understand, the Task Force has asked for us to think outside the box and to come up with ideas to ensure that we meet the legal needs of the poor in matters concerning the necessities of life. The Legislative branch and Executive branch can and should do more. Recognizing that many matters can be kept out of court if civil legal assistance is provided before a legal problem escalates in a court case, among the various options available to the Legislature and the Executive branch are: Establishing Know Your Rights community legal

education programs; establishing programs and other means to provide preventative legal assistance; mandating some form of pre-action ADR; authorizing fee shifting in various actions; and providing a reliable, dedicated source of funding, independent of the judiciary, targeting legal assistance for matters concerning the necessities of life.

I believe the judiciary also can and should do more to ensure access to justice in civil cases, and among the options that I can come up with are: Simplifying forms and procedures and rules in the Family Court, landlord-tenant and foreclosure cases; dedicating staff to assist pro se litigants in understanding and completing those forms and procedures; waiving or reducing attorney registration fees for attorneys who devote, for example, 60 or more hours bi-annually to pro bono service in areas involving the necessities of life; mandating that all practicing attorneys provide a fixed number of pro bono hours of service in areas involving the necessities of life; working with lo -- with local bar associations and law schools -- we have Syracuse Law School here and that does a lot with clinic work, and I heard the dean speak with all the wonderful work that the Buffalo Law School is also doing -- but working with those bar associations in the law schools and Legal Aid organizations to train pro

bono lawyers; expanding the program that allows retired lawyers to practice law; and allowing judges and their law clerks to engage in pro bono work outside of the court.

In these hard economic times, we have unemployed and underemployed lawyers who would, with adequate training, address and meet the needs of the litigants in areas involving the necessities of life. While the burden of addressing these needs should not fall solely on the soldiers -- shoulders of the legal profession, a profession that consistently has stepped up to and beyond the plate, I have focused my comments today here on what I know best, the strength, integrity and compassion of the many men and women who serve as lawyers and justices in our great state.

I thank you for the opportunity to speak today.

JUDGE LIPPMAN: Thank you, Judge. Appreciate it.

And the cleanup hitter here, or the last witness for the day, is going to be Judge Ogden who is a City Court judge, an acting judge of the County and Family Court. And I note, because, Judge Ogden, that you have such importance in this system, that Judge Pigott has made -- our colleague on the Court of Appeals, has made sure that he's here to hear your testimony because he told me earlier today that he expected great things from your

testimony. We don't want to put pressure on you, Judge Pigott, we just, you know, think a lot of Judge Ogden.

So, Judge Ogden, with Judge Pigott listening and the rest of the audience, and the only one keeping them between lunch is you, so with that, with that intro, you're on.

JUDGE E. JEANNETTE OGDEN: Let me first say thank you for allowing me to participate in this process, because it is very important to me and very near and dear to my heart. Because I sit on the City Court, which is a high volume court that handles both criminal and civil matters, and in the City Court the civil matters that we handle often involve the landlord-tenant proceedings which you may have observed and we certainly are blessed to have the Lawyer of the Morning Program, but I would also like to draw your attention to the fact that sometimes the landlords are senior citizens, living on a fixed income, they are not eligible for the assistance of the Lawyer of the Morning, and they really need the rents that they are receiving, and sometimes the tenants may have created these situations that result in Housing Court problems and things of that nature, and for those individuals, there is no legal representation.

And the purpose of the judge is to ensure

justice and fairness to everyone that comes into the courtroom. So when one party does not have access to an attorney, they don't have access to justice, not really.

JUDGE PFAU: And what does that do to your role as a judge when you have so many cases coming in front of you, your time is limited, and then you see just what you're talking about happening in front of you.

JUDGE OGDEN: That compromises my position as a judge because I am required to be a neutral arbiter of the law, and it's very, very difficult, and I have to be very mindful of the ethical ramifications that can result if I lean one way or the other. And certainly I can make suggestions, I can make recommendations, but at the end of the law, my job can be compromised and the whole concept of justice can be compromised as well.

JUDGE PFAU: And also the perception of what you're doing, even if not the reality, right?

JUDGE OGDEN: That's correct, it creates a perception, an appearance of impropriety. That's just in the landlord-tenant area.

Then we also have the same dilemma when we're dealing with debtor-creditor situations because so many people are unable to pay their credit card bills, and that doesn't even address the rent-to-own people who are regulars in the City Court as well as people who are

already paying twice as much for items that they are renting and they cannot afford attorneys either, same problem arises.

Then in the City Court we have the issue of the small claims matters where most of the litigants are also unrepresented, or one party may be unrepresented. Fortunately, here in Buffalo in Erie County, the bar, if a lawyers is present for another matter, they can count on the judge calling on them to see if they will be willing to lend some pro bono assistance in the courtroom, and often if it's a minor matter, they will, they certainly -- and we wouldn't ask them to take on more serious matters.

That's just a part of the City Court problem when you don't have free and equal civil legal services.

Also, City Court judges issue civil contempt orders when persons are not in compliance with information subpoenas relating to the debtor-creditor actions, and as a result, we actually take away the liberty of someone. So it is very, very important, in addition to depriving them of their, perhaps, a place to live.

JUDGE LIPPMAN: Judge, would you agree that we're talking about the Supreme Court versus some of the other courts and the type of litigation, but you see, when you sit in City Court, you really see every day this issue upfront and center, right?

JUDGE OGDEN: Yes.

JUDGE LIPPMAN: Of lack of representation and in so many different kinds of cases --

JUDGE OGDEN: That is correct.

JUDGE LIPPMAN: -- that are critical --

JUDGE OGDEN: Yes.

JUDGE LIPPMAN: -- to the individual person and society.

JUDGE OGDEN: Yes, I do. I agree wholeheartedly. And so I would echo what everyone else said because we certainly see that.

Now in the Family Court context, being mindful of the time, in the Family Court context, I was assigned, to a large extent, to handle custody and visitation disputes. In our Erie County area there are many grandparents who are coming in to court petitioning the court to seek custody or visitation of their grandchildren. There is a distinction in the eligibility requirements for an individual seeking visitation and seeking custody. So a grandparent who is seeking custody can avail themselves of the free civil legal services that are offered by our Grandparent Advocacy Program as well as an Assigned Counsel Program; however, if that same person is asking for guardianship, or visitation, they are ineligible for the same services. Many times the need to

come in and petition for custody arises as a result of an inability of a parent to care for that child, maybe because the parent is on drugs or has gotten into some kind of trouble, it's often a temporary arrangement. Often the grandparent is low income or lives in subsidized housing and they can't take custody of the child because to do so would jeopardize other social benefits that they may be receiving. So in that slight instance, that is an injustice that I see often. Because of the request, the nature of the request, and sometimes maybe someone may suggest to them that you should go seek custody, but it's not like a parent's shoes. When you seek custody of someone, there are a lot of other ramifications to the child, to the system as a whole.

In the end, if we had those civil legal services available to low and moderate income people, the system may not have to pay to support that same child in other arenas that would cost twice as much and I think some consideration should be given to that, and that's just in one area, as I think it would be a cost-saving measure in many other areas.

And if you take the instances that you observed in the Supreme Court and you triple them in the city urban centers, that's what you will see in the City and the Family Court. So it creates, overall, an adverse impact

to the court because it compromises our ability to do our job and be a fair and detached and neutral arbiter.

JUDGE LIPPMAN: You can't be the judge and the lawyer for somebody at the same time.

JUDGE OGDEN: That's correct. You affect the perception of justice because people on the outside come in and they want to see the judge being in the middle, they don't want to see the judge leaning, because if you're leaning in this instance, how will they know that you won't lean in every other instance? The judge can never be the lawyer, that's why there is a difference.

And I think that it is so important that people realize that every individual that steps into a court in New York State has an individual fundamental right to fairness, and you achieve that when you allow equal access to an attorney, because that's the first step in equal access to justice.

Thank you very much.

JUDGE LIPPMAN: Well, thank you, Judge Ogden. I think that eloquently, you know, sums up what this is all about.

And I thank our judicial panel, and really, we've had a very interesting day. I think the clients that we had to start out really graphically, you know, demonstrated that we're talking about issues affecting the

necessities of life, and each of those clients', really, lives were salvaged by having the civil legal services representation; I thought that the testimony from the collaborations here in the western part of the state, in Monroe and Erie and coming soon in Onondaga, sharing services, sharing costs is certainly a wave of the future in terms of how providers are going to meet the challenges of the day; I think the dean was quite eloquent in terms of what he called teaching students to have soul and to understand that they have an obligation to equal justice; and I think each of you on the judges' panel certainly demonstrated that -- that commitment.

I think the bottom line, and this is the fourth of our series of legal civil service hearings this year, certainly what's clear is that funding civil legal services is a good investment. As we indicated, for every dollar that is spent, the public spends on civil legal services, at least five dollars are returned to the state in reduced Social Services, homelessness, incarceration, and additional federal funds that comes to the state. So on so many levels it's a good investment from the bottom line perspective, and obviously as we've talked about so much today, each and every society, and certainly every civilized society, certainly is judged in very significant degree to how it treats its most vulnerable citizens, and

for us in the judiciary and the legal profession, obviously we feel a particular commitment and obligation to meet our mission of -- and our responsibility to foster equal justice is really what we're all about, it's our very reason for being.

So I'm very happy to be here in Albany with this last hearing of this --

JUDGE FEROLETO: Buffalo.

THE COURT: -- series of hearings, we will be -- the Task Force and Helaine Barnett, and some of your members are here today, will be completing their report in the coming month or so, a little bit longer, and then we go forward again with I think what is a -- certainly a noble endeavor of the judiciary and the bar to -- in this -- in pursuit of justice, in pursuit of equal justice.

I want to thank Judge Feroleto for her hospitality in having us here in this beautiful setting, and being here, ordered a perfect day of weather, I know that Judge Pigott had something to do with that, Paula, to have the beautiful weather today. And we thank you all and very much appreciate you coming. Thank you so much.

(Proceedings concluded at 1:55 P.M.)

* * *

REPORTER'S CERTIFICATION

I hereby certify that the foregoing is a true and accurate transcript of the stenographic minutes taken in the matter of The Chief Judge's Hearing on Civil Legal Services.

_____

BARBARA F. CULTRARA, CSR, CMR, CRR,
Official Supreme Court Reporter.

October 7, 2011
Buffalo, New York

APPENDIX 11:

Written Statements submitted at the Second Department Hearing held on September 20, 2011

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Written Statements Submitted at the
Second Department Hearing on September 20, 2011

Statements of Testifying Witnesses

David Boies (Managing Partner, Boies, Schiller & Flexner LLP)

Kathleen DeNezzo (Client of Nassau/Suffolk Law Services Committee, Inc., accompanied by Denise Snow)

Hon. Janet DiFiore (Westchester County District Attorney)

Tara Grisby (Client of Legal Aid Society of Rockland County, Inc., accompanied by Alexander Bursztein)

Rev. Adrienne Flipse Hausch, Esq. (Partner, Carway & Flipse)

Esther Jimenez (Client of Staten Island LegalServices, accompanied by Nancy Goldhill)

John Lindstrom (Court Attorney-Referee, Supreme Court, Orange County)

Hon. Janet C. Malone (Acting Supreme Court Justice and Family Court Judge, Westchester County)

Faith Piatt (Executive Director, Orange County Rural Development Advisory Corporation)

Boris Raishevich (Client of Legal Services of the Hudson Valley, accompanied by Ndukwe Agwu)

Alina Saez, mother of Justin Rosario (Client of Legal Services of the Hudson Valley, accompanied by Gina DeCrescenzo)

William M. Savino (Managing Partner, Rivkin Radler LLP; Member of the Board, Long Island Association)

Hon. Anthony A. Scarpino, Jr. (Westchester County Surrogate, Acting Supreme Court Justice, and Supervising Judge for Fiduciary Matters, Ninth Judicial District; Co-Chair, Ninth Judicial District Pro Bono Action Committee)

Barbara J. Strauss (Immediate Past President, Orange County Bar Association)

Terri Torchio (Director of Economic Independence, Department of Social Services, Orange County, on behalf of Commissioner David Jolly)

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Statements of Non-Testifying Witnesses

Legal Services of the Hudson Valley

Nassau County Coalition Against Domestic Violence

Nassau/Suffolk Law Services Committee, Inc.

Westchester Hispanic Coalition

Written Statements of Testifying Witnesses

David Boies

Managing Partner, Boies, Schiller & Flexner LLP

Task Force to Expand Access to Civil Legal Services in New York

Chief Judge's Hearings - Second Department

September 20, 2011

Testimony Summary Presented by: David Boies

The American justice system is in crisis. Our courts and other components of our justice system are egregiously underfunded. There is a sense in which this is not new; the amount of resources devoted to the justice system, never a large percentage, has been declining for at least two decades. However, the confluence of the results of this long term decline in financing, and the pressure that has come from recent events which have both increased the demands on our justice system and further reduced the resources available, has resulted in a crisis that we can not continue to ignore.

The problem in New York is not as severe as it is in some other parts of the country where civil jury trials have been suspended, judges have lost their health insurance, and litigants must supply their own paper to get a copy of court orders. We are making real progress in New York, and we are grateful for your leadership in making that happen. However, problems remain and those problems will get worse not better unless we make a sustained commitment to provide the basic financial support that a functioning justice system requires.

The court system is understaffed and, despite some recent progress, under paid. We have been fortunate in our ability to recruit and retain high quality judges and court personnel who have been prepared to make significant financial sacrifice in order to serve. However, there is a limit to the extent of financial sacrifice that we can expect to demand while at the same time preserving that quality. In addition, we must continue to

provide the personnel and technological support that our courts require to handle the quantity and complexity of the cases which demand their attention - and to do so without the delays that both frustrate justice, and in the final analysis, increase its cost. In the long run, increased personnel and advanced technology can make our courts more efficient and less costly, and the size of the investment required is relatively modest compared to other state expenditures. New York is becoming a leader in the application of technology to the justice system, and it is important to New York and to the nation that that leadership continue.

We must also provide the funding that is necessary to avoid user fees and litigant costs that price our most vulnerable citizens out of a realistic opportunity to have their causes heard - and to support agencies and services that make counsel available to people who cannot afford it. Umepresented litigants in civil legal matters burden the courts with substantial requirements and costs. They require more time from judicial personnel and the courts themselves both because cases reach the courts when litigants are unrepresented which would not result in litigation if counsel were available and because when cases do reach the courts unrepresented litigants require time, assistance, explanations, and supervision that represented litigants do not.

There is in fact, I believe, an important link between an efficient and defective justice system for all litigants and the provision of legal services for litigants who cannot themselves afford counsel, particularly in certain essential areas such as family matters (including domestic violence and issues relating to children), housing (including evictions and foreclosures and homelessness), and access to healthcare and education. The absence of assistance of counsel in these vital areas burdens not only the justice

system but society at large which must bear the burden of the consequences of the practical inability of millions of citizens to have access to our justice system to secure their rights.

There is much to be done, but it is well within our means even in difficult economic times. We must never forget that the courts are not merely another government agency, but a co-equal branch of government - and the branch upon which we all depend for the just application of the rule of law, upon which all of our other rights and benefits is in turn dependent.

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

AUGUST 8-9, 2011

RESOLUTION

RESOLVED, That the American Bar Association urges state, territorial, and local bar associations to document the impact of funding cutbacks to the justice systems in their jurisdictions, to publicize the effects of those cutbacks, and to create coalitions to address and respond to the ramifications of funding shortages to their justice systems.

FURTHER RESOLVED, That the ABA urges state, territorial, and local governments to recognize their constitutional responsibilities to fund their justice systems adequately, provide that funding as a governmental priority, and develop principles that would provide for stable and predictable levels of funding of those justice systems.

FURTHER RESOLVED, That the ABA urges federal, state, territorial, and local courts to identify and engage in best practices to insure the protection of the citizens within their jurisdictions, efficient use of court resources, and financial accountability.

FURTHER RESOLVED, That the ABA urges state, territorial and local courts and bar associations to develop sustainable strategies to communicate the value of adequately funding the justice system utilizing advisory groups, enhanced civic and public education, and direct engagement with public officials at all levels.

REPORT

CRISIS IN THE COURTS: DEFINING THE PROBLEM

Introduction

The courts of our country are in crisis. The failure of state and local legislatures to provide adequate funding is effectively -- at times quite literally -- closing the doors of our justice system. At the same time, Congress has reduced its support for both the federal courts and other programs that directly and indirectly support our justice system at the state, county and municipal levels.

As a result, over the last few years, the courts of virtually every state have been forced into debilitating combinations of hiring freezes, pay cuts, judicial furloughs, staff layoffs, early retirements, increased filing fees, and outright closures. These reductions in court staff and related resources come at the very time when the demand for the judicial resolution of economic claims has increased dramatically. Our courts, already short-staffed, have thus been forced to lay off judges, clerks and other personnel just as they are being inundated with hundreds of thousands of new foreclosures, personal and small business bankruptcies, credit card and other collection matters, domestic fractures, and the many other lawsuits resulting from the Recession. The courts must then deal with these increased caseloads, often facing the additional problems created when litigants proceed *pro se*, which occurs all the more frequently in hard economic times.

Sadly, the courts are easy prey for Draconian budget cuts, because they lack the power to tax to support themselves and hence are at the mercy of legislative and executive branch political priorities. At its most extreme, this had led to constitutional crises where, as in New York last year, judges were forced to sue legislative and executive branch officials in an attempt to obtain even the most basic level of support.

Yet the "savings" to a state or local government from drastic cuts in funding the justice system are typically insignificant when viewed in terms of a government's overall fiscal woes. The proportion of state and local budgets represented by even a fully-funded court system is quite small -- in the range of 1 to 2%. And since judicial budgets consist almost entirely of personnel costs, the courts do not have the ability simply to postpone expensive items to a more robust economic time; and thus reductions in court funding directly and immediately curtail meaningful access to the justice system.

When that happens, the costs to society are great. The undue delay or outright denial of effective judicial action results not only in further harm to those who need prompt and fair resolution of their disputes, but also, in many instances, to more overcrowded prisons, threats to public safety, and harm to those, such as broken families, in the greatest need of legal support.

In cold hard cash the results can also be staggering. For example, it was recently estimated that the quantifiable costs from court-related delays in foreclosure cases in

Florida alone was nearly $10 billion.[1] And ultimately, when our courts -- the focal point of our legal system -- cannot provide justice, such problems breed contempt for the law itself.

I. The Extent of Our Underfunded Justice System

Unlike other elements of state government which fared relatively well in the better economic times from the mid-1990's to 2007, the nation's courts and related services were being curtailed in many respects even before the current Recession. And the ABA has long been concerned by that situation.

In 2003 its Standing Committee on Judicial Independence issued a report which documented the growing disparity between the courts and agencies that serve other state functions, such as education and healthcare, which had been the beneficiaries of a "burst of increased spending in the 90's." The committee report warned that it was "no longer the case" that the "courts' status as a co-equal branch of government" would serve as an effective "buffer" from even deeper budget cuts.[2]

A year later, in August 2004, the House of Delegates focused on the increasingly common legislative practice of reducing judicial funding at the same time, they demanded more and more of the courts in terms of both traditional adjudication and new, related social services. The House voiced concern over the budget processes of many states which made it difficult, if not impossible, for judges and court administrators to use financial resources in the most effective manner.[3] The report accompanying the House resolution echoed the findings of a prior report of the ABA's Commission on the 21st Century Judiciary (2003), that, without enhanced funding, the judiciary's capacity to preserve itself would be threatened.[4]

Over the next few years, a few states responded to these concerns with some modest improvements in court funding procedures. But, with the onset of the current Recession in 2008 -- and the significant loss of tax revenues that soon followed -- the courts once again became the target of budget cuts more severe than those imposed on other entities.

Over the last three years, the courts of most states have been forced to make do with 10 to 15% less funding than they had in 2007. And because the budgets of the judiciary and related support systems (juvenile counselors, drug diversion programs, probation officers) are typically 90% personnel expenses -- as opposed to other agencies tending our highways, parks, hospitals or libraries which devote a far greater percentage of their budgets to capital projects or equipment, where expenditures can be deferred without immediately impacting a reasonable level of services -- these cuts to court budgets have had a direct and debilitating impact on available court days and all of the related functions that require people to work on burgeoning caseloads on an immediate basis.

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[1] Washington Economic Group, The Economic Impacts of Delays in Civil Trials in Florida's State Courts Due to Underfunding (2009) at 1.

[2] Zemans, Court Funding (August 2003) at 10.

[3] ABA, House of Delegates Resolution and Report (August 9, 2004).

[4] Id. at 6.

State judicial officers have attempted to cope with these cuts in various ways -- all of which have a direct and negative effect on the pace and quality of adjudications. Over the last two years,

-- Twenty-six states have delayed filling judicial vacancies; thirty-one, judicial support positions; and thirty-four, vacancies in clerks' offices.

-- Thirty-one states have either frozen or reduced the salaries of judges or staff.

-- Sixteen have furloughed clerical staff, with commensurate reductions in pay; and nine have extended those furloughs to judges as well.

-- Fourteen states have simply laid off staff entirely.

-- Some twenty-two state court systems have attempted to offset some of these budget cuts by increasing filing fees and/or fines.

-- Last, but hardly least, fourteen state court systems have been forced to curtail the hours and even entire days they are open.[5]

The Task Force has heard many accounts of the extent and results of such chronic underfunding. To cite but one state's experience, the courts in Georgia have seen their funding shrink 25% over the last two years, such that their budget (which must also pay for prosecutors) now constitutes a mere 0.89% of the state's overall budget. As a result, criminal cases now routinely take more than a year to resolve -- with the innocent and guilty alike crowding local jails (thereby adding to that expense of other branches of the government). Those delays in turn cause an even greater reduction in court time for civil cases -- with at least one Georgia judicial circuit closing its doors entirely to all civil cases -- divorce, child custody, business and personal injury cases that simply are not heard.[6]

Georgia, of course, is not unique. To one degree or another, the court administrators of every state have stories ranging from the most tragic circumstances of the failure of courts to protect the most vulnerable in our society simply because there is neither the court time nor staff to hear their cases, to the absurd situation of an Ohio municipal court, which recently announced it can no longer accept new cases of any type simply because it has run out of paper.[7] Such is the state of our nation's justice system today.

II. The Adverse Impact on Public Safety

There can be little doubt that the adverse impact of budget cuts on the courts' ability to resolve cases in a reasonably prompt manner degrades their traditional roles in maintaining societal order and public safety. Most obviously, many states have experienced delays in the

[5] National Center for State Courts, Budget Impacts (December 2010).

[6] Transcript at 42–46, *Crisis in Court Funding: First Hearing before the ABA Task Force on Preservation of the Justice System*, Atlanta, Ga. (Feb. 9, 2011) [hereinafter Atlanta Hearing] (Testimony of Georgia Supreme Court Chief Justice Carol Hunstein).

[7] Transcript at 81, Atlanta Hearing, (Testimony of Manny Medrano, reporter/anchor, KTLA News and KNBC News, Los Angeles, CA).

resolution of criminal dockets to the point where judges and prosecutors are faced with the dilemma of warehousing untried defendants in local jails (at additional expense to other government agencies) or releasing potentially violent offenders simply because further pre-trial detention is either constitutionally impermissible or practically impossible. Such delays are rapidly becoming the rule. In Minnesota, for example, almost a third of all criminal cases now take more than a year to clear.[8] In Alabama, recent layoffs of judicial staff have lead to an indefinite delay in a high-profile capital murder case, prompting the state's Chief Justice to observe that "Something has to get done. We can't have a civilized society without the court system."[9]

In Georgia another capital case was delayed repeatedly -- with the defendant jailed for five years -- because the state could not pay for anyone to represent him.[10] On the other hand, in Washington state a suspect in a violent case was released as a result of speedy trial concerns only to rape a woman and then kill a pedestrian in the ensuing high-speed chase.[11]

Although these cases present more notable examples, the more "routine" effects of cutbacks in the courts' ability to serve public safety are no less troubling. Throughout the country, the added cost in time and money to local police departments in traveling longer distances or spending more time waiting to testify at trials that have been transferred or delayed because of insufficient court time is clear.[12] For lack of funds, DNA data on arrested offenders is not being entered into databases in Nevada for future use.[13] Inadequate funding of mental health and substance abuse programs -- and the judicial officers who must make the critical decisions on which offenders could benefit from medical treatment rather than the polar alternatives of prison or outright release -- is likewise endangering public safety and increasing the costs of an overwhelmed prison system.[14]

The adverse impact of reductions in judicial time on public safety is not limited to delays in criminal proceedings, which are at least given some priority in most states. They extend to sensitive civil matters as well. A delay in providing protective orders in domestic relations cases, for example, can lead to tragic results.

Last, but not least, budget cuts are now commonly making our courthouses themselves unsafe.[15] Bailiffs, marshals, and other security staff have been laid off--and their broken screening equipment left unreplaced--to the point where some courthouses and many courtrooms no longer have the level of security their dockets deserve.[16]

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[8] National Center for State Courts, Budget Survey (October 2010) at 11.

[9] Associated Press, "Courthouse Lay-Offs Delay U.S. Murder Trial Over Australian Honeymoon Death" (April 13, 2011).

[10] Transcript at 46, Atlanta Hearing (Testimony of Georgia Supreme Court Chief Justice Carol Hunstein).

[11] Transcript at 80, Atlanta Hearing (Testimony of Manny Medrano).

[12] Transcript at 26, Atlanta Hearing (Testimony of Roy Weinstein,).

[13] Transcript at 82, Atlanta Hearing (Testimony of Manny Medrano).

[14] Report of Boston Bar Association Task Force on the FY 2011 Judiciary Budget (March 2010) at 5, 7.

[15] Boston Bar Association Task Force on the FY 2011 Budget at 5.

[16] Transcript at 67. *Crisis in Court Funding: Second Hearing before the ABA Task Force on Preservation of the Justice System*, Concord, N.H. (May 26, 2011) [hereinafter New Hampshire Hearing] (Testimony of Maine Supreme Court Chief Justice Leigh Saufley, and Massachusetts Trial Court Chief Justice for Administration and

III. The Adverse Impact on the Economy

As serious as the adverse impact of insufficient funding of the justice system can be in terms of public safety, the negative effect on the economy is no less devastating -- and far more widespread. Over the past few years, a number of economists have made detailed calculations of the costs -- both direct and indirect -- of court budget deficits, all with the same conclusion: Those costs to local economies far exceed the supposed "savings."

For example, one group of economic consultants was recently asked to calculate the true costs of state funding cut-backs that had resulted in annual deficits in the budget for the Los Angeles Superior Court projected to range between $80 million in 2009 to $140 million in 2012.[17] The authors found that the resulting reductions in court time, increasing delays in adjudicating cases, and other related expenses would total many times the projected "savings" to the state.

Because the Los Angeles Superior Court -- with over 600 courtrooms and 5400 employees -- is the largest trial court system in the nation, this analysis merits some additional comment. But it is not unique. The problems of delay and attendant economic costs are being seen throughout the nation, wherever courts are so underfunded they are forced to reduce hours, close courtrooms, or otherwise delay trials and hearings solely to ration scarce resources.

In the Los Angeles study, the authors first described the most direct effects of the funding cuts, noting first that, as the projected deficits rose the court staff itself would be cut by nearly 500 in the first year to 1800 (about 1/3 of the pre-Recession level) by the fourth year studied -- all with a resulting loss in courtroom operating days starting at 5% but soon plunging by more than 35% from the 2001 baseline level.[18]

The predictable result, of course, was a commensurate delay in deciding cases, increasing the average disposition time of a little less than 2 years in the base year of 2009 to an anticipated 4-1/4 years by 2012.[19] The report then carefully documented the costs of these additional delays to all of the key participants in the judicial system:

-- The immediate loss of almost $1.1 billion from the combined salaries of the laid-off court workers and the multiplier effect those direct losses would have on other workers in the local economy.

-- As much as $13 billion more resulting from the losses to members of the legal services industry who would be unable to secure court time to litigate their cases.

-- As much as $15 billion more from the losses in other economic activity that results when litigants, who are delayed in resolving civil cases, cannot invest or otherwise employ their resources as they can, and will, do once those disputes are resolved.

Management Robert Mulligan).

[17] Weinstein and Porter, Economic Impact on the County of Los Angeles and the State of California of Funding Cutbacks Affecting the Los Angeles Superior Court (December 2009) at 2.

[18] Id. at 6-7.

[19] Id. at 8.

This last type of damage from underfunding our justice system cannot be overlooked and, of course, is especially problematic in difficult economic times. For it is precisely at those times that the economy is most in need of prompt judicial resolution of such matters as foreclosures, business reorganizations, bankruptcies, related credit problems, and other business disputes that have resulted from the downturn.

Perhaps nowhere is this more apparent than in the area of residential foreclosures. The combination of the dramatic increase in mortgages requiring judicial adjustment or termination at the same time the courts are being forced to curtail staff and courtroom hours, has led to "robo-signing" abuses by some lenders (which can hardly be monitored by judges who have less than a minute per file) as well as undue delay or outright denial of that essential reorganization of the real estate markets. It has been estimated that in 2009 in Florida -- where the courts constitute less than 1% of the state's budget[20] -- the backlog of mortgage foreclosure cases alone cost that state's firms and residents $9.9 billion billion in additional legal fees, interest lost by financial institutions, and reductions in property values (over and above the "normal" declines from the general property market) as houses and offices remained vacant and not properly maintained as a result of the delay in the foreclosure process itself.[21] Such losses can then have a ripple effect as they can deprive small family businesses of ancillary income to make ends meet for their other unrelated businesses -- resulting in other business bankruptcies.[22]

Nor is this type of economic loss limited to states such as California and Florida that have perhaps been hardest hit by the Recession. In 2010 the Iowa courts reported that, in part because the judicial budget of that state also is 90% composed of personnel costs, an "across-the-board" reduction in state funding had resulted in the judicial branch suffering 49% of the lay-offs of the entire state government, even though it accounted for only 4% of that workforce.[23]

Finally, in an ironic twist, the reduction in state expenditures for properly functioning courts even harms the state treasury itself. Many of the economic costs noted above -- directly lost salaries and indirectly lost business opportunities -- result in corresponding tax losses estimated to be as much or more than the "savings" they were intended to create. For example, the report on the Los Angeles Superior Court estimated that, over the four years the state hopes to save $480 million through the deep reductions in the court's budget, the resulting economic losses will include more than $1.6 billion Billion in lost state and local taxes.[24]

IV. The Adverse Impact on Those Who Need the Protection of the Courts

Given their historic role as the protectors of the least advantaged in our nation, the courts have rightly been called "Society's Emergency Room." And never is that title so warranted as in times of economic distress. The same Recession that has lead legislatures to reduce access to our justice system has obviously increased the number of people who need it.

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[20] "Chief Justice Charles Canady Argues Against Cuts to Courts," Sunshine State News (January 26, 2011).

[21] Washington Economic Group, The Economic Impacts of Delays in Florida's State Courts Due to Underfunding (February 2009) at 10.

[22] *See* New Hampshire Hearing (Testimony of Maine Supreme Court Chief Justice Leigh Saufley).

[23] Iowa Judicial Branch, The Impact of Budget Costs on Justice (January 2010) at 13.

[24] Weinstein and Porter at 1.

Family relationships ruined by unemployment or foreclosure often need judicial mediation. Yet when family and probate courts are forced to restrict hours or close entirely, the processes of child or elderly custody, legal separation or divorce, and child support orders are delayed or frustrated all together.[25]

The rights of minorities also likewise suffer when the courts cannot promptly address actions filed to enforce state anti-discrimination laws.

All of this litigation burden on the courts is then compounded when those needing judicial protection are also denied access to free legal services and hence must proceed (if at all) on a pro se basis -- thereby requiring even more time of judges and their staffs who must then provide the additional guidance an appointed attorney would otherwise satisfy. And, of course, that is precisely what has happened. During the Recession, legal aid agencies across the country have seen their budgets slashed, both as a direct result of reduced state expenditures and the historically low rates now paid on Interest on Lawyers' Trust Accounts (IOLTA) -- a primary source of many legal aid budgets.[26]

On the national level, funding for the Legal Services Corporation has likewise been cut significantly over the last few years, as a matter of both budget imperatives and partisan disputes. Most recently, the LSC Budget for FY2011 was reduced an additional 3.8% half way through that budget cycle (thus requiring cuts twice that large for the remainder of the year), even as the number of Americans eligible for civil legal aid was pushed by the Recession to an all-time high of 57 Million.[27]

One "new" group adversely affected by such reductions is veterans returning from Iraq and Afghanistan -- and the families they had left behind -- trying to deal with the almost unprecedented situation of overseas deployments in the midst of a Recession. Yet, just when the courts and legal aid offices should be gearing up to deal with the needs of these veterans -- and all of the others who must have access to free legal advice from advocates and court officers alike -- they are being told there are no funds for even the standard level of such services.[28] Indeed, it is estimated that 8 of every 9 people needing legal services are now being denied.[29] Such unassisted litigants are then left alone to deal with the delays of our justice system -- or, as is too often the case, simply to abandon the process entirely.

V. The Adverse Impact on Our Very System of Government

Ultimately, the continuing failure to address the underfunding of our judicial system threatens the fundamental nature of our tri-partite system of government. If, as John Marshall observed, the "power to tax is the power to destroy," it seems just as clear that the repeated refusal of the legislative and executive branches to provide adequate funds for a state's justice system becomes a "power to destroy" the courts as a separate and co-equal branch.

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[25] Boston Bar Association Report at 5, 7.
[26] Communication from Legal Services Corporation (May 15, 2011).
[27] Legal Services Corporation Press Release (April 12, 2011).
[28] Boston Bar Association Report at 8.
[29] New Hampshire Hearing (Testimony of New York State Chief Judge Jonathan Lippman).

Last year, that issue was directly addressed by the New York Court of Appeals in an action filed on behalf of the state's 1300 judges, seeking their first cost-of-living increase in more than a decade. In *Maron v. Silver*,[30] the court confronted a situation that is increasingly true around the country, where judicial salaries had been held hostage to partisan disputes to the point where the court concluded the very separation of powers was imperiled.

The court explained that the 1300 judges had not received any pay increase in 11 years in which inflation had eroded their salaries in real terms by about 30%, while their dockets had increased, coincidentally enough, also by about 30%, but in the opposite direction, to a "staggering" 3500 cases for each judge. The court noted that for each of the prior five years the governor and legislative leaders had publicly announced that the situation called for an immediate salary increase; and yet each year the measures to do so had been defeated as they became embroiled in disputes over unrelated legislation.

Whether from the corrosive effects of inflation so long left unaddressed -- or actual pay-cuts and excessive budget reductions -- the effect is the same: If we do not resolve to fund a justice system which is both independent and effective, we will have neither.

CRISIS IN THE COURTS: PROPOSALS AND OPTIONS

As set forth above, the Task Force has received testimony and research that leaves no doubt that the courts in the United States are underfunded. The overall stability of the justice system is in jeopardy.

The suggested responses and solutions fall into three categories. First, we must establish a predictable and adequate funding system. Second, we must create a more efficient and effective system of delivering justice. Third, we must establish a means of communicating the importance of the justice system to the public and political decision makers. In developing proposals in these categories, our Task Force is drawing on previous ABA commissions, including the 2004 Commission on State Court Funding. We also draw on the research of the National Center for State Courts ("NCSC"), Conference of Chief Justices ("CCJ"), Conference of State Court Administrations ("COSCA"), the successful programs in many of our states and the testimony presented to the Task Force.

There is no question that the realities of 2011 require a look at varied approaches to ensure that courts can perform their constitutional duties while, at the same time, allowing the courts to be more efficient. Those are the goals of these proposals.

I. Achieving Financial Predictability and Adequacy

The preservation of the justice system requires the presence of adequate resources to support that system. This statement begs the question of how much funding is "adequate"? And who defines what is "adequate"? And, how do we define "justice system"?

[30] 14 N.Y.3d 230, 925 N.E.2d 800 (2010).

For our purposes, the justice system includes courts and the budgetary expenditures that include providing basic access to the courts. In other words, the current crisis requires advocates to fight for funding that is sufficient to support overall access to the system. This crisis puts courts in a triage mode and funding for some things is more critical in the short term. This crisis does not make issues such as funding of sufficiently compensated judges unimportant. Those issues are important and should be addressed. However, first we have to keep the courthouse doors open. There must be advocacy for adequate personnel to allow access. For example, the cuts in legal services and in public defenders offices have an impact on "rationing justice". Fewer lawyers representing the poor results in more *pro se* parties and more delays in the justice system for everyone. Because of the reality of overall funding shortages, many of the reforms mentioned below deal with improving budget systems, efficiency and communications. That does not mean that supporting actual full funding is any less important.

Financing the justice system is a challenge for several reasons. While delivering justice is understood as fundamental to our society, the average citizen may not perceive or appreciate the tangible products of the system. Yet, undeniably, citizens are better off when the justice system swiftly and correctly handles criminals who endanger public safety. Citizens are better off when the rules of commerce are stable and enforced. In other words, when the justice system is working best, it may not be extremely visible, but it is extremely valuable.

The reforms identified below are efforts to use scarce taxpayer resources efficiently, effectively and accountably:

1. **Provide for flexible management of funding within the judicial branch.**
   Flexible management of funds within the judicial branch allows the courts to allocate funds within the judiciary's budget. Having the ability to allocate funds within its own budget gives the judiciary the capacity and flexibility to confront unforeseen circumstances and maximize efficiency. The courts should also be able to carry over funds from one fiscal year to the next.[31] The goal of this reform is to allow the courts to do the most they can with available resources. For example, courts have used retired judges and reassigned judges among jurisdictions to address case overloads such as occurred when some jurisdictions had numerous foreclosure proceedings.

2. **Establish court system appropriations and budget bills with fewer line items and fewer legislative restrictions on expenditures.**
   This proposal is consistent with proposal No. 1 and facilitates its execution.
   Line items in appropriations can unnecessarily restrict how courts may use money given to them by the legislature and can often lead to inefficiencies, waste, and budgetary shortfalls. Additionally, having fewer line items allows courts to avoid being micro-managed by the legislative and executive branches. One example is Utah, where the judicial budget contains only four line items.[32] A contrasting example is Massachusetts, which has several hundred line items. Reduction of line items requires the legislature to

[31] AM. BAR ASS'N STANDING COMM. ON JUDICIAL INDEPENDENCE, REPORT TO THE HOUSE OF DELEGATES, Aug. 2004, at 9.

[32] *Id*. at 8.

have greater faith in the courts stewardship of funds and accountability. Formulas described below can help provide that basis for legislative understanding and support.

3. **Develop a judicial workload funding formula that fosters fair and predictable funding.**
   The purpose of establishing a specific formula is to assess needs in a rational way and to provide more predictability and stability.[33] One example is the California State Appropriations Limit which is a formula, applied to the state's judicial budget that looks at cost-of-living changes, changes in the population and workloads. Another example is the Minnesota Judicial Workload Assessment which provides a formula for determining the number of judges required to handle a given judicial workload.[34] Formulas may also use a combination with per judge costs or assessments of costs associated with different types of cases.

4. **In furtherance of predictable and supportable funding budget processes must show measureable outcomes, prove fiscal accountability and deal with long term goals of the court system. NCSC has developed "principles of judicial administration."[35] that may guide these reforms.**
   This proposal goes beyond proposal No. 3, above, in that this proposal involves consideration of overall process changes, specifically transparent and measurable outcomes and long term sustainable reform. A court's annual budget proposal should be developed to further the long-term goals (three to five years) articulated in a state-wide judicial strategic plan.[36] Those long-term goals should have measurable outcomes, such as improving case flow management to reduce case disposition times, the associated pretrial detention and litigation costs. With measurable outcomes, the court system can evaluate the benefit of funding different programs and make intelligent allocation decisions to get the most out of limited resources.[37] This type of system further enhances the ability to obtain sustained legislative support.

5. **Establish limits for cutbacks by legislatures or executive branches by recognizing the inherent powers of the judiciary as a separate branch of government.**
   This proposal seeks to ensure that there are no untoward cutbacks **during** a budget year.

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[33] NAT'L CTR. FOR STATE COURTS, PUERTO RICO SUPERIOR COURT JUDICIAL WORKLOAD ASSESSMENT MODEL, FINAL REPORT, EXECUTIVE SUMMARY; *see also* Atlanta Hearing (Testimony of Bert Brandenburg, Executive Director, Justice at Stake, on development of a "Justice Index" to help courts measure and communicate ability to deliver).

[34] Minnesota Judicial Workload Assessment 2002, submitted by the National Center for State Courts, at 12 Exhibit 4.

[35] Principles for Judicial Administration: Governance, Case Administration, Essential Functions and Funding, National Center for State Courts, July 2010 Draft Report, *available at* http://www.ncsc.org/conferences-and-events/4th-symposium.

[36] *Id.*

[37] NAT'L ASS'N FOR COURT MGMT, AMERICAN UNIVERSITY, BJA CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT, *Financing The Third Branch in Lean Times: Placing the Present Fiscal Crisis in Perspective*, Mar. 2010 Final Draft, at pages 8–9; *see also* Transcript at 197, Atlanta Hearing (Testimony of Ron Overholt, Chief Deputy Director of the Administrative Office of the Courts of California, describing the California State Appropriations Limit Formula).

In certain states, there are constitutional or statutory limits on the ability of other branches to reduce or cut court funding during a fiscal year. The executive should not have authority to reduce funding in the judiciary unilaterally without justification. An unfettered power to cut intrudes upon that constitutionally protected inherent power of the judiciary as an independent branch of government. Courts have successfully used this reasoning to limit the ability of the Executive Branch or legislative branch unilaterally to reduce judicial budgets.[38] As an independent branch of government, the judiciary should have power to allocate and utilize its resources within the judicial branch in a way that makes the most sense to the administration of justice.[39]

6. **Establish unified funding for courts at the state level.**
For the last half-century of court reform, there has been a drive to shift funding responsibility from local governments to state governments. This process is seen as a way to strengthen the ability of state courts to perform their core functions and can help ensure the uniformity of justice throughout a state. Unified funding remains a key recommendation of the American Bar Association Standards on Court Organization. Under a unified state funding model, a central statewide court administrative office is responsible for the allocation and distribution of court resources at the local level.[40]Many systems in the United States are a mix of state and local funding.

7. **Identify, pay for, or eliminate unfunded mandates on the justice system.**
Legislatures and Congress have required the courts to perform certain tasks without providing the attendant funding. Courts should seek funding processes that prohibit or limit mandates that do not provide funding.[41]

8. **Eliminate functions that are no longer necessary, have less priority, or can no longer be afforded as part of the budget of the courts.**
This type of action has been taken in Utah, Vermont and Michigan. The result of identifying and eliminating unnecessary functions is to make resources available to fund those functions that do take priority.[42] The issue, of course, is defining "unnecessary" functions. The ability of courts to show that they can streamline and participate in budget cuts enhances their legislative credibility.

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[38] Chiles v. Children, 589 So. 2d 260 (1991); *see also* W. VA. CONST. art. VI, § 51(b)(3), (5) (stating that when the budget is certified to the governor by the state auditor, the legislature cannot reduce line items related to judiciary); Felix F. Stumpf, *Inherent Powers of the Courts: Sword and Shield of the Judiciary*, 2004 ABA Report 107 (Reno, NV: National Judicial College, 2008).

[39] REPORT OF THE BOSTON BAR ASSOCIATION TASK FORCE OF THE FY 2010 JUDICIARY BUDGET at 8.

[40] AM. BAR ASS'N, STANDARDS RELATING TO COURT ORGANIZATION, §1.50 at 106 (1990 ed.); *see also* Robert Tobin, *Creating the Judicial Branch: The Unfinished Reform*, National Center for State Courts (1999 & 2004); NAT'L ASS'N FOR COURT MGMT., at 6.

[41] *See generally* TEXAS ASS'N OF COUNTIES, STATE MANDATES: UNFUNDED AND UNDER-FUNDED, *available at* http://www.county.org/resources/assets/UFM.pdf (last visited May 5, 2011) (describing some of the problems with unfunded government mandates and listing several examples of the negative impact of unfunded mandates, including delay of the judicial process).

[42] NAT'L CTR. FOR STATE COURTS, FUTURE TRENDS IN STATE COURTS 2010, REENGINEERING LESSONS FROM THE FIELD 39, *available at* http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=1625 (last visited May 5, 2011).

II. Increasing Efficiency and Reducing Waste

In difficult economic times, each element of government, including the judiciary, must examine its use of resources. Tradition is not a justification for waste. Efficiency bolsters arguments for adequate funding.[43]

The definition of efficiency is elusive. Just spending less may be considered efficient by some. Therefore, cutting the number of court rooms or simply increasing the caseload of a judge could be classified as more "efficient" because expenses are reduced or "production" is increased. However, that kind of analysis discounts the effects and other costs of cutbacks such as delays and denial of basic access to justice. In fact, as shown above, such cuts can result in greater costs and more harm in the long run and a fundamental denial of due process. Consequently, in defining and achieving a more efficient justice system, the mission of the system cannot be sacrificed for false economies.

A consistent theme in court reform over the last two decades calls for improved organization, process and reengineering. Several terms have been used consistently to describe these types of reforms. The review of "business processes" is used to describe assessment of functional reforms that perform tasks in more efficient and less expensive ways. "Reengineering" has included reorganizing, streamlining and enhancing the use of technology. Enhanced use of technology has taken many forms, and examples are enumerated in this report. Implementing technological reforms requires a cost-benefit analysis to assure that the change augments the mission of the courts and is in fact more efficient and cost effective. Also, principles for evaluating reforms are identified.

There are specific best practices, reforms and cost efficient methods developed by NCSC, COSCA , CCJ and individual state courts. The Task Force has many examples, studies and resources available. As in some other industries, the major cost of the courts is personnel. To the extent that less expensive technology can, in some cases, replace personnel, such technology can be a source of reducing future costs. Additionally, effective use of personnel can save resources. Improved efficiency is not limited to improved technology. Improved management and business processes can be not only less expensive but also more effective for citizens encountering the justice system.

Further, there are alternative methods of delivering justice. For example, alternative dispute resolution has been promoted by some states and court systems to help resolve conflicts without resort to trials in court.

The following is a list of some options to make the justice system more efficient:

1. **Enhanced use of technology to improve the efficiency of the judicial system.** The use of technology within the judicial system has the double benefit of reducing costs while increasing efficiencies. A simple example, implemented in Iowa, is online payment of speeding tickets. However, many more advanced options are available. For

[43] New Hampshire Hearing (statement of U.S. District Court Judge Norma L. Shapiro, E.D. Penn.).

example web-based case management systems, such as MassCourts[44] in Massachusetts and E-Filing in Florida, enable fast data collection and information sharing to track case progress and timeliness. The Boston Bar Association credits the web-based MassCourts with increasing the timely disposition of cases from 74.1 percent in 2006 to 89.8 percent in 2008.[45] Also, some courts in Utah have replaced court reporters taking a stenographic record with digital audio recording.[46] Courts have found increased efficiency with electronic filing, electronic document management systems, electronic payments of courts fees and costs, digital records for both transcripts and files, use of interactive television technology and fully integrated case management systems.[47]

2. **Use business process management principles to evaluate efficiency.**
The term "business process" refers to a group of related activities by which a court or any other organization uses its resources to provide defined results in support of its mission, goals and objectives.[48] By use, we mean nothing more than applying the same sort of synergistic model, employed in the corporate world, of efficiently using resources to maximize profit, to the judicial world. Individual courts that have implemented good business process management programs include Orange County, California; Sacramento, California; Maricopa County, Arizona; and Hennepin County, Minnesota.

3. **Establish principles for "reengineering" the judicial process.**
By principles we mean goals, such as reducing the cost and complexity of the judicial process, maintaining and improving access to justice, and improving case predictability. Some example states include Vermont (restructuring the administrative bifurcation between state and counties; eliminated redundant jurisdictions between types of judges), New Hampshire (consolidating courts), Minnesota (centralizing functions formerly done at a local level, such as accounts payable), Oregon (simplifying civil rules for less complex cases) and Utah (reorganizing the Human Resource system to make it more professional and expand services for case management and *pro se* litigants).[49]

Reengineering also involves evaluating the current judicial functioning through such metrics as CourTools and using the "real time" budget performance information to tailor annual budget submissions.[50] In that way, funds can be reallocated to areas of need. Reengineering examples include re-designing antiquated court governance models to function more as an integrated quasi-business administrative entity. Another example of

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[44] http://www.mass.gov/courts/press/pr112003.html

[45] REPORT OF THE BOSTON BAR ASSOCIATION TASK FORCE OF THE FY 2010 JUDICIARY BUDGET at 3, *available at* http://www.bostonbar.org/prs/reports/fy2 See Report of the Boston Bar Association Task Force of the FY 2010 Judiciary Budget at 3, available at http://www.bostonbar.org/prs/reports/fy2010_judbudget020509.pdf

[46] STATE COURTS AND THE BUDGET CRISES: RETHINKING COURT SERVICES, THE COUNCIL OF STATE GOVERNMENT, THE BOOK OF THE STATES 2010, at 292, *available at* http://knowledgecenter.csg.org/drupal/content/state-courts-and-budget-crisis-rethinking-court-services (last visited May 5, 2011)

[47] NAT'L CTR. FOR STATE COURTS at 39; *see also* National Center for State Courts 2009 Strategic Plan, at page 10.

[48] Eight National Court Technology Conference, Using Business Process Reengineering Strategies for Courts, Kansas City, Missouri, 2003.

[49] Transcript at 55, Atlanta Hearing.

[50] Conference of State Court Administrators Budget Survey, National Center for State Courts, June 2009.

reengineering is a plan to consolidate some judicial and administrative functions. That is, centralize state-wide administrative management of staffing, payroll, records, etc. (to streamline administration) but keep local selection of judges and case law development (to maintain legal continuity and integrity).[51]

4. **Use alternative, more efficient and less expensive means of resolving conflicts and delivering justice.**
   Develop performance measures for evaluating the efficacy of specialized problem solving courts, such as family court, children's court, alternative dispute resolution, drug court, etc.[52]

   a. **Consider the use of specialty courts such as drug court, business court [53]and family court.**
      These specialty courts have been successful in several jurisdictions, such as Florida with the use of drug courts and New Hampshire with the use of business courts. The goal is to provide greater access, judges with specific expertise, and the ability to handle disputes in less time and with better designed outcomes.

   b. **Foster alternative dispute resolution (ADR).**
      ADR has been successful in enhancing access to conflict resolution. There are various means to encourage ADR, such as court ordered mediation. Certain conflicts are not handled best by ADR, including those with vastly unequal parties, those involving fundamental social and constitutional conflicts and serious criminal matters.[54] However, overall ADR is a important option. One example of combining alternative dispute resolution and new technology is online dispute resolution of small claims in Michigan.[55]
   c. **Community resources – Family Centers.**
      Courts can make good use of community resources for little or no charge. For example, courts can use students as volunteers or as for-credit (at no cost to the court system) externs through local colleges and universities, and courts can also look to community volunteers.[56]

5. **Reexamine court jurisdictions and consider consolidation or elimination of certain Courts.**

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[51] National Center for State Courts, Future Trends in State Courts 2010, Reengineering Lessons from the Field, Hall and Suskin, *available at* http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=1625 (last visited May 5, 2011). See also CourTools trial court performance measures developed by the NCSC to help identify and evaluate the efficiency of trial court functions. *See, e.g.*, National Center for State Courts 2009 Strategic Plan, at 22.

[52] NAT'L CTR. FOR STATE COURTS 2009 STRATEGIC PLAN, at page 17.

[53] New Hampshire Hearing (statement of Richard Samuels, Chair of the New Hampshire Business and Industry Association).

[54] RISKIN ET AL., DISPUTE RESOLUTION AND LAWYERS 22–35 (4th ed. 2005).

[55] Transcript at 152, Atlanta Hearing (Testimony of Janet Welch, Executive Director of the State Bar of Michigan).

[56] NAT'L ASS'N FOR COURT MGMT at 10.

Can some courts be merged into others? Can smaller jurisdictions be combined with other smaller jurisdictions?[57] Consolidation can produce increases in both savings and efficiency.[58]

III. Communicating and Advocating a Stable and Effective Justice System

The most universally endorsed reforms involve improved communication about the role and value of the courts. Virtually all witnesses in the Task Force hearings mention the importance of improved communications. Most other government expenditures have more constituencies and more political support. It is the responsibility of the legal profession to facilitate communication and advocacy for the justice system. The efforts to improve communication and advocacy take several general forms and have been implemented in numerous specific ways:

- Communicating with legislators and legislative leadership
- Creating coalitions of opinion and civic leaders to communicate with legislators
- Communicating to the general public and public schools as well as establishing grassroots support

A consistent problem with maintaining a reasonable level of support for the justice system is the lack of understanding of the system by the public and lawmakers. The issues of communication and advocacy of the system must recognize the inherent and ethical limitations on judges' involvement in the political process and the responsibility of the bar to act as advocates for the system. The Task Force believes a systematic approach to better public understanding of the functions of the system is essential to achieving the goals of adequate funding and efficiency:

1. **Include legislators directly in communication, familiarization and education programs.**
   Any budgetary allocation begins with the legislatures. By working together and making legislators aware of the problems and needs of the state court systems, state court leaders can better advocate for change. Communication can come in the form of highly developed educational programs, but a great deal can also be done by continuing and sustained conversations and continuing relationships. For example, legislators in Oregon have spent a day with judges to become more familiar with the actual processes and the functions of the courts.[59] Legislators have been invited to observe a day in the Family Courts of Massachusetts.

2. **Develop coalitions that include business groups and general counsels of corporations to help educate and influence legislators**.

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[57] *See* NAT'L CTR. FOR STATE COURTS at 39.

[58] New Hampshire Hearing (statement of New Hampshire Supreme Court Chief Justice Linda Dalianis on combining Probate, Family and District Courts in New Hampshire).

[59] Transcript at 36, 50, and 60, Atlanta Hearing (Testimony of Texas Supreme Court Chief Justice Wallace B. Jefferson, Georgia Supreme Court Chief Justice Carol Hunstein, and Oregon Supreme Court Chief Justice Paul J. De Muniz).

Judicial leaders and bar association leaders should work with civic and citizen groups to establish communication about the importance of the justice system.[60] The voices and efforts of the business community through the Missouri Law Institute had a positive effect in communicating needs to their legislators. Effective efforts to influence legislators and decision makers require broader community involvement from outside the legal profession.

3. **Enhance education on the role of the courts for the public and in schools.**
Civic education can take the form of judges participating in community activities and focusing on providing greater public understanding of the role of the judiciary.[61] One example of public education is holding court in different locations available to the public. Minnesota and Maine have even held court in high schools.[62] In New Hampshire, fourth graders go to "law school" and must explain the courts and constitution to their parents as part of their work. Long term support of the justice system requires public understanding and support. The American Bar Association, through its Least Understood Branch Project, sends judges and non-judge members into the community and the schools to educate on the role of judges and courts in our every day lives.

4. **Establish a communications plan that explains that certain judicial cuts result in more cost to the taypayer in the long run.**
One problem in the communications gap between the legislature and judiciary (and public at-large) is a failure to express how severely a cut in the judicial budget affects court functions and how those depressed functions affect tax payers.[63] The fact that a delay of access or denial of access can result in greater harm to individuals and greater cost to the public is easily provable. As NAACP General Counsel Kim Keenan stated, an uninformed public " would rather spend the money on having the firemen go and put out the fire than spend the money on some court personnel to resolve it amicably."[64]

5. **Use national media to deliver the message through compelling and specific stories on the impact of justice system cuts.**
Publicizing dramatic impacts will enhance general awareness and facilitate the creation of coalitions and advocacy groups. As shown above, the Task Force heard many examples of how the budget crisis in the court system has caused dramatic harm to citizens.[65]

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[60] Transcript at 6 and 15, Atlanta Hearing (Testimony of Wayne Withers, General Counsel (ret.), Emerson Electric, on creation of the Missouri Law Institute). *See also* National Center for State Courts, 2009 Strategic Plan, at 12 (describing plan to build a constituency for the state courts by partnering with leaders of state courts, state bars, and the corporate community).

[61] National Center for State Courts 2009 Strategic Plan, at 8.

[62] Black Letter Recommendations of the ABA Commission on State Court Funding, Aug. 2004. *See also*, New Hampshire Hearing, (Testimony of Maine Supreme Court Chief Justice Leigh Saufley).

[63] Transcript at 167, 176, Atlanta Hearing (Testimony of NAACP General Counsel Kim Keenan).

[64] *Id*.

[65] Transcript at 87, Atlanta Hearing (Testimony of Manny Medrano, reporter/anchor, KTLA News and KNBC News, Los Angeles, California, and Hon. Dennis W. Archer, former ABA president, suggesting the ABA use its resources to facilitate coverage on national media such as CNN, MSNBC, or Fox News).

6. **Advocates for judicial funding should consider utilizing polling, paid media, and grassroots advocacy.**
   The Georgia Bar Association conducted polling and paid for ads demonstrating the negative effects of court budget cuts. Georgia Bar President Lester Tate III described the successful efforts of the Georgia Bar in persuading the Georgia legislature.[66] The Boston Bar Association developed a grassroots email system of getting members to communicate with legislators.[67] These examples show that successful advocacy methods used by other groups can work for the justice system as well.

Conclusion

When there is a general sense of order and justice, the court systems are taken for granted. When they begin to fail, faith in the entire system of government deteriorates. Strong, effective, and independent justice systems are a core element of our democracy. Even the most eloquent constitution is worthless with no one to enforce it. The court crisis affects more than the justice system. It compromises citizen's faith in our government. Responding to this profound threat deserves a strong sustained response from the American Bar Association.

[66] Transcript at 122, Atlanta Hearing (Testimony of Lester Tate III, President, State Bar of Georgia).
[67] New Hampshire Hearing (Testimony of Don Federico, President, Boston Bar Association).

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GENERAL INFORMATION FORM

Submitting Entity: Task Force on Preservation of the Justice System ("Task Force")

Submitted By: Jon Mills, Task Force Reporter and co-drafter
Peter T. Grossi, Task Force Member and co-drafter
Carol E. Dinkins, Task Force Member and HOD Facilitator

1. Summary of Resolution(s).

This Resolution addresses one of the most significant issues impacting our justice system today, namely the underfunding of our courts. This Resolution urges state, local, and territorial bar associations to document the impact of cutbacks to judicial system funding in their jurisdictions, to publicize the effects of shortages, and to create coalitions to respond to and address the funding shortages. It urges state, local, and territorial governments to recognize the constitutional responsibility and the priority to fund the justice system adequately and to develop principles that provide for stable, rational, predictable, and efficient means and levels of funding. It urges courts to identify and engage in best practices to insure protection of citizens and efficient, accountable use of resources. Finally, the Resolution urges state, local, and territorial bar associations and the courts in the states and territories to develop sustainable strategies to communicate the value of adequately funding the justice system utilizing advisory groups, enhanced civic and public education, and direct engagement with public officials at all levels.

2. Approval by Submitting Entity.

The Resolution and Report were approved on July 11, 2011.

3. Has this or a similar resolution been submitted to the House or Board previously?

On August 9, 2004, the House of Delegates approved a resolution on state court funding.

4. What existing Association policies are relevant to this resolution and how would they be affected by its adoption?

A resolution on court funding, approved by the House of Delegates, on August 9, 2004 is relevant to this resolution. The previous resolution and report focused on the threat, stemming from inadequate funding, to the state courts and the judiciary. The current submission of the Task Force offers solutions to the crisis and would enhance the previous resolution. Unlike the 2004 resolution, this resolution also refers to the federal courts.

5. What urgency exists which requires action at this meeting of the House?

As the Honorable John Broderick (former New Hampshire Chief Justice and current Dean of the University of New Hampshire Law School) has said on many occasions, our courts are dying, and we must save them NOW. The courts are closing their doors, and the jury trial is an endangered species. The courts have reached out to the ABA pleading for its assistance. The Task Force has labored this year to define the crisis in the courts and to unearth and compile practical solutions to it. While there is still work to do, the Task Force feels it must release this current "First Aid" kit to the courts before it is too late.

6. Status of Legislation. (If applicable.)

7. Cost to the Association. (Both direct and indirect costs.)

N/A

8. Disclosure of Interest. (If applicable.)

N/A

9. Referrals.

The resolution and report have not yet been circulated. Per advice received by the Task Force from the Policy office, the Task Force will wait to hear from Rules and Calendar before it circulates widely within and outside the ABA. Thereafter, there will be wide distribution, including to the Standing Committee on Judicial Independence; the Judicial Division; the Standing Committee on Federal Judicial Improvements; the Criminal Justice Section, and other relevant ABA entities.

10. Contact Person. (Prior to the meeting.)

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11. Contact Person. (Who will present the report to the House.)

*Please note that David Boies and Theodore B. Olson, the Task Force co-chairs, plan to present the report to the House of Delegates. Lady Booth Olson, Jon Mills, Peter Grossi, Elaine Jones, and Bill Weisenberg are also potential presenters. However, the chairs have appointed Carol E. Dinkins as the on site contact person/HOD facilitator.

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EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges state, local, and territorial bar associations to document the impact of cutbacks to judicial system funding in their jurisdictions, to publicize the effects of shortages, and to create coalitions to respond to and address the funding shortages. It urges state, territorial, and local governments to recognize the constitutional responsibility and the priority to fund the justice system adequately and to develop principles that provide for stable, rational, predictable, and efficient means and levels of funding. It urges courts to identify and engage in best practices to insure protection of citizens and efficient, accountable use of resources. Finally, the Resolution urges state, local, and territorial bar associations and the courts in the states and territories to develop sustainable strategies to communicate the value of adequately funding the justice system utilizing advisory groups, enhanced civic and public education, and direct engagement with public officials at all levels.

2. Summary of the Issue that the Resolution Addresses

This Resolution addresses one of the most significant issues impacting our justice system today, namely the underfunding of our courts.

3. Please Explain How the Proposed Policy Position will Address the Issue

The proposed policy position will provide states with guidance on a variety of options to utilize in order to survive the existing court funding crisis.

4. Summary of Minority Views

N/A

Kathleen DeNezzo

Client of Nassau/Suffolk Law Services Committee, Inc.,
accompanied by Denise Snow

Nassau/Suffolk Law Services Committee, Inc.

One Helen Keller Way, Hempstead, NY 11550-3903 • (516) 292-8100 • Fax (516) 292-6529

Douglas J. Good
Chairman
Jeffrey A. Seigel
Executive Director

TESTIMONY BEFORE THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES

September 20, 2011

Second Department
Public Hearing
Westchester County Courthouse
111 Dr. Martin Luther King, Jr. Boulevard
White Plains, New York 10601-2509

Testimony By: Ms. Kathleen DeNezzo
Client-Nassau Suffolk Law Services

My name is Kathleen DeNezzo. I am 51 years old, and a lifelong resident of Long Island. I was born in Huntington Hospital and was raised in East Northport. I was married, and I have three sons. I had to leave my husband because of abuse, and raised my sons as a single Mom. My husband did not support my children consistently, and as a result I spent a considerable amount of time in the court system. Most of the time I represented myself. My husband was incarcerated several times for non payment of child support. Life has not been easy for me. I worked as an aide in nursing homes taking care of the elderly, and I sometimes had to work two jobs to keep a roof over our heads and food on the table. I never, ever asked anyone for help. However, in November 2007 I was diagnosed with breast cancer. I had a bilateral mastectomy in January 2008. Soon after that surgery aggressive chemotherapy followed. While in treatment I experienced grand mal seizures. Now, not only did I have to deal with providing my family with the basic necessities of life, I had to deal with the anguish and pain of a catastrophic illness.

To survive I had to apply for Social Security and I did receive it. I also received benefits for my sons until they graduated from high school. Financially, things were very tight. I was barely making ends meet and stressed out from recovering from my illness and trying to take care of my family. Then the unspeakable happened. I was informed that Social Services wanted to take $186 per month out of my Social Security check for medical insurance. That was in addition to the $110 they took out already. That would leave me with $763 per month to live on. The cost of living is high on Long Island. How could I live on $763 and support my family? I felt this was very unfair as I had never asked anyone for help even though I have had a hard life, and I certainly did not ask for

United Way of Long Island

LSC

breast cancer! Social Services told me I if I did not pay them $186 they would cancel my health insurance. I borrowed the money and paid it, and then requested a fair hearing.

At the Fair hearing a representative from Social Services and an Administrative Law Judge were present at the proceedings. The representative asked the Judge if we could step out of the room so she could explain things to me. She told me I made too much money so the health insurance money would be deducted out of my benefits. She told me I should be able to live off of $763. I explained my story to her and she told me I could move to Albany or somewhere cheaper. I could not believe her. I am a lifelong resident of Long Island, and I should move to live!. We returned to the courtroom. The Judge could see I was very upset, and he told me not to worry. He told me he would direct me to people that could help me. For the record the representative from Social Services told her story, and then I told mine. Finally, the Judge said "OK, I have heard enough". He ended the proceeding, and told me I needed to set up a trust. He then walked me out to the waiting room and introduced me to a woman. She told me she was from Nassau Suffolk Law Services. She said she could not help me directly, but she would make a phone call for to an attorney who could help me. She told me to call Denise Snow. Denise Snow is an attorney in the PLAN project at Nassau Suffolk Law Services that provides legal services to victims of breast cancer. She made an appointment for me the very next day. Ms. Snow explained the facts and the law to me. She set up a Supplemental Needs Trust so that I could receive the medical benefits I needed to, and have money leftover to live on. What a relief! Ms. Snow was caring, knowledgeable, and thorough. In our interview she discovered that that my husband had filed divorce proceedings against me fifteen years ago. I hired an attorney but the proceedings were never completed and I never received a final judgment of divorce. My ex-husband never stayed in one place long enough for me to track him. Ms. Snow believes she can help me obtain a divorce. This is something I could never had done myself.

As I said before I had to represent myself many times in court. I could never get satisfactory legal services from other organizations. So I thought I was better off representing myself. However, I was wrong. I did not know the laws regarding Medicare, Medicaid, Social Security and I certainly did not know about Supplemental Needs Trust. I had no idea when I was stricken with cancer that would have to deal with legal issues. I thought I would be dealing with doctors and nurses, not lawyers. Thank goodness Nassau Suffolk Law Services has the PLAN project and other projects like it.

I feel like a ton of bricks has been lifted off of my shoulders. Now I can focus on healing and helping my sons advance themselves in life. I was a single Mom and alone for all these years. However, I don't feel that way anymore. Now I know about Nassau Suffolk Law Services and I know I can turn to them for help.

For further information, please contact Jeffrey A. Seigel, Executive Director, Nassau/Suffolk Law Services Committee, Inc., (516) 292-8100, ext. 3147.

Hon. Janet DiFiore

Westchester County District Attorney

Honorable Janet DiFiore
West Chester County District Attorney

Biography

District Attorney Janet DiFiore has dedicated her career to public service as both a former judge and a prosecutor. She is currently serving her second term as Westchester County District Attorney. Prior to her election as District Attorney in 2005, she served as a County Court Judge and Supreme Court Justice for seven years, and as an Assistant District Attorney in Westchester County for ten years. This year, District Attorney DiFiore serves as President of the District Attorneys Association of the State of New York, the organization of New York's District Attorneys that promotes effective law enforcement and public safety in our state.

District Attorney DiFiore has been a leader in New York's efforts to promote the fair administration of justice. She is Co-Chair of the New York State Justice Task Force, a permanent committee created by the Chief Judge of the State of New York to examine wrongful convictions and recommend appropriate reforms. She has served as a member of the Commission on the Future of Criminal Indigent Defense Services, as Coordinator of the 9th Judicial District's Access to Justice Initiatives, and in several additional criminal justice advisory positions.

Chief Judge Lippman, Justice Prudenti, Judge Pfau and President Doyle -- thank you for allowing me the opportunity to be heard at this morning's hearing.

Our Constitution guarantees the right to counsel for defendants who stand before the bar charged with a crime. We cherish this right. And because the right to counsel in criminal cases is so important, we organize our courts and our legal system to provide such counsel even though it can be very difficult and expensive to do so. Yet in civil litigation, where the stakes for civil litigants are frequently just as high as they are for criminal defendants, we do not have similar protections.

While I appear here today as Westchester County District Attorney, I am mindful of my days as a judge when I presided in the Family Court. There, litigants often attempt to navigate the legal system without counsel, and the stakes for those litigants is often of equal or greater importance to them than their liberty interest – as such matters often involve the custody of a child or the need for protection for them or their children from an abusive spouse. Those fortunate enough to have counsel are better positioned to more effectively communicate their need for judicial intervention and are more likely to obtain the needed relief – whatever it is: the emergency order of protection or the custody order determining who should have the responsibility for decisions effecting the health, safety and welfare of their children. Unfortunately, the well-being of these litigants and their families often bear a direct relationship to the legal assistance and services they have access to.

As the Westchester County District Attorney, I am committed to enhancing the safety of these same families who find themselves simultaneously victims in the criminal

justice system and litigants in the civil legal system. Nowhere is this more common than in the area of domestic violence.

In Westchester County this year alone we will prosecute over 3,000 domestic violence cases -- 3,000 cases translates into hundreds of families in crisis, with victims who frequently need civil legal assistance to address the host of necessary issues beyond their criminal justice needs: child support and custody orders, divorces and the resulting re-organization of family structure, and immigration relief. These are victims whose lives are in transition often as a direct result of crimes that have been committed against them. Research shows that 25% of homeless women are homeless because of domestic violence. Successful prosecution of these important cases often depends upon helping these victims gain their economic independence. Without civil legal assistance and other services, victims frequently find themselves trapped in relationships with their abusive partners.

In our continuing effort to address this issue, last year my office collaborated with the Office for Women to open the Family Justice Center, which is located adjacent to the Westchester County District Attorney's domestic violence bureau. Since that time 685 clients have been served at the Center. While the Family Justice Center has successfully met the counseling and emergency needs of nearly every client who has been processed for service – it frequently has not been able to meet the needs of those clients and their families for legal services. Of the Family Justice Center clients who needed civil legal assistance, 58% did not receive the legal services their circumstances suggested they needed.

The need for legal services outstrips the resources that are available to provide those services. This predicament can mean that while a victim becomes empowered to envision a new life, -- safe and free of abuse, -- the legal ties that keep them ensnared in the abusive relationship may remain firmly in place.

Immigrant domestic violence victims, -- and other crime victims, -- face an additional obstacle in reporting crime: the fear of deportation. An abuser or criminal defendant will often instill fear in the victim that by reporting a crime or cooperating in a criminal prosecution, immigration authorities will become alerted and seek to deport them -- whether or not they are legally residing in the country. The Westchester County District Attorney's Office works closely with immigration attorneys at My Sister's Place and the Empire Justice Center to assist victims in understanding their rights and, where appropriate, obtaining visas -- but these resources are insufficient to address the entire need.

Our success in prosecuting domestic violence -- and bringing justice to these cases -- is greatly enhanced when civil legal services are provided to victims.

While domestic violence is an area where criminal law, family law and civil law frequently intersect, there are other equally important ways in which our partnerships with civil legal providers can enhance the quality of life for the community we serve. These partnerships arise in many contexts.

For instance, seniors, -- our fastest growing population here in Westchester County -- represent another group of vulnerable victims who benefit from the partnerships that can be forged between prosecutors and civil legal service providers.

We know that older individuals victimized by crime frequently live in isolation and with diminished financial resources. In New York the poverty rate for seniors is higher than the national rate. Similar to victims of domestic violence, elderly victims of crime often find themselves embroiled in civil legal tangles arising from the crimes that have been committed against them. Elderly victims of economic fraud, identity theft or physical abuse need help to restore their financial stability and standing, -- and they often cannot do that without civil legal assistance. These victims have a wide range of needs: they may need to change a power of attorney designation or health care proxy, fend off bankruptcy or foreclosure proceedings, file for bankruptcy or require skilled advocacy with adult preventive services to find a safe and appropriate living arrangement.

Here in Westchester County, the elder abuse unit of the District Attorney's Office consults regularly with elder law attorneys at Hudson Valley Legal Services and the Pace Women's Justice Center in order to meet the many and varied civil legal service needs of our elderly victims. On the flip side, the attorneys at these agencies often identify crimes and refer cases to my office for criminal prosecution. -- This is the type of collaboration we find to be critical to resolving the issues confronting many of our senior victims, -- the issues that all-too-often prevent an older victim from enjoying a safe and secure quality of life in their later years.

While these providers are doing excellent work in their efforts to assist seniors with their civil legal service needs, their resources are insufficient for the job and the needs are growing at a rate greater than these organizations can meet. Acceptable resolutions designed to enhance quality of life will only be possible when there are

additional resources made available to provide these necessary civil legal services to our senior victims. --

Beyond crime victims, the offenders we prosecute also have civil legal needs that, if not met adequately, can interfere with their path to a productive life once their sentences have been served. Providing these services is in the community's interest because successful reentry of these men and women back into our communities when they return home from prison enhances the public's safety.

For the last four years, I have worked as Chair of the Westchester County Reentry Task Force to see that individuals returning home to Westchester County after serving state prison sentences are positioned to achieve a successful reintegration back into our communities. This is not only a matter of doing what is right but is also a matter of public safety -- because facilitating successful reentry is one of the most effective means of reducing recidivism thereby making our county a safer place to live.

The reentrants with whom we work face many significant obstacles, including access to housing and employment. The Reentry Task Force is a partnership of government and not for profit agencies designed to assist these men and women by linking them to needed services. Many times, these reentrants need civil legal services. An individual who faces barriers in securing appropriate housing or employment often needs a civil lawyer to advocate for him or her to overcome discriminatory practices that can impede their successful reentry back into the community. As a prosecutor, I consider it part of our collective public safety mission to reduce recidivism by ensuring that these men and women have the tools necessary to rebuild their lives and live within and abide by the law.

While these public/private partnerships have been effective in reducing recidivism and enhancing public safety, they lack the necessary resources to accomplish the mission. It is tragic that we are creating all of these effective means to enhance public safety and the quality of life of our citizens, and then we find ourselves short of the resources necessary to turn these effective models into broader practices.

With the smart investment of the appropriate resources we can achieve significant improvements in the quality of life for the victims of domestic violence, including children, for our seniors and for overall community safety. –

In closing, I want to thank you and tell you how much I appreciate and admire each of you for your efforts in investigating, ascertaining and solving the problem of unmet needs for civil legal services here in New York State. The partnership to be forged by and between the courts and the legal community to formulate a smart, effective, adequately funded plan to meet these needs will benefit and ultimately enhance the safety and welfare of all of us.

Thank you also for this opportunity to address you. Please do not hesitate to call upon me at anytime if you think there is any way in which I can be of assistance to you as you continue your work.

Thank you.

Tara Grisby

Client of Legal Aid Society of Rockland County, Inc.,
accompanied by Alexander Bursztein

Tara Grisby

Summary of Case

Ms. Grisby, her husband and 6 children (ranging in age from 3 to 21) reside in a public housing development at 53 Gesner Drive, Spring Valley, New York 10977.

Ms. Grisby's oldest son, Daniel (not his real name) was arrested for a drug related offense. As the result, the housing authority gave the Grisby family a notice terminating the tenancy of the entire household. As this was Daniel's first offense, his criminal case was referred to the Rockland County Drug Court. Upon completion of a rigorous 18-month drug treatment program, Mr. Grisby's felony conviction will be vacated. The misdeameanor conviction that will remain on his record will have a far less negative impact upon Mr. Grisby's ability to lead a productive life in the future.

Ms. Grisby retained the Legal Aid Society of Rockland County to represent her family in the eviction proceeding commenced by the housing authority. Her attorney negotiated an agreement allowing not only the family to remain in the apartment but also permitting her son to continue residing with the family as long as he continues to comply with the terms of treatment mandated by the Drug Court. Thus, not only was subsidized housing preserved for a family of 8 but a young man who would not have had a realistic chance of completing drug treatment if he were rendered homeless is getting a chance to get his life in order.

Testimony of Tara Grisby

Good morning. My name is Tara Grisby. I would like to thank you for this opportunity to tell you how the Legal Aid Society of Rockland County was there for me when I needed help.

I am the mother of six children. My oldest is 21, my youngest is 4. My husband, my children and I live in a public housing complex in Spring Valley, New York.

I am 37 years-old. I grew up in Spring Valley. For as long as I can remember, drugs have been a terrible problem in our community. I have seen lives destroyed by drugs, witnessed mature adults and young children overcome by addiction. I have seen parents go to jail, their children placed in foster care and never having a chance to lead a normal life and succeed. I have seen young children placed in facilities for juvenile delinquents because of drug use; very few of them were able to resume normal lives once they were released.

I tried really hard to raise my children right. I always warned them about the dangers of drugs and supervised them as closely as I could when they were growing up.

I was absolutely devastated when my oldest son was arrested for a drug offense earlier this year. As naive as it sounds, I never expected this to happen in my family. My son was never in trouble. He graduated from high school, he was working. His arrest was a shock.

What made matters even worse is that shortly after his arrest, we were served with a notice terminating our tenancy. There are eight people in my family. We can't afford to live in private housing in Rockland County - rents for three- bedroom apartments in Spring Valley exceed $1500. I knew that if we were evicted, we would never find another place to live in the county. Public housing is where I have lived for a long time, it is where my children grew up. Spring Valley is the community I know, it is the community where my family and friends live, it is where my children go to school. I desperately wanted to stay.

This was my son's first arrest. Because of that and I think also because he was truly sorry and desperate for a chance to get his life together, his lawyer in the criminal case succeeded in having his case transferred to the Rockland County Drug Treatment Court. That court required my son to participate in an 18-month long intensive drug treatment program.

So far, everything is going great. My son has complied with all the requirements of the court. He is working two jobs and contributing to our household. He is eager to prove himself and happy to be able to stay with his family.

But even though my son was and is doing very well, the threat of eviction of our whole family was hanging over our head. When I received eviction papers, I contacted

the Legal Aid Society of Rockland County. I was represented by the Legal Aid Society's Deputy Director Mary Ellen Natale.

Ms. Natale told me that she would in all likelihood be able to negotiate an agreement that would allow the rest of the family to stay in the apartment upon the condition that my son move out. She and I agreed, however, that it was essential that we make an effort to enable my son to remain at home. I felt that he would never be able to find a place to live in Rockland County on his own (and remaining in the county is one of the conditions of the Drug Court). I also felt that in his time of need, my son needed his family if he were to succeed.

In court, Ms. Natale was able to negotiate an agreement that allows my son to stay with us as long as he complies with the requirements of the Drug Court. It is hard for me to describe how happy I was when I found out that my son would not be required to move.

As I said before, everything is going well for my son. I hope and pray that he continues to make progress and that ultimately he will be able to put this problem behind him and lead a happy and productive life.

Three times a week, my son goes to AA meetings. He knows that the danger of addiction will always be with him. I know that too. But thanks in no small part to the efforts of the Legal Aid Society, he is doing great, our family is together and we are able to live in a place that is affordable for our family.

Rev. Adrienne Flipse Hausch, Esq.

Partner, Carway & Flipse

Adrienne Flipse Hausch

Adrienne Flipse Hausch is a member of the law firm of Carway and Flipse, a general practice law firm in Mineola, New York. Ms. Hausch concentrates primarily in the areas of matrimonial and family law, criminal defense and general litigation.

Ms. Hausch is a graduate of St. John's University School of Law where she earned a Juris Doctor in 1976. Her undergraduate degree is from Hofstra University. Ms. Hausch also received a Masters of Divinity degree from New Brunswick Theological Seminary in 1995 and was ordained that year as Minister of Word and Sacrament and installed as Pastor for Congregational Care at the Community Church of Douglaston, a position she still holds.

Ms. Hausch served as a legislative counsel in Albany in both the Senate and the Assembly before entering private practice. She was a candidate for the State Assembly in 1980 when she was narrowly defeated by a 3 term incumbent.

Ms. Hausch taught at the college level for more than 15 years at such colleges as New York Institute of Technology, St. John's University and C.W. Post.

She has been a member of the Nassau County Bar Association since she was a student member and has serviced on the Associations Board of Directors, as Editor of its "Nassau Lawyer" monthly newspaper and was instrumental in the formation of the Pro Bono Committee, serving as the first chair of that committee. She has been recognized as "Pro Bono Attorney of the Year" by the NCBA in 1985, 2000 and 2011 and by the NYS Bar Association in 1998.

Ms. Hausch has been a member of The Committees on Character and Fitness of the Appellate Division, Second Department since March 2000. She is a member of the panels which provide legal services to children, indigent litigants in both civil and criminal cases and has served as a legal guardian to numerous individuals as a member of the Part 36 panel in Nassau, Suffolk and Queens Counties.

Ms. Hausch resides in Garden City with her husband, Roger H. Hausch, also an attorney.

Testimony of Adrienne Flipse Hausch

Good morning Chief Judge Lippman and members of the Task Force. My name is Adrienne Flipse Hausch. I am an attorney as well as a minister ordained in the Reformed Church in America. I am currently a partner in a small Long Island law firm and serve as Minister for Congregational Care of the Community Church of Douglaston. The Church services congregants who live as far west as Bayside, and as far south as Bellerose, Floral Park and Elmont (on both sides of the border between Nassau and Queens as well as the northern tier of Nassau – including Manhasset and Great Neck. The population is economically and culturally diverse.

I am also a member of various panels which provide *pro bono* civil legal services supported by the staff at Nassau-Suffolk Legal Services. I was the first chair of the *Pro Bono* Committee of the Nassau County Bar Association. We worked with the civil legal services office to insure representation for poor people primarily in the areas of landlord-tenant and matrimonial law. Over the course of that first year we started to build a *pro bono* panel, we developed screening processes specific to *pro bono* representation, as well as forms for almost everything we would need to proceed with a *pro bono* case, including retainer agreements. Some years later, with the assistance of an attorney, a Supreme Court Justice, the matrimonial clerk's staff and two law students we eliminated a three plus year backlog in less than one year. This was a good model of the cooperative work that can be done when resources are flush and community members are engaged. But it could not have been workable or efficient without the direct service and support of civil legal services.

Most of my own parish knows that I am an attorney. But I am often approached by total strangers who are not so much in need of prayer as they are in need of an attorney. Because I AM an attorney, I know what services are available and how to refer them. As a pastor, this is something I should know. I believe that clergy are a natural conduit for connecting legal services and those who are in need of those services.

I was approached by a young woman who advised she needed "pastoral counseling." She was married and had three young children. Although trained as a secretary she had been out of the job market for a number of years raising her children and was totally dependent on her husband. For more than a year her husband had kept her on a short leash: he purchased food for the family and gave her no cash at all. He put a minimal amount of gas in the tank of the car for "emergencies" and monitored her mileage and questioned her on where she had been. Recently a "wrong answer" to where she had been resulted in a physical beating. On that occasion the 8 year old witnessed the attack. With no place to go, she asked if I could meet with her sometime during the day during the week when her husband was working. Since she lived within walking distance of the church, he would not know she had come. After a relatively brief interview I referred her to the Coalition against Domestic Violence and the Nassau/Suffolk Legal Services Volunteer Lawyers Program. Those programs referred her to the proper Queens domestic violence programs.

In my "other life" I have also found an effective and willing network of knowledgeable educated individuals who can serve as a backup and referral system. Most clergy are trained in counseling and "social services." And it is likely that the clergy would know more counselors, doctors—and even lawyers—than any of the lawyers in their neighborhoods. In addition, there is a coercive factor in obtaining volunteers if you are clergy that does not exist among you civilians. These individuals can form the backbone of a volunteer network that can enhance and enrich the services offered by civil legal services office that provides support, knowledge and expertise in all areas of legal need.

We are here because many legal service agencies are stretched, but were we to pursue programs that could efficiently pull in more volunteer lawyers and members of the community, I believe, as the techies say, there is still "band width" in the legal profession and in many of the related fields upon which we can rely. Clergy opine that God never gives you more to handle than you can manage. As a minister, I believe in the simple principle of "do unto others as you would have them do unto you." As an attorney, I know the value of legal counsel both to the individual litigant and to the proper functioning of the legal system. And as a member of the community, I believe it would be fiscally sound to engage all skilled members of society to insure representation of the most vulnerable.

My church has a bulletin that is distributed to those who attend worship services. We have a monthly newsletter that is mailed to anyone who wishes to receive it. It includes public service announcements, stories of interest. It is also published on our website. Many churches communicate to their congregants in this way and others. Our church building is used by numerous community groups for meetings and programs. We host informational programs by our local councilman, State Senator and member of the Assembly.

We also have a local clergy commission that meets and discusses the needs of the greater community. My denomination, the Reformed Church in America, has regional groups called "classes". Each classis is geographically about the size of a Roman Catholic Archdiocese. Its members (clergy and Elders from each church in the zone) meet regularly. They also communicate frequently with all denominational clergy and cooperate in programs of interest to the community. They respond to crises worldwide. The RCA is just one small denomination with access to just the people we need to reach: both to provide resources and to reach our target population. Other denominations have similar denominational structures and communication media. All hold eleemosynary activities as their second priority after worship.

My church also houses a counseling center, another "safe place" to supply information and another resource available for the distribution of information. Many church based counseling centers offer services on a sliding scale. Almost all take a holistic approach and try to connect patients to necessary services. I receive calls regularly from our counselors seeking referrals for lawyers, accountants, rental agents and even spiritual advisors.

In Nassau County the Bar Association holds countless programs and seminars for the community at which attendees are given practical advice in a variety of areas including avoiding foreclosure, what to do if you are foreclosed, bankruptcy, matrimonial proceedings and immigration issues. An absolutely inert way of increasing the information flow is to permit clergy counselors and other professionals serving indigents to attend CLE programs without charge on a space available basis.

Conclusion

I believe that basic and "bridging the gap" CLE programs should be made available to clergy and other professionals working in religious institutions and not for profits.

I believe that community forums and workshops should be offered (and sponsored) by houses of worship.

I believe community based organizations should be encouraged to work with local clergy and attorney organizations to promote their programs and gain trust, respect and visibility in the community.

I believe incentives for *pro bono* work should be increased.

But mostly, I believe my congregants who are in need of legal services, who are poor, are best served by a robust community involvement alongside a well-funded civil legal service program with dedicated attorneys working to ensure that rights of the most vulnerable among us are protected on a day-to-day basis. For this there is no substitute.

I thank you for your kind attention.

Esther Jimenez

Client of Staten Island Legal Services, accompanied by Nancy Goldhill

Testimony of Esther Jimenez
Client of Staten Island Legal Services
Task Force Hearing on Civil Legal Services September 20, 2011

Thank you for giving me the opportunity to talk to you about the help I got from Staten Island Legal Services during a very hard time in my life. My name is Esther Jimenez and I live in Staten Island. I have three children: 2 daughters who are 9 and 6 years old and a 3 yr old son. In 2009, I left my husband after eight years of abuse.

My husband was very abusive. Many times he punched me, choked me, forced me to have sex against my will, and threatened to kill me. A lot of this happened when my children were there. Many times he also threatened that he was going to get the best attorney in the country and take my children away. Thank god I was able to get a great attorney and I did not lose my children.

Luckily our pastor suggested that we separate, so that made it easier. At first, I let him see the children almost every day because I wanted them to have a relationship with their father. But that changed after a few weeks when my husband came to see the children and attacked me. We got into an argument and he slammed me against the wall. I was holding my son, who was only one and a half, and my son fell to the ground. I couldn't even pick him up because my husband had pinned me against the wall. My daughter, who was 4, tried to pull my husband off of me, but he pushed her out of the way and threw her against the wall too. When he started to leave, my daughter tried to stop him and he pushed her down. My oldest daughter watched the whole thing and was terrified. After my husband left, I called 911. But when the police came, they didn't do anything because I don't speak English and I couldn't communicate with them.

I found my way to Staten Island Legal Services and they gave me the help I needed. Manar Waheed, my lawyer, explained my rights to me and told me about the different choices I had. Then Manar represented me in family court so that I could get an order of protection and custody of my children. She also told me that I had the right to file a police report even though I only speak Spanish and explained how to do it so that I would have some proof to bring to court.

Manar and Claire, a social worker in her office, helped me prepare for trial so that I could tell my story even though I was afraid of speaking in front of my husband and talking about the awful things he did to me. The trial was emotional and difficult, but in the end the judge gave me a three year order of protection that includes my children. I felt like the judge really listened to me and understood what I went through and that felt good. After that, my husband agreed to give me custody of my children. The judge is still deciding how often my husband should see the children, but right now he is not allowed to see them at all.

I would not have been able to do all this without a lawyer. Staten Island Legal Services helped me escape a long and very abusive relationship. They supported me through a difficult time in my life and helped protect me and my children. Without them, I would never have known that I had the right to go to court to get an order of protection and custody. And I would have been afraid to go by myself. I know that many other women are in situations like mine and have no idea what their options are or where to go for help. When they don't speak English the problem is even worse. Manar helped me move forward with my life by advocating for me to get what I needed. On top of everything else, Claire, the social worker, helped me get my children into therapy to deal with the abuse that they witnessed.

Without Legal Services' help, I don't know what I would have done. I know that they cannot help everyone and I was lucky that were able to help me. If they aren't able to keep doing what they do, I am afraid that people in situations like mine won't be able to get help the way I did. I want you to know how important their services are, especially on Staten Island where there are so few services to help people who can't afford to hire their own lawyers.

John Lindstrom

Court Attorney-Referee, Supreme Court, Orange County

Testimony of John R. Lindstrom, Esq.
Court Attorney Referee – Settlement Conference Part NYS
Supreme Court – Orange County
For the Chief Judge's Hearings on
Civil Legal Services
Presented before
Hon. Jonathan Lippman, Chief Judge of the State of New York
Hon. Ann Pfau, Chief Administrative Judge
Hon. A. Gail Prudenti, Presiding Justice, Second Department
Vincent E. Doyle , III President New York State Bar Association

September 20, 2011
Westchester County Courthouse
White Plains, New York

Good morning. My name is John Lindstrom. I presently serve as the Court Attorney Referee in the Mortgage Foreclosure Settlement Conference Part in the Orange County Supreme Court. I have served in that position since January 2010. I am pleased and honored to offer testimony about the need for adequate legal representation in mortgage foreclosure matters. Thank you for this opportunity to speak today.

The statistics for Mortgage Foreclosure Settlement Conference Part are annexed. As you can see, between January of 2010 and August 2011, I have conducted 9141 settlement conferences (around 450 a month).[1] Out of 9141 conferences, 1945 were attended by a defendant represented by counsel. The defendants in the remaining 7196 conferences were unrepresented. You can also see that 518 settlements have been reached during that time period. While some of these settlements were short sales or discontinuances without prejudice, the vast majority of the settlements have been loan modifications or repayment programs that resulted in people keeping their homes. I believe that these settlements were the direct result of the mandated Mortgage Foreclosure Settlement Conference. I also believe that if more of the people who appear before me were represented by competent counsel, the number of settlements would be higher.

With only 21 % of borrowers who appear before me being represented by counsel, the need for more representation for distressed homeowners is clear and makes the foreclosure pilot projects put into place by the Chief Judge in Orange and Queens counties especially important and relevant.

[1]Most cases have multiple conferences.

The program guarantees representation for all homeowners in residential foreclosure conferences in Orange County. It is an ambitious; one that would not be possible without the strong support of members of the private bar and without the leadership of Legal Services for the Hudson Valley. The Foreclosure Project brings legal services, bar associations, and the court together to meet the mission of providing representation to homeowners.

I first refer any borrower who needs legal representation to the project's housing counseling partner, Orange County Rural Development Advisory Corporation, know to us as RDAC.. RDAC is a HUD approved Housing Counseling Agency. RDAC is a fantastic organization and I am constantly encouraging borrowers to go to RDAC. The pilot project's success is tied to agencies such as RDAC, because they can do so much of the work that attorneys would otherwise have to do. RDAC screens the borrower for the viability of saving their home through a possible loan modification with their lender. If they find the borrower to be a candidate for a modification, the case is sent to Legal Services to handle the Settlement Conference representation. The case is then either handled by legal services or assigned to the many attorney volunteers from the Women's Bar Association of Orange & Sullivan Counties, and the Orange County Bar Association. Volunteer attorneys have attended a training conducted by the Empire Justice Center and receive guidance from the legal services Foreclosure Project Attorney. Any collateral legal issues related to the foreclosure, for example, such as filing a Chapter 13 bankruptcy to make the homeowner more solvent for a loan modification, or motion practice to challenge the behavior of the lender, is assigned to Legal Services Foreclosure Project Staff Attorney. If RDAC finds that the home is not savable through the foreclosure process, they offer the client all the alternatives available such as short sale or a deed

in lieu of foreclosure – and guide them through the entire process. Ideally, no one is left on their own.

The Foreclosure Project provides representation to homeowners who would otherwise have great difficulty navigating the process – And – by starting to mentor and train volunteer attorneys to represent homeowners in settlement conferences – further moving towards the aspirational goal of providing as many Orange County homeowners with an attorney in their settlement conference.

The bank is always represented by counsel. As much as I try to make it an even playing field for homeowners who come before me with no attorney, knowing I can get one for them makes my job easier and the process smoother. In my position I have learned that learned that these conferences play an essential role in helping to prevent the loss of people's homes. What was not apparent from the outset is how complex and labor intensive the conferences are. Because judges, hearing officers and court attorney referees make every effort to reach mutually agreeable resolutions, it is not uncommon for a single foreclosure case to require six to eight settlement conference appearances before it can be resolved. Many conferences, especially those involving the unrepresented take even longer. The long life span of these cases in the conference part, coupled with the incredible increase in foreclosure filings in Orange County over the past two years, has resulted in an unprecedented shift in the civil caseload of the court. For example, the total number of mortgage foreclosure settlement conferences conducted in Orange County in all of 2009 was 775. In September of 2010 alone, I conducted 750 conferences.

Dealing with a pro se litigant is difficult in the best of circumstances. I encounter pro se litigants in the worst of circumstances. They come to the conferences from all walks of life from janitors to Madison Avenue Advertising Executives. All have been through some sort of personal catastrophe that resulted in them falling behind on their mortgage payments. Stories of extended periods of unemployment, business failures, medical expenses due to lack of health insurance, divorce, the death or disability of a spouse or family member, are all too common. While I am no psychiatrist, a number of the people who appear before me seem to be suffering from depression. They cannot do the simplest of things needed to be done to save their house. They cannot follow simple instructions to gather documents needed by the bank to make a determination that would allow them to keep their home. Others who appear before me are angry and frustrated with their bank's inability to hold onto documents, to respond to their inquiries, and to provide accurate information. Most of the unrepresented who appear before me have never been to court as the subject of an action (other than traffic court). Those that have been to Supreme Court before, have never done so without a lawyer. They ask if they need a lawyer in the settlement conference, but then tell me they can't afford a lawyer anyway. So they proceed unrepresented.

The turnout for first time conferences in my conference part is low. At least 25% of the cases eligible for a settlement conference have a just a single conference as a result of non-appearance by the defendant. The non-appearance of the defendant is noted and the foreclosure action is allowed to proceed. Other than those that have already left their home, I can only speculate as to why people don't show up for a conference. I believe that some don't show up out of fear or embarrassment. I believe this because of what the borrowers who do appear for a

first conference say to me. They are afraid of what is going to happen next. Will they have to leave their homes? When? They are embarrassed that they have failed to keep their commitment to pay the bank. They have been unable to modify in the past and don't see any hope for retaining their home. Who knows how many of those people who did not appear for conferences, would have come to the conference if they knew they would have an attorney available to them?

Before I started conducting settlement conferences, I received training here in White Plains. We learned about mortgage modification programs, short sales and deed in lieu of foreclosure and how to conduct the settlement conference. I then started conferencing cases. I found that the bank attorneys were well versed in the applicable law and federal guidelines. I found that the on the defense side, the few lawyers appearing for defendants were not so aware and found themselves relying on the bank attorneys for information on legal issues. Except for the attorneys from Legal Services of Hudson Valley. They knew about the applicable law and were not shy about sharing what they knew with me and the bank attorneys. They became a valuable resource in my continuing education in this area of the law. In the spring of 2010, it seemed like the United States Treasury Department was modifying the Making Homes Affordable guidelines every Friday. The bank attorneys kept me abreast of the changes they felt favored their clients, and Legal Services of Hudson Valley attorneys were keeping me up to date on changes favoring borrowers.

Does having a lawyer make a difference in the foreclosure conference process? Absolutely.

Much of what I do on a day-to-day basis is help people get through the "paper chase" of the mortgage modification process, i.e. getting a packet of current financial documents and bank forms from point A (the borrower) to point B (the bank) without loss of part or all of the entire packet. Borrowers and (sadly) banks lose documents and don't keep copies of documents. It is a lawyers natural reaction to a document to make sure there is a copy kept. Borrowers don't have scanners, copiers, fax machines, and smart phones. Lawyers do.[2] When I have a lawyer representing a borrower on a file, I know that there is a complete copy of all documents in the lawyers file or computer that can be given directly to the bank when the bank claims it never received the document. That is an incredible advantage to the represented borrower over the unrepresented borrower.

A modification application should be decided within four months of the first settlement conference. That almost never happens. Even with a lawyer, a decision on a modification will usually be had in 6 months. I have unrepresented borrowers who have been with me for 18 months.

I know the applicable law and what a borrowers rights are as they go through the process. While I do advocate for borrowers and try to be sure that every borrower is given every opportunity and advantage, there are times that I cannot do so. I have a busy court room and a heavy calendar. I try to keep my calendar moving so as to get people in and out. When a borrower has an attorney knowledgeable in this area, I am more efficient and can get more work done. As I discussed above, some borrowers, for whatever reason, are in need of extra help. An

[2]Staples charges $1.50 a page for fax services. I encourage people to use housing counseling agencies if for no other reason than they get free fax and copy services.

attorney can do something I cannot do. An attorney can take a borrower aside, away from the spotlight of the conference to help them understand what needs to be done and why.

Early on in my tenure, I had a case where the bank advised that due to "investor restrictions"in the Pooling and Service Agreement, the loan was not eligible for the federal government program, HAMP. I had never heard of such restrictions. The borrower had an LSHV attorney who asked for a copy of the "investor restrictions". The bank refused on multiple grounds. At the borrower's attorneys insistence, I directed that the bank produce the restrictions. Before the next conference, I received in the mail the entire 450 page Pooling and Service Agreement with a cover letter that did not identify the specific pages containing the relied upon restriction. I had no time to read the entire agreement, but the LSHV attorney took it upon herself to review the entire agreement and located the "restriction" which we were able to then discuss at the ensuing conference. It turned out that the restriction did prohibit certain types of modification of the loan, but did permit modification as provided for under the HAMP program. The borrower ultimately was given a HAMP modification and got to keep his house. Had it not been for the attorney's persistence, that happy ending would not have occurred.

In a similar case, the restrictions actually did preclude a modification. The borrower's attorney (also a LSHV attorney), requested that the bank ask the investor to waive the restrictions. The bank declined. At the next conference, the borrower's attorney asked for my help and I directed that the bank ask the investor to waive the restrictions. To my surprise, the investor agreed to waive the restrictions and the borrower ultimately got a modification. Another happy ending that never would have occurred without an attorney's assistance.

Recently, I had an attorney obtain new reviews of denials of modifications for several clients because he discovered that the bank was using an incorrect market value for the homes in question. The home value and other input numbers used by the bank are available to a homeowner denied a modification and I routinely direct that banks provide borrowers with a statement of the input numbers used in evaluating a loan modification. It is up to the borrower to review these numbers and raise any objection. In this instance, the borrowers' lawyer may well keep his clients in their homes. These cases are still pending before me.

People need the advise of a lawyer even when things go right. Most of the people who appear before me want to save their homes. Often, they are offered modifications that provides payments that are higher than they can truly afford. They ask me what they should do. I can only tell them that it is their decision and they should consider all their circumstances before accepting or rejecting a settlement proposal. They need the advise of a lawyer who can help them through these type of decisions.

The advise of an attorney is necessary at the outset of the foreclosure as well, and not just for legal purposes. Once a bank puts a case in foreclosure, the bank will not accept payments from the borrower. As a result, the borrower has an increase in available funds every month. What the borrower does with those funds can determine whether he/she will get a modification in the coming months. Some pay off all other debt thinking that will make them look better to the bank. Those people can miss out if they are only eligible for a modification that requires a significant down payment. If a bankruptcy filing is necessary to save the house, they will have paid off debt that could have been eliminated by the bankruptcy court. A few minutes with a lawyer discussing a strategy toward other debt early on could save a home.

I have participated in two fairly well attended training seminars for attorneys in Orange County offered in the hope that attorneys would offer their services pro bono to borrowers at conferences. I have spoken to the head of the Orange County Bar Association and advised him that I will provide every accommodation I can to attorneys representing borrowers pro bono in my part. While I am hopeful that pro bono representation will start to increase, to date, I am not aware of any pro bono representation in cases before me. But the project is still in its early stages and I am hopeful that the partnership between the Court, Legal Services of the Hudson Valley, the private bar and RDAC, will be a great starting point and will provide much needed relief for the families and communities of Orange County.

ORANGE
SPECIAL FORECLOSURE CONFERENCE STAT SHEET
YEAR 2010

	# Of Confs. Held	OFDPN	# Of No Shows	# Of Settlement	Adj	Not Fit Criteria	Rep by Counsel	Pro se
January*								
February*	129	4			125			
March	604	138	266	49	416	48	50	172
April	469	145	207	17	306	14	88	158
May	493	129	173	44	320	16	101	206
June	640	192	234	38	405	28	116	268
July	465	124	179	24	317	7	109	191
August	509	123	141	31	351	11	115	263
September	750	186	248	39	525	32	154	343
October	667	159	199	32	500	26	145	349
November	524	100	134	25	398	23	103	285
December	468	68	107	27	373	17	121	243
TOTAL-2010	5718	1368	1888	326	4036	222	1102	2478

Total Foreclosure Filings for 2010= 1789

* January & February stats are limited as we did not capture this info completely during this time frame.

ORANGE
SPECIAL FORECLOSURE CONFERENCE STAT SHEET
YEAR 2011

	# Of Confs. Held	# of Eligible Cases Referred to IAS	# Of No Shows	# Of Settlements	Adj	Not Fit Criteria	Rep by Counsel	Prose
January	480	56	88	19	405	19	106	286
February	401	35	102	19	348	8	77	222
March	481	45	91	29	411	12	122	276
April	415	49	64	30	336	10	116	234
May	423	61	70	27	335	5	99	254
June	487	68	60	30	395	10	128	304
July	367	56	44	27	285	6	90	207
August	369	67	61	11	290	2	105	203
September								
October								
November								
December								

Hon. Janet C. Malone

Acting Supreme Court Justice and Family Court Judge,
Westchester County

HON. JANET C. MALONE
WESTCHESTER COUNTY FAMILY COURT JUDGE

Janet C. Malone was elected to the Westchester County Family Court in 2007 and in 2011, she was appointed Acting Justice of the Supreme Court by the Chief Administrative Judge for the State of New York. Judge Malone presides over cases involving juvenile delinquency, persons in need of supervision, domestic violence, child custody and visitation, neglect and abuse, and aspects of paternity and support.

In 2011, Judge Malone was appointed Lead Judge for Westchester County Child Welfare Court Improvement Project and was charged to assist family court to implement system reform efforts designed to improve outcomes for children and families in the child welfare system.

Judge Malone has served on the Westchester County Family Court, Yonkers, since 2003 when she was first appointed a Support Magistrate and designated as the Magistrate to the Integrated Domestic Violence Part in the Yonkers City Court where she handled support cases involving domestic violence.

Judge Malone graduated from the City University of New York Law School in 1989 and started her legal career the same year as a New York County Assistant District Attorney under Robert M. Morgenthau. She was assigned to the trial division where she prosecuted major felonies, including sex crimes, domestic violence cases and homicides; supervised felony and misdemeanor assistant district attorneys and argued appeals in the Appellate Division for the First Judicial Department. In 1997, Judge Malone accepted a position as an associate in a midtown litigation firm. The following year she opened her own law practice where she represented clients in criminal, matrimonial and family matters.

Judge Malone is admitted to the United States Supreme Court, the United States District Court for the Southern and Eastern Districts of New York and the Second Judicial Department of the State of New York.

Judge Malone serves on the International Child Abduction Committee of the National Association of Women Judges, the Family Law Committee and the Committee on Children and the Law of the New York State Bar Association and the Committee on Families, Children and the Courts of the Westchester Women s Bar Association.

She is an Officer and Director of the Westchester Black Bar Association and serves on the Advisory Boards of the Mercy College Legal Studies Program and the Lois Bronz Children s Center. She is a member of the New York State Family Court Judges Association, Westchester County Bar Association and New Rochelle Bar Association where she served on the Board of Directors from 2006 to 2008. She is also a member of All Island Association, Sister to Sister International, Yonkers Truancy Reduction Strategy Group and she is a Mentor in Judge Judy s Her Honor Mentoring Program. Locally, she serves on the African-American Writers and Readers Literary Tea Committee of the Westchester Library System.

Judge Malone is the recipient of numerous awards, including the Community Service Award of the Bethany African Methodist Church, the Finer Womanhood Award of Zeta Phi Beta Sorority, Inc., and the Business and Professional Award of the F. Willa Davis Women s Club of New Rochelle. She was also honored by the Westchester Black Women s Political Caucus as a Cheerleader for Social Change.

Born in Barbados, West Indies, Judge Malone resides in Westchester with her husband, George and their dog, Jaz and with family nearby. She is a member of Greater Centennial A.M.E. Zion Church in Mount Vernon.

The Family Court is dear to the heart of Judge Malone. She sees the Family Court, and specifically her courtroom, as the place where she meets children and families in an intimate way and often when they are at their most vulnerable. Judge Malone believes Family Court is Law in the Service of Human Needs, the motto of her law school.

TESTIMONY OF THE HON. JANET C. MALONE
ACTING SUPREME COURT JUSTICE
WESTCHESTER COUNTY FAMILY COURT

TO
CHIEF JUDGE'S HEARING ON CIVIL LEGAL SERVICES

PRESENTED BEFORE
HON. JONATHAN LIPPMAN, CHIEF JUDGE OF THE STATE OF NEW YORK
HON. ANN PFAU, CHIEF ADMINISTRATIVE JUDGE
HON. A. GAIL PRUDENTI, PRESIDING JUSTICE, SECOND DEPARTMENT
SEYMOUR W. JAMES, JR., PRESIDENT ELECT,
NEW YORK STATE BAR ASSOCIATION

SEPTEMBER 20, 2011

APPELLATE DIVISION, SECOND DEPARTMENT

WHITE PLAINS, NEW YORK

TESTIMONY OF THE HON. JANET C. MALONE, A.J.S.C., J.F.C.

CHIEF JUDGE'S HEARING ON CIVIL LEGAL SERVICES

SECOND DEPARTMENT

SEPTEMBER 20, 2011

Good Morning, my name is Janet C. Malone. I am a Westchester County Family Court Judge with an Acting Justice of the Supreme Court designation.

Chief Judge, thank you for the invitation to speak at this hearing about the burgeoning issue of funding for Civil Legal Services.

I have practiced in the State and local Courts of New York and the United States District Courts for the Southern and Eastern Districts of New York, as an Assistant District Attorney, as a Private Practitioner and as Assigned Counsel in the First and Second Departments. I have seen the need for quality legal representation for the disenfranchised, who typically have a negative view of the legal system and who feel that they have no say in the legal process that will impact their life.

I remember, as a young prosecutor, being in a court room when a criminal defendant told the judge in a loud baritone voice that he wanted his appointed lawyer fired and that he wished to represent himself. The judge patiently asked the defendant his highest level of education and whether he was familiar with court room etiquette, trial procedures and the rules of evidence he would have to know. Most importantly, he asked the defendant if he understood that if he did not prevail in the case, his liberty would be at stake.

I was convinced that this young man should keep his attorney; after all, I was fresh out of law school, the Rules Against Perpetuities still causing me nightmares, and my knees still shaking after being the first assistant district attorney in the class of 1989 to have a trial under her belt. I wanted to scream to him that it is not as easy as they make it look on TV; your assigned attorney might not be Perry Mason but he is better than having a fool for a client. But when the young man said that he couldn't do worse than his attorney going up against a system that was already against him, I realized he was angrier at the system than at his attorney. The judge denied the defendant s application to relieve his attorney.

The defendant in my story would have a jury to decide his fate, but what does a judge do when she is the jury, charged with being an impartial arbiter for both parties, as well as custodian of the court record, the mover of cases and the adherer to time constraints?

Since 2003, I have been assigned[1] first, as a Support Magistrate to hear and determine issues of financial support and to establish paternity, and, now as a judge. I preside over cases involving juvenile delinquency, persons in need of supervision, domestic violence, child custody and visitation, neglect and abuse, and aspects of paternity and support. My court serves the City of Yonkers, the largest city in Westchester County and the fourth largest city in New York State after New York City (all five boroughs), Buffalo and Rochester.[2] I am told that Yonkers Family Court has the largest caseload outside of New York City Family Court.

In my courtroom, I meet the teenage mother alleged to have neglected her newborn, the mature woman alleging domestic violence at the hands of her partner, the father in jail seeking parenting time with his child, the teenager exposed to the family court for the first time on a juvenile delinquency petition. The parties are educated and not so educated, English speaking and non-English speaking, rich and the not so rich or somewhere in between.

Regardless of the parties socioeconomic status, I meet them when they are vulnerable, angry, sad, frustrated and confused. We would not want our doctor[3] or even our judge exhibiting or performing under this type of emotional stress, so why

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[1] Yonkers Family Court Jurisdiction covers the City of Yonkers and the Villages of Tuckahoe, Bronxville, Hastings-on-Hudson and Dobbs Ferry.

[2] New York City (Bronx, Kings New York, Queens and Richmond) = 8,175,133; Buffalo = 261,310; Rochester = 210,565 and Yonkers = 195,976. Reported by Wikipedia at http://en.wikipedia.org/wiki/List_of_cities_in_New_York. Page last modified on 5 June 2011 at 19:45.

[3] The American Medical Association Code of Medical Ethics Opinion 8.19 cautions that physicians generally should not treat themselves or members of their immediate families. Professional objectivity may be compromised . . . the physician s personal feelings may unduly influence his or her professional medical judgment, thereby interfering with the care being delivered. Physicians may fail to probe sensitive areas when taking the medical history or may fail to perform intimate parts of the physical examination.

should we expect untrained parties in Family Court to represent themselves under these times of emotional stress.

Yet *pro se*[4] parties who appear in the Family Court are expected to step back and view their emotional, volatile and even life-altering circumstances through an objective lens while having the mirror of rules, procedures and evidentiary rulings reflect back at them.

In these harsh economic times, funding for civil legal services is needed more than ever. Child support, domestic violence, loss of homes through foreclosure, all leading to displaced children, are at an all-time high, college and retirement funds have disappeared and families are living off their credit cards to make ends meet.

A typical U.S. family got poorer during the past ten (10) years. This weak economy has driven the median household income down, hitting the poor, the young and minorities the hardest in 2010.[5] The Census Bureau said just last week, on September 13, 2011, that the Median household income fell 2.3% to $49,445 last year and has dropped 7% since 2000 after adjusting for inflation. Also, the number of people living in poverty hit 2.6 million or 15.1% of the national population, the highest level since 1993.[6]

This report makes the need for the funding of civil legal services even more urgent. The number of child support petition filings has increased as has domestic violence reporting, which unfortunately, seem to go hand in hand with a downturn in the economy.

Although parties are advised that they have the right to be represented by counsel of their own choosing, the right to have an adjournment to confer with counsel, and the right to have counsel assigned by the court in any case where a party is financially

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[4] For one's own behalf; in person. Appearing for oneself, as in the case of one who does not retain a lawyer and appears for himself in court. Black s Law Dictionary, Sixth Edition.

[5] USA Today (Bob Andres, AP), http://www.usatoday.com/news/nation/story/2011▲09▲13/census▲household▲income/50383882/1.

[6] *Id*.

unable to obtain the same.[7] There appears to be a misconception by some in the legal and non-legal communities that if your gross income is over $35,000.00, you don't qualify for the assignment of counsel. I have yet to find in writing where it says that $35,000.00 in earned income, especially in Westchester, disqualifies a party who requests the assignment of counsel.

A survey of nearly 1,200 state trial judges around the country indicates that another result of the weak economy is an increase in the number of litigants representing themselves in foreclosures, domestic relations, consumer issues and landlord-tenant housing matters; judges say that litigants are doing a poor job even as they burden courts already hurt by cutbacks.[8]

More than half the judges surveyed had seen case filings increase in 2009 even though fewer people are represented by counsel. Because of a loss of funding for Civil Legal Services, this affects not only the poor but the middle class as well. The poverty income guideline for a single person in 2011 as reported by the United States Department of Health and Human Services, is just $10,890.00.[9] These are the folks who desperately need civil legal services. We must figure out a way to fund that organization so as to provide competent representation to those in need.

Unfortunately, self-representation results in worse outcomes for litigants, according to a majority of those judges, with the greatest problems being failure to present necessary evidence procedural errors, ineffective witness examination and failure to object to evidence. Seventy-eight percent of those judges said that the increase in self-representation is also slowing the court docket.[10] Clearly, we must fund legal services sufficiently provide access to justice to all parties who enter the courts seeking justice.

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[7] *See*, Family Court Act §262.

[8] http://www.abajournal.com /news/articles/judges_say_litigants_increasingly_going_pro_se . Article Judges Say Litigants Are Increasingly Going Pro Se - at Their Own Peril. Based on survey conducted by e-mail to members of the ABA Judicial Division s National Conference of State Trial Judges.

[9] Child Support Standards Chart prepared by New York State Office of Temporary And Disability Assistance Division of Child Support Enforcement, Released April 1, 2011, see also, http://www.familiesusa.org/resources/tools_for_advocates/guides/federal_poverty_guidelines.html, http://www.humanarc.com/Resources/FederalPovertyGuidelines/Default.html,.

[10] http://www.abajournal.com/news/articles/judges_say_litigants_increasingly_going_pro_se .

Recently, I had a case where the respondent father had traveled to New York to respond to an application by petitioner mother for an Order from the Court exercising temporary emergency jurisdiction over the parties child. The petitioner mother was represented by counsel and the respondent father was unrepresented. I advised the respondent of his right to counsel and his right to request the assignment of counsel if he could not afford to pay for an attorney. The respondent, who had a stutter, rejected the offer, confident that he could prove his case alone.

As the respondent flipped through a pile of papers, I asked him if he had a pen. No, he replied. Do you have a pad of paper? No, he replied. Do you have the Order to Show Cause that brought you before the court? He could not find it in the papers now spread out before him on the table. I then explained the Unified Child Custody Jurisdiction Enforcement Act (UCCJEA) and the powers of the Court if the petitioner mother prevailed.

Should I have let the unrepresented father go up against the mother s attorney on his own? Would I get all of the information I needed from the father who came to court without a pen or pad and whose stutter became more pronounced as he became anxious? Would I have learned about the Temporary Order already issued in the child s home state? I needed answers quickly in this emergency situation I squeezed onto my already tight calendar. I assigned an attorney off the court floor for the limited purpose of representing the respondent father on the Order to Show Cause. It was the right decision.

A judge must act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.[11] However, when one or both parties are unrepresented, a trial judge in a non-jury part should not have to walk a tightrope balanced on a thin rope of objectivity and justice, while teetering above a net of advocacy, delays, congested calendars, etc.

A judge should be able to preside over a matter, without having to take part in it. When parties come before the Court, they want an objective Court, a Court that will listen, will be compassionate and fair, and will meaningfully deliberate on their issues to a fair resolution where, even if they do not walk away with everything they wanted, they know they had their day in court in front of an impartial judge and with a strong legal advocate at their side.

[11] 22 NYCRR §100.2 (A).

Thank you for this opportunity.

Faith Piatt

Executive Director, Orange County Rural Development Advisory Corporation

Testimony of Faith Piatt
Executive Director
Orange County Rural Development Advisory Corporation

Good morning, my name is Faith Piatt, and I presently serve as Executive Director for the Orange County Rural Development Advisory Corporation ("RDAC"). Orange County RDAC is a non-profit housing counseling and development agency that boasts nearly three decades-worth of service to Orange County residents. RDAC administers various state and federal housing grant programs and offers a suite of counseling services. Our mission is to encourage vital, healthy and stable communities by providing and preserving a broad array of attainable and sustainable housing opportunities for people within a wide income range. RDAC also promotes and supports related community issues as they influence shelter, quality of life, economic opportunity and diversity.

Today, I am here to talk about our vital foreclosure partnership with Legal Services of the Hudson Valley, the courts and the private bar. For the past two months, all of the partners in the foreclosure collaboration have worked together to ensure that homeowners facing foreclosure have assistance and representation. Legal Services and RDAC have been helping Orange County homeowners in foreclosure trouble since the housing crisis began, and doing an exemplary job keeping families in their homes. Now – working in conjunction with each other – and with the Orange County Supreme Court – we can reach more Orange County families in a more efficient way. Since the project

began on July 1– the court has referred 19 homeowners to RDAC. My organization also receives the list of foreclosures filed from LSHV via the Orange County Supreme Court Clerk, and evaluates the sustainability of the home, and the eligibility for a loan modification. If a loan modification is possible, we assist the client with all the paperwork along the way and communicate with the lender. If any problems arise with the lender, or the client is in the settlement conference part, we notify LSHV that we need one of their attorneys – or a volunteer attorney from the private bar – to represent the client in the settlement conference.

Since August 1, 2011 RDAC and LSHV are now up to 10 households being served – and many more on the way.

Our partnership with Legal Services of the Hudson Valley and the private bar has provided us with a vital resource to offer our clients. We have helped homeowners in Orange County for years – and we are very good at it. But now we have access to legal help to carry the ball further – and together – we are making a difference. Thank you Judge Lippmann for focusing on our community of Orange County and for the opportunity to collaborate in the foreclosure pilot project.

Boris Raishevich

Client of Legal Services of the Hudson Valley, accompanied by Ndukwe Agwu

Testimony for Boris Raishevich

I am a homeowner in Orange County, New York. I have lived in my home for 25 years. I am currently defending a foreclosure action in the Orange County court, and I am convinced that if I were not represented by Legal Services of the Hudson Valley I would have lost my home long ago.

About four years ago I lost my job in a packaging plant where I was a manager. Since then my wife and I have taken whatever jobs we can to support our family, and I am also self-employed as a farmer. When my income disappeared I requested a forbearance from the bank, but they never answered me.

I began to get calls from the bank about my mortgage payments before they served me with the foreclosure papers. They still call me now. They tell me to sell my house. They never tell me how to save my house, or that they will modify my mortgage.

The attorneys from Legal Services have been with me in court on many occasions. They have pressured the bank to offer me a modification. They give me confidence that the court system can actually work to help me save my home.

When I came to court with an attorney I still do not believe the bank's attorneys took me seriously, until my attorneys submitted a motion. Then the bank could see that it was not going to be a simple matter to say I had to leave.

I am an immigrant and I have three children. My oldest has graduated college and has a PhD. My second is in college, and my youngest still lives at home. This house has been their only home.

During the last two years I have had to be in court at least 10 times for this foreclosure. The bank's attorneys always say that I am not qualified for a modification of my mortgage. But somehow, my attorneys always convince the Hearing Officer that I should be given a chance to pay my mortgage, and we continue to try to get them to give me a modification agreement.

I am convinced that if I did not have an attorney to represent me I would have been foreclosed long ago, and my house sold. I now at least have hope that I can get an opportunity to save my home.

Alina Saez,
mother of Justin Rosario

Client of Legal Services of the Hudson Valley, accompanied by Gina DeCrescenzo

Testimony of Alina Saez

For the Chief Judge's Hearings on
Civil Legal Servics

Presented before

Hon. Jonathan Lippman, Chief Judge of the State of New York
Hon. Ann Pfau, Chief Administrative Judge
Hon. A. Gail Prudenti, Presiding Justice, Second Department
Vincent E. Doyle, III, President New York State Bar Association

September 20, 2011
Westchester County Courthouse
White Plains, NY 10601

Testimony of Alina Saez, mother of Justin Rosario

Good morning. My name is Alina Saez. I am a single mother of a 16 year old child who has special needs. His name is Justin and he is here with me today.

Justin has been diagnosed with severe developmental disabilities and has been classified by the Ossining School District as Intellectually Disabled and Emotionally Disabled. Justin and I moved into Ossining in April of 2010. From April 2010 through November 2010 – only a 6 month period according to a school calendar - Justin was suspended or otherwise disciplined approximately 20 times! On November 16, 2010, Justin was suspended because he threw a pencil across the classroom. The pencil did not hit anyone nor was it Justin's intention to hit anyone - he was just having a very bad day.

We then had an administrative hearing that was scheduled to determine my son's guilt or innocence and his potential punishment. At that hearing, I was not represented by counsel and the counsel for the District encouraged me to sign a stipulation of settlement admitting my son's guilt, waiving my right to a hearing, and waiving my right to a manifestation review (the determination by the CSE team whether the behavior is a manifestation of Justin's disability).

I signed the stipulation. I did not know my options or my rights at that time. I knew my son threw the pencil. I thought I was doing the right thing. This resulted in Justin being suspended for approximately 80 days. I tried everything I could to get the District to find Justin an

appropriate placement. I knew it wasn't right that Justin was not receiving an education - that he was not receiving the counseling that he needed – that he was not receiving any of the services or supports that are designated on his Individualized Education Program – his IEP. But the District refused to listen to me. After 80 days of agony, the District *finally* found Justin a placement- in a 24 hour residential facility for extremely emotionally disturbed children… in another county! The most restrictive setting for Justin.That is what led me to Legal Services of the Hudson Valley. I knew Justin would never survive, let alone progress, in this setting. I was put in touch with Gina DeCrescenzo and she immediately reviewed my paperwork and decided to file a complaint on our behalf. This complaint explained all of the District's failures to provide Justin an appropriate education since he arrived in Ossining and asked for relief that we hoped would put Justin back on track.

Ms. DeCrescenzo filed a due process complaint against the District. She negotiated with them and attended several meetings with the District for approximately 2 months. The District held firm to their position that Justin needed a 24 hour residential setting regardless of what I believed and refused to conduct an updated psychological evaluation to better understand the root of Justin's problems. They also refused to offer any more than 60 hrs of compensatory educational services and 4 hours of compensatory counseling to make up for the time that my son had lost.

My attorney did not waiver from her position - instead she held her ground and moved forward to say that this was not ok. We proceeded to the due process hearing. On the eve of the 1st day of the hearing, the District's attorney called Ms. DeCrescenzo and gave in to ALL of our requests. To name a few, Justin was placed in a therapeutic private day program, the District agreed to

provide 20 hours of 1:1 counseling as compensatory counseling, the District agreed to provide 180 hours of 1:1 tutoring with a special education teacher as compensatory educational services to be used whenever I want and without an expiration date, and the District agreed to pay for a neuropsychological evaluation by an independent provider of my choosing.

At this time, my son Justin is attending a school that he loves and one that is meeting his needs. This all because of legal services' help and efforts. I don't know where Justin or I would be at this moment if not for them. Legal Services made every stride in helping us through this difficult challenge because as I said previously the Ossining School District was not providing my son with any help or alternatives rather than to just get rid of him and whatever happens happens. Instead my attorney fought long and hard for our rights and services. I would like to take this time to sincerely thank you Gina DeCrescenzo because without you I know they would have never given Justin what he needed and deserved. Gina DeCrescenzo came into our lives and turned it all around. Amazing is all I have to say and I feel that if every person knew and or needed Legal Services they would have the same outcome as we had: SUCCESS!

Thanks Gina DeCrescenzo & Legal Services of the Hudson Valley. We appreciate you!

William M. Savino

Managing Partner, Rivkin Radler LLP

Member of the Board, Long Island Association

RIVKIN RADLER
ATTORNEYS AT LAW

Attorney Profile

William M. Savino

Partner

William M. Savino serves as Rivkin Radler's Managing Partner and is Chair of the firm's Executive Committee.

Mr. Savino's practice concentrates on commercial and insurance coverage litigation and related counseling. He has litigated before trial and appellate courts throughout the United States. He has represented certain insurers in the *September 11 World Trade Center Liability Coverage Litigation*; the *BPA-Plastic Products Coverage Litigation* and *Shell Oil Company v. Aetna Casualty and Surety Company*. He has served as counsel for insurers in the defense of class actions involving interest charges and numerous insurance coverage claims and suits ranging from intellectual property liabilities and business torts to national environmental, antitrust and fiduciary claims.

An active speaker across the United States, Mr. Savino has recently presented workshops on medical monitoring "no injury" suits, privacy, terrorism-related liabilities and the relationship between primary and excess insurers.

Mr. Savino serves as a member of the Board of Directors of Fireman's Fund Indemnity Corporation, Chair of the Audit Committee. He is Immediate Past Chairman of the Board of Directors of Long Island's United Way; a member of the Boards of Directors of the Long Island Association and the Nassau County Bar Association, where he served as President. He also served as Mayor of the Village of Old Brookville, NY and President of the Villanova University Alumni Association.

Mr. Savino has been appointed by the Governor to the New York State Judicial Screening Committee to sit on the Nassau County Judicial Panel. He is also a member of the State of New York Tenth Judicial District's Independent Judicial Election Qualification Commission and the Unified Court System's Statewide Commercial Division Discussion Group. He has been listed as one of the 100 Most Influential Long Islanders by the Long Island Business News, and is among the Top 50 Most Influential Long Islanders by the Long Island Press.

Mr. Savino is a recipient of the Fordham University School of Law Long Island Distinguished Alumni Award. On Oct. 8, 2010, Mr. Savino received the Firefighters Leadership Award by the Nassau County Firefighters Museum.

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United States Supreme Court
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United States District Courts for the Southern and Eastern Districts of New York

BAR AFFILIATIONS
Nassau County Bar Association - President 2003-2004
New York State Bar Association
American Bar Association

EDUCATION
Fordham University, Juris Doctor
Villanova University, B.S. in Economics

TESTIMONY BEFORE THE TASK FORCE
TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK

TUESDAY, SEPTEMBER 20. 2011

WILLIAM M. SAVINO, ESQ.

MANAGING PARTNER
RIVKIN RADLER LLP

Chief Judge Lippman and distinguished panelists, thank you for this opportunity to provide testimony on the acutely important topic of access to civil legal services - - access to justice - - in New York

My name is William Savino. I am the Managing Partner of Rivkin Radler LLP, Long Island's largest law firm. I have served as President of the Nassau County Bar Association. I am the immediate past chairman of the Board of Directors of the United Way of Long Island. I am a founding member of the Long Island Insurance Community that has raised in excess of $3 million - - funds that have been spent on behalf of those in need across Long Island. I have also served as a member of the Board of Directors of the Long Island Association, Long Island's largest business association.

Before proceeding further, I would like to thank you, Chief Judge Lippman and the Office of Court Administration for focusing attention on the vital need to assure access to justice and the associated funding of civil legal services.

Long Island is a critically important economic component for New York State. Its 2010 gross metropolitan product, a measure of its output of goods and services exceeded $120 billion, as set forth in the Long Island Association's soon-to-be-released, "Annual Business Fact Book 2011." Excluding New York City, Long Island accounts for two-thirds of the combined output of New York's metropolitan areas.

According to the US Census, there are 1,339,532 residents in Nassau County and 1,493,350 residents in Suffolk County. It is without question one of the most desirable as well as most expensive places in the United States to live.

As the Business Fact Book notes, Long Island is fortunate to have a highly educated and talented workforce. This is matched by a strong array of small businesses that have shown great agility in the face of a recessionary economy. Long Island's small businesses have shown a great entrepreneurial "know how" especially under these unpredictable and rapidly changing business conditions.

The Long Island business community, as mentioned, largely comprises small businesses. According to the Long Island Association's, "Annual Business Fact Book 2011":

- "Almost two-thirds of all Long Island business establishments (nearly 61,000) employed 1-to-4 persons in 2009. Almost 90% of them employed fewer than 20 persons."
- Of the 96,440 businesses located in Nassau or Suffolk Counties, 93,126 have fewer than 100 employees.
- An estimated 109,100 Nassau-Suffolk residents were unemployed in 2010. This official unemployment figure excludes "discouraged" workers who are no longer actively seeking work and those working part-time involuntarily. The unemployment rate on Long Island exceeded 7% in June 2011. The New York State Department of Labor has reported that Long Island had lost 13,000 jobs from August 2010 to August 2011.
- In early August 2011, Newsday reported that more than 43,000 Long Islanders have exhausted their extended unemployment benefits in the past 17 months, increasing pressure on the strained economy and social services agencies, already facing reduced budgets.
- On Long Island from 2008 until December 31, 2011, foreclosure filings, as noted in the records of the Long Island United Way, were made against 36 of every 1,000 homes.
- As reported by the Empire Justice Center (with data current as of September 1, 2010), Suffolk County leads New York State with the most loans in foreclosure, and a similar number of loans at imminent risk of foreclosure.
- Foreclosure filings are up 319% in Nassau County, 274% in Suffolk County with estimates between 44% and 70% of New Yorkers facing foreclosure unrepresented by counsel.
- Nassau/Suffolk Law Services reports that in 2009, the Cities of Long Beach and Glen Cove and the District Courts in Nassau County and Suffolk County handled a total of 18,057 eviction cases. I would like to quote from a report prepared by Nassau/Suffolk Law Services

> We know from our staff's frequent presence at Landlord-Tenant calendar calls that the vast majority of these were residential evictions, each of which involved a family facing the loss of its home and the frightening prospect of homelessness. This does not even include the cases from the Town Justice Courts in eastern Suffolk, which handle all of the evictions for the five easternmost towns. At 10,194 cases, Suffolk County had more eviction cases than any locality in the state outside New York City, exceeding Buffalo by more than 2,300 cases. Nassau County was a close third behind Buffalo, with 7,398 eviction cases. <u>The courts make short shrift of unrepresented tenants, pushing through in a morning</u>

> calendars which may contain over a hundred cases, and determining the fate of a family in a few short minutes. All of Law Services projects combined provided legal assistance in 2,551 landlord-tenant matters last year, and provided legal representation in court on 1,475 of them (in some instances representing the same household in multiple consecutive cases brought against them by their landlord.) We successfully prevented eviction for 580 households (comprised of 1,679 persons) which, when you consider the cost of placing individuals and especially families in emergency shelter, as described above, is not only a benefit of vital importance to the households themselves, but a cost-effective means of reducing a burden on the public fisc. We also accomplished a significant delay of eviction in 960 cases, involving 2,994 persons. These delays, particularly when coupled with a reality check from the attorney early in the process to motivate the client, will often provide enough time for the tenant to secure alternate housing before an actual eviction and homelessness occur.

In the past decade, Nassau added 1,100 households and Suffolk added more than 30,000. There was a notable increase in single-parent households, particularly female headed households with children under 18. Non–family households, generally composed of individuals living alone, also increased -- many of them seniors living alone. These non-family households had significantly lower incomes than family households.

Long Island's United Way has long sponsored a program, "Project Warmth." Project Warmth assures delivery of energy to supply heat to those who cannot otherwise afford this basic human need. There has been a remarkable surge in the number of families in need of the services of Project Warmth matched, I might add, by an equally remarkable surge in the number of public utility "shut offs" to family residences in these pressing economic times.

When coupled with local government cuts in social services and even tighter allocation budgets among Long Island's many not-for-profits, one thing is clear: the "safety net" for the growing numbers of those among us who are less fortunate, is shrinking.

Inevitably, these "Long Island dynamics" will surely convert to an increased need for civil legal services by those adversely impacted. So, allow me to add yet another voice to those who have preceded me in exclaiming that access to justice, especially under the dynamics recounted in my testimony, is central to the vitality of Long Island's economic health. If Long Island is to fully exploit its first rate competitive advantages, yes, it must hold taxes down, provide affordable housing for its resident workforce, and ever improve its education and transportation systems. But, Long Island must also be assured that sufficient funding is available to provide its less fortunate residents with access to civil legal services. To do so is consonant with the goal of a thriving Long Island economy.

- For example, the Federal Reserve Bank of Boston recently reported on "Foreclosure's Price-Depressing Spillover Effects on Local Properties" concluding the spillover effects vary in form: lowering nearby property values, reducing the local property tax base, increasing blight and crime, and disrupting basic social ties. These problems on Long Island, I am convinced, could be better managed and reduced by providing the appropriate legal assistance at a much earlier point and throughout the legal entanglements that so often result.
- The spillover will have negative financial implications for the small businesses on Long Island that rely on a stable workforce; stable property values and a tax base that cannot afford any further increases.
- As noted in its March 2011 report; "The Mortgage Meltdown II," the Empire Justice Center noted that housing counseling saves homes; that homeowners are 1.7 times more likely to save their homes with the assistance of a housing counselor. The report further remarked that (i) housing counselors and legal assistance providers work closely together in every county in the state; (ii) homeowners are less vulnerable to financial scams when they have access to local resources; (iii) courts depend on referring homeowners to service providers; and (iv) those homeowners with legal counsel promote efficiencies in the judicial process, raise appropriate defenses to protect homeowners against lenders who broke the law and help re-negotiate loan terms.
- And, in sum, the challenges facing Long Island's less fortunate make evident those key findings articulated in the Task Force's November 2010 report.

The need for access to civil legal services, to state the obvious, grows as our economic conditions have worsened, bringing to mind a brief passage from one Dr. Suess, who so often, in so few words, made such powerful statements about the human condition. Dr. Suess once said: "Unless someone like you cares a whole awful lot, nothing is going to get better. It's not."

For more than a decade, my partners and associates have served as pro bono counsel for Nassau/Suffolk Law Services' Landlord/Tenant Dispute Panel. From this experience, we can tell you, first-hand, the dramatic difference counsel can make in expediting the judicial process and protecting the indigent in housing disputes. Often these representations have resulted in peaceful settlements benefiting both litigants as well as minimizing the court's time. It is a win-win for all concerned.

Allow me a moment of American pride. We, as fortunate citizens of this great nation, promptly rise, remove our hats, and clasp our hands over our hearts with pride, reverence and commitment in the presence of the American flag to recite our Pledge of Allegiance;

**"I pledge allegiance to the flag of the United States of America,
and to the republic for which it stands, one nation under God,
indivisible, with liberty and *justice* for all."**

Now, especially now, in these times, we pause and urge that without "access" we will have left "justice" as a mere word, not a tangible, valuable community benefit that functions in harmony with a thriving Long Island economy. Thank you.

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Hon. Anthony A. Scarpino, Jr.

Westchester County Surrogate, Acting Supreme Court Justice, and Supervising Judge for Fiduciary Matters, Ninth Judicial District

Co-Chair, Ninth Judicial District Pro Bono Action Committee

HON. ANTHONY A. SCARPINO, JR.
WESTCHESTER COUNTY SURROGATE

Born and raised in Mount Vernon, Judge Scarpino attended Mount Vernon High School and graduated with High Honors from the University of Connecticut. He received his Juris Doctor Degree from Syracuse University College of Law where he was selected the Dean's Outstanding Student, was President of the Law Student Senate, and was elected to Who's Who among students in American Universities and Colleges.

After law school, Judge Scarpino served as an Assistant Corporation Counsel for the City of Mount Vernon. He left local government in 1977 to become a Special Agent with the Federal Bureau of Investigation (FBI). During his tenure with the FBI, he worked on numerous civil rights violations, bank robbery, kidnapping, extortion cases and foreign counter intelligence matters.

After a brief stay with Banker's Trust Company as an Assistant Vice President, in 1984 Judge Scarpino was appointed Associate City Court Judge of Mount Vernon by the late Mayor Thomas E. Sharpe. In 1985, he was elected City Judge. In 1986, he became Senior City Judge, presiding over one of the busiest courts in the County. In November 1988, Judge Scarpino was elected Westchester County Court Judge. At thirty-seven, he was the youngest County Court Judge in Westchester's history.

In July 1989, he was appointed Acting Supreme Court Justice and was assigned to expand the Special Narcotics Part in the Westchester County Courthouse. In July 1991, he was reassigned and presided over the most serious criminal cases occurring in Westchester County. In 1993, he was elected to the New York State Supreme Court for the Ninth Judicial District. He was assigned to Rockland County and Westchester County handling Civil Parts. In February 1998, he was assigned to the Special Matrimonial Part. In November 2000, Justice Scarpino was elected Westchester County Surrogate. In addition to his responsibilities as Surrogate, in April of 2005, Judge Scarpino was appointed Co-Chair of the Ninth Judicial District Pro Bono Action Committee. He continues in that capacity to this date. In addition, in June of 2006, Judge Scarpino was appointed Supervising Judge of the Matrimonial Part of Westchester County. He served in that capacity until his appointment in January of 2010 as Supervising Justice for Fiduciary Matters and Article 81 proceedings in the Ninth Judicial District.

In 2006, he was recognized by *Lawdragon* Magazine as one of the top 500 judges in the United States, and the Westchester County Bar Association for his contributions to the legal community. In 2007, he received the "Justice For All Award" from the Westchester Women's Bar Association for his work in the Pro Bono area. In 2009, he received the Columbian Lawyers Association Distinguished Service Award. In 2010, he was re-elected Surrogate of Westchester County with the endorsement of all political parties.

Judge Scarpino is an adjunct professor at Pace Law School, teaching Surrogate's Practice; Iona College, teaching Criminal Law, Procedure, and Evidence to graduate students in the Criminal Justice Department and Westchester Community College, teaching Health Care and Medical Malpractice Law. He is a member of the Pace Law School Board of Visitors, the Westchester County Task Force on Bias and Hate Crimes and was the Ninth Judicial District's Coordinator for the Simon Wiesenthal Center's Task Force Against Hate.

MEMORANDUM

TO: HON. JONATHAN LIPPMAN
Chief Judge of the State of New York

HON. ANN PFAU
Chief Administrative Judge

HON. A. GAIL PRUDENTI
Presiding Justice

HON. SEYMOUR W. JAMES, JR.
New York State Bar Association President-Elect

FROM: HON. ANTHONY A. SCARPINO, JR.
Westchester County Surrogate

DATE: September 9, 2011

RE: **Testimony Summary for September 20, 2011 Hearings**

My testimony will discuss the importance of adequate funding to support the providing of counsel to the needy. This testimony is based upon my 28 years of experience and observations as a trial judge in City, County, Supreme and Surrogate's Courts as well as my responsibilities as co-chair of the Ninth Judicial District's Pro Bono Action Committee since 2005.

AAS:jls

MEMORANDUM

TO: HON. JONATHAN LIPPMAN
Chief Judge of the State of New York

HON. ANN PFAU
Chief Administrative Judge

HON. A. GAIL PRUDENTI
Presiding Justice

SEYMOUR W. JAMES, JR., ESQ.
New York State Bar Association President-Elect

FROM: HON. ANTHONY A. SCARPINO, JR.
Westchester County Surrogate
AJSC, Supervising Judge for Fiduciary Matters, 9th JD

DATE: September 13, 2011

RE: **The Chief Judge's Hearings on Civil Legal Services - 9/20/11**

Judges Lippman, Pfau, Prudenti and Mr. James, thank you for the opportunity to appear before this panel to discuss the importance of adequate funding for civil legal service for the needy.

I have had the privilege of serving the people of New York as a judge in various trial courts for the past 28 years. In each and every court, I have witnessed the difficulties and inequities faced by pro se litigants who cannot afford legal representation. Over the years, I have also witnessed an increase in the number of such pro se litigants. The consequences of the increase in such unrepresented litigants are numerous. I would say that these effects fall into two categories: first are those on the pro se litigants themselves; second are the effects on the Court system and all litigants, even those not involved in litigation with a pro se litigant.

Obviously, the most immediate effect on pro se litigants is their ability to prove or to defend their respective case. As this esteemed panel is well aware, case law requires Courts to hold pro se litigants to the same standards of conduct and procedure to which attorneys are held. However, few, if any, pro se litigants are capable of meeting this standard, and Judges and Court personnel are legally and ethically forbidden from providing litigants with legal advice. As a result, more often than not, pro se litigants with a meritorious case simply lack the ability to prove their

case. Either they do not know what they have to prove and/or how to prove it. And, the Courts are powerless to help them do so.

I could recite countless instances in which a pro se litigant's inability to afford counsel resulted in an injustice which I was powerless to prevent. For example, during my tenure as a City Court Judge in Mount Vernon handling landlord/tenant matters, most unrepresented tenants did not know how to prove a case involving a landlord's breach of the warranty of habitability. If not for the assistance which the Legal Services of the Hudson Valley provided to some of these needy tenants, unscrupulous landlords would have been able to charge rent without providing basic services bargained for by their tenants, with catastrophic consequences to the tenants. Unfortunately, Legal Services of the Hudson Valley is simply unable to meet the overwhelming need for legal counsel in these matters. Later, as a Supreme Court Justice (as both an IAS Justice in the Westchester Matrimonial Part and as a Supervising Justice of the Matrimonial Part), and, of course, as Surrogate for the past 11 years, I have regularly presided over litigations involving unrepresented litigants who cannot afford counsel. Unfortunately, some of these situations provided the same potential for inequitable results.

Another potential consequence of litigants being forced to represent themselves is how their experience affects their perceptions of the Court system and justice. Many pro se litigants do not understand the legal and ethical limitations placed upon the Courts. Sincerely believing that they have suffered some legal wrong, they not only come to the Court seeking justice, but believe that the Court's role is to help them achieve their vision of justice. When the Court cannot help them in the way they believe it should, and they ultimately lose the case, some walk away convinced that "justice" is a concept reserved for those who can afford an attorney, or that a particular judge is ignorant, biased or corrupt.

Matters involving pro se litigants also affect the Court system overall, and therefore, all litigants appearing in the Court. Having handled thousands of pro se matters, I can confidently state that a "routine" pro se matter does not exist. Rather, matters involving pro se litigants regularly place disproportionate demands on the time of Court system personnel. Based on my personal experience, I estimate that litigation involving an unrepresented litigant generally takes 3-to-4 times longer than does a comparable matter in which the litigants are represented by counsel. Ultimately, this adversely affects the Courts' ability to administer justice efficiently to all litigants, not only pro se litigants. This is particularly true, and even more so, when a matter involving a pro se litigant goes to trial. In the future, this will only be magnified by the judicial system's ever-increasing caseload and by staff reductions due to budgetary constraints.

With those factors in mind, members of the Ninth Judicial District Pro Bono Committee, of which I am the Co-Chair, have spent an enormous amount of time and energy to recruit private attorneys to assist financially eligible unrepresented litigants. Since 2005, we have personally recruited approximately 500 Westchester attorneys to volunteer their time through the Legal Services of the Hudson Valley to assist the such litigants in Landlord/Tenant, Matrimonial, Domestic Violence,

Foreclosure, Family Court, Consumer, Elder Law and other matters. Originally restricted to Westchester County, similar committees have been formed to cover the other four counties in the Ninth Judicial District, resulting in the successful recruitment of an additional 400 attorneys to serve the neediest members of those counties. At present, the Pro Bono attorney list for the district is nearly 900 attorneys.

Unfortunately, the efforts and energies of all the members of these committees, which include judges, bar association representatives, legal service providers and private practitioners, are about to be for naught due to the recent reductions in funding to the Legal Services of the Hudson Valley. It and other similar provider organizations are the critical link between the committees' recruitment efforts and those who need representation. Those organizations are the match-maker that complete the circle. Without them, the efforts bear no fruit.

Specifically, I would like to highlight two programs initiated by the Pro Bono Committee to demonstrate the substantial loss that has occurred by the recent elimination of the Pro Bono coordinator of the Legal Services of the Hudson Valley due to budget cuts.

Project "FAIR PLAN" (Family Attorneys in Rockland Providing Assistance Now) was envisioned as a partnership between the Court system, Legal Services of the Hudson Valley and local attorneys in Rockland who are experienced, volunteer, family law attorneys. These attorneys were to be trained specifically to give advice and counsel to pro se litigants in the context of limited scope representation. The project was housed in the Family Court in Rockland County and overseen by the Legal Services of the Hudson Valley pro bono staff. FAIR PLAN recruited volunteer attorneys through offering a free Continuing Legal Education program as well as the ability to earn further CLE credits for their pro bono work on the project. During the pilot stage of the project, we successfully recruited approximately 35 volunteer attorneys, and a Legal Services coordinator staffed a help desk once a week so that any eligible unrepresented litigant could utilize the program. Not only did otherwise unrepresented litigants receive legal counsel, this collaboration significantly reduced their requests of assistance from the Court staff members. This latter aspect was particularly significant because the Court staff members were unable to give the time and attention needed to meet the volume of litigants seeking assistance.

Unfortunately, due to the recent budget crisis, the project lost funding for the position of pro bono coordinator, and the pilot program was discontinued. The local service provider, Legal Services of the Hudson Valley, has only one pro bono staff member, and she is simply unable to coordinate and supervise such a program in addition to her other duties for the agency. Encouraged by the original success of the Project FAIR PLAN, Committee members in Dutchess County intended to implement a similar project in Dutchess County Family Court, but the lack of a staff person to coordinate such a project resulted in an indefinite hold on its inauguration.

Similarly, budget constraints led to the cancellation of Project APARTMENT SAVE, a pilot program aimed at providing counsel to unrepresented litigants in

landlord/tenant proceedings in Westchester County. The local city and town Judges supported the project, and in the City of Mount Vernon, the Judges participated in a free continuing legal education program to ensure that the volunteer attorneys were properly trained. Again, the project was terminated due to the lack of supervisory and administrative resources resulting from the loss of the Local Action Committee's pro bono coordinator.

On a positive note, one continued success remains – the Matrimonial Assigned Counsel Program, a collaboration between the Ninth Judicial District's Administrative Judge's office, local legal services agencies (both Legal Services of the Hudson Valley and the Legal Aid Society of Rockland County), and the local matrimonial bar. In Westchester, Orange and Rockland Counties, the local legal services organizations screen unrepresented litigants in matrimonial actions to determine whether they are "income eligible" pursuant to the federal poverty guidelines, and, if so, assist them in preparing pro se applications to the Administrative Judge for assignment of counsel. If found eligible, the Administrative Judge will assign an attorney to represent the litigant on a pro bono basis. The attorneys are then eligible to receive CLE credits through the legal services agency for the time spent working on the case. This program is hugely successful and serves approximately 250 people per year who would not otherwise be able to procure legal counsel. This program is vital to the operation of the already overburdened matrimonial part in that it relieves the Court of the difficulties inherent in dealing with pro se litigants.

The administrative costs of establishing and maintaining successful pro bono programs are not insignificant, and in the present economic climate, it is understandable that funding must be trimmed. However, the costs of these programs are minimal when seen in the context of the return they provide. Litigants who cannot afford counsel deserve the same justice as those who can, and sometimes these programs provide the only means to ensure that these litigants are properly represented. The partnerships and programs that have grown from the work of the pro bono local action committees during the past six years have been an invaluable tool in assuring that justice for all is a meaningful concept in the Ninth Judicial district and elsewhere. The loss of funding of one administrative position has put the committee in a position where it is impossible to continue its work on a scale that is needed to meet the ever-growing demand.

Obviously, I do not mean to imply that every pro se litigant has a meritorious case, which they would be able to prove if only they were represented by counsel. That, however, does not minimize the benefit of those who cannot afford to retain counsel having access to competent, independent legal advice. In fact, sometimes the people who would benefit most are those without a meritorious case. That is, an attorney representing their interests should be able to explain why they would be unsuccessful if they pursued a matter through litigation, thereby avoiding an unpleasant experience for the litigant. Likewise, the early intervention of counsel, sometimes a simple letter, could prevent other disputes from making it into the courthouse. However, once they are in the Court system, pro se litigants generally do not have a positive experience. Nor does the Court or the other litigants.

It seems to be a popular mantra in the world of politics that we have to return to our founding father's thoughts. A Benjamin Franklin quote seems appropriate to sum up and conclude my thoughts concerning the benefits of providing needy pro se litigants with access to independent legal advice... "An ounce of prevention is worth a pound of cure."

Barbara J. Strauss

Immediate Past President, Orange County Bar Association

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In 1980, Barbara Strauss began her career as a lawyer in the New York offices of the United States Department of Health & Human Services. In 1982, she took a position with the Orange County District Attorney's Office, serving as a Senior Assistant District Attorney for eight years. As the Senior Assistant District Attorney, she was in charge of the prosecution of child sex abuse cases and supervised the appellate litigation. In 1990 she left the District Attorney's Office and established her own law firm. Barbara Strauss has maintained a private practice for over 20 years dedicated to advocating for men, and women coping with divorce, family law disputes or criminal charges. She represents clients in Orange, Sullivan, and Ulster Counties. Barbara Strauss is also a court appointed lawyer for children representing children's interests in divorce, custody and child abuse matters. For over five years she has co-taught the Parents Apart teaching parents in the midst of custody disputes about the impact of litigation on children.

Ms. Strauss is an active member of numerous legal organizations and has taught continuing legal education classes to lawyers, and has been an attorney/teacher at the Intensive Trial Advocacy Program at Yeshiva University's Cardozo School of Law. She is also an active and contributing member of the Goshen community. She is the Immediate Past-President of the Orange County Bar Association (2010-2011) and is a former president of the Women's Bar Association of Orange and Sullivan Counties. She is also a member of the House of Delegates of the New York State Bar Association. She is also a Member of the Grievance Committee for the 9th and 10th Judicial Districts, and a founding member of the Orange County Collaborative Practice Group.

Her *pro bono* and community activities include, "A Friend's House" Runaway and Homeless Youth Shelter Advisory Committee; Board Member, YWCA of Orange County; Orange County Safe Homes; Orange County Dispute Resolution Center; Leadership Orange, Goshen Central School District; Former Member, Board of Directors, Goshen Chamber of Commerce and the Mental Health Association of Orange County; Volunteer Mediator, Orange County Dispute Resolution Center, Parents Apart Program.

Among her awards, Ms. Strauss, has been honored with the Pro Bono Award for Outstanding Contribution, Orange County Bar Association, 1994; received the Special Recognition Award for Pro Bono Activities, Field of Family Law, American Bar Association, 1994 and was presented Women of Achievement of Orange County Award, by the Sarah Wells Girl Scout Council and the YWCA of Orange County, 2004. She received her J.D. degree from New York University Law School and graduated with a BA in psychology, *cum laude*, from Wesleyan University.

Testimony of Barbara J. Strauss
Law Office of Barbara J. Strauss
Goshen, New York (Orange County)
Immediate Past President of the Orange County Bar Association

Hearings to Expand Access to Civil Legal Services in New York

Presented before:
Hon. Jonathan Lippman, Chief Judge of the State of New York
Hon. A. Gail Prudenti, Presiding Justice of the Second Department
Hon. Ann Pfau, Chief Administrative Judge
Seymour W. James, Jr., President Elect of the New York State Bar Association

Thank you Chief Judge Lippman for inviting me to speak before this panel on the future of civil legal services in New York. With so many people lacking such services in Orange County and elsewhere in the state, your emphasis on this issue could not be more welcome.

As a member of the legal profession for more than 30 years and as a former president of the Orange County Bar Association I know how the lack of legal representation has the potential to devastate people's lives. I also recognize the value of recruiting local attorneys to work alongside legal service providers to assist in providing representation for individuals facing a financial or personal crisis. *Pro bono* efforts, however, cannot be effective without the leadership, training and coordination provided by local civil legal service projects.

In Orange County, as in other suburban/rural counties, the economic downturn has increased the challenges faced by legal service providers. But one issue has had a

particularly profound and troubling impact on Orange County, the foreclosure crisis. Our proximity to jobs in the metropolitan area has created enormous housing development in the last few decades. But much of that seemingly affordable housing has been financed by the kind of loans that borrowers ultimately could not handle when the economy turned and they had increasing difficulty meeting their payments. As a result, foreclosure filings have soared in the county, a crisis that persists. And many, if not most of the homeowners facing foreclosure, cannot afford the legal representation that is important in protecting their rights against lenders, who always have lawyers, in court proceedings many ordinary citizens find difficult to understand.

I was president of the Orange County Bar Association in February 2010 when heard that Judge Lippman named Orange County as one of two counties in a pilot project to offer representation in settlement conferences for homeowners facing foreclosure. I thought, “That’s great, let me see what we can do to help.”Judge Lippman had recently given an address to the Orange County Bar Association—I gave him a call and told him how excited we were and asked how we could best contribute, so we were actively involved right from the get-go. We spread the word to attorneys through our e-mail network, stayed in close communication with legal services providers working on behalf of low-income persons in our community, and immediately had a group of lawyers signed up to attend the training programs necessary to be *pro bono* contributors to the pilot project.

The Orange County Bar Association was particularly eager to support the project because our entire community has been hit so hard by the foreclosure crisis. While protecting our neighbors from the terrifying prospect of losing their homes drives our

involvement, we are likewise concerned that the rise in foreclosures has had a ripple effect throughout Orange County. As foreclosures have become more common, foreclosure sales have likewise increased. Homes sold in this way tend to sell for less than the prevailing market value. Even ten years ago, a below market value foreclosure sale would have had comparatively little impact on community home values, but the rise of sophisticated online sales databases like Zillow.com, which calculate home values based on recent local sales, mean that just a few foreclosure sales can have a drastic effect on the value of neighboring homes. Thus, depressed home values, driven in no small part by the increase in foreclosures, have had a significant negative impact even on those not immediately at risk of foreclosure.

Here's one example of the ripple effect caused by the rise in foreclosures from my own practice: in a large number of the divorce proceedings I handle, the parties owe more money on their mortgage than their home is currently worth. In those situations, the couple is forced to make a series of complex calculations—if they can sell, will the bank accept a short sale; should one of them stay in the home, should they wait a few years and hope that the market recovers, or do they have no choice but to let the mortgage go into default and lose the home. Dividing marital assets in a mutually acceptable way is always difficult, but it has become even more challenging in the current economic environment.

With alarming frequency, parties facing foreclosure hit a point where they utterly give up—they stop attempting to pay their bills, stop trying to preserve their credit ratings, stop opening the threatening-looking envelopes that arrive in the mail, and simply abandon their homes. Dedicated attorneys can help these men and women to

realize that they have other, better choices. Even slowing the foreclosure process by a few months can make a tremendous difference in the lives of those affected, providing them with an opportunity to accumulate some savings before they seek alternate housing. Others may have the opportunity to modify their loan at a lower interest rate or a longer term. By showing those facing foreclosure that they have more options than they supposed, families are kept in their homes, communities are preserved and our local economy is protected. Without representation, foreclosures cause even greater harm than the sad consequences of loss of a real estate investment. Credit is ruined; it becomes difficult to find alternative housing because of lack of credit, neighborhoods falter, businesses serving the neighborhoods lose money and the funding of local schools decreases. It is genuinely scary.

When it comes to foreclosures, a coordinated effort with our local civil legal service organization, the Orange County Bar Associations and the Orange County Women's Bar, housing counselors and the courts -is the best possible means to insure better decisions are made and rights are protected, at a time when so many have so much to lose.

Thank you for this opportunity and for your extraordinary efforts to provide much needed legal services for people facing the frightening prospect of homelessness.

Terri Torchio

Director of Economic Independence, Department of Social Services, Orange County (on behalf of Commissioner David Jolly)

Task Force to Expand Access to Civil Legal Services in New York

Testimony Summary

Orange County Department of Social Services

Presented by: David Jolly, Commissioner

Chief Judge of the State of New York, Hon. Jonathan Lippman, Presiding Justice A. Gail Prudenti, Chief Administrative Judge Ann Pfau and New York State Bar Association President Elect Seymour W. James, Jr. Thank you for providing us with this opportunity to address your panel today on civil legal services in New York. Let us start by applauding your efforts to strengthen the health and well being of New York residents by addressing the need for civil legal services across the State.

We deeply appreciate and applaud your commitment to ensuring that the most vulnerable people among the growing Orange County population receive the quality services they require and deserve. We especially appreciate and applaud your commitment to a local exploration combined with solutions at the state level for these very significant issues. We know that, through your leadership, effective change can be accomplished. We are committed to work with you to create and implement the solutions that will ensure the continued opportunity for people to achieve greater economic security resulting in lives that are healthy, satisfying, and productive.

We understand the complexities and importance of ensuring that the New York State meets the needs of the most vulnerable residents while protecting the fiscal integrity of the State and its collective tax payers. With this understanding, we need to identify a balance between cost and access to ensure that our most vulnerable residents continue to have access to vital services, including civil legal services. In many cases, access to civil legal services for our working poor families can be the most important service they receive.

While the need for access to civil legal services is essential in many areas for our most vulnerable consumers, today we would like to focus on two essential services: housing and domestic violence.

Housing:

Far too many of our working poor / under employed families have very limited access to social welfare service as they remain just above the threshold for direct assistance. In these circumstances, access to legal service becomes essential as they may experience difficulties with housing, day care, employment and / or disability assistance which requires a high level of technical expertise in order to access assistance.

Access to civil legal service in the area of housing has become the most important issue facing our most vulnerable residents. As the economic recession has continued, the rental market where far too many of our consumers live is becoming increasingly complex to navigate and access to affordable units is at an all time low. As new home sales have slumped and foreclosures have risen, more and more families living on the economic edge have found themselves in the rental market. As new residents have moved into the rental market and / or choosing to wait longer to purchase a new home, market rates for the County have outpaced wage increases by record margins.

While logic may dictate that during a recession, prices decrease the opposite is true in the rental housing market. The basic economic principals of supply and demand conspire to place new pressures on the County low income population. As supply dwindles and demand increases the corresponding market rates for the County continue to grow. In years past, being late on a rent payment might not result in much attention from the landlord, as the supply of rental units far outpaced the demand. During these times, landlords are patient with families as they struggle to figure out which bills to pay first with their limited resources.

As the supply has begun to dwindle, our most vulnerable residents can no longer prioritize the repair of a car over the payment of rent, during difficult months as eviction proceedings are much more likely to begin soon rather than later. In these cases, access to the expertise and legal assistance offered by agencies such as the Hudson Valley Legal Services become important. Many of our consumers have limited knowledge of their rights in the market place and can be easily taken advantage of. In most cases, our families facing eviction in Orange County are hard working families, living at the brink of financial disaster, where making decisions such as how to pay their rent are topics at the dinner table each and every night of the week.

In the area of housing assistance, access to legal services is essential and in Orange County as we struggle with limited resource, housing assistance must be a priority over other forms of assistance.

For our homeless population, access to a safe, healthy rental unit can be almost impossible to achieve. In many of these cases, simple economic principals are at work again creating a situation where our homeless population remains at great risk. In Orange County, we have a unique and creative way to serve our homeless families, with legal services an essential part of the work we do each and every day for our homeless consumers. We have moved to develop a more progressive system for the following reasons: 45% of our homeless population has mental health and / or substance abuse issues, 26% are homeless as a result of an eviction, 18% have a chronic illness and with the changes in rental market lengths of stay have increased over the past few years. For our homeless, access to legal services is the link in the chain that will allow each homeless family and / or individual to find permanency as soon as possible.

For our homeless, legal services should include: eviction prevention, lease protections and tenant awareness. We have found that eviction proceedings can result in significant changes in the rental market, as high quality eviction services tend to have a ripple effect in the community. When access to eviction proceedings is vibrant, the landlords in the area have a greater willingness to work collaboratively with a tenant at-risk of eviction.

We have also found that tenant awareness workshops when run in conjunction with landlords and civil legal providers can have a major impact on the behaviors of both tenants and landlords. Sometimes a simple understanding of the rules, both for tenants and landlords helps to alleviate future problems in the marketplace as tenants and landlords gain a better understanding of each other. In Orange County, Hudson Valley Legal Services has been instrumental in assisting the DSS with implementing tenant awareness workshops across the County, which is a testament to the impact that civil legal services can have within a community.

Eviction prevention, tenant awareness and leaseholder protections are the most important of the civil legal services available in Orange County at present, but access to each of these services is very limited at this time. The investment in civil legal services from the State of New York has been almost non existent in recent years. In previous years, the State used excess TANF Funds to support eviction prevention services, but as Federal funds have been redirected, access to legal services across the County has grown increasingly limited. Investment is needed today in eviction prevention and homeless prevention services that include both a social and legal component. Efforts to prevent eviction from a social perspective only fall short, as do efforts to prevent eviction from a legal perspective only.

The combination of service is the key, we need to work together to encourage change in the individual or family, while protecting their legal rights. County governments currently make the investment in the social change; we need a greater investment in partnerships on the civil legal services from the State of New York.

Domestic Violence:

Victims of domestic violence face significant challenges as they begin to make the courageous decision to leave an abusive relationship. While safety, social and child welfare services are available, access to legal service remains a critical challenge for most victims.

Safety depends on access to legal services to secure an order of protection, advice and legal expertise that can outline a path through the legal maze into independence and safety.

Additionally, victims of domestic violence often find themselves in need of assistance across systems. They access public assistance, mental health and/or substance abuse treatment, housing crisis's including eviction and foreclosure. Civil legal services assist struggling families and individuals to stabilize by securing access to benefits and programs that help them stay safe, healthy, and sheltered in the midst of crisis. Civil legal services provide cost-saving services to New York State. These preventative services save money in the long run by avoiding the long term costs of hunger, homeless and emergency shelter stays, provision of foster care and chronic health problems associated with exposure to abuse and economic instability.

Thousands of individuals affected by domestic violence and their families rely on civil legal services each year. While research is clear that poverty and the current economic crisis does not cause domestic violence, we do recognize that economic hardship can exacerbate an already unhealthy situation and that those experiencing both domestic violence and poverty are therefore facing significant crisis on two fronts. More importantly, women when they leave an abusive relationship face significant economic hurdles. Access to bank accounts may be limited and credit cards may be terminated if the account was shared. The first few weeks of departure access to a myriad of services is essential to the future success of the family and in many cases, the key can be access to civil legal services to begin process of protecting shared assets. This complex situation reduces access to vital services and increases the number of barriers faced in finding safety. Orange County believes that civil legal services are one of these vital services necessary for victims of domestic violence. This belief is supported by a $150,000 legal services funding stream that while significant, does not meet the needs of all of our victims.

Our legal service program provide a variety of services relied by victims and service providers across the County. The program helps victims who are abused obtain orders of

protection and secure child support orders, modifications and most importantly matrimonial support. The majority of victims who reach out for assistance to local domestic violence programs include a request for legal services on their list of needs. Victims find it difficult to access legal services for a variety of reasons and lack of resources is the reason most cited. Asking a mother of 3 to pay a $3,500 retainer on a salary of $30,000 is often impossible and leaves vulnerable victims arriving at court with no legal representation. They find themselves very quickly overwhelmed by the legal system and lack of quality representation may increase the danger for victims and their children. Moreover, without an attorney victims may find themselves coerced and/or intimidated into making decisions that may not be in their best interest. Recently a victim on domestic violence who was placed on our waiting list for services explained her desperation to find an attorney to help her with her custody case. She had no money for an attorney because even though she was working a full time job and still qualified for civil legal services, access due to a statewide lack of funds creates a prioritization of scarce resources. She tried to work through the legal system on her own but found herself trying to navigate child support, orders of protection and a custody petition with very little support. As the legal proceedings proceeded on, access to resource become increasingly difficult until she finally gave up, dropping the order of protection, settling on child support and agreeing to an arrangement on visitation that was not safe for her, or her family members.

In this case and in many others, the County cannot do it alone; we need assistance and support from the State to develop a comprehensive system of legal protections for victims of domestic violence, who have gained the courage to leave. Without such a robust system, too many of the victims we serve are victimized again as they struggle through the court process.

Civil legal services must be adequately funded by the New York State. The state must make a strong commitment to those most vulnerable, including those affected by domestic violence and their children, to ensure them quality, accessible and affordable legal

representation. Doing so can increase the safety for victims of domestic violence and their children and refusing to do so will most certainly cost the state more in the long run.

Alavita Williams

Client of Legal Aid Society, accompanied by Sumani Lanka

Alavita Williams

Summary of Client Facts

Ms. Williams is a retired New York City Corrections Officer. She came to The Legal Aid Society in 2009 after she had refinanced her mortgage twice, first with Defendant A and less than a year later with Defendant B. Both mortgages were arranged by a group of brokers and a "hard money" lender, and both were adjustable rate mortgages with unaffordable interest rates and grossly unfavorable terms. One of the Defendants dissuaded Williams from retaining her own counsel at the closing by stating that he would take care of everything and that there would be an attorney present at the closing to represent her. In fact, the attorney was working closely with the hard money lender.

At the first closing, through misrepresentations and omissions, the Defendants tricked Ms. Williams into transferring title to her home to a Limited Liability Corporation in the property address' name and she became the sole managing member of this Corporation. Ms. Williams was then deceived into taking out, in the name of the LLC, an approximately 7-year adjustable rate mortgage of $250,800, starting with an interest-only rate of 15% and a balloon payment of $250,800 due at the end of the 7-year loan term. This mortgage stripped $6,900 of equity from Williams' home. Furthermore, unbeknownst to Ms. Williams, the first lender escrowed $37,620 of equity from the home, paying itself monthly interest-only payments of $3,135 from the escrow account until April 2007. That lender was not registered to do business in New York State.

Less than one year after the first mortgage refinance, the Defendants conspired to induce Ms. Williams into refinancing her home again, paying off the first lender and losing additional equity. At the closing, Ms. Williams signed the loan documents without a clear understanding as to the amount and the terms of the loan. Without her knowledge, Ms. Williams had executed a document transferring title back to her from the sham LLC and signed two different sets of loan documents to cover the Defendants' trail. As a result of this refinance transaction, Ms. Williams ended up with an adjustable rate mortgage at a higher loan amount of $282,750 with a initial interest rate of 10.5%, and she paid excessive fees and costs and received a mere $850.64 at the closing.

Working together with pro bono counsel from Fitzpatrick, Cella, Harper & Scinto, The Legal Aid Society filed suit against these Defendants in federal district court, alleging violations of the federal Truth in Lending Act (TILA) as well as fraud and various violations of New York State law. The district court denied the Defendants' motions to dismiss and then discovery of the Defendants operations proceeded.

As a result of the Society's representation of Ms. Williams, in April 2011 Ms. Williams and the current holder of the mortgage entered into a Settlement Agreement and Loan Modification. Through this agreement, Ms. Williams' principal balance was reduced and she now has a 30 year fixed interest rate of 3%, and affordable monthly payments of $1,432.05. Ms. Williams also settled damages claims against the individual brokers and the second lender. Litigation is still proceeding against the first lender and the attorney who purported to represent her interests at the first closing.

Introduction by Sumani Lanka

Good morning Chief Judge Lippman and members of the Hearing Panel, and thank you for this opportunity to appear here today. My name is Sumani Lanka, and I am a staff attorney with the Foreclosure Prevention Unit at The Legal Aid Society, Queens Neighborhood Office. I am here today with my client, Alavita Williams, who currently resides in Queens Village, New York with her 14-year-old daughter. According to recent statistics on the foreclosure crisis, Queens County, particularly southeastern Queens where Ms. Williams resides, is one of the neighborhoods in New York City hardest hit by foreclosure filings and their effects on homeowners, tenants and the surrounding community. Many homeowners continue to remain unrepresented in Court, resulting in vast numbers of unresolved foreclosure cases, uncertainty in the neighborhood and declining property values. In fact, throughout all the boroughs of New York City, foreclosures continue to be a pervasive problem which homeowners are ill-equipped to face without legal advocacy or assistance. In our last survey of applicants for Society services in 2010, the demand for legal assistance with foreclosures had increased by 800 percent.

In addition, within these foreclosure cases there is a enormous need for legal representation in other related civil litigation areas, including consumer law, bankruptcy, family law and housing law. Unfortunately, The Legal Aid Society is only able to assist a small fraction of New Yorkers seeking our assistance in civil legal matters, only 1 out of every 9 eligible New Yorkers who seek our services.

Ms. Williams came to The Legal Aid Society as a victim of a predatory lending scheme perpetrated by questionable lenders, attorneys and real estate brokers who set about stripping over $85,000 equity out of her home by refinancing her home twice and charging excessive fees and closing costs. As a result of these refinances, Ms. Williams became burdened with unaffordable mortgages, leading to default and inevitable foreclosure. Predatory lending practices have come under increasing scrutiny and criticism by both federal and State regulators. The Legal Aid Society is currently representing Ms. Williams in an affirmative action filed in federal court in the Eastern District of New York against a hard-money lender that specifically targets vulnerable homeowners and induces them into entering highly unaffordable mortgages that violate consumer protection laws. Due to our representation over the course of two years and hundreds of attorney hours, Ms. Williams was able to obtain an affordable loan modification, recoup some of the equity lost by settling with the brokers and the second refinance lender, and save her home from inevitable foreclosure. Ms. Williams will now tell her story.

Testimony of Alavita Williams
Task Force Hearing on Civil Legal Services

Good Morning. My name is Alavita Williams, and I am currently a client of The Legal Aid Society. I would like to share with you my story and describe how the advocacy and work of The Legal Aid Society helped me save my home from foreclosure. I hope that my story will demonstrate the need for continued and increased funding for The Legal Aid Society and other

civil legal services programs. These programs are vital for New Yorkers who cannot otherwise afford legal representation or assistance but desperately need access to such services.

I currently reside in Queens Village, New York with my 14-year-old daughter. We have lived in our home for over ten years. Over the years, I have spent considerable money maintaining and repairing this house. I am a retired member of the Corrections Officers' Benevolent Association (COBA) union and I worked for the NYC Corrections Department. If my daughter and I were to lose this home, it would be extremely difficult for us to find another place to live, particularly with a foreclosure on my credit report.

After purchasing my home in March 2001, I ended up falling behind on my mortgage payments due to extensive repairs that needed to be done on the home. I tried many different ways to get current on my mortgage, including applying for a loan modification and looking for refinancing options. In April 2006, a mortgage broker contacted me about refinancing my home with what I later learned was a "hard-money lender", an individual who looks for people who need immediate help and tries to loan them money at very high interest rates. But at the time, through assurances from the broker, I believed that I was refinancing my home with a 30-year mortgage at an affordable interest rate. I was told that I didn't need my own attorney at the closing, because an attorney would be there to represent my interests. However, at the closing in May 2006, I met an attorney for the first time and I was instructed to sign many loan documents that were not clearly explained to me. Without knowing it, I had transferred the deed to my home to a sham LLC created in the property address' name, of which I was the sole managing member, and I ended up with two mortgages under the LLC's name. One mortgage was an approximate seven-year interest-only adjustable rate mortgage of $250,800, with an interest rate starting at 15% and a balloon payment of $250,800 due at the end of seven years. I later learned through The Legal Aid Society that such a mortgage violated many consumer protection laws and that the lender transferred the deed to the LLC in order to evade these laws. The second was a junior mortgage of $6,160.10 to be paid off in one year at a 15% annual interest rate. Also unbeknownst to me, the lender took $37,620 of equity from my home and put it into escrow to pay itself monthly mortgage interest-only payments of $3,135 for almost a year.

Less than a year later, in March 2007, the same mortgage broker contacted me again and arranged a second refinance of my loan with another lender, although I didn't understand why I had to refinance my loan again. At the closing, I was instructed again to sign many loan documents without any explanation, which included a deed transfer from the sham LLC back to my name. Because the transaction happened so quickly, I was unaware that I was taking out a 30-year adjustable rate mortgage of $282,750, starting at a high interest rate of 10.5%, with monthly mortgage payments of $2,896. Because the loan was unaffordable from the outset, I ended up falling behind soon thereafter in August 2007 after depleting my savings in making the first three monthly mortgage payments. Furthermore, as a result of the May 2006 and March 2007 refinance transactions, over $85,000 of equity was taken from my home.

In late 2008, I was referred by another not-for-profit organization to contact The Legal Aid Society for assistance with my case. Although I was not currently in foreclosure, I had received the 90-day notice and I feared that foreclosure proceedings were imminent. After speaking with a staff attorney in the Foreclosure Prevention Unit at The Legal Aid Society, she carefully reviewed my case and informed me of my legal rights. She further advised to me that I had legal claims against the lenders and other parties involved the May 2006 and March 2007 refinance transactions. She also informed me that there were several other cases pending throughout New York and New Jersey against the same hard-money lender for similar predatory lending practices.

The Legal Aid Society agreed to represent me in an affirmative litigation case against the fraudulent parties in the Eastern District of New York, in hopes that they would be able to save my home and protect the rights of other homeowners in similar circumstances. As a result of Legal Aid's direct representation, I was able to reduce the principal amount due on the loan and modify the mortgage by reducing the monthly mortgage payments by more than $1,400 per month.

I am so grateful that The Legal Aid Society agreed to represent me in this case, because, otherwise, I have no doubt that my daughter and I would be without a home. I consider myself very lucky, because I now have an affordable monthly mortgage payment and no fear of foreclosure. However, I know that there are still many New Yorkers out there who also need this type of advocacy and assistance. I cannot stress enough the importance of funding the Legal Aid Society and other civil legal services programs, because they are an extremely significant resource for New Yorkers who otherwise lack the ability to obtain representation or gain legal assistance in a variety of civil litigation issues. I am here in support of continued and increased funding for civil legal services in New York.

Thank you.

Hon. Lori Currier Woods

Acting Supreme Court Justice and Family Court Judge,
Westchester County

HONORABLE LORI CURRIER WOODS
FAMILY COURT JUDGE
ORANGE COUNTY, NEW YORK

Judge Lori Currier Woods is a Family Court Judge in Orange County in the Ninth Judicial District of New York. She was elected in 2006 and has also served as an Acting Supreme Court Justice since 2008.

Prior to becoming a Family Court Judge, Judge Currier Woods worked as a private attorney in Los Angeles, California and also served in the District Attorney's Offices in Orange County, California and Orange County, New York. Judge Currier Woods worked in private practice in New York and later served as an Attorney for the Child at the Children's Rights Society, Inc. in Goshen, New York. She has served as both Councilperson to the Town of Monroe, New York and as an attorney/consultant/trainer for the Children's Rights Society.

Judge Currier Woods is the Chair of the Orange County Pro Bono Local Action Committee. Her professional associations in which she is a member include the New York State Bar Association, Orange County Bar Association, Women's Bar Association of Orange & Sullivan Counties, Law Guardian Advisory Board Committee, Orange County System of Care Coordinating Council, and the Judicial Wellness Assistance Committee for the Ninth Judicial District. Judge Currier Woods is the Lead Judge for the Orange County division of the Child Welfare Court Improvement Project in New York State. She will also be participating in the Ninth Judicial District Task Force.

Judge Currier Woods has been involved in many civic activities which include the Leadership Orange Program, the Youth Bureau Committee of Juvenile Justice, Orange County Court Child Care Center Committee, Building Leadership Committee for the Monroe-Woodbury Schools, Commissioner of the Monroe Joint Parks & Recreation Commission, Junior League of Orange County, People for People Fund,, Monroe-Woodbury Swim Club Board Member, Monroe-Woodbury School District Steering Committee, Monroe-Woodbury School District Wide Reorganization Committee, and the Governor appointed Eastern Citizen Review Panel. She is currently a member of the YMCA Board of Directors in Middletown, New York.

Judge Currier Woods received her Bachelor of Science Degree from the State University of New York at Oneonta in 1979 and her Juris Doctorate from Southwestern University School of Law.

SUMMARY
WRITTEN STATEMENT JUDGE LORI CURRIER WOODS, F.C.J.
TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK
SEPTEMBER 20, 2011

As a Family Court Judge, most, if not all of the litigants who appear before me are frightened, frustrated, angry and confused. It is clear that many of them are overwhelmed by the complexities of the legal system, and while some of these litigants are able to retain private counsel to represent them in court and to guide them through the legal process, the vast majority are indigent and low income individuals who cannot afford to do so.

Unrepresented litigants face many challenges and present many challenges to the Court. Most, if not all of the unrepresented litigants who appear in Family Court do not understand the legal process, which can result in prolonged court appearances and trials. Unrepresented litigants who seek orders of protection may fail to properly allege a cause of action, which can result in their request for an order of protection being denied or an order of protection being dismissed at trial. In the area of support, litigants are not provided with a right to counsel, which can be detrimental to these individual's lives and can often time result in orders of support that are not based on fully accurate information because the unrepresented litigant is unprepared.

Each day on the bench I am reminded of how important Civil Legal Services are. Simply put, I cannot imagine how the Family Court would function with it.

Due to the downfall in the economy, the large majority of poor and low-income New Yorkers do not have access to an attorney for their civil matters, making pro bono services all the more necessary. In the 9th Judicial District legal services programs struggle to meet the overwhelming legal needs of the poor. Although there have been great strides in providing CLE's and in increasing the number of attorneys volunteering to provide pro bono services,

studies have demonstrated that an estimated 80% to 85% of low-income New Yorkers' civil legal needs go unmet.

In the 9th Judicial District, pro bono services have been coordinated through Legal Services of the Hudson Valley. Until 2011, Pro Bono NY was able to provide funding for a pro bono coordinator to work with Legal Services of the Hudson Valley. Unfortunately, funding cuts in 2011 required the elimination of that position. Without a pro bono coordinator Legal Services of the Hudson Valley is severely limited in the number of people that it can help.

In light of the state of our economy, the need for legal services is greater than ever, and Civil Legal Services is critical in helping to provide access to legal representation.

WRITTEN STATEMENT OF JUDGE LORI CURRIER WOODS, F.C.J.
TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK
SEPTEMBER 20, 2011

Thank you for providing me with this opportunity to speak on the importance of Civil Legal Services in New York State. I am very honored to take part in today's public hearing.

As a Family Court Judge, hundreds, if not thousands, of litigants appear before me each year in cases involving struggles in their family lives. These matters include but are not limited to custody and visitation, parental rights and responsibilities, abuse and neglect, persons in need of supervision, juvenile delinquency, domestic violence, orders of protection and child support.

The goal of the Family Court is to provide a system of justice that is responsive to the needs of the families that appear before us. The Family Court provides a forum which ensures justice for the families and children involved in these proceedings and strives to promote a timely resolution of these cases in order to address the needs of the individuals that we see each day.

Most if not all of the litigants who appear before me are frightened, frustrated, angry and confused. It is clear that many of them are overwhelmed by the complexities of the legal system, and while some of these litigants are able to retain private counsel to represent them in court and to guide them through the legal process, the vast majority are indigent and low income individuals who cannot afford to retain private counsel.

The Orange County Family Court is more fortunate than many other courts in that we have the Legal Aid Society, the Children's Rights Society and the 18-b panel where we are able to appoint counsel to qualified individuals. My position from the Family Court bench provides

me with a bird's eye view of the complications that arise when unrepresented litigants come into Court and allows me to see on a daily basis the importance and necessity of Civil Legal Services.

Unrepresented litigants face many challenges and present many challenges to the Court as well. By way of example, service of process, a basic principal that attorneys comprehend, can become quite a challenge for unrepresented litigants. I have seen first hand how confusing and complex the concept of service of process appears to unrepresented litigants, as they simply do not know and understand what constitutes sufficient service, and the matter only worsens if they cannot locate the other individual. In many instances as much as ten to fifteen minutes of a court appearance can be spent trying to explain the service of process procedures to unrepresented litigants. This in and of itself can present challenges to Judges who are striving to adhere to the time constraints imposed by the current economic crisis.

Most if not all of the unrepresented litigants who appear in Family Court simply do not understand the legal process and in particular, do not understand the rules of evidence. As a result, trials that proceed with one or more unrepresented litigants are often time prolonged, as these individuals struggle with something as simple as entering a photograph into evidence. Unrepresented litigants, with the assistance of the internet, often times cite to statutes and/or case law that is inapplicable to the case at hand or is no longer good law. More often than not they do not know how to go about eliciting appropriate testimony and quickly become frustrated and upset when certain information that they feel is critical to their case cannot be admitted into evidence or heard by the Court.

Unrepresented litigants may also face more challenges when seeking an order of protection. Many of these individuals do not understand the relevant statutes and therefore do not properly allege a cause of action, which can result in their request for an order of protection being denied or an order of protection being dismissed at trial. Such denials or dismissals can have detrimental effects in the lives of the individuals who appear before the court and their families.

In the area of support, low income and indigent litigants are not provided with a right to counsel, which can be detrimental to these individual's lives and can often time result in orders of support that are not based on fully accurate information because the unrepresented litigant, not fully comprehending what is required of him/her, comes to court unprepared.

Just recently an unrepresented low income litigant had two cases in the Family Court on the same day. He appeared before me for the first case and then left. Apparently, he did not understand that he needed to appear before the Support Magistrate downstairs for the second case. His failure to appear resulted in a default support order that he contends he cannot afford to pay being entered against him. I am certain that this result could have been avoided if he had the benefit of legal representation. And while he has the right to make a motion to vacate the default order, it is unlikely that he will be able to do so without the assistance of counsel.

Each day on the bench I am reminded of how important Civil Legal Services are and how necessary they are to create a level playing field and to help the lives of the families that appear before me. Simply put, I cannot imagine how the Family Court would function without Civil Legal Services.

In addition to my service on the bench, I am also privileged to serve as the Chair of the Orange County Pro Bono Local Action Committee. The primary goal of the committee is to increase the extent to which pro bono legal services are an integral part of every attorney's regular practice.

In New York State, the complexity of the law and its court structure makes the assistance of an attorney critical for the just resolution of legal matters. Unfortunately, due to the downfall in the economy, the large majority of poor and low-income New Yorkers do not have access to an attorney for their civil matters, making pro bono services all the more necessary. In the 9thJudicial District legal services programs struggle to meet the overwhelming legal needs of the poor. Although there have been great strides in providing CLE's and in increasing the number of attorneys volunteering to provide pro bono services, studies have demonstrated that an estimated 80% to 85% of low-income New Yorkers' civil legal needs go unmet.

In 2002 the Deputy Chief Administrative Judge for Justice Initiatives hosted four pro bono convocations throughout the state to bring together all of the stakeholders, including judges, court administrators, attorneys in private practice, public interest lawyers, government attorneys, law school professors and members of the bar to develop a concrete plan for increasing pro bono participation. The convocations produced thoughtful debate and discussion about what is feasible for increasing pro bono services in New York State and led to two groundbreaking recommendations: (1) implementation of a statewide pro bono program, comprised of local pro bono action committees that would assess and devise strategies to meet local unmet legal needs; and (2) development of pilot projects statewide assigning pro bono attorneys on discrete/select issues as a way to increase pro bono service.

Pro Bono NY was created out of those convocations and is a statewide committee structure sponsored by the court system and broadly representative of the legal community. It was developed in order to foster and support voluntary pro bono service. Pro Bono NY, which commenced organizational activity in 2005 stemmed directly from the convocation's recommendations.

The local pro bono action committees are dedicated to increasing voluntary free legal services for low income New Yorkers. The primary goal of these committees is to increase the extent to which pro bono legal services are an integral part of every attorney's regular practice. Essential to the expansion of organized pro bono programs is the provision of adequate managerial and coordinating services. Such services include case and client intake procedures, maintaining lists of attorneys willing to accept pro bono case referrals, matching clients and appropriate volunteers and making case assignments, participating in publicity, recruitment and CLE training programs, mentoring volunteer attorneys handling pending matters and assisting with attorney recognition activities. These services help attorneys to commit to increased levels of pro bono activity by providing needed support, maintaining focus on specific unmet needs in each area and generally increasing efficiency and effectiveness.

In the 9th Judicial District, these services have been coordinated through Legal Services of the Hudson Valley, which is working hard to recruit volunteers and has been very active in planning new pro bono projects addressing specific needs as well as generally increasing the level of pro bono work on a wide variety of matters. By 2010 the Committee had recruited more than three hundred volunteer attorneys and sixteen law firms and more than one hundred cases involving a broad range of legal issues were placed with these volunteers.

Until 2011, Pro Bono NY was able to provide funding for a pro bono coordinator to work with Legal Services of the Hudson Valley. Unfortunately, funding cuts in 2011 required the elimination of that position. The pro bono coordinator screens cases, determines whether individuals financially qualify for services, matches clients with attorneys and provides legal support to the attorneys. Without a pro bono coordinator Legal Services of the Hudson Valley is severely limited in the number of people that it can help. And despite the strides that have been made, more work needs to be done in order to provide legal services to indigent and low income individuals.

In light of the state of our economy, the need for legal services is greater than ever. Without access to legal assistance, hundreds of thousands of low income and indigent litigants must deal with life altering legal issues on their own. Civil Legal Services is critical in helping to provide access to legal representation and equal access to justice.

Thank you.

Written Statements of Non-Testifying Witnesses

Legal Services of the Hudson Valley

Legal Services
of the Hudson Valley
Protecting Rights Promoting Justice

MAIN OFFICE
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TESTIMONY OF LEGAL SERVICES OF THE HUDSON VALLEY

On

THE IMPACT OF THE UNMET CIVIL LEGAL SERVICES THROUGHOUT NEW YORK STATE

Submitted to:
Hon. Jonathan Lippman, Chief Judge of the State of New York
Hon. A. Gail Prudenti, Presiding Justice of the Second Department
Hon. Ann Pfau, Chief Administrative Judge
Seymour W. James, Jr., President-Elect of New York State Bar Association

Second Department Hearing
September 20, 2011

Legal Services of the Hudson Valley (LSHV) welcomes this opportunity to submit written testimony for the second round of hearings to evaluate the continuing unmet need for civil legal services in New York State and to assess the level of resources necessary to meet the need. We greatly appreciate the consideration of this urgent problem by the Chief Judge, the Presiding Justice, the Chief Administrative Judge, and the President Elect of the State Bar President.

(LSHV) is the largest provider of free, comprehensive civil legal services in the Hudson Valley, the only provider in Westchester, Putnam, Dutchess, Orange, Ulster and Sullivan Counties, and one of two providers in Rockland County. LSHV provides assistance to households who need civil legal services to maintain the basic necessities of life involving housing, family stability, personal safety, access to health care, or education, or subsistence income and benefits.

In these harsh economic times there is a desperate and growing need for free civil legal help for people who have been displaced by foreclosures, job loss, lack of health care and loss of housing. Many Hudson Valley residents are falling deeper into poverty and thousands more are slipping into poverty for the first time.

In late 2010, the U.S. Census Bureau reported that the percentage of Americans struggling below the poverty line was the highest it had been in 15 years. The Hudson Valley has not been immune from this growth in poverty. The counties served by LSHV have the largest population of poor and low-income individuals outside of New York City. According to the 2009 Poverty Estimates, U.S. Census Bureau, American Community Survey, there are 593,547 individuals living below 200% of the federal poverty level in LSHV's service area. LSHV generally provides legal assistance to households at or below 200% of poverty ($44,100 for a family of four). We exceed that level of income when special lines of funding include households with greater income, such as Protection and Advocacy (Disability). Overall, the clients we serve are the most vulnerable among us and are as diverse as our state, encompassing all races, ethnic groups and ages, including the working poor, veterans, homeowners and renters facing foreclosure or evictions, women as single parents, families with children, people with disabilities, victims of domestic violence, the elderly, children and persons with chronic diseases.

LSHV has seven offices located in White Plains, Yonkers, Mt. Vernon, Poughkeepsie, New City, Newburgh and Kingston, some of the poorest cities hard hit by the bad economy. Year after year nearly 45% of all our services go to households threatened with eviction, foreclosure, or some other threat of homelessness. Over 20% or our cases involve income maintenance including disability benefits, unemployment and public assistance/food stamps. And approximately 20% of our cases are dedicated to domestic violence issues in family court. Consumer cases make up about 8% of our caseload.

In 2009, LSHV handled 11,350 cases, which impacted roughly 35,000 people. These cases came into our specialized substantive legal units largely from our centralized intake system, which was fully staffed in 2009. In 2010 due to the loss of federal, New York State and local governmental funding the paralegals who were dedicated to the centralized intake unit were laid off and attorneys who left the program were not replaced. Other program paralegals and attorneys did the best they could to fill the gap but the result was a drop in new clients intaked into the program by 15% in 2010.

In August, 2011, LSHV was notified that it will receive $728,000 in funding from the Oversight Board for Judiciary Civil Legal Services Funds in New York for the period August, 2011 through March, 2012. With that funding LSHV will increase the number of people that receive services by (1) adding four paralegals and a supervising attorney to its centralized intake unit; (2) augmenting direct services by creation of a Community Response Team that will conduct ongoing outreach, intake and training in the communities included in our service area and (3) hiring or retaining attorney and case handling paralegal staff. The restaffing and retooling of the toll free centralized call center will provide quick resolution to all legal matters susceptible to such service without litigation, thereby increasing access to services and distinguishing between clients who can be helped by the intake unit and those that need to be referred to attorneys in specialized units for more extended service. The Judiciary funding will also allow LSHV to hire or retain staff attorneys and paralegals handling housing and public benefits cases throughout our service area. But for this judiciary funding, LSHV would be severely cutting back on services to those most in need.

On a daily basis, civil legal services programs save counties and the state money by averting costly "crisis" services such as emergency and homeless shelter stays. It offsets costs by helping families and individuals secure federally funded benefits such as Social Security and Food Stamps. It helps stabilize families and thus avoid foster care costs and increases economic security by maximizing child support benefits for low income parents and children. It leverages private and federal funds that bring dollars and jobs into communities.

While not all evicted or displaced households wind up in homeless shelters, many do. In 2010 LSHV prevented or delayed 1,185 households from being evicted. 3,303 individuals lived in those households. 806 of those households were from Westchester County where it costs on average $36,000 per year to house an individual or family in a homeless shelter. The average stay in a shelter in 2010 was seven months. 400 of the 806 evictions prevented involved families with children, and 406 were for childless couples or individuals. The County and State each pay 25% of the cost of sheltering a homeless family (the federal government pays 50%) and 50% each of the cost of sheltering an individual or childless couple (the federal government pays nothing). Assuming only one-third of the households served end up needing County shelter, the cost savings to the County and State is a minimum of $4,199,580 million just in Westchester County.

In counties outside of New York City it is difficult to estimate the real taxpayer cost or cost savings associated with providing eviction related legal assistance without further study. In all of the counties served by LSHV we have been told by local department of social services officials and not-for- profit housing organizations that data is either not kept or difficult to aggregate that would allow us to determine the reason for homelessness or unstably housed families. In some suburban counties, like Westchester, improved homelessness prevention and rapid rehousing collaborations, including federal, state and local funding for legal services, have enabled counties to achieve reductions in homelessness. These collaborations are now in danger of collapse with the reduction and termination of federal stimulus, state housing and local funding of services. Therefore, the expectation is that loss of housing and resultant homelessness will get much worse in the coming year.

As documented by the IOLA Fund and the Civil Legal Services Task Force, County and State dollars are also saved through a myriad of programs serving the disabled, the elderly, victims of domestic violence, and children. Clearly in addition to the "moral imperative" Judge Lippman frequently speaks about, there are powerful economic incentives to fund legal services. Outlays for civil legal services are budgetary pennies that save many dollars. A foreclosure prevented is an eviction avoided, a family kept from homelessness — and a considerable burden lifted from the government's social-service safety net. With legal help, poor people can avoid litigation, easing the load on judges and courtrooms. They can get food stamps, leveraging federal dollars in an underused program. Most importantly, they can avoid poverty and have money to spend in the local economy.

In sum, without the Judiciary funding awarded in 2011, LSHV would have had to continue to reduce services to low income households facing civil legal problems affecting the basic necessities of their lives. The funding will allow us to stabilize our services, but not

increase them. We will still be turning away more people than we can help. Therefore, we urge the state legislature and executive to work with the Judiciary to increase permanent state funding so civil legal services can be provided to the most vulnerable New Yorkers.

Thank you once again for taking the time to solicit our input and taking the initiative to address the lack of civil legal help for individuals and families who desperately need assistance to keep or obtain the basic necessities of life in New York State.

Submitted by Barbara Finkelstein, Executive Director

Nassau County Coalition Against Domestic Violence

TESTIMONY ON CIVIL LEGAL SERVICES

OCTOBER 7, 2010

My name is Lois Schwaeber and I am the Director of Legal Services for the Nassau County Coalition Against Domestic Violence. I provided oral testimony on the urgent need for civil legal services during your hearings at the Second Department last year, but today I am writing to you to re-emphasize the increasing dire need for civil legal services in New York State. Research has shown that legal assistance is the **one** service that has been found to reduce the occurrence of domestic violence in a community.

The Coalition is the only provider of comprehensive domestic violence and rape/sexual assault services in Nassau County. We maintain the county's only Safe Home for Abused Families and the county's only domestic violence and rape/sexual assault 24 hour hotlines. In addition, we are also the only provider of civil legal services to victims of domestic violence, dating violence, elder abuse, and rape/sexual assault in Nassau County. Our Legal Services Center not only provides court advocacy services on a daily basis in Nassau County Family Court, and as needed in the two Nassau County Dedicated Domestic Violence Parts and the Integrated Domestic Violence Court. We assist any petitioner, walk-ins and other victims, regardless of their income, in navigating the court system and provide much needed emotional support, information, and referrals. Our Legal Services Center also has five attorneys who provide direct representation to victims of domestic violence in child custody/visitation, child and spousal support, paternity, immigration, and matrimonial proceedings. There

are **no** fees for any of our services. Coalition is a 501(c) (3) private-not-for-profit corporation and is totally dependent on grants, awards, and donations to provide all our services. All Coalition services are available to both men and women, unless there is a conflict of interest.

Last year Coalition's attorneys provided 921 clients with free consultations and provided direct representation to almost 500 clients referred by either the court advocacy programs or our counseling and hotline staffs. Our bi-monthly "Legal Question and Answer Clinic" provided information about divorces, orders of protection, child custody/visitation, and child support to 170 clients.

Nassau County is viewed by the rest of the world as a "wealthy" county, but in reality almost 5% of our 1,357,429 residents are below the poverty line. Of the 3646 victims of domestic violence and rape/sexual assault seen at Coalition in 2009 between 70% to 84% are TANF-eligible, 275 are Limited English proficient people and 125 are undocumented residents, who do not qualify for any congressionally funded Legal Services. (Coalition's Legal Department saw 106 Limited English proficient people and 65 undocumented clients).

Recent census poverty statistics show rising numbers of poor people. Using the federal poverty threshold A family of **four** earning $21,756 would be considered indigent making them eligible for federal government assistance programs. (Most government benefits are only available to people who earn between 150-200% of the federal poverty guidelines.)

However these figures do not take into consideration the actual cost of living in Nassau County. In fact a 2010 report "Self Sufficiency Standards for NYS"

(University of Washington) calculated that an adult with two children (**a family of three not four**) living in Nassau needed an income of almost $74,000 to meet just their basic needs. Thus, over 45% of Nassau families fall between the federal poverty level and the self-sufficiency level. These people struggle to make ends meet and cannot find the funds to obtain legal services.

Coalition Legal Services Centers employs five attorneys who provide direct legal representation in family offenses, child custody/visitation, immigration, paternity, divorces, child support, (Since Nassau Suffolk Legal Services lost funding for their child support project we are seeing many more clients in need of representation in child support litigation), and any other issues that arise as a result of the abuse. Coalition provides legal representation to victims within 250% of the federal poverty guidelines.

The agency is seeing more and more clients who are unemployed and/or who have spouses or partners that are unemployed, and many have houses already in foreclosure and “underwater”. Their credit cards are “maxed out.” Many are dependent on food banks and food stamps to supplement their income. Other clients come to my office in the middle of a divorce, with a trial date certain, without legal representation because their attorneys have been relieved by the judges because of the amount they still owe. These clients have already exhausted their bank accounts, borrowed money for retainer fees, and yet still owe their attorneys $30,000 or $40,000. They are desperate for representation, afraid of representing themselves when their abuser has legal counsel, afraid of losing their children, afraid of being left homeless and poverty-stricken (just as

the abuser has always told her she would be). They are doubly afraid to go to trial without an attorney because then the abuser would have the right to cross examine them. Some are frightened to show up in court without an attorney because the judge has told them that they must get one within 30 days. Every legal service agency has said that they cannot help, either because they don't do divorces, (like Legal Aid of Nassau County); or because the agency has a two to three year wait for assignment to a matrimonial attorney; (like Volunteer Legal Project who send all their domestic violence clients to us); or because she still is on the deed of a house from which she fled for her safety; and which is worth less than the money owed on the mortgage because her husband has taken out all the equity; or because her disability payments are too high, so she doesn't qualify for services; or because she is undocumented.

Without adequate legal representation the client either doesn't understand the legal jargon; or the procedures; or have the know-how to answer legal papers or make legal arguments; or the necessity for prompt action to avoid a default or being precluded.

Pro se litigants consume an inordinate amount of judicial time and court resources. *Pro se* litigants add to the cost of litigation for the courts and for the opposing party.

Coalition is currently working with volunteer attorneys, mostly the unemployed and underemployed, to learn the nuances, and understanding of the impact and complex dynamics of domestic violence in contested divorces. (Few, if any, domestic violence cases are ever uncontested). Since May 2010, 44 active

cases have been assigned to the *pro bono* attorneys that Coalition has recruited last year. Nonetheless, we still have over 20 clients waiting to be assigned to an attorney. (A waiting list that would be about a year's wait to initiate a divorce action).

We hope this training and mentoring that we provide will enable the *pro bono* attorneys to provide survivors sensitive and competent legal representation. Coalition has also created a website and listserv to provide the volunteers with on-going information, social research, and case law updates, as well as a forum to network. Recently Coalition has also entered into a partnership with the Nassau County Bar Association to provide domestic violence clinics in unserved and underserved communities staffed by volunteer attorneys who have been trained in nuances of domestic violence issues. This partnership is also encouraging the volunteer attorneys to take on a *pro* bono matrimonial and is providing the volunteers with training on the dynamics of domestic violence and its impact in matrimonial proceedings.

I understand that with the current economic conditions, hard choices have to be made, however, without funding for Civil Legal Services the Coalition, and agencies like it, will be unable to assist victimized families to establish safe and healthy lives free of their abuser. Without this funding we will be unable to help survivors get access to equal justice.

Without this funding more and more abused women and children will become homeless and a financial burden to the country, state, and county.

Without this funding, New York State's most vulnerable citizens will sink further and further into poverty and homelessness.

Nassau/Suffolk Law Services Committee, Inc.

Nassau/Suffolk Law Services Committee, Inc.

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Douglas J. Good
Chairman
Jeffrey A. Seigel
Executive Director

TESTIMONY BEFORE THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES

September 20, 2011

Second Department
Public Hearing
Westchester County Courthouse
111 Dr. Martin Luther King, Jr. Boulevard
White Plains, New York 10601-2509

Nassau Suffolk Law Services Committee, Inc., (Law Services), welcomes this opportunity to testify at this special hearing on the critical need for civil legal services in New York State. We greatly appreciate the consideration of this urgent problem by the Chief Judge, the Presiding Justice, the Chief Administrative Judge, and the State Bar President. With the crucial support of the Assembly and the Senate, the Judiciary's advocacy for funding for civil legal services has been exceptional, first by allocating $15 million in the budget of the 2011-2012 Office of Court Administration's to offset the dramatic drop in IOLA funding, due to the historic reduction in interest rates; second, by allocating an additional $12.5 million state-wide to help meet the need for civil legal services and third by conducting these historic hearings statewide on the unmet civil legal service needs of New Yorkers.

We submit this testimony to provide information on the continuing critical need for civil legal assistance for families and individuals on Long Island who need legal help to maintain the basic necessities of human life. With the current economic downturn and the increase in the number of Long Islanders living in poverty, the need is greater than ever before.

Recently released data from the United States Census Bureau show that 168,397 individuals were living below the federal poverty level in Nassau and Suffolk Counties in 2010. This is about a 10% increase since the last decennial census in 2000, although the total population has only increased by about 3%. According to Newsday, the poverty rate in Nassau is 5.9% (it was 3.5% in the last census) and 6.2% in Suffolk (3.9% in the last census.) Because the poverty level is applied uniformly across the nation regardless of the wide disparities in cost of living, a better test for the actuality of living in distressed circumstances in this high-cost region is 200% of the federal poverty level. According to the Census Bureau data, 467,991 Long Islanders were living at or below that level in 2010. Equally telling, in July 2011, the New York State Office of Temporary and

Disability Assistance reported that 76,100 people in the region were in receipt of income support for the poor (Temporary Assistance to Needy Families, Safety Net Assistance, Supplemental Security Income) and 163,140 were in receipt of Food Stamps.

The high cost of housing has led to serious problems of evictions and homelessness. Long Island is the region which has been hit hardest in New York State by the foreclosure crisis. The crisis has affected not only homeowners, but also tenants residing in single- or two-family rentals (the most common form of rental in the area) where the landlord is in foreclosure. In 2009, the City (Long Beach and Glen Cove) and District courts in Nassau and the District Courts in Suffolk handled a total of 18,057 eviction cases, according to the New York State Uniform Court System Annual Report for that year, and we have every reason to believe that the numbers for 2010 and 2011 will be comparable or even higher. We know from our staff's frequent presence at Landlord-Tenant calendar calls that the vast majority of these cases were residential evictions, each of which involved a family facing the loss of its home and the frightening prospect of homelessness. This does not even include the cases from the Town Justice Courts in eastern Suffolk, which handle all of the evictions for the five easternmost towns. At 10,194 cases, Suffolk County had more eviction cases than any locality in the state outside New York City, exceeding Buffalo by more than 2,300 cases. Nassau County was a close third behind Buffalo, with 7,398 eviction cases. Unrepresented tenants may never give the court enough information to indicate a potential defense, and with a calendar which may contain over 200 cases, the judge does not have time to conduct a full inquest on each case, so the fate of a family may be determined in a few short minutes. All of Law Services projects combined provided legal assistance in 2,551 landlord-tenant matters last year, and provided legal representation in court on 1,475 of them. We successfully prevented eviction for 580 households (comprised of 1,679 persons) which, when you consider the cost of placing individuals and especially families in emergency shelter, as described below, is not only a benefit of vital importance to the households themselves, but a cost-effective means of reducing a significant financial burden on the public. We also accomplished a significant delay of eviction in 960 cases, involving 2,994 persons. These delays, particularly when coupled with a reality check from the attorney early in the process to motivate the client, will often provide enough time for the tenant to secure alternate housing before an actual eviction and homelessness occur.

The cost of sheltering the homeless on Long Island is enormous. Nassau County estimates that it spent approximately $16,334,000 on emergency housing in 2010, and another $541,000 on transportation, moving and storage costs for families. On average, Nassau County housed 154 families and 256 singles each night, at an average cost of $3,820 per month per family and $2,897 per month per single adult.[1] Suffolk County calculates that in 2010, the average monthly cost of sheltering a homeless family (including storage and school transportation) was $6,319 to $6,830, and the average length of stay was 161 days. The average monthly cost for single adults and couples

[1] Douglas A. Russell, Ph.D., Director of Planning and Research/Quality Management, Nassau County Health and Human Services

without children was $3,488, and the average length of stay was 95 days.[2] We were told only this week that Suffolk County is currently housing 482 homeless families, including 1,118 children, in 52 shelters and 16 motels in Suffolk County.

In the face of these dire circumstances for increasing numbers of Long Islanders, Law Services continues to meet the civil legal service needs of Long Islanders to the greatest extent possible. Established in 1966, Law Services was the first Legal Services Corporation program in New York State. The program is committed to helping disadvantaged persons vindicate their rights under the law. Law Services has been successful at developing individually tailored programs designed to deal with the legal problems of persons with special needs: the Adult Home Project, The Foreclosure Prevention Project, the Mental Health Law Project, the Protection and Advocacy Project for the physically disabled and developmentally disabled, the PLAN project for individuals and families affected by cancer, the Senior Citizen Law Project, the SSI/Disability Advocacy Project, the David Project for individuals with HIV/AIDS, and programs to protect the homeless and those at risk of homelessness. With a staff of 70 lawyers, paralegals, social workers and support staff nearly 8,000 cases for more than 20,000 individuals were handled to completion in 2010. Our staff was able to prevent homelessness, help people move from welfare to work, obtain medical care for people with HIV/AIDS, cancer and other illnesses, address discrimination against disabled persons, help senior citizens avoid nursing home placement, halt domestic violence, and help custodial parents obtain child support. Due to the foreclosure crisis on Long Island Law Services has also received funding to provide legal assistance in foreclosure cases in both counties since 2008. With the cooperation of the Nassau and Suffolk Bar Associations, Law Services also conducts a Bankruptcy Clinic and has served clients by either providing a consultation with a bankruptcy attorney or a Chapter 7 bankruptcy for them. Yet, we are not meeting the needs of all Long Islanders who need assistance. We must turn away clients because we simply do not have the resources to assist them. This is not just a Long Island dilemma. Even at current funding levels, before any IOLA reductions or other State and County cuts, national studies have found that at least 80 percent of low income persons who need civil legal assistance are unable to access services.

Not providing adequate legal representation dramatically limits the access to justice of low income and disadvantaged individuals and families, but it is also fiscally irresponsible. It is indisputable that New York is facing an unprecedented financial crisis. However, our benefits the State, County and local economy. We save the state and counties money through our SSI, public benefits, family and housing work. During 2010, our efforts on behalf of our clients had the additional benefit of saving New York State taxpayers nearly $6,000,000 through the avoidance of emergency shelter costs and by moving clients off welfare onto federal social security. These benefits bring desperately needed dollars into local economies. An IOLA report in 2001 revealed that every $1 invested in civil legal services yields $2.44 in client benefits, which then flows into local

[2] Donald F. Reed, Division Administrator, Division of Housing and Employment Services, Suffolk County Department of Social Services

communities to buy food and pay rent. So New York State benefits from the work of Law Services, and other civil legal service providers, but until Judge Lippman and the Office of Court Administration recently took up the banner of civil legal services, New York State ranked last among states in the Northeast, including New Jersey, in per capita expenditures for civil legal services.

This financial crisis is wreaking havoc in the lives of low income New Yorkers and once middle class New Yorkers, who are the new poor. Every day at Law Services we experience their desperation. While they struggle and with no immediate economic recovery in sight, the need for civil legal services is increasing exponentially. A year ago, the Task Force to Expand Access to Civil Legal Services convened by Chief Judge Jonathan Lippman recommended that $100,000,000 would ultimately be needed to meet the need in New York State, and we fully concur. In fact, since other long-term sources of government funding have been drying up, even more may be needed.

Chief Judge Jonathan Lippman's continuing leadership in convening these hearings in each of the four departments, appointing a Task Force to make recommendations to meet the unmet need for civil legal assistance, and committing scarce resources to civil legal services, is the leadership we need for our current realities. Thousands of individuals are representing themselves in court proceedings. This development is unconscionable and undermining the core values of our judicial system. Supreme Court Justice Lewis F. Powell Jr. said, equal justice "is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists...it is fundamental that justice should be the same, in substance and availability, without regard to economic status." The State of New York should help the nation fulfill the promise of equal justice for all and address the dire need for civil legal services for its residents.

Nassau Suffolk Law Services, Committee, Inc. supports the Chief Judge's initiative to meet the unmet needs for civil legal assistance in the New York State.

Respectfully submitted,

Jeffrey A. Seigel
Executive Director
Nassau Suffolk Law Services Committee, Inc.
Dated: October 7, 2011

Westchester Hispanic Coalition

THE CHIEF JUDGE'S HEARINGS ON CIVIL LEGAL SERVICES – SECOND DEPARTMENT
ORAL TESTIMONY INVITATION REQUEST

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INTRODUCTION

Low-income, unauthorized immigrants are among the most vulnerable populations in our community. They face threats of deportation or of being found out around every corner, especially by those who owe them something. Employers use the lack of status as a tool to keep immigrant workers from enforcing wage and hour laws; landlords similarly use immigration status to thwart potential reporting of housing violations. Because they are so prone to exploitation, they are more likely to be in a situation requiring legal services, yet they have little or NO access to those services when they need it the most. While this problem persists in every area of the law and of life, the Westchester Hispanic Coalition would like to focus its testimony on wage theft and housing. Both issues are extremely relevant and problematic and people do not have access to legal services when presented with either dilemma.

The immigrant population has increased significantly all throughout Westchester County, with Hispanics making up the largest immigrant group. For example, Port Chester alone hosts a 59% Hispanic population, which is up from 46% 10 years ago. Hispanics now comprise almost 22% of the entire Westchester population. Although all immigrants face significant barriers to accessing civil legal services, unauthorized immigrants experience this lack of access more profoundly as they are excluded from almost every federally or state funded legal service programs. The most prominent example exists with Legal Services of the Hudson Valley: because of the federal LSC funding, they are specifically prohibited from representing unauthorized immigrants. These types of restrictions make an already dire situation impossible.

The result is that immigrants on the verge of being thrown out of their house have nowhere to turn for assistance. The result is that an immigrant who did a days work and did not get paid for that work has nowhere to turn to fight for the pay to which s/he is entitled.

WAGE THEFT

- Essentials of Life = getting paid for work done
- Unmet Need
    - Immigrant workers do not have access to legal services if they want to try and recover unpaid wages from an employer
        - Legal Services cannot represent undocumented workers (even though, under federal law, status is irrelevant to not getting paid for work done)

        - No funding in the area for *legal assistance* for wage theft cases – the organizations are using individuals who already have many other things on their plate and who are unable to dedicate their time only to wage theft
            - They are people without legal experience and whose main resource is to make calls to the employer who has already proven to disregard her/his responsibilities
            - Our organization has had a minimum of 29 cases in the past year handled only by one person – a person whose primary job is to coordinate the hiring site and engage in other organizing efforts throughout the state and region; he spends a minimum of 10 hours per case and the timeframe ranges from weeks to years. However, the work was so demanding that he has had to stop taking new cases in order to be able to focus on those already pending
    - Furthermore, the limited services they do have available do not adequately address the need
        - First, the Department Of Labor ("DOL") process takes an unreasonably long time (both Federal and State) – we have cases that have been pending for over 2 years
            - Specifically, we have 3 cases submitted 2 – 3 years ago, and still have yet to receive any response
            - We have a total of 13 cases that were sent to either the Federal DOL or the State DOL since 2008
                - Of these, **NONE** have been resolved
                    - Two were originally brought to the Federal DOL, but they have since passed the cases on to the State DOL; six are being handled by the Federal DOL; and five by the State DOL
        - The small claims court process in inaccessible to immigrants (unauthorized or authorized)
            - Language access; lack of guidance; intimidation of facing the legal process alone; disparity in educational attainment (which compounds the previously mentioned issues)
    - There is no one to whom we can refer cases – there are no legal services for wage theft cases, especially not for unauthorized workers, nor are there any lawyers who are willing to take cases on pro bono, nor are there any organizations receiving funding to provide such legal services to the multiple workers' centers throughout the county
        - Occasional local labor/employment lawyer willing to take on a case; however, the case must be much more substantial and have many positive factors on its side (legitimacy and solvency of an employer, large amount of unpaid wages claim that includes violations of federal overtime and minimum wage laws)
            - We do have one case taken on by local labor/employment lawyer, which was resolved in a matter of weeks. This demonstrates the potential effectiveness of having access to legal services
- Economic and Social Consequences

- Not getting paid: takes money out of economy; makes home life more strenuous; struggle to pay bills, could fall behind on rent thereby causing further problems for which there are no services to address

- Potential for reduction in unmet need:
  - "Know Your Rights" workshops focused on workers' rights – preventative
  - Increase DOL transparency and speed up the process of wage theft claims
  - Funding for a legal position to provide legal services to the multiple workers' centers throughout the county to assist in simple tasks such as writing demand letters and making calls
    - We have seen the direct impact the involvement of a lawyer can make; but this should not be limited to only large wage theft claims against more established employers, it should be available to every worker who has not been paid by his or her employer (regardless of immigration status, regardless of number of hours unpaid, regardless of the type of employer)
  - Streamline the small claims court process and provide language access

HOUSING

- Essentials of Life = roof over one's head
- Unmet Need
  - Our office is flooded with phone calls every day from people facing problems with their landlord or not being able to pay rent. Yet we are unable to provide services or referrals to the vast majority of them
    - Simple things such as recovering the return of a security deposit legally owed to a former renter has become an almost insurmountable task
      - Again, only one person within one agency is dedicated to providing housing services to unauthorized immigrants – and even then, the services we are able to provide are extremely limited
      - We have engaged in landlord mediation in the past, which has proven to be successful.
        - For similar reasons discussed above, our clients are unable to navigate the system on their own
  - Any partnerships we have with legal services for eviction prevention and rental assistance is not available to our unauthorized immigrant clients
  - Limited rental assistance programs we have are incredibly restrictive and have very specific immigration status requirements
    - The vast majority of people who contact us do not qualify
    - In addition, there is nowhere else to which to refer them; we are often the first and last line of defense
- Economic and Social Consequences
  - "The Pew Research analysis finds that, in percentage terms, the bursting of the housing market bubble in 2006 and the recession that followed from late 2007 to mid-2009 took a far greater toll on the wealth of minorities than whites. From 2005 to 2009, inflation-adjusted median wealth fell by 66% among Hispanic households and 53% among black households, compared with just 16% among white households.

"As a result of these declines, the typical black household had just $5,677 in wealth (assets minus debts) in 2009; the typical Hispanic household had $6,325 in wealth; and the typical white household had $113,149.
"Moreover, about a third of black (35%) and Hispanic (31%) households had zero or negative net worth in 2009, compared with 15% of white households. In 2005, the comparable shares had been 29% for blacks, 23% for Hispanics and 11% for whites."[1]
        - This new study demonstrates that Hispanics are feeling the effects of the economic crisis more profoundly than whites (especially), but other groups in general
    - Landlords regularly take advantage of immigrants' fears and lack of knowledge regarding tenants' rights, which leads to unhealthy living conditions and eventually higher rates of homelessness
- Potential for reduction in the unmet need:
    - Informative workshops about tenants' rights, and even forming tenants associations, can act as preventative and early intervention services
    - Provide support for landlord mediation programs

[1] WEALTH GAPS RISE TO RECORD HIGHS BETWEEN WHITES, BLACKS, HISPANICS, Rakesh Kochhar, Richard Fry and Paul Taylor, PEW RESEARCH CENTER, Released July 26, 2011 available at: http://pewsocialtrends.org/2011/07/26/wealth-gaps-rise-to-record-highs-between-whites-blacks-hispanics/ (last visited September 6, 2011).

APPENDIX 12:

Written Statements submitted at the First Department Hearing held on September 26, 2011

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Written Statements Submitted at the
First Department Hearing on September 26, 2011

Statements of Testifying Witnesses

Jeffrey L. Baliban (Managing Director, Navigant Consulting, Inc.)

Donna Cirolia (Vice President, Coca-Cola Refreshments)

Hon. Fern Fisher (Deputy Chief Administrative Judge for the New York City Courts; Director of the New York State Courts Access to Justice Program)

Yves Gebhardt (Client of Legal Services NYC, accompanied by Mallory Curran)

Hon. Douglas E. Hoffman (Acting Supreme Court Justice and Supervising Judge, Family Court)

Natalie Jones (Client of Legal Services NYC, Domestic Violence Unit, accompanied by Lenina Trinidad)

Hon. David Kaplan (Housing Court Judge)

Hon. Tanya R. Kennedy (Acting Supreme Court Justice and Civil Court Judge)

Eneyda Maldonado (Client of The Legal Aid Society, accompanied by Jack Newton)

Virginia Norman-Acevedo (Client of The Legal Aid Society, accompanied by Judith Goldiner)

Hon. Christine Quinn (Speaker of the New York City Council)

Craig L. Reicher (Vice Chairman, CB Richard Ellis)

Samuel W. Seymour (President, New York City Bar Association)

Geeta Singh (Principal, Cornerstone Research)

Tracy Smith (Client of the Urban Justice Center-Community Development Project, accompanied by Sadia Rahman)

Deborah C. Wright (Chairman and CEO, Carver Federal Savings Bank)

(Non-Testifying Witnesses are listed on the following page)

Written Statements Submitted at the
First Department Hearing on September 26, 2011

Statements of Non-Testifying Witnesses

The Family Center

Law Library Association of Greater New York

The Legal Aid Society

Legal Services NYC

New York County Lawyers' Association

Samaritan Village, Inc.

Written Statements of Testifying Witnesses

Jeffrey L. Baliban

Managing Director, Navigant Consulting, Inc.

REPORT OF JEFFREY L. BALIBAN

TO THE

TASK FORCE TO EXPAND CIVIL LEGAL SERVICES IN NEW YORK

PRESENTED AT THE

FIRST JUDICIAL DEPARTMENT HEARING

SEPTEMBER 26, 2011

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I. QUALIFICATIONS

1. Navigant Consulting, Inc. ("Navigant") is a specialized, global expert services firm combining technical expertise in accounting, economics, finance and management consulting with business pragmatism in a wide variety of industries and circumstances. I am a Managing Director at Navigant. For more than 34 years, my practice has focused on the study of how changes in internal operations, external market factors, and other anomalous events affect business results as well as the valuation of businesses. Much of my work includes analyzing business and financial issues with respect to specific industries, markets, and economic environments. I have led numerous significant national and international engagements in a diverse range of industries and geographies regarding matters involving business value and economic impact. I have, on numerous occasions, provided testimony as an expert in business valuation, economics, accounting, and finance in litigation, arbitration (domestic and international), and other administrative proceedings.

2. Prior to joining Navigant, I was a Senior Vice President in the Securities & Finance practice of National Economic Research Associates, Inc. ("NERA"), a global consulting firm. Before joining NERA, I was a senior partner in the Forensic and Litigation Services ("FLS") practice at KPMG LLP, where I also served as the FLS western regional managing partner and national lead partner of the practice's Insurance Services section.

3. I hold a BS in Accounting from Fairleigh Dickinson University (1977) and an MA in Economics from the University of Texas (1995). I have been a Certified Public Accountant since 1981 and also hold the Accredited in Business Valuation (ABV) and the Certified in Financial Forensics (CFF) professional designations of the American Institute of Certified Public Accountants. My experience and education are more fully set out in my curriculum vita, attached as **Exhibit 1**.

II. INTRODUCTION

4. On November 23, 2010, the Task Force to Expand Access to Civil Legal Services in New York (the "Task Force") issued its report to The Honorable Jonathan Lippman, Chief Judge of the State of New York. The Task Force was charged to

> **[A]ssess the extent and nature of the current unmet civil legal needs of low-income New Yorkers throughout the State and to identify the level of public resources necessary to meet that need.**

5. In its report, the Task Force developed the following four key findings:

Finding 1: The substantial number of unrepresented litigants in civil legal matters adversely impacts the quality of justice for all parties in the Courts of New York State, increases the amount of litigation, and undermines the rule of law.

Finding 2: Providing civil legal assistance increases federal benefit payments for low-income New Yorkers, and reduces the need for State and local government assistance payments.

Finding 3: The unmet need for civil legal assistance in New York State is profoundly impacting vulnerable New Yorkers and costing taxpayers millions of dollars by increasing homelessness, failing to prevent domestic violence, and increasing poverty.

Finding 4: In these difficult economic times, current funding is inadequate to meet the critical need for civil legal assistance in our State of nearly 20 million people.

6. As noted in ***Finding 3***, the unmet need for civil legal assistance contributes to a failure to prevent domestic violence (where potentially preventable). This levies an economic burden since society bears these costs whether they are allocated through taxes, paid with New York State and/or federally funded medical insurance programs, translated into higher private medical insurance premiums, a decrease in general productivity, or through many other negative externalities associated with violence in a society. While there are a number of ways to allocate this cost among the members of society, economic efficiency (as well as morality and common

decency) demands such costs to be incurred in ways not solely to allocate but to ultimately reduce the overall impact on society.

7. Increased funding to improve the availability of civil legal services to low-income households in the State of New York that require these services can result in an even greater reduction of overall societal costs of domestic violence. I have been asked to provide an economic analysis to determine the magnitude of this potential cost savings.

III. EXECUTIVE SUMMARY

8. This report outlines a framework by which data available can be used to estimate at least a portion of the overall cost of domestic violence on our society. I first estimate the number of incidents based on a study funded by Congress and conducted by the Centers for Disease Control and Prevention ("CDC") in 1994 and as updated in 2003. Data about nonfatal intimate partner violence ("IPV") victimizations and resulting healthcare service use were collected through the National Violence Against Women Survey ("NVAWS") funded by the National Institute of Justice ("NIJ")[1] and CDC. The NVAWS showed that:

a. There are an estimated 5.3 million IPV victimizations occurring among U.S. women ages 18 and older each year.

b. This violence results in 2 million injuries, more than 550,000 of which require medical attention.

c. IPV victims lose a total of 8 million days of paid work (the equivalent of more than 32,000 full-time jobs) and nearly 5.6 million days of household productivity as a result of the violence.[2]

9. The NVAWS categorizes IPV incidents as rape, physical assault, and stalking. This is useful as different types of IPV will incur different costs. For instance, rape and physical assault victims will incur higher medical care costs, while stalking victims incur none. However, the protracted and lingering effects suffered by stalking victims result in higher mental

[1] The research arm of the U.S. Department of Justice.

[2] National Center for Injury Prevention and Control. Costs of Intimate Partner Violence Against Women in the United States. Atlanta (GA): Centers for Disease Control and Prevention; 2003.

healthcare costs incurred. Nationally, the costs of intimate partner rape, physical assault, and stalking exceed $7.81 billion in medical care costs each year as well as $1.35 billion in lost productivity costs.[3]

10. As reflected in Table 1, my analysis shows that direct and indirect costs of nearly $85 million is being incurred annually by IPV victims who could benefit from access to civil legal services, but who otherwise cannot afford them. Direct costs typically include medical care, *e.g.*, hospitalization, physician costs, emergency room visits, ambulance and paramedic services, physical therapy, dental visits and the like. Direct costs also include mental healthcare costs such as psychiatric care, professional counseling services, substance abuse treatment facilities, and other therapy costs. Indirect costs typically include the loss of victims' productivity in the work force due to time off. To the extent victims are not currently in the work force but provide household services, I borrow from the courtroom accepted and recognized methods of estimating the value of household services in civil claims regarding personal injury and wrongful death in valuing lost household services at (opportunity) cost rates.

[3] *Id.*, amounts are adjusted for inflation.

Table 1 – Cost of Incidents Avoidable

Based on incidence rates applied to 7,768,878 New York State females 18 or older per the 2010 Census

	Rape	Physical Assault	Stalking
Expected annual incidents[1]	15,538	100,995	38,844
66.44 percent of expected annual incidents will likely occur in low-income households.[2] This represents the number of incidents potentially avoidable through increased access to civil legal services	10,324	67,103	25,809
Protective orders are generally shown to be effective 40 – 80 percent of the time. We assume a 60 percent effective rate to estimate **incidents avoidable**[3]	**6,194**	**40,262**	**15,485**
Avoidable cost estimates (incidents avoidable × per-incident costs):	*($ amounts in thousands)*		
Direct – Medical costs[4]	$6,047.9	$41,575.7	$ -
Direct – Mental healthcare[5]	2,971.5	16,068.1	6,829.4
Indirect[6]	1,280.4	4,962.8	5,198.3
Total	**$10,299.8**	**$62,606.5**	**$12,027.7**
Cumulative total annual avoidable costs		**$84,934.1**	

[1] Based on NVAWS, Incidents in the Past Twelve Months applied to the NY selected population.

[2] Most studies report a higher prevalence of domestic violence among lower income households. A Bureau of Justice Statistics Special Report: *Violence Against Women: Estimates From the Redesigned Survey* indicates that, of female IPV victims over 18 years of age, 66.44 percent are below 200 percent of the poverty line.

[3] Increasing Access to Restraining Orders for Low-Income Victims of Domestic Violence- A Cost-Benefit Analysis of the Proposed Domestic Abuse Grant Program. December 2006. Appendix K.

[4] See Table 2A

[5] See Table 2B

[6] See Table 3

IV. MEASURING VICTIMIZATIONS

11. Measuring the cost of victimizations each year has proven itself to be a daunting task, especially in light of the fact that researchers, in their many cost/benefit studies of this issue, have not been able even to agree on a definition of domestic violence. Some studies, as I do here, focus on IPV as an aspect of domestic violence differentiated from, say, child or elder abuse. Others have focused on violence against women since they make up the overwhelming majority of victims of IPV (Brush 1990, Gelles 1997, Rand and Strom 1997, Rennison and Welchans 2000).

12. Because no national or state-wide system exists for ongoing collection of data about IPV, estimates are often drawn from surveys, which can be subject to variations in survey methodology, and survey instrument development and application. Other sources can be the information hospitals collect about victims to provide patient care and for billing purposes. However, these may include little about the nature of the violence, the perpetrator, and his/her relationship to the victim. Police information will collect such violence and perpetrator information. However, there is a significant non-reporting issue as victims are often reluctant to report their victimization because they may love, depend on, and wish to protect the perpetrator, or they may fear reprisals.

13. In analyzing the impact increased civil legal services could have on domestic violence, several studies focus on the effectiveness of civil protective order issuance. I find such studies useful but limiting in that they relate to one specific civil legal service (of many that may be needed in the circumstances) and, while an attorney can be instrumental in the ultimate granting of a protective order, s/he not an absolute requirement. Also, studies based on civil protective order issuance fail to deal with the significant non-reporting issue (estimates as high as 2/3 of domestic violence incidents go unreported or misreported).

14. The State Bar of Wisconsin funded a study in 2006 (the "Wisconsin Study") to analyze the costs and benefits of a proposed Domestic Abuse Grant Program.[4] This was of particular interest as it represents an analysis of issues similar to what is currently before this

[4] Increasing Access to Restraining Orders for Low-Income Victims of Domestic Violence- A Cost-Benefit Analysis of the Proposed Domestic Abuse Grant Program (December 2006).

Panel. The Wisconsin Study specifically refers to a 1995 National Crime Victimization Survey ("NCVS") report on violence against women.[5] This survey, published by the Bureau of Labor Statistics, estimates rates of violence against women, particularly sexual assault and other incidents that are perpetrated by intimate offenders. The NCVS obtains information about crimes, from a continuous, nationally representative sample of approximately 50,000 households and 100,000 individuals age 12 or older are interviewed for the survey annually. Portions of this study inform my analysis.

15. In its analysis of the effectiveness of protection orders, the Wisconsin Study notes that restraining order effectiveness depends on numerous factors: (1) whether or not the victim drops the order, (2) if the victim reports violations to the police, and (3) if violations are met with consequences. Throughout their research, they found that restraining orders are between 40 and 80 percent effective at deterring future incidents of abuse in the year after obtaining the order.[6] In my analysis, I incorporate a mean effectiveness factor of 60%.

16. Another comprehensive study that reviews domestic violence incidents concurrently with the effectiveness of protection orders, is the Kentucky Civil Protective Order Study[7] ("Kentucky Study"), issued in September 2009. The NIJ funded this project in 2006 to examine civil protective orders in Kentucky from multiple perspectives. This study focused on both rural and urban jurisdictional differences in the protective order process, protective order outcomes, and costs of protective orders as well as the economic impact of protective orders on victim and societal costs of partner violence. This study, based on a continuing interview process of 105 victims from rural areas and 104 victims from urban areas, used multiple data sources including victim self-reports, key informant interviews, and court data.[8]

[5] Bureau of Labor Statistics. National Crime Victimization Survey. Violence Against Women: Estimates from the Redesigned Survey ("NCVS").

[6] Wisconsin Study. Page 47.

[7] A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, & Costs. By TK Logan, Ph.D., Robert Walker, M.S.W., L.C.S.W., William Hoyt, Ph.D., Teri Faragher, M.S.W. September 2009.

[8] Kentucky Study. (Abstract. iii)

17. Substudy 3 of the Kentucky Report, *Costs of protective orders versus partner violence: Is it really worth it?*, focuses on the full spectrum of costs associated with domestic violence and the economic impact of protective orders on domestic violence and domestic abuse. Specifically, this Substudy examined direct and indirect victim costs incurred by the victims during the six months before and the six months after the abuse (in addition to criminal justice costs). A difference in costs before and after protective order issuance, avoided costs relative to protective order intervention costs, and estimates of the statewide impact of avoided costs are examined.

18. When Congress requested a study about the costs of IPV, no existing survey or study had a large enough sample to reliably estimate the occurrence of IPV-related injuries in the U.S. population. Nor did any existing survey or study include enough information about the nature and extent of injuries and their treatment to make the national projections Congress had requested. A new study was needed to fill gaps in knowledge about the magnitude of IPV. The CDC, in performing its initial 1997 study, learned that the NIJ had funded Patricia Tjaden and Nancy Thoennes of the Center for Policy Research in Denver to develop the NVAWS. The NVAWS was to generate information about the incidence, prevalence, characteristics, and consequences of physical assault, rape, and stalking perpetrated against U.S. women ages 18 and older by all types of perpetrators, including intimate partners. The CDC provided supplemental funding for the NIJ study, which expanded the survey population to a number large enough to provide reliable national estimates of the incidence and prevalence of forcible rapes, physical assault, and stalking; related injuries and health care costs, including those for mental health care services; and indirect costs due to lost productivity of paid work and household chores.[9] Based on this, I found the results of this study to be an adequate basis for my New York estimates of incidence.

19. CDC and the office of the Assistant Secretary for Planning and Evaluation, another component of HHS, contracted with Wendy Max, Dorothy Rice, Jacqueline Golding, and Howard Pinderhughes at the University of California, San Francisco, to use the methodology

[9] National Center for Injury Prevention and Control. Costs of Intimate Partner Violence Against Women in the United States. Atlanta (GA): Centers for Disease Control and Prevention; 2003.

they had developed earlier (Rice *et al.* 1996) to review draft survey questions and to recommend changes that would enable cost data to be collected with the NVAWS. The survey questions sought to detail the type of violence; the circumstances surrounding the violence; the relationship between victim and perpetrator; and consequences to the victim, including injuries sustained, use of medical and mental health care services, contact with the criminal justice system, and time lost from usual activities.[10]

20. From November 1995 to May 1996, a national probability sample of 8,000 women and 8,000 men ages 18 and older were surveyed via telephone using a computer-assisted interviewing system. Female interviewers surveyed female respondents. A Spanish-language version of the survey was used with Spanish-speaking respondents. In addition to the 8,000 completed interviews, the women's survey contacts included 4,829 ineligible households; 4,608 eligible households that refused to participate; and 351 interviews that were terminated before completion. The women's response rate was 71.0%.[11]

21. Tjaden and Thoennes (1999) used the NVAWS data and U.S. Census figures for the population of women ages 18 and older to generate national estimates of the incidence and prevalence of IPV-related injuries among women. My analysis is based on this seminal work.

22. Subsequent studies have attempted to estimate IPV costs by applying their many and varied methodologies to the Tjaden and Thoennes incidence rate measured by their national probability survey model. CDC also funded the Research Triangle Institute International (RTI) to derive measures of reliability for the incidence, prevalence, and cost estimates. Additionally, RTI, along with others, developed estimates of the present value of lifetime earnings for fatal IPV by combining economic data with IPV homicide data from the Federal Bureau of Investigation.[12]

23. My analysis incorporates CDC's integration of the work by Tjaden and Thoennes, Max *et al*., and RTI. In so doing, I avoid the non-reporting issue. Applying the determined

[10] *Id.*

[11] *Id.*

[12] *Id.*

incidence rates to the 7,768,878 females 18 years and older in the State of New York (2010 Census) yields my expected annual incidents shown in Table 1.

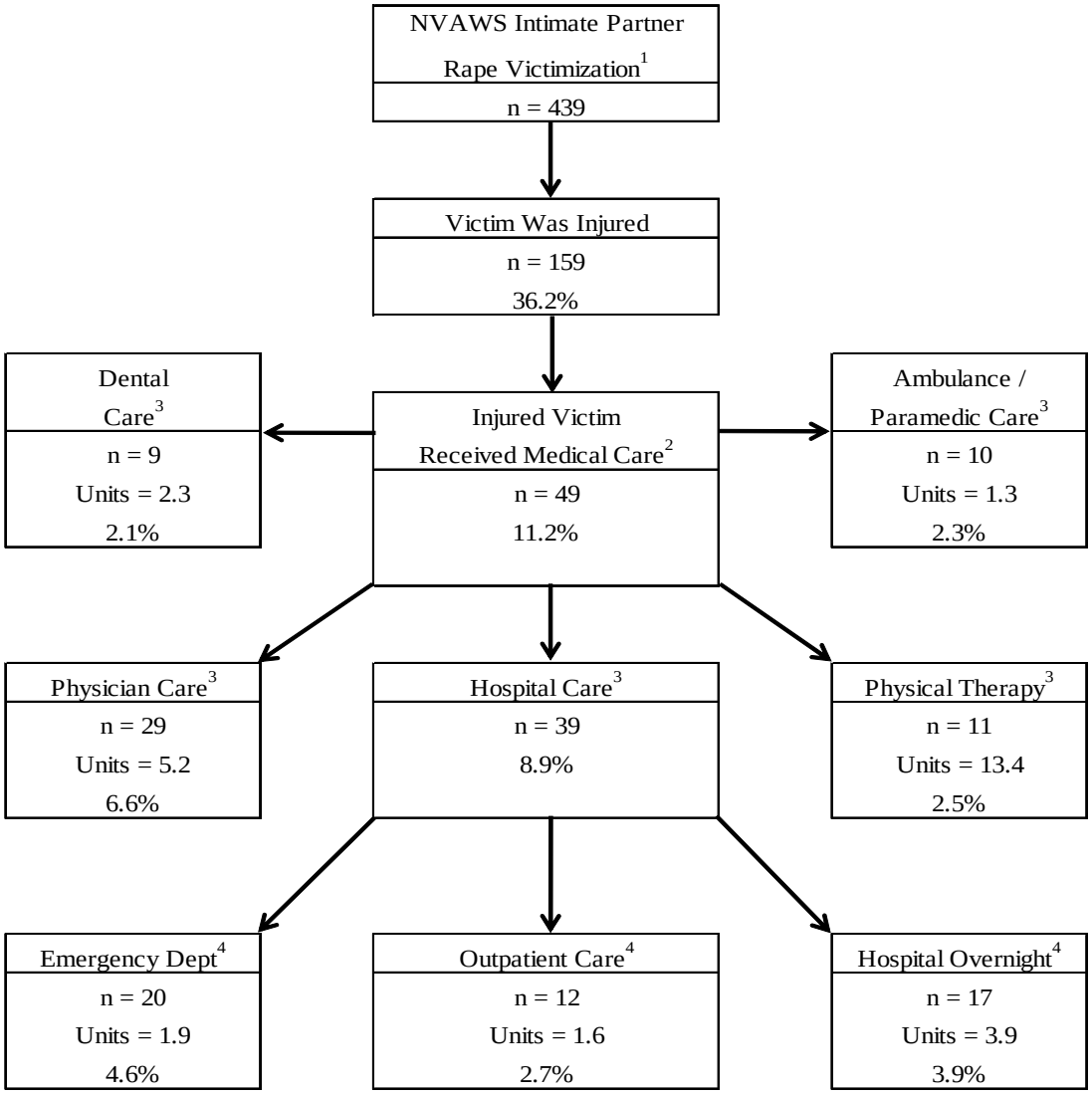
24. Many studies report a higher prevalence of domestic violence and IPV among lower income households, herein defined as household income at or below 200 percent of the poverty level. A Bureau of Justice Statistics Special Report: *Violence Against Women: Estimates From the Redesigned Survey* indicates that, of female IPV victims over 18 years of age, 66.44 percent are below 200 percent of the poverty line. I apply this factor to estimate expected annual incidents in lower income families.

V. DIRECT COSTS[13]

25. In Figures 1A and 1B, I reproduce the victimization percentage distributions of U.S. adult female victims of IPV by medical care service use. Figure 1A reflects these percentage distributions for rape and Figure 1B presents similar information for physical assaults. I apply these factors to estimate units of medical care service utilized.

[13] It should be noted that, due to exclusions of several cost components about which data were unavailable or insufficient (e.g., certain medical services, social services, criminal justice services), the costs presented in this report likely underestimate the problem of IPV in New York.

Figure 1A -- Rape Victimization Medical Cost Distribution



Sources:

Cost of Intimate Partner Violence Against Women in the United States - Department of Health and Human Services Centers for Disease Control and Prevention National Center for Injury Prevention and Control ("CDC Report") published March 2003, Figure 1 & Table 4.
Tjaden and Thoennes 2000

Notes:

Percentages are based on the percent of total victimizations.

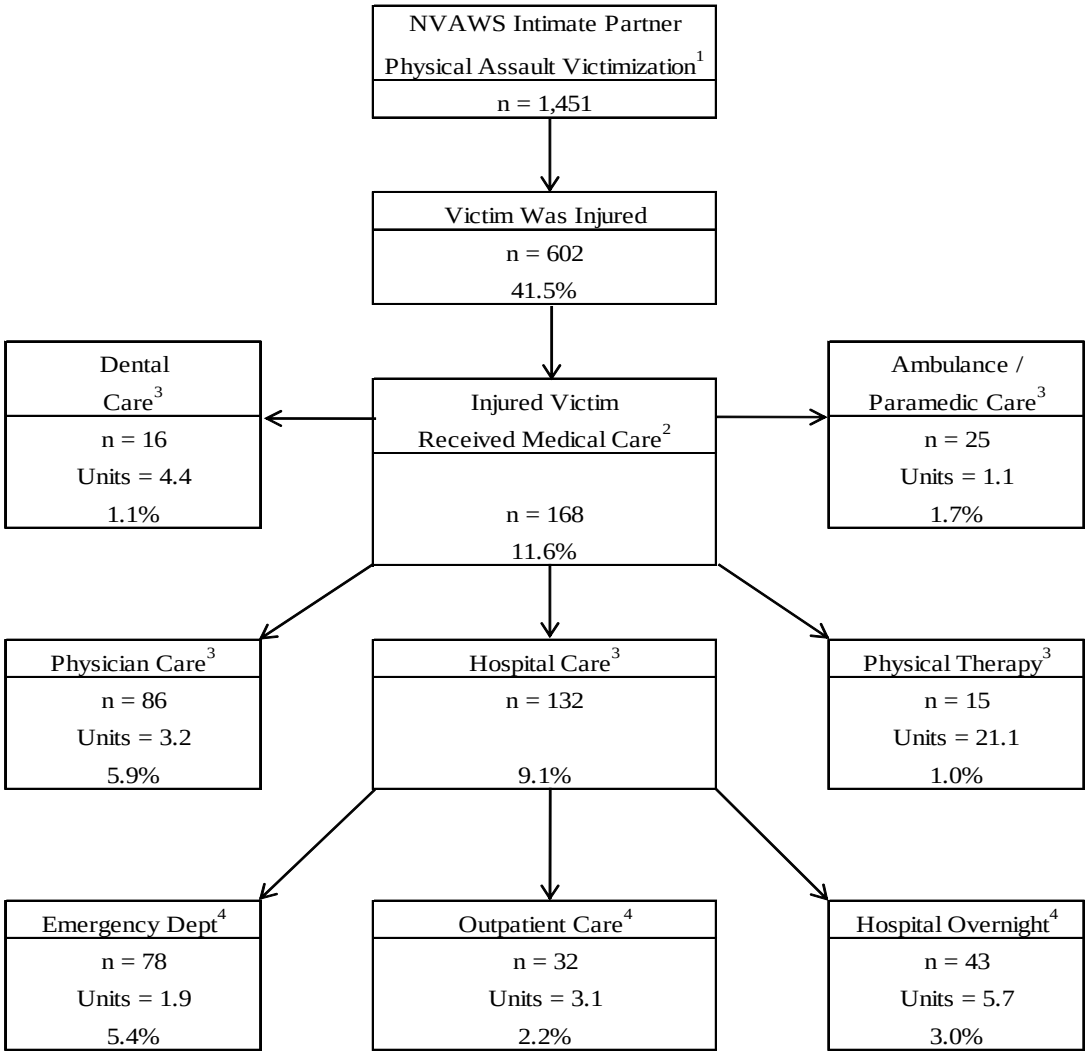
1 Estimates are based on the most recent intimate partner victimization since the age of 18.

2 The number of victims who received medical care is based on 158 responses from victims who were injured, excluding one “don’t know” response

3 Estimates are based on responses from victims who received medical care.

4 Estimates are based on responses from victims who received hospital care.

Figure 1B -- Physical Assault Victimization Medical Cost Distribution



Sources:

Cost of Intimate Partner Violence Against Women in the United States - Department of Health and Human Services Centers for Disease Control and Prevention National Center for Injury Prevention and Control ("CDC Report") published March 2003, Figure 2 & Table 4.
Tjaden and Thoennes 2000

Notes:

Percentages are based on the percent of total victimizations.

1 Estimates are based on the most recent intimate partner victimization since the age of 18.

2 The number of victims who received medical care is based on 598 responses from victims who were injured, excluding 4 “don’t know” responses.

3 Estimates are based on 168 responses from victims who received medical care, although the percentage of victims who received physician care is based on 166 respondents, excluding 2 “don’t know” responses.

4 Estimates are based on responses from victims who received hospital care.

26. Using these medical cost distributions, I estimate direct medical care costs incurred annually by the portion of expected annual victims of IPV in low-income households. Table 2A reflects my calculation of direct costs for each incident of rape and physical assault. Total potentially avoidable medical healthcare costs are $47,623,615 a year ($6,047,894 for rape + $41,575,721 for physical assault).

Table 2A -- Direct Medical Costs

RAPE

Estimated avoidable incidents **6,194**	Units: Incidents Receiving Care	Units: Total Units	Costs: Unit Cost Per Service	Costs: Total Adjusted Cost
ED Visits	285	541	$ 1,042.76	$ 789,419
Outpatient Visits	167	268	390.68	110,756
Hospital Overnights	242	942	4,157.09	4,149,409
Physician Visits	409	2,126	169.62	382,035
Dental Visits	130	299	275.31	87,263
Ambulance/Paramedic Services	142	185	973.85	252,217
Physical Therapy visits	155	2,075	89.74	276,794
Estimated Medical Costs for Rape Victims				**$ 6,047,894**

PHYSICAL ASSAULT

Estimated avoidable incidents **40,262**	Units: Incidents Receiving Care	Units: Total Units	Costs: Unit Cost Per Service	Costs: Total Adjusted Cost
ED Visits	2,174	4,131	$ 1,042.76	$ 6,023,611
Outpatient Visits	886	2,746	390.68	1,136,533
Hospital Overnights	1,208	6,885	4,157.09	30,322,607
Physician Visits	2,375	7,601	169.62	1,366,065
Dental Visits	443	1,949	275.31	568,386
Ambulance/Paramedic Services	684	753	973.85	1,025,319
Physical Therapy visits	403	8,495	89.74	1,133,201
Avoided Medical Costs for Physical Assault Victims				**$ 41,575,721**

27. Regarding direct costs for mental healthcare, I utilized the basic framework of the CDC/NVAWS analysis, in particular because it was the only analysis that separated costs by type of victimization (rape v. physical assault v. stalking). Table 2B reflects the national costs in 2003 dollars utilized in the CDC study. Updating these to reflect New York price levels v. national, and inflating to 2010 dollars yields the values reflected. In rape cases, 33 percent of victims sought some type of mental healthcare service as did 26.4 percent of physical assault victims and 43 percent of stalking victims. Total potentially avoidable mental healthcare costs are $25,868,968 a year.

Table 2B – Direct Mental Healthcare Costs

	Rape	**Physical Assault**	**Stalking**
Number of victimizations potentially avoidable	6,194	40,262	15,485
Percent of victims seeking care	33.0%	26.4%	43.0%
Victims seeking mental healthcare services	2,044	10,629	6,659
Mean cost per incident among victims receiving treatment (national rates in 2003 dollars)	$978	$1,017	$690
Total cost	$1,999,103	$10,809,874	$4,594,518
Factor to inflate costs to 2011 dollars	134.74%	134.74%	134.74%
Factor reflecting the healthcare component of the NY cost of living rate (national = 100%)	110.32%	110.32%	110.32%
Total	**$2,971,514**	**$16,068,053**	**$6,829,400**
Cumulative total		**$25,868,968**	

VI. INDIRECT COSTS

28. Victims of IPV lose time from their regular activities due to injury and mental health issues. They may also be at greater risk for other health problems, such as chronic pain and sleep disturbances, which can interfere with or limit daily functioning (McCauley et al.

1995).[14] The NVAWS showed various amounts of time lost, as reflected in Table 3 below. In valuing those days lost, I used annual income at minimum wage ($7.25/hr × 2,080 hours = $15,080).

Table 3 -- Indirect Costs - Lost Productivity & Related Values

Calculating Average Income per Day			
Annual minimum wage income	$ 15,080.00		
Total paid days per year	260		
Average income per day (2010)	**$ 58.00**		
	Rape	**Physical Assault**	**Stalking**
Assumed Avoided Assaults	6,194	40,262	15,485
PAID WORK			
% of Victims Reporting Days Lost	21.50%	17.50%	35.30%
Mean Number of Days Lost per Victim	8.1	7.2	10.1
Total Days Lost	10,787	50,730	55,210
Total value of time lost from paid work	**$ 625,646**	**$ 2,942,340**	**$ 3,202,180**
HOUSEHOLD SERVICES			
% of Victims Reporting Days Lost	13.50%	10.30%	17.50%
Mean Number of Days Lost per Victim	13.5	8.4	12.7
Total Days Lost	11,289	34,835	34,416
Total value of time lost from household services	**$ 654,762**	**$ 2,020,430**	**$ 1,996,128**
Total Indirect Costs	**$ 1,280,408**	**$ 4,962,770**	**$ 5,198,308**

29. This reflects an amount roughly equivalent to the 2011 income and resource levels at which a family of four would still qualify for Medicaid ($14,637), and is, therefore, conservative. The same family of four could earn up to $44,700 annually and still be at 200 percent of the 2011 Federal Poverty Level. Running these calculations at this higher level of income yields a total indirect cost estimate nearly three times higher for each category.

[14] National Center for Injury Prevention and Control. Costs of Intimate Partner Violence Against Women in the United States. Atlanta (GA): Centers for Disease Control and Prevention; 2003.

VII. SUMMARY

30. This study, prepared by me along with other professional staff working under my direction, is an attempt at estimating potentially avoidable incidences of IPV among lower income households in New York and some of the associated potentially avoidable costs.[15] We measure direct and indirect costs incurred as a result of IPV, specifically among lower income households in the State of New York. We estimate conservatively that annual costs of up to $85 million could potentially be avoided to the extent that an increase in the availability of civil legal services contributes to the avoidance of those incidents.

31. It is important to understand that there are several areas of costs not included in this study but which are, nonetheless, a significant and continuing drain on society resources. For instance, abused women experience more physical health problems and have a higher incidence of depression, drug and alcohol abuse, and suicide attempts than do women who are not abused. Further, children living in households where domestic violence is prevalent and who witness these incidents suffer from a greater level of physical, emotional, psychological, and behavioral difficulties, which interfere with their natural development and education process. These difficulties typically will last into adulthood. This study does not attempt to measure the cost of these issues on society other than to recognize that they exist and are incremental to the potentially avoidable costs determined herein.

Respectfully Submitted,

Jeffrey L. Baliban
Managing Director
Navigant Consulting, Inc.
September 22, 2011

[15] We have been provided various documents and information in connection with this assignment. These resources included the Task Force Report dated November 23, 2010, as well as discussions with the Task Force, relative studies concerning domestic violence issues, discussions with members of IOLA, current statistics provided by the Bureau of Labor Statistics for New York, and my analysis of other publicly available data and information.

Donna Cirolia

Vice President, Coca-Cola Refreshments

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TESTIMONY SUBMITTED FOR THE CHIEF JUDGE'S HEARING ON CIVIL LEGAL SERVICES IN NEW YORK
September 26, 2011

Good morning Chief Judge Lippman, Presiding Justice Luis A. Gonzalez, Chief Administrative Judge Pfau, and New York State Bar Association President Doyle, distinguished members of the task force, ladies and gentlemen.

Thank you for the opportunity to testify before you today to discuss the importance of protecting and expanding access to civil legal services in New York.

My name is Donna Cirolia. I am Regional Vice President for Public Affairs and Communications, Coca-Cola Refreshments USA, Inc., here in the Northeast.

Coca-Cola Refreshments is the sales, manufacturing, and distribution arm of The Coca-Cola Company's operations in most of the US. Together with our independent bottling partners, we are the men and women you see everyday in the streets of our cities and towns, driving red trucks, stocking and merchandising store shelves, and working in our manufacturing facilities. The majority of our close to 70,000 employees are hourly workers and represent a diverse cross section of our communities.

Here in New York State, Coca-Cola Refreshments employs over 3,200 men and women, has two large production facilities in Maspeth and Elmsford, and sales and distribution centers in the Bronx, Staten Island, Elmsford, Albany, Rochester, Syracuse, New Windsor, Smithtown, Elmira, and Watertown.

I begin my brief remarks with this background, hopeful that it demonstrates that Coca-Cola is more than a large multi national brand. Coca-Cola is made up of people who live in our neighborhoods, send their kids to our schools, and want to see their communities thrive. This is best achieved by building sustainable communities.

In a business context, sustainability typically refers to the economic, social and environmental performance of a company. We define sustainability as creating meaningful benefits for society as we manage and grow our business. We're working to embed sustainability into every aspect of our business, beginning with our business planning process. In addition, we are committed to developing the capabilities of our employees, and ensuring that our system associates, stakeholders, customers and consumers are engaged and in a stable business environment.

Coca-Cola Refreshments

Part of supporting a sustainable community and a sustainable business environment is understanding the needs of those who are the most vulnerable among us. And that is why I am here today.

As I've come to learn, when the least fortunate among us are unable to gain access to the judicial system because they cannot obtain legal help with their civil legal problems, the impact is broad in our community and in the stability of that community. When a family, struggling to get by, is not aware of their civil legal rights, or unable to exercise those rights it can tear into their economic future. Particularly with respect to children, lack of essential legal assistance in such matters as foreclosures and child support can lead to significant declines in a child's economic well-being, health, and future academic success. Indeed, we are especially concerned that the lack of access to civil legal help can pose a clear threat to health and safety for women and children who cannot escape from domestic violence without legal representation.

As a businessperson, I understand the difficult economic times we are in, and I do not envy the difficult decisions that must be made by our elected officials. I hope that by testifying today, we've added to the broad base of information needed to make those decisions.

Hon. Fern Fisher

Deputy Chief Administrative Judge
for the New York City Courts;
Director of the New York State Courts Access to Justice Program

Hon. Fern A. Fisher
Testimony at the Chief Judge's Hearing on Civil Legal Services
September 26, 2011

Thank you again for the opportunity to offer testimony to you on this vital issue. The success of the hearings last year which resulted in additional funding must be celebrated. The additional funding will result in more services for low income people at a time when New Yorkers continue to be faced with severe economic challenges. However, our job is not complete. The New York Times reported last week that one in five New Yorkers lives in poverty, the highest number since 2000. The numbers of unrepresented litigants continue to flood our courts with life altering cases. The desperation of litigants has not decreased. Just a few weeks ago a tenant committed suicide when the City Marshal attempted to evict him. You have already heard from our judges on the difficulties that they see in their courtrooms of litigants who are trying to handle their cases, usually poorly without an attorney. You have also heard from clients on the difference an attorney can make. We must now move forward to expanding the success of the funding obtained this year to increasing substantially the amount next year. This year at the request of the Task Force I am focusing my remarks on a topic other than the increase of funding: the simplification of court procedures and processes.

Last year's Task Force report concluded that increased funding alone will not maximize access to justice for New Yorkers, but more funding must be accomplished in tandem with simplifying the Courts. Simplification will assist those unrepresented litigants who cannot obtain an attorney in navigating the courts. In addition some simplification measures can make it easier for civil legal services attorneys and pro bono attorneys to increase the numbers of clients they can assist and may also ease their ability to provide effective services. The Task Force conducted a survey of judges, non-judicial management personnel and legal services providers which resulted in a long wish list of simplification measures. In light of recognition of fiscal restraints and that it is impossible to accomplish everything overnight, today I speak to you on some of the priorities that the Task Force has determined are starters on the road to simplification of the court system.

Most individuals would not attempt to play a sport, play a game, take an exam, or fill out an important application without knowing the rules and instructions. Indeed, we give people clear rules or instructions on how to complete these tasks. But, we often do not always provide unrepresented litigants the rules, instructions and necessary tools when they are attempting to navigate the courts. In our adversarial system, the information, rules and forms un represented litigants need to be successful on their case are often not available or accessible.

We often hide the ball necessary to play the game. It is time to stop hiding the ball, so the game is fair. The Task Force is setting forth for your consideration four proposals to further move forward access to justice: Standardization and simplification of forms and procedures, improvement of the Court's website, expansion of outreach and a study of court scheduling and of the Town and Village Justice Courts. In my capacity as the Director of the New York State Access to Justice Program, I believe these proposals are well considered, vital and doable.

In order to achieve a major step forward in access to justice, standardization and simplification of forms and procedures is an effort we must embrace and get done. New York is already the national leader in DIY (Do-It-Yourself) computer programs for unrepresented litigants. DIY programs assist litigants in filling out court forms using a computer tutorial program. However, that effort will eventually be stymied unless we standardize and simplify forms and processes statewide. Recently, when preparing a DIY program for minor name changes my staff learned that depending on the county a family resided in, the family may be charged one fee for changing the names of all the children in the family or in other counties a fee will be charged for each child. In some counties the fee depended on who was at the counter at the time. In some counties three copies of the forms

were required. In other counties less than three copies are required. Some counties required a petition others did not. We cannot move forward with more DIY programs unless we address these issues. Over 55,000 litigants have used the existing DIY programs. The implications of the lack of uniformity extend beyond DIY programs. Justice should not be more expensive or complicated depending on the county in which you reside. Moreover justice should not be stymied by obstacles we can remove.

In NYC tenants are given access to a check off list of available defenses in housing cases. In consumer cases in NYC clerks are instructed to require affidavits from plaintiff debt collections which establish chain of custody of books and records, assignment and compliance with statute of limitations requirements. In the city, the court mails out notices to respondents and defendants of pending cases in housing and consumer credit before default judgments are entered. In Housing Court a large number of tenants come in to answer their cases stating that the only notice they received was the one mailed by the court. In consumer cases, thousands of notices are returned due to bogus, non-existent addresses or addressee unknown. In those cases clerks are instructed not to enter a default judgment parenthetically plaintiffs may move before a judge for the default judgment, but few do. As in housing cases, consumer defendants who answer

indicate that the only notice they have received is the notice from the court. These measures do not exist outside NYC. Equal access to justice demands uniformity throughout the state.

The Task Force has set forth some examples of where simplification of forms and processes should be implemented. Any changes should be uniform throughout the state and all forms and instructions should be translated into numerous languages. The following are examples where improvements can be made where they do not exist already:

- ★ streamline and simplify the divorce process;
- ★ affidavits of net worth, which request more information than necessary from poor litigants, including information about yachts and maids;
- ★ unrepresented litigant housing/consumer court forms which provide defenses and rights;
- ★ contested/uncontested divorce checklists, which are not standardized in the state;
- ★ Article 6 custody/visitation forms for people who are not biological parents; petitions for orders of protection, custody, and child support, as well as summonses need to be in simpler language with clearer instructions;
- ★ service of process;

★ filing deadlines;

★ pleading requirements; and

★ procedures to request an interpreter.

Standardization of forms and procedures will assist in increasing limited scope representation. Legal services advocates and pro bono counsel and clinics could provide more limited-scope services by assisting litigants with filling out simplified forms. More volunteers could be trained on a statewide basis to assist litigants if common forms were used and common procedures were in place. A by-product of simplifying the courts will be the reduction of litigation costs for all, including plaintiffs in bread and butter cases.

Without training of clerks to utilize and embrace new forms and procedures efforts to standardize and simplify will hit brick walls. Another recent inquiry by my office turned up a startling revelation. In one county a clerk indicated that there were no forms to vacate a tenant's default and that she never had a tenant move to vacate a default. In another county the clerk in his long career had only seen five or fewer tenants come in to vacate a default. We have far to go in some areas of the State not only to develop forms and procedures but to educate the public and train court personnel.

Judges must be encouraged to accept simplified forms and procedures but also to feel comfortable in explaining procedure and defects in pleadings when rejecting the pleadings. In the absence of sufficient attorneys and Help Centers and the large numbers of unrepresented litigants, Judges must become engaged while remaining neutral. Nationally, the view of the role of a Judge is changing to include setting forth procedure, explaining why a pleading is inadequate and construing pleadings liberally. The concept is beginning to take hold and New York should be at the head of the movement of embracing the changes.

As we move further and further into the internet age, web sites become the conduit of information. Information is one pathway to increased access to justice. The Task Force has proposed various improvements to the website which will be included in the final report. For purposes of today I highlight just a few suggestions:

★ Court Help and local court web sites should be linked.

★ All court forms should be in a central place on the web sites not scattered as they are now. They should be organized so easily found.

★ All local courts should direct users to the central location for forms and legal information. This measure would insure all forms and legal information is uniform, accurate and up to date.

★ All local court sites should be uniform.

★ Translate the website into more languages.

★ Improved search engines.

Various outreach measures are endorsed by the Task Force, including expanding Volunteer Lawyer for The Day Programs and Volunteer Lawyer Programs in order to attract more pro bono attorneys by offering limited scope representation opportunities. In addition expansion of the Attorney Emeritus Program is encouraged. The Task force also supports developing partnerships of law firms, non-profits and foundations to fund Mobile Help Centers like the New York Lawyers Assistance Group (NYLAG) mobile van.

Other measures to ease the practice of law for civil legal services and pro bono lawyers and to assist unrepresented litigants unable to come to courthouses or in need of minimizing the time they spend in courthouses are proposed by the Task Force. The appropriate use of telephone and/or video conferencing would accommodate litigants with disabilities, limited income and geographic challenges. Lawyers would be able to economize their time by the use of remote conferences. Electronic filing as well will make it easier for lawyers to practice. I believe that electronic filing may assist some unrepresented litigants. However, with respect to unrepresented litigants the protocols for them with respect to

electronic filing must be carefully considered. Finally, the Task Force urges the Court study the possibility of staggered scheduling of court cases, so neither lawyers nor litigants sit around waiting for their cases needlessly,

Finally, a review of the Town and Village Justices and the impediments faced in ensuring access to justice in these courts is necessary. My office receives frequent feedback from across the State on problems in these courts which undermine the delivery of justice. The Task Force endorses a full study of these courts.

A continuation of stable civil legal services is a must. An increase of the funding obtained last year is a must. The court system, as a responsible government partner in providing access to justice, must simplify and make uniform our courts. Change is never easy, but with the backing of Judge Lippman. Judge Pfau, the Presiding Justices, Judge Coccoma, the Deputy Chief Administrative Judge for Courts Outside of New York and all the other Administrative Judges and with the support of bar association such as the New York State Bar, change is not only doable but a certainty. In conclusion, paraphrasing Mohandas Gandhi, each of us in our own way must be the change we wish to see in the world.

Yves Gebhardt

Client of Legal Services NYC, accompanied by Mallory Curran

Testimony of Yves Gebhardt

The Chief Judge's Hearings on Civil Legal Services

September 26, 2011
New York, New York

Good morning. My name is Yves Gebhardt. Thank you for giving me the opportunity to speak with you today. I am a 59-year-old man who moved to New York in 1980, and have called the City my home ever since. In 2002, I was diagnosed with stage IV cancer and HIV. I was given a 20% chance of surviving the cancer, and I had surgery, chemotherapy, and several biopsies. Although I have been in remission from cancer since 2003, I have experienced an avalanche of other medical conditions related to my HIV and its treatment.

Prior to my illnesses, I was the manager of a Manhattan restaurant where I had worked for more than 20 years. No longer able to work, I focused for several years on regaining my health, learning about the community supports available to me, and becoming an advocate for both myself and others with disabilities. Currently, I am a volunteer Community Liaison with the Manhattan HIV Care Network.

Through my own experiences and my volunteer work, I understand firsthand the crucial importance of legal services to low income people. People living with HIV are people like everyone else. They have the same trials and tribulations of life as others. Most people with HIV are low income, and so like other low income people they have legal problems related to issues like housing, access to public benefits, immigration, domestic violence, and consumer problems to mention a few.

However, having HIV adds another layer of complexity. Due to illness, severe side effects from highly active anti-retroviral medication regimens, and other challenges, people with HIV often lack the financial resources, strength and physical vitality to fight problems with the focus and determination needed to overcome barriers.

I have been a client of legal services on several occasions. I cannot overstate the importance of having a lawyer for both solving my legal problems and also maintaining my health. For people with HIV, having a low viral load and a high CD4 count is an important indicator of health. When I and others in my community experience the stress of an unresolved legal problem, our viral loads increase precipitously and our CD4 counts plummet. Access to legal services is literally of life and death importance to us.

This summer, my neighbors and I received a shocking and unwelcome visit from the Emergency Placement Unit of a City agency. They told us that because the owner of our building was going into bankruptcy, the building would be transferred. They said that we should move within two weeks because the building was at risk of being totally shut down and locked up. Moving with two weeks

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notice is awful for anyone; for myself and my neighbors, all of whom have significant disabilities, it was horrifying. The first thing that I did upon receiving this news was to contact Manhattan Legal Services (a program of Legal Services NYC). They responded immediately – as I recall, within fifteen minutes.

Together with their colleagues from South Brooklyn Legal Services (another Legal Services NYC program), the attorneys at Manhattan Legal Services brought our plight to the attention of anyone and everyone who could help save our building: the Mayor's Office, Human Resources Administration (also known as HRA), Housing Preservation & Development (or HPD), Housing & Urban Development (or HUD), the building managers, the previous contract holder, and the bankruptcy trustee. In less than two weeks, and without going to court, the problem was solved: a new contract was signed for the provision of social services, all tenants were able to stay in the building, and catastrophe was averted.

In my experience, that's what legal services does: provides timely and effective problem solving, helping low income people do things like avoid eviction, maintain health insurance, access safety net services, and move along the path toward citizenship. Ultimately, they help us maintain our health in the face of precarious financial situations. In short, they are our lifeline.

Thank you again for inviting me to speak today. I would be happy to answer any questions.

Hon. Douglas E. Hoffman

Acting Supreme Court Justice and Supervising Judge,
Family Court

The Hon. Douglas E. Hoffman has been the Supervising Judge of New York County Family Court since July, 2009, and is an Acting Justice of the Supreme Court of the State of New York. Judge Hoffman was first appointed to the Bench in 1996 by then-Chief Administrative Judge Jonathan Lippman to preside in New York County Housing Court. Mayor Michael Bloomberg thereafter appointed him as a Criminal Court Judge in 2003. Judge Hoffman was made an Acting Justice of the Supreme Court and assigned to Family Court, first in Kings County and then Bronx County. Mayor Bloomberg appointed Judge Hoffman as a Family Court Judge in 2005.

Prior to appointment to the Bench, Judge Hoffman served in various positions with the Civil Division of The Legal Aid Society, including Litigation Director for the Bronx Neighborhood Office, Director of Training, Attorney-in-Charge of The Brooklyn Office for the Aging, and staff attorney for the Harlem Neighborhood Office.

Judge Hoffman served as Law Clerk to Hon. Anne E. Thompson, United States District Judge, District of New Jersey, for two years following graduation from New York University School of Law. At NYU, he was a Root-Tilden-Kern Scholar and Arthur Garfield Hays Fellow in Civil Liberties.

Judge Hoffman is a member of numerous professional organizations and serves as Chair or a member of a wide array of Family Court-related Committees. He is married with three teen-aged children.

HONORABLE DOUGLAS E. HOFFMAN
SUPERVISING JUDGE
NEW YORK COUNTY FAMILY COURT

Summary of Background and Testimony for Access to Civil Legal Services Hearings

I would like to thank Chief Judge Jonathan Lippman, Chief Administrative Judge Ann Pfau, Deputy Chief Administrative Judge Fern Fisher, Presiding Justice Luis Gonzalez, Task Force Chair Helaine Barnett, and New York State Bar Association President Vincent Doyle III for providing me with the opportunity to testify today.

I have been the Supervising Judge of New York County Family Court since July 2009, and am an Acting Justice of the Supreme Court of the State of New York. I was first appointed to the Bench in 1996 and presided in New York County Housing Court from 1996 - 2003. In 2003, Mayor Bloomberg appointed me to the Criminal Court Bench and I have been assigned to Family Court since that time. I was appointed a Family Court Judge in 2005. I have presided in the Kings, Bronx and New York County Family Courts.

Prior to appointment to the Bench, I served in various positions with the Civil Division of The Legal Aid Society, including Litigation Director for the Bronx Neighborhood Office, Director of Training, Attorney-in-Charge of the Brooklyn Office for the Aging, and Staff Attorney for the Harlem Neighborhood Office.

As the Supervising Judge of the New York County Family Court, I oversee the operations of the court and hear cases of all types, including child abuse and neglect, domestic violence, custody and visitation, juvenile delinquency and aspects of child support matters. This

is a Due Process-driven court where we strive to address all cases fairly and expeditiously, with the goal of providing a forum that will ultimately improve the lives of the adults, children and families who come before the court. It is imperative that litigants feel that they have had a fair opportunity to have their concerns heard and can present their views concerning intensely personal and deeply emotional issues in a meaningful manner.

There are approximately 250,000 petitions filed annually in the New York City Family Court. Of these petitions, roughly 89,000 are support petitions and 21,000 are paternity cases. The overwhelming majority of Family Court litigants are not represented by counsel and do not have meaningful legal guidance until they first appear in court. Although many litigants are ultimately represented in an array of cases in Family Court, petitioners in paternity proceedings and most parties in support proceedings are not entitled to and do not have counsel. It is only when a party potentially faces incarceration, such as where there is a willfulness hearing in a child support case, that the party is entitled to counsel. Parties are not entitled to counsel in a violation hearing; thus, by the time the party potentially faces incarceration in a willfulness hearing, it may be effectively too late meaningfully to assist the litigant, even with assigned counsel.

The impact upon parties without counsel can be devastating. Our paternity and support laws are complex, and one party represented by counsel has a strong advantage in terms of presenting evidence and articulating legal arguments. Although the court strives to seek to ensure fairness, we are cognizant of our role as neutral arbiters and that jurists can extend themselves only so far to seek to ensure that an unrepresented litigant properly presents his or her case.

In a paternity case for example, where the petitioner does not have the right to counsel, a petitioner may not know that he may have a right to DNA testing, may not be able to raise issues such as the presumption of legitimacy of a child born to a woman who is married, or may not be aware that there is an equitable estoppel argument that may prevent testing to indicate biological parentage.

In support cases, seeking to establish income, assets, adjustments for other children for whom there may not be an order of support, validity of employment searches, bases for upward or downward modifications, child care costs, or bases for deviation from standard support guidelines, are difficult to establish. At the hearing, an unrepresented litigant has a distinct disadvantage based upon lack of knowledge of how to obtain and present testimonial or documentary evidence in a coherent manner.

The Family Court Act requires litigants in support proceedings to provide numerous financial documents, including sworn financial statements, a current and recent pay stub, copies of their tax returns and W-2 forms. Litigants often have to produce employment records and documentation as to employment searches. They may be obliged to submit medical records to substantiate a claim of inability to work. As a result of inexperience of unrepresented litigants with the process, many fail to provide proper documentation to the Support Magistrate, who must at times issue an order of support without key documents. This creates the potential for unduly onerous orders of support to be entered against low-income litigants who are ultimately unable to meet these child support obligations. This can lead to findings of violation of orders of support and, potentially, incarceration. Further, it causes an increase in the amount of supplemental petitions filed requesting modification of prior child support orders, or violation

petitions for low-income litigants who have been unable to make payments on these child support orders. Under the law, with limited exceptions, upward or downward modification of support orders can be effective only as of the date of the filing of the modification petition, even though the facts underlying the downward modification may have existed long before the petition was filed. Had the litigant had appropriate legal counsel, the support order could have corresponded more properly to the economic reality of the parties. Lack of counsel can also play a significant role in cases involving litigants who are self-employed (they do not receive “W2" income) and can lead to inadequate orders for a custodial parent. In these complex cases, counsel can make the difference between an order which adequately supports a child and one that provides very little help to a family.

In the several thousand interstate support matters filed annually in our court, the petitioners are represented by Corporation Counsel, while respondents usually go unrepresented, causing an imbalance in the ability to present one’s side of the case. Proof as to living expenses, tax returns, interpretations of the federal tax code, and the presentation of evidence in appropriate form present vexing obstacles to unrepresented litigants.

In all of these types of cases, the problems are often compounded by the lack of familiarity so many of our newest citizens have with the judicial system and the absence of knowledge as to how outcomes in civil proceedings affect immigration status.

Greater availability of civil legal services would be extremely beneficial to unrepresented litigants within the Family Court. Cases that include counsel for both sides result in more informed, and therefore more just decision making by the court. The process moves more expeditiously and eliminates the filing of unnecessary supplemental petitions. A litigant in a

child support proceeding represented by an attorney with experience in child support matters may receive a more reasonable child support order, consistent with actual income, which would decrease the need to file future petitions for downward modification, as well as violation petitions. Increase in the availability of civil legal services attorneys would promote judicial economy and would provide jurists with more time to spend on each case, while also decreasing the amount of time each jurist spends explaining Family Court procedures to unrepresented litigants.

Greater access to civil legal services may also increase the number of Family Court matters that are resolved prior to trial. Litigants come to the Family Court with highly sensitive and emotional issues that they have been unable to resolve without the aid of the court. Trained attorneys representing low-income litigants may be able to mediate issues and reach resolutions which otherwise might not happen if the litigants were unrepresented.

I have had the benefit of presiding in two high-volume courts, Family Court and Housing Court, where many litigants, mostly low-income, are not represented by counsel when such representation is essential. Many Family Court litigants are the very same people who are unrepresented while participating in Housing Court eviction proceedings. There are many overlapping issues between Family and Housing Court, with high correlation among domestic violence and lockouts, removal of children or lack of child support and nonpayment eviction proceedings, violence in the home or juvenile delinquency and holdover eviction petitions, to name a few.

The overwhelming goal in abuse and neglect proceedings in Family Court is to protect children from the risk of or actual harm. With provision of services, the court, agencies and the

families work most frequently toward the goal of reunifying children with their parent or parents. An essential aspect of reunification is for the children to have a home to which to return. Often when a child is removed, and the child and/or parent is receiving public assistance, the child's public assistance, including the housing portion thereof, is removed from the budget. This may make the household ineligible for a larger rental assistance grant and the head of the household may fall into rent arrears. Unless that eviction can be prevented, reunification, when in the best interest of the child, may be unnecessarily delayed, resulting in tremendous harm to the child and large, unnecessary foster care and shelter expenses for the city, state and federal governments.

My experience in addressing many thousands of housing eviction proceedings, both at the administrative and judicial levels, together with observation of how pilot programs providing counsel for indigent tenants have prevented eviction at an exceptionally high rate, leads to the unquestionable conclusion that representation by counsel for indigent tenants would prevent a huge proportion of evictions. In both Family Court and Housing Court, representation is needed at the inception of the litigation, not at the end, when the indigent litigant may be faced with sanctions or incarceration in Family Court, or eviction in Housing Court. Provision of legal counsel in Housing Court unquestionably would assist in reunifying families and in keeping them together. I would note that unmarried individuals, although living together as couples, often are not permitted to share family shelters. This not only interferes with the family relationship, but it greatly complicates effectuating visitation orders from Family Court when children have been removed from the home. This, too, hinders reunification of families. Provision of civil legal services before the eviction could prevent this from occurring.

In Family Court, numerous proceedings, such as family offense petitions predicated upon domestic violence, abuse and neglect cases, and particularly PINS and juvenile delinquency proceedings, may ultimately serve as the predicate for a finding of non-desirability by the New York City Housing Authority or can be used by private landlords to evict tenants. Litigants in both Family and Housing Court often do not know their rights and are unfamiliar with the collateral consequences a finding in one court has upon a proceeding in another court or upon immigration status.

Greater availability of legal services to litigants in both Family and Housing Court would go a long way toward achieving the goal of informed decisionmaking, meaningful opportunity to be heard, and therefore justice in both courts. Thank you.

Natalie Jones

Client of Legal Services NYC, Domestic Violence Unit,
accompanied by Lenina Trinidad

Testimony of Natalie Jones

The Chief Judge's Hearings on Civil Legal Services

September 26, 2011
New York, New York

Good morning. My name is Natalie Jones and I thank you for inviting me to speak today. I am a low income single mother and I immigrated to New York from Jamaica as a young woman. I am a survivor of domestic violence.

In 2008, one month after giving birth to my son, my ex-husband physically abused me, choked me and threw me out of our apartment. By the time I was able to return home, he had left the State with my baby. I was able to get my son back, and file a police report. I also filed for custody and for an Order of Protection from the Family Court. My husband was arrested but my ordeal had only just begun.

My husband hired lawyers and filed for custody of our son. I had no money to hire a lawyer and I didn't know what to do. On top of that, my husband had taken all of my documents. I had no identification documents, no way to prove who I was, and no way to get a job to take care of my baby. My case was being heard in the Integrated Domestic Violence Court, where I was referred to Manhattan Legal Services. I met with an attorney, Lenina Trinidad, and things began to change for me.

The Criminal case against my husband was dismissed, which gave my husband more motivation to pursue custody. I was terrified that my abuser would win custody of my baby and I would not be able to protect him. After many court dates, and my husband refusing to agree to my having custody of the baby, the Judge said we had to have a trial.

I spent many hours with my baby in my arms at my lawyer's office getting ready for Court. I had a team—a lawyer, her supervisor and a paralegal—working hard to prepare for my case. My lawyer spoke to my witnesses, went over evidence with me and explained what was going to happen in Court.

My case finally went to trial. I testified in Court to everything my husband had done to me, about the bruises I had, and how afraid I was for myself and my son. Over the course of five or six two-hour trial dates, my husband's lawyer tried to make me look like a liar. But because of the work of my legal services lawyers, the Court decided to issue a five-year order of protection for me and my son against my abuser-husband.

Even after the judge gave me the Order of Protection, my husband still wanted to get custody of the baby. Two false child neglect claims were called in against me to the Administration for Children's Services. Legal Services NYC, though its Manhattan Legal Services office, again helped me through the process of getting the investigation completed without any problems for me and my child. The

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charges were unfounded or found to be untrue. We finally settled the custody case with a detailed written order. I got custody of my baby and we were finally safe. I was able to get child support in family court. This helped me put my child in daycare so that I was able to enroll in college. I got an apartment. I was able to get my green card and work authorization replaced. Now that I am in college, I want to help women with children in situations like mine. Thanks to Manhattan Legal Services I was able to protect my son and make a better life for us. I know that if I didn't have a lawyer, things would have gone very differently for me and my baby.

Thank you again for inviting me to speak today.

Hon. David Kaplan

Housing Court Judge

Summary of Background:

David J. Kaplan Housing Court Judge, New York County:

Appointed in 2008 as a judge in the Housing Court, I currently preside in a resolution part in New York County. I have also presided in a trial part, HP part and City part in New York County. Preceding my appointment, I was an associate at Shaub Ahmuty Citrin & Pratt LLP in its appellate practice group. Prior to my time in private practice, I was a law clerk for the Honorable Carmen Beauchamp Ciparick at the New York State Court of Appeals. Before accepting the clerkship at the Court of Appeals, I was a court attorney assigned to various housing court judges in New York and Kings County.

I received my JD from Emory University's School of Law in 1999 and a BA in Economics from the State University of New York College at Geneseo in 1996.

Summary of Testimony:

Thank you for affording me the opportunity to address this distinguished panel on what I see as one of the most daunting issues impacting the Housing Court today.

With the number of people below poverty level continuing to escalate, unemployment remaining high, social services funding repeatedly being cut and job opportunities being scarce, New York City's Housing Court has been presented with a new set of challenges. These challenges tax a court system that already struggles to address the systemic problems associated with a large population of unrepresented litigants. The problems we face have been further aggravated by the court's own economic issues that have left it prey to budget cuts, reduced hours and staff reductions.

Over 90% of tenants appearing in New York City Housing Court eviction proceedings -- as well as a significant percentage of landlords -- do so without the benefit of counsel. The vast majority of these litigants are simply unable to obtain counsel. This has saddled the court with the burden of preserving equal access to justice on a playing field that is inherently unlevel.

Unrepresented litigants are routinely at a disadvantage as they lack both the knowledge and the tools to properly assert their rights and assess their claims. In practice, unrepresented litigants in housing court are pulled aside daily by opposing counsel and offered settlement agreements. Often they are induced into signing such agreements with comments like; "Sign this and you will get out quickly," "This is the best you can do" and "If you don't agree to this, you will have 5 days to pay or you will be evicted." These unrepresented litigants, who often do not speak English as their primary language, regularly sign stipulations that they do not fully understand as they tend to be unfamiliar with their rights and overcome by the fear of losing their home. These agreements that they sign are not written in plain language but rather contain terms that an individual without a legal background cannot be expected to understand.

By statutory mandate, the court is obligated to review all stipulations in which one party is unrepresented by counsel to describe its terms to the unrepresented party. When done correctly,

this is a time consuming process that requires the court to detail the stipulation by converting the legalese into simple terms to make sure the unrepresented litigant understands what he or she is signing in a manner that renders the stipulation enforceable. This is not an easy task – now consider that the typical housing court judge sitting in a resolution part must repeat this exercise between 50 and 100 times each day.

As a new housing court judge, coming from a brief stint as an appellate practice attorney and a clerkship at the Court of Appeals where I was spoiled with cases that were regularly well briefed by counsel on all sides, I have always taken this role very seriously. The contrast between the practice of law in which all parties are represented and that in which a party appears without counsel and without a fundamental knowledge of the law is glaring. Reviewing stipulations with unrepresented litigants is a challenging, important and encompassing role which monopolizes most of the court's time. It is a difficult act that requires the court to balance its paramount responsibility of being impartial while still ensuring litigants a fair opportunity to be heard under the law. This is one of the primary areas where further access to legal services would make an immediate and huge impact. Not only would the court avoid being placed in the position of walking an uneasy line between impartially applying the law and making sure unrepresented litigants have equal access to justice by understanding their rights, but it would leave the court with more time to focus on the myriad of legal issues that routinely arise each and every day. If this role was not daunting already, I note that it has been made much more difficult by the recent reduction in hours and staff.

Turning back to the economic pressures that are plaguing the court system, it has become more apparent than ever that litigants need help navigating not only the court system, but also the governmental agencies that are intertwined with the housing matters that regularly come before the court. Funding for social services and eviction prevention programs continue to be slashed. Matters that previously were routine – i.e., seeking a grant for arrears ("One Shot Deal"), applying for or the adjustment of section 8 benefits, etc. – now require assistance and advocacy in light of funding cuts, staffing reductions and morale issues. Litigants who are already struggling to pay their rent must take off from work and are often forced to wait for hours to file applications for assistance which are then frequently denied or delayed based on technicalities, errors, misunderstandings and administrative red tape. Annual and interim recertification of section 8 benefits are often lost in the process or delayed for months. Applications and adjustments for SCRIE and DRIE benefits regularly result in delays and discrepancies that place seniors and people with disabilities unnecessarily at risk of eviction. All of these matters can generally be resolved in a much more efficient and timely matter and with significantly less court intervention if the litigant had counsel. When a tenant does not have counsel, not only is he or she put at greater risk of eviction, but the cases often get dragged out over numerous court dates and orders to show cause – all at a significant cost to landlords and the court system.

In closing, the economic realities which surface in our housing court have fostered an environment in which generally only one side has the benefit of legal representation. This places an enormous burden on both the court's resources and its role in impartially providing justice for all. Further availability of civil legal services would directly correlate with proper access to justice, and would alleviate burdensome court calendars and an otherwise overtaxed system. This need for representation has now reached a tipping point as it has transcended to litigants'

access to social services and their ability to navigate the government agencies which play an integral role in the resolution of housing related matters actively litigated before our court. I fully support the Chief Judge and Task Force's efforts to ascertain the needs of unrepresented litigants and to further maintain and extend access to civil legal services.

Hon. Tanya R. Kennedy

Acting Supreme Court Justice and Civil Court Judge

CIVIL COURT OF THE CITY OF NEW YORK
111 CENTRE STREET
NEW YORK, NEW YORK 10013

CHAMBERS OF
TANYA R. KENNEDY
ACTING JUSTICE, SUPREME COURT

Tanya R. Kennedy was elected to Civil Court, Countywide on November 8, 2005, and assumed office on January 1, 2006. On January 1, 2011, Judge Kennedy was designated an Acting Supreme Court Justice of the Supreme Court of the State of New York. Judge Kennedy has presided over cases in the Criminal and Civil Courts of the City of New York, as well as the Family Court of the State of New York. Judge Kennedy also teaches a juvenile justice seminar course as an Adjunct Professor at Fordham University School of Law.

Prior to her election, Judge Kennedy served as Principal Law Clerk to former Associate Justice Barry A. Cozier in the Appellate Division, Second Judicial Department. She also served as Principal Law Clerk to Justice Cozier in the Commercial Division of the Supreme Court of the State of New York, New York County. Judge Kennedy commenced her legal career at the New York City Law Department, Office of the Corporation Counsel, where she worked in both the Bronx Family Court and Bronx Tort Divisions and was promoted to Deputy Assistant Chief while assigned to the Tort Division.

Judge Kennedy is a member of The New York State Bar Association, New York City Bar Association, Metropolitan Black Bar Association, New York Women's Bar Association, National Bar Association and the National Association of Women Judges, where she serves as Secretary. She also serves on the board of directors of the New York Women's Agenda and the Mid-Manhattan Branch of the National Association for the Advancement of Colored People (NAACP). Judge Kennedy is committed to the pursuit of higher education through her work as a mentor and visits to schools and other institutions as a youth motivational speaker.

Judge Kennedy received her Bachelor of Arts Degree from Pennsylvania State University and her Juris Doctor from Benjamin N. Cardozo School of Law, where she is a member of the Dean's Public Service Council and the Alumni Association Executive Committee.

Testimony of

Hon. Tanya R. Kennedy

Acting Supreme Court Justice

Civil Court, New York County

Monday, September 26, 2011

Good Morning, Chief Judge Jonathan Lippmann, Chief Administrative Judge Ann Pfau, Deputy Chief Administrative Judge Fern Fisher, Presiding Justice Luis A. Gonzalez, New York State Bar Association President Vincent E. Doyle, III, Task Force Chair Helaine M. Barnett and Task Force Members. My name is Tanya R. Kennedy and I am an Acting Supreme Court Justice assigned to Civil Court, New York County at 111 Centre Street. Thank you for allowing me the opportunity to give testimony regarding the need for increased funding to ensure equal access to justice for the indigent in civil matters based upon my observations while presiding over consumer debt proceedings.

As you are aware, the consumer debt part is comprised of cases in which creditors such as banks, credit card issuers, auto and furniture leasing entities retain counsel to recover outstanding debts from unrepresented defendants. Contrary to popular public belief, most of the defendants are not those attempting to avoid paying their debts. Most acknowledge their indebtedness and sincerely work to reach a settlement to pay. Defendants often express shame and embarrassment concerning their inability to pay, despite their willingness to do so. Many of the defendants often resemble a deer in headlights inasmuch as they lack a basic understanding of the court system and the procedural posture of their case, as well as their ability to assert certain defenses.

The most common defendant is one who timely paid his or her bills until they lost their job and exhausted all financial means, including unemployment benefits. These individuals now often depend upon friends and relatives as they struggle to keep their heads above water. Unlike two or three years ago, entrepreneurs and small business owners now comprise an increasing number of the defendants who appear in the part after suffering a decline in revenues. Similarly, increasing numbers of persons with advanced degrees and white collar jobs appear in

the part due to corporate layoffs and downsizing. Sometimes defendants who appeared before me in the consumer debt part in the morning returned to my courtroom in the afternoon to appear for the mandatory foreclosure settlement calendar where I was charged with ensuring that banks engaged in good faith settlements to enable defendants to save their homes by modifying the mortgage terms to allow for more affordable payments.

It is rare for a consumer debt case to proceed to trial. Most of the cases are settled to allow defendants to pay off the debt through a monthly payment plan, sometimes as low as $15.00 a month. The judge reads each settlement term to the defendant and poses a series of questions on the record to ensure that the proposed settlement constitutes the actual agreement between the parties, that the defendant is voluntarily entering into the agreement, and that he or she has a full understanding of its terms before the judge approves and so-orders the settlement. I have rejected many settlements where defendants are unemployed, with little to no savings, or who state that they will borrow funds from a relative, friend or other source to satisfy the debt.

While all litigants justifiably rely upon judges to further the ends of justice, many unrepresented defendants are under the mistaken belief that this responsibility encompasses the role of an advocate. The most difficult part of my job in the part was to maintain neutrality and to strike the appropriate balance to ensure a level playing field where the scales of justice appear to be tipped in favor of the creditors. This was especially evident during motion practice.

There were instances in which a defendant acknowledged receiving motion papers in the mail and not being aware of the need to submit a written response. Very often, defendants do not read the motion papers because of their limited education or inability to read, write or speak English. Even if defendants read the motion papers, many are unable to grasp the legal concepts

set forth in the papers. When I advised defendants of their right to submit a written response, they often asked me for assistance in how to prepare the papers. I would then have no other choice but to adjourn the motion to allow them an opportunity to seek assistance with preparing response papers.

Motions are repeatedly adjourned because defendants are unaware of the need to bring certain papers or information which will enable a court volunteer to assist them in preparing papers. These delays cause: (1) defendants, who already face precarious financial circumstances, to miss additional days from work and face possible termination or reduced take home pay; (2) plaintiffs to incur additional litigation expenses due to repeated court appearances; (3) defendants being subjected to increased fees and expenses that are assessed to the underlying debt during the pendency of the case; and (4) additional cases being added to an existing burgeoning case calendar.

During my most recent tenure in the consumer debt part from mid April to July of this year, there were 2,381 cases on the calendar. 1,731 cases were scheduled for conferences/trials, and the remaining 650 cases were scheduled for motions. An overwhelming majority of the motions in the part are filed by defendants seeking to vacate a default judgment entered against them, as well as to vacate the restraint on their checking accounts or the garnishment from their paychecks.

While the court system has done a tremendous job in providing resources to defendants who appear in the part by establishing the Volunteer Lawyer for a Day Program and developing Do-It-Yourself Forms, these laudable efforts fall short of providing these litigants with equal access to justice. While participants in the Volunteer Lawyer for a Day Program are exemplary

in their work to negotiate fair settlements for defendants, as well as to identify and present defenses that are unknown to defendants, the program's efforts have been threatened by recent budget cuts. The number of volunteers and the days of their availability to appear in the part has been substantially reduced. More resources are needed.

To highlight this fact, of the 1,731 conferences/trials that appeared on the calendar during mid April to July of this year, 426 cases were resolved. For the remaining 1,305 cases that remained in the part at the end of my assignment, how many of those cases will the Volunteer Lawyer for a Day Program be able to handle? Although program participants have the desire and will to provide assistance, the program lacks the necessary manpower to handle such a large case load.

In light of the current economic crisis, the number of consumer debt proceedings will only increase. As the Honorable Learned Hand, Chief Judge of the United States Court of Appeals for the Second Circuit stated in his keynote address at the 75th anniversary of the Legal Aid Society on February 16, 1951:

"If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice."

This is a charge to keep that we have.

Eneyda Maldonado

Client of The Legal Aid Society, accompanied by Jack Newton

Introduction by Jack Newton

My name is Jack Newton, and I am a Staff Attorney at The Legal Aid Society in the Family/Domestic Violence Unit in the Bronx Neighborhood Office. I am Vice President of the Civil Practice of UAW Local 2325, Association of Legal Aid Attorneys. I am here today with my client Eneyda Maldonado. The Legal Aid Society was able to help Ms. Maldonado gain economic independence from her abusive husband through representation and advice on several issues, including immigration, divorce, custody, public benefits and medical debt concerns.

Testimony of Eneyda Maldonado
Chief Judge's Hearing on Civil Legal Services

My name is Eneyda Martina Maldonado Manzano. I was born in Mexico. I first came to The Legal Aid Society by way of the Bronx Family Justice Center, a drop-in center providing counseling and legal services for domestic violence victims. That meeting has changed my life and the lives of my children in ways I could never have imagined. With the assistance of The Legal Aid Society, I have been able to free myself from my husband's physical abuse and economic control. Now I am able to decide how I spend the money I earn on my family and decide where, when and for whom I am going to work. Since that first meeting I have received assistance from The Legal Aid Society in almost every aspect of my life: immigration, work authorization, divorce, custody, benefits and medical debt.

I came to this country in 1990 at the insistence of my husband who was living here at the time. From the very beginning of our marriage, my husband beat me, forbade me to speak to others, insulted me and told me I was worthless because I was a woman. He hit, punched, kicked and slapped me. When he was angry, he would throw chairs or shoes at me or destroy things in the house; once he even threw a metal pipe at me, hitting me in the face.

I was terrified of my husband and believed that he would indeed kill me some day. I was also afraid to call the police because my husband frequently threatened to have me deported and even told me the police would deport me. I was terribly afraid of being separated from my American-born daughter and I had no idea how I would support my children if I were forced to return to Mexico.

I worked 10 to 12 hours per day as a nanny and housekeeper while he stayed home and monitored my comings and goings. My husband largely refused to work, instead relying on me to provide not only for the entire family – including, at times, his brothers and other relatives outside of our immediate family – but also for his own substantial and often selfish needs. It was my husband who would often mandate when and where I would work.

Finally, after nearly 20 years of abuse, something in me snapped. After a particularly severe beating by my husband in the summer of 2009, I called "911." A few days later my husband was arrested while I was at work.

My husband was charged with assault, menacing and harassment. Although I was very afraid and lost many nights sleep, I kept my resolve and cooperated fully with the police and district

attorney in the prosecution of my husband. My husband eventually pled guilty to harassment, and I received a final order of protection against him that is valid until May 2012.

While all of this was going on, my husband sued me for visitation with the children. I did not know what to do and had no money to pay for a lawyer. The district attorney assigned to my case suggested I go to the Bronx Family Justice Center to see if I might be able to get some legal advice regarding custody. This is how I first came to The Legal Aid Society.

I went to the Bronx Family Justice Center in May 2010. The attorney who conducted the screening that day happened to be a lawyer with The Legal Aid Society, Mr. Jack Newton. I told Jack that I was looking for help in keeping custody of my children. During our interview, I told Jack about the years of abuse I had suffered and about my husband's arrest the prior year. To my great astonishment, Jack advised me that both my older daughter and I might be eligible for something called a U-Visa. I had never heard of such a thing and was astonished to hear the news. He also asked me if I wanted a divorce from my husband, and he explained the process to me.

Over the next few months, Jack and his colleague, Ms. Michal Katcher, prepared and submitted U-Visa applications on my daughter's and my behalf along with applications for employment authorizations. Both applications required many hours of interviews and lots of paperwork. In May 2011, we were notified that both our visas and work permits were granted!

Receiving a U-visa and work authorization has also had an immeasurable impact on my life. Now that I have my work authorization, the family for whom I am working increased my weekly pay by 60% and gave me a two-week paid vacation. I can't remember the last time I had a paid vacation, which is a chance to spend time with my children! Since receiving my work authorization, I feel as if my employer has treated me with more respect and dignity.

Recently, my youngest daughter became extremely ill, requiring hospitalization for several days. Before having work authorization, I think that I would have been fired for taking time off and staying in the hospital with my daughter. I believe that my U-Visa status and newfound respect from my employer gave me the strength and courage to tell my employer that I needed some time off instead of merely asking and expecting that I would be fired.

Although I am pleased that I am being treated better by my employer, I am looking for another job that challenges me in different ways. That is the wonderful thing about obtaining U-Visa status: the opportunity to improve my life and my daughters' lives.

I feel safe and secure in my home now; I no longer fear being forced to return to Mexico where I see no future for my children and where I would receive no protection from my violent husband.

The Legal Aid Society is also going to help me get a divorce from my husband. Once again, I would never be able to afford to hire an attorney to file the required papers. I have felt trapped in a miserable marriage for over twenty years and getting a divorce would be tremendously

liberating for me – yet another step in my journey to independence. I can't wait to sever all legal ties to my husband. Legal Aid has also provided me with advice relating to custody of my children. My children are my priority, and the advice I have received has been invaluable.

When I received my U-Visa, Legal Aid advised me that my daughter and I were eligible for certain public benefits. The attorneys then walked me through the process of how to apply for those benefits—a process that was extremely complicated. My daughter and I both applied for Medicaid. This, too, has had a tremendous impact on me. I have not been to a doctor in years because I could not afford it. Now that I can see a doctor, I am taking care of long-neglected medical problems.

Even after applying for Medicaid, Legal Aid continues to help me. While my daughter received her Medicaid card promptly, mine has not yet arrived and my medical bills are piling up. I told Jack and Michal about this issue, and they connected me with Legal Aid's Health Law Unit. Now Legal Aid is assisting me to make sure that I do not owe anything dating back to the time I applied for Medicaid. I was very worried about the mounting medical bills until I spoke with my attorneys in the Health Law Unit.

I never in my wildest dreams imagined that all of this would come true. I really appreciate all the legal representation and advice that Legal Aid has been able to provide me regarding immigration, work authorization, divorce, custody, benefits and medical debt. The services Legal Aid provides to victims of domestic violence like me is simply invaluable. With my husband out of my life and having U-Visa status, I now view the world a little differently. I am able to decide my own future, both economically and emotionally. Since my first meeting with Legal Aid around one-and-a-half years ago, I walk a little taller and I dream a little bigger than I did before.

Virginia Norman-Acevedo

Client of The Legal Aid Society, accompanied by
Judith Goldiner

Introduction by Judith Goldiner

Good morning Chief Judge Lippman, and members of the Hearing Panel and thank you for this opportunity to speak regarding this matter. My name is Judith Goldiner, and I am the Attorney-in-Charge of the Civil Law Reform Practice at The Legal Aid Society. I am here today with Virginia Norman-Acevedo, the guardian of my client, Orlando, who is 12 years old and blind. Orlando has been a client of The Legal Aid Society's Juvenile Rights Practice which sought the assistance of our Civil Practice in order to resolve his problems. Orlando lives in HUD subsidized housing for the blind in Manhattan. Ms. Norman-Acevedo lived until recently in a New York City Housing Authority apartment. The wait for subsidized housing can be as long as 20 years because the need is so great. There are 143,000 families on the list for public housing and another 124,000 on the list for Section 8 housing. Because housing affordable to very low-income families is a scarce and important resource, The Legal Aid Society gives a high priority to representing these families and keeping them in their homes. However, because of lack of funding, The Legal Aid Society is forced to turn away eight families for every one we are able to accept for housing assistance.

Testimony of Virginia Norman-Acevedo
Chief Judge's Hearing on Civil Legal Services

Good morning. My name is Virginia Norman-Acevedo. I am the legal guardian for Orlando Chang, a twelve-year-old blind boy who lives in Manhattan at 135 West 23rd Street, which is Selis Manor, the Visions sponsored housing for the Blind. I am also blind.

I have known Orlando since he was born. Orlando was abandoned by his mother at birth. His mother gave him to a neighbor who became his guardian and raised him at Selis Manor. She was also blind. She passed away in 2004. At that time, Selis Manor took the position that Orlando would be evicted and that his new guardian, Orlando Acevedo, was not allowed to join the household to care for him. The Legal Aid Society intervened and prevailed on Selis Manor to allow Orlando and his guardian to remain at Selis Manor -- the only home that Orlando has ever had. In 2007, I married Orlando Acevedo and helped him care for Orlando during the day, but I had to return to my public housing apartment which is close by at night in order to help my daughter take care of her children.

I had lived in my public housing apartment since 1989. In 2004, my daughter, Diane, moved into my public housing apartment with my two young grandchildren, both diagnosed with special needs, autism and speech delays. In 2008, Mr. Acevedo was diagnosed with throat cancer and became progressively ill; he passed away in August 2010. Fearing Orlando could go into stranger foster care, I immediately filed for legal guardianship of Orlando which was finalized in December 2010. In January 2011, I was formally added to the lease at Selis Manor.

After Mr. Acevedo died, I consulted with the New York City Housing Authority and in October 2010, I applied to add Diane and her two grandchildren to my lease. The Housing Authority granted the request in January 2011. I then explained to the Housing Authority that I needed to

move to Selis Manor to care for Orlando. The Housing Authority told me that my daughter and grandchildren would be evicted if I moved out. I was caught in an impossible situation -- either move Orlando from the only home he has ever had or my daughter and grandchildren would be evicted.

Desperate, I contacted The Legal Aid Society. The Legal Aid Society reached out to Speaker Quinn's office and worked with the Speaker's office to convince the Housing Authority to waive their one-year remaining family member rule as a reasonable accommodation of my family's disabilities. On September 9, 2011, the Housing Authority gave my daughter the lease to the public housing apartment allowing Orlando and me to stay in his home in Selis Manor.

I am so grateful that The Legal Aid Society agreed to help me. Without them, either my daughter and grandchildren would be without a home or Orlando would lose his home. I consider myself very lucky, because I now am able to care for Orlando in his home, while my daughter and grandchildren can stay in their home. I am also grateful because the Legal Aid Society was able to help me stay in this country years ago when they helped me obtain a green card and prevent me from having to return to the Dominican Republic. However, I know that there are still many New Yorkers out there that also need this type of advocacy and assistance. I cannot stress enough the importance of funding the Legal Aid Society and other civil legal services programs, because they are an extremely significant resource for New Yorkers who otherwise lack the ability to obtain representation or gain legal assistance in a variety of civil litigation issues. I am here in support of continued and increased funding for civil legal services in New York.

Thank you.

Hon. Christine Quinn

Speaker of the New York City Council

Craig L. Reicher

Vice Chairman, CB Richard Ellis

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September 23, 2011

Testimony for The Chief Judge's Hearing on Civil Legal Services

Thank you for the opportunity to testify with respect to the need for expanded access to legal assistance for low-income New Yorkers in civil matters.

CB Richard Ellis Group, Inc. (NYSE:CBG), a Fortune 500 and S&P 500 company headquartered in Los Angeles, is the world's largest commercial real estate services firm (in terms of 2010 revenue). The Company has approximately 31,000 employees (excluding affiliates), and serves real estate owners, investors and occupiers through more than 300 offices (excluding affiliates) worldwide. CB Richard Ellis offers strategic advice and execution for property sales and leasing; corporate services; property, facilities and project management; mortgage banking; appraisal and valuation; development services; investment management; and research and consulting. For more information, visit www.cbre.com.

Access to legal services for all New Yorkers is vital for our City to remain on the cutting edge of industry and culture. City businesses need stable and desirable communities in order to prosper and grow. A well-functioning judicial system that works for everyone regardless of income encourages employment growth, and therefore, City personal income, corporate, business, sales and use, real property, commercial rent, mortgage recording, transfer, and hotel tax revenues.

Commercial real estate demand is directly correlated with employment as businesses invest in our City by leasing commercial space and by owning, financing and trading commercial property. The unemployment rate in New York City was 4.3% in December 2006, 10.4% in January 2010 and is 8.7% today[1]. Similarly, the current recession has taken its toll on the commercial real estate market locally. The overall availability rate in Manhattan was 8.50% in December 2006, 14.34% in November 2009 and is 10.92% today[2] [*Please see attached CBRE Manhattan Market Snapshots published this month*]. Prospects for a strong economic

[1] http://data.bls.gov/pdq/SurveyOutputServlet;jsessionid=6F633DD0232E3D56613CC83E64857A19.tc_instance5
[2] CBRE Research

recovery are not around the corner, and we must face difficult decisions to tackle fiscal problems.

The overall economic health of New York depends in large part on job growth; providing legal services to low-income New Yorkers will prove to be a prudent investment as it will stabilize communities and help promote an environment of job creation. The fiscal future of New York City is directly linked to a healthy real estate market which reflects the job creation environment. According to the NYC Comptroller, 48.8% of City tax revenues for FY 2011 are real estate related.[3]

While the unemployment rate is back from the brink, business growth is lagging and many New Yorkers have yet to recover. Ensuring available and adequate legal assistance for lower-income New Yorkers dealing with our civil legal system is of significant importance to the real estate community and to the overall economic future and well-being of our City.

Respectfully submitted,

Craig L. Reicher

[3] The State of the City's Economy and Finances 2010

CB RICHARD ELLIS

MarketView

Downtown Manhattan Snapshot

www.cbre.com/research

September 2011

Market Activity

	Aug '11	Jul '11	Aug '10	YTD '11	YTD '10
Leasing Activity	0.26 MSF	0.86 MSF	0.13 MSF	4.35 MSF	2.19 MSF
Absorption	0.09 MSF	0.24 MSF	0.03 MSF	2.18 MSF	(2.50) MSF
Availability Rate	10.9%	11.0%	14.3%		
Vacancy Rate	7.7%	7.7%	8.5%		
Average Asking Rent	$39.36 PSF	$39.02 PSF	$38.30 PSF		
Taking Rent Index	88.5%	87.7%	88.4%		

Hot Topics

- Following four consecutive months of above-average leasing, Downtown's 260,000 sq. ft. of activity in August fell 26% short of the five-year monthly average of 350,000 sq. ft.
- Downtown's year-to-date 2011 activity of 4.35 million sq. ft. was nearly double that of 2010.
- Only a handful of sizeable new availabilities were brought to market in August, keeping absorption in positive territory, at 90,000 sq. ft. This brought year-to-date absorption to positive 2.18 million sq. ft., a reversal from 2010's negative 2.50 million sq. ft.
- Downtown's overall and sublease availability rates each ticked down 0.1 point during the month, to 10.9% and 1.6%, respectively.
- Downtown's average asking rent rose $0.34 to $39.36 per sq. ft. in August due to the addition of higher-priced space to the market and the leasing of space priced below the average.

Top Lease Transactions

Size (Sq. Ft.)	Tenant	Address
57,945	Centerline Capital Group	100 Church Street
24,229*	BGC Partners, Inc.	199 Water Street
18,903	Obsidian Financial Group	59 Maiden Lane
17,990	New York Property Insurance Underwriting Association	100 William Street
14,710**	Reliance Insurance Company	75 Broad Street

* Expansion ** Renewal

Major New Availabilities

- 37,000 sq. ft. of direct space at 32 Old Slip
- 28,000 sq. ft. of STi Prepaid sublease space at 75 Broad Street
- 20,000 sq. ft. of Corporation for Supportive Housing sublease space at 50 Broadway
- 17,000 sq. ft. of Russo, Keene & Toner sublease space at 33 Whitehall Street
- 14,000 sq. ft. of direct space at 17 State Street

Capital Markets Activity

- SouFun Holdings purchased 72 Wall Street for $46 million ($142 per sq. ft.) from Kumho Investment Bank and Young Woo Associates.

Definitions

Availability
Space that is being actively marketed and is available for tenant build-out within 12 months. Includes space available for sublease as well as space in buildings under construction.

Asking Rent
Asking gross "face" rents (excluding all concessions and tenant electric).

Leasing Activity
Total amount of square feet leased within a specified period of time, including pre-leasing and purchases of space for occupancy and excluding renewals.

Net Absorption
The change in the amount of occupied square feet within a specified period of time.

Taking Rent
Actual initial base rent in a lease agreement (excluding all concessions and tenant electric).

Taking Rent Index
Initial taking rents (actual initial base rent excluding all concessions and tenant electric) as a percentage of asking rents; index represents a six-month rolling weighted average (for size and month).

Vacancy
Unoccupied space available for lease.

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CBRE

Market Activity

Midtown	Aug '11	Jul '11	Aug '10	YTD '11	YTD '10
Leasing Activity	1.00 MSF	0.90 MSF	1.14 MSF	11.81 MSF	10.55 MSF
Absorption	0.56 MSF	0.20 MSF	0.76 MSF	1.47 MSF	3.58 MSF
Availability Rate	11.3%	11.6%	13.2%		
Vacancy Rate	7.8%	7.7%	9.3%		
Average Asking Rent	$60.09 PSF	$60.18 PSF	$54.93 PSF		
Taking Rent Index	92.9%	94.1%	90.0%		

Midtown South	Aug '11	Jul '11	Aug '10	YTD '11	YTD '10
Leasing Activity	0.28 MSF	0.44 MSF	0.26 MSF	3.27 MSF	2.92 MSF
Absorption	0.04 MSF	0.40 MSF	0.13 MSF	1.61 MSF	1.18 MSF
Availability Rate	9.6%	9.7%	13.1%		
Vacancy Rate	6.8%	6.9%	9.2%		
Average Asking Rent	$44.44 PSF	$43.99 PSF	$42.82 PSF		
Taking Rent Index	93.8%	90.0%	90.8%		

Downtown	Aug '11	Jul '11	Aug '10	YTD '11	YTD '10
Leasing Activity	0.26 MSF	0.86 MSF	0.13 MSF	4.35 MSF	2.19 MSF
Absorption	0.09 MSF	0.24 MSF	0.03 MSF	2.18 MSF	(2.50) MSF
Availability Rate	10.9%	11.0%	14.3%		
Vacancy Rate	7.7%	7.7%	8.5%		
Average Asking Rent	$39.36 PSF	$39.02 PSF	$38.30 PSF		
Taking Rent Index	88.5%	87.7%	88.4%		

Manhattan Overall	Aug '11	Jul '11	Aug '10	YTD '11	YTD '10
Leasing Activity	1.54 MSF	2.20 MSF	1.53 MSF	19.43 MSF	15.66 MSF
Absorption	0.69 MSF	0.84 MSF	0.92 MSF	5.26 MSF	2.26 MSF
Availability Rate	10.9%	11.1%	13.4%		
Vacancy Rate	7.6%	7.5%	9.1%		
Average Asking Rent	$51.83 PSF	$51.74 PSF	$47.73 PSF		

Definitions

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MarketView
Midtown Manhattan Snapshot

www.cbre.com/research

September 2011

Market Activity

	Aug '11	Jul '11	Aug '10	YTD '11	YTD '10
Leasing Activity	1.00 MSF	0.90 MSF	1.14 MSF	11.81 MSF	10.55 MSF
Absorption	0.56 MSF	0.20 MSF	0.76 MSF	1.47 MSF	3.58 MSF
Availability Rate	11.3%	11.6%	13.2%		
Vacancy Rate	7.8%	7.7%	9.3%		
Average Asking Rent	$60.09 PSF	$60.18 PSF	$54.93 PSF		
Taking Rent Index	92.9%	94.1%	90.0%		

Hot Topics

- Midtown lagged its five-year monthly leasing average in August for the second consecutive month, with 1.00 million sq. ft. of activity trailing the average of 1.19 million sq. ft. by 16%.
- With few sizeable new availabilities added to the market in August, Midtown recorded positive absorption of 560,000 sq. ft., pushing the year-to-date total to positive 1.47 million sq. ft.
- The overall availability rate ticked down 0.3 points to 11.3% during the month, and the sublease availability rate edged down 0.1 point to 2.8%.
- Following five consecutive months of increases, Midtown's average asking rent has been flat for the past two months, with pricing growth halting early in the summer.

Top Lease Transactions

Size (Sq. Ft.)	Tenant	Address
212,052*	Deloitte LLP	1633 Broadway
93,967*	Aegis Media Americas	150 East 42nd Street
91,417**	Polo Ralph Lauren Corporation	625 Madison Avenue
88,049***	Rothstein Kass & Company	1350 Avenue of the Americas
50,057	Duval & Stachenfeld LLP	555 Madison Avenue

* Renewal ** Expansion *** Renewal & Expansion

Major New Availabilities

- 108,000 sq. ft. of Li & Fung sublease space at 1372 Broadway, which was already on the market, but fell within 12 months of tenant possession in August and was therefore reflected in availability statistics
- 54,000 sq. ft. of direct space at 116 West 32nd Street
- 45,000 sq. ft. of direct space at 750 Seventh Avenue

Capital Markets Activity

- Alaska Permanent Fund Corporation purchased Rockpoint Group's interest in 299 Park Avenue.
- Paramount Group, which previously had a 51% stake in 1633 Broadway, purchased the remaining 49% interest from Morgan Stanley and Bank of America. Simultaneously, Beacon Capital Partners purchased a 25% interest and SL Green acquired a preferred equity position. This gives Paramount a 75% stake and Beacon Capital a 25% stake in 1633 Broadway. Morgan Stanley and Bank of America exited the partnership.
- USAA Real Estate Company purchased a 49% interest in 340 Madison Avenue from RXR Realty and Broadway Partners. As part of the recapitalization, the joint venture obtained new 12-year first mortgage financing from Cornerstone Real Estate Advisers for the 92% occupied asset.

Definitions

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MarketView

Midtown South Manhattan Snapshot

www.cbre.com/research

September 2011

Market Activity

	Aug '11	Jul '11	Aug '10	YTD '11	YTD '10
Leasing Activity	0.28 MSF	0.44 MSF	0.26 MSF	3.27 MSF	2.92 MSF
Absorption	0.04 MSF	0.40 MSF	0.13 MSF	1.61 MSF	1.18 MSF
Availability Rate	9.6%	9.7%	13.1%		
Vacancy Rate	6.8%	6.9%	9.2%		
Average Asking Rent	$44.44 PSF	$43.99 PSF	$42.82 PSF		
Taking Rent Index	93.8%	90.0%	90.8%		

Hot Topics

- With 280,000 sq. ft. of leasing activity in August, Midtown South fell just short of its five-year monthly leasing average of 300,000 sq. ft.
- Year-to-date 2011 leasing of 3.27 million sq. ft. was 12% ahead of the year-earlier period.
- The handful of mid-size new availabilities that were added to the market in August offset the month's leasing activity. As a result, absorption landed just above break-even level, at positive 40,000 sq. ft.
- Midtown South's overall availability rate inched down 0.1 point to 9.6%—its lowest level since December 2007—while the sublease availability rate held at 1.4%.
- The month's rise in average asking rent was fueled in large part by new ownership at 601 West 26th Street increasing asking rents on available space at that property.

Top Lease Transactions

Size (Sq. Ft.)	Tenant	Address
26,000*	Tory Burch	11 West 19th Street
23,875**	Arenson Office Furnishings	1115 Broadway
22,047	Meebo, Inc.	641 Avenue of the Americas
16,000	New York University	411 Lafayette Street
14,000**	MJM Creative Services, Inc.	71 Fifth Avenue

* Expansion ** Renewal

Major New Availabilities

- 51,000 sq. ft. of direct space at 315 Hudson Street
- 31,000 sq. ft. of direct space at 601 West 26th Street
- 31,000 sq. ft. of direct space at 6 East 32nd Street
- 21,000 sq. ft. of ICON Capital Corporation sublease space at 100 Fifth Avenue
- 21,000 sq. ft. of Coty, Inc. sublease space at 2 Park Avenue

Capital Markets Activity

- Lam Group purchased 1205-1225 Broadway from Mocal Enterprises. The existing two office properties are likely to be demolished and a hotel is expected to be built. The all-cash deal was for $71.9 million (approximately $288 per buildable sq. ft.).
- RXR Realty and Public Sector Investment Board purchased the Starrett Lehigh Building at 601 West 26th Street from Shorenstein Properties and Mark Karasick for $920 million ($398 per sq. ft.).

Definitions

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CBRE

Samuel W. Seymour

President, New York City Bar Association

The Chief Judge's Hearing on Civil Legal Services
September 26, 2011
Appellate Division, First Department
27 Madison Avenue, New York City

Testimony of the New York City Bar Association
By: Samuel W. Seymour, President

Introduction

Chief Judge Lippman and distinguished panelists:

Thank you for the opportunity to testify on the important topic of civil legal services in New York. My name is Sam Seymour and I am the President of the New York City Bar Association. The City Bar is an organization of over 23,000 lawyers and judges dedicated to improving the administration of justice and insuring access to justice. In addition to having members who are active in legal services, and a committee devoted to studying ways to improve the delivery of pro bono and legal services in New York City, the Association has a public service affiliate - the City Bar Justice Center - whose mission is to leverage the resources of the City's legal community to increase access to justice for low-income individuals. The Justice Center does this by using a small staff to administer a program matching pro bono lawyers with thousands of clients, training them and supervising their work. The Justice Center assists more than 20,000 clients a year. Clients find the Justice Center through court referrals, the LawHelp website and a hotline which handles over 800 calls a month.

As with other legal services providers, the demand for the Justice Center's services has increased sharply since 2008 and shows no sign of abating. The number of clients the Justice Center served between September 1, 2010 and August 31, 2011 showed no significant decrease from the prior year, and we do not anticipate that this demand for our services will slow down. Exacerbating this situation, cases are persisting longer than expected, individuals and families are under significant strain as unemployment persists, and a slower than expected economic recovery continues to take its toll on low-income families who cannot meet their expenses. The

work performed by civil legal services programs is critically needed by New York City's poor now more than ever.

Like other providers during the recession, the Justice Center has created programs in the past few years that target what we believe are the greatest areas of unmet civil legal need. These include a Veterans' Advocacy Project, a Foreclosure Project, and an Immigrant Outreach Project. In addition, we have expanded our Consumer Bankruptcy Project. These projects ultimately help save taxpayer dollars by efficiently mobilizing private resources to help individuals get their lives stabilized and regain their footing. For the fiscal year ending April 30, 2011, the Justice Center leveraged over $18 million in pro bono legal services. But despite the work of pro bono providers and direct legal services providers, the justice gap persists for low-income litigants in New York.

The Unmet Need

As documented by the Chief Judge's Task Force to Expand Access to Civil Legal Services in New York (the "Task Force")[1], the total caseload of the courts statewide has risen dramatically over the past five years, largely due to increased foreclosure filings. From 2005 - 2009, foreclosure filings increased 319% in Nassau County; 274% in Suffolk County; 200% in Kings County; 249% in Westchester County; 281% in Dutchess County; and 217% in Queens County.[2] OCA further reports that the caseload in New York City Civil Court and city courts outside of New York City nearly doubled in the past decade, mostly due to the growth in consumer debt filings, and that the number of family offense cases statewide increased 32% from 2006. Not only does the growth in caseload place added pressure on the courts, but many of the parties facing economic and family-related crises do not have legal representation.

The statistics regarding the number of unrepresented litigants are startling. As documented by the Task Force, over 95% of litigants are unrepresented in eviction, consumer credit and child support cases statewide and 44% of homeowners appearing in foreclosure cases

[1] http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf

[2] *Id.* at p. 16.

throughout New York State are unrepresented.[3] In total, more than 2.3 million New Yorkers annually are unrepresented in civil legal proceedings in New York State courts, and civil legal services providers - at best - are meeting only 20% of need because of a lack of resources.[4] Many of these unrepresented civil litigants (and their families) are unable to effectively represent themselves in court and suffer negative outcomes in legal proceedings. They are then forced to become consumers of state funded social services for their food, housing and medical care. There are also educational and juvenile justice costs and outcomes arising from families stressed by the inability to resolve their legal problems due to the absence of representation in civil proceedings.

As we've witnessed at the City Bar, the benefits of civil legal representation are very real: based on our work and our research, we have recommended, for instance, that there ought to be a right to appointed counsel in the immigration system. Removal proceedings are criminal trials in all but name. Without adequate representation in these cases, we will continue a system that has demonstrably devastating consequences for individuals who cannot effectively present their potentially meritorious claims. Those consequences extend far beyond the unrepresented individuals – they reach dependent family members as well. And in our work representing individuals being foreclosed upon or sued for collection of a consumer debt allegedly owed, we have witnessed an enormous justice gap where parties without representation forego rights and defenses of which they are not aware. In addition, providing representation in these cases is critical to the function of the courts – it facilitates a quicker resolution, lessens the burdens on overworked court personnel and avoids improper default judgments. The Task Force findings concerning the need for and benefits of providing civil legal services representation are consistent with the conclusions reached by the City Bar and on which we have previously testified.

In addition, there are lost economic opportunities when there is a lack of representation. New York loses hundreds of millions of dollars each year because unrepresented New York State residents fail to retain or obtain federal funds for which they are eligible from programs benefitting veterans, persons with disabilities and others. According to the IOLA Fund's 2010

[3] *Id.* at 16 – 17.

[4] *Id.* at pp. 37 – 38.

Annual Report[5], the Fund distributed grants of $31.8 million to legal services providers for the 15-month period of January 1, 2009 – March 31, 2010, which translated into direct representation of 650,000 clients who, in turn, recovered approximately $577 million in federal and non-federal benefits and awards.[6] This translates into a nearly twenty times return on investment and provides ample evidence that legal services representation is a wise investment of money and time.

Our work at the Justice Center's Veterans Assistance Project serves to highlight this point: in the last month alone, four clients were awarded federal veterans benefits. One veteran received $48,000 in retroactive benefits with $1,400 a month going forward; another received $182,000 in retroactive benefits with $1,427 a month going forward; a third received $61,400 in retroactive benefits with $1,228 a month going forward; and the fourth received $37,102 in retroactive benefits with $1,427 a month going forward.

For all of these reasons, the City Bar supported the Judiciary budget's inclusion of $25 million in the 2011-2012 Judiciary Budget in order to fund legal services programs and address the urgent need for expanded civil legal assistance to residents across New York State. Given that the number was ultimately reduced by half, we urge the Judiciary to include a total of $37.5 million for this purpose in the 2012-2013 Budget, which would carry forward the Chief Judge's plan of adding $100 million over four years to provide adequate legal representation for the poor. We recognize that this is a substantial request given the state's fiscal circumstances and this year's state budget process, but it addresses only a small portion of the need and, as I've described, represents an important investment in our state's needy population. Moreover, the need for an increased funding stream is glaringly apparent: income generated by IOLA accounts is dramatically down, other funding streams to support civil legal services are drying up, and federal cuts to Legal Services Corporation funding are deep and will only deepen. We commend and support Chief Judge Lippman for making this issue a priority and dedicating a portion of the Judiciary Budget to this cause.

[5] http://www.iola.org/Annual%20Report%202010%20Draft%206%20FINAL.pdf

[6] *Id.* at p. 2.

Expanding Access to Civil Legal Services in the Areas of ADR/Mediation

This past June, our Committee on Pro Bono and Legal Services, along with our Committee on Alternative Dispute Resolution, issued a report recommending ways to incorporate ADR and mediation into civil legal services and pro bono practice, and ways to simplify court forms and processes. That report is attached to my testimony. I want to briefly highlight a few points from the report since it is one of the issues the panel wishes to explore at this hearing.

First, there is a need to equalize low income clients' access to the same process options wealthy parties can access – litigation, mediation, arbitration, collective practice, etc. In the vast majority of cases, low-income litigants are not only proceeding pro se but also have no idea that they have any other options available to them. This must change. Second, the City Bar is committed to ensuring that mediation remains a voluntary process option for clients and not exclude clients from choosing to litigate or from seeking or accessing legal representation. Third, the City Bar believes that mediation works best when there is a trained mediator and so long as there is not a significant, incurable power imbalance between the parties. As detailed in our report, we believe there are many cases where mediation would provide a more effective and efficient way of helping individuals and families resolve conflict and we make several recommendations for how such a process might be put into place. I hope the report is helpful and we are, of course, happy to assist in these efforts going forward.

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REPORT BY THE COMMITTEE ON PRO BONO & LEGAL SERVICES AND THE COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION

RESPONSE TO THE NOVEMBER 2010 REPORT OF THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN THE AREAS OF ADR/MEDIATION AND SIMPLIFICATION OF FORMS AND PROCESSES

Outlined below are the recommendations of the New York City Bar with respect to (i) the incorporation of ADR and Mediation into a civil legal services and pro bono practice and (ii) simplification of forms and court processes.

I. ADR/MEDIATION

"*The Task Force will also explore opportunities for the increased use of mediation, alternative dispute resolution initiatives and the simplification of the legal process for the benefit [of] all litigants, including low-income New Yorkers, and the judicial system as a whole.*"

Mediation has traditionally been an alternative to litigation in the event of a conflict between two or more parties – which would require the consent of both parties (or be the required forum for conflict dispute resolution by prior agreement between those two parties). There are many instances where mediation would benefit low-income clients and is currently not an available option.

The New York City Bar commends the New York State Office of Court Administration (OCA) for working towards incorporating mediation into a civil legal services practice, and, if appropriately incorporated, believes that expanding access to high-quality mediation services would benefit clients

without compromising their rights. We have a valuable opportunity here to equalize the ability of low-income clients to choose the appropriate dispute resolution process for their conflict (e.g., litigation, mediation, etc.), an opportunity that well-resourced New Yorkers already have by virtue of being able to pay for it.

The New York City Bar believes that, in order for it to be effective, we must be committed to ensuring that mediation remain a voluntary process option for clients and not exclude clients from (i) choosing to litigate their cases, (ii) seeking legal representation for a case they have chosen to litigate, or (iii) accessing counsel in cases in which an individual is entitled by statute to representation by counsel.

In addition, the New York City Bar believes that Mediation works best when there is not a significant, incurable power imbalance between the parties (i.e., where one party is unaware of his/her rights or unable to express his/her needs and interests openly in the mediation). The assistance of a skilled mediator, facilitated access to clear legal information and legal consultations, as well as different forms of mediation (including shuttle diplomacy) can address many power imbalances. But, where a power imbalance is incurable, mediation is not appropriate.

THRESHOLD CONSIDERATIONS

The New York City Bar recommends the following threshold considerations with respect to incorporating ADR and Mediation into a civil legal services and pro bono practice:

- Clients in mediation should have access to relevant legal information regarding their conflict. Although we believe that clients in mediation should only give as much weight to the law as they choose to, we do think it is crucial that they base their mediated agreement on truly informed consent, which includes knowledge of the relevant law and court practices.
- In order to ensure that clients understand the court process and the implications of mediation, beginning the process post-filing of an action – when the client is more likely to have an attorney – is recommended.
- In more legally complex cases, where a client is appearing pro se, the client should have access to "consulting attorneys" – *pro bono*, where necessary – not only to give them a sense of how a court is likely to handle their dispute but also answer questions along the way and to review the content of their mediated agreement.
- Mediation agreements should ultimately be "so ordered" so as to bear the same level of enforceability as a court order that results from litigation.
- We must ensure that mediators have a base level of competence not only in the process of mediation but also, ideally, in the law and court practice

relevant to the case before them. Thus, the City Bar also strongly recommends that in the context of incorporating ADR/Mediation into a pro bono and civil legal services practice that funded programs and projects use mediators with a base of knowledge and experience in the relevant subject matter area. Mediation is not the same as a settlement conference or settlement negotiations, and it calls on a unique set of skills. Therefore, lawyers who have not had a 30+-hour, dedicated training in mediation most likely are not appropriately skilled to provide high-quality mediation services.

Areas Over Which OCA Can Directly Implement or Support Projects

- ***Housing:*** Services typically offered by legal services providers include defending clients in nonpayment, holdover and other eviction proceedings, helping them pursue rent overcharge claims, reasonable accommodations, and actions to improve housing conditions.
    i. Opportunities for mediation in this context include:
        - Noise complaints and neighbor-neighbor disputes
        - Variety of landlord-tenant disputes
        - Rent disputes and H/P Actions.
    ii. Mediation/ADR services are also useful before litigation ensues because it can prevent tenant "blacklisting", which helps to save city resources.
    iii. If the government entity (NYCHA, HPD) is not on board, mediation would not be useful.

- ***Surrogate/Trusts & Estates:*** Trusts & Estates/Surrogate issues typically arise in elder practices, general practice units that provide assistance to persons with HIV and AIDS, and sometimes in foreclosure actions (e.g., needing to clear title to a property before suing a bank).
    i. Opportunities for mediation include will contests, distribution of estates, decision-making for residence/care/etc., plans for the elderly, and integrating family and friends into plans developed for the elderly.

- ***Family:*** Providers are predominantly divided into those serving adults and those providing services for children. Children receive mandated representation in abuse, neglect, voluntary foster care, PINS and delinquency proceedings, and are assigned attorneys at the discretion of the court in other matters, including custody, visitation, paternity, guardianship and adoption proceedings. In custody/visitation cases, unless the subject-child is an infant, the Family Court's practice is to assign counsel to the child in the vast majority of cases (this is not always so in Supreme Court). Adults are entitled to representation in (i) custody/visitation cases, (ii) order of protection cases, (iii) child support

cases in which they are a respondent and face jail time for non-payment, (iv) cases in which they oppose an adoption, (v) paternity cases in which they are a respondent, and (vi) child protective proceedings in which they are a respondent. Although they may be assigned 18-b counsel at the discretion of the court in other matters, in practice, this rarely happens. They are not entitled to representation in a divorce. Services typically offered to adults by legal services providers are predominantly focused on assisting victims of domestic violence with divorce, custody, orders of protection and some child/spousal support cases. Given the limited resources of most legal services programs, it is very difficult for an adult who is not a victim of domestic violence to access traditional legal services in divorce, custody or support cases. A very small number of organizations may assist with some guardianship/adoption cases. The vast majority of low-income adults end up representing themselves where representation is not otherwise guaranteed.

i. Opportunities for Mediation: Some Family Law cases are well-suited to mediation given the ongoing nature of the relationships between the parties to the dispute. In addition to a number of court-annexed ADR programs under the auspices of OCA's Office of Alternative Dispute Resolution and Court Improvement Programs, opportunities for mediation in this context include divorce (all issues, including distribution of property), custody/visitation, and child support and spousal support cases. (In custody and visitation cases, the court must retain oversight to insure that any mediated resolution reflects the wishes and interests of the subject-children.) Divorce cases in which clients would otherwise be proceeding *pro se* – i.e., the vast majority of low-income cases – would be well-served in mediation, especially where the mediator has dual expertise in mediation and divorce. There is also an opportunity here to reach the underserved, low-income LGBT community by offering mediation not only for second-parent adoptions but also for donor/co-parenting agreements as well as dissolution of domestic partnerships.

ii. Examples of Family Law Mediation Projects

- *LEGAL SERVICES NYC FAMILY & DIVORCE MEDIATION PROJECT*

  The Legal Service Project provides mediation services to a select group of low-income clients in contested divorce and custody matters. Experienced matrimonial attorneys mediate between the parties to resolve disputes concerning divorce grounds, custody and visitation arrangements, child support, spousal support and equitable distribution, and they provide parties with referrals to a pre-screened network of volunteer attorneys who consult with the parties to inform them of their

right and confirm the settlement terms. Where appropriate ethical standards have been met, following outside attorney review, attorneys may draft stipulations of settlement reflecting the parties' ultimate agreement and assist parties in filing the papers with the relevant authorities.

- *OCA'S COLLABORATIVE FAMILY LAW CENTER*
  The Office of Court Administration's Office of Alternative Dispute Resolution invited Legal Services NYC, the Legal Aid Society and NYLAG to participate in a pilot project to represent low-income parties in collaborative divorces and to serve as consulting counsel to low-income parties in a divorce mediation process. This project is based out of OCA's Collaborative Family Law Center. Family law practitioners from all three legal services organizations, as well as legal services provides for the DC 37 Union, participated in a five-day training program in mediation and collaborative divorce sponsored by OCA and given by the Center for Mediation in Law in collaboration with OCA. In return, each legal services lawyer agreed to accept one collaborative divorce client and acts as consulting counsel with two mediation clients. This expands the legal services' organizations matrimonial practices beyond the domestic violence cases they have traditionally been funded to handle and makes services that do not currently exist available to low-income clients. Legal Services organizations only can continue with this project if they receive funding beyond the commitment that was made to each take one collaborative case and two mediation cases.

Other Areas

- ***Small business/Non-Profits:*** Services typically offered by legal services providers to small businesses and non-profits (community based and/or small businesses that cannot afford to pay an attorney) are "start-up" services such as drafting articles of incorporation and by-laws to "in-house counsel" services that community-based organizations and small businesses do not have the financial resources to obtain, such as: contract review, drafting and negotiation; representation in corporate, tax, real estate, and financing matters; representation in administrative, licensing and regulatory proceedings and litigation; strategic consultation for long range community planning; and analysis of the legal and financial impact of program and policy options. There is a difference between negotiation in a transactional context and dispute resolution in a litigation context. However, there are a few areas of recurring conflict which often arise in a litigation context that could benefit from mediation:

i. Slip and falls (personal injury actions):
   - Examples: child participant in after-school program trips and injures his or herself and parent sues school and nonprofit after-school provider; construction worker or passerby at construction site alleges injury from site condition (falling debris, cracked sidewalk) and sues non-profit owner/developer along with construction lenders and general contractor.
   - Potential for mediation: If the nonprofit has general liability and/or builder's risk/property insurance then it will likely be covered by its insurance for legal representation and obtain representation through counsel assigned by insurance carrier. These matters in litigation are often given the opportunity to mediate or settle and that is a decision made by a client in consultation with its assigned counsel.

ii. Employee law matters (EEOC and Human Rights Commission complaints and administrative hearings; wrongful discharge claims):
   - Example: former employee alleges age discrimination or other type of basis for wrongful termination
   - Potential for mediation: If the nonprofit has general liability insurance then it will likely be covered by its insurance for legal representation and obtain representation through counsel assigned by insurance carrier. These matters in litigation are often given the opportunity to mediate or settle and that is a decision made by our client in consultation with its assigned counsel.

iii. Contract Disputes:
   - Example: Dispute between nonprofit developer and general contractor for failure to complete construction on time and/or contractor claim for additional funds due it under terms of agreement; nonprofit tenant claim for repairs due it from nonprofit landlord under lease; vendor's claim for payment for goods delivered and/or services provided.
   - Potential for mediation: Generally nonprofits must secure either pro bono or private (fee charging) counsel to represent them in these matters. Mediation could be an option if it was inexpensive, fast and fairly composed mediation panel (i.e., in the construction context a panel made up of not just construction professionals)

- ***Employment:*** Services typically offered by legal services providers address the challenges that workers face when recently unemployed or when transitioning into work. Services provided include legal advice and representation at hearings and in unemployment insurance appeals, requests for reasonable accommodations, wage theft, denial of

employment (employees have a right to know the cause when denied employment based upon a background check), challenging employment discrimination, and assisting with consumer debt-related legal problems that can create barriers to getting work (for example, consumer debt problems that create bad credit that impedes one's ability to get hired). Providers also provide "Know Your Rights" trainings at job training sites.

i. Opportunities for mediation in this context include:
   - wrongful termination;
   - working conditions;
   - workplace relationships;
   - harassment at work;
   - disputes regarding terms of employment;
   - wage theft; and
   - accommodation requests.

ii. Example - ADR/Mediation Committee's pilot project in District Court

- ***Education:*** Services typically offered by legal services providers include representing students in school disciplinary proceedings, and in advocating for appropriate accommodations in special education matters.
  i. Opportunities for mediation include conflict resolution in special education matters, i.e., between parents and school personnel (and the student, when appropriate) around the educational needs of/issues related to the student
  ii. In order for mediation to be possible here, there has to be an interest in the government actor, probably pressure politically to agree to incorporate mediation.

TRAINING/EDUCATION

- Training in ADR skills is useful to almost every area of a legal services/pro bono practice, both in facilitating productive communication between lawyers and clients as well as in helping lawyers effectively conduct settlement negotiations. It does not need to be limited to just those who are engaging in a mediation project.
- Ideally, we would want a mediator who has an underlying knowledge of the substantive area of law, which means we would want to design trainings in both the substantive area and the mediation skills. In cases where the relevant law is complex, an additional procedural protection would be to ensure that parties have access to a knowledgeable consulting attorney outside of the mediation process. Attorneys with training in mediation could also provide review of mediated agreements.
- Below is a very good example of how a training can be developed.

- A training for legal services attorneys was designed and given by Jack Himmelstein of the Center for Mediation in Law and Dan Weitz of OCA in Oct 2010, and sponsored by OCA. A legal services attorney helped adapt the training materials to the legal services audience (e.g., developed relevant case studies) and helped co-facilitate the training. This model was extremely effective -- sponsorship by OCA, substantive training by the Center for Mediation in Law (which specializes in working with attorney-mediators to effectively bring the law into a mediation, in contrast to the prevailing CDRC model), and tailoring to the legal services community/co-facilitation by a member of that community.

CONCLUSION

There is a vast unmet need among low-income families for assistance in resolving the conflicts they find themselves in. Currently, those families are mostly forced to bring their conflicts to the court for resolution and navigate the legal system pro se. In certain types of cases, we believe that mediation would provide a more effective and efficient way of helping individuals and families resolve conflict.[1]

In the vast majority of cases, low-income folks are not only proceeding pro se but also have no idea that they have any other process options (e.g., mediation, collaborative law) available to them. At a minimum, it is crucial that every litigant is informed at the outset of his/her case about the different types of dispute resolution processes (litigation, mediation, etc.), their respective potential strengths and weaknesses, and how to obtain assistance with each process. It is clear that many litigants are in court simply because they are unaware that they have any other option for resolving their conflict.

Equalizing low-income clients' access to the same process options wealthy parties can access – litigation, mediation, arbitration, collaborative practice, etc. – is something the Committee commends and values highly. Just as we believe that all individuals, regardless of means, should have access to the court system, so should they have access to high-quality alternative dispute resolution processes.

Mediation has many unique strengths as a process option for conflict resolution that distinguish it from litigation:

- Greater opportunity for self-determination and empowerment through parties' ownership over process and outcome.

[1] We acknowledge that there are a number of ADR/mediation-related efforts and programs in place that we have not mentioned in this report. Our intention in mentioning the projects above was only to give examples of the type of ADR/mediation-related efforts that are currently reaching clients and improving their experience of the legal system.

- Higher instances of adherence to final agreement because parties have created the agreement themselves.
- More room for creativity in crafting solutions that work for individual parties and families.
- Far less time- and resource-intensive than litigation.
- Facilitates preservation of relationships between parties in conflict, where possible. In family conflicts, the preservation of relationships has a significant positive impact on the children involved.

While we value the speedy resolution of cases for clients, we must also ensure that ADR/Mediation does not replace the need for real advocacy and litigation on important issues because of economics or a need to manage the high number of cases in our courts. Particularly in Family and Housing Courts, which are "low-income people's" courts, we do not want clients' issues to be given "short shrift" and forced into mediation. Mediation should always be a voluntary alternative, and is precluded by New York case law from being a State-mandated substitute for litigation. It is important that clients who choose to mediate their cases not lose the opportunity to return to litigation if they do not reach a satisfactory resolution.[2]

II. SIMPLIFICATION

"Simplification" of processes and forms as defined in the Task Force report:

> *[S]implification of the legal process for the benefit [of] all litigants, including low-income New Yorkers, and the judicial system as a whole. Simplification of forms and procedures, particularly in family law, consumer credit, landlord-tenant and foreclosure matters, in combination with increased community legal education by providers may reduce the number of low-income New Yorkers who seek legal assistance from providers, thereby achieving better outcomes for New Yorkers and further controlling costs. Such simplification is necessary to enhance the effectiveness of brief advice in resolving legal problems when it may be possible to do so without full representation.*

LawHelp.org is an excellent resource that should be leveraged, and the courts through NYCourtHelp.gov are also working on simplification matters, such as the A2J forms. There should be more collaboration between OCA and LawHelp.

Following are specific recommendations:

[2] While we have not explored certain, more complex subjects, such as Domestic Violence and Foreclosure, as opportunities for ADR/Mediation, it is not our intention to suggest that they are not or should not be considered candidates for ADR/mediation programs. They simply require a much more in-depth consideration than we are able to give within the confines of this report.

- ***Housing***
  i. The translation of forms is something that advocates have been working on but there is an issue with having the actual form in a language other than English. Translated instructions would be useful.
  ii. A simplified form for an Order to Show Cause for tenant screening and vacating judgments would be enormously helpful.
  iii. A2J Forms in Housing Court –
    - These forms could be expanded as a pro se model.

- ***Family***
  i. In divorce cases, parties are required to exchange affidavits of net worth. The standard form is about 15 pages long and asks about things like yachts and maids. Advocates at LawNY developed a simplified form (attached) for low-income clients. Uniform Rule 201.16(b) requires a statement of new worth in substantial compliance with Appendix A, which is the long form. If an exception is made the judge will need to be convinced. In the rare case in which the other side requests more details, a supplemental affidavit can be done.

- ***Plain Language Forms***
  i. Not enough forms/materials are in plain language and more could use a bold, plain language warning.
  ii. Also, many forms do not have handy instructions.

- ***Forfeiture***
  i. A short form or otherwise easier paperwork should be developed in forfeiture cases (where, for instance, the defendant needs to file a standard answer to a complaint).

June 2011

SUPREME COURT: STATE OF NEW YORK
COUNTY OF Index No._____
****

_____, *Plaintiff,*

-against-

_____, *Defendant.*

STATEMENT OF NET WORTH

(DRL §236)

****

*Date of commencement of Action*_____

Complete all items marking "NONE", "INAPPLICABLE" and "UNKNOWN", if appropriate.

*STATE OF*_____*COUNTY OF*_____ *ss:*

_____, *the (Plaintiff) (Defendant) herein, being duly sworn, deposes and says that the following is an accurate statement as of* _____, *of my net worth (assets of whatsoever kind and nature and wherever situated minus liabilities), statement of income from all sources, and statement of assets transferred of whatsoever kind and nature and wherever situated:*

I. FAMILY DATA:

(a) Husband's age _____ *(a) Wife's age* _____

(b) Date married _____

(c) Date separated _____

*(d) Number of children of the marriage under 21 years*_____

(e) Names and ages of children:

_____

_____

_____

_____

*(f) Physical Custody of Children:*_____*Husband* _____*Wife*

*(g) Minor children of prior marriage:*____*Husband*___*Wife*
*(Husband)(Wife)(Paying)(Receiving)$*_____*as (Maintenance)and/or $*_____*as child support (not from current spouse).*

(h) My children of prior marriage:
*Name:*_____
*Address:*_____

*(i) Is marital residence occupied by Husband*___*Wife*___
*Both*____ *Neither*____

(j) Husband's present address:
_____
Wife's present address:
_____

*(k) Occupation of Husband*_____
Occupation of Wife _____

(l) Husband's employer
_____

(m) Wife's employer
_____

(n) Education, training and skills (Include dates of attainment of degrees, etc.)
*Husband*_____
Wife _____

*(q) Husband's health*_____

*(r) Wife's health*_____

*(s) Children's health*_____

II. GROSS INCOME: (State source of income and annual amount.)

Salary or wages: (State whether income has changed during the year preceding date of this affidavit:_____. If so, set forth name and address of all employers during preceding year and average weekly wage paid by each.) Indicate overtime earnings separately. Attach previous year's W-2 and income tax return.

_____ $_____

_____ $_____

(a) Weekly deductions:
- Federal tax.....
- New York State tax.....
- Social Security.....
- Medicare.....
- Other payroll deductions(specify)_____

(b) Social Security Number_____

(c) Number of dependents claimed:_____

(e) Bonus, commissions, fringe benefits(use of auto, memberships, etc.).....

(f) Partnership, royalties, sale of assets (Income and installment payments).....

(g) Dividends and interest (state whether taxable (or not)..... _____

(h) Real estate (income only)..... _____

(i) Trust, profit sharing and annuities (principal distribution and income)..... _____

(j) Pension (income only)..... _____

(k) Awards, prizes, grants(state whether taxable)..... _____

(l) Bequests, legacies and gifts..... _____

(m) Income from all other sources..... _____ (including alimony, maintenance or child support from prior marriage)..... _____

(n) Tax preference items:
1. Long term capital gain deduction.... _____
2. Depreciation, amortization or depletion._____
3. Stock options - excess of fair market value over amount paid..... _____

(o) If any child or other member of your household is employed, set forth name and that person's annual income..... _____

(p) Social Security..... _____

(q) Disability benefits..... _____

(r) Public Assistance..... _____

(s) Other..... _____

TOTAL INCOME: $ _____

CHILDREN, AND OTHER HOUSEHOLD MEMBERS LIVING WITH YOU:

	NAME	AGE	RELATIONSHIP
1.			
2.			
3.			
4.			

HEALTH INSURANCE COVERAGE:

Family health insurance coverage is available through an employer or other organization to:
_____ the wife _____the husband _____ both _____ neither party.

The identity of the wife's / the husband's current health insurance plan is:_____, and the address for the plan provider is:_____. The type of coverage provided is: _____, and the policy or plan number is _____. The current cost to the parent of said insurance for said children is $_____ per _____. [Attach proof of cost/benefit list from employer]

III. ASSETS

SAVINGS Account: Bank(s)_____Balance:$_____
_____ _____
CHECKING Account: Bank(s)_____Balance:$_____
_____ _____
Residence Owned (address):_____
Market value: $_____ Mortgage Owed:$_____
Date Acquired: _____ Title owner_____
Other real estate owned: Address _____
Market value: $_____ Mortgage Owed:$_____ Date Acquired:_____
Other Property:(specify)(for example: stocks and bonds, trailer, boat, etc.)
_____ Value: $_____
_____ $_____

Automobile(s), Year & Make: _____Value: $_____
_____ $_____

Retirement Funds or pensions:
Type and location:_____ Amount:$_____
(Attach relevant statements)

LIST ALL ASSETS TRANSFERRED IN ANY MANNER DURING PRECEDING THREE YEARS, OR LENGTH OF MARRIAGE, WHICHEVER IS SHORTER:

Description of Property	*To Whom Transferred*	*Date of Transfer*	*Value*
_____	_____	_____	$_____
_____	_____	_____	$_____

IV. EXPENSES

(You may elect to list all expenses on a weekly basis or all expenses on a monthly basis, however you must be consistent. If any items are paid on a monthly basis, divide by 4.3 to obtain weekly payment; if any items are paid on a weekly basis, multiply by 4.3 to obtain monthly payment.)

Living Expenses:	*Children*	*Self*	*Monthly Amount*
Rent/Mortgage.....	_____	_____	_____
Taxes(if not included in mortgage)	_____	_____	_____
Utilities:			
Heat.....	_____	_____	_____
Gas.....	_____	_____	_____
Electric.....	_____	_____	_____
Telephone.....	_____	_____	_____
Water.....	_____	_____	_____
Garbage Removal..	_____	_____	_____
Groceries/Food.....	_____	_____	_____
Lunches.....	_____	_____	_____
Medical/Prescriptions.....	_____	_____	_____

Clothing.....	_____	_____	_____
Insurance: Auto.....	_____	_____	_____
Life.....	_____	_____	_____
House/Renters....	_____	_____	_____
Car Payment/Bus Fare.....	_____	_____	_____
Gas/maintenance/.....	_____	_____	_____
Home Maintenance & Repairs...	_____	_____	_____
Laundry/Dry Cleaning.....	_____	_____	_____
Baby Sitting/Day Care.....	_____	_____	_____
Recreation.....	_____	_____	_____
Other Support Orders:			_____
*Paid To:*_____			
Miscellaneous.....	_____	_____	_____
Miscellaneous.....	_____	_____	_____
TOTAL LIVING EXPENSES:	_____	_____	_____

LIABILITIES, LOANS & DEBTS

(a) *Owed to whom?*_____ $_____
1. *Purpose* _____
2. *Date Incurred*_____
3. *Total Balance Due:*$_____
4. *In whose name:*_____

(b) *Owed To Whom?*_____ $_____
1. *Purpose*_____
2. *Date Incurred*_____
3. *Total Balance Due:*$_____
4. *In whose name?* _____

(c) *Owed To whom?*_____ $_____
1. *Purpose*_____
2. *Date Incurred*_____
3. *Total Balance Due:*$_____
4. *In whose name?* _____

(d) *Owed To Whom?*_____ $ _____
1. *Purpose* _____
2. *Date incurred* _____
3. *Total Balance Due:*$_____
4. *In whose name?*_____

TOTAL MONTHLY DEBT PAYMENTS $_____

Other Financial Data should be brought to attention of Court:
(include amount of public assistance, supplemental Social Security income, NYC or Yonkers Tax paid):

Y0U ARE REQUIRED TO ATTACH A CURRENT AND REPRESENTATIVE PAYCHECK STUB AND MOST RECENTLY FILED STATE AND FEDERAL INCOME TAX RETURNS TO THIS FORM. EMPLOYER STATEMENTS; PAY STUBS; CORPORATE, BUSINESS OR PARTNERSHIP BOOKS AND RECORDS; CORPORATE AND BUSINESS TAX RETURNS; AND RECEIPTS FOR EXPENSES OR SUCH OTHER MEANS OF VERIFICATION MAY BE REQUIRED AS THE COURT DEEMS APPROPRIATE.

The foregoing statements have been carefully read by the undersigned who states that they are true and correct.

_____

Sworn to before me this_____
day of _____,200____

I, the undersigned attorney, hereby certify the above net worth statement of my client, pursuant to the requirement of 22 NYCRR §130-1.1-a .

_____

NOTARY PUBLIC–STATE OF

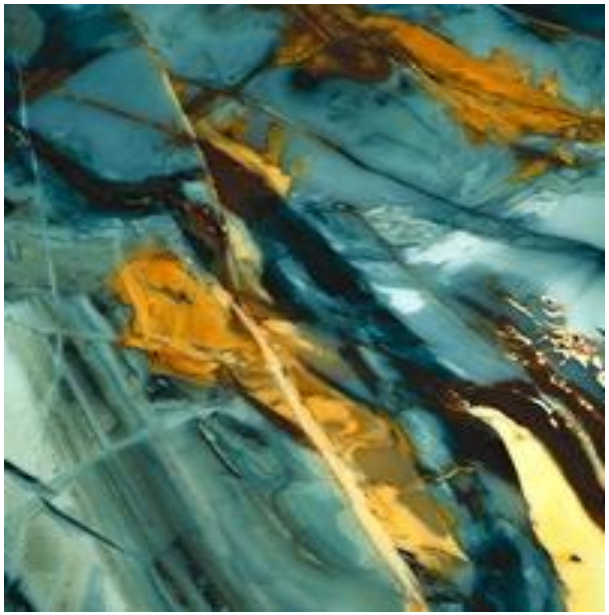
_____

Geeta Singh

Principal, Cornerstone Research

CORNERSTONE RESEARCH

ECONOMIC AND FINANCIAL CONSULTING AND EXPERT TESTIMONY



Testimony at the Chief Judge's Hearing on Civil Legal Services

Geeta Singh, Ph.D.

October 18, 2011

Geeta Singh, Ph.D.

- Geeta Singh specializes in applying analytical models and implementing empirical analyses in a wide variety of business litigation. She has worked on antitrust matters involving issues such as price fixing and monopolization, as well as on securities matters involving class certification and damages analyses. Dr. Singh has managed large teams, supervised complex data analyses, and helped prepare numerous experts for testimony.

- Prior to joining Cornerstone Research, Dr. Singh worked at Harvard University's Center for International Development, where she conducted research on issues related to public policy in developing countries.

- Dr. Singh has a Ph.D. in economics from Stanford University.

Assignment

- Examine the benefits of providing eviction-related legal aid to low-income households

  Consequences of eviction:

  - Homeless individuals and families are likely to end up at a shelter either directly after being evicted or after staying with family and friends for some time.
  - Homelessness affects education of children and thus their earning capacities as adults.
  - Homeless individuals are likely to have poorer health outcomes and are more likely to use medical services, including utilization of Medicaid.

Shelter Costs

- Estimate costs avoided by providing legal aid to prevent eviction

  i. Start with the number of cases/individuals for which eviction was prevented or delayed through legal aid provided to low-income households.

  ii. Use existing research, surveys, and other data related to evictions and shelter use to estimate the number of households from (i) that would have used a shelter had the eviction not been prevented.

  iii. Calculate the average cost of shelter use for households and individuals.

  iv. Use this cost in (iii) to determine the total shelter cost avoided for the individuals who would have gone to a shelter in the absence of legal help to prevent eviction (product of (ii) and (iii)).

Shelter Costs

- Results from these calculations
  - Data come from various sources: we reached out to county-level administrators to understand the shelter system, its usage, and its costs.
  - Where the data are incomplete we have performed statistically valid calculations in keeping with best practices.
  - Data show a 12.9% increase in clients helped through civil legal services from 2009 to 2010.
  - Data show that on average about 40.2% of evictees end up using a shelter in New York State.
  - The average shelter cost is $12,822 for New York State.

Shelter Costs

- Savings calculations
  - This analysis uses a more refined methodology than prior analyses and is based on more detailed data.
  - Calculations show savings of $116.1 million in New York State.

Savings in Emergency Shelter Costs in New York State

	New York State
A. Number of cases for which eviction was avoided or delayed or foreclosure was averted:	18,983
B. Estimated number of people for whom eviction was avoided or delayed:	50,352
C. Percentage of the above for which homelessness was avoided:	40.2%
D. Number of cases in which households avoided homelessness:	7,851
E. Average cost to taxpayers per homeless household:	$12,822
F. Estimated savings for taxpayers:	$116,100,000
G. Estimated total number of people who avoided homelessness:	20,784

Impact on Educational Outcomes

- Housing instability and homelessness negatively affect the developmental outcomes of children. A strong association exists between moving three or more times and increased emotional, behavioral, and educational problems.
    - For example, in the U.S., fewer than 25% of homeless children graduate from high school. (See "America's Youngest Outcasts: State Report Card on Child Homelessness," The National Center on Family Homelessness, 2009.)

Impact on Educational Outcomes

- Homeless students are more likely to rely on government-funded programs in the future due to reduced educational proficiency and higher high-school dropout rates.
  - See Belfield, C. and Levin, H.,"The Economic Losses from High School Dropouts in California," California Dropout Research Project, UC Santa Barbara: Gevirtz Graduate School of Education, August 2007.

Impact on Educational Outcomes

- Homeless students have decreased net incomes due to reduced educational proficiency.
  - See “America’s Youngest Outcasts: State Report Card on Child Homelessness,” The National Center on Family Homelessness, 2009.

Impact on Health Outcomes

- Large literature on impact of homelessness on health outcomes.
  - See Raven, M.C., *et al.,* "Medicaid Patients at High Risk for Frequent Hospital Admission: Real-Time Identification and Remediable Risks," Journal of Urban Health, March 2009.
  - See "The Health of Homeless Adults in New York City," New York City Department of Health and Mental Hygiene and Homeless Services, December 2005.
  - See Salit, S. A., *et al.,* "Hospitalization Costs Associated with Homelessness in New York City," The New England Journal of Medicine, June 1998.

Impact on Health Outcomes

- Evictions and subsequent homelessness are linked to decreased mental and physical health outcomes among children and adults. Homeless individuals are also more likely to depend on costly acute medical care over more cost-effective preventative and long term measures
  - See “America’s Youngest Outcasts: State Report Card on Child Homelessness,” The National Center on Family Homelessness, 2009.

Conclusion

- Shelter cost savings presented here are *conservative* given the data that was available for the calculations.

- Calculations of savings presented in this report are *conservative* as they focus only on savings from reduced shelter use. Additional savings occur due to reducing the education and health impact of homelessness.

CORNERSTONE RESEARCH

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Tracy Smith

Client of the Urban Justice Center-Community Development Project, accompanied by Sadia Rahman

Testimony of Tracy Smith

September 26, 2011

My name is Tracy Smith. I am honored for this opportunity to tell you about the legal assistance I received from Legal Services of New York and the Urban Justice Center. Attorneys from these agencies saved me from eviction in three different cases brought within two years by my landlord.

In April 2009, Hayco Realty Company, the owners of my building, sent me a demand for rent, which stated that I owed approximately $2000.00. At this point, I was withholding my rent because the owners refused to make repairs in my apartment and my daughter and I were living with horrendous conditions. However, I knew that I owed far less than $2000.00

In response to this rent demand, I sent the owners a letter (after many unanswered phone calls); I informed them that I was withholding the rent because of repairs. I listed the most dangerous conditions that needed to be fixed immediately and as a gesture of good faith, I enclosed a partial payment of $400.00. Hayco did not respond to my request for repairs.

The next month, I was sued for nonpayment of rent. I didn't know what to do or where to turn. At the first court date, the owners' lawyer called my name, took me into the hallway of the court house and stated that he would give me four to five weeks to come up with the $2000. He was talking fast and was very intimidating. All I could say to him was that I wasn't comfortable signing anything without having a lawyer look at it. He said in response "You don't need a lawyer, just take the deal" but I knew that was inaccurate and didn't sign anything.

In July 2009, a lawyer from Legal Services of New York was sent to represent me. She interviewed me and assessed the paperwork in my case. She concluded that the landlord was trying to get money from me that they were not entitled to. From that moment forward, I felt

relieved and realized that I do have right to defend myself as a tenant. The lawyer from LSNY gave me confidence and provided much needed support when I was nervous about the case.

While this case was pending, the landlord started to harass me. In particular, after a court date on July 7, 2009 the landlord sent the super, to my apartment and he started to ring my bell non-stop. (I had not been in my home for ten minutes before he began to ring my bell). When I did not respond, my phone rang. Knowing that it was probably someone from the owners' office, I refused to answer. My door bell and house phone continued to ring simultaneously for about 30 minutes. Then, one of the owners of the building, left a threatening message on my answering machine.

At the end of July 2009, in housing court the judge ordered me to pay $560 to Hayco, as opposed to the $2000. I paid the $560 in full by August 31, 2009.

In September 2009, less than ten days after Hayco received my payment, they took me back to court for an alleged illegal washer/dryer.

On October 10, 2009, the same LSNY attorney and I were back in housing court. This case was in court from October 2009 through April 5, 2010. Finally on that court date in April, a judge stated to the owners' lawyer that they had no proof that the washer and dryer was illegal and no case and therefore I was entitled to keep my appliances. However, the judge did not stop there, he even awarded me $100 to be paid by the owners for the inconvenience of having to come to court and defend this baseless case.

That same spring, I started to talk to my neighbors about the landlord's conduct and it became apparent to me that many others were also not getting repairs. I started to organize a tenants association and invited attorneys from the Urban Justice Center to help us bring an action against the landlord. However, within a few days of holding my first building meeting with the

tenants, I received a dispossess letter taped to my door from the landlord. This letter was open to my neighbors to read. I believe that this was an attempt to humiliate and harass me and undermine my position as the Co-President of the tenant association of my building. The letter stated that I owed $3400 in rent arrears.

By May 2010, I was sued again for nonpayment of rent. This time, the Urban Justice Center represented me. In housing court, I was able to provide proof of payment for every month's rent since my last case had been dismissed. The landlord claimed that they never received four of these money orders.

So, I agreed to trace the payments. It turns out that three out of four of them had, in fact, been cashed by the landlord within a few days of receiving them. With the help of the Urban Justice Center I was able to reissue the fourth money order and settle the case.

As to the repairs, the Urban Justice Center brought a case against the landlord on behalf of fifteen tenants living in the building. During this case, we were able to get approximately 100 violations addressed in the building.

I am extremely grateful for the many hours of work that the Legal Services of New York and Urban Justice Center dedicated to my cases. There is no way I could have reached a successful resolution of this magnitude on my own. LSNY and UJC enabled me to remain in my home and removed a major source of stress from my life. Now, I am able to focus on myself and my life. Without a safe and stable home, I literally do not know if I would have made it through this story. It truly breaks my heart to think there are many New Yorkers every year who need the kind of help that I received, but who do not receive because of insufficient state funding of legal services. I urge all of the branches of New York government to come together and find a fair

and permanent solution to the problem of inadequate funding for civil legal services in our state.

Thank you once again for the opportunity to testify.

Deborah C. Wright

Chairman and CEO, Carver Federal Savings Bank

TESTIMONY SUBMITTED AT THE CHIEF JUDGE'S HEARING ON ACCESS TO CIVIL LEGAL SERVICES

MONDAY, SEPTEMBER 26, 2011

DEBORAH C. WRIGHT

CHAIRMAN & CEO
CARVER FEDERAL SAVINGS BANK

Thank you for the opportunity to testify today on the need for expanded access to legal assistance in civil cases. I commend the Chief Judge for his foresight and leadership.

Carver Bancorp, Inc., (NASDAQ: CARV), the holding company for Carver Federal Savings Bank, is a federally chartered savings bank and the nation's largest African- and Caribbean-American operated bank with approximately $700 million in assets and 140 employees. Carver operates nine full service branches in the New York City boroughs of Brooklyn, Queens, and Manhattan.

Including my current role as CEO of Carver, I have worked to strengthen inner city neighborhoods for more than twenty years. During law school, I was a summer intern at the Dallas Legal Services, where I learned firsthand the vital role of legal representation for the poor. In my roles as the Commissioner of the Department of Housing Preservation and Development and as the head of the Upper Manhattan Empowerment Zone, I also saw the urgent need for civil legal assistance in low-income communities.

New York's economic vitality requires a well-functioning judicial system that works for everyone. Failure to insure access to representation for all New Yorkers undermines efforts to make this a city of economic opportunity and stability. Increasing access to counsel in civil matters will instill greater confidence in the fairness of our justice system and in the character of our city. This, in turn, will contribute to the stability needed to attract new business investment and grow our economy. The communities in which Carver's branches are located desperately need more jobs for its residents.

New York City and most of its business sectors are rebounding from the global recession, but the recovery has yet to reach most low-income New Yorkers. In fact, statistics released earlier this month show that New York State's poverty rate climbed to 20.1% in 2010, the largest increase in nearly two decades. Recent studies by the FDIC and the City of New York also document that as many as 60% of the communities in which Carver operates are unbanked or underbanked.

The recession and increasing conditions of poverty have resulted in an increase in the number of New Yorkers seeking free and discounted civil legal assistance, obtaining unemployment and disability benefits, fleeing domestic violence, and preventing evictions, foreclosures and

homelessness. For example, I understand that the numbers of struggling families and individuals who seek civil legal help at The Legal Aid Society have increased dramatically during the economic downturn, and the Society, which is the oldest and largest legal services organization in the country, now has to turn away eight low-income New Yorkers for every one client it can help.

Providing legal services to low-income New Yorkers is not just the right thing to do, it is a good investment. As we seek solutions for the difficult fiscal problems faced by both our City and State, we should keep in mind that these legal services have the potential to save government millions of dollars a year in averting homelessness and domestic violence and obtaining federal benefits in place of City and State public assistance payments.

A fair and just legal system is essential to sustaining the confidence of business in our city, and to encouraging investment, growth, and stability. This is why insuring adequate legal help for lower income New Yorkers dealing with our civil legal system is so important to the economic future and well-being of our city.

Thank you for allowing me to appear today.

Deborah C. Wright is Chairman & CEO of Carver Bancorp, Inc., (NASDAQ: CARV), the holding company for Carver Federal Savings Bank, a federally chartered savings bank and the nation's largest African- and Caribbean- American operated bank with approximately $700 million in assets and 140 employees. Carver operates nine full service branches in the New York City boroughs of Brooklyn, Queens, and Manhattan. Black Enterprise Magazine named Carver the Financial Services Company of the Year in 2006. The American Banker named Ms. Wright "Community Banker of the Year" in December of 2003 and US Banker named Ms. Wright one of the 25 Most Powerful Women in Banking in October of 2010.

Prior to assuming her current position, Ms. Wright was President and CEO of the Upper Manhattan Empowerment Zone Development Corporation, from May 1996 until June of 1999. She previously served as Commissioner of the Department of Housing Preservation and Development under Mayor Rudolph W. Giuliani from January 1994 through March 1996. Previously, Mayor David N. Dinkins appointed Ms. Wright to the New York City Housing Authority Board, which manages New York City's 189,000 public housing units.

Ms. Wright serves on the boards of Time Warner, The Partnership for New York City and Sesame Workshop. She is a member of the Board of Managers of the Memorial Sloan-Kettering Cancer Center and served as a member of the Board of Overseers of Harvard University and Kraft Foods Inc. She earned A.B., J.D. and M.B.A. degrees from Harvard University.

Written Statements of Non-Testifying Witnesses

The Family Center

Written Comments of Adam J. Halper
Director of the Department of Legal Services
The Family Center

Submitted to the
Task Force to Expand Access to Civil Legal Services

Hon. Jonathan Lippman, Chief Judge of the State of New York
Hon. Ann Pfau, Chief Administrative Judge
Hon. Luis A. Gonzalez, Presiding Justice, First Department
Vincent E. Doyle, III, President, New York State Bar Association

September 19, 2011
Appellate Division, First Department Courthouse
New York, New York

Introduction:

Your intake day is always the hardest day of the week and today is yours. You're an attorney. You work at a legal services agency in the city. Today, you receive a call from a man speaking to you on behalf of his sister who is sick and needs help. The sister is dying from colon cancer and she is in hospice care. She was diagnosed a year ago and although the initial prognosis was neutral, her health deteriorated quickly. After she began treatment, she had to quit her job as a teacher's assistant. She worked for a local high school, one that you know because it's not far from your apartment. She had medical insurance for a time after she left her job, and then after spending every last dollar she had, she became eligible for Medicaid. She has two children, ages twelve and eight. She is unmarried and the children's father is not around very much. He has his own problems. The brother puts his sister on the phone.

She tells you she wants her brother to be the guardian of her children when she dies. She can't say for certain when but she fears, her voice catching in her throat, that "her time," is coming. She needs a lawyer to help her write a will. Her brother needs help getting guardianship of her children. The brother will need help with housing. She wants to keep the children in her apartment, have the brother move in and assume the lease. The only problem is that she fell into arrears when she left her job. Not long ago, the landlord commenced eviction proceedings for nonpayment. The brother works but it doesn't pay much and he can't support two children on his own, or make up the arrears.

Your first meeting with them is at the hospital. After many phone conversations, and knowing that you may only have one opportunity to meet with the sister, you've prepared papers for her to sign. When you arrive, everyone is in the room: the brother; his sister – thin and drawn – her bones peeking out of her skin; the children, brave and articulate in a manner which surprises you given the approaching loss. On his face, the brother wears an expression of unspeakable horror.

Within it are shades of grief, loss, anger and fear about the future. You sit down and talk with the sister for a long time and ask the children to wait outside of the room. When she signs her name to the guardianship papers, you hold her arm to keep her hand steady. Afterwards, you step outside and the children go back into the sister's room. You speak with the brother for a long time about what comes next – with housing, with the children, with public benefits, with settling his sister's estate and….

What comes next is a great deal. It is Family Court. It is Surrogate's Court. It is Housing Court. It is HRA and likely OTDA (Office of Temporary and Disability Assistance). For the brother and children newly under his care what comes next is a miasma of engagements with courts, mental health and safety net systems. All of it will take time and somewhere within this long twilight hour, they have to find a moment to reconstitute themselves as a family. You have work ahead, they have so much more.

The Issues:

Thank you to Chief Justice Lippman and to the Task Force to Expand Civil Legal Services in New York for receiving this written testimony. I am the Director of Legal Services at The Family Center, a non-profit serving individuals and families affected by illness, grief and loss. The Family Center is a multidisciplinary agency which serves clients in all five boroughs of New York City. I write today, specifically, to address the Taskforce on the following issues:

1. To encourage funding and programming for multidisciplinary civil legal services, especially those that use early interventions to help otherwise unrepresented litigants to stay out of court; and

2. To voice support for unrepresented litigants to have a right to counsel in civil matters connected to the "essentials of life," when court proceedings are unavoidable; and

3. To recommend funding and program development to assist litigants in maintaining compliance with judgments and stipulations verdicts in order to avoid civil court "recidivism."

The Family Center's Mission:

The population the Taskforce seeks to assist and The Family Center's clients are one in the same. Since 1994, The Family Center has worked with individuals and families affected by illness, grief and loss. Our organization is dedicated to assisting some of New York City's most vulnerable and disenfranchised communities with quality legal, social and medical case management services. In our model of service, lawyers work hand-in-hand with social workers, case managers, medical personnel, and others not only to address the legal issue, but also to address the many psycho-social and economic issues that come with a diagnosis of serious illness.

This model of service means that our work with clients generally does not begin in the courts. Often, the place where our cases commence is in hospitals, hospices, local CBO's and in client's

homes. Our referrals come from oncology and virology departments, home care agencies, welfare job centers and any institution you where would expect to find people struggling with serious illness. We have formal and informal agreements with medical providers across the city and they refer clients to us for a host of legal issues including eviction prevention, access to public benefits and entitlements, family and matrimonial law matters and lifetime planning (advance directive) work.[1] We speak with clients in their living rooms and kitchens; we help them execute wills at their hospital beds, we are their advocates in courts across New York City.

Through any lens this work, intimate by definition, is legal work focused on providing clients and their families with the "essentials of life." Our view of these elements is no different than that of the Taskforce. In the last year alone, TFC's Legal Services Department worked with 700 clients representing 1,050 individual household members. The Department closed 110 housing (eviction prevention) cases, 332 lifetime planning matters, 169 public benefits, SSI/SSD and debt collection cases and 147 family law and matrimonial cases.[2] In the last year, our dollar benefits achieved for clients (tracking awards, benefits and judgments) added up to $1,688,000. This figure does not include monetary values for our eviction prevention and child custody work. Much of our legal work over the past few years includes keeping children with family when they would otherwise have nowhere else to go and likely end up in the foster care system. According to a report by New York City's Public Advocate Bill De Blasio, it costs $36,000, annually, to have a child in the foster care system.[3] We estimate that our services have saved New Yorkers $1,440,000. Similarly, the annual cost of one person in homeless shelter is $19,710 ($54.00 per night).[4] We estimate that our services saved New Yorkers $886,950. The Family Center as a whole serves over 2,100 people annually.

Since 2008, we have seen a steady change in the volume and type of cases we handle on a routine basis. For 2011, we project that we will serve over 1,000 clients with comprehensive legal services designed to insure housing, financial, family and lifetime planning stability. Hundreds more will receive advice and counsel and education through clinics, lay programs and empowerment workshops. In the last year, our Outreach Team conducted trainings, clinics and educational presentations for 4,277 people. The emphasis in our work, which at one time included only lifetime planning matters for HIV-affected women, now falls heavily into the areas of eviction prevention, entitlement and contested family law work.

This development has hardly come as a surprise. Our clients live at the intersection of illness, poverty, substance abuse, domestic violence and incarceration. Indeed, TFC's clients represent New York City's most profoundly vulnerable families. More than 95% of our agency clients live below the poverty line; 94% are either Latino, African- or Caribbean-American, and reside in the city's most disadvantaged neighborhoods, including the South Bronx, Central Brooklyn,

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[1] The Family Center (TFC) has memoranda of understanding and referral agreements with approximately 62 medical, legal and social service providers across this city. TFC collaborates closely with hospitals and local CBO's especially with units within those institutions that focus on living with chronic illness and end-of-life care.

[2] It is notable that TFC's Department of Legal Services currently consists of three full-time staff attorneys, part-time Law Fellows, legal interns, a paralegal and a Director of Legal Services. The full-time legal staff is five.

[3] See, Public Advocate, Bill De Blasio, Press Release, June 8, 2010, http://pubadvocate.nyc.gov/news/2010-06-08/public-advocate-de-blasio-council-member-palma-hold-rally-protect-nyc-children-abuse

[4] The Lewin Group, The Cost of Serving Homeless Individuals in Nine Cities, November 19, 2004, available at http://www.rwjf.org/files/newsroom/cshLewinPdf.pdf

Northern Manhattan, and the Lower East Side. Often, they are overwhelmed by financial strain, health concerns, age and infirmity, psychosocial problems, frequent criminal justice or domestic violence involvement, and educational barriers for children in their households. Our clients come to us with considerable challenges, legal and otherwise. TFC's Department of Legal Services exists to help clients face those challenges by delivering legal counsel, integrated with social and medical case management services to stabilize and support these needy families.

The Need:

Further, the same communities we serve are also some of those hardest hit by the economic recession. A brief look at the wages of the broader New York City and State community tells us all we need to know about the demand for civil legal services for those who cannot afford them. Our clients, living with illness and at the margins of economic and health stability prior to the recession are more vulnerable now than at any time in recent memory.

They belong to the larger New York community of individuals and families living at the edge of their resources. The Family Center's clients, chronically ill and lacking in numerous supports, find themselves at the intersection of many of New York's worst economic measures and such measures could hardly be found wanting. In New York State, approximately, 33.1% of the population lives below 200% of the federal poverty guideline (a family of four living below $44,000 of income).[5] New York State's unemployment rate for August, 2011, was 8.0%, with 756,400 New Yorkers unemployed.[6] Notably, the unemployment rate in parts of New York City are much higher, with 12.3% unemployment in the Bronx and 9.7% in Brooklyn.[7] As of June 2011, the number of households in New York State receiving cash assistance (both Family and Safety Net Assistance, not including SSI) was 300,494, representing approximately 570,249 individual recipients. Of these, 188,891 households and 350,609 were in New York City.[8] Often, for The Family Center's clients, being ill, also means having no employment or income security. Commonly, after a diagnosis of severe illness, work along with income vanishes.

This insecurity exists across other life essentials. As of June 2011, 1,622,860 households in New York State received Food Stamp Benefits, representing 3,035,825 individual New Yorkers. The majority of these Food Stamp recipients live in New York City, with 1,006,578 households and 1,830,907 individuals receiving Food Stamps.[9] When individuals and families become poor, Medicaid can be a safety net, but many simply remain uninsured. Approximately, 3,853,061

[5] U.S. Census Bureau, Annual Social and Economic (ASEC) Supplement, Poverty Status by State: 2009, *available at* http://www.census.gov/hhes/www/cpstables/032010/pov/new46_185200_09.htm
[6] New York State Department of Labor, Press Release, *available at* http://www.labor.ny.gov/stats/pressreleases/pruistat.shtm
[7] *Id.*, *available at* http://www.labor.ny.gov/stats/pressreleases/pruistat.shtm.
[8] New York State Office of Temporary and Disability Assistance, Temporary and Disability Statistics June 2011, *available at* http://otda.ny.gov/resources/caseload/2011/2011-06-stats.pdf
[9] New York State Office of Temporary and Disability Assistance, Temporary and Disability Statistics June 2011, *available at* http://otda.ny.gov/resources/caseload/2011/2011-06-stats.pdf

New Yorkers have health insurance through Medicaid[10] and 2,778,900 have no medical insurance whatsoever.[11]

Poverty, which may appear to be a disease unto itself, has many symptoms. Certainly one of those is that New York's poor and sick tend to be frequent visitors to state civil court. According to this Taskforce's own research, nearly half of low-income New Yorker's reported having one or more civil legal problems in the past year.[12] As the number of poor has risen, so too has the numbers of filings in civil courts. For example, in 2009, there were 742,365 filings in New York Family Courts and 909,064 filings in the Civil Court of the City of New York.[13] In 2009, only six percent of Family Court petitioners in New York State were represented by an attorney at every appearance and 76% were unrepresented at all appearances. In New York City, 83% of Family Court petitioners were unrepresented at all appearance.[14] Worse, 99% of tenants in New York City Housing Court were unrepresented.[15] The issue of lack of representation is hardly confined to state civil court. Those who cannot afford counsel, of course, struggle in all manner of civil proceedings, including the maintenance of very modest public benefits income. Thus, in 2009, there were 245,782 requests for hearings ("fair hearings") relating to benefits administered through the Office of Temporary and Disability Assistance.[16] Poverty's burden on the court system cannot be overestimated.

What strikes many of us at The Family Center, where we deliver legal services to a population of clients that obtain eligibility by virtue of dire illness, is that medical issues are often overshadowed by legal and economic problems. Many of our clients report statements such as "It wasn't the cancer that kept me up at night, it was insurance, rent and how I was going to pay for my next meal that made me sleepless." The condition of poverty, once you are in it, is difficult to cure. It is a condition compounded by a dearth of support systems for those who need it and the civil court system is a place where New York's poorest and most vulnerable needs support very badly.

The Answer:

1. Help Clients to Resolve Matters Prior to Litigation and Court Proceedings.

Like all non-profit, legal services providers, our experience at The Family Center, regardless of the type of matter involved, is that clients contact us at a very late stage of conflict. Often, what

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[10] New York State Department of Health, Average Monthly Medicaid Beneficiaries for Categories of Service by Category and Eligibility – January 2010 through March 2010, *available at* http://www.health.state.ny.us/nysdoh/medstat/quarterly/aid/2010/q1/beneficiaries.htm

[11] Kaiser Family Foundation, State Health Facts – New York, *available at* http://www.statehealthfacts.org/profileglance.jsp?rgn=34

[12] The Taskforce to Expand Access to Civil Legal Services in New York, Report to the Chief Judge of the State of New York, November, 2010, Appendix 17.

[13] New York State Unified Court System, Annual Report 2009, *available at* http://www.courts.state.ny.us/reports/annual/pdfs/UCSAnnualReport2009.pdf.

[14] New York State Unified Court System, Representation of Parties in Supreme Civil, Family and Local Civil Court Cases, *available at* http://www.nycourts.gov/ip/nya2j/pdfs/Judge%20Fisher%27s%20Testimony.pdf

[15] *Id.*

[16] New York State Office of Temporary and Disability Assistance, Annual Report 2009, *available at* http://otda.ny.gov/news/annual-report/OTDA-AnnualReport2009.pdf.

brought the client to court was something that if it had been addressed sooner, court would not have been necessary.

- For example, routinely, we see clients that may be several thousand dollars in rental arrears. They may or may not be in Housing Court, already. They have a third party payer, but because of an administrative problem such as a missed recertification appointment, checks stopped getting to the landlord. The client was never told why or when the checks stopped.

- Clients come to us with medical insurance denial issues that have been going on for some time. They come to us after they started receiving debt collection letters, in some cases for years, although they are and have been Medicaid eligible for an equal period of time.

- They seek to enforce or modify a child support order for which the Respondent has been in arrears for years if not longer. The Respondent's income may have changed dramatically or may be unknown, along with their whereabouts.

- An ill client and her family, living on public benefits and food stamps comes to us after having been through periodic rounds of sanction, hearing and recoupment with Human Resources Administration. She has never had an attorney and has failed to advance her grievances properly at OTDA.[17]

The result of accessing an attorney late is exactly what one might expect. All court proceedings are more difficult, urgent and create greater stress for everyone involved but most assuredly on the client and their families. In instances too often to remember or count, clients find themselves in court as a result of administrative error which can be either theirs or that of an institution such as HRA. Correcting those administrative errors will help clear the bench's calendar in all courts. Notably, for our clients, the volume of cases and the length of time it takes to resolve them is a very specific concern. An adjournment for a client with cancer means something very different than it does to other litigants.

New York Courts have made great strides in offering unrepresented litigants self-help resources and "unbundled" services. However, we encourage the Taskforce to consider applying significant resources towards the study and implementation of programs that assist low-income New Yorkers in resolving disputes and administrative issues earlier. Very often the matter in court is not so much a legal dispute or even necessarily a factual one. For example, everyone involved understands the course of events that may have lead to a nonpayment or a holdover proceeding. The only matter to be decided in court is who has the responsibility of addressing it – the petitioner or respondent. What the Court becomes in such instances is not a place in which justice is administered, but rather a forum to assign tasks and accountability.[18] This issue, of why many unrepresented litigants end up in court in the first place is not new.[19]

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[17] These examples are only a few closed matters that have crossed the desks of TFC Attorneys in the last year. They are representative of a large number of cases – especially in the areas of public benefits and housing – and we believe representative of a large number of cases city-wide.

[18] In the words of Judge Fisher, Deputy Chief Administrative Judge of the New York City Courts, "Our judges are flooded with cases such as landlord tenant cases which would not have ripened into litigation if government

Many of the mechanisms that would address the issue are already in place and should be expanded upon. Dedicating equal resources towards keeping clients and families out of court through ADR, client education, preventive/holistic services, collaborations with non-legal entities – especially those that assist with financial management – will assist in the proper administration of justice if only, by diverting cases that should never have been before the bench in the first place. The result of services designed to have clients and their families avoid court, will be to lower not just the number of active cases, but also to lower costly interventions from social, medical, child welfare and law enforcement services.[20]

The Taskforce should consider that for such remedies to be effective, it would be wise to house them outside of the Courthouse. By the time the unrepresented reach court, it is most likely because they have been summoned or are filing an action themselves. Of course, expanding civil legal services will require a greater number of trained lawyers, but it should not necessarily mean that those lawyers will only be available when a court conflict is inevitable. Our civil courts should not always be the arbiter of first resort for community conflict or understanding of the law.

Lawyers with a background in various types of civil law may be and are used effectively in different ways. For example, at The Family Center, we've learned that going to the clients and their families, often to their second homes (local CBO's, schools, hospitals and religious institutions) is a far more effective way to educate and meet clients one-on-one about a legal issue. Staff in my office have conducted clinics (where actual legal work is performed), trainings (on topics ranging from housing, public benefits to end-of-life issues) and lay classes all over the city. In these settings, clients learn not just from the attorney, but also from each other. A new type of legal community develops, even if only for a moment, that has as its goal the understanding of one legal issue better and how they might handle it if the time comes.

In providing clients with advice and counsel, either in person or over the phone, we have found that clients and their families can benefit enormously simply from having a better understanding of their rights and obligations under the law. This is not something that can be done through web pages (although all technology that can be applied to this issue should be explored). It requires

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benefits, unemployment insurance, wage and immigration issues were resolved by lawyers. For example, numerous cases in the New York City Housing Part would disappear if individuals had adequate access to lawyers to resolve financial issues that fuel non-payment housing cases. The court system, owners and tenants all benefit when underlying legal issues are resolved by attorneys without the need to file a housing case. The court system would see far less cases in other substantive areas if lawyers were available pre-litigation to assist individuals." Closing Statement before the Taskforce, October 7, 2010, available at, http://www.nycourts.gov/ip/nya2j/pdfs/Judge%20Fisher's%20Testimony.pdf

[19] For instance, in September of 2007, the Urban Justice Center released a report noting as follows, "61% of Food Stamp recipients are cut off within the first 20 months, largely due to compliance/bureaucratic issues." Having clients speak with knowledgeable attorneys could prevent hundreds if not thousands of unrepresented litigants from having to go to administrative court to argue, before an ALJ, what is little more than a bureaucratic issue. Jackie Kessel, Berlin Rosen, Report Finds NYC Food Stamps Program Deters Participation. Urban Justice Center Report (from 2007): http://www.urbanjustice.org/pdf/publications/PR_20070906.pdf.

[20] For example, a routine family law matter requires the presence of a judge, court clerk, court officer, lawyer for the child, an ACS investigation (COI), background check, etc. Having access to an attorney prior to filing a petition or modification may increase the number of family law matters resolved without judicial intervention.

human interaction along with legal expertise in more than just a particular practice area, but also in how to effectively work with a client in a time-limited way such that not only do they have their questions answered but also have the opportunity to unburden themselves a bit of their concerns, fears and truly, their suffering. Although it is not appropriate to have non-lawyers administering legal counsel, I suspect there is a place here for the use of lay advocates. Advice and counsel services can be used to assist those looking for a better understanding of how to navigate the system and ask targeted questions about specific problems. I encourage the Taskforce to consider how to expand such services and how best these interactions can take place outside of an index or docket number.

2. Providing the unrepresented with civil legal services in matters connected to the "essentials of life."

For our clients, if court proceedings cannot be avoided and their lives are to be examined within the four corners of a petition, it can be a daunting experience even for those who have been to court in the past and regardless of the outcome. Walking into civil courts such as Family Court or Housing Court can feel, at times, like being dropped into a foreign country. There is a rhythm and language to all courts, both formal and informal, which serves to distance litigants from what's happening in their case. Attorneys and court personnel on all sides appear to know each other. There is a common language spotted with acronyms and familiar phrases none of which are known to the client. For the unrepresented litigant, conversations regarding their cases happen quickly as do court appearances. For those without a lawyer, the administration of justice and its outcome is an event which happens to them.

Alleviating some of the intensity of civil court proceedings is no small thing and the Office of Court Administration, the Taskforce, the Civil Courts and all stakeholders are to be commended for tremendous efforts in this regard through the development of websites, videos, volunteer lawyer programs and other mechanisms designed to help unrepresented litigants to navigate the system. That said; the Court must remain a neutral actor when proceedings commence and this cannot be avoided. The best mechanism to assist litigants in crossing the chasm between a process that is happening to them and a process that is happening with them is by affording them an attorney: trained, empathetic and one who is committed to being with them until the matter is resolved – for better or worse.

Anyone who has been to court knows that it is a demanding atmosphere, rooted in the adversarial process in which unrepresented litigants often feel that everyone in the room knows more than they do. It is hardly surprising that the bench reports difficult behavior in unrepresented litigants all of which seems to be a cry of desperation.[21] In situations in which people may be deprived of housing, badly needed income and benefits, their safety, their children or grandchildren (sisters and brothers), those before the court must have confidence in the system and know that they received appropriate, knowledgeable and thoughtful counsel. When litigants do not have counsel or worse, when they do not have counsel and the other side does, it is impossible to expect the unrepresented to have that confidence in the judicial process.

[21] See, e.g., Written Statement to the Taskforce to Expand Civil Legal Services, Judge Ruben A. Martino, presiding Judge of the Harlem Justice Center, September 28, 2010.

Each of us possesses different levels of ability in the use of our voices as an advocate for ourselves or others. Providing legal representation to those facing barriers in obtaining the essentials of life will ensure that all who need it have that voice. In the absence of this opportunity, the courts and the many hard-working people who work within them -- lawyers and non-lawyers alike -- are all just a part of a system which, to those who are unrepresented, seemingly serves to deprive them of the essentials of life.

Providing unrepresented litigants access to an attorney in court is an intervention which easily survives cost benefit analysis. In this regard, I can refer only to the Taskforce's own understanding of this issue.[22] From the perspective of an agency working with indigent clients who are ill, the numbers are often the same. Ill clients and their families who meet with us early and for whom we address more than one legal need (ie: housing, public benefits, lifetime planning) are less likely to come back to us in the future, are less likely to need the court system again and are less likely to have negative engagement with the criminal justice system, child welfare system or end up in the shelter system. The cost of action, such as an expanded right to counsel, reduces more costly interventions later.

3. Assisting litigants in maintaining compliance with judgments, verdicts and resolutions will avoid a revolving door of civil court proceedings.

In order to expand civil legal services appropriately and in order to realize the cost benefit of providing an attorney in civil matters connected to the essentials life, we strongly urge the Taskforce to consider implementing post-judgment/stipulation services. Counsel should be retained not just to assist a client with a court matter, but to make sure that the client is able to abide by the court's judgment. Too often, civil court proceedings which end in a final judgment or stipulation simply reappear in court months or even weeks later when one or all of the parties were not able to abide by the terms of the order or agreement. The client was unable or did not understand how to apply for a "one shot deal," at the rental assistance unit in court, was unhappy with the child visitation arrangement, or after bringing and winning a fair hearing, there was no compliance and because they failed to raise an issue at the hearing, another round of notices of intent started arriving from HRA.

There is questionable value in assigning an attorney to those who need it when no one is there for them, once formal court proceedings have passed. In expanding on *Gideon v. Wainwright*, the Taskforce should borrow from those agencies, which began as criminal defenders, who discovered long ago that they could best serve their clients by also providing multidisciplinary services and civil representation.[23] In doing so, they discovered that by raising the wages of their clients, their families and the communities in which they practice, they reduced the likelihood of people going to jail.[24]

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[22] The Taskforce to Expand Access to Civil Legal Services in New York, Report to the Chief Judge of the State of New York, November, 2010, pages 20 - 33.
[23] *Gideon v. Wainwright*, 372 U.S. 335 (1963).
[24] See, e.g. Appellate Division, First Department, Written Comments of McGregor Smyth and Kate Rubin, The Bronx Defenders, September 24, 2010, submitted to the Taskforce to Expand Civil Legal Services in New York.

We, in the civil arena, should make all efforts towards reducing the reopening of civil matters connected to those areas into which we want to expand the right to counsel. This is where multidisciplinary services and what was once referred to in legal services circles as the "wrap-around," comes into play. It is good practice and often necessary to make sure that a client has access to an attorney after the court has closed its doors. This can be accomplished in many ways such as financial management services, attorney/client check-ins on a routine basis for a set period of time, or by giving the responsibility of post-judgment monitoring to newly assigned attorneys (an example borrowed from current ADR practices).

At The Family Center, we try to stay with a client and their family for as long we can and as long as they need us. This is made much easier by having a network within the office of mental health, medical and case management professionals who can meet with clients and their families to address the significant "non-legal" fall-out of court proceedings. For example, children in custody proceedings do not stop grieving for a lost parent after their new caregiver receives letters. Often, that is when behavioral problems begin. Educational and juvenile justice issues are always nearby in such matters.

Having an attorney available and using multidisciplinary systems to help with the real consequences of civil court supports the driving philosophy of *Gideon*, that those who need it have the "guiding hand of counsel at every step in the proceedings against him."[25] Criminal proceedings, with all of their ramifications, may end in verdict – innocence or guilt. For those engaged in proceedings regarding the essentials of life, the court matter may be just the beginning of the work ahead. Guidance should be available, if not indefinitely, than in some structured form.

Without a full wrap- around approach many matters will end up right back in court. One of the hallmarks of a civil *Gideon* doctrine should be the absence or at least a decline of civil court recidivism. If people have access to an attorney after proceedings end, the number of those reentering the court system will drop.

Conclusion:

Finally, members of the Taskforce, amid the strong testimony you will receive on this issue; amid the dizzying statistics regarding both the unmet need for civil legal services, poverty and how providing the unrepresented with counsel in civil matters will be cost effective, there is one more reason to undertake this ambitious initiative.

Simply, this is the cost of living in a free society in which disputes are addressed by process, guided by reason and which require trained minds and strong voices. This endeavor is the cost of living in a populous state, made up of rich and poor, who live side by side and work together to make the community a fair and just one. This is the cost of a free society in which courts, the third pillar of our government, stand to protect all who come before them. They should be free to do so without the burden of having to unravel cases that are no more than administrative issues or hear from unrepresented litigants who have difficulty expressing their rights and stories. This is the cost. The benefit cannot be calculated in dollars and billable hours. It is more

[25] *Gideon v. Wainwright*, 372 U.S. 335 at 345 (quoting *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932)).

accurately calculated in lives saved, homes protected, livelihoods preserved and opportunities maintained. It is measured in good conscience kept.

Thank you for this opportunity to submit written comments on the issue of expanded legal services. The Family Center wishes Judge Lippman and the Taskforce good luck.

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Law Library Association of Greater New York

Written comments for the Chief Judge's Hearings on Civil Legal Services

Submitted to the Task Force to Expand Access to Civil Legal Services

From the Law Library Association of Greater New York

September 26, 2011

New Yorkers deserve access to civil legal services regardless of their financial situation. The state's diverse libraries and librarians play an essential role in providing legal information, research and access to materials in the face of their own diminished staff and resources. In order to better serve the legal research needs of all New Yorkers, the Law Library Association of Greater New York (LLAGNY) supports expanding civil legal resources, including support for publicly available law library collections and staff.

On behalf of our Association, I, as Vice President, sincerely thank Chief Judge Lippman and the Task Force to Expand Access to Civil Legal Services for their efforts to find solutions to this growing need and for this opportunity to submit our comments.

Many of our law librarians and information specialists, especially those in the New York State Unified Court System's law libraries, work directly with the public. These professionals are at the front line of court service to patrons representing themselves and attorneys representing others. The self-represented generally have few authoritative legal resources on which to rely. Solo-attorneys or those employed in legal aid centers or legal clinics often lack sufficient funds for resources. Court librarians provide vital services, including research help, tools and instruction tailored to the individual needs of patrons. Equally important, court librarians assist court personnel, the judiciary and its administration, extending to them the same reference, research, tools and instruction.

Our academic librarians support the educational needs of those who will soon enter the legal field. These librarians provide legal research instruction, guidance and resources to students who often participate in legal clinics serving civil legal needs.

Academic libraries continue to provide support for alumni, some of whom, now retired and without substantial legal research tools of their own, may volunteer their legal services to the economically disadvantaged.

Approximately seventy percent of LLAGNY members work in private law firms whose associates are encouraged to serve the public through pro bono legal work. Growing litigation areas such as consumer credit, mortgage foreclosure, landlord and tenant issues, and problems caused by the current high unemployment rate and distressed business environment contribute to the need for public legal services. Private law library staffs and resources support the pro bono, assigned or appointed counsel, and other low or no fee work performed by firm lawyers.

In addition to our members' paid work, committees within and activities sponsored by the Law Library Association of Greater New York speak directly of the Association's volunteer efforts to meet the legal information needs of the public. Examples are:

* Outreach Programs Committee - Bridge the Gap annual program paving the transition from law student to practicing associate

* Pro Bono Committee - offering no cost legal research and reference service to those without law library resources

* Education Committee - providing free or nominal cost continuing professional education for our members

* Government Relations Committee – identifying opportunities for LLAGNY to track government activities and be alert to changes in laws affecting libraries

LLAGNY and its members are also actively:

* Increasing educational opportunities (such as the recently evolving Practising Law Institute joint partnership in creating the Research Briefings programs)

* Creating self-help procedural programs or continuing legal research instruction for the public (e.g., CALI - Center for Computer-Assisted Legal Instruction)

* Exploiting the existing professional network of the state's libraries in a coordinated effort to provide legal help information, interlibrary loans, and referrals

* Ensuring that the online government legal information used by the public is authentic, trustworthy and preserved

Reductions in library staff and funding continue to impose consequences on those most in need of our support. Bear in mind that:

1) Government requires citizens to privately litigate in order to enforce public rights.

2) In order to hold government accountable, citizens must be able to find records of government actions. Libraries provide these materials and librarians provide instruction.

3) Expanding legal services while cutting library subscriptions denies volunteer lawyers support via library resources.

4) Courts need to develop a public policy of archiving their precedents through the State Reporter. The reliance upon private publishers is no longer an effective solution since increases in price and changes in format impede the public's ability to access these documents.

The Law Library Association of Greater New York has participated in the metropolitan New York City area's legal community for over 70 years. Since 1949, LLAGNY has been a chapter of the American Association of Law Libraries. We have a membership of over 650, made up of law librarians, lawyers, legal publishers, legal research instructors, and other information specialists. We may be employed in New York City or New York State government agency and court libraries, in private law firms, in corporations, in academic institutions, or in legal publishing entities. We are united in our objective "to develop and increase the usefulness and efficiency of law libraries." In doing so, we play an active role, providing effective assistance, efficient resources and network support, either directly or indirectly, to those in need of civil legal services. LLAGNY welcomes an opportunity to help find solutions to better meet the civil legal service needs for New Yorkers.

Sincerely,

William R. Mills
Vice President/President Elect
Law Library Association of Greater New York

The Legal Aid Society

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Testimony of The Legal Aid Society

on

THE IMPACT OF THE UNMET CIVIL LEGAL SERVICES NEEDS THROUGHOUT THE STATE

Submitted to:

Hon. Jonathan Lippman, Chief Judge of the State of New York
Hon. Luis A. Gonzalez, Presiding Justice of the First Department
Hon. Ann Pfau, Chief Administrative Judge
Vincent E. Doyle, III, President of the State Bar Association

FIRST DEPARTMENT HEARING

September 26, 2010

The Legal Aid Society welcomes this opportunity to testify at this special hearing on the critical need for civil legal services in New York State. We greatly appreciate the consideration of this urgent problem by the Chief Judge, the Presiding Justice, the Chief Administrative Judge, and the State Bar President. With the crucial support of the Assembly and the Senate, the Judiciary's leadership in addressing this problem has been extraordinary – first by allocating funding to rescue the New York State IOLA Fund in the Judiciary's budget to partially offset a dramatic drop in IOLA funding due to the historic reduction in interest rates, and now by implementing this initiative to respond to the unmet need for civil legal assistance across the State.

We submit this testimony to provide information about the continuing urgent need for civil legal assistance for families and individuals in New York who need legal help to maintain the essentials of life – shelter from the elements, family safety and integrity, access to health care, food, clothing, and subsistence income – in the midst of the most extreme economic conditions since the Great Depression of the 1930s.

As you know, with a staff of more than 1,600, including some 900 lawyers and 600 social workers, paralegals, investigators, and support and administrative staff, The Legal Aid Society provides comprehensive civil, criminal, and juvenile rights legal assistance to low-income families and individuals in literally every community in the five boroughs of New York City. During the past year, The Legal Aid Society provided these legal services in more than 300,000 cases and legal matters for New Yorkers in desperate need of legal help. Many of our clients are referred to The Legal Aid Society by the constituent services staffs of State elected officials or by community-based organizations serving every district of the City. Indeed, since its founding in 1876, The Legal Aid Society has been a vital part of the social fabric of the City.

We are mindful of the extreme financial difficulties that the State is facing. At the same time, these extraordinary economic conditions are having an especially harsh impact on low-income New Yorkers and the need for the civil legal help for these struggling families and individuals is increasing exponentially. Without ongoing substantial support for the provision of civil legal assistance in New York State, the Society and other civil legal services programs across the State and in New York City will have to turn away more families and individuals who need legal aid to get unemployment and disability benefits, flee from domestic violence, and prevent evictions, foreclosures, and homelessness.

Every day, civil legal services programs like the Society provide for thousands of vulnerable New Yorkers a lifeline for basic survival. And the situations our clients are facing – loss of jobs, foreclosure, eviction, hunger – are the grim hallmarks of this current fiscal crisis.

As the Chief Judge's civil legal services task force found in its comprehensive 2010 report, the legal help provided by civil legal services programs also saves State and local governments millions of dollars each year and brings millions of dollars of federal benefits for clients into the New York economy – and is thereby a proven, tested and wise investment.

Nevertheless, even at current funding levels, the Chief Judge's task force has found that at best 20 percent of the legal needs of low-income New Yorkers are being met.

The situation is even more extreme at The Legal Aid Society because low-income families and individuals seek our assistance as the safety net when all other safety nets have failed. During the last year, we worked on some 43,000 civil legal matters in literally every zip code in the City. However, we are able to help only one out of every nine New Yorkers who seek our help with civil legal problems because of lack of resources. The situation has become particularly dire since the economic downturn began. Homelessness, for example, is at record levels in New York City, and unemployment, hunger, and foreclosures are on the rise.

In these severe economic times, civil legal assistance is needed now more than ever. As we reported previously, since the economic downturn began in 2008, we have seen unprecedented increases in requests for help in core areas of need:

- a 29% increase in requests for help with unemployment benefits and employment problems;
- a 40% increase in requests for health law assistance and help obtaining Medicaid, Medicare, and other health care coverage;
- a 12% increase in requests for help to obtain food stamps, federal disability benefits, and public assistance;
- a 16% increase in requests for domestic violence and family law help;
- a 15% increase in requests for help from current or former low wage workers with earned income tax credit or other low income taxpayer problems;
- a 21% increase in requests for eviction prevention representation; and
- a stunning 800% increase in requests for foreclosure defense assistance.

Even more troubling, over the past few months, we have seen further increases in requests for our civil legal aid above these high levels of increased legal need: an additional 54% increase for low-wage employment and unemployment matters; an additional 18% increase for housing problems; an additional 12% increase for domestic violence and family matters; an additional 23% increase for subsistence income support problems; and an additional 11% increase for access to health care matters.

Moreover, behind these troubling statistics is the great suffering of low-income families and individuals who desperately need our civil legal help. Consider, for example, the cases of these clients who we were able to help and who are testifying at the Chief Judge's civil legal services hearings this year:

- Alavita Williams, a retired corrections officer who needed our civil legal aid to avert the loss of her home in a mortgage scam;

- Eneyda Maldonado, whose life turned around when our civil legal assistance enabled her to escape with her child from domestic violence, obtain custody of her child, and gain access to employment and health care; and

- Virginia Norman-Acevedo, a blind grandmother with an adopted blind child who needed our legal help to keep the child out of foster care when his guardian died, to retain housing for herself and the child, and to prevent the eviction of her adult daughter and her grandchildren.

Another Legal Aid client, William Dean, submitted written testimony that described a heartbreaking situation which was resolved only by our provision of civil legal assistance to prevent his eviction. Mr. Dean is the custodial parent of two daughters and a veteran who suffers from post-traumatic stress disorder who had been in fear of losing his family's home. A copy of his written statement is included with this testimony.

Against this backdrop, Chief Judge Jonathan Lippman's initiative to conduct these hearings in each of the four Departments and appoint a task force to make recommendations to meet the unmet need for civil legal assistance is exactly the breakthrough that is needed in these extreme economic times. Indeed, the increasing number of unrepresented parties is adversely impacting court operations and represented parties in addition to literally thwarting access to justice for tens of thousands of New Yorkers.

The Society applauds and supports the Chief Judge's initiative to bridge this gap in access to justice for the most vulnerable New Yorkers who are in desperate need of our civil legal aid – survivors of domestic violence, senior citizens, children and adults who have disabilities or chronic illness, immigrants fleeing oppression, unemployed and low-wage workers, persons living with HIV infection, and children and adults faced with evictions, foreclosures and homelessness.

Thank you for your consideration of these matters that are so critical for families and individuals in New York City and throughout the State who need civil legal help to obtain the basic necessities of life.

Introduction by Julia McNally

My name is Julia McNally. I am a Staff Attorney at The Legal Aid Society in the Housing Unit in our Bronx Neighborhood Office. The Legal Aid Society was able to assist William Dean with several issues, including negotiating a settlement of his eviction proceeding and securing a subsidy to pay his ongoing rent in full.

Testimony of William Dean

My name is William Dean. I am a veteran and the custodial parent for my two children. Since my service ended, I have received regular counseling for depression and post-traumatic stress disorder.

My recovery has made it difficult for me to work, and my only source of income right now is public assistance. In 2010, my landlord brought an eviction proceeding against me because I could not afford to pay the rent.

I was terrified of being evicted, and overwhelmed with the prospect of coming up with thousands of dollars in back rent. I was working on securing custody of my daughters, and I knew that being evicted could jeopardize my family. I didn't have any money to pay an attorney, and the threat of eviction caused intense anxiety. Defending a case by myself, that could result in my family's eviction, was so stressful that I often considered just leaving my home and moving to a shelter.

When The Legal Aid Society's attorneys began to represent me, they immediately negotiated a settlement with my landlord to give me time to pay the arrears. The settlement was structured so that if I didn't pay on time, the landlord would have to bring me back to Court instead of simply serving me with a notice of eviction. I no longer had to live in fear of the day the Marshal would knock on my door. Also, The Legal Aid Society convinced the landlord to repair all of the conditions in my apartment, including a broken toilet and a bathtub that leaked water into the apartment below.

The Legal Aid Society then ensured that I would be able to pay all of my arrears and all of my ongoing rent by filing a successful application for me to participate in the Family Eviction Prevention Supplement program.

When The Legal Aid Society ended my Housing Court eviction case and arranged for the payment of all the arrears to the landlord, it was as if a huge burden was lifted from me. I am in school and striving to become skilled and healthy enough to support my family. By ensuring that I have a secure, decent home, The Legal Aid Society has given me the opportunity to focus on building a stable family.

Legal Services NYC

Testimony of Legal Services NYC

The Chief Judge's Hearings on Civil Legal Services

First Department
September 26, 2011
New York, New York

Testimony of Raun J. Rasmussen, Executive Director

Legal Services NYC

The Chief Judge's Hearings on Civil Legal Services

First Department
September 26, 2011
New York, New York

"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."[1]

My name is Raun J. Rasmussen and I am the Executive Director of **Legal Services NYC** (LS-NYC), the nation's largest organization devoted exclusively to providing free civil legal services to low income and underserved individuals and communities.

With neighborhood-based offices and outreach sites located throughout the City's five boroughs, LS-NYC has a singular overriding mission: to provide expert legal assistance that improves the lives and communities of low income New Yorkers. Our services include a strategic combination of specialized law units, legal helplines, impact litigation, and *pro bono* private attorney efforts.

The provision of legal assistance to low income New Yorkers not only solves the heart wrenching problems faced by our clients, but also saves the state money and brings desperately needed dollars into low income communities—not an easy feat in this time of economic downturn.[2] The child support payments, unemployment insurance benefits, and federal social security disability benefits we secure for our clients save the state millions of dollars by shifting costs away from State public assistance. For example, from January 2009 to March 2010, LS-NYC secured more than $13 million in retroactive benefits and $20 million in ongoing client benefits,[3] which flows into local communities to buy food, pay rent, and help keep families from falling apart under the weight of unemployment and underemployment.

Before I address the key points raised in the hearing invitation, I would like to thank Chief Judge Jonathan Lippman for his leadership in (a) including funding in the FY2011-2012 budget of the Office of Court Administration (OCA) to make up for the shortfall in the New York State Interest on Lawyers' Accounts Fund; (b) including $12.5 million in funding for civil legal services in the FY2011-2012 OCA budget to create a permanent, stable source of funding for the

[1] Universal Declaration on Human Rights (Article 25(1), 1948).
[2] November 2010 Report to the Chief Judge of the State of New York of The Task Force to Expand Access to Civil Legal Services in New York (hereafter, the '2010 Task Force Report'), http://www.courts.state.ny.us/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf.
[3] See LS-NYC's 2009-10 IOLA Summary Report, attached hereto as Attachment A.

provision of civil legal services to low income New Yorkers; and (c) convening these hearings on the future of civil legal services funding. These hearings bring welcome and sorely needed attention to the inadequate level of State funding for these vital services.

In this testimony, I discuss:

a. The current state and scope of the unmet need for civil legal services by low income New Yorkers confronting legal problems involving the "essentials of life;"
b. the impact on communities and the courts of reduced or eliminated legal services;
c. the costs and benefits to communities and the courts when legal services are provided in matters involving the "essentials of life;" and
d. various examples of how to reduce the growing unmet need through, *inter alia*, preventive and early intervention services by providers, simplification of court and administrative processes, self-help programs, community legal education, provider collaborations, and expanding the availability of *pro bono* legal services.

THE CURRENT STATE AND SCOPE OF THE UNMET NEED FOR CIVIL LEGAL SERVICES BY LOW INCOME NEW YORKERS CONFRONTING LEGAL PROBLEMS INVOLVING THE "ESSENTIALS OF LIFE," INCLUDING HOUSING, FAMILY STABILITY AND PERSONAL SAFETY IN DOMESTIC RELATIONS, ACCESS TO HEALTH CARE AND EDUCATION, OR SUBSISTENCE INCOME AND BENEFITS

For 45 years LS-NYC's network of programs has provided free legal representation to people who have nowhere else to turn in areas including: Consumer Law, Disability Rights, Domestic Violence, Education Law, Elder Law, Employment Law, Family Law, Foreclosure Prevention, Government Benefits & Entitlements, HIV/AIDS, Housing, Immigration, Parent Representation, Preservation of Low-Income Housing, Tax Law, and Unemployment Insurance Benefits. Between January 2009 and March 2010, we closed approximately 23,500 cases, benefiting 58,250 clients and their family members, and we conducted dozens of community legal education programs, benefiting another 40,000 low income New Yorkers.[4]

Despite our best efforts to leverage our work with *pro bono* assistance and collaborations with colleague providers and community partners, the number of people we can serve compared to the need remains small. In 2009, we participated in the Legal Services Corporation's *Justice Gap* Survey.[5] According to the survey results, in 2008 (the beginning of the recession) we were able to serve fully only 12% of the people who came to us for help; the remainder were either turned away (51%), not served fully (13%), or received only brief services and advice (24%).

These numbers mirror the broader crisis in the need for the provision of civil legal services. Nationally, the poverty rate climbed to 15.1% in 2010, the highest level since 1993.[6] In New York State, the poverty rate climbed to 16% in 2010, up from 14.5% in 2007.[7]

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[4] Id.
[5] Documenting the Justice Gap in American – The Current Unmet Civil Legal Needs of Low-Income Americans, An Updated Report of the Legal Services Corporation, September 2009, http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf.
[6] Income, Poverty, and Health Insurance in the United States: 2010, http://www.census.gov/prod/2011pubs/p60-239.pdf.

According to the federal poverty guidelines more than 1.5 million New York City residents, almost one in five, live in poverty. Mayor Michael Bloomberg, as part of his anti-poverty initiative launched in 2007, called for the development of a new measure of poverty in New York City that factored in things such as rising housing costs, government benefits, and regional cost-of-living differences. Including these factors, 22% of New York City residents—more than 1.8 million people—are poor. When looking at those earning up to 200 percent of the official poverty line, 3 million people in New York City—nearly 2 out of 5—qualify as either poor or near poor.

By some estimates, the need for civil legal services has increased by 30% since the economic downturn began in 2009. With massive layoffs over the last several years—many of them service and entry-level positions held by low income individuals—unprecedented numbers of people have lost their jobs and homes. Examples of the growing need in New York State include:

- New York City had an unemployment rate of almost 9% in August, compared with 5.7% in October 2008, and some areas of New York City are much higher—the Bronx, for example, has the State's highest unemployment rate, at 12.3%;
- New York City experienced a decrease in affordable housing through the loss of 17,000 rent-stabilized apartments between 2005-2008;
- Nearly 300,000 eviction proceedings were commenced in New York City's Housing Courts in 2010, resulting in nearly 25,000 evictions or legal possessions;
- Incidents of domestic violence skyrocketed to 249,440 in 2010, and there was a 40% increase in teen dating violence over the past decade; and
- New York State is experiencing historic rates of foreclosures; Queens County, for example, had a 217% increase in filings from 2005-2009.

The crisis in the justice system is compounded by the fact that there are few attorneys to address the legal needs of New York's poor. As a result of a lack of resources and the growing need for legal help, 95% of litigants in eviction, consumer credit, and child support cases in New York State are unrepresented. In foreclosure cases, 44% of homeowners are unrepresented.[8]

At a time when demand continues to climb as the economy continues to falter, federal funding for civil legal services from the Legal Services Corporation (LSC)—the largest funder of civil legal services in the United States—continues to decline. In 2011 LS-NYC lost more than $700,000 in funding from the LSC. In 2012, we are likely to lose at least another $800,000 in LSC funding. And in 2013 and 2014, we anticipate losing another 20% of our LSC funding–more than $3 million–based on recent census results. This loss of federal funds could require us to lay off as many as 45 advocates, depriving thousands of New Yorkers of legal help.

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[7] Jarrett Murphy, 'Recovery' Year Saw Incomes Fall, Poverty Rise, http://www.citylimits.org/blog/158/-recovery-year-saw-incomes-fall-poverty-rise.

[8] 2010 Task Force Report, http://www.courts.state.ny.us/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf.

As a result of the disparity between the need for civil legal services and the resources to provide them, the low income people and communities that we serve are suffering more now than at any time since the Great Depression.

THE ECONOMIC AND SOCIAL CONSEQUENCES OF REDUCED OR ELIMINATED CIVIL LEGAL SERVICES IN COMMUNITIES AND FOR THE COURTS

Impact on Communities

When low income New Yorkers become unemployed and cannot get or have exhausted their unemployment benefits, they cannot pay rent or buy food or other necessities. They need legal help to prevent eviction, get food stamps, and apply for other public benefits. Economic pressures exacerbate family tensions and domestic violence increases. Children who experience hunger or tension at home have trouble learning.

Static incomes, rising rents, the loss of subsidized and regulated housing, and the foreclosure crisis have resulted in the highest number of homeless families and individuals in the City's history.

Further, because of lack of resources to provide assistance to people with legal needs, New York State loses millions of dollars every year in uncollected government benefits and other benefits to which people are entitled. The lack of income further leads to a lack of purchasing power, which hurts the local stores and businesses that hold low-income communities together and help keep them safe.

Providing counsel when needed saves people from immediate trauma and long-term hardship; it also saves public funds and returns dollars to low income communities.

Impact on Courts

Courts and administrative tribunals in New York are grappling with a tsunami of increased filings and proceedings. Unemployment Insurance hearings have dramatically increased due to the prolonged economic recession. Housing and eviction cases have increased. Cases involving charges like assault by family members – the type of domestic violence cases that civil legal services family law practitioners handle – have increased. Foreclosure cases have ballooned with the economic crisis. And because consumer debt continues to escalate in this difficult economic period, Civil Court cases, where most credit card debt actions occur, exploded to more than 577,000 in 2009, up from 200,000 a decade ago.

Last year, more than 2.3 million New Yorkers tried to navigate the State's complex civil justice system without a lawyer, requiring court personnel to spend thousands of hours helping the unrepresented.

Those who work in the court system summarize the situation best:

> "*I am seeing the ripple effects that destroy the family structure*." Hon. Pam Jackman-Brown (Family Court, Queens County).[9]
>
> "*People who have lost their jobs, or have taken a lesser-paying job, are not able to make their mortgage payments. People in default of their credit cards may have gotten a job but they can't accumulate enough money to pay back what they owe plus interest*." Hon. Philip G. Minardo (Supervising Judge, Richmond County).[10]

As noted above, most low income litigants cannot get representation in the court and administrative proceedings that adversely affect their lives. As a result, they are not able to assert defenses or to obtain fair settlements of their cases. The inequity created because of lack of access to the courts breeds, at best, a lack of faith in the justice system because it often does not appear to work for those who are forced to rely on it to deliver fairness in matters of basic survival.

THE COSTS AND BENEFITS, TO THE COURTS AND TO COMMUNITIES, FROM THE PROVISION OF CIVIL LEGAL SERVICES IN MATTERS INVOLVING THE "ESSENTIALS OF LIFE"

In this time of economic crisis, LS-NYC and the other legal services providers in New York State prevent immediate human problems–evictions, domestic violence, loss of homes–bring money into low income communities and save the State millions of dollars per year in costs that the State would otherwise incur. For example, certain types of benefits—e.g., Earned Income Tax Credits, child support payments, federal disability payments—are not funded by the State. When a client receives such benefits, he or she will need fewer or no State benefits. As detailed in the 2010 Task Force report, LS-NYC and other legal services providers in New York State win $321 million in federal benefits on an annual basis, generating $475 million in economic activity in low income communities.[11]

Cost savings to the State from the work legal services providers do is equally dramatic. In the area of Family Law, the average saving from protecting a family from Domestic Violence is $3,400, resulting in statewide savings of $6 million in 2009. In the Housing Law area, legal services providers saved New York State taxpayers nearly $100 million in 2009 by saving homes from foreclosure and preventing wrongful evictions.[12]

The courts are helped when civil legal services are provided because cases can be more efficiently and more fairly adjudicated. Judges need to spend less time allocating stipulations of settlement and less time ensuring that unrepresented litigants are fairly treated.

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[9] William Glaberson, "The Recession Begins Flooding Into Courts Nationwide," The New York Times, December 28, 2009, A3, Col. 2.
[10] Jeff Harrell, "Empty Pockets, full dockets: Foreclosure filings, family cases soar as economic woes come to roost in Island courts," The Staten Island Advance, January 24, 2010, A1, Cols. 4-5.
[11] 2010 Task Force Report, http://www.courts.state.ny.us/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf.
[12] Id.

THE POTENTIAL FOR REDUCTION IN THE UNMET NEED THROUGH, *INTER ALIA*, PREVENTIVE AND EARLY INTERVENTION SERVICES BY PROVIDERS, SIMPLIFICATION OF COURT AND ADMINISTRATIVE PROCESSES, SELF-HELP PROGRAMS, COMMUNITY LEGAL EDUCATION, PROVIDER COLLABORATIONS, AND EXPANDING THE AVAILABILITY OF *PRO BONO* LEGAL SERVICES

By forging partnerships with community-based organizations and collaborations with colleague organizations, legal services providers are often able to address potential legal problems before they have ripened to litigation. For example, LS-NYC provides extensive training and workshops for both community-based advocates and the overall poverty law community, to describe how problems can be spotted and solved in a way that prevents litigation. And we create innovative projects—such as recent initiatives to provide mediation services to clients in contested divorce and custody matters, and to provide representation to homeowners in mandatory settlement conferences[13]—that are designed to keep people out of court or to help them settle cases without litigation. In all, our services benefit clients as well as the court system by diverting almost 5,000 cases from the courts each year.

Through collaborative advocacy, legal services providers also can achieve systemic changes that can benefit thousands. For example, although the New York City Council recently passed a law that prohibits housing discrimination based on the source of the tenant's income, landlords blatantly violate the law. LS-NYC attorneys, in partnership with *pro bono* attorneys, litigate these cases in State Supreme Court, which not only places scores of families in apartments with their Section 8 rent subsidies intact, but also develops the law to help others avoid this problem.

Finally, as funding sources continue to decline and more working families fall into poverty, legal services providers are increasing their *pro bono* partnerships to further expand their ability to serve low-income New Yorkers. At LS-NYC, for example, we have increased our *pro bono* participation by 131% since 2006. An area ripe for an increase in *pro bono* participation is financial justice, to ensure that low-income families have the ability to build good credit—a critical step to exit poverty. At LS-NYC, we have expanded our citywide Bankruptcy Advocacy Project to meet the overwhelming need of unrepresented bankruptcy litigants. And our offices are key partners in CLARO (Civil Legal Assistance Resource Office) court programs, which

[13] LS-NYC has developed a Family & Divorce Mediation Project, which is being piloted by our Queens office in 2011. The Project provides mediation services to clients in contested divorce and custody matters, which do not involve domestic violence, and attempts to help families resolve their disputes without going to court. Family-law practitioners will mediate between the parties to resolve disputes concerning divorce grounds, custody and visitation arrangements, child support, spousal support, and equitable distribution. Also, LS-NYC collaborates with OCA to implement and improve the mandatory foreclosure settlement process. Our attorneys work in the Supreme Courts in Brooklyn, Bronx, Queens and Staten Island to represent homeowners and help the Supreme Court judges and administration ensure that loan servicers appear and engage in meaningful negotiations so that litigation can be ended. We have recently worked with OCA to open a new foreclosure part in the Bronx which we will staff, and also work closely with the Legal Aid Society and others to implement the OCA foreclosure pilot project in Queens Supreme Court.

provide advice and *pro bono* assistance to *pro se* low-income debtors at New York City Civil Courts.

* * * *

"Our lives are connected by a thousand invisible threads, and along these sympathetic fibers, our actions run as causes and return to us as results."[14]

We are very grateful to the New York State Office of Court Administration and Chief Judge Jonathan Lippman for the historic leadership exhibited by creating the Task Force to Expand Access to Civil Legal Services in New York and in convening these hearings on the future of funding for the provision of civil legal services in New York State.

We recognize that this will be another difficult fiscal year for the State because of the overall downturn in the economy. Poor people, however, have been denied meaningful access to the legal system in matters of fundamental survival for far too long. The funding allocated to civil legal services in the Judiciary budget last year represented a major shift in the commitment of New York State to an area of overwhelming human need that has long been neglected. As a matter of fundamental fairness and sound social policy, we ask the Judiciary to continue this momentum and increase funding for civil legal services in its next budget.

This is a unique opportunity for New York State to share our vision of how to ensure a basic tenet of the promise of America—justice for all—that the nation can take notice of, and follow.

Attached hereto as Attachments B, C and D, respectively, is the testimony of Albert Areizaga, Natalie Jones, and Yves Gebhardt, three LS-NYC clients. These client stories demonstrate the enormous value of providing timely, high-quality legal assistance to poor people. Creating a permanent funding source for legal assistance in New York is a meaningful step towards making access to justice for all New Yorkers a reality.

Thank you.

Raun J. Rasmussen
Executive Director
Legal Services NYC

[14] Herman Melville, a great New Yorker whose own family was forced to declare bankruptcy during another time of financial distress in our State.

ATTACHMENT A

LS-NYC's 2009-10 IOLA SUMMARY REPORT

Legal Services NYC

Snapshot of Accomplishments, 2009-2010

During the fifteen-month January 2009-March 2010 reporting period, Legal Services NYC (LS-NYC) programs provided direct legal assistance benefiting 58,250 low income New Yorkers in 23,467 individual closed cases. We also provided community legal education, pro se assistance, and "know your rights" materials in print that benefited over 40,189 persons. We obtained $13,573,123 in retroactive benefits and $1,740,168 in ongoing monthly benefits ($20,882,010 annualized) for our clients and saved taxpayers more than $85,776,968 in averted shelter, public assistance and foster care costs. During the reporting period, LS-NYC maintained its historic priorities of housing, benefits and family law while expanding services in foreclosure prevention, employment, unemployment, bankruptcy, consumer credit, immigration, and education.

During the reporting period our work for clients grew and evolved in exciting ways. Our Brooklyn Family Defense Project, initiated two years ago, served over 1,000 clients in abuse and neglect proceedings in Family Court in 2009. Our Language Access Project continued to implement pro-active legal outreach and advocacy efforts on behalf of our limited English proficient client base. We expanded our work with low-wage workers, providing intake at job training sites and handling Earned Income Tax Credit, unemployment insurance benefits and

Continued on page 6

This Provider At a Glance

Population Served: General Low Income Population
Area Served: New York City Metropolitan Area
Total Funding: $58,094,195
Total IOLA Grant(s): $5,625,000
Program Size - Full Time Equivalents

Total Staff:	*357.11*
Lawyers:	*188.44*
Paralegals:	*75.91*
Other Staff:	*92.76*

Types of Services Provided

Direct Civil Legal Representation	
Brief Services	•
Extended Services	•
Hotlines and Other Phone-Based Services	•
Community Legal Education	•
Pro Se Assistance	•
Support for Other Service Providers	•
Major Cases or Other Advocacy Projects	•

The IOLA Grant(s)

Legal Services NYC Program Grant $5,625,000	*See page 3*
Bedford-Stuyvesant Community Legal Services $260,807	*See page 9*
Legal Services NYC-Bronx $1,104,594	*See page 10*
Legal Services NYC-Brooklyn Branch $269,582	*See page 11*
Brooklyn Legal Services Corp. A $532,083	*See page 12*
Legal Support Unit $359,726	*See page 13*
Manhattan Legal Services $833,430	*See page 14*
Queens Legal Services $897,345	*See page 15*
South Brooklyn Legal Services $658,530	*See page 16*
Staten Island Legal Services $122,587	*See page 17*
Administration/Fiscal Unit $586,316	*See page 18*

Outcomes...

58,248 Individuals Benefited from Direct Civil Legal Representation

Extended Representation Outcomes

- 5,269 People prevented eviction from private housing
- 2,353 People obtained, preserved or increased public assistance, TANF or other welfare benefit/right
- 1,215 People obtained, preserved or increased food stamps eligibility/right
- 1,106 People obtained, preserved or increased SSI benefits/rights
- 10,734 People obtained benefits from other "extended representation"

Brief Representation Benefits

- 32,517 People benefited from legal advice and counsel
- 2,536 People benefited from non-litigation advocacy services
- 2,518 People benefited by referral to other sources of help

Dollar Benefits Achieved for Clients - Total	**$44,540,101**
• Social Security, SSI Benefits:	$22,674,315
• Unemployment Compensation:	$5,002,677
• Family Law - Child Support:	$348,528
• Family Law - Alimony:	$530,257
• Affirmative Judgements:	$621,038
• Other Benefits:	$15,363,287

Total includes back awards and 3 year total of monthly benefits, estimated over 6 months (unemployment compensation), 12 months (other federal benefits, food stamps, alimony, affirmative judgements and other benefits) or 36 months (Social Security, SSI and child support).

Examples...

Outcomes for Clients

Ms. H, a former payroll coordinator at a home health attendant agency, came to the Henry Street Settlement "Single Stop" program site for legal help. She had been terminated for failure to comply with a directive and was denied unemployment insurance by the Department of Labor (DOL).

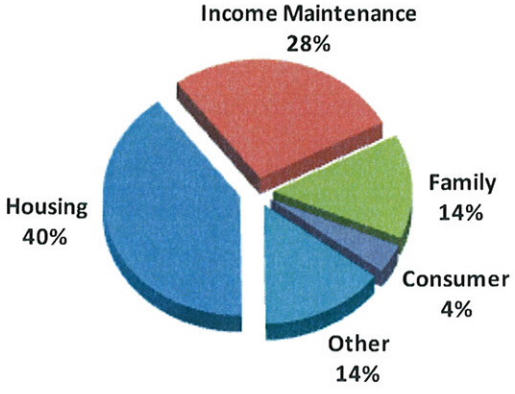
A Manhattan Legal Services attorney found that Ms. H had asked her immediate supervisor whether or not a home health attendant was entitled to receive overtime pay for extra hours worked. The supervisor instructed her not to pay for the extra hours. Ms. H disagreed with this decision and called the regional payroll manager to inquire further. The general manager indicated that the employee must be paid for the work. When Ms. H reported this to her supervisor, she was told it was wrong and was terminated the next day for failing to follow an order.

MLS appeared at the hearing on her behalf. The employer appeared with a witness, the head of human resources, who testified for the employer. The MLS attorney, through vigorous cross-examination, established that Ms. H had a duty to inquire about proper payment of home health attendants as required by her job title and that there was nothing in the employer rules or regulations that prevented an employee from calling a regional manager to ask for clarification on a payroll matter.

Examples continued on page 5

Breakdown By Legal Problem Area

Total	**58,248 People**
Housing	23,305 People
Income Maintenance	15,999 People
Family	8,276 People
Consumer	2,251 People
Other	8,417 People



Other Services

Hotlines and Other Telephone Based Legal Services

Legal Services NYC programs throughout the City staff hotlines for advice and brief service in housing, family law, bankruptcy and general consumer law, public benefits, SSI, elder law, pension, education, and financial justice.

Legal Services Other Than Direct Legal Representation

All Legal Services NYC programs commit substantial resources to efforts on behalf of low income clients that do not fit the traditional case model. Training, community education programs, pro se clinics and numerous collaborative efforts involving others in the justice community, are all part of the Legal Services NYC tradition.

Legal Services NYC works closely with our community partners and constituent services staff of elected officials. Those linkages foster many different kinds of opportunities to provide services. Through our Legal Support Unit (LSU) and our neighborhood offices, we provide training to lay and other legal advocates and to the clients they serve. We hold pro se clinics, make referrals, prepare amici briefs, write manuals, and provide updated materials for LawHelp. We collaborate on cases and provide expert assistance to other advocates and back-up case consultation as well as comments to government agencies on the impact of proposed policies and regulations on the lives of our clients. Finally, we participate in community fairs where we distribute community education materials.

Support for Other Service Providers

The Legal Support Unit (LSU) provides support services to all of Legal Services' staff as well as to public interest advocates throughout the City and State. The LSU provides a comprehensive continuing legal education (CLE) program in a number of substantive areas for legal services providers, advocates and private attorneys. The LSU convenes monthly task force meetings in poverty law open to legal services providers, the pro bono bar, advocates from social services organizations and elected officials' offices. The LSU maintains listservs in which practitioners share information and discuss case strategies as well as probono.net web sites in several areas of poverty law. We distribute legal resource materials, co-counsel in affirmative

IOLA Project Grants

Civil Legal Services in New York City
IOLA Funding Amount: $5,625,000

The Interest on Lawyer Account Fund (IOLA) provides significant general support for our city-wide legal services program and provides a pro-rated share of our overall delivery of civil legal services in New York City. Our programs offer a full range of legal services, including representation in courts and administrative proceedings, advice, referral, community education, outreach and extensive collaboration with other members of the New York City justice community, the private bar and community organizations.

Number of People Benefited by Legal Services Other Than Direct Legal Representation...

Total:	**736,963 People**
Community Legal Education:	687,079 People*
Pro Se Assistance:	40,426 People
Legal Hotline Services:	9,458 People

**This figure includes 646,224 "hits" on legal education materials posted on Web sites, including 453,744 page hits on the LawHelp web site, a collaborative project involving a number of legal services groups and to which Legal Services NYC provides dedicated staff.*

Other Services, *continued*

litigation, prepare amici briefs, and provide telephone and electronic mail consultations to neighborhood-based legal services programs to enable advocates from legal services programs, social service organizations and the private bar to provide high quality assistance to their clients.

The LSU also provides critical leadership, program development, and overall coordination of city-wide special projects such as the Language Access Project, the Leadership Institute, and LawHelp/NY, for which Legal Services serves as a founding and integral Consortium member.

Major Cases or Other Advocacy Projects

FNMA v. OCG (Ocelot Realty)

In July of 2009, Legal Services NYC-Bronx was approached by organizers working with tenants in a portfolio of nineteen buildings that were in foreclosure. The buildings had been purchased by a company called Ocelot that had drastically over-leveraged them thinking it could drive the low-income, rent-stabilized tenants out and replace them with higher paying tenants. The buildings rapidly fell into disrepair and when Ocelot's debt-service reserve ran out it essentially abandoned the buildings so they fell into greater distress. The loans on the buildings were held by Fannie Mae. On behalf of the tenants, LS-NYC-Bronx moved in the foreclosure proceedings for an order compelling Fannie Mae to pay to bring the buildings up to code during the pendency of the foreclosure.

Although LS-NYC-Bronx never received a decision from the court, the pressure the Bronx program exerted, together with the organizers, tenants, and elected officials, led Fannie Mae to sell the loans to a City-Approved affordable housing developer. The outcome in this case affects tenants living in 522 apartments in the 19 buildings in the Ocelot portfolio. There are anywhere from 60,000 to 100,000 units of over-leveraged housing in New York City and we are cautiously optimistic that the outcome in this case will influence lender and landlord behavior in many of these other buildings.

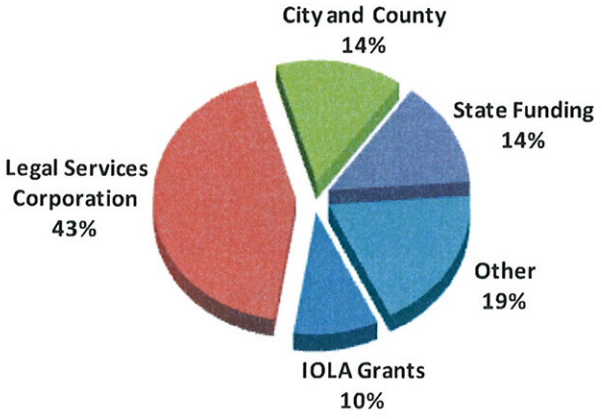
Pro Bono Private Attorney Involvement

During the 2009-2010 reporting period, we continued to strengthen our ties with the private bar and find new projects that offer opportunities for private attorneys to provide important pro bono services. Examples of innovative and successful ongoing pro bono projects include the following:

- Deferred Associates: Legal Services NYC has placed a total of ten deferred associates at our programs.
- Bankruptcy Project: The New York City Bankruptcy Assistance Project brings pro bono attorneys and debtors together through a system of workshops where potential filers first hear an informational presentation about the advantages and disadvantages of bankruptcy. They then meet with attorneys for assessment, advice, and possible assistance with preparing and filing a Chapter 7 bankruptcy petition. Those who choose to file a bankruptcy petition through the Project will represent themselves in court. In addition to the pro se filings, pro bono attorneys also help with contested matters. Over 600 attorneys have

Sources of Funding

Total	$58,094,195
IOLA Grants	$ 5,625,000
Legal Services Corporation	$24,913,925
City and County	$ 8,436,805
State Funding	$ 8,138,977
Other	$10,979,489



Other Services, *continued*

participated, preparing over 440 bankruptcy petitions and providing assistance to nearly 3,800 debtors. On average, over $42,000 per debtor has been discharged, making it possible for low-wage earners to work and pay their bills.

- Low Income Taxpayer Clinic: In a collaboration between Legal Services NYC-Bronx's Low Income Taxpayer Clinic, Columbia Law School and the law firm of Milbank, Tweed, Hadley & McCloy LLP, the Clinic's overflow cases are being referred to the law firm for tax representation. Having cases generated by the Clinic referred to the firm allows Legal Services NYC-Bronx to continue to provide new and potential clients with the opportunity to fully access free and high quality legal services, provide students with the opportunity to work with real clients, and expose both the students and private attorneys to pro bono work.
- Anti-Eviction Project: Since 2002, Manhattan Legal Services has partnered with Simpson Thacher & Bartlett LLP in an anti-eviction program. Each spring, experienced staff attorneys from the office train new associates on Housing Court practice and landlord-tenant law; the associates receive CLE credit for the training. Housing cases are then referred to the firm and the associates are mentored by senior housing attorneys on their cases. The Anti-Eviction Program has been extremely useful in securing legal representation for clients whose cases Manhattan Legal Services could not take.
- "Local Law 10" Project: In a unique project instituted in early 2008, South Brooklyn Legal Services has partnered with Dewey & LeBoeuf LLP to represent tenants in Local Law 10 cases. Local Law 10 was enacted in 2008 to prohibit landlords from refusing to rent, sell, or lease housing to someone because of their "lawful source of income" which includes public assistance benefits, social security, disability benefits and Section 8 rental subsidy. While landlords can refuse to accept tenants for other economic reasons, such as a poor credit rating, they cannot refuse to rent because of the tenant's use of Section 8 vouchers, nor can they refuse to accept a Section 8 voucher from an existing tenant.
- Externships: We have established externship programs with four law firms, each externship typically lasting from four to six months.
- Clinic Staffing: We also have continuing relationships with local firms that staff clinics.

Pro Bono Statistics

For the 15-month period, volunteer lawyers participating in our program achieved the following results:

• *Number of cases completed:*	*1,076*
• *Hours contributed:*	*24,878*
• *Dollar value of services*:*	*$3.73 million*

**estimated at $150 per hour*

Outcomes for Clients *continued from page 2*

The employer witness also admitted during cross-examination that all employees must be paid for all time worked. The Court overturned the Department of Labor's decision and Ms. H received $33,970 in unemployment insurance benefits.

Ms. P and her husband participated in an arranged marriage in 2004 outside of the United States. The couple moved to the US in 2005 and Ms. P became a stay-at-home mother. Her husband began verbally abusing her, calling her vulgar names and telling her that she was "nothing" and "worthless." The husband's mother later moved into the home and joined in the verbal abuse. The abuse escalated when the husband attacked her, hit her, pushed her into walls, dragged and kicked her, and threatened to kill her and take away their child. The mother-in-law told Ms. P she had no rights and her husband could divorce her and take their child as easily here as in their native country. After another death threat, Ms. P called the police and the husband was arrested. She filed petitions for an order of protection and for custody of the child in the Family Court. Queens Legal Services Corporation represented Ms. P and obtained an order of protection for two years and sole legal custody of the child.

Snapshot of Accomplishments *continued from page 1*

employment law matters. We also significantly expanded our city-wide foreclosure prevention work and hired a director of immigrant services to coordinate our services to immigrants city-wide. Pro bono projects continued to flourish: in the past year, nearly 500 pro bono attorneys, paralegals, and others were enrolled in our pro bono program, contributing services valued at $7,110,743. We continued to use technology to support our programs and increase access to justice for low income New Yorkers. Finally, and most importantly, during 2009 and 2010 our offices have won important victories for clients-fighting predatory lending practices; stemming gentrification and displacement; and advancing the rights of low income consumers.

Selected highlights of Legal Services NYC's achievements during the 2009-2010 reporting period include the following:

- Continued Our Leadership in Foreclosure Prevention: Legal Services NYC has the largest foreclosure prevention program in the nation. As the program partner to the Center for New York City Neighborhoods (CNYCN), an organization that funds and coordinates foreclosure prevention advocacy city-wide, LS-NYC has provided litigation and management support to CNYCN Network Partners city-wide and has worked with CNYCN staff and other program partners on systemic advocacy issues. Policy advocacy achievements in the past year include improving the implementation of mandatory foreclosure settlement conferences in New York City courts. We have also worked on drafting state law enhancing protections for tenants following foreclosure (later enacted into law along with enhanced protections for homeowners facing foreclosure). Likewise, we have worked with CNYCN and CNYCN Network Partners to address the many issues arising around the federal loan modification programs and difficulties in implementing the program by advocating with servicers to address servicing abuses and improve the implementation of the federal loan modification programs. Finally, we have worked with CNYCN, ProBono.net and other CNYCN Network Partners to finalize the development of the prototype foreclosure website that will make available training materials and other practice-specific resources for New York foreclosure advocates and volunteer attorneys.
- Conducted Affirmative Systemic Litigation that has Benefited Thousands of Tenants: During the reporting period, Legal Services NYC has engaged in affirmative litigation and policy advocacy benefiting scores of low income tenants in both public and private housing. For example, LS-NYC advocates in Queens, Manhattan and the Bronx have challenged the practices of predatory equity landlords that are buying up thousands of rent-regulated apartments across New York City expecting to generate quick profits by increasing rents after existing tenants leave their units. Tenant advocates report that such landlords have used tactics like not cashing rent checks and initiating frivolous actions to force tenants out. LS-NYC programs have successfully challenged such practices using the Consumer Protection Act and Tenant Protection Act, resulting in a landmark settlement in a case against a major real estate investment firm seeking to gentrify East Harlem. In addition, we provided testimony before the City Council on the impact of predatory equity companies on rent-regulated tenants. Likewise, LS-NYC-Bronx advocates intervened in a foreclosure proceeding on behalf of tenants in violation-ridden buildings to prevent the sale of these buildings to predatory purchasers and to obtain repairs.
- Expanded Access to Legal Information through LawHelp/NY: As the lead and founding member of LawHelp.org/NY, an online legal-information website, Legal Services NYC plays a critical role in the development of new content for the LawHelp/NY website. In 2009 LawHelp/NY launched two new topics, Consequences for Criminal Charges and Veterans and Military. In addition, in 2009, LawHelp/NY undertook several initiatives to increase its multilingual capabilities and awareness of the language rights of LEP communities in New York State. For example,

Continued on page 7

Snapshot of Accomplishments *continued from page 6*

LawHelp/NY added more than 240 language access rights resources, translated the intake information of 112 New York City free legal services programs into Spanish, increased its multilingual library of Know Your Rights resources, and launched LiveHelp, a real-time, online chat service, in English and Spanish, that helps guide visitors to relevant legal information and free legal services.

- Enhanced Our Immigration Practice: During the reporting period, our new Director of Immigrant Services has worked with LS-NYC immigration advocates across the City to review and develop priorities, expand resources, and coordinate our immigration work. Likewise, we have expanded our presence in the immigration advocacy community by joining several immigration tasks forces, including the New York Immigration Coalition, the City's Violence Against Women's Task Force, and the Katzmann Immigration Working group (a coalition of legal advocate organizations organized by Judge Katzmann of the U.S. Court of Appeals for the Second Circuit to provide immigrants with adequate representation in immigration court). We have also significantly expanded our outreach into the immigrant community by disseminating a variety of pamphlets and informational brochures. As a result of these efforts, we have significantly expanded legal assistance to immigrants seeking U.S. citizenship, lawful permanent residency, employment authorization, and safety from domestic violence and other crimes.
- Promoted Excellence Through Staff Training: During the reporting period, LS-NYC concluded the first phase of our Leadership Institute training program for LS-NYC's legal and social work supervisors. That program covered important topics such as improving communication skills; supervising high-volume practice so that clients get excellent results and broad impact is achieved; planning and implementing systemic litigation and advocacy projects; giving effective feedback; and managing a practice area.
- Increased Language Access for Low Income New Yorkers: LS-NYC's Language Access Program, a national model for programs across the country, has commenced litigation and advocacy initiatives on behalf of clients with Limited English Proficiency (LEP) who are being denied access to benefits or services because of language barriers. The Language Access Project conducted a landmark study and report, "Translation Woes: Language Barriers at New York City's Human Resources Administration" that revealed the agency's systematic failure to provide legally mandated access services to limited English proficient individuals. In response to the attention focused on this issue as a result of the Translation Woes report, Mayor Bloomberg, in July 2008, signed an executive order requiring New York City agencies to provide translation or interpretation services in the six foreign languages most commonly spoken in the City. In 2009, the Language Access Project and a team of lawyers from other LS-NYC programs and the MinKwon Center for Community Action filed a lawsuit challenging HRA's system-wide failure to comply with its obligations to serve limited English proficient applicants for and recipients of public assistance and other benefits.
- Advocated for Low Wage Workers: In 2009 and 2010, LS-NYC continued to expand its employment practice area to address the legal needs of low-wage workers. With new funding from the Robin Hood Foundation, we have dramatically increased our representation of needy clients at unemployment insurance (UI) hearings. UI cases handled in the past 15 months have put hundreds of thousands of dollars in the pockets of our clients. In addition, we have taken the lead, with the National Employment Law Project, in raising funds from two foundations to support and expand the work of the Unemployment Insurance Coalition, a coalition of advocacy groups from around the City. In 2009, LS-NYC continued to be in administrative advocacy efforts to reform the New York State Unemployment Insurance system. These included the following: 1) identifying and

Continued on page 8

Snapshot of Accomplishments *continued from page 7*

changing confusing unemployment application questions by meeting with Department of Labor (DOL) staff and recommending modifications to their questions; 2) obtaining benefits for clients who are paid in cash through advocacy with the DOL which subsequently wrote and released a questionnaire specifically for cash earners in order to expedite their UI application process; and 3) increasing access to legal information and referrals for pro se claimants by staffing an information table for claimants at the DOL UI hearing waiting room, where we help them understand the hearing process and make referrals for representation for particularly complex applications. We plan to expand our information table to a second hearing location later in 2010.

- Completed a Study on Government Benefits Work: In August 2009, LS-NYC completed a city-wide study of our government benefits work that was based on meetings with our advocates, reviewing our case data and researching effective practices throughout the country. As a result of the report, LS-NYC government benefits advocates have targeted the following government benefits issues as important areas to address through litigation as well as legislative and administrative advocacy: 1) Eliminating, reducing, or minimizing the impact of work-related sanctions, particularly for employed recipients; 2) Reducing barriers to accessing benefits; 3) Promoting better access to case records, education, training and work supports; and 4) enforcing the Americans with Disabilities Act in the public assistance context. To achieve results in these areas, LS-NYC has participated in several city-wide collaborations focused on specific government benefits issues, most notably, the Economic Justice and Social Welfare Network's (EJSWN) Policy and Advocacy Committee's (PAC) Working Group on Sanctions "Access to Assistance" campaign, which is focused on increasing access to benefits by reducing barriers in the application process. By invitation of State Senator Squadron, LS-NYC advocates are providing input regarding legislative advocacy initiatives around sanction reform.
- Expanded Our City-wide Consumer Law Work: Consumer debt issues are a large and growing problem for low income people. As a result of the demand from LS-NYC clients and our own advocates, a number of LS-NYC programs, including Manhattan Legal Services (MLS), LS-NYC-Bronx, and South Brooklyn Legal Services (SBLS), have significantly expanded their consumer law practices. In 2009:
  - MLS created a Consumer Law Unit, which focused, in part, on legislative and administrative advocacy, testifying at City Council hearings on legislation to regulate process servers and before the New York City Department of Consumer Affairs on regulating debt collectors. In addition, MLS has started litigation in federal court challenging debt collection practices that are illegal under the Fair Debt Collection Practice Act.
  - SBLS played a significant role in the passage of New York's Exempt Income Protection Act, which protects the bank accounts of low income New Yorkers from being frozen by creditors, even if the accounts contain money that is supposed to be exempt from collection activities, such as SSI, pensions, unemployment insurance, and child support. Under the new law, the first $2,500 in an account will be protected if the account has received electronically deposited exempt payments and $1,740 even if it has not.
- Achieved Significant Dollar Benefits for Disabled Clients: Legal Services NYC's Disability Advocacy Project helps low income disabled children and adults get Social Security disability benefits and move off of welfare, saving the City and State millions of dollars. From January 2009 to March 2010, LS-NYC advocates obtained $6,031,824 in retroactive benefits and $462,291 in monthly benefits for disabled New Yorkers, winning 85-90 percent of cases we accepted.

Bedford Stuyvesant Community Legal Services Corporation

This Provider At a Glance

Population Served: General Low Income Population
Area Served: Borough of Brooklyn
Total Funding: $1,822,223
Total IOLA Grant(s): $260,807
Program Size - Full Time Equivalents

Total Staff:	*12.40*
Lawyers:	*6.00*
Paralegals:	*2.40*
Other Staff:	*4.00*

Number of People Benefited by Legal Services Other Than Direct Legal Representation...

Total:	**570 People**
Community Legal Education:	570 People

Outcomes...

2,416 Individuals Benefited from Direct Civil Legal Representation

Extended Representation Outcomes

- 117 People prevented eviction from private housing
- 109 People obtained, preserved or increased SSI benefits/rights
- 36 People prevented eviction from public housing
- 36 People solved a tax problem
- 184 People obtained benefits from other "extended representation"

Brief Representation Benefits

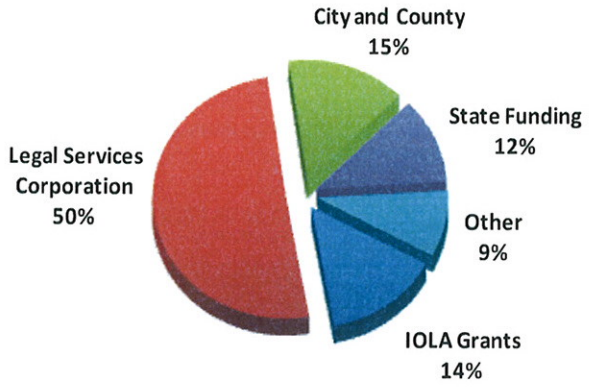
- 1,497 People benefited from legal advice and counsel
- 77 People benefited from non-litigation advocacy services
- 360 People benefited by referral to other sources of help

Dollar Benefits Achieved for Clients - Total	**$1,525,344**
• Social Security, SSI Benefits:	$1,476,224
• Unemployment Compensation:	$16,992
• Other Benefits:	$32,128

Total includes back awards and 3 year total of monthly benefits, estimated over 6 months (unemployment compensation), 12 months (other federal benefits, food stamps, alimony, affirmative judgements and other benefits) or 36 months (Social Security, SSI and child support).

Sources of Funding

Total	**$1,822,223**
IOLA Grants	$ 260,807
Legal Services Corporation	$ 921,484
City and County	$ 269,067
State Funding	$ 211,408
Other	$ 159,458



Legal Services NYC-Bronx

This Provider At a Glance

Population Served: Low Income and Elderly Residents of the Bronx
Area Served: The Bronx
Total Funding: $8,133,282
Total IOLA Grant(s): $1,104,594
Program Size - Full Time Equivalents

Total Staff:	*62.20*
Lawyers:	*30.20*
Paralegals:	*19.00*
Other Staff:	*13.00*

Number of People Benefited by Legal Services Other Than Direct Legal Representation...

Total:	**4,880 People**
Community Legal Education:	1,111 People
Pro Se Assistance:	2,829 People
Legal Hotline Services:	940 People

Outcomes...

10,881 Individuals Benefited from Direct Civil Legal Representation

Extended Representation Outcomes

- 2,047 People prevented eviction from private housing
- 1,245 People obtained, preserved or increased public assistance, TANF or other welfare benefit/right
- 312 People prevented eviction from public housing
- 312 People solved a tax problem
- 1,870 People obtained benefits from other "extended representation"

Brief Representation Benefits

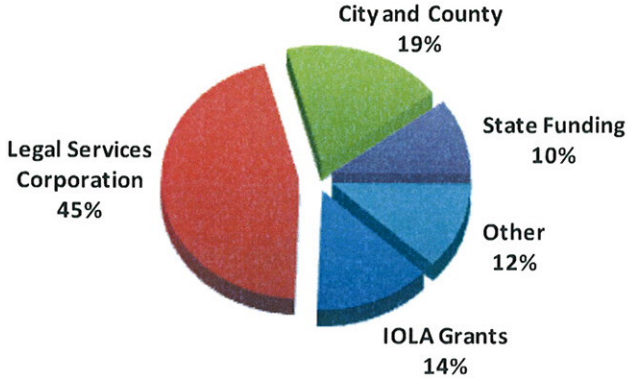
- 4,155 People benefited from legal advice and counsel
- 577 People benefited from non-litigation advocacy services
- 363 People benefited by referral to other sources of help

Dollar Benefits Achieved for Clients - Total	**$9,469,896**
• Social Security, SSI Benefits:	$3,949,517
• Unemployment Compensation:	$2,016,387
• Affirmative Judgements:	$6,895
• Other Benefits:	$3,497,097

Total includes back awards and 3 year total of monthly benefits, estimated over 6 months (unemployment compensation), 12 months (other federal benefits, food stamps, alimony, affirmative judgements and other benefits) or 36 months (Social Security, SSI and child support).

Sources of Funding

Total	**$8,133,282**
IOLA Grants	$1,104,594
Legal Services Corporation	$3,688,992
City and County	$1,528,751
State Funding	$ 851,756
Other	$ 959,189



Legal Services NYC-Brooklyn Branch

This Provider At a Glance

Population Served: General Low Income Population
Area Served: Kings County
Total Funding: $2,495,874
Total IOLA Grant(s): $269,582
Program Size - Full Time Equivalents

Total Staff:	*11.37*
Lawyers:	*7.37*
Paralegals:	*1.00*
Other Staff:	*3.00*

Number of People Benefited by Legal Services Other Than Direct Legal Representation...

Total:	**10,057 People**
Community Legal Education:	10,057 People

Outcomes...

3,124 Individuals Benefited from Direct Civil Legal Representation

Extended Representation Outcomes

- 615 People prevented eviction from private housing
- 367 People obtained, preserved or increased public assistance, TANF or other welfare benefit/right
- 94 People obtained, preserved or increased SSI benefits/rights
- 48 People obtained, preserved or increased unemployment insurance benefits/rights
- 265 People obtained benefits from other "extended representation"

Brief Representation Benefits

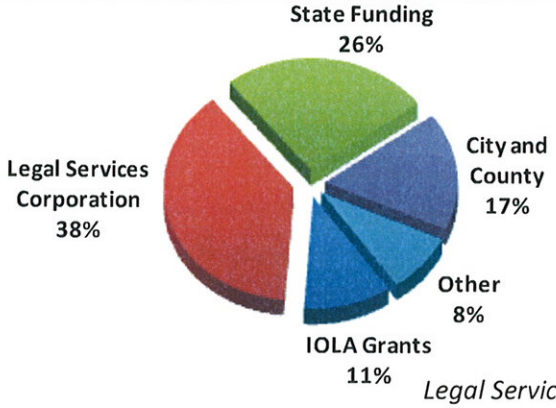
- 1,528 People benefited from legal advice and counsel
- 96 People benefited from non-litigation advocacy services
- 111 People benefited by referral to other sources of help

Dollar Benefits Achieved for Clients - Total	**$12,158,727**
• Social Security, SSI Benefits:	$1,741,320
• Unemployment Compensation:	$164,850
• Family Law - Child Support:	$12,600
• Other Benefits:	$10,239,957

Total includes back awards and 3 year total of monthly benefits, estimated over 6 months (unemployment compensation), 12 months (other federal benefits, food stamps, alimony, affirmative judgements and other benefits) or 36 months (Social Security, SSI and child support).

Sources of Funding

Total	**$ 2,495,874**
IOLA Grants	$ 269,582
Legal Services Corpora	$ 952,487
State Funding	$ 638,375
City and County	$ 425,630
Other	$ 209,799



Brooklyn Legal Services Corporation A

This Provider At a Glance

Population Served: General Low Income Population
Area Served: Kings County
Total Funding: $5,377,846
Total IOLA Grant(s): $532,083
Program Size - Full Time Equivalents

Total Staff:	*25.59*
Lawyers:	*13.93*
Paralegals:	*4.80*
Other Staff:	*6.86*

Number of People Benefited by Legal Services Other Than Direct Legal Representation...

Total:	**8,820 People**
Community Legal Education:	8,070 People
Pro Se Assistance:	500 People
Legal Hotline Services:	250 People

Outcomes...
6,880 Individuals Benefited from Direct Civil Legal Representation

Extended Representation Outcomes

- 697 People prevented eviction from private housing
- 504 People avoided or delayed foreclosure or other loss of home
- 162 People delayed eviction providing time to seek alternative housing
- 110 People obtained, preserved or increased SSI benefits/rights
- 663 People obtained benefits from other "extended representation"

Brief Representation Benefits

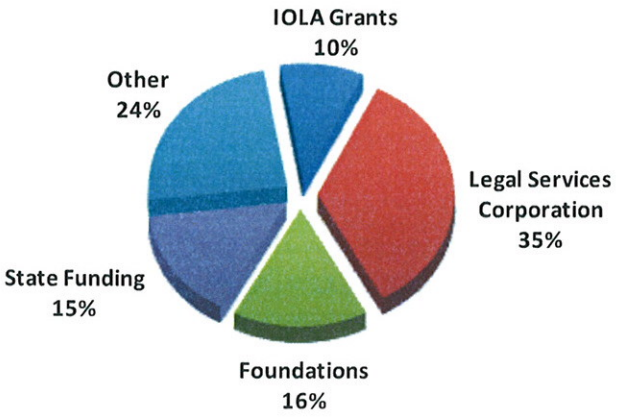
- 4,210 People benefited from legal advice and counsel
- 382 People benefited from non-litigation advocacy services
- 152 People benefited by referral to other sources of help

Dollar Benefits Achieved for Clients - Total	**$2,554,179**
• Social Security, SSI Benefits:	$1,935,739
• Unemployment Compensation:	$512,763
• Other Benefits:	$105,677

Total includes back awards and 3 year total of monthly benefits, estimated over 6 months (unemployment compensation), 12 months (other federal benefits, food stamps, alimony, affirmative judgements and other benefits) or 36 months (Social Security, SSI and child support).

Sources of Funding

Total	**$5,377,846**
IOLA Grants	$ 532,083
Legal Services Corporation	$1,879,953
Foundations	$ 844,423
State Funding	$ 825,373
Other	$1,296,014



Legal Support Unit

Legal Support Unit summary contains data for the Bankruptcy Assistance Unit and the Brooklyn Family Defense Project.

This Provider At a Glance

Population Served: General Low Income Population
Area Served: New York City Metropolitan Area
Total Funding: $7,155,002
Total IOLA Grant(s): $359,726
Program Size - Full Time Equivalents

Total Staff:	*47.07*
Lawyers:	*31.20*
Paralegals:	*9.70*
Other Staff:	*6.17*

Number of People Benefited by Legal Services Other Than Direct Legal Representation...

Total:	550,157 People
Community Legal Education:	546,577 People*
Pro Se Assistance:	1,390 People
Legal Hotline Services:	2,190 People

Outcomes...

1,378 Individuals Benefited from Direct Civil Legal Representation

Extended Representation Outcomes

- 594 People avoided protective order/removal of children
- 244 People obtained federal bankruptcy protection
- 1 Person obtained waiver or reduction of utility arrearage (including phone)
- 48 People obtained benefits from other "extended representation"

Brief Representation Benefits

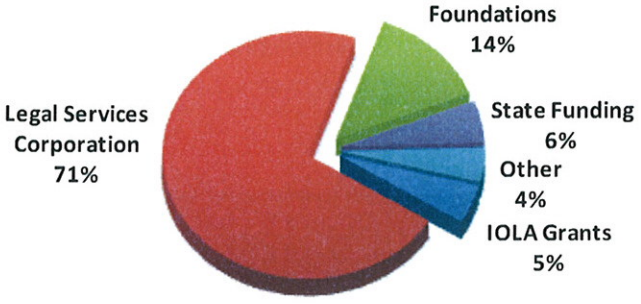
- 490 People benefited from legal advice and counsel
- 1 Person benefited by referral to other sources of help

**This figure includes 453,744 page "hits" on legal education materials posted on the LawHelp web site, a collaborative project involving a number of legal services groups and to which Legal Services NYC provides dedicated staff.*

The Legal Support Unit provided 99 Continuing Legal Education training events reaching more than 3,410 people in the period January 2009 to March 31, 2010. Legal Services NYC's Legal Support Unit is the only comprehensive legal support services office available to poverty lawyers and other advocates for low-income families and individuals in New York City. In addition to CLE trainings in poverty law, the LSU conducts task forces in a range of critical substantive areas, disseminates materials to practitioners, and provides expert advice and case consultation to scores of social services organizations and other non-profit groups, greatly leveraging resources and augmenting the ability of legal services programs to address legal needs. The LSU also operates special projects and initiatives such as the Bankruptcy Assistance Project, the Language Access Project, and the Leadership Institute. Of these projects, only the Bankruptcy Assistance Project provides direct legal assistance reflected in the outcomes listed here. Finally, the outcomes listed here include those for the Brooklyn Family Defense Project, a program operated directly by Legal Services NYC.

Sources of Funding

Total	$7,155,002
IOLA Grants	$ 359,726
Legal Services Corporation	$5,108,109
Foundations	$ 978,183
State Funding	$ 395,194
Other	$ 313,790



Manhattan Legal Services

This Provider At a Glance

Population Served: General Low Income Population
Area Served: Manhattan
Total Funding: $7,103,951
Total IOLA Grant(s): $833,430
Program Size - Full Time Equivalents

Total Staff:	*44.47*
Lawyers:	*26.87*
Paralegals:	*8.00*
Other Staff:	*9.60*

Number of People Benefited by Legal Services Other Than Direct Legal Representation...

Total:	**8,151 People**
Community Legal Education:	6,238 People
Pro Se Assistance:	223 People
Legal Hotline Services:	1,690 People

Outcomes...
8,844 Individuals Benefited from Direct Civil Legal Representation

Extended Representation Outcomes

- 494 People prevented eviction from private housing
- 404 People obtained, preserved or increased food stamps eligibility/right
- 296 People prevented eviction from public housing
- 280 People obtained, preserved or increased public assistance, TANF or other welfare benefit/right
- 935 People obtained benefits from other "extended representation"

Brief Representation Benefits

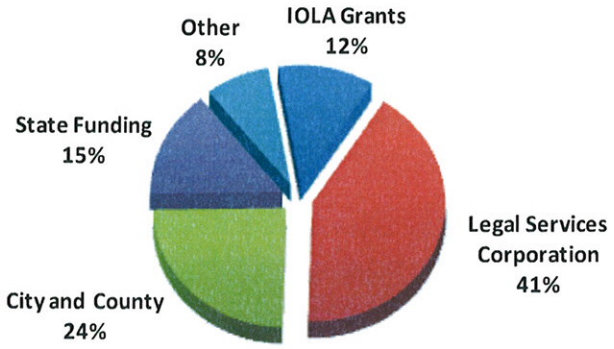
- 5,937 People benefited from legal advice and counsel
- 430 People benefited from non-litigation advocacy services
- 68 People benefited by referral to other sources of help

Dollar Benefits Achieved for Clients - Total	**$5,996,926**
• Social Security, SSI Benefits:	$4,863,725
• Unemployment Compensation:	$333,583
• Family Law - Child Support:	$80,576
• Affirmative Judgements:	$81,315
• Other Benefits:	$637,727

Total includes back awards and 3 year total of monthly benefits, estimated over 6 months (unemployment compensation), 12 months (other federal benefits, food stamps, alimony, affirmative judgements and other benefits) or 36 months (Social Security, SSI and child support).

Sources of Funding

Total	**$7,103,951**
IOLA Grants	$ 833,430
Legal Services Corporation	$2,944,676
City and County	$1,726,934
State Funding	$1,038,733
Other	$ 560,178



Queens Legal Services Corporation

This Provider At a Glance

Population Served:	General Low Income Population
Area Served:	Queens County
Total Funding:	$7,178,714
Total IOLA Grant(s):	$897,345
Program Size - Full Time Equivalents	
Total Staff:	*45.54*
Lawyers:	*22.83*
Paralegals:	*12.71*
Other Staff:	*10.00*

Number of People Benefited by Legal Services Other Than Direct Legal Representation...

Total:	**8,434 People**
Community Legal Education:	6,871 People
Pro Se Assistance:	400 People
Legal Hotline Services:	1,163 People

Outcomes...
8,102 Individuals Benefited from Direct Civil Legal Representation

Extended Representation Outcomes

- 787 People obtained, preserved or increased food stamps eligibility/right
- 458 People prevented eviction from private housing
- 265 People obtained, preserved or increased unemployment insurance benefits/rights
- 236 People delayed eviction providing time to seek alternative housing
- 1,194 People obtained benefits from other "extended representation"

Brief Representation Benefits

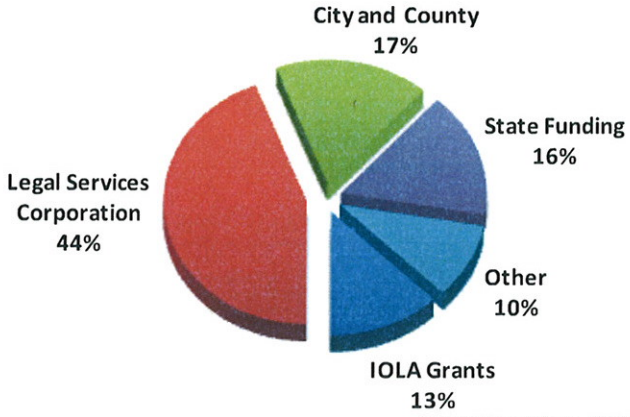
- 4,734 People benefited from legal advice and counsel
- 376 People benefited from non-litigation advocacy services
- 52 People benefited by referral to other sources of help

Dollar Benefits Achieved for Clients - Total	**$5,277,196**
• Social Security, SSI Benefits:	$3,826,263
• Unemployment Compensation:	$890,220
• Family Law - Alimony:	$3,870
• Affirmative Judgements:	$140
• Other Benefits:	$556,703

Total includes back awards and 3 year total of monthly benefits, estimated over 6 months (unemployment compensation), 12 months (other federal benefits, food stamps, alimony, affirmative judgements and other benefits) or 36 months (Social Security, SSI and child support).

Sources of Funding

Total	**$7,178,714**
IOLA Grants	$ 897,345
Legal Services Corporation	$3,170,500
City and County	$1,236,795
State Funding	$1,176,695
Other	$ 697,378



South Brooklyn Legal Services

This Provider At a Glance

Population Served: General Low Income Population
Area Served: New York City Metropolitan Area
Total Funding: $9,166,284
Total IOLA Grant(s): $658,530
Program Size - Full Time Equivalents

Total Staff:	*60.17*
Lawyers:	*38.04*
Paralegals:	*13.80*
Other Staff:	*8.33*

Number of People Benefited by Legal Services Other Than Direct Legal Representation...

Total:	**143,851 People**
Community Legal Education:	105,626 People
Pro Se Assistance:	35,000 People
Legal Hotline Services:	3,225 People

Outcomes...

13,675 Individuals Benefited from Direct Civil Legal Representation

Extended Representation Outcomes

- 841 People prevented eviction from private housing
- 219 People obtained, preserved or increased public assistance, TANF or other welfare benefit/right
- 203 People obtained, preserved or increased SSI benefits/rights
- 159 People obtained, preserved or increased unemployment insurance benefits/rights
- 2,522 People obtained benefits from other "extended representation"

Brief Representation Benefits

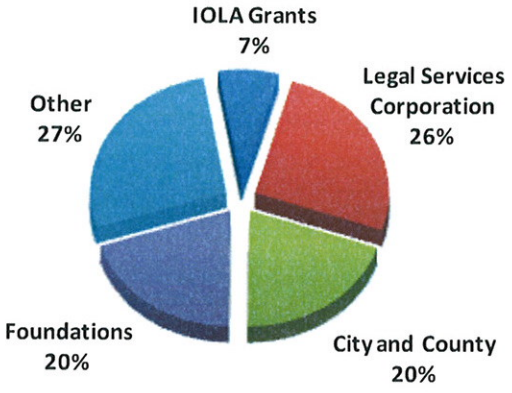
- 7,850 People benefited from legal advice and counsel
- 519 People benefited from non-litigation advocacy services
- 1,362 People benefited by referral to other sources of help

Dollar Benefits Achieved for Clients - Total	**$6,684,486**
• Social Security, SSI Benefits:	$4,423,798
• Unemployment Compensation:	$956,992
• Family Law - Child Support:	$139,990
• Family Law - Alimony:	$462,303
• Affirmative Judgements:	$532,687
• Other Benefits:	$168,715

Total includes back awards and 3 year total of monthly benefits, estimated over 6 months (unemployment compensation), 12 months (other federal benefits, food stamps, alimony, affirmative judgements and other benefits) or 36 months (Social Security, SSI and child support).

Sources of Funding

Total	**$9,166,284**
IOLA Grants	$ 658,530
Legal Services Corporation	$2,366,282
City and County	$1,824,948
Foundations	$1,818,951
Other	$2,497,573



Staten Island Legal Services

This Provider At a Glance

Population Served: General Low Income Population
Area Served: Staten Island
Total Funding: $2,284,883
Total IOLA Grant(s): $122,587
Program Size - Full Time Equivalents

Total Staff:	*16.00*
Lawyers:	*9.00*
Paralegals:	*4.00*
Other Staff:	*3.00*

Number of People Benefited by Legal Services Other Than Direct Legal Representation...

Total:	**2,043 People**
Community Legal Education:	1,959 People
Pro Se Assistance:	84 People

Outcomes...
2,948 Individuals Benefited from Direct Civil Legal Representation

Extended Representation Outcomes

- 208 People avoided or delayed foreclosure or other loss of home
- 70 People obtained protection from domestic violence
- 56 People obtained or maintained custody of children
- 44 People obtained a divorce, legal separation or annulment
- 326 People obtained benefits from other "extended representation"

Brief Representation Benefits

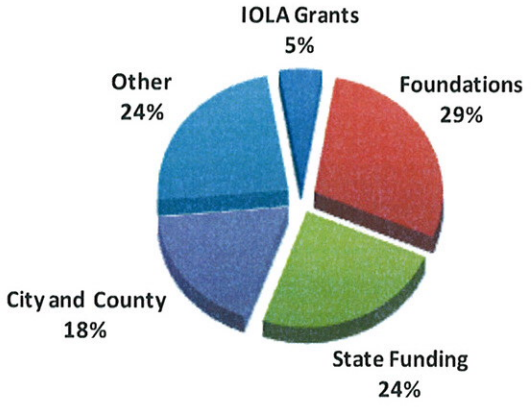
- 2,116 People benefited from legal advice and counsel
- 79 People benefited from non-litigation advocacy services
- 49 People benefited by referral to other sources of help

Dollar Benefits Achieved for Clients - Total	**$873,346**
• Social Security, SSI Benefits:	$457,728
• Unemployment Compensation:	$110,890
• Family Law - Child Support:	$115,362
• Family Law - Alimony:	$64,084
• Other Benefits:	$125,282

Total includes back awards and 3 year total of monthly benefits, estimated over 6 months (unemployment compensation), 12 months (other federal benefits, food stamps, alimony, affirmative judgements and other benefits) or 36 months (Social Security, SSI and child support).

Sources of Funding

Total	**$2,284,883**
IOLA Grants	$ 122,587
Foundations	$ 657,001
State Funding	$ 551,842
City and County	$ 414,442
Other	$ 539,011



Administrative/Fiscal Unit

This Provider At a Glance

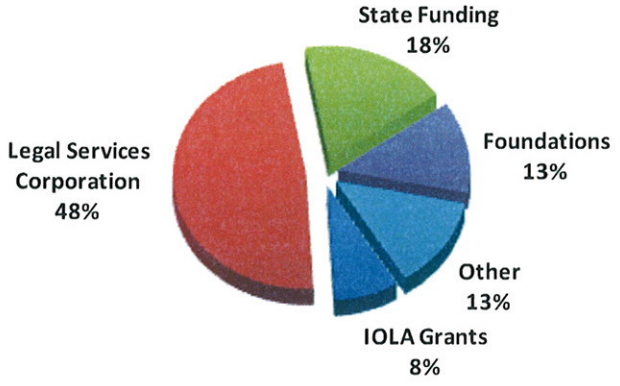
Population Served:	Central Support Unit for Legal Services NYC
Area Served:	New York City Metropolitan Area
Total Funding:	$7,376,137
Total IOLA Grant(s):	$586,316

Program Size - Full Time Equivalents

Total Staff:	*32.30*
Lawyers:	*3.00*
Paralegals:	*0.50*
Other Staff:	*28.80*

Sources of Funding

Total	**$7,376,137**
IOLA Grants	$ 586,316
Legal Services Corporation	$3,543,033
State Funding	$1,330,761
Foundations	$ 963,275
Other	$ 952,752



ATTACHMENT B

TESTIMONY OF ALBERT AREIZAGA

Testimony of Albert Areizaga

The Chief Judge's Hearings on Civil Legal Services

September 26, 2011
New York, New York

My name is Albert Areizaga. I was born in the Bronx and I live in Brooklyn with my wife and three of our children. I served in the U.S. Army for 27 years. I work part-time at a photography studio and also run my own photography and design business. My wife works for the New York City Department of Education.

We bought our home on 17th Street in Brooklyn in 1994, and for many years we kept up with the payments, even while we had a high-cost adjustable-rate mortgage with a minimum interest rate of 11 percent. However, due to a series of personal and financial misfortunes—including my wife's serious illness, my loss of employment, and the failure of an earlier business venture—we fell behind in our mortgage payments on our home. In July 2006, we were sued in foreclosure.

My wife and I made every effort to avoid losing our family's home to foreclosure. We applied for a loan modification in or around April 2008, but Option One—the servicer of our mortgage—turned down our application. Then we tried to negotiate a short sale later in 2008, but because of the financial crisis, the potential buyer was unable to obtain financing and the deal fell through. We even paid a lawyer thousands of dollars to help us defend ourselves, but all she did was file a series of bankruptcy petitions that were each later dismissed. We tried again and again to apply for a loan modification, but each time, after getting confusing and contradictory information about the status of our application, the servicer turned us down—each time for a different, often nonsensical, reason. Then in late February 2009, on same the day I got my last denial notice, I also received in the mail a notice from the attorney for the bank, notifying me that my property would be sold at auction on March 26, 2009.

After I got that notice, I reached out to South Brooklyn Legal Services, a program of Legal Services NYC. The attorney who I met with contacted the loan servicer and the bank attorney, seeking to have the auction put off. When they refused, the attorney advised me how to ask the court for an emergency order to show cause to ask for the sale to be put off. I did as the attorney advised, and on the day before the sale was supposed to go forward, the judge issued an order postponing the sale. Soon after that, my case was referred to court-mediated settlement conferences.

The same attorney at South Brooklyn who advised me how to ask for the auction to be postponed represented me in the settlement conferences, and she also helped us by collecting and submitting documentation and information in support of a new modification application. We were offered a trial modification under the federal modification program (HAMP) in October 2009, and after we made all of

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Raun J. Rasmussen, Executive Director
Joseph S. Genova, Board Chair

our trial period payments, we received a final HAMP offer in February 2010. The foreclosure action was discontinued in March 2010, and we are current on our modified mortgage.

Because of the same financial and personal setbacks that caused us to get behind on our mortgage, we also got behind on our property taxes and were sued in foreclosure on a tax lien in April 2009. Our attorney at South Brooklyn represented us in settlement conferences in this case also, but this case could not be settled—the tax lien holder said it would dismiss the case only if we paid the amount we owed, plus interest. Our attorney applied for and obtained funds (a grant and a loan) to help pay off the tax lien, in addition to our own contribution. The tax lien holder discontinued its case against us in April 2010.

For years we lived in fear of losing our family home. The stress and anxiety my wife and I felt during those years I would not wish on my worst enemy. I could hardly sleep at night, and when I did sleep, I had nightmares. I would feel real panic when dropping our kids off at school, just because of the uncertainty about the future. Now we feel secure, and we love being part of our neighborhood and part of our community. We are so grateful for the help that South Brooklyn provided. I don't know where we would be without it.

ATTACHMENT C

TESTIMONY OF NATALIE JONES

Testimony of Natalie Jones

The Chief Judge's Hearings on Civil Legal Services

September 26, 2011
New York, New York

Legal Services NYC

Good morning. My name is Natalie Jones and I thank you for inviting me to speak today. I am a low income single mother and I immigrated to New York from Jamaica as a young woman. I am a survivor of domestic violence.

In 2008, one month after giving birth to my son, my ex-husband physically abused me, choked me and threw me out of our apartment. By the time I was able to return home, he had left the State with my baby. I was able to get my son back, and file a police report. I also filed for custody and for an Order of Protection from the Family Court. My husband was arrested but my ordeal had only just begun.

My husband hired lawyers and filed for custody of our son. I had no money to hire a lawyer and I didn't know what to do. On top of that, my husband had taken all of my documents. I had no identification documents, no way to prove who I was, and no way to get a job to take care of my baby. My case was being heard in the Integrated Domestic Violence Court, where I was referred to Manhattan Legal Services. I met with an attorney, Lenina Trinidad, and things began to change for me.

The Criminal case against my husband was dismissed, which gave my husband more motivation to pursue custody. I was terrified that my abuser would win custody of my baby and I would not be able to protect him. After many court dates, and my husband refusing to agree to my having custody of the baby, the Judge said we had to have a trial.

I spent many hours with my baby in my arms at my lawyer's office getting ready for Court. I had a team—a lawyer, her supervisor and a paralegal—working hard to prepare for my case. My lawyer spoke to my witnesses, went over evidence with me and explained what was going to happen in Court.

My case finally went to trial. I testified in Court to everything my husband had done to me, about the bruises I had, and how afraid I was for myself and my son. Over the course of five or six two-hour trial dates, my husband's lawyer tried to make me look like a liar. But because of the work of my legal services lawyers, the Court decided to issue a five-year order of protection for me and my son against my abuser-husband.

Even after the judge gave me the Order of Protection, my husband still wanted to get custody of the baby. Two false child neglect claims were called in against me to the Administration for Children's Services. Legal Services NYC, though its Manhattan Legal Services office, again helped me through the process of getting the investigation completed without any problems for me and my child. The

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Joseph S. Genova, Board Chair

charges were unfounded or found to be untrue. We finally settled the custody case with a detailed written order. I got custody of my baby and we were finally safe. I was able to get child support in family court. This helped me put my child in daycare so that I was able to enroll in college. I got an apartment. I was able to get my green card and work authorization replaced. Now that I am in college, I want to help women with children in situations like mine. Thanks to Manhattan Legal Services I was able to protect my son and make a better life for us. I know that if I didn't have a lawyer, things would have gone very differently for me and my baby.

Thank you again for inviting me to speak today.

ATTACHMENT D

TESTIMONY OF YVES GEBHARDT

Testimony of Yves Gebhardt

The Chief Judge's Hearings on Civil Legal Services

September 26, 2011
New York, New York

Legal Services NYC

Good morning. My name is Yves Gebhardt. Thank you for giving me the opportunity to speak with you today. I am a 59-year-old man who moved to New York in 1980, and have called the City my home ever since. In 2002, I was diagnosed with stage IV cancer and HIV. I was given a 20% chance of surviving the cancer, and I had surgery, chemotherapy, and several biopsies. Although I have been in remission from cancer since 2003, I have experienced an avalanche of other medical conditions related to my HIV and its treatment.

Prior to my illnesses, I was the manager of a Manhattan restaurant where I had worked for more than 20 years. No longer able to work, I focused for several years on regaining my health, learning about the community supports available to me, and becoming an advocate for both myself and others with disabilities. Currently, I am a volunteer Community Liaison with the Manhattan HIV Care Network.

Through my own experiences and my volunteer work, I understand firsthand the crucial importance of legal services to low income people. People living with HIV are people like everyone else. They have the same trials and tribulations of life as others. Most people with HIV are low income, and so like other low income people they have legal problems related to issues like housing, access to public benefits, immigration, domestic violence, and consumer problems to mention a few.

However, having HIV adds another layer of complexity. Due to illness, severe side effects from highly active anti-retroviral medication regimens, and other challenges, people with HIV often lack the financial resources, strength and physical vitality to fight problems with the focus and determination needed to overcome barriers.

I have been a client of legal services on several occasions. I cannot overstate the importance of having a lawyer for both solving my legal problems and also maintaining my health. For people with HIV, having a low viral load and a high CD4 count is an important indicator of health. When I and others in my community experience the stress of an unresolved legal problem, our viral loads increase precipitously and our CD4 counts plummet. Access to legal services is literally of life and death importance to us.

This summer, my neighbors and I received a shocking and unwelcome visit from the Emergency Placement Unit of a City agency. They told us that because the owner of our building was going into bankruptcy, the building would be transferred. They said that we should move within two weeks because the building was at risk of being totally shut down and locked up. Moving with two weeks

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LSC

notice is awful for anyone; for myself and my neighbors, all of whom have significant disabilities, it was horrifying. The first thing that I did upon receiving this news was to contact Manhattan Legal Services (a program of Legal Services NYC). They responded immediately – as I recall, within fifteen minutes.

Together with their colleagues from South Brooklyn Legal Services (another Legal Services NYC program), the attorneys at Manhattan Legal Services brought our plight to the attention of anyone and everyone who could help save our building: the Mayor's Office, Human Resources Administration (also known as HRA), Housing Preservation & Development (or HPD), Housing & Urban Development (or HUD), the building managers, the previous contract holder, and the bankruptcy trustee. In less than two weeks, and without going to court, the problem was solved: a new contract was signed for the provision of social services, all tenants were able to stay in the building, and catastrophe was averted.

In my experience, that's what legal services does: provides timely and effective problem solving, helping low income people do things like avoid eviction, maintain health insurance, access safety net services, and move along the path toward citizenship. Ultimately, they help us maintain our health in the face of precarious financial situations. In short, they are our lifeline.

Thank you again for inviting me to speak today. I would be happy to answer any questions.

New York County Lawyers' Association

NEW YORK COUNTY
NYCLA
LAWYERS' ASSOCIATION

TESTIMONY BY STEWART D. AARON

PRESIDENT, NEW YORK COUNTY LAWYERS' ASSOCIATION

AT

THE CHIEF JUDGE'S HEARINGS ON CIVIL LEGAL SERVICES

SEPTEMBER 26, 2011

APPELLATE DIVISION, FIRST DEPARTMENT

The New York County Lawyers' Association (NYCLA) welcomes this second opportunity to submit written testimony to the Chief Judge's Hearings on Civil Legal Services.

NYCLA, a 9,000-member bar association organized 103 years ago, has always had as part of its fundamental mission a commitment to access to justice for New Yorkers without regard to their resources. Over the years, NYCLA has expressed this concern in several ways: operating *pro bono* programs offering legal advice and representation to low-income persons and advocating for adequate government funding for legal services for the poor in both criminal and civil matters.

Based on a standard New York City developed to calculate poverty, a version of which the Obama administration planned to adopt, the number of poor people in New York City rose by 300,000 from 2005-2008. Twenty-two percent of New Yorkers were classified as poor in 2008, compared to 20.6 percent in 2005, with older people and minorities experiencing the highest rates of poverty. Overall one in five working families failed to earn enough to escape poverty. (*New York Times*, March 2, 2010) The economic outlook in 2011 has not improved. With zero job creation reported recently by the United States Department of Labor, economists are debating whether the economy is entering a double-dip recession, further endangering the livelihood of New Yorkers.

As more people lose their jobs and remain unemployed for long periods of time or only find employment that pays less than their previous jobs, keeping up with rent, mortgages and credit card bills becomes more difficult. Financial problems often beget legal problems. For the past several years, filings in Civil Court have averaged about 250,000 per year for both housing cases and consumer debt cases, with the latter often exceeding the former in sheer numbers.

At the same time that case filings remain high, Civil Court resources are dwindling. In a Preliminary Report on the Effect of Judicial Budget Cuts on New York State Courts,

issued on August 11, 2011, NYCLA's Task Force on Judicial Budgets Cuts examined the 2011/2012 judiciary budget and found that the 74 percent reduction in overtime has significantly curtailed courthouse hours of operation, particularly in the evening, prolonging trials and necessitating longer adjournments; the reduction in non-judicial personnel positions, coupled with a hiring freeze and an early-retirement program, has created delays in processing cases and a growing backlog in entering warrants and judgments; and the closing of child care facilities, hailed with much acclaim when they opened 15 years ago, deprives litigants of a safe place to leave their children.

A major problem long predating budget cuts is the huge numbers of unrepresented litigants in Civil Court. Estimates of the number of *pro se* litigants in both housing and consumer debt cases are consistently upwards of 97 percent, while the landlords and debt-collection agencies litigating against them are virtually 100 percent represented by attorneys. To exacerbate this litigation inequality, judicial budget cuts for 2011/2012 led to the demise of the Volunteer Lawyer for the Day Program, operating in four boroughs and providing representation to consumer debtor defendants. A small replacement grant for this program from the Oversight Board for Judiciary Civil Legal Services Funds, while welcomed by NYCLA and the other providers, will lead to much reduced services to needy New Yorkers in the coming year.

IOLA grants to bar associations like NYCLA only partially underwrite *pro bono* programs serving increasing numbers of participants in need of advice as they confront serious legal issues. The number of those served in NYCLA's Manhattan CLARO (Civil Legal Advice and Resource Office), which provides advice to low-income self-represented litigants in consumer debt cases, doubled in the past year to almost 600 people. The NYCLA Legal Counseling Project, which provides advice in the areas of family, landlord/tenant, consumer bankruptcy and employment law, has experienced an increase in people seeking assistance with multiple legal problems. Long committed to *pro bono*, NYCLA underwrites these and other projects with its own operating funds.

As stated in the testimony James B. Kobak Jr., then NYCLA President, submitted to the Chief Judge's hearings in 2010: "Small ad hoc supplements and programs like NYCLA's, though important, are not a solution and do not address the dimensions of the issue. Annual skirmishes in the United States Congress, New York State Legislature and New York City Council over funding for civil legal services yield inadequate funding for legal service providers."

The only remedy is a funded right to counsel--"civil Gideon." Principle 1 of the ABA Basic Principles for a Right to Counsel in Civil Legal Proceedings describes the minimum obligation of government when establishing a system of effective representation in certain legal proceedings for persons unable to pay for an attorney: "Legal representation is provided as a matter of right at public expense to low-income persons in adversarial proceedings where basic human needs—such as shelter, sustenance, safety, health, or child custody—are at stake."

Other countries have recognized this right. In a recent forum NYCLA sponsored, leaders of the Lille (France) Bar Association described the system France has had in place for a number of years to provide volunteer lawyers to represent people in need in a variety of civil matters. The United States has much to learn from Western Europe where civil legal services are considered as important as criminal legal services in terms of public funding.

At the same time NYCLA advocates for civil Gideon and for adequate funding for the Legal Services Corporation, we are also committed to expanding our *pro bono* projects. The NYCLA Task Force on Unemployed and Transitioning Lawyers is developing a program in which, under appropriate supervision, lawyers who are unemployed or underemployed can assist unrepresented litigants in Civil Court. Such a program would not only benefit the litigants but would expand or sharpen the skill set of the volunteer attorneys.

NYCLA commends Chief Judge Lippman for his persistent focus on unmet civil legal services needs and his dedication to developing funding sources in a time of fiscal constraints. NYCLA looks forward to working in partnership with him, other bar associations and legal services providers to make civil Gideon a reality.

Samaritan Village, Inc.

TESTIMONY BY CAROL DAVIDSON, LCSW, CASAC
SENIOR DIRECTOR OF VETERANS SERVICES, SAMARITAN VILLAGE, INC.

RESPECTFULLY SUBMITTED FOR THE RECORD TO
HONORABLE JUDGE JONATHAN LIPPMAN
RE: HEARING ON CIVIL LEGAL SERVICES

My name is Carol Davidson and I am the Senior Director of Veterans Services for Samaritan Village. For the past 12 years, I have been working directly with veterans as a clinician; managing and developing veterans treatment programs as an administrator; and teaching, writing, and participating in public policy activities as an educator and advocate on behalf of veterans. It is my privilege to represent Samaritan's President, Tino Hernandez, and our veterans community, and it is my hope that I can offer a meaningful contribution to this important dialogue.

There are well in excess of one million veterans living in New York State, and there are currently about 10,000 veterans returning home from active duty to New York State every year. Veterans are a diverse group of men and women who embody the richness of American culture. They personify the spirit of patriotic service, leadership, courage, and sacrifice. Throughout the course of their lifetimes, many veterans also face significant personal challenges, including problems associated to their military service like combat trauma, Post Traumatic Stress Disorder, Traumatic Brain Injury, depression and/or other mental health problems, substance abuse and/or any of the multitude of problems associated to co-occurring disorders. These problems can manifest in life issues that cover the spectrum from employment difficulties to interpersonal relationship problems to criminal behavior, and certainly include matters of civil law such as marital and family issues, housing concerns, domestic safety and matters involving the "essentials of life" that are common to all of our citizens. I would like to express my appreciation for your interest in veterans as a special, and often underserved, population.

Samaritan Village Overview

Samaritan Village is a non-profit service provider in New York State with a history of fifty years of dedicated service to the community. The roster of programs within Samaritan's portfolio includes both residential and out-patient treatment facilities for drug and alcohol dependency, specialized facilities for military veterans, a range of health and mental health services, alternative-to-incarceration placements,

shelter for homeless individuals, and services for seniors. We operate thirteen facilities that are located throughout New York City and upstate in Ulster County, and serve more than 3,000 men and women each year. Samaritan's treatment programs, which are central to the agency's mission, are licensed and funded by the New York State Office of Alcoholism and Substance Abuse Services (OASAS).

Over twenty years ago, Samaritan identified a treatment population of veterans within their existing programs who had special clinical needs. Many of these individuals were Vietnam combat veterans with Post Traumatic Stress Disorder. They often had histories of prior treatment failures and were unable to maintain sobriety over any significant period of time. Most treatment options available during that era focused exclusively on either the substance abuse or the mental health aspects of the veterans' problems. Clinicians in mental health settings often felt that they could not conduct meaningful therapeutic work with substance abusers until they had established long term sobriety, and chemical dependency counselors often felt that attempts to address traumatic issues would likely destabilize clients in early recovery. Clients were left to negotiate the cycles of anxiety, depression, and intrusive symptoms that would emerge in sobriety, and would frequently revert to the use of drugs or alcohol in an effort to find relief from painful memories and emotions. The subsequent progression of addiction would ultimately exacerbate the mental health problems and make lasting recovery less likely over time. Substance abuse was often a misguided attempt to self regulate or medicate unmanageable mental health symptoms. Within the veterans population, the nature of traumatic memories associated to combat experiences made it even less likely that clients in mainstream treatment programs of any kind would either disclose their issues or form therapeutic bonds with practitioners or peers. Furthermore, few clinicians had any significant expertise in identifying or working with combat trauma, and the symptoms of PTSD were often misunderstood, misdiagnosed, and mismanaged.

Working with a core group of staff and clients who shared the profound camaraderie, rapport, and brotherhood of combat veterans, Samaritan created a holistic, integrated treatment model where substance abuse, mental health issues, Post Traumatic Stress Disorder (PTSD), and other life problems could be addressed simultaneously within a veterans-specific clinical culture. At Samaritan, we utilize validated instruments to assess mental health issues, employ evidence based practices to treat co-occurring disorders, and offer a variety of creative modalities for healing such as art therapy and an emphasis on promoting veterans pride. Our programs have on-site psychiatric services, and are staffed by licensed clinical social workers and credentialed alcoholism and substance abuse counselors.

Samaritan currently operates two programs for male veterans with a combined total of 98 beds, and a highly specialized Women Veterans Program that can serve 25 women. The women's facility is the only one of its

kind in New York State. The agency has filled an important niche in the continuum of care by offering comprehensive long term residential treatment for military veterans without regard to their discharge status or Veterans Administration eligibility.

Co-occurring Disorders

Among the current generation of veterans, there is evidence that as many as 35% of our Operation Iraqi Freedom and Operation Enduring Freedom veterans will experience Post Traumatic Stress Disorder (PTSD) and/or Depressive Disorder. The incidence of a co-occurring substance abuse disorder among combat veterans with PTSD is estimated to run as high as 80%. These numbers will include an unprecedented number of female veterans who are serving in OIF/OEF, and who may also exhibit problems associated to Military Sexual Trauma, which is reported by an alarming 25% of female troops.

PTSD may take months or years to manifest, and may result in a wide range of psychological, interpersonal, and life problems including vocational disruption, family problems, physical health issues, alcohol and substance abuse disorders, behaviors that precipitate criminal justice system involvement, and heightened suicide risk. A Bureau of Justice Statistics Report published in 2000 found that 81% of criminal justice involved veterans had a substance abuse problem and 25% were diagnosed with mental health problems. The same report identified 23% of veterans with criminal justice involvement had been homeless in the prior year. The National Coalition for Homeless Veterans (NCHV) reports 131,000 veterans are homeless on any given night in America, and estimates 76% of our homeless veterans have mental health problems.

Over 1 ½ million troops have already served in OIF/OEF. The prevalence of co-occurring disorders among veterans is significant, and constitutes a social problem that will have enormous impact on individuals, families, and communities within New York State and across the country. Clearly, no one entity can address all of these concerns, and there has been a very productive spirit of cooperation developing between governmental and community-based agencies to ensure that services are available so that no veteran is "left behind." Collaborative planning efforts, including the National Policy Academy on Returning Veterans, sponsored by the federal Substance Abuse and Mental Health Services Administration (SAMHSA), have been established to formulate public policy, create linkages between agencies, and to expand and streamline services for the influx of combat veterans returning from Iraq and Afghanistan. Samaritan Village is participating in many of these coalitions. We are proud or our record in assisting scores of veterans in achieving personal recovery and reintegrating into the community as productive members of society, and we are actively providing training and consultation to other agencies that are developing veterans services. Government agencies at the federal and local levels, human service providers, and veterans organizations can

work together to innovate solutions and design services that are grounded in proactive thinking, practical planning, and prudent spending.

Civil Legal Issues & Services

While The Veterans Administration is working in close collaboration with the ever-expanding roster of Veterans Treatment Courts, the realm of civil law remains grossly underserved. Neither the V.A. nor the Veterans Courts provide representation or services to address civil matters. Veterans returning from overseas deployments are often anxious to separate from the military. They may not be aware of their entitlements and they may not seek assistance when they need it because they fear becoming entangled in a bureaucracy that they may not trust, or they fear being stigmatized in some way that may have long-lasting personal or career consequences. The same concerns that often prevent them from seeking counseling services may prevent them from protecting their rights in matters concerning marriage, child custody or visitation, housing, contracts, debts, military discharge status or veterans benefits. Buffalo Veterans Treatment Court Mentorship Coordinator, Jack O'Connor, tells a poignant story about a veteran who showed up at Judge Russell's court, asking "do I have to get arrested to get some help?' That veteran turned out to be only the first of a long parade of veterans who subsequently came to the court seeking assistance for various non-criminal matters.

As the treatment court professionals well know, the courtroom can be a very important point of entry into the network of helping systems that can ultimately assist our veterans in making a successful transition home. In my experience, the difficulties and frustrations that many of our veterans experience in attempting to deal with relatively minor issues have become part of the sequence of events that escalates their estrangement from the community and exacerbates their mental health problems. I have worked with many young veterans who, for example, are estranged from their young children because they have failed to protect their rights in support, custody and visitation disputes. One female Army vet, who was deployed to Operation Iraqi Freedom, came home to find that her children had been moved to another state and that she was barred from contacting them. Many others have lost contact with children after vulnerable relationships fell apart during or following deployments. In some cases the stereotypes and stigmas associated to "combat veteran" and the specter of "PTSD" as a dangerous disorder have been used to interfere with visitation rights. The subsequent guilt, shame, anger, rage and self-loathing that is often associated to these life problems can accelerate the progression of readjustment and/or serious mental health problems that, in turn, may lead to more dysfunction, and much more serious behavioral problems.

Projects currently operating on a small scale throughout New York State to provide pro bono services for veterans facing civil law problems have already been of immeasurable help in addressing problems, resolving issues at the simplest level, and showing our veterans that their community is truly behind them. I would encourage and support continued efforts on behalf of the legal system to expand these efforts to assist our country's military veterans.

In closing, I would like to paraphrase President Teddy Roosevelt, who said simply that "any person (sic) who is good enough to shed their blood for their country is good enough to be given a square deal afterwards…" In that spirit, our veterans deserve our gratitude, support, and the finest array of services conceivable to honor the sacrifices that they have made on our behalf. Thank you for convening this hearing as a forum for an important exchange of information and ideas.

APPENDIX 13:

Written Statements submitted at the Third Department Hearing held on October 3, 2011

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Written Statements Submitted at the
Third Department Hearing on October 3, 2011

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Hon. Christine M. Clark (Schenectady County Family Court)

Hon. Michael V. Coccoma (Deputy Chief Administrative Judge for Courts Outside New York City)

Prof. Joseph M. Connors (Director, Albany Law School Clinic and Justice Center)

Julie A. Davies (North Country Mediation/Rural Law Center)

Arthur Demar, Jr. (Client of Legal Aid Society of Northeastern New York, accompanied by Robert Vanderbles)

Buckmaster de Wolf (General Counsel, GE Global Research)

Michael Hertz (Chief Marketing and Business Development Officer, White & Case)

Rasaan Kellam (Client of Legal Aid Society of Northern New York, accompanied by Robert Vanderbles)

Martin J. Mack (Executive Deputy Attorney General for Regional Affairs, on behalf of Eric Schneiderman, Attorney General of the State of New York)

Dana P. (Client of The Legal Project, accompanied by Lorraine Silverman)

Debra L. Schimpf (Executive Director, Schenectady Community Action Program)

Hon. Leslie E. Stein (Appellate Division, Third Department)

Debra Sullivan (Former Pro Bono Director and Member, Capital District Paralegal Association)

F. Michael Tucker (President and CEO, Center for Economic Growth)

(Non-Testifying Witnesses are listed on the following page)

Written Statements Submitted at the
Third Department Hearing on October 3, 2011

Statements of Non-Testifying Witnesses

Empire Justice Center

Legal Aid Society of Northeastern New York, Inc.

New York State Bar Association

Prisoners' Legal Services of New York

Alyssa L. Talanker, Esq.

Written Statements of Testifying Witnesses

James J. Barba

President and CEO, Albany Medical Center

James J. Barba
President & CEO
Albany Medical Center
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James J. Barba is president and chief executive officer of Albany Medical Center, the only academic health sciences center in northeastern New York.

He oversees the largest hospital in 25 counties; one of the nation's oldest medical colleges, where 40 percent of the doctors and health care professionals from our region are trained; a research operation where scientific and medical researchers are working on projects totaling $30 million in funding; a workforce of more than 7,000, making Albany Med the region's largest private employer; a Physician Practice Group of 325, doctors who practice what they teach; and, to support it all, one of the region's most active fund-raising organizations.

Mr. Barba is currently overseeing the most ambitious expansion in the Center's 172-year history, and the largest such project in the history of the region. This $360 million, eight-year project is transforming the New Scotland-Park South neighborhood where the Center stands.

A native Albanian and attorney by education, Mr. Barba was named chairman of the Center's board of directors in 1994, a position he held until 2006. He was named president and CEO in 1995, and is widely credited with putting the Medical Center back on firm financial footing. He was formerly senior counsel to the Albany law firm of Hiscock & Barclay and is a graduate of the University of Notre Dame Law School and Siena College, from which he holds an honorary doctorate.

He has served on numerous special commissions and councils by gubernatorial appointment and at the request of his peers, as well as boards of community organizations – particularly those related to regional economic development. As a result, he received numerous accolades over the years: "Executive of the Year" from the *Capital District Business Review*; the "Career Achievement Award" from Siena College; and the "Distinguished Citizen" award from the Twin Rivers Council Inc., Boy Scouts of America. He has been cited for his leadership in health care by the American Heart Association, the Juvenile Diabetes Association, and the National Multiple Sclerosis Society. He is a frequent lecturer and author on health care topics and health care policy.

9-19-11

SHORT SUMMARY OF ORAL TESTIMONY
OF JAMES J. BARBA, J.D.
PRESIDENT & CEO
ALBANY MEDICAL CENTER
ALBANY, NEW YORK

AT A PUBLIC HEARING
OF THE CHIEF JUDGE'S TASK FORCE
TO EXPAND ACCESS TO LEGAL SERVICES IN NEW YORK

October 3, 2011
Court of Appeals Hall
26 Eagle Street, Albany, New York

Without Legal Aid for the thousands of poor and under-served, there is no justice.

Those of us in health care recognize that these times are like no others in memory due, in great part, to the economy. And for the poor, life's complexities, already legion, are aggravated -- and often debilitating, leaving many in despair and without hope.

The health care delivery system in America is changing rapidly. Federal and state spending will diminish hospitals' resources. At the same time, health care reform will increase opportunities for those currently without insurance to secure coverage. But still there will be hurdles, and I envision the need for legal help will increase.

Statistics have a face and remind me of words I wrote and delivered in 1969 at the centennial celebration of my alma mater, the University of Notre Dame Law School: "Law becomes justice only when it is made available to all on equal terms."

And now there is a corollary: "Delivering health care encompasses more than delivering health care services. It absolutely mandates sharing knowledge that leads to justice."

At Albany Medical Center, we see a growing need for civil legal services to the poor and under-served – in our Children's Hospital, HIV Center, in our Emergency Department, in our kidney practice. We depend on the services of the Legal Aid Society of Northeastern New York because we recognize that underlying many of our patients' sicknesses are issues that exacerbate illness and complicate healing.

We have several partnerships with the Society, including the Medical-Legal Partnership for Children and Families. The Legal Aid Society continues to be a required part of our College's residency "community health rotation."

An Albany Medical College alumnus and an associate professor at the College today, who operates a clinic in one of Albany's poorest neighborhoods, observed: "People's inability to access justice will lead them from frustration to hopelessness and finally to despair…. One of the biggest battles that I face… is to help our patients overcome the overwhelming temptation to just give up. A legal advocate can literally change their world by injecting hope in the situation, and hope is our greatest weapon as we battle despair…. "

-- James. J. Barba
President & CEO
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9-19-11

TESTIMONY OF
JAMES J. BARBA, J.D.
PRESIDENT & CEO
ALBANY MEDICAL CENTER
ALBANY, NEW YORK

AT THE CHIEF JUDGE'S HEARING
ON CIVIL LEGAL SERVICES

October 3, 2011
Court of Appeals
26 Eagle Street, Albany, New York

Chief Judge Lippman, Presiding Justice Cardona , Chief Administrative Judge Pfau and New York State Bar Association President Doyle, my name is James J. Barba. I have been president and CEO of Albany Medical Center since 1995.

Thank you for the opportunity to testify today on the importance of – and growing need for – civil legal services to the poor and under-served.

Those of us in health care now recognize that these times are like no others in memory due, in great part, to the economy. And for the poor, life's complexities, already legion, are aggravated -- and often debilitating, leaving many in despair and without hope.

At Albany Medical Center we see far more of the poor than the region's other health-care facilities. And, we depend on the services of the Legal Aid Society of Northeastern New York because we recognize that underlying many of our patients' sicknesses are issues that exacerbate illness and complicate healing.

Let me begin, if I may, by placing Albany Medical Center in context.

Our mission – as the only academic medical center in Northeastern New York – distinguishes us in the 25 counties – and among the 3 million people – we serve. We are the region's leading health care provider with more than half-a-million outpatient visits and 32,500 inpatient stays last year.

We are the number-one Medicaid provider in the 23 New York State counties in our service area. In the last 10 years, our Medicaid discharges from those counties have increased by an astounding 50 percent. We also have a generous charity care policy, budgeting more than $40 million annually to provide medical services for which we will not be reimbursed.

So we see hundreds and hundreds of patients who are the poor, the under-served and the working poor.

These stunning statistics have a face and remind me of words I wrote and delivered in 1969 at the centennial celebration of my alma mater, the University of Notre Dame Law School.

I said: “Law becomes justice only when it is made available to all on equal terms.”

And now there is a corollary to my thinking: “Delivering health care encompasses more than delivering health care services. It absolutely mandates sharing knowledge that leads to justice.”

As an academic health center, we are productively involved in the community and understand increasingly how health care and the social determinants of health intertwine.

An Albany Medical College alumnus and an associate professor at the College today, who operates a clinic in one of Albany’s poorest neighborhoods, observed: “People’s inability to access justice will lead them from frustration to hopelessness and finally to despair…. One of the biggest battles that I face… is to help our patients overcome the overwhelming temptation to just give up. A legal advocate can literally change their world by injecting hope in the situation, and hope is our greatest weapon as we battle despair…. It is hard to think of a patient who has not had significant dealings with the system which has not negatively impacted their well-being.”

He also notes that among those he serves, health care is at the bottom of a list of priorities --after (1) housing; (2) jobs; (3) food; (4) education and (5) violence prevention.

Imagine how hard it is to manage your diabetes when your apartment is padlocked by code enforcement; how hard it is to pay your co-pays when you can't access your benefits due to issues with your insurer; how difficult it is to keep medical appointments when you're in Family Court fighting for child custody or orders of protection.

They may be non-medical issues, but they impact a person's overall health and well-being.

At Albany Medical Center, a day does not pass that a social worker does not see a patient who needs legal help. So our social workers, part of every patient care team, are armed with information about Legal Aid; it is distributed liberally because it MUST be.

In our Children's Hospital, there are young mothers – poor, uninsured, worried about their child – but also terrified by domestic abuse, fair housing, Social Security. They are routinely advised of the Legal Aid Society – of an advocate who can help them and empower them.

In our HIV Center, we see thousands of patients; many need legal help – job discrimination, housing discrimination. In our kidney practice, the poor find it increasingly difficult to access health benefits and preventive care. In our Emergency Department, we see 70,000 patients a year – many victims of life cycle and domestic violence, homelessness, mental illness. Legal Aid Society is indispensible in all these cases.

We have several partnerships with the Society, including the Medical-Legal Partnership for Children and Families. Legal Aid trained health care staff at our pediatric unit to identify legal issues and refer patients who can see a Legal Aid attorney right at our pediatric practice or be given a direct line to be screened for eligibility.

The Legal Aid Society continues to be a required part of our College's residency "community health rotation."

We have brought to the board of directors of Albany Med the voice of Lillian Moy, an attorney who has devoted her professional life to helping the poor and under-served. Her 30-year perspective offers an invaluable dimension to our thinking and leadership.

The health care delivery system in America is changing rapidly. Federal and state spending will diminish hospitals' resources. At the same time, health care reform will increase opportunities for those currently without insurance to secure coverage. But still there will be hurdles, and I envision the need for legal help will increase.

My words of 1969 still ring true. "Law becomes justice only when it is made available to all on equal terms." And, yes, today, "Delivering health care encompasses more than delivering health care services. It absolutely mandates sharing knowledge that leads to justice."

Without Legal Aid for the thousands of poor and under-served, there is no justice.

Thank you.

-- James. J. Barba, J.D.
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Hon. J. Timothy Breen

Warren County Family Court

TESTIMONY OF

Honorable J. Timothy Breen

Warren County Family Court Judge and

Acting Supreme Court Judge Warren County Supreme Court

On The Extent and Nature of Unmet Need for Civil Legal Services in New York State

Submitted To:

Honorable Chief Judge Jonathan Lippman's Hearings on

Civil Legal Services

October 3, 2011

New York State Court of Appeals, Albany, New York

Testimony of Hon. J. Timothy Breen
October 3, 2011

Biography:

1985 Appointed as the first New York State (Hearing Examiner/Support Magistrate)
1999 Appointed to Warren County Family Court Bench by Gov. George Pataki
1999 First Elected term to Warren County Family Court Bench
2002 Acting Supreme Court Justice
2003 - Present, Warren County Treatment Court Presiding Judge
2009-Present, Back Up Integrated Domestic Violence Judge
2009 Second Elected term to Warren County Family Court Bench

Summary of Testimony

-Access to counsel should be further expanded in Family Court

-Access to counsel should be further expanded in matrimonial actions in Supreme Court to issues of grounds, child support, maintenance, domestic violence requiring an order of protection and equitable distribution issues

-Family Court Cases are more complex

-Court operations are negatively affected by pro se litigants:time spent explaining court procedures, proper paperwork, avoiding giving legal advice

-Judiciary is negatively affected by pro se litigants: delay in calendars because more time is spent during court appearances

explaining what is happening delaying court calendars, adjournment requests to obtain counsel resulting in more court appearances, lack of public confidence in the integrity of the judicial system if Judges must step out of judicial role and “assist” pro se litigants

-Pro Se litigants are negatively affected by self representation: poor outcomes in their cases, lack of understanding of the proceedings, inability to introduce evidence or testimony or to raise defenses, missed days at work, numerous court appearances, counsel for other parties are reluctant to work on resolutions with them

-Children are negatively affected by Pro Se parent/litigants in family court and matrimonial matters: lengthy unresolved court proceedings are never in the best interest of children as they affect the parent-child relationship, the child's education and possible negative impact on their overall well being

-Civil Gideon will require more funding in order to hire more counsel who are trained in the areas of matrimonial and family law which is required due to the increasing caseloads and to allow for adequate representation of the parties

Testimony:

Good Morning Honorable members of the Hearing Panel. (Presiding Justice Anthony V. Cardona, Chief Administrative Judge Ann Pfau and President Vincent E. Doyle, III, Esq. NYS Bar Association). My names is J. Timothy Breen. I am the presiding Family Court Judge in Warren County Family Court and an Acting Supreme Court Justice. I want to thank Chief Judge Lippman, Chief Administrative Judge Ann Pfau and Chairperson of the Task Force Helaine M. Barnett for giving me the opportunity to testify today on this very important topic.

There is a continuing unmet need for civil legal services in New York State. The time for the Legislature to provide stable funding for them is now.

The Judiciary has spoken and it unequivocally continues to maintain that civil legal assistance is required for the most vulnerable low income New Yorkers who are facing the loss of their families, their shelter, their personal safety and/or their economic resources.

The purpose of my testimony today is not to repeat the same testimony that you heard last year from Judges in support of the four findings that were stated in the Report of the Task Force in 2010. However, one cannot dispute that the our current status quo is not acceptable.

The number of Americans that are currently living in poverty is increasing annually. That means more business for the Court system. Without equal justice for all, litigants will be more frustrated with and distrustful of the Judiciary. Why? Pro Se litigants do not understand what is going on during the court

proceedings or why they are not being given a chance to tell their side of the story. Court calendars will continue to be clogged, outcomes will continue to be poor and the economic and emotional health of families and children will continue to suffer. This has the potential overall devastating effect on families and children, with many families becoming further dependent upon public monies.

On September 13, 2011, the New York Times reported that the most recent US Census indicates that 15.1 percent of Americans are living below the poverty line of $22,113 for a family of four and that 45.3 percent of Americans, between the ages of 25 and 34 years old, are living below the poverty line, if you do not take their parents' income into account. This is the population that we serve in our Family Courts. The article went on to quote Timothy Smeeding, the director of the Institute for Research and Poverty at the University of Wisconsin, Madison who said that "We're risking a new underclass. Young, less educated adults, mainly men, can't support their children and form stable families because they are jobless."

Typical family court cases have become much more complex and do not involve just a mother and a father anymore. For example, we can have a mother who has four children in her care who has recently separated from her husband. The mother files a paternity petition naming two to three men as the putative father of her newborn child in a paternity action. She must also name her husband as a respondent in the paternity petition. She also files custody, child support and family offense petitions against her husband as a result of domestic violence in the home. The husband/ father also files custody, child support and family offense petitions against the mother. The domestic violence allegations require intervention/investigation by Child Protective Services and the

Department of Social Services files neglect petitions against the mother and father concerning all four children. The putative fathers of the newborn child are also given notice of the proceeding as interested parties. All four children are removed from the care of their parents and placed into foster care giving the foster care parents the right to notice of the proceedings in the neglect cases and in all future permanency hearings. When the maternal and paternal grandparents learn of the neglect petitions and the removal of the children they file intervenor custody petitions that will be heard at the dispositional phase of the neglect proceeding. The father then commences a divorce proceeding in Supreme Court.

At the arraignment on the neglect petitions, how many people will be in the courtroom and who should have attorneys?

There will be 21 people in the courtroom (11 parties present and 10 attorneys for the parties) The 4 children are also parties but will not be present. The mother and her attorney, the husband/father and his attorney, two putative fathers and their attorneys, the four grandparents and their two attorneys, one attorney for the three children and one attorney for the newborn child, two foster parents and their attorney and counsel for the Department of Social Services and their caseworker client.

If there are any other contract caseworkers, domestic violence advocates or family members that come to the court appearance, we can approach as many as 25 people in the courtroom, not counting any witnesses or court personnel.

The reality is that my Family Court only has three tables and three microphones and that the respondents, the putative fathers, the maternal and paternal grandparents and the foster parents will

probably not all have counsel, even if they are qualified to have counsel assigned.

What are some of the common misunderstandings of pro se litigants in Family Court:

1-They do not understand that when they file a petition in Family Court, they are commencing a lawsuit and are suing the respondents that are named in the petition.

2- They think that after they file a petition in Family Court they have an "appointment" in Court.

3-When they appear in Family Court they think that they are going to tell their side of the story at the first court appearance.

4-Ex parte communication with the Judge is often attempted.

5- When indigent persons are arraigned on their right to assigned counsel at the first court appearance, they do not appreciate that they should immediately apply for counsel. They often wait until they are at a pretrial conference, weeks before the trial is scheduled to be held, before they apply.

6- They do not know that there are rules of evidence, burdens of proof or that testimony and/or evidence are required during a hearing.

7-They do not know that the Judge, as the impartial fact finder, is prohibited from "helping" them prove their case.

8-When Pro Se litigants miss Family Court appearances they do not

appreciate the consequences that can occur in their absence. Dismissal of petitions, vacatur of orders of protection, transfer of custody, commitment orders, etc.

Some might say that the Family Court Act affords certain indigent parties the assistance of counsel in matters that involve abuse and neglect, domestic violence, custody and parenting time, foster care and permanency planning proceedings, contempt proceedings, adoptions and paternity. So what is the problem?

The problem is that all sides should be represented by counsel. For example, in a paternity proceeding, only an indigent father is entitled to assigned counsel. If the mother cannot prove her case, the subject child will not be entitled to support as there is no adjudication of paternity. In a contempt proceeding, only an indigent respondent is entitled to counsel. Most often contempt proceedings involve violations of child support orders. It is rare that the petitioner is ever represented by counsel in these proceedings. In an adoption proceeding, only the parent of the child who opposes the adoption is entitled to counsel. If the adoption is opposed a hearing must be held. Finally, in a child support proceeding, no indigent parties are entitled to assigned counsel.

Some might say that indigent parties are entitled to assigned counsel for issues involving custody and parenting time in matrimonial actions so what is the problem?

The problem is that the parties are still representing themselves on often complicated issues that involve the grounds to get divorced, child support, maintenance, domestic violence and equitable distribution. These parties are also generally ill equipped to complete the compulsory financial disclosure documents as well.

Some might say that there are new statutes that address counsel fees and maintenance issues in matrimonial actions that should address the inequity of the parties so what is the problem?

The problem is that pro se plaintiffs and/or defendants may not be aware of how to move for such relief or that it even exists.

Some might say that judges can use the catch all paragraphs of the Family Court Act 262 or the CPLR 1102 and assign an attorney to any party, at their discretion so what is the problem?

The problem is that Judges utilize these tools to assign counsel to indigent parties, on a case by case basis, is done so sparingly because the resources in the legal community, the public defender's office, our 18-b panel and our Legal Aid office, could never absorb the volume of cases and the number of clients that would be assigned to them if the Judges truly assigned counsel from the bench in an effort to bridge the justice gap.

In closing, the failure of the New York State Legislature to face this problem in the past has had the chilling effect of denying indigent parties meaningful access to our court system which is simply unacceptable. More funding is needed so that specifically trained counsel in their respective subject areas of law can be made available to indigent parties to assist them with the navigation of the court system and in achieving more favorable outcomes.

Hon. Christine M. Clark

Schenectady County Family Court

Testimony of Honorable Christine M. Clark
Schenectady County Family Court Judge
620 State Street
Schenectady, NY 12305

Schenectady City Court Judge, January 1, 2005 - December 31, 2010

Schenectady County Family Court Judge, January 1, 2011 - present

Submitted to the Chief Judge's Hearings on Civil Legal Services

October 3, 2011

NYS Court of Appeals, Albany, NY

I am Christine Clark and I am here to express my support for increased funding and stability for civil legal services. I appreciate the opportunity to participate in this hearing, and I want to thank Judge Lippman and the Task Force for making this issue a priority in New York.

It is crucial that we increase access to civil legal services for the rising number of people coming to our courts. This not only supports the idea of equal justice but also makes a tremendous difference in the ability of the court system to function effectively. I have seen many unrepresented individuals over the past 6 years in my role as both a city and family court judge. Self-represented litigants are at a severe disadvantage when appearing against a represented party. The self-represented litigant does not know the law and does not understand the burdens of proof or the rules of evidence. As a Judge, I find it difficult when I have an unrepresented or self-represented party appearing in front of me. I have to be careful to ensure that the unrepresented party's rights are not being violated by the represented party while making sure that I remain neutral. This is a difficult balancing act for any judge.

As a Schenectady City Court Judge, I handled criminal and civil matters. In the civil part of the court, I heard landlord/tenant matters, City code violations and small claims matters. As part of the landlord/tenant cases, we had monthly municipal housing cases where the tenants lacked counsel. Most of the landlord/tenant matters were eviction proceedings. In the majority of those eviction proceedings, the tenants were without attorneys. The tenants had no idea of their rights. We were fortunate to have a worker (a non-attorney) from the Schenectady Community Action Program (SCAP) in court on certain dates to assist tenants. The SCAP worker could explain the eviction process and help the tenants in contacting the Legal Aid

Society to get representation if necessary. However, SCAP could only refer the most egregious cases because of a lack of resources. As a first year law student, I worked for a summer at the Legal Aid Society of Northeastern New York, I know first-hand that the number of people that apply for services greatly outweighs the number of attorneys available to assist in these cases.

Many cases come to mind when I think of the unrepresented individual in City Court. However, there was one particular case in which a local attorney agreed to step in and provide pro bono services to assist a tenant who was low-functioning and had special needs. When he appeared in Schenectady City Court, I was concerned because he did not seem to understood the eviction process or what it meant if he was evicted. I wondered if he needed a guardian appointed for him. At my request the court staff contacted this particular attorney who I was familiar with to see if she would be willing to help this young man. Fortunately, she was willing to assist and able to come to a resolution with the landlord who may not have followed the appropriate procedures in filing an eviction. If he had not be represented, this special needs young man would have ended up homeless.

As a Family Court Judge, I can assign counsel in many proceedings and I do. However, the guidelines for assignment of counsel are at the poverty level. On a daily basis, I see individuals who work but cannot afford an attorney. They are living hand to mouth and have no disposable income or even available credit to retain a private attorney. Schenectady is like many other upstate cities facing trying economic times.

I have seen many instances where I wish that I could assign counsel but the parties are over the allowed income level. One particular case was a young woman who filed a family

offense petition. I had never seen someone so genuinely afraid of their alleged perpetrator. She worked and was living in a home that the perpetrator owned. She requested an order of protection because he had allegedly brutally assaulted her on two occasions and broke her nose. She told me that she could not afford an attorney so I suggested that she contact The Legal Project, a pro bono legal services program which is located in the Capital Region. I made this suggestion because she told me that she was employed full-time. I knew that she would not qualify for assigned counsel based upon what she told me about her income. The Legal Project has flexible income eligibility guidelines to allow representation of the working poor, and they specialize in domestic violence. Fortunately, The Legal Project was able to take her case and they provided a well-trained and experienced pro bono attorney to represent her. At the court appearances, this young woman had a domestic violence advocate with her who worked hand in hand with The Legal Project attorney. This support was extremely important in terms of this young woman's emotional needs during a difficult and overwhelming time. Thankfully, the case did not go to trial. If it had gone to trial, there was no way this young woman would have been able to represent herself. She was visibly afraid of the alleged perpetrator whenever he appeared in court. She could not have pursued the case without the representation of an attorney and the support of the domestic violence advocate.

There are consequences that I see as a result of individuals not having access to legal services. The unrepresented individual ends up with a negative view of the system. Often times, it is because of the frustration of going forward without counsel. Also, there can be an

appearance of impropriety or unfairness. The unrepresented litigant believes that the attorney is getting better treatment and the attorney believes that the court is too lenient on the unrepresented individual. In addition, unrepresented litigants tend to repeatedly return to court asking for the same relief. In Family Court, we have no filing fees so litigants can continuously file petitions. If individuals are not getting legal advice, they do not understand when they can or should re-file a petition.

In our Family Court, I am lucky to have a professionally trained custody mediator who helps facilitate parenting agreements. I can refer cases to her if the parties agree to participate in mediation. This program obviates the need for attorneys. Approximately 85% of parties involved in mediation are unrepresented. The parties are on a level playing field attempting to work out the custody matter with the mediator in a low-key non-confrontational manner. If the parties reach an agreement, attorneys do not have to be involved and no trial is held. It is a large cost savings measure as there are no litigation or attorney expenses. Our custody mediator averages a 75 - 80% agreement rate.

In conclusion, some of the ways in which I think we could better our system would be:

Increase the income level for the court to assign counsel;

Continue and increase financing to agencies such as SCAP and agencies that

provide domestic violence advocates;

Increase the number of professionally trained mediators to assist the court in resolving matters prior to trial;

Increase the participation of private attorneys through pro-bono or funding agencies such as the Legal Project and the Legal Aid Society of Northeastern New York.

Thank you for allowing me to speak on this important matter today.

Hon. Michael V. Coccoma

Deputy Chief Administrative Judge for Courts
Outside New York City

HON. MICHAEL V. COCCOMA

Michael V. Coccoma is a Justice of the New York State Supreme Court. He was appointed as Deputy Chief Administrative Judge for Courts Outside New York City in May 2009 by Chief Administrative Judge Ann Pfau. In his new position, Judge Coccoma is responsible for managing the courts in the 57 counties outside of New York City.

Judge Coccoma is a graduate of The Citadel and earned his J.D. at Albany Law School. He began his career in private practice and served as Otsego County Attorney and Assistant District Attorney before being elected as District Attorney in 1991. He was elected to his first term as a multi-bench judge of County Court, Family Court and Surrogate's Court in Otsego County in 1994. Five years later, Judge Coccoma was appointed Presiding Judge of the then newly-created Otsego County Drug Treatment Court. In 2004, he ran unopposed for his reelection to County Court. Judge Coccoma was appointed an Acting Supreme Court Justice in 2000 and elected to the Supreme Court in 2008. From July of 2008 until May of 2009 he served as Administrative Judge for the Sixth Judicial District.

In addition to this experience, Judge Coccoma has served on important state-wide committees including the New York State Matrimonial Commission and the Family Court Advisory and Rules Committee, and as a member of the Law Guardian Advisory and Rules Committee for the Third Department. He also participated in the Otsego County Children's Center Committee, which created a safe haven for young family members awaiting hearings. He serves currently as a member of the New York Family Court Judicial Leadership Team.

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ANN PFAU
CHIEF ADMINISTRATIVE JUDGE

MICHAEL V. COCCOMA
DEPUTY
CHIEF ADMINISTRATIVE JUDGE
COURTS OUTSIDE NEW YORK CITY

TESTIMONY TO THE COMMISSION ON FUNDING FOR CIVIL LEGAL SERVICES TO THE POOR
October 3, 2011 at The Court of Appeals, Albany, NY

Hon. Chief Judge Lippman, Judge Pfau, Judge Cardona, and honored members of this Commission.

Good morning. I wish to begin my remarks with a quote.

> "There can be no equal justice where the kind of trial a man gets depends on the money he has." (Hon. Hugo Black, United States Supreme Court Justice, *circa* 1964)

I am Supreme Court Justice Michael Coccoma, with additional responsibilities as Deputy Chief Administrative Judge for the Courts Outside the City of New York. I wish to thank Chair, Helaine M. Barnett**,** for her invitation to appear here today and offer these remarks on the important topic of funding for civil legal services in New York.

Having been a judge for nearly 17 years, including 13 years as a Multi-Bench County Judge, I have had contact with many unrepresented litigants appearing before my Court. My remarks are based upon my personal experiences from the bench, as well as an administrator of the trial courts in 57 counties outside the City of New York.

Hopefully, these statewide hearings will bring to the attention of our state government the need for innovative solutions to enhance civil legal services in New York to unrepresented individuals who enter our civil courts. New York could be a national leader on this issue.

I have divided my remarks into two parts. First, my personal observations from the bench, and second, a summary and comment upon the efforts so far to meet the demands for civil legal services to the poor.

The seriousness of the problem this committee seeks to address cannot be underestimated. The courts which I supervise are in rural, suburban, as well as urban counties. They consist of County, Family, and Surrogate Courts, as well as Supreme. I also am involved in the supervision and education of town and village justices. Although the character of the communities that these courts are located in may differ, the challenges to the litigants who appear in these courts, unrepresented, remain the same. Often, their entry into the civil court system is fraught with confusion, frustration, and in many cases, fear.

We all know that we are in unprecedented times in our state and in this nation, with unemployment at its highest levels, evictions and foreclosures rampant, and social problems related to the economic downturn being at an all-time high. It is no surprise that more and more people turn to the courts for access to justice to protect their basic human rights, such as adequate housing, safety for their children, and redress for personal grievances. The courts in New York are no exception. However, due to the current fiscal crisis in the State of New York, funding for civil legal services, assistance which was previously available to the unrepresented, has been cut back or eliminated. While federal, state, county and local government leaders struggle to maintain critical services to meet the immediate needs of their constituents, this leaves little funding available for civil legal services to the poor. However, I urge that these legal services to the poor are just as critical as matters which relate directly to housing, employment, and public safety.

The number of people who cannot afford attorneys is increasing, while the number of cases in courts continues to rise. Currently, the New York State Unified Court System has over 73,000 foreclosure proceedings, and about 60% of the homeowner litigants are unrepresented in the mandated settlement conferences during which someone's right to continue to reside in their home is the main focus. There are pro bono projects started by many of the Bar Associations around the state whereby attorneys agree to accept and appear with individuals and families at these settlement conferences. And without them, we would be unable to manage these cases, and these people would have little voice in the outcome of a proceeding which impacts a fundamental human right - that of adequate housing.

To put the issue of lack of representation in perspective, over two million litigants appear without attorneys in our New York courts annually. You will hear, during the course of your public hearings across the state, from litigants who have been put in this position. You will hear of their feelings of helplessness and distress, confusion and frustration when facing court proceedings on their own. From my own perspective - and I believe I speak for judges throughout the state - a case that comes before me involving a party who is unrepresented presents an added challenge.

Unfamiliarity with court procedure, with court processes, and most importantly, a lack of understanding of the substantive law itself, creates an impediment to these unrepresented individuals which is impossible to overcome. It is simply not a level playing field.

My first comment in court to unrepresented individuals is to advise them of their

right to be represented by counsel and their right to a reasonable adjournment so that they can speak with and reappear with an attorney. However, these words carry little comfort if there are no attorneys available, either through a pro bono program or a civil legal services program. In most cases, and especially in matters of consumer debt collection and foreclosures, a litigant comes back to court after having received that reasonable adjournment, to seek counsel, only to inform the court that they were unable to secure the services of an attorney. And so, they must then proceed without counsel.

Just like most judges throughout the state, I must then take the time to explain court procedure, how to subpoena witnesses, how to ask a proper question on both direct and cross-examination of witnesses, and how to serve papers.

This extra time, taken by the judge to try to be fair to the unrepresented party, delays case processing times and the cases back up. With increasing caseloads, eventually this will reach critical mass in our courts, in fact, it already has in some courts. As a result of reduction in force of staffing in our courts, further delays in processing cases only create a greater bottleneck. Of grave concern to me is the impact on our family courts throughout New York State that are struggling with maximum caseloads, lack of judges, and inadequate staff to adequately manage these cases. Although 18-B assignments and Attorneys for the Children assignments do provide services to a number of unrepresented individuals, in many cases, there are not a sufficient number of attorneys participating in these programs. We need additional funding to train and recruit these attorneys.

Unrepresented litigants present an ethical dilemma for judges as well. While the judge must take time to explain the law and its applicability in the case, there is a fine line that a judge must walk to try to be fair and neutral to both sides, and not give the appearance of favoring the unrepresented litigant. In addition, given the time and ethical constraints on the judges, the explanation of the procedural and substantive law that the unrepresented receive is cursory at best. The judge cannot wear two hats.

So the unrepresented struggle to understand the intricacies of the legal proceeding that may result in loss of a home, custody of a child, or a sum of money. Imagine if a patient arrived at a hospital in this state and was told upon arrival that they must supervise and administer their own medical procedure that day because the hospital did not have sufficient medical staff to carry out that role. Such a situation would not occur and it should be no different in our courts. We all know the story of Clarence Gideon as documented in Anthony Lewis' book "Gideon's Trumpet." We all know the reality of what happened - the final scenario of his criminal prosecution in which, in his retrial before the same judge, by the same prosecutor, involving the same evidence, in the same courtroom where he was previously convicted, on retrial, with the assistance of counsel and the ability to put forth a viable defense, he was found not guilty of the burglary for which he was charged. And while his triumph resulted in the Sixth Amendment Right to Counsel being guaranteed through state- paid assigned counsel in criminal cases, that right has never shifted over to the civil arena. Yet, given the seriousness of the issues that are in the courts these days, primarily due to the economic downturn, the situation is no different than that faced by Clarence Gideon in 1963.

At every level, from the local village court to the Supreme Court, the face of the litigant may differ, but the issues are the same. Persons who are in need of an Order of Protection or face an eviction need legal representation by attorneys in order to effectively participate in court proceedings that may have a profound impact on their lives.

Let me turn briefly to some efforts to confront this problem. The New York State Unified Court System, and in particular, the Access to Justice Program overseen by my colleague, Deputy Chief Administrative Judge Fern Fisher, has been trying to address these issues in many ways. She and her staff are to be commended for their efforts. I believe we need to do much more.

One issue that the unrepresented litigant faces is the complexity of our court forms. Intended for attorneys, these forms can be daunting. Some of the courts have simplified common forms used in the Family, City and Housing Courts, including custody and child support forms. Experience has shown that these simplified forms have made it easier for the person who is unrepresented to get their case in front of a judge.

The problem is that these changes, although authorized, are not yet statewide, and certainly not consistent throughout the state. Thus, resources are needed to continue the revision of forms to a plain language format and the simplification of procedures. Making these forms and procedures uniform throughout the state would benefit all who use our courts.

There are a number of help centers which have been created in courthouses or in public libraries throughout the state. But the workforce reduction resulting from cuts to the judiciary budget have made it necessary to close some of these centers. Those that remain are staffed by either court employees or volunteers and provide legal and procedural information, including instructional packets, court forms, and public access computers.

The Do It Yourself Program is another step in the right direction, providing a free and easy guided step-by-step computer program that allows a user to answer a series of guided questions and produce a petition that can be filed in the correct court. Currently there are limited filing types available, but we hope they can be expanded in the future.

There have been collaborative efforts between courts and local bar associations, with pro bono attorneys and “Lawyers for a Day” programs. These efforts, again, are laudable and have been successful, but they are not sufficient to meet the ever-increasing demands. In reality though, these programs lend themselves to simple cases and are limited in nature.

All of these efforts, such as DIY, help centers and pro bono attorneys, deserve our praise and support and have certainly helped thousands of people, but, unfortunately, are not enough to avert the crisis which is upon us. I urge you to recommend new ideas to stem the tide of the overwhelming need for civil legal representation for our most needy citizens.

For example, when I hear that an increasing number of recent law school graduates are unable to find jobs, I ask myself why can we not develop funding streams and

programs which would provide an opportunity for these attorneys who are eager to put their skills to work in a public service program providing legal services to the poor. Perhaps, in exchange for a two or three-year commitment in such a program, they would receive a reduction in their student loans, similar to the Americorps programs that we see many college students entering, or public health service programs that provide participants with assistance with their medical school tuition. This is an idea which I believe you should consider recommending to the legislature to appropriate funding for.

As my time draws to a conclusion, I again thank you for the opportunity to highlight some of my concerns and to give you a small piece of the puzzle that you must put together into a clearer vision for the future. Only we, as trained judges and lawyers, can truly understand and appreciate how important it is that a court system truly provides a level playing field for all who enter through the courthouse doors.

So let me close with and emphasize the words of former U.S. Supreme Court Justice Lewis Powell, Jr., when he served as President of the American Bar Association.

> "Equal justice under the law is not merely a caption on the facade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists. It is fundamental that justice should be the same, in substance and availability, without regard to economic status."

Thank you, and I would be happy to entertain any questions you might have.

Prof. Joseph M. Connors

Director, Albany Law School Clinic and Justice Center

To: Helaine M. Barnett, Chair
From: Joseph M. Connors
Re: October 3. 2011 Testimony
Date: September 19, 2011

Pursuant to your request, this is a brief summary of my background and planned testimony at the October 3, 2011 access to justice hearing. I will submit a complete summary of my remarks by September 26, 2011.

Background

Joseph M. Connors is a graduate of Albany Law School and has been admitted to practice in New York since 1989. He began his legal career at Monroe County Legal Assistance Corporation, where he was a staff attorney representing impoverished individuals with disabilities and senior citizens in a broad variety of issues, ranging from access to education and disability benefits to compliance with federal Medicaid due process regulations. Since 1993, Professor Connors has taught at Albany Law School, continuing to represent low income individuals through Albany Law School's clinical education program, initially as a staff attorney, then as a clinical instructor in the school's AIDS Law Clinic. For the past several years, he has continued to teach law students how to represent individuals with HIV/AIDS as well as those affected by cancer gain access to necessary insurance coverage for treatment, set up emergency health care plans for themselves and future care plans for their children, secure disability benefits, and challenge discriminatory treatment. Since 2009, he has been the Director of Albany Law School's Clinic & Justice Center, which serves about 600 individuals each year through the efforts of law student interns who represent clients under faculty supervision.

Summary of Testimony

Professor Connors will summarize local collaborative efforts between Albany Law School and area legal services providers to address their communities' unmet legal needs. With appropriate support and guidance, law students can make valuable contributions to strategic justice partnerships. Experiential learning is essential to the professional development of students and ensuring that future attorneys meet their responsibility to addressing the needs of their communities through pro bono and other leadership initiatives. While certainly unable to significantly close the access gap alone, law schools play an important role in the movement to expand access to civil legal services.

TESTIMONY FOR OCTOBER 3, 2011 HEARING ON ACCESS TO CIVIL LEGAL JUSTICE

Professor Joseph M. Connors
Albany Law School

May it please the Hearing Panel. Thank you for this opportunity to participate in today's hearing. As a former Legal Services Attorney in the late 1980's and early 1990's and as a professor at Albany Law School and the current Director of Albany Law School's Clinic & Justice Center, I hope that my perspective is helpful to the panel's deliberations.

There is no doubt that law schools play an important leadership role in helping to close the justice gap that exists for the most neediest members of our community.

My remarks will first focus on the role that the movement to reform legal education can play in increasing access to justice. I will then outline some of the model initiatives that Albany Law School has pursued, in collaboration with our community partners, to increase access to justice. I will conclude by tempering my remarks with the point that greater involvement by law schools, in and of itself, will not serve as "the solution" to the crisis. Rather, increased funding for community legal assistance offices is crucial to ensuring access to fundamental needs, including housing, access to public benefits, protection of the integrity of the family, and equal protection of the law.

I. The Climate of Legal Education Reform

A sea change is occurring in legal education. The February 2011 NYSBA Association Report of the Task Force on The Future of Legal Education outlines some of these changes. Albany Law School's Professor Mary Lynch made significant contributions to this report as the Chair of the Education and Training Sub-Committee. The report was also informed by other important reports from 2007: Professor Roy Stuckey and other's *Best Practices for Legal Education* from and the Carnegie Foundation's *Educating Lawyers: Preparation for The Practice of Law*.

These reports stress, in part, the profession's need for practice ready law graduates who have received a meaningful education structured around measurable core competencies. The reports recognize the value of different learning methodologies, but call for students' law school experience to include training in applying theory to solving real problems and training in acquiring professional judgment through live client clinical opportunities. The NYSBA specifically recommends reconsideration of Court of Appeals rules which have the effect of limiting the number of clinical credits students can take as part of their law school education. The NYSBA report also calls for a reexamination of bar admission procedures, with possibilities including requiring a period of supervised public interest work before admission.

The trend to change legal education to include more practice based training comes at a time when the numbers of those without legal representation is increasing. A ripe

opportunity exists to increase clinical legal education opportunities to both help address this need and provide students with transferable skills that they can use regardless of their area of practice. Training in professional judgment necessarily includes an understanding of the lawyer's role as community leader, familiar with his or her community, and dedicated to pro bono participation to help close the justice gap.

II. Albany Law School's Model Initiatives

Time does not permit me to list all of Albany Law School's initiatives today and I respectfully refer the committee to a list of programs previously submitted by our current Acting Dean and President Connie Mayer. Dean Mayer has encouraged and supported widespread access to justice initiatives at the school. I will focus on a few of these initiatives today in my remarks today.

A. Clinical Programs

Albany Law School's in-house clinical program serves about 600 individuals each year that otherwise would not have legal representation. Our clinics provide holistic representation in the areas of civil rights and disability law; health law; unemployment benefits law; housing law; low income tax law; securities arbitration; and civil and criminal justice for victims of domestic violence. Our field placement programs places close to 200 students each year in other offices committed to ensuring access to justice, from judges' chambers, to state and private agencies, including those that serve victims of domestic violence, homelessness, the mentally ill, and abused and neglected children.

Professors Burke, Louis, Kearns, Johnsen, Rogerson, Lynch, and Maurer do an amazing job in supervising students in these programs.

B. Pro Bono Programs

Albany Law School also has a robust Pro Bono Program, led by Professor Susan Feathers. Under the supervision of attorneys, students provide community education trainings, conduct research for public interest organizations, participate in consultation services, and staff "Help Desks" at local Family Courts.

It is important to note that Albany Law School's efforts in these areas are often implemented through collaborative efforts with other legal services providers. We coordinate our efforts and avoid competing for limited funding. For example, legal services provided by our Health Law Clinic are supported by the New York state Department of Health and coordinated with Legal Aid of Northeastern New York and the Legal Project through our HIV/AIDS Law Consortium. A Health Law Clinic trained fellow, Alejandro Taylor, now serves as a staff attorney at Legal Aid. Our Domestic Violence Programs are supported by the New York State Office for Prevention of Domestic Violence and implemented in collaboration with statewide task forces, including those led by the Empire Justice Center, as well as the Legal Aid Society and the Legal Project. A recent pilot program to attempt to serve tenants affected by mortgage foreclosures was planned within input from Legal Aid, the Empire Justice Center, and area housing organizations. Our Civil Rights and Disabilities Law Clinic shares a grant and collaborates with Disability Advocates. This type of cooperation and collaboration is essential to the effective delivery of legal services.

C. Loan Repayment Assistant Program

Albany Law School has been a leader in LRAP programs since 2006. Eligible students receive loan forgiveness of $10,000/year for three years while pursuing a public interest career.

D. Summer Stipends for Public Interest Work

Albany Law School supports summer interns at several public interest offices through the generous gifts of alums and others, including former District Court Judge Cholakis and Judge Levine. This support creates opportunities for students and often opens doors to future public interest careers.

E. Pro Bono Activities By Faculty

Albany Law School faculty are actively involved in pro bono service in the community. They provide direct free legal representation, continuing education seminars for other attorneys, and supervise students who work on appellate work. With apologies to those omitted through my oversight, special recognition to Professors Ira Bloom, Mike Hutter, Pat Connors, Alecia Ouelette, Melissa Breger, Christine Chung, and all of the clinical faculty previously mentioned.

III. Law School Activities Are Insufficient In and Of Themselves

While we are proud of our activities to close the justice gap and applaud similar efforts at other law schools, Albany Law School recognizes that our efforts only make a small impact in the grand scheme. We wholeheartedly support and call for increased legislative funding for community legal services offices who are best suited to provide the specialize

representation that clients need at administrative hearings, in housing courts, in Family Court and integrated domestic violence courts, at hearings and meetings concerning the educational services disabled children will receive, and in other forums where today individuals are suffering because they don't have a lawyer to advance and protect their interests.

Thank you for your time and consideration.

Julie A. Davies

North Country Mediation/Rural Law Center

Julie A. Davies
Program Director, North Country Conflict Resolution Services
Rural Law Center of New York, Inc.

Bio and Summary of Testimony for the Civil Legal Services Task Force's Third Department Hearing, October 3, 2011, Albany

BIO: Julie Davies is the Director of the Rural Law Center's five county mediation program, North Country Conflict Resolution Services (NCCRS). NCCRS is a part of the NYS Unified Court System's Community Dispute Resolution Centers Program. Julie has worked in the mediation field in New York State for over17 years. She is responsible for the administration of 5 county centers that conduct outreach and coordinate services with Courts, community agencies, schools and private attorneys. She also coordinates mediation certification trainings for volunteer mediators, and accredited trainings for town and village court judges. She is a native of the Adirondacks and her undergraduate and graduate degrees from SUNY Plattsburgh focused on the rural, cross-border culture between New York's North Country and rural Quebec.

SUMMARY: My testimony will begin with a brief overview of our Alternative Dispute Resolution (ADR) program, including descriptions of our service area, the funding sources, the types and number of cases, the sources of our cases and our program's staffing, including the volunteer mediation panel. With this background established, I will turn my focus to the need for Civil Legal Services funding. Mediation can be an important component of a legal services delivery system, but it cannot always solve the acute client legal needs. Through our intake system we see issues, such as domestic violence, foreclosures, public benefits and disability matters, that are not appropriate cases for our mediation services. However, there are many instances where mediation is an appropriate method of resolving a dispute. Our program considers mediation an integral part of our intake triage process. In this process, we can evaluate the most client-centered, efficient and cost-effective direction for each case. Cases that are resolved through mediation in our program reach a resolution satisfactory to both parties nearly 90% of the time. Courts and agencies that use our mediation services experience a significant reduction in the costs associated with these cases. Finally, I will suggest some possible steps that might be taken to improve the existing delivery model. Although our program is fortunate to have a number of attorneys on our volunteer panels, perhaps more attorneys would participate if they received CLE and Pro Bono for their services. And, I will suggest that there would be significant benefits resulting from an initiative to encourage connections and collaborations between the state's ADR programs and Legal Services Programs.

Julie A. Davies

Program Director

Rural Law Center of New York, Inc.

Testimony

at the

Chief Judge's Hearings

on Civil Legal Services

Third Department

October 3, 2011 10:00 AM

NYS Court of Appeals,

20 Eagle Street, Albany, NY 12207

Thank you, Chief Justice Lippman, Chairperson Barnett and members of the Task Force, for the invitation to speak to you about the need to expand funding for Civil Legal Services in New York State. My name is Julie Davies, and I am the Director of North Country Conflict Resolution Services (NCCRS), which is a program of the Rural Law Center of New York. NCCRS is a part of the New York State Unified Court System's Community Dispute Resolution Centers Program.

For the past 8 years, NCCRS has been serving the "North Country" counties of Clinton, Essex, Franklin, Hamilton and Saint Lawrence. This geographic region is approximately the size of the state of Connecticut. We have offices in each county, including an office on the Akwasasne Mohawk Reserve. The Rural Law Center is unique in its inclusion of an Alternative Dispute Resolution program as a part of our legal services delivery model for low-income, rural New Yorkers. These methods of resolving client legal matters, when properly utilized, provide a significant savings in court costs, as well as a less stressful environment for an already disadvantaged client.

The primary funding for this program comes from the NYS Unified Court System's Office of ADR Programs and from the USDA, as well as from local Social Services agencies. Our program is available, free of charge, as an alternative to formal court proceedings for suitable cases. In our five counties, we provide services in approximately 1300 cases each year, covering a wide range of civil matters. Many common types of disputes are appropriate for mediation, including permanency planning, custody/visitation, grandparent custody issues, employment, Special Education, pre-divorce mediation, elder issues, gay and lesbian partnerships, landlord-tenant matters and income-related cases involving debt collection and small claims. We also facilitate community disputes involving local communities and their residents, and workplace staff and management issues. Additionally, we conduct the Attorney General's Lemon Law Arbitrations for the North Country. The full range of dispute resolution processes offers creative ways to solve the diversity of issues facing low-income clients in our rural regions. From intake to completion, a case is resolved in an average of 15 days. If

multiple sessions are required, the average time to resolution is 60 days. In cases where NCCRS dispute resolution services were provided in the past year, 88% reach agreement or final decision.

Each of our North Country counties has a county ADR Coordinator who works closely with judges, court staff, agencies, and the private bar. Our panel of professionally-trained and certified mediators reflects the diversity of their communities and includes judges, attorneys and the entire Rural Law Center staff. Our program currently provides regular service to 54 city, town and village courts across our service area. Additionally, we work directly with the Family Courts and the Akwesasne Tribal Court. Our panel of trained, experienced volunteers is supervised by NCCRS County Coordinators. Our volunteers are chosen from people who have completed our OCA approved 30-hour Basic Mediation Training. While many of our volunteers are non-lawyers, we also have offered training to members of the justice community. For example, last fall we provided training to 40 people from across the North Country and 17 of those were lawyers or town justices. From the many trained volunteers, our coordinators choose only volunteers who have the most potential to effectively work as mediators.

I have been involved in mediation programs for about 18 years. First as a volunteer, then as a County Coordinator, and, for the past 8 years, as the administrator of our NCCRS program. I have also been on staff at the Rural Law Center for nearly 12 years. Working in both ADR and Legal Services programs, I have a vantage point that gives me a perspective on the need for a comprehensive/collaborative legal delivery system. Such a system would offer services that work efficiently and effectively for the benefit of the clients, the courts, the private bar, and the legal programs that serve clients.

Mediation is one component in that constellation of services, but it cannot replace the acute need for trained legal services attorneys and staff who can advocate on behalf of those most vulnerable New Yorkers facing “essentials of life” issues. In fact, as cost effective as Mediation may be, it is only appropriate when:

- Both parties agree to participate in the process

- There can be a balance of power between the parties
- There are no issues of Domestic Violence
- The parties understand that they have a right to pursue the matter in court or through an agency hearing, and they have access to counsel representation.
- They have the right and opportunity to have agreements reviewed by an attorney, prior to those agreements coming into effect.

With those critical screening factors in place, we can offer mediation as a means for resolving disputes in many types of issues. Some examples of those are:

- Mediations between family members and local Departments of Social Services that result in children at risk of foster care, instead being placed with grandparents or other suitable relatives.
- Mediations between creditors and debtors, in cases that would most probably result in a judgment against the debtor, but that through mediation, can result in a jointly agreed to affordable payment arrangement. (These cases effectively stop wage garnishments, seizure of bank accounts and other assets, and help preserve the debtor's credit rating.)
- Mediations between parents with special-needs children and local school districts to develop an appropriate Individualized Education Program.
- Mediations between gay and lesbian partners, dissolving a relationship, to resolve property issues without court intervention.
- Pre-divorce mediations that allow divorcing couples to proceed through the divorce process without costly litigation. (Many of these cases are referred to us through the local matrimonial bar or come to us from a party who has picked up the Pro Se Divorce Packet, and found it daunting.)
- Landlord/tenant mediations with resolutions that do not need formal eviction proceedings, and often result in extended tenancies.
- Parent and DSS caseworker mediations that involve both parents, their attorneys, and the attorney for the child, to attempt to resolve permanency issues and avoid a lengthy and costly Termination of Parental Rights hearings.

Cases that come to our program from the Family Courts offer an alternative to costly, time-consuming and often contentious matters. Where there are children involved, it is critical that the parties have a reasonable way of dealing with each other long after the court process is complete. A successful mediation agreement in a custody case can avoid litigation, but also can prevent long term damage to a relationship between the parents. In child permanency matters leading to the termination of parental rights, a court case means that the state must prove that the parent is not fit to have the child. These cases are long, difficult and costly to the courts and the county. Additionally, the emotional cost to the parent as a result of this court process, can be enormous. When the Family Court refers these cases to mediation, all of the players that would be in court (parent, parent's attorney, parent advocate, Attorney for the Child, caseworkers, DSS attorney) participate. The difference is that the parties are gathered to craft an agreement that spares the damage. Additionally, it is possible for the parties to agree on outcomes (such as possible continued contact between parent and child) not possible from a formal court process. This is a summary of a typical Family Court case referred for our mediation services:

When a very young mother and her boyfriend were not able to care for their infant daughter, they informally placed her with her maternal grandparents. From the time she was just a few weeks old, the child was in this nurturing and stable environment. Just before her 3rd birthday, the child developed a medical condition and her natural parents were not a ready resource to arrange for necessary treatment. However, without legal custody of their granddaughter, these grandparents were unable to make necessary decisions regarding the girl's health and welfare We were able to work with both the grandparents and the biological parents to craft a custodial agreement satisfactory to all parties. With this agreement, it was then possible for the grandparents to petition for formal custody to their Family Court.

A substantial number of our cases involve the preservation of family farms. The Rural Law Center has long recognized that the most remote rural regions of our state are typically disadvantaged, both economically and in the provision of all basic human services. This holds true in the case of small farms trying to survive in the face of growing debt and the competition from large agri-businesses. Since the Rural Law Center works to provide non-traditional and creative service alternatives to existing legal services models, the provision of Alternative Dispute Resolution services and our

Agricultural Mediation Program are both natural alignments to our overall mission. Funded by the USDA, this program was designed to work directly with farm families on small claims matters, credit, loans, farm succession plans and appeals of adverse USDA loan decisions. We provide mediation services in over 200 agricultural cases each year. A typical example follows here:

When Judy's husband died unexpectedly, she was left with her teenage son and the family's 100 year-old dairy farm. Although she worked hard to keep everything together, a significant drop in milk prices was a real setback financially. In three years she owed the feed store over $12,000. Even though the store had a reasonable interest rate of 8.2%, she was having trouble making the payments each month. She contacted the mediation center. At mediation, the feed store owner was clear that she didn't want Judy's farm to fail, but continuing to provide her with feed for the animals was putting the store in a precarious financial position. They were able to reach a settlement that restructured the past-due amount over a longer period with a smaller monthly payment.

We routinely ask for mediation participants' evaluations of their experience. Here is the follow-up comment by the feed-store owner in the case above:

" I considered [the farmer] to be a friend, as well as a long-time customer. It was very difficult to try to collect on a big debt for feed and supplies. I didn't want to feel responsible for the farm failing, but I couldn't forgive the debt and jeopardize my business. Mediation was a godsend because it gave us a place to work out a payment plan without embarrassment."

Despite the range of mediations that can be offered, people who are facing serious "essentials of life" matters should never feel that mediation is the only tool available to them. Through effective intake and referral, Legal Services Programs and Mediation programs can work together for a better delivery system.

When a case is referred to our program, there is a thorough screening process to ensure that the matter is appropriate for dispute resolution services. Currently our cases come from many referral sources. About 60% are referred by the courts, 20% from human service agencies and the balance from schools, faith-based organizations and the private bar. Another source of referrals is the Rural Law Center's own intake system, as well as those that are referred to us by the local Legal Services office staff.

While these formal and informal referral networks work well for our clients, there are ways we can improve and bolster the delivery model. Some of those efforts might include:

- Sharing information about program services and written materials.
- Developing a collaborative program that would include Legal Services attorney brief services to review agreements prior to them coming into effect.
- Encouraging Legal Services attorneys to participate in mediations with a low income client. (Our program recently conducted a series of court-referred mediations where a Legal Services attorney attended with several clients. These clients were flood victims and were being charged by the landlord for rent owed and damage deposits, even though the flooded apartments were uninhabitable. As a result of the mediations, the landlord agreed to stop his collection efforts if his "generosity" was not made public. The mediator in these cases was quick to praise the efforts of the skilled LASNNY attorney whose participation balanced the power between the landlord and tenants.)
- Encouraging Legal Services attorneys to participate in OCA sponsored Mediation Certification training, and offer mediation services through the local ADR centers.

Working closely with local Legal Services offices provides clients with choices, saves the court system money, by processing cases to satisfactory closure, without the expensive use of court staff and time and provides Legal Services' offices with a place to refer cases so that their legal staff can concentrate on matters that need urgent attorney attention.
In closing, it is clear to me that Mediation and ADR services can be an important component of a Legal Services Delivery System. However, it cannot replace the pressing need for Civil Legal Services programs. Through my work at the Rural Law Center, I am acutely aware of a low-income client's need to have an attorney who is trained in those 'essentials of life' areas of public benefits, housing, education, health, income preservation and domestic violence. However, I am also aware of the fact that in current economic conditions, it becomes even more difficult for traditional legal services to meet client legal needs. Mediation and other forms of alternative dispute resolution can be a valuable tool in the legal services delivery continuum. Working together, all of us in the

justice community can create a collaborative service delivery model that understands the importance of stable Civil Legal Services funding.

Thank you again for the opportunity to speak with you today.

Arthur Demar, Jr.

Client of Legal Aid Society of Northeastern New York,
accompanied by Robert Vanderbles

BIOGRAPHY OF ARTHUR DEMAR, JR

Art Demar. Jr is 58 years old and resides in Peaseleeville, New York.

Testimony of Arthur Demar, Jr.

My name is Art Demar, Jr., I am 58 years old, and I live in Peaseleeville, New York.

I am here today to talk about the services I received from the Legal Aid Society of Northeastern New York during the spring flooding in Plattsburgh this year.

Before the flooding I lived in a second floor apartment at Lakeside Apartments. I had lived in Lakeside for 2 and ½ years before the flooding.

When the flooding started, I was in the hospital for cancer treatment. Everyone was evacuated from Lakeside on May 7 and when I was released from the hospital on May 9, I wasn't allowed to return to my apartment because the first floor of the building was flooded. The Clinton County Department of Social Services put me up in a Plattsburgh motel rather than the emergency shelter because of my medical condition.

The Department of Social Services and other Lakeside residents told me that there was a person from Legal Aid at the emergency shelter to help people who lost their homes due to flooding. I went to the emergency shelter and met with Becky, the Legal Aid paralegal. I told her that I needed my security deposit and the rest of my May rent back so I could use it to find another place to live. Becky told me Legal Aid would send a letter to the Lakeside landlord demanding my prorated rent and my security deposit back.

Legal Aid sent a letter to my landlord demanding $1,064.52, which was my $600 security deposit and the rent from May 8 until May 31. As a result of the letter, the Lakeside landlord returned $832.26 to me. The landlord said I had to pay rent from May 8 until May 20 because I didn't get my belongings out of my apartment until May 21. I didn't think this was right because I was not allowed by the police to return to Lakeside and get my belongings until May 21.

I then talked to Dan, a lawyer at Legal Aid, who filed a small claims case against the landlord for the $232.26 in rent that the landlord refused to return to me. Dan and I went to Court together and at Court the landlord agreed to refund the rest of the money.

I used the money that the landlord returned to me to get new permanent housing in Peaseleeville.

Because of the services from the Legal Aid Society, the Department of Social Services did not have to spend money to help me relocate.

Buckmaster de Wolf

General Counsel, GE Global Research

Buckmaster de Wolf

Buckmaster (Buck) de Wolf is General Counsel of GE Global Research based in Niskayuna, New York. Prior to this role, Buck was Senior Counsel Litigation & Legal Policy for GE with responsibility for overseeing Intellectual Property Litigation for the company.

Prior to joining GE, Buck was a partner in the San Francisco Office of Howrey. Buck earned his JD from Boston College Law School, magna cum laude - Order of the Coif, his B.A. in Economics from Middlebury College, cum laude, and attended The London School of Economics and Political Science.

Summary of Testimony

I will discuss the important role of corporate pro bono programs and GE's approach to pro bono.

On behalf of GE, I want to thank Chief Judge Lippman and the Task Force to Expand Access to Civil Legal Services for inviting us to share the company's thoughts on the importance of pro bono legal services. This is a wonderful effort in partnership with many of New York's pro bono service providers to bring us together to discuss this critical issue.

We are all public interest lawyers in some fashion; some of us are full-time public interest advocates, while others strive to maintain a balance between more commercial pursuits and our pro bono commitment. We are part of one pro bono community, and we can and should learn from each other.

For me, my commitment to pro bono service and my work as a general counsel at a corporation are not at odds; rather, they inform and enrich each other. These days, there is a great deal of cynicism about big business. I believe that that attitude ignores both the socially useful benefits of business and, in turn, the value that socially responsible activities like pro bono can bring to the business side. At GE, we consciously work, on our own and with other major companies, to find practical ways of applying the aspirations of the Universal Declaration of Human Rights (the "UDHR ") in the business context and urging other businesses to do the same. In essence, the UDHR demands that we respect the dignity of every individual and contains several provisions which address the issue of equality and access to Justice. We strive to live by these principles because of our commitment to the values embedded in the Declaration, and also because we believe that a fair, just, and stable society – one anchored in the rule of law - is, frankly, better for business.

In the same vein, one of the most important aspects of my position is addressing compliance issues. Ensuring compliance with legal and ethical requirements these days is an area of growing complexity and concern for all in-house general counsel. Compliance, however, is more than simply not doing the wrong thing. It is also very much about affirmatively doing the right thing – taking ethical actions beyond mere compliance not only helps to resolve problems of individuals and communities, it also increases the company's long-term value. Pro bono and other forms of volunteerism, along with transparency, diversity, and sustainability should be a core value of all responsible and thoughtful institutions, and it aligns well with both societal value and business value.

I have found the several pro bono matters in which I have been involved – including fair housing, disability rights, juvenile issues, immigration issues, criminal rights and intellectual property – to be some of the most interesting and professionally enriching experiences in my legal career. I hope all lawyers, young and old, are able to enjoy and learn from those pro bono opportunities in the same way I have.

Finally, pro bono and volunteerism cannot be the only source of support for these low-income communities. Unfortunately, the need is too large. Millions of low-income New Yorkers are facing legal problems which they are ill-equipped to address. At the same time, civil legal aid providers are experiencing budget cuts and staff reductions due to the economic downturn. This is forcing legal aid programs across the state to turn away more eligible clients just when the need is at its highest level in years. Efforts like the Task Force to Expand Access to Civil Legal

Services is critical to shine a light on the funding needs of these organizations at this critical time.

GE's Pro Bono Effort

GE promotes responsible corporate citizenship and supports numerous volunteer efforts to this end. In keeping with this tradition, GE lawyers provide pro bono legal services in their communities, including New York. Moreover, GE lawyers, like all attorneys, bear a special responsibility to provide legal assistance. Rule 6.1 of the American Bar Association Model Rules of Professional Conduct provides that each lawyer "should aspire to render at least (50) hours of pro bono legal services per year."

Given the need for pro bono legal assistance, the ethical responsibility of all attorneys to perform pro bono service, and in keeping with GE's commitment to add to the well-being of the communities in which we operate, every GE attorney is encouraged to participate in pro bono service. In support of the company's pro bono efforts, GE has taken a leadership position in the Corporate Pro Bono Challenge, a project developed by the Pro Bono Institute and the American Corporate Counsel to enhance participation of in-house attorneys in pro bono service. We pledge to encourage at least 50% of our legal staff to undertake pro bono services per year. We are also working to develop pro bono opportunities outside the U.S. and expect to develop a more extensive non-U.S. platform in the near future.

The willingness to volunteer legal services to the community demonstrates a level of professionalism valued by GE. Participation in the pro bono program increases awareness of the diversity in the community, improves professional skills, and is consistent with GE's tradition of contributing to communities.

At GE, we emphasize that there are many ways to participate in the pro bono effort. While pro bono matters often call upon legal training, they do not all involve the practice of law per se. The Model Rule mentioned above provides that pro bono services may include "charitable, religious, civic, community, governmental and educational organizations in matters designed primarily to address the needs of persons of limited means . . . " The Comment to that Rule "recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession[,]" including service on bar association committees, pro bono boards, legal services programs, or as a continuing legal education instructor. So, GE in-house counsel have many opportunities to contribute their legal skills in ways that will benefit the community.

We also understand that pro bono matters are very important and should be accorded the necessary time and attention. At GE, pro bono work may be undertaken during the workweek, so long as that work does not interfere with other assigned responsibilities. And we insist that pro bono matters be handled with the same level of competence that applies to regularly assigned duties. At GE, no attorney is adversely affected by a decision to participate in pro bono, or penalized for not participating. On the other hand, pro bono work is viewed as a plus and each year our General Counsel honors one or more lawyers for his/her outstanding pro bono contributions. On an annual basis, GE tracks the total number of pro bono lawyers in

each business to assure that we exceed the 50% participation standard. Our business general counsels view their respective participation rates as a health form of competition to raise the overall level of projects or matters undertaken by company lawyers and legal support staff.

Currently, many GE employees volunteer for a wide range of community-based programs. Particularly notable are programs that address needs in the areas of public education, children's health, asylum applications, domestic violence, homelessness and hunger, which parallel the company's extensive charitable giving efforts. GE works with many New York based pro bono service providers, including the Pro Bono Partnership, Bronx Defenders, Lawyers Alliance for New York, Kids in Need of Defense (KIND), the Legal Aid Societies of New York City and Northeastern New York, Medical-Legal Partnerships, and the Public Interest Law Institute.

To coordinate the Company's support for pro bono service, GE established a company-wide Pro Bono Coordinating Committee. The Coordinating Committee is chaired by a senior GE Corporate legal counsel and includes representatives appointed from each of the operating businesses and representatives from the geographic poles. The Committee confers periodically to deal with operational or policy issues, to review and revise the source list of pro bono service agencies, and to assess the progress of the pro bono program in general and within each business. We have recently instituted a self-insurance program to cover lawyers working on qualifying projects for legal malpractice where such coverage is not otherwise available.

Many of the law firms we regularly retain have developed their own pro bono programs. The larger firms are familiar with the various pro bono sources in their communities, employ lawyers who have developed in-depth expertise in many substantive pro bono areas, sponsor

pro bono training and orientation programs, and administer legal clinics and other pro bono projects. GE lawyers are encouraged to partner with law firms with which the company works, so that we can take full advantage of their staffing size, expertise, and infrastructure to make our pro bono efforts as effective and efficient as possible.

Conclusion

The problems in this nation – especially after the recent sharp economic downturn and the concerns of the post-9/11 era – are profound, and, as lawyers and legal staff, we must help to rebuild our nation's fiscal safety net for the poor and protect the integrity of everyone's individual and constitutional rights.

At GE, we are working hard to do our part by involving our lawyers throughout the world in pro bono and corporate citizenship efforts.

Thank you.

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Michael Hertz

Chief Marketing and Business Development Officer,
White & Case

Task Force to Expand Access to Civil Legal Services in New York

Summary of Testimony by Michael Hertz

Background

I graduated from Columbia University, School of Law in 1988 and started my career in New York as an associate and then a litigation partner at Latham & Watkins. In 1998 on a leave of absence from my practice, I co-founded and then ran a new non-profit organization called Pro Bono Net which uses innovative technology and collaborations to increase access to justice. Pro Bono Net is now used by tens of thousands of lawyers across the United States – including almost 20,000 pro bono and legal aid lawyers here in New York State. Since 1998, Pro Bono Net has worked with almost every civil legal services organization in the state on projects like LawHelp New York and other innovative projects, including the online Do-It-Yourself (DIY) forms initiative of the New York State Courts Access to Justice Program. I still serve as a board member of Pro Bono Net.

In 2005, I moved to London to join Freshfields Bruckhaus Deringer, a London headquartered global law firm and served as the firm's Global Chief Knowledge Officer. The mission of the knowledge management function at a firm like Freshfields is to ensure that the firm's lawyers across a global network could work together efficiently and effectively and included significant work with technology that could support collaboration and knowledge sharing.

I recently returned to New York City with White & Case and am responsible for all client-related initiatives and programs across the global firm including client-facing technology.

Summary of Testimony

Drawing on my background in both the private law firm and non-profit legal sectors, I will discuss the importance of technology for expanding access to civil legal services. Over the course of the last 20 years, technology has transformed the ways that lawyers work and how they collaborate across organizations and geography. Technology – if implemented well – can also create new ways to deliver service and reach people who might otherwise go un-served.

I will briefly review the advance of technology since I began practicing in 1988. I will also provide some comparisons between the investments being made in the private sector as well as those being made in the legal aid sector.

I will then talk about three, inter-related ways that technology has expanded and can continue to expand access to civil legal services. The first area is efficiency. Doing more with less or the same resources is the main driver behind investments in technology in the legal sector. I will discuss some of the key systems and investments that support efficient working. The second is quality or effectiveness. Technology underpins quality delivery. Access to the best online research, e-discovery, collaboration and knowledge management systems (to name just a few systems) is critical to providing quality services. Third, I will discuss ways that technology is leading to new and exciting innovations in the way that services are delivered and allowing civil legal aid groups and courts to assist many more people with the limited resources that they have.

Finally, I will say a few words about funding and more particularly funding innovation. I will draw on the experience of the Legal Services Corporation's Technology Initiatives Grant (TIG) program over the past ten years to illustrate how significant innovation and broad adoption of best practices could be generated with relatively modest amounts of grants.

Thank you, Chief Justice Lippman and members of the panel, for the opportunity to speak today on the topic of technology and its important role in expanding access to justice.

My Background

My name is Michael Hertz, and in 1988 I graduated from Columbia University, School of Law and started my career in New York as an associate and then a litigation partner at Latham & Watkins. In 1998 on a leave of absence from my practice, I co-founded and then ran a new non-profit organization called Pro Bono Net which uses innovative technology and collaborations to increase access to justice. In 2005, I moved to London to join Freshfields Bruckhaus Deringer, a London headquartered global law firm and served as the firm's global Chief Knowledge Officer. The mission of the knowledge management function at a firm like Freshfields is to ensure that the firm's lawyers across a global network could work together efficiently and effectively and included significant work with technology that could support collaboration and knowledge sharing. I recently returned to New York City with White & Case and am responsible for all client-related initiatives and programs across the firm including client-facing technology.

How Technology Can Expand Access to Justice

In my experience in the private law firm and non-profit legal sectors, I have seen the immediate and direct impact that technology has had on the practice of law. When I started practice in 1988, there were no personal computers on the lawyers' desks. I was given a Dictaphone. Then came voicemail, email, listservs (a type of group email that were and still are used extensively by lawyers) and in the mid-1990s the advent of the worldwide web which supported new ways of collaborating and sharing knowledge. Today we are witnessing a second wave of web-based tools – frequently referred to as social media and Web 2.0. These new tools -- which continue to lower the barriers for sharing information -- include blogs, wikis, Facebook, Twitter and YouTube among others. In addition, mobile technology is having an enormous impact with lawyers now able to access significant resources with a phone or tablet like the iPad.

These technologies have significantly changed the way law is practiced, how services are delivered and how lawyers work together. It has changed how lawyers conduct research. It has changed how lawyers access training and leverage the power of their law firm's network or a larger network of advocates in the case of Pro Bono Net and the many active listservs within the legal services community. It has changed how lawyers work together as teams. And in the case of legal aid and access to the courts, technology now allows us to reach hundreds of thousands of people with information that can help them find a lawyer, create a form for the court and educate themselves about their rights and the process for protecting these rights.

Because of the importance of technology to the practice, significant investments are now made every year in building new tools and updating the existing tools. Technology is now seen as an essential building block of the modern law office. For example, according to industry experts like Hildebrandt-Baker Robbins**,** Information Technology (IT) spending as a percent of gross revenues for large law firms during 2007-2009 ranged from 3.0% to 5.7%. IT spending per lawyer for firms ranged from $16,000 to $40,000 in this same time period. According to the Legal Services Corporation (LSC), federally funded legal services programs are spending significantly less per lawyer, approximately $7,000 per lawyer. The difference raises serious questions about whether the legal aid groups can dedicate enough investment in technology under current circumstances. The level of legal aid spending on technology is worthy of further investigation, as are ways to maximize the budgets that are available.

Despite having far more limited resources than the private law firms, the legal aid sector in New York has distinguished itself in regard to the use of technology to increase access to justice and the creation of innovative collaborations among programs to build new tools that can be used to reach far more people. Below are examples of technology tools and programs that have been developed in order to increase efficiency, to ensure quality and effectiveness and to reach many more people than is possible without technology innovation and investment.

1. EFFICIENCY

There is a range of technologies that allow attorneys to do much more in much less time. These range from hardware such as personal computers and cell phones, to software such as Outlook and other office technologies, donor databases and financial software, document and case management systems, intranets and internets, broadband, phone systems, etc. These are the fundamental building blocks for a modern, well-run organization and it requires an ongoing investment in new systems and software. Legal aid groups obviously struggle to support these ongoing investments in core technologies that allow their lawyers to work as efficiently as possible.

Limited resources, however, have not stopped the legal aid community from developing applications to drive efficiencies and suit the particular needs of providing civil legal services to the poor. For example, case management and practice management software have become essential components of well run legal practices and deliver significant efficiency gains. This software helps keep track of thousands of cases from intake through resolution. Unfortunately standard commercial applications did not meet the specific needs of legal aid organizations. In response, in 1993 the Western New York Law Center (WNYLC) created and released the WNYLC TIME software, a case-management system created specifically to meet the needs of legal services organizations and the demands of its funders for specific reporting requirements. The TIME system created an integrated and

comprehensive workflow from intake to matter resolution that captured client information that was essential for eligibility determination, case assessment, deadline management, and case closing information required by major funders including the Legal Services Corporation and the IOLA Fund. The TIME system is used by legal services organizations throughout the state, and has been adapted for use in other states as well.

The creation of the TIME system, which is continuously updated to meet changing needs and demands, has allowed New York's many legal services programs to access a case management system that meets their needs without each program investing in separate research, development and implementation of such a system. Today, organizations continue to explore the ways technology can enhance efficiency. Legal Assistance of Western New York is currently piloting efforts to implement an online intake system that will further expedite information gathering and eligibility assessment, while allowing low-income New Yorkers to initiate the intake process at any time. In addition, LawHelpNY and Pro Bono Net continue to explore using online document assembly technology to expedite the process of preparing legal forms and pleadings, allowing legal aid attorneys and other non-legal advocates to serve more clients in less time.

2. EFFECTIVENESS AND QUALITY

Internet technology has created unprecedented access to information and has created new channels of communication that enable collaboration among lawyers and other advocates. A range of technologies now exist that allow lawyers to access the collective knowledge of hundreds of advocates and essential training and best practice. These technologies are critical to maintaining the effectiveness and quality of the services delivered by legal aid staff and pro bono lawyers.

In 1999, Pro Bono Net launched websites that provide the pro bono and legal aid community with online libraries of training materials, sample documents, and practice tools created by leading experts from the civil legal services community. In 2010 Pro Bono Net New York had nearly 50,000 unique visitors, and had over 4 million page views, or an average of nearly 11,000 per day. And in 2000, the Greater Upstate Law Project (now the Empire Justice Center) created a website that provided access to in-depth research and resources for legal services staff. In 2010-11 the Empire Justice website (www.empirejutice.org) had 56,200 unique visitors and over 4.1 million "hits" on its information or an average of 11,300 per day. Annual visits to the website now top 3.6 million or an average of 9,900 per day.

The impact of these technologies on the quality of the service that is delivered is difficult to measure but it must be significant judging by the investments that private firms make in similar technology platforms. Likewise, video recording and online video streaming have allowed the creation of online repositories of recorded expertise, training and knowledge that are accessible by advocates day or night, from anywhere.

The Western New York Law Center, as the technology backup center for New York's legal services program, currently hosts a number of substantive law "listservs" as a way of facilitating peer-to-peer networking between and among legal services staff. These well-used electronic communication systems allow new advocates to post case related questions, give experienced advocates a way of easily collaborating on more complicated cases, and offer the community as a whole a way of connecting and learning from each other in their day-to-day work.

As a way of expanding the resources available to front-line legal services staff, WNYLC and the Empire Justice Center have also created a number of on-line resources for the community, including the Fair Hearing Bank which currently makes over 2,900 searchable decisions and related information available to its 3,400 registered users. The Public Benefits database current has decisions, pleadings, briefs and related materials in over 700 cases available to 937 registered users. Given the unique nature of poverty law, these are resources needed by the legal services community that are simply not available in and created by the private market.

The Online Resource Center had 1.1 million page views in 2010-11 calendar year and 431,000 visits, an increase of 10,000 visits from the prior year. This data is separate from and in addition to the statistics for the use of the Empire Justice Center general website. Again, this is an area where targeted investments in the creation of communitywide resources have been an effective and powerful use of limited resources.

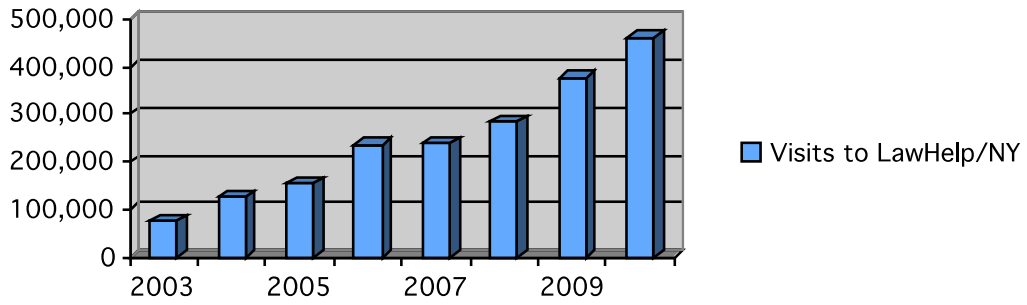
All of these tools are critical to ensure that legal aid advocates are properly trained and supported so that they can practice at the highest level possible. Likewise, providing volunteer lawyers easy access to training, experts and online libraries of practice materials and templates go a long way to lowering the hurdles to participation by private attorneys – thereby increasing volunteer contributions -- and ensure that these efforts are effective in helping low income clients.

3. INNOVATIONS TO EXPAND THE REACH OF LEGAL AID

The gaps in the unmet needs for civil legal services are enormous and require innovative solutions. One approach which has gained traction is to develop programs that use technology to extend significantly the reach of existing legal aid groups and advocates. These programs change the way services are delivered and accessed.

So whether it is bridging the hundreds of miles between a client in a rural area and a legal advocate in a city or providing access to information for non-English speakers or low literacy individuals, new programs are now coming into place that greatly expand access for these populations.

The best example of this today is LawHelp New York --www.lawhelp.org/ny -- an online resource that helps low-income New Yorkers find free legal aid programs in their communities, answers to questions about their legal rights, court information, links to social service agencies and more. Coordinated by a consortium of dedicated advocates from legal services organizations across the state, the visits to LawHelp New York are now approaching a half million every year. See the chart below.



Moreover, the LawHelp New York Consortium has worked hard to expand access for non-English speakers. For example, the site now has resources in 37 languages. In addition, the participating programs have developed a feature called "LiveHelp" -- a text-based chat service that integrates with LawHelp New York and allows volunteer "operators" to guide visitors around the website.
LiveHelp seeks to support people who visit the LawHelp website, are eligible for legal aid, but suffer literacy and language challenges. The program also makes innovative use of non-legal volunteers -- law students and lay volunteers – who serve as LiveHelp "operators."

Online document assembly technology also plays an important role in increasing access to the courts. The New York Courts' Access to Justice Program has created numerous Do-It-Yourself online court forms hosted on the court's website that have allowed unrepresented low-income New Yorkers to use a guided, interactive interview to learn about the legal process and generate appropriate court forms for family law, trusts and estates, consumer debt, and housing cases. In the 2nd quarter of 2011, nearly half of the total recorded petitions to vacate a default judgment in a consumer debt case filed in the New York City Civil Courts were generated using the Court's Do-it-Yourself forms. The New York Courts also has a new initiative to make the process of petitioning for an order of protection much simpler by implementing electronic filing for these petitions in Family Court.

Technology can also be used to increase the ability of legal services and pro bono programs to deliver assistance to rural communities, by effectively bringing rural clients and attorneys based in urban centers together. One program that is being developed in partnership with the courts in California will use document assembly technology to allow advocates to assist domestic violence survivors in rural areas to prepare petitions, which will then be transmitted to and reviewed by city-based

legal services or pro bono attorneys prior to filing. Another initiative in California's Central Valley will enable law student volunteers in urban settings, supervised by a legal services attorney, to staff rural virtual law clinics using video chat.

RECOMMENDATIONS FOR FURTHER INNOVATION

The programs and tools mentioned above have been developed with funding from many different sources and through collaboration among the various parts of the access to justice network in New York State. Their reach – while significant – only scratches the surface and the potential to substantially increase access to critical information and services continue to be enormous; however, additional and reliable investments are required.

Here are a number of suggestions:

- Conducting research into the IT investments made by legal aid groups and private law firms, the technologies that the legal aid groups need to fulfill their mission and the potential creation of standards and best practice.
- Continued development of resources in efforts to improve internal efficiencies within legal services programs and to expand the external reach of programs and services to those in need. This could include expansion of efforts to bridge language gaps, continued innovations to reach hard-to-serve populations, including those in rural areas, and expanded use of technology to assist legal services staff in their work, including access to emerging technologies.
- The state courts and legal aid groups – taken together – have significant purchasing power when it comes to hardware and software. With leadership from the state courts and legal aid groups, and standards in place, courts and legal aid groups could maximize the return on their investments in the core technology and tools that each organization needs.
- Finally, in order to insure that innovation continues, the state should explore establishing a New York State version of the Technology Initiatives Grant ("TIG") program that has been in place for a number of years through LSC. The TIG program has made grants of approximately $3.5 million a year for each of the last 12 years. Through relatively small investments, LSC has been able to provide the seed capital for an enormous amount of innovation. This program should be reviewed to see whether a similar model should be established in New York State.

Thank you again for inviting me to provide input to the Task Force.

Michael Hertz

Rasaan Kellam

Client of Legal Aid Society of Northern New York,
accompanied by Robert Vanderbles

Summary of Testimony and Biography of Rasaan Kellam

Mr. Kellam is 58 years old and lives in the City of Schenectady. He works as a sales representative with a local company. Mr. Kellam will testify regarding his experience with the Legal Aid Society of Northeastern New York and the eviction for nonpayment of rent they worked together to prevent.

Testimony at the Chief Judge's Hearings on Civil Legal Services

My name is Rasaan Kellam and I speak today as a former client of the Legal Aid Society of Northeastern New York. For the past six years I have been stably housed, employed, and sober. I was able to achieve this despite forty two years of abusing cocaine, multiple instances of homelessness, and a short time in jail. After four different stays in city missions I hope to never be homeless again. Through the assistance of a variety of community agencies I have been given the opportunity to put my life on the right track. Narcotics Anonymous helped me surrender to and own my addiction. The halfway house assisted me with obtaining employment. Mohawk Opportunities has provided me with a rental supplement and case management services, as they do for a number of individuals with disabilities. I owe my thanks to many people for these successes, and I thank the Legal Aid Society for helping me to protect these gains that have transformed my life.

Recently, my landlord tried to evict me for nonpayment of rent. I admit that I owed one month of rent, and with my next paycheck I planned to pay my landlord what was due. I had asked my landlord to give me until the day after court, when I would receive my paycheck, to pay him. My landlord would not agree to give me the one day I needed. I was afraid I would become homeless again.

I did not know how the system worked. I contacted the Legal Aid Society of Northeastern New York and met with Rob Vanderbles the next day. Mr. Vanderbles saw that my landlord had not given me a ten day notice to cure, followed by a thirty day termination notice, even though

he had agreed to do so in the lease we signed. Mr. Vanderbles represented me in court and moved to dismiss the case because my landlord had not followed the termination procedure we had agreed to in the lease. Mr. Vanderbles also moved to strike the demand for $150.00 of late fees because there was no lease term allowing late fees.

All I wanted was one day to pay my landlord with my next paycheck, and with the defenses raised by Mr. Vanderbles my landlord agreed. I used my next paycheck to pay my landlord and we were able to stop my eviction. The Legal Aid Society enabled me to help myself and preserve the stable lifestyle I have worked hard to obtain. From the beginning the Legal Aid Society guided me through the process and gave me peace of mind in a highly professional manner. My best interest was their only priority.

If I had been evicted I would have lost my housing, my rental supplement, my job, and perhaps my sobriety. Returning to homelessness would be a lifestyle change that I could not cope with. Beyond representing me in court, Rob Vanderbles took the time to discuss strategies and guidelines for avoiding this situation again. I now budget my income to ensure that I pay rent on time every month so that I will not be at risk of homelessness again.

I am grateful to Legal Aid and hope that you will do all you can to ensure that agencies like Legal Aid have the staff and resources to help people like me maintain their housing, their jobs and keep their lives stable and on track.

Martin J. Mack

Executive Deputy Attorney General for Regional Affairs, on behalf of
Eric Schneiderman, Attorney General of the State of New York

TESTIMONY BY MARTIN J. MACK,
EXECUTIVE DEPUTY ATTORNEY GENERAL
TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES
TO BE DELIVERED OCTOBER 3, 2011

AS PREPARED FOR DELIVERY

GOOD MORNING, AND THANK YOU FOR INVITING ATTORNEY GENERAL SCHNEIDERMAN TO ADDRESS TODAY'S HEARING ON ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK STATE. UNFORTUNATELY, HE WAS UNABLE TO ATTEND, BUT I AM HONORED TO SPEAK ON THIS CRITICAL ISSUE ON BEHALF OF OUR OFFICE.

ATTORNEY GENERAL SCHNEIDERMAN WOULD LIKE TO THANK JUDGES PFAU AND CARDONA, AND OUR NEW YORK STATE BAR ASSOCIATION PRESIDENT VINCENT DOYLE, FOR THEIR LEADERSHIP. AND HE'D ESPECIALLY LIKE TO THANK CHIEF JUDGE LIPPMAN FOR PROVIDING THE IMPETUS FOR THESE HEARINGS. JUDGE LIPPMAN'S EFFORTS ON THESE ISSUES HAVE BEEN NOTHING SHORT OF EXTRAORDINARY.

THE HISTORY OF THE LEGAL SERVICES MOVEMENT IN OUR COUNTRY BEGAN AS A REFLECTION OF THE WIDESPREAD RECOGNITION BY THE LEGAL PROFESSION THAT WE HAD A SPECIAL OBLIGATION TO ENSURE ACCESS TO JUSTICE WAS AVAILABLE TO ALL, REGARDLESS OF ECONOMIC STATUS.

FOR DECADES, LEGAL SERVICES LAWYERS HAVE HELPED TO ACHIEVE MAJOR VICTORIES IN EVERY ASPECT OF THE FIGHT TO PROTECT THE RIGHTS OF THE DISADVANTAGED. THEY BROUGHT AND WON CASES AFFIRMING THE CONSTITUTIONAL RIGHTS OF THE POOR AND HELPED THEM ENFORCE THEIR RIGHTS TO GOVERNMENT BENEFITS, THE HONEST TREATMENT OF CONSUMERS AND ACCESS TO HEALTH CARE. AND THEY ADVOCATED FOR LEGISLATIVE CHANGES WHEN THE COURTS COULDN'T HELP.

THIS ALL BEGAN TO CHANGE IN THE 1980'S WHEN THE LEGAL SERVICE CORPORATION SAW ITS FUNDING SLASHED AND ITS MANDATE ATTACKED. THE BUDGET FOR LSC HAS BEEN CUT, AT THE SAME TIME THE NEED FOR ITS SERVICES HAS GROWN. TODAY, THE RECESSION HAS CAUSED THE RANKS OF THE WORKING POOR AND THESE NEEDS TO GROW EVEN FASTER. WHEN THE LOSS OF A JOB, FORECLOSURE ON ONE'S HOME, OR CUSTODY OF ONE'S CHILD IS AT STAKE, JUSTICE DEMANDS NOTHING LESS THAN ADEQUATE REPRESENTATION. AS THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES SO CLEARLY AND ABLY ILLUSTRATED IN ITS REPORT TO CHIEF JUDGE LIPPMAN LAST YEAR, WE ARE FALLING SHORT OF THIS IDEAL IN NEW YORK STATE.

NATIONWIDE, THE LSC ESTIMATES THAT FOR EVERY CLIENT SERVED BY AN LSC-FUNDED PROGRAM, ANOTHER PERSON WHO SEEKS HELP IS TURNED DOWN BECAUSE OF INSUFFICIENT RESOURCES. HERE IN NEW YORK, THE OFFICE OF COURT ADMINISTRATION ESTIMATES THAT MORE THAN 2.3 MILLION NEW YORKERS ARE UNREPRESENTED AS THEY ATTEMPT TO NAVIGATE OUR CIVIL JUSTICE SYSTEM. THE FUND FOR MODERN COURTS REPORTS THAT IN 2009, ALMOST 3 MILLION LOW-INCOME NEW YORKERS FACED AT LEAST ONE LEGAL PROBLEM WITHOUT REPRESENTATION, AND 1.2 MILLION FACED THREE OR MORE MATTERS WITHOUT ACCESS TO COUNSEL.

LET ME FOCUS FOR A MOMENT ON ONE ISSUE THAT OUR OFFICE IS WORKING ON RESOLVING - THE MORTGAGE CRISIS THAT HAS LED TO TENS OF THOUSANDS OF NEW YORKERS BATTLING TO KEEP THEIR HOMES. EVERY FORECLOSURE REPRESENTS A THREAT TO SOMEONE'S FUTURE.

NEW YORKERS THREATENED WITH FORECLOSURE HAVE ONLY THE PROMISE OF A FAIR LEGAL SYSTEM TO PROTECT THEM FROM BEING RENDERED HOMELESS AND HAVING THEIR AMERICAN DREAM DIE AN UNJUST, AND UNTIMELY DEATH. AND YET WE KNOW THAT ALL TOO OFTEN THE SYSTEM IS

NOT FAIR.

TOO MANY HOMEOWNERS HAVE TO "GO IT ALONE" WHEN FACING A FORECLOSURE ACTION BECAUSE OF THE LACK OF LEGAL COUNSEL. EVEN WITH SPECIAL STATE LEGISLATIVE FUNDING FOR FORECLOSURE PREVENTION SERVICES AND THE SURGE OF *PRO BONO* ASSISTANCE, ACROSS THE STATE, 44 PERCENT OF NEW YORKERS FACING FORECLOSURE LACK LEGAL REPRESENTATION.

THE LACK OF INDIVIDUAL REPRESENTATION IN FORECLOSURE ACTIONS IS ONE REASON WE HAVE SEEN SYSTEMIC ABUSES OF THE LEGAL SYSTEM BY LENDERS AND DEBT COLLECTORS.

WE'VE ALL HEARD HARROWING TALES OF ABUSES--INCLUDING FORECLOSURE ACTIONS BROUGHT AGAINST HOMEOWNERS WHO ARE ACTUALLY UP-TO-DATE ON THEIR MORTGAGE PAYMENTS. A RECENT REVIEW OF BANKRUPTCY FILINGS IN THE FEDERAL DISTRICT COURTS FOR THE SOUTHERN AND EASTERN DISTRICTS OF NEW YORK BY THE *NEW YORK POST* FOUND THAT 92% OF CREDITORS ASSERTING THE RIGHT TO FORECLOSE AGAINST BANKRUPT FAMILIES LACKED THE PROPER CHAIN OF TITLE FOR THE PROPERTY THEY WERE SEIZING.

FOR EVERY ABUSIVE CASE UNCOVERED, THERE ARE DOZENS UPON DOZENS OF HOMEOWNERS AND, SAD TO SAY, FORMER HOMEOWNERS, WHO HAVE BEEN STEAMROLLED BECAUSE THEY DID NOT HAVE ADEQUATE REPRESENTATION. ABUSES SUCH AS ROBO-SIGNING, SEWER SERVICE, AND IMPROPER LEGAL DOCUMENTATION ONLY HAPPEN BECAUSE LENDERS AND DEBT COLLECTORS ARE ABLE TO ASSUME THAT THE OVERWHELMING MAJORITY OF HOMEOWNERS WON'T HAVE ATTORNEYS TO FIGHT BACK.

THE RECENT REFORMS ENACTED BY JUDGE LIPPMAN AND JUDGE PFAU -REQUIRING LAWYERS FOR LENDERS TO AFFIRM THAT THEY HAVE TAKEN

REASONABLE STEPS TO VERIFY THE ACCURACY OF THEIR PAPERS IN RESIDENTIAL FORECLOSURES - WERE NEEDED IN LARGE PART BECAUSE OF THE LACK OF PRIVATE COUNSEL IN INDIVIDUAL CASES TO IDENTIFY AND OBJECT TO FALSE FILINGS. AND TO THE SURPRISE OF NO ONE, THE NEWLY ENACTED REFORMS DRAMATICALLY REDUCED FORECLOSURE FILINGS IN NEW YORK. OUR OFFICE LOOKS FORWARD TO BEING INVOLVED IN THE DEFENSE OF THIS RULE.

BUT WE MUST DO MUCH MORE. THE THREAT OF FORECLOSURES REMAINS ALL TOO REAL FOR MANY HOMEOWNERS. THE FEDERAL RESERVE BANK OF NEW YORK REPORTS THAT, AS OF MARCH OF THIS YEAR, ROUGHLY 10% OF RESIDENTIAL MORTGAGES IN NEW YORK CITY, THE NINE COUNTIES OF THE HUDSON VALLEY, AND LONG ISLAND ARE EITHER IN FORECLOSURE OR MORE THAN 90 DAYS DELINQUENT. AND THE PAIN IS ACUTELY CONCENTRATED IN SOME OF THE POOREST AREAS OF OUR STATE, WHERE THE NEED TO PROVIDE CIVIL LEGAL ASSISTANCE IS GREATEST.

ONE OF OUR OFFICE'S TOP PRIORITIES IS TO RESTORE NEW YORKERS' FAITH IN THEIR PUBLIC SECTOR INSTITUTIONS.

WE BELIEVE FIRMLY THAT ONE OF THE BEST WAYS TO RESTORE FAITH IN OUR STATE GOVERNMENT IS TO ENSURE THAT TAXPAYER DOLLARS ARE WELL-SPENT AND THAT WE ROOT OUT WASTE WHEREVER IT EXISTS. EVERY PUBLIC DOLLAR WASTED IS A DOLLAR LOST FOR CRITICAL SERVICES LIKE HEALTH CARE AND HOUSING. THAT IS WHY ATTORNEY GENERAL SCHNEIDERMAN ESTABLISHED A NEW "TAXPAYER PROTECTION BUREAU" IN THE OFFICE OF THE ATTORNEY GENERAL TO TARGET CORRUPT CONTRACTORS, PENSION CON-ARTISTS, AND LARGE-SCALE TAX CHEATS WHO RIP-OFF NEW YORK STATE GOVERNMENT AND ITS TAXPAYERS.

LEGAL SERVICE ATTORNEYS ARE VITAL PARTNERS IN THE EFFORT TO SAVE TAXPAYER DOLLARS. SUPPORTING THEM IS A WISE, LONG-TERM INVESTMENT

FOR NEW YORK, AS THEY HELP TO MAKE OUR JUDICIAL SYSTEM MORE EFFICIENT AND TO ACHIEVE BETTER RESULTS FOR ALL PARTIES. WITH THE AID OF COUNSEL, CASES ARE RESOLVED EARLIER, UNNECESSARY ADJOURNMENTS ARE AVOIDED, AND COSTLY TRIALS CAN BE AVERTED. JUDGES AND COURT PERSONNEL SPEND LESS TIME EXPLAINING PROCEDURAL MATTERS TO PARTIES WITH COUNSEL THAN TO THOSE WHO REPRESENT THEMSELVES *PRO SE*.

EFFECTIVE CIVIL COUNSEL FOR THE INDIGENT AND THE WORKING POOR ALSO HAS DIRECT AND TANGIBLE BENEFITS FOR STATE AND LOCAL GOVERNMENTS. PREVENTING EVICTIONS AND FORECLOSURES HELPS TO AVERT HOMELESSNESS; KEEPING FAMILIES TOGETHER AVOIDS COSTLY FOSTER CARE PLACEMENTS; AND OBTAINING FEDERAL DISABILITY BENEFITS AND UNEMPLOYMENT INSURANCE CAN REDUCE OR SUPPLEMENT STATE AND LOCAL PUBLIC ASSISTANCE BENEFITS.

NEW YORK STATE IS QUITE LITERALLY LEAVING HUNDREDS OF MILLIONS OF DOLLARS "ON THE TABLE" EVERY YEAR IN UNCLAIMED FEDERAL BENEFITS TO WHICH OUR CITIZENS ARE RIGHTFULLY ENTITLED. OUR STATE LOSES OVER $400 MILLION ANNUALLY BECAUSE UNREPRESENTED NEW YORKERS LOSE THEIR RIGHT TO ACCESS FEDERAL PROGRAMS LIKE VETERANS BENEFITS AND DISABILITY PAYMENTS.

FINALLY, IT IS OUR OFFICE'S DUTY TO DEFEND THE STATE AND ITS AGENCIES IN A WIDE ARRAY OF ACTIONS AND PROCEEDINGS. OFTEN, OUR OFFICE FINDS ITSELF IN AN ADVERSARIAL POSTURE WITH LEGAL SERVICES LAWYERS. WHILE WE MAY NOT ALWAYS AGREE ON THE MERITS OF A GIVEN DISPUTE, THEY ARE ABLE AND WORTHY OPPONENTS. AND THEIR INVOLVEMENT IN THE PROCESS RESULTS IN BETTER OUTCOMES FOR ALL PARTIES. OUR OFFICE HAS WORKED OPPOSITE LEGAL SERVICES LAWYERS TO ACHIEVE POSITIVE SETTLEMENTS – AND POSITIVE POLICY SOLUTIONS – FOR THE STATE AND ITS

CITIZENS IN AREAS SUCH AS JUVENILE JUSTICE, MENTAL HEALTH, AND PRISON REFORM.

AND LEGAL SERVICES LAWYERS ARE NOT ONLY OUR ADVERSARIES; THEY ARE ALSO OUR PARTNERS. LAWYERS WORKING ON THE GROUND IN COMMUNITIES SERVE AS THE "EYES AND EARS" OF OUR STATE GOVERNMENT, INCLUDING THE OFFICE OF THE ATTORNEY GENERAL. THEY HELP TO IDENTIFY SYSTEMIC PROBLEMS IN COMMUNITIES THROUGHOUT THE STATE, AND THEY PROVIDE AN "EARLY WARNING SYSTEM" FOR EMERGING PROBLEMS.

LAWYERS IN OUR OFFICE ROUTINELY WORK WITH LEGAL SERVICES ATTORNEYS IN DEVELOPING AFFIRMATIVE CASES. OUR OFFICE'S LABOR BUREAU RECEIVES COMPLAINTS FROM LAWYERS ABOUT VIOLATIONS OF WORKERS RIGHTS AND DISCRIMINATION IN THE WORK PLACE. ATTORNEYS IN OUR CIVIL RIGHTS BUREAU WORK WITH LEGAL AID LAWYERS TO IDENTIFY UNLAWFUL DISCRIMINATION IN THE WORKPLACE, HOUSING, AND SCHOOLS. AND OUR HEALTHCARE BUREAU RECEIVES TIPS AND LEADS THAT HELP IT TO ADDRESS SYSTEMIC PROBLEMS IN HEALTHCARE DELIVERY. OFTEN, IT IS INFORMATION FROM LEGAL SERVICES LAWYERS THAT ENABLES US TO IDENTIFY AND ADDRESS PATTERNS OF WRONGDOING BEFORE THE PROBLEMS BECOME WIDESPREAD.

THANK YOU FOR GIVING US THE OPPORTUNITY TO TESTIFY TODAY. WE MUST ENSURE THAT ALL NEW YORKERS IN CASES INVOLVING THE FUNDAMENTAL STRUGGLES OF SOCIETY CAN GAIN MEANINGFUL ACCESS TO THE LEGAL SYSTEM. ON BEHALF OF ATTORNEY GENERAL SCHNEIDERMAN, WE LOOK FORWARD TO WORKING WITH THE TASK FORCE TO EXPAND ACCESS TO LEGAL SERVICES, WITH OUR OUTSTANDING COLLEAGUE CHIEF JUDGE LIPPMAN, AND WITH OUR PARTNERS IN BOTH THE LEGAL PROFESSION AND THE LEGISLATURE TO ACHIEVE THIS NOBLE GOAL.

Dana P.

Client of The Legal Project, accompanied by
Lorraine Silverman

Bio For Dana P., Client of The Legal Project

Appearing with her attorney, Lorraine Silverman, Esq., Staff Attorney, The Legal Project

Dana P., has been a special education teacher for 20 years. She is the single mother of 2 children who endured severe abuse by her former husband for a number of years before he was finally incarcerated in Marcy Prison for stalking, menacing and threatening to kill her. He was diagnosed as mentally ill and was not been deterred by numerous arrests and orders of protection, even damaging two GPS ankle units intended to keep his whereabouts known to protect her and her children. He also threatened to "blow up the probation building and kill everyone in it", and threatened the police, court officers and anyone who was helping her. She desperately needed to legally divorce him, and she first engaged a private attorney because, on paper, she had an income that precluded her from obtaining most civil legal services assistance, even though her marriage to this man left her in financial ruin. She spent $3000 that she could not afford on that attorney but before she could successfully divorce her husband, the attorney quit her case because her husband repeatedly threatened him, too. She found out about The Legal Project, and thankfully, they were able to step in and complete the divorce. Her attorney at The Legal Project understood what she was going through, was aware of the special dynamics of domestic violence and was able to help her finally get free of her horribly abusive and frightening husband. If not for the services of The Legal Project, she would still be legally married to a man who made her life a living Hell.

Debra L. Schimpf

Executive Director, Schenectady Community Action Program

Biographical sketch of
Debra L. Schimpf
Executive Director
Schenectady Community Action Program, Inc.

Debra L. Schimpf is the Executive Director of Schenectady Community Action Program (SCAP), one of Schenectady's largest nonprofit providers of services to low income people. Her involvement with SCAP began in 1988 when she was hired as the Finance Director. SCAP has been providing services since 1964 in response to President Lyndon B. Johnson's War on Poverty and the signing of the Economic Opportunity Act which sought out integrated solutions to eradicate the causes of poverty and create solutions that would help low income people move out of poverty. People in poverty worked alongside community leaders including those who were representative of business, religion and government to create improved systems and services to achieve this goal. Since inception, SCAP has partnered with the community to provide services, advocate for policies leading to greater access to jobs, housing and education for low income people and, when gaps exist, to increase the community's resources and improve its ability to meet the needs of its most vulnerable.

Deb Schimpf is a community leader advocating for improved partnerships and integrated community solutions. She is a member of Schenectady Rotary and on the Boards of the New York State Community Action Association and the Visiting Nurses Services of Schenectady and Saratoga. She is the Chairperson of the Community Crisis Network and Co-Chair of the Homeless Services Planning Board. Ms. Schimpf is a member of the Commissioners Advisory Group for Schenectady County Department of Social Services, the Ellis Medical Home Advisory Group and the Schenectady Foundation's Strengthening Families Advisory Board.

Testimony of
Debra L. Schimpf, Executive Director
Schenectady Community Action Program
913 Albany Street, Schenectady, New York 12307
518-374-9181, dschimpf@scapny.org

To Chief Judge Lippman and Distinguished Members of the Panel: Thank you for the opportunity to testify on the important topic of civil legal services in upstate New York. My name is Debra Schimpf. I am the Executive Director of the Schenectady Community Action Program (SCAP) which serves Schenectady County.

SCAP's mission is to eliminate the symptoms and eradicate the causes of poverty. We serve the low income population of Schenectady County, and in particular, the City of Schenectady. We face a daunting poverty rate of 20.7% in the City of Schenectady, one of the highest in northeastern New York. In addition, our total poverty population of 15,826 is consistently at risk of losing the essentials of life: income, housing, safety, health care and education. We have always been and continue to be an anti-poverty agency. We share that mission with our colleagues at the Legal Aid Society of Northeastern New York.

SCAP offers an array of services including Head Start, transitional and permanent housing for homeless families, crisis intervention for individuals and families not able to meet their basic needs, case management for low income people that includes budgeting and income tax assistance and employment services. We lead a number of community collaborations with many local human services agencies. We are particularly proud to partner with the Legal Aid Society of Northeastern New York in trying to maintain our clients' "essentials of life", in particular, housing.

For more than 15 years, we have engaged in a variety of formal and informal partnerships with the Legal Aid Society. These have included basic referral relationships as well as formal,

funded partnerships that ensure that Schenectady County residents at risk of homelessness receive rental and financial assistance as well as legal services.

Most recently, we have worked closely with the Legal Aid Society in a local Homelessness Prevention and Rapid Rehousing Project (HPRP). This partnership includes Bethesda House, SCAP, Legal Aid Society and the City of Schenectady. This partnership places two Legal Aid Society attorneys, available for intake, at our offices on Thursdays and Fridays of each week. In addition, our long-term housing coordinator, Donna Gonzales, is stationed at the Schenectady City Court every day. Ms. Gonzales regularly screens and serves many people at risk of homelessness, providing information and referrals to tenants. Ms. Gonzales can link tenants to financial assistance from SCAP. At the same time, Ms. Gonzales refers low income people who have received a threat of eviction or court papers to Legal Aid Society attorneys. Typical landlord-tenant issues referred to Legal Aid include those tenants who are being evicted illegally, who have never received or been served court papers, who have serious code violations, especially vacate orders or who are trying to protect their extremely valuable public housing or Section 8 tenancies.

Through this partnership, we have been able to maximize the HPRP resources available to Schenectady County clients. SCAP administers HPRP rental and utility subsidies and provides information to clients with relatively simple evictions as well as public assistance advocacy and case management. Clients who need an attorney in order to prosecute procedural and substantive defenses are referred to Legal Aid Society attorneys.

SCAP and LASNNY jointly address common issues with our local Department of Social Services. These can include clients with emergencies who are turned away because they arrived “too late”, clients who have a written threat of eviction who are turned away because “they can

still stay in the apartment", or told to come back "when the sheriff locks you out", or who are told to come back "when you receive court papers". In Schenectady County, regrettably, non-English speakers are sometimes turned away by DSS because they did not bring their own interpreter, or DSS has no interpreter available. We also are addressing untimely processing of emergencies and ongoing applications. Legal Aid lawyers provide invaluable legal assistance on all these issues.

The partnership with the Legal Aid Society is powerful for our community. In addition to resolving housing cases, Legal Aid can also represent our clients in a variety of other legal issues that preserve the "essentials of life". These include unemployment insurance appeals, Social Security Disability appeals, divorce, adoption, custody, child support, wills, immigration, foreclosure, real property, bankruptcy and debt collection. We know that the Legal Aid Society has similar partnerships throughout northeastern New York.

Funding for civil legal services is necessary to allow low income people to maintain the essentials of life. The Society is committed to partnering with community agencies like SCAP. Trained non-attorney resources can provide information, case management and financial assistance, and attorney resources can be preserved for clients with the most pressing legal problems. Legal Aid Society attorneys have also trained SCAP and other agency staff so that they can recognize appropriate legal issues for referral to Legal Aid.

I hope that the Chief Judge's Task Force will again recognize all that legal services agencies like the Legal Aid Society of Northeastern New York have done to partner with non-legal providers to meet the needs of low income people efficiently and effectively. If I can provide you with any additional information, please do not hesitate to contact me.

Hon. Leslie E. Stein

Appellate Division, Third Department

HON. LESLIE E. STEIN
JUSTICE OF THE SUPREME COURT
APPELLATE DIVISION, THIRD DEPARTMENT

Justice Stein is a graduate of Macalester College and Albany Law School. Justice Stein began her legal career as the law clerk to the Schenectady County Family Court Judges. She then became associated with the Albany law firm of McNamee, Lochner, Titus & Williams, P.C., where she practiced matrimonial and family law, and became a partner in the firm. While a practicing attorney, Justice Stein was elected a Fellow of the American Academy of Matrimonial Lawyers. Before her election to the New York State Supreme Court for the Third Judicial District commencing January 2002, she was an Albany City Court Judge and an Acting Albany County Family Court Judge. She served as the Administrative Judge of the Rensselaer County Integrated Domestic Violence Part from January 2006 - February 2008. On February 11, 2008, she was appointed a Justice of the New York State Appellate Division, Third Department.

Justice Stein is co-chair of the NYS Unified Court System Family Violence Task Force and a member of the New York State Bar Association Committee on Diversity. She also serves on the Executive Committee of the Association of Justices of the Supreme Court of the State of New York. Justice Stein was previously the Secretary-Treasurer of the New York State Association of City Court Judges, served on the Board of the New York Association of Women Judges, and was a founding member of the New York State Judicial Institute on Professionalism in the Law. In addition, she chaired the Third Judicial District Gender Fairness Committee from 2001 - 2005. Justice Stein has lectured and developed curricula for continuing legal education of attorneys and judges on a variety of topics. She has a long history of involvement in bar associations, including the New York State Bar Association, the Women's Bar Association of the State of New York, the Capital District Women's Bar Association and the Albany County Bar Association. She has also been active in a number of other professional and civic organizations.

Justice Stein will testify regarding the need for civil legal representation based upon her experiences with self-represented litigants in private practice, as a City Court Judge, as a Supreme Court Justice on the trial bench, including an Integrated Domestic Violence Part, and as an Appellate Division Judge. She will also describe some of the existing programs and resources in the Third Judicial District as well as in the Appellate Division, Third Department, for providing such representation.

Testimony of Hon. Leslie E. Stein

My name is Leslie Stein. I currently serve as a Supreme Court Justice sitting in the Appellate Division for the Third Department. I want to thank Chief Judge Lippman, Chief Administrative Judge Pfau, Presiding Justice Mercure and President Doyle for the opportunity to present testimony at this hearing on this very important topic.

After serving as a law clerk to the Schenectady County Family Court Judges, I practiced matrimonial and family law in the Capital Region for more than a decade before I was appointed to the bench. I have served as a judge since 1997, when I was appointed to the Albany City Court. In 2002, I became a Justice of the Supreme Court and, in 2008, I was appointed to the Appellate Division. I applaud the Chief Judge and the members of the Task Force for their ground breaking work in investigating the need for civil legal services in New York and recommending a means to increase resources for such services. As you might imagine, I have witnessed this need from a variety of perspectives throughout my legal career.

As a practitioner, I found that when the adverse party was unrepresented, there would often be delays in the proceedings, negotiations, settlements and trials. This type of delay made representation of my own client more time consuming, difficult and costly.

As a City Court Judge for 5 years, primarily in the civil part, I presided over civil, commercial and small claims matters, as well as evictions and code violations. The Albany City Court is a very busy court where a substantial number of litigants appear pro se, particularly in debtor/creditor, small claims and eviction matters. In eviction cases, for example, many private landlords had attorney representation and the Albany Housing Authority filed hundreds of summary proceedings each year through its attorney. Tenants, on the other hand, were most often unrepresented. The small number of tenants who were represented were primarily

represented by attorneys from the Legal Aid Society of Northeastern New York. Sometimes, they were assisted by non-attorney tenant advocates and, whenever possible, I utilized volunteer mediators who were present in court. Over time, I saw that represented litigants were more likely to achieve a superior outcome. I was often placed in the position where it would be necessary for me or my staff to explain the Court's procedures and give direction to a self-represented litigant. Additionally, I regularly saw cases that were appropriate for settlement go unresolved because self-represented tenants or other litigants were not able to fully articulate their positions, accurately analyze the strengths and weaknesses of their cases or appreciate the benefits of settlement. When settlement efforts failed, I frequently observed that self-represented tenants could not adequately present evidence or effectively argue defenses that they appeared to have. Eviction cases implicate one of the most basic "essentials of life" - a place to live. I was often faced with tension between the duty to remain neutral and the necessity of ascertaining key facts in order to make a just determination in such an important matter. In all such matters, competent legal representation for all litigants would allow judges to more efficiently handle busy court calendars and to fairly administer justice.

While sitting as a trial judge in the Supreme Court, I presided over many mortgage foreclosures, other debt collection matters and matrimonial cases, among other things, particularly in the rural areas of Columbia and Greene Counties. Again, I witnessed how the lack of effective legal representation could delay proceedings and render it more difficult for judges to obtain the information necessary to arrive at a just result.

As the presiding judge of the Integrated Domestic Violence Part of the Supreme Court in Rensselaer County for over 3 years, I also saw the impact of local legal services providers, particularly The Legal Project and the Legal Aid Society of Northeastern New York, which

provide skilled representation to victims of domestic violence. Imagine a domestic violence victim sitting alone in the courtroom, without representation, with the abuser – often with an attorney – only a few feet away. In matrimonial proceedings, in particular, it is critical that there be a balancing of the power of a domestic violence victim against that of the abuser. The Legal Project and the Legal Aid Society do excellent work, but neither program has the staff or resources required to provide representation to every client who needs it. We are also fortunate to have a matrimonial pro bono program administered through the Supreme Court Clerk's Offices in Albany and Rensselaer Counties. However, many gaps remain and we must increase the civil representation resources available in this community in order to ensure a just resolution for every victim of domestic violence and other low income litigant.

In the more than 3 years in which I have been sitting on the Appellate Division – a forum in which there are many technical and procedural requirements – I have seen that the resources available for pursuing legitimate appeals are even more scarce. Matters in which litigants may find themselves without legal representation include a full array of issues, including some Family Court matters, estate matters, contracts, administrative proceedings such as workers' compensation and unemployment insurance, as well as land disputes and Article 78 proceedings, not to mention a substantial number of inmate claims, among others.

Recently, The Legal Project, New York State Bar Association and the Rural Law Center have joined together to administer a family law appeals project in the Third Department called the Civil Appeals Pro Bono Pilot Program. During its pilot period, this project has screened approximately 36 applications and has provided appellate representation to 6 litigants in family law matters. While the Legal Aid Society also occasionally provides pro bono representation in appeals, overall resources are scarce for low income appellate litigants.

In these times of a difficult economy and increased unemployment, the need for legal representation in civil matters at all levels of our court system is more acute than ever. I hope that we will be able to find a way to provide the necessary funding to programs such as those that currently exist to enable low income litigants to obtain adequate and effective representation.

Thank you.

Debra Sullivan

Former Pro Bono Director and Member, Capital District Paralegal Association

Biography of Debra Sullivan

Representing the Capital District Paralegal Association

Ms. Sullivan is a 1997 graduate from Schenectady Community College with an AAS in Paralegal Studies. She is in her final year at Sage Evening Division working towards a Bachelor Degree in Legal Studies. Ms. Sullivan became a member of the Paralegal Association in 1996 which was then known as the Albany Legal Assistants Association. The association changed to Capital District Paralegal Association (CDPA). She served as Treasurer of CDPA for two years and was on the Board as the Pro Bono Director for the 2008/09 and 2009/10 year(s).

Ms. Sullivan volunteers once a month for The Legal Project as the legal clinic coordinator at the Mechanicville location and in the regularly offered Pro Se Divorce Clinics, held by The Legal Project. She also participates in association volunteer events such as Senior Law Day (Albany Law School) and the Law Run for Domestic Violence (Albany County. Ms. Sullivan is currently employed as a Legal Assistant II with the Office of State Comptroller in the Hearing Administration and Matrimonial Bureau.

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TESTIMONY SUBMITTED TO THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK

MONDAY, OCTOBER 3, 2011

DEBRA SULLIVAN, PARALEGAL

CAPITAL DISTRICT PARALEGAL ASSOCIATION

My name is Debbie Sullivan and I am a Paralegal and former President of the Capital District Paralegal Association (CDPA). My testimony at the Chief Judge's Hearings on Civil Legal Services is on behalf of the Capital District Paralegal Association (CDPA) and is in accordance with the Association's commitment to Pro Bono activities within the community.

The pro bono committee works on contacting various not-for-profit agencies to determine a need for our membership to participate in pro bono activities. The committee works closely with the various organizations and making necessary arrangements to involve our membership.

CDPA prides itself on its involvement with pro bono activities and encourages all members to be involved to assist those members of the community who cannot otherwise afford to pay for legal services. Our goal is to use our knowledge and provide our services to assist those people who need it the most. We have proven that when it comes to assisting the public, CDPA is a very strong alliance of members and will continue to be.

Members of the association have volunteered for pro bono activities conducted by the Albany County Bar Association such as the Run for Domestic Violence and Law Day Clinics. We have an excellent working relationship with The Legal Project and are ready to assist with their various projects. We also volunteer our time at Senior Law Day through Albany Law School.

The Association has increased its involvement significantly with The Legal Project for various projects including the Divorce Clinics. Our members attend the training at Albany Law School and assist the public. Through my involvement with the Legal Project, I became the Legal Clinic Coordinator for The Legal Project at the Mechanicville location.

The legal clinic is an excellent program and is held once per month. There are clinics held at different locations throughout the area. The Mechanicville clinic consists of two attorneys, at times there may be three depending on the need. Community members in need contact The Legal Project to make an appointment, and they appear on the scheduled day to meet with the Attorney. People can call for an appointment to discuss virtually any civil legal topic, such as employment, credit, bankruptcy, health, landlord-tenant, personal injury or family law.

The attorneys meet with the individuals in private consultations and provide advice to those that would not otherwise be able to afford an attorney. This is a valuable service to the entire community.

Through my experience with the clinic and speaking with the people who come to meet with attorneys for private consultations, they are very appreciative of the clinic and what it stands for. To some it may be a simple matter, but to them – they are seeking guidance, and they cannot afford legal assistance. Time and again I've been told from those attending that the clinic is such a great program and they are so happy with the services they offer. One person recently wrote on their evaluation, "The appointment with the lawyer was so helpful! I now know what my next step is and I feel like I can now do something about my situation. Thanks for the peace of mind!" We hear comments like this all of the time, and the sense of relief that I see in the faces of those that we help is tangible.

The most valuable thing about the Legal Clinics is the fact that they can provide early legal intervention in these people's lives. Information is truly power, and letting people know what options they have and if in fact, additional legal services are necessary can make a tremendous difference in avoiding major crises in their lives. It is also critical that these clinics are open to the community. The Legal Project does not do a full intake when people call for this assistance because they are meeting with pro bono attorneys, which avoids the problem of legal conflicts. This way people can feel comfortable in coming to ask their legal question, no matter what their situation. Anonymous evaluations are provided post-consultation at the clinic and income level is asked at that time. At least 90% of those that attend the clinics are under 200% of poverty and could not

dream of going to a private bar for help. These clinics help level the playing field for people who otherwise would have little or no access to legal information and guidance. This is so incredibly important, especially in this economic period where people are literally living on the edge.

The Pro Se Divorce Program is a wonderful way that we can connect our paralegal volunteers with low income individuals in the community who need an uncontested divorce. We hear all of the time from judges that so many people come to court with incomplete or incorrect paperwork when they are seeking a divorce and they get turned away from the courts, wasting everyone's valuable time and frustrating those that are seeking to use what was intended to be a process friendly to the lay person. Unfortunately, so many people are confused by the paperwork and struggle to get through it all, only to be stymied by the process. With this program, we can use non-attorney paralegals along with students from Albany Law School, who are trained to understand the paperwork and guided by two or more attorneys from The Legal Project on site, to literally sit with the individual and help them as they complete their paperwork. What an amazing difference this makes. People leave feeling calmer and more in control of their situation and more aware of the process that lies ahead. The courts are very happy with the results, finding more people coming prepared with their paperwork and ready to move ahead. This saves an enormous amount of angst, time and money for both the individual and the court. We at the CDPA are so pleased to be a part of this excellent program.

You have been hearing from countless people today about the need to find ways to support civil legal services programs and find creative ways to serve more people with less. I add my voice and the voices of the members of the CDPA in this important message to those in decision making positions in state government. As a state, if we do not find the resources to support civil legal services, we end up wasting opportunities to head off much more expensive litigation and other life crises. There are few program areas that have a better track record in being creative, cost-conscious and collaborative than civil legal services. We need to value that and ensure that as a state, we invest in those services going forward. The stability that these programs help people find in their lives is invaluable—let us ensure that we find ways to keep these programs stable as well.

In closing, I appreciate the opportunity to provide testimony and take part in these proceedings on behalf of the Capital District Paralegal Association and programs such as The Legal Project. Thank you for all of the work of the Task Force and your efforts to help support equal justice in New York State.

F. Michael Tucker

President and CEO, Center for Economic Growth

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F. Michael Tucker

President and CEO

F. Michael Tucker was appointed President of the Center for Economic Growth (CEG) in March 2007. CEG is the premier economic development organization in New York's Tech Valley and serves as the Capital Region's designated Regional Technology Development Center. A private, non-profit, membership-based organization, CEG creates economic impact by working with partners in business, government, and education on strategic initiatives to grow local companies, attract new industry and investment, and prepare communities for future growth.

Prior to joining CEG, Mr. Tucker served as President of the Harriman Research and Technology Development Corporation where he was responsible for initiating and overseeing the redevelopment of the 300-acre W.A. Harriman State Office Campus into a world class Research and Technology Park.

For more than 25 years Mr. Tucker was a principal with Mercer Companies, Inc., an Albany based real estate and energy development firm. Mr. Tucker oversaw the development, financing and operation of Mercer's commercial office, senior housing and hydroelectric projects throughout New York State. In addition, he was responsible for Mercer's property management and real estate brokerage services. Mr. Tucker has extensive experience in business, economic development and energy related issues.

Mr. Tucker graduated from Villanova University and the Villanova School of Law. He is an attorney and a licensed real estate broker. He is active in legal, real estate and economic development organizations at the local, state and national levels. He currently serves as a Director of the New York State Economic Development Council and is on the boards of numerous not-for-profit organizations throughout Tech Valley. He served as the Chairman of the Town of Bethlehem Industrial Development Agency, is a Trustee of Ulster Savings Bank, and is a member of the MedTech Board of Directors' Advisory Council. He is also a member of Governor Cuomo's Capital Region Economic Development Council.

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SUMMARY OF TESTIMONY
THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK

F. MICHAEL TUCKER,

PRESIDENT AND CEO OF THE CENTER FOR ECONOMIC GROWTH

Stability, efficiency, and quality of judicial systems and their fairness, equity, and accessibility are important considerations for businesses when they are considering investing, expanding, or locating in any community. Tech Valley and the Capital Region are becoming a globally recognized hub of technology clusters, and the region's reputation and character are more crucial now than ever to business development and attraction. Confidence in our legal system should be one of our global strengths.

Access to justice at all socio-economic levels is fundamental to a vibrant economy. It affects our community, its quality of life, and our ability to attract business to the area and encourage existing businesses to expand.

Unmet need for legal services burdens the economy as a whole, for example, in health care and welfare costs, which are passed on to businesses, many of which are already struggling given these difficult economic times. Individuals and businesses alike will suffer from the consequences that lack of legal services access will create because legal services are an essential part of a functional social services network.

Lack of legal services is no longer an issue just for the abject poor. There are now newly poor and temporarily poor individuals. Offering access to legal services is a sure path to help jump start the economy and making these individuals and families productive again. These are people who are potentially highly employable in the region, and we need that human capital to fill our workforce pipeline gap.

Access to legal services is crucial to community stability. Community stability is crucial to business attraction and the expansion of and access to a productive workforce pipeline.

Governor Cuomo has made it clear that he wants New York Open for Business. Our state cannot be positioned to do this without proper access to the legal system because that system is just as important as assets like infrastructure and human capital. Therefore, access is inextricably linked to our economy's success.

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TESTIMONY SUBMITTED TO THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK

MONDAY, OCTOBER 3, 2011

F. MICHAEL TUCKER,
PRESIDENT AND CEO OF THE CENTER FOR ECONOMIC GROWTH

Thank you for the opportunity to submit testimony with respect to the importance to the business community of expanded access to civil legal services in New York State. I commend the Chief Judge and the Task Force on their leadership in addressing this critical issue.

Grow, Attract, and Prepare have been the guiding principles of the Center for Economic Growth (CEG) since its inception. For more than two decades, CEG has been at the forefront of economic development initiatives and public policy discussions affecting the 1.1 million residents of New York's Capital Region and Tech Valley. As a not-for-profit membership-based organization with over 300 member companies, we collaborate with our partners to both shape the future of our region and provide the pathways necessary to make those goals become reality. By advancing visionary policies and advocating for transformational change we strive to build upon the qualities that make the area a great place to live, work and play.

Stability, efficiency, and quality of judicial systems and their fairness, equity, and accessibility are important considerations for businesses when they are considering investing, expanding, or locating in any community. Tech Valley and the Capital Region are becoming a globally recognized hub of technology clusters, and the region's reputation and character are more crucial now than ever to business development and attraction.

Governor Cuomo is aggressively trying to change the perception of New York State and make the state more business friendly. To undermine our legal system and access to it undermines the Governor's mission. Access to justice means the difference between keeping or losing custody of a child, between living in a safe and secure home and living on the streets, or in constant fear of violence. These issues affect our community and its quality of life and directly affect our ability to attract business to the area and encourage existing businesses to expand.

That low and moderate income people are well represented is important to the national and global perception of New York State and the Capital Region. It is important because we are already behind the eight ball with respect to the perceived competitiveness for business attraction. A fully functional justice system is just as important as our infrastructure, educational opportunities, and availability of human capital in giving businesses the confidence in the functionality of our region's economic ecosystem. Access to justice at all socio-economic levels is fundamental to a vibrant economy. If low income individuals are not adequately represented, New York will not be seen as a place for economic opportunity and people and businesses will not come here.

While we have a strong web of educational institutions and growing and anchor businesses such as IBM, GE, and GlobalFoundries, we are already facing a major challenge in providing a workforce pipeline to those companies, and lack of access to the justice system is yet another obstacle in attracting and sustaining the human capital that is critical to the attraction and expansion, if not survival, of the industries that will define the Capital Region's future. The workforce pipeline does not just encompass technology- or knowledge-based workers; it includes individuals from all socio-economic backgrounds that are needed to work at the supply chain and service companies that companies like GlobalFoundries rely on.

Confidence in our legal system should be one of our global strengths, and if the system is perceived as lacking in accessibility and equity, businesses and individuals will think twice about locating or expanding in our state and region and will choose other locations around the nation and world that offer better economic development incentives coupled with a more accessible legal system. Businesses do not necessarily see access to justice as a rich/poor issue – if the state does not make legal services available and accessible to the poor, investors and businesses will question what else the state may not provide in tough fiscal times.

Businesses understand that diminishing legal services for the poor is partially an economic decision made by the state – that does not give confidence that New York is a viable place to live and work, but rather creates concern that other services will start to diminish as well, and not just for the poor. Such diminishment in services is an indicator of the breakdown in other social and economic systems as well – if the legal system breaks down for some, it could break down for all.

It is important to remember that civil legal services not only refer to representation in court, but situations that occur before any court is involved. As the economy worsens, there are more and more unrepresented litigants and claimants in all facets of the legal system, and an increasing number of individuals are facing more than one legal problem concurrently. There are many cases that would never end up in court had unrepresented individuals had access to some form of civil legal services from the beginning. The business community has to have confidence in what happens in our justice system. Uncertainty as to who can get help, who can't, and whether it will change

at the drop of a hat creates instability and distrust, and lends support to the perception that New York State is somewhat chaotic and volatile in its dissemination of services, whether they be legal, economic, tax-related, regulatory, etc. Businesses need to know that there are services available not only for themselves if they need it, and for those who might sue them, but for their employees as well, because the more services that are available up front, the less costly it is for everyone.

When discussing civil legal services for low and moderate income individuals, we primarily are referring to issues involving the essentials of life, such as housing, family stability, personal safety, access to health care and education, and subsistence income and benefits. The breakdown of that system and the increase in the unmet need for services burdens the economy as a whole, for example, in health care and welfare costs, which are passed on to businesses, many of which are already struggling given these difficult economic times. Individuals and businesses alike will suffer from the consequences that lack of legal services access will create because legal services are an essential part of a functional social services network.

Lack of legal services is no longer an issue just for the abject poor. There are now newly poor and temporarily poor individuals. There are middle-income Americans whose needs are not being met because they are currently priced out of the legal system. The definition and perception of "low income" is changing – it is no longer associated primarily with "poor" but with many people who suffered job, business, and home losses related to the major economic crash. Individuals who only a couple years ago would be considered "middle class" are facing unemployment, mortgage delinquency, home foreclosure, eviction, etc. Recent natural disasters have created an even greater need with respect to people who may otherwise never have needed such services. Offering access to legal services is a sure path to help jump start the economy and making these individuals and families productive again. These are people who are potentially highly employable in the region, and we need that human capital to fill our workforce pipeline gap. Access to legal services will allow them to address these matters and focus on getting back on their feet.

Having legal representation and fair access to the system enhances a fair outcome, decreases the amount of time needed to resolve disputes, and may prevent a case from proceeding to formal litigation, saving businesses, taxpayers, and the judiciary money and time. While there are moral and social aspects to equal access to the justice system, from a business perspective, it's also a bottom line issue. Individuals and families who can keep their home and children and have access to health care and education will contribute to society in other ways, like opening bank accounts, having strong work attendance, and obtaining additional training and education. Therefore, access is inextricably linked to our economy's success.

Most things in our society are driven by the economy - access to justice and legal services cannot be one of them without corroding people's confidence in our state and country. As Judge Lippman has said, "[A]ccess to justice can't depend on…good times

or bad times. It's one of the fundamentals of our society that people have access to the courts."

There is no doubt that these are tight budgetary times. But it is counterintuitive that when people need more help, they are getting less. It is not only individuals and "poor" people who need access to civil legal services. More so now than ever before, for example, small business owners need access to legal services but may not be able to receive them. While the Capital Region is blessed with strong industry and educational assets and partnerships, small businesses are a critical part of our economic engine and will suffer from lack of civil legal services as they face potential foreclosure, loss of employees, and even eviction from leased premises. The Legal Project currently matches women, minority, and low income business owners with pro bono attorneys with corporate law experience for private consultations in areas such as business formation and incorporation, zoning, employment issues, and real estate to help support the efforts of microenterprises in our community. This unique program also provides education and guidance to these businesses and coordinates with local microenterprise programs to help these small business owners be aware of their options and hopefully circumvent avoidable and potentially expensive legal scenarios. Programs such as this will allow for more creative and cost-effective support for the businesses that are the core our economy.

Stability is crucial to our community and economy. Businesses cannot handle any more unknowns in our state. Governor Cuomo has made it clear that he wants New York Open for Business. Our state cannot be positioned to do this without proper access to the legal system because that system is just as important as assets like infrastructure and human capital.

We all know that rules and regulations are key to a civil society. Education, awareness, and perception are important pieces within the umbrella of access and equity in the justice system. It is just as important for citizens to understand a system exists, are aware of its scope and limitations, and learn how to access it. Too often people, primarily those with lower incomes, do not understand the system so they don't trust it or feel that they have been treated fairly by accessing it. They look at it negatively, not as a vehicle or solution, so they ignore the system, and when they are subjected to it by default, they become further alienated and withdrawn. Our world is ever-changing and more complex and volatile than ever before, so access to education to gain a clear understanding of how to effectively use the system is a key piece of the funding puzzle as well.

For example, early access to civil legal services in the form of consultations with lawyers or representation during mediation or negotiation makes the entire process more efficient. The economy benefits because there is less stress on the court system and judges, cases for the most part are more timely resolved, and people will lose less time from work and will be less distracted. Individuals with personal issues interfere with work focus and efficiency. If an individual had access to information and an attorney to handle the matter, it would ease some of the angst and allow the employee to remain

focused on his or her job. But additional pro bono services from private attorneys are only part of the puzzle.

Early access and education clearly reduces costs to both businesses and our community as a whole. It reduces the tremendous downstream costs of problems like homelessness, domestic violence, and poverty that are ultimately absorbed by businesses. Every year our economy loses hundreds of millions of dollars because unrepresented individuals lose their right to obtain federal funds. Programs like Legally Speaking, offered by the Legal Project, and written materials like Legal Lifelines, offered by the Legal Aid Society of Northeastern New York, are an important first step in access to the legal system. Additionally, programs offered by organizations like Legal Aid that specifically address access to social benefits are instrumental in reducing costs to taxpayers and to increasing economic activity in our region. For example, the Legal Aid Society of Northeastern New York's Nutrition Outreach and Education Project helped families in Albany, Montgomery and Saratoga Counties received $2,184,840 in food stamp benefits, with a resulting $4,020,104 in additional economic activity in one year.

In addition, proper funding would minimize the danger of the judiciary playing the role of advocate for the unrepresented, which unfortunately is occurring more and more frequently as judges and court personnel spend thousands of hours trying to assist the unrepresented in navigating through the legal system. It places not only the judges in an awkward and potentially unethical position but creates the perception of a potentially unfair legal system.

According to the recent census, 53-56% of school age children in Albany, Troy, and Schenectady live in a household with single mothers. And across all socio-economic boundaries, children who live in households where at least one parent is unemployed have significant behavioral problems, according to a study published in the spring 2011 issue of the Journal of Policy Analysis and Management. Imagine the effect on these children if at the same time their mother is being abused, or they are being evicted and forced to move from apartment to apartment, or the family does not know that services are available to help them access health care and education.

Access to legal services is crucial to community stability. Community stability is crucial to business attraction and the expansion of and access to a productive workforce pipeline. Equitable access to civil legal services is not about giving people a sense of entitlement or a means to avoid contractual obligations to landlords or business owners – it's about integrating all individuals into the social order on an equal access basis. Frankly, when there is not justice for all, there is no sense of justice.

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Written Statements of Non-Testifying Witnesses

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The Chief Judge's Hearing on Civil Legal Services

October 2011

Prepared by:
Anne Erickson, President & CEO

I. Introduction

The Empire Justice Center is a statewide organization dedicated to expanding access to legal assistance and securing social and economic justice. As a legal services provider, Empire Justice provides a full range of legal representation in core areas of poverty law. As a statewide backup and training center, we provide training, support and technical assistance to legal services organizations and to other non-profits serving the needs of poor, low income and disenfranchised clients, including those living with disabilities, victims of domestic violence and vulnerable immigrant populations.

In providing and pursuing a powerful blend of impact litigation and direct legal assistance, policy analysis and advocacy, and training, support and technical assistance, we strive toward our mission to make the law work for all New Yorkers, especially for those who need its support and protection most.

With four offices located strategically around the state in Rochester, Albany, White Plains and Central Islip on Long Island, our work cuts across over thirty fundamental areas of law that most impact our clients. These areas include public assistance, including food stamps, cash assistance, child care, kinship care and child support; consumer law, including foreclosure prevention, debt collection and credit protections; special education; disability benefits, including Supplemental Security Income (SSI) and Social Security Disability (SSD); health coverage, including Child Health Plus, Family Health Plus, Medicaid and Medicare Part-D for seniors; domestic violence, including a specialization in issues impacting the LGBT community; immigration and immigrant access to assistance, including language access; civil rights; employment; and public and subsidized housing.

This hybrid model of service delivery prioritizes being responsive to the needs of the community -- both clients and providers -- emphasizes collaboration and efficiency, and facilitates identification of high impact solutions to emerging client issues.

II. Empire Justice Center's Role in the Community

Each of our four offices provides a different mix of services, based on history and the needs of the community they are located within. We work hard to ensure that our services compliment and supplement the local delivery system and are developed in collaboration and consultation with local legal services and human services providers. In 2010 our staff closed a total of 1,122 cases, impacting 2,590 individuals. We worked on 26 major impact cases, which affected well over 20,000 additional individuals. All told, we were able to direct over $29 million in benefits to our clients.

In our Rochester office, we are one of the core legal services providers for that community, housed at the Telesca Center for Justice. We provide legal assistance to individuals and families with issues that involve disability benefits, special education, civil rights, the need for specialized legal assistance for those living with HIV/AIDS, and consumer law – including foreclosures and predatory lending.

We also run the C.A.S.H. program (Creating Assets Savings and Hope) jointly with the United Way of Greater Rochester. Through C.A.S.H. we train, certify and deploy between 450 and 600 volunteers every year who, in addition to providing free tax preparation, work to connect clients to basic banking services, to health, nutrition and economic supports and to on-going financial counseling. During the 2011 tax season, C.A.S.H. volunteers assisted over 13,000 households in claiming $25.2 million in tax refunds, including $10.9 million in Earned Income Tax Credits; virtually all of which is pent in the Greater Rochester community, adding to the region's economic vitality.

In the Capital District we focus primarily on policy analysis, research and systems change advocacy. Our direct legal assistance in the Capital Region focuses on two specific areas of law. We work in collaboration with the three major domestic violence shelters in the region, providing legal assistance to immigrant victims of domestic violence on referral from the shelters and we provide community legal education in a variety of substantive law areas to their staff and others in the community. We also have a contract with Legal Aid Society of Northeastern New York to provide targeted foreclosure legal assistance in the greater Albany area. Given our extensive expertise in this area, the cases referred to our Albany office are the more complicated and time consuming cases.

We have three bilingual attorneys in our White Plains office, located on the Pace Law School Campus with a small office in Mt. Vernon from which we serve the immigrant populations of the Hudson Valley. Our staff provides legal assistance primarily to immigrant victims of domestic violence, handling everything from VAWA self petitions to specialized U visas to naturalizations and work authorizations. Under contract with Westchester County, we are now providing legal assistance to immigrants facing employment issues including wage and hour claims and instances of wage theft. Our staff works closely with Legal Services of the Hudson Valley, the Pace Women's Justice Center, My Sister's Place and other smaller community-based organizations throughout the region, providing technical assistance and support to their staff and taking direct client referrals of immigrants in need of legal assistance.

Our Long Island office, housed at the Touro Law School, provides a combination of public benefits and immigrant representation – areas of need that were identified by the community when we opened our Long Island office. Thanks to funding from three community foundations and support from IOLA, we have a three-person staff at Touro and are stationing our paralegal at one of the local Hispanic agencies – *Pronto* – for intake on a bi-weekly basis. Our Long Island staff is providing ongoing community leadership on issues involving language access, working to form a newly emerging collaboration – the Long Island Language Access Coalition (LILAC).

III. Working as a Backup Center, Convener and Facilitator

Empire Justice is a traditional backup center for legal services and provides training, support and technical assistance to local and regional legal and human services providers primarily in the regions outside of New York City. These critical services help individual staff attorneys stay abreast of constant changes in law, rule and regulations that impact the legal rights of their clients on a daily basis.

Our training and support staff are acknowledged leaders in their field, many recognized on the national as well as the state level for their knowledge and expertise in the area of law where they focus. To provide the best possible training opportunities we also tap individuals outside our organization to participate in our training events. This helps to build leadership among the field program staff as well increasing the dimension and diversity of the training offered.

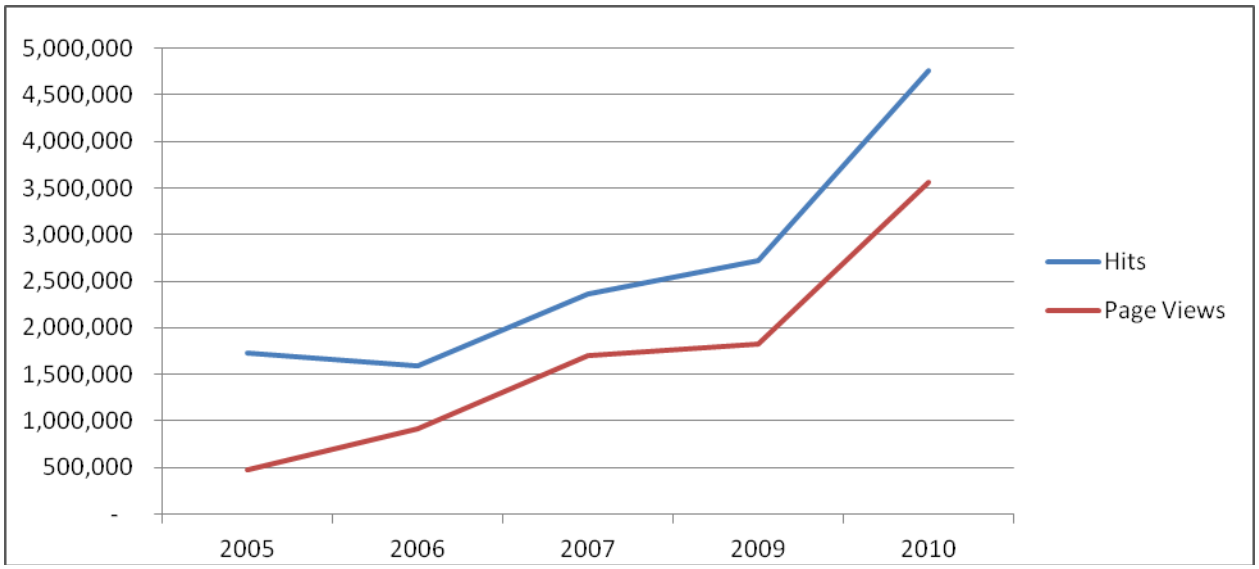
In 2010, we organized 115 training events, reaching 4,035 participants, covering 1,069 Continuing Legal Education (CLE) training hours. A total of 24 substantive law task force meetings were held, reaching 544 advocates working in diverse areas of law, including health, disability, domestic violence and public benefit. We provided webcast access to 14 trainings, which were viewed for a total of 813 hours.

We also publish two legal journals – The *Legal Services Journal* and the *Disability Law News*. Each is published quarterly are e-mailed to close to 6,000 registered users. In addition the articles are posted and archived on our website and accessed on an ongoing basis.

Empire Justice continues to strive to make the most efficient and effective use of our resources and to tap new and emerging technologies to meet the needs of the community. We created and maintain the only statewide website devoted to meeting the substantive law needs of the legal services community in New York. With the help of our technology partners at the Western New York Law Center (WNYLC) we are constantly updating and streamlining our web offerings.

The website is used extensively – topping over 4.5 million hits in 2010 with over 3.5 million page views.

Usage of the Empire Justice website: www.empirejustice.org



We have also created very specialized web-based resources for legal services attorneys. For example, recognizing the significant role Fair Hearings play in our clients' lives and in light of the fact that the State was not making precedential hearing decisions easily or readily available to the community, Empire Justice Center's predecessor, the Greater Upstate Law Project created and maintained a filing system of hearing decisions that our public benefits staff would summarize, alert the community to and make available upon request. In 1999, we converted that filing system to a web-based resource that allows now 3,444 registered users to search 2,900 summarized decisions and to get access to the full decision to help support them in their work. The Fair Hearing Bank continues to grow as advocates around the state submit key decisions to be included. To help maintain the bank, Empire Justice has a regular placement for law students from Albany Law School every semester and as a summer placement.

More recently, we worked with WNYLC, SelfHelp and the Legal Aid Society of New York City to create a special area of the web dedicated to health law issues contracting our clients and the legal services staff working to meet their needs.

In addition to our trainings and web based resources, as a backup center, our staff is available to field staff to provide technical assistance on specific cases, including legal research, strategy, referrals and moral support, helping to ensure the best possible representation and outcomes for clients across a host of substantive law areas. Tapping into the efficiencies offered by new technologies, Empire Justice and the Western New York Law Center (WNYLC) launched a number of listservs to help connect legal services staff to each other to allow for more peer-to-peer networking and assistance. We now co-host a growing number of listservs including in domestic violence, disability, public benefits, housing, special education, health/Medicaid, and family law.

IV. Ensuring Client Issues are Heard in all Forums: Legislative and Administrative Advocacy and Systems Change Litigation

Since 1996 when restrictions which barred class actions were imposed on organizations funded by the Legal Services Corporation (LSC), Empire Justice has been one of the few legal services organizations in the state with the ability and capacity to bring class actions which can end illegal practices that affect tens of thousands of eligible clients. These cases are often the most cost effective and appropriate course to take when confronting the systemic failure to honor or enforce the rights of those we serve.

The American Bar Association, in its Standards for the Delivery of Legal Services, envisions a statewide system that can effectively meet the full range of client needs; one that can provide a full range of representation of client needs in all forums including before legislative and administrative bodies and in complex litigation. In fact, the ABA notes that "cases that threaten permanent loss of shelter, or income, or that threaten the stability and safety of the family, for instance, call for full representation because of the potential harm that may befall clients."

The ABA goes on to point out that "some issues affect large numbers of people and are rooted in policies and practices of governmental agencies and businesses that frequently interact with low income persons. Such issues sometimes require advocacy aimed at changing the underlying policy or practice."

Empire Justice incorporates a range of representation into our overall practice, including legislative and administrative advocacy and class action litigation where needed and appropriate. Through our training and support, our interaction with the community, and our own direct representation of clients, we are able to identify trends and systemic concerns that impact clients and warrant systemic solutions.

As leaders in the statewide policy arena we often act as conveners, bringing together key players, including legal services colleagues to craft legislative or administrative policy solutions and to determine whether a legal challenge is necessary. Our work with statewide and national coalitions allows us to bring issues to a wider audience and solicit additional support for policy change. All of this "big picture" work, when successful, results in broad positive change for groups impacted – often thousands or tens of thousands of New Yorkers benefit.

Empire Justice works to maximize the number of people who benefit from our legal help by bringing cases that benefit thousands of people who are being harmed by the same illegal policy or practice.

One example of this work is in our efforts to remove illegal barriers and delays for public assistance eligibility that exist in many counties. People generally do not apply for cash public assistance, Food Stamps, or Medicaid until their financial situation is pretty desperate. Because of this, the law requires counties to make decisions on applications within either 30 days or 45

days for most types of benefits. Despite the law, many counties were taking twice as long as they were allowed, or even longer, to make eligibility decisions. The effect of the illegal delays on families is devastating. They have done everything and provided everything that was required to show they are eligible but can't get the help they so desperately need and often can't even find out when a decision will be made. In a the cases of some of our clients the county workers sat on the information the client provided for so long that when the worker finally looked at the file she decided the information the client provided months ago was now stale. Adding insult to injury the workers actually further delayed opening the case and made the client go back and get updated information.

This is the type of problem that needs a systemic solution, not simply an individual solution that moves one client to the head of the line and pushes those who have waited longer even further back in the line.

Working with other legal services programs that are allowed to do class actions and in some cases pro bono counsel we have filed suits in Federal Court to enforce the timely case opening rules in six counties. Five of the counties have settled, agreeing to process all cases within the time periods required by law and submitting to monitoring to make sure that they comply. The sixth case is close to settlement.

Over a hundred thousand applicants for needs-based assistance will benefit from these lawsuits. Many will receive their benefits twice as quickly as during the time when illegal practices prevailed. Many will not be evicted while waiting for benefits to start saving the time of our overcrowded state courts.

V. The Full Cycle of Services

A perfect example of the way our services inform and strengthen each other and lead to systemic changes is our work on foreclosure prevention. Through our consumer law work in Rochester, our staff recognized an unmet need for direct representation for low wage families facing the loss of home ownership. We sought and obtained local funding nine years ago to represent low income homeowners at risk of foreclosure.

Through this work we began to see clients with non-traditional, subprime mortgages who were victims of fraudulent sales and mortgage origination practices. Utilizing the skills of our researcher, we began looking more closely at data related to the problem and were able to use proprietary data supplied by the Board of Governors of the Federal Reserve to map regional trends and lending data, which we released in January of 2008. It was this data that identified minority neighborhoods on Long Island as the regions among the hardest hit by the Subprime Mortgage Crisis after specific neighborhoods in New York City. Until then, the crisis was thought to be an issue almost exclusively in New York City. Ultimately, the maps and data we developed helped to secure and drive $25 million in funding to housing counselors and legal services providers to begin assisting at-risk homeowners. That funding resulted in the creation

of the Subprime Mortgage Prevention Services Program – creating collaborations that now exist among 120 legal services and housing counseling organizations across the state.

When the program was created, only a handful of attorneys outside of New York City were handing foreclosures. As one of the first trainings we offered in this area, Empire Justice Center developed a webinar series that provided a road map for legal services programs interested in developing a foreclosure practice. Today, New York boasts a vibrant community of attorneys and paralegals providing representation in foreclosure matters.

As the subprime crisis shifted into a financial crisis and recession, we were on the ground, representing homeowners and training advocates on best practices and changes in the law. Once we realized the shift was occurring, we worked through the statewide coalition, New Yorkers for Responsible Lending, to build on previous expansions of the foreclosure process that created the mandatory settlement process – to open it up to all homeowners in foreclosure, not just those with subprime loans.

We continue to carefully monitor all facets of the foreclosure process to identify problems, improvements and best practices and share our observations with advocates and policy makers. As this testimony is submitted we are working on finalizing our fourth report on foreclosure trends in New York, which we hope will inform the discussions about this ongoing crisis as the 2012 Legislative Session begins.

This is the "wrap around" approach that, given the resources, we would to take in every area of the law we practice in. As it stands we put our resources where we believe they will have the highest impact.

VI. Support for the Chief Judge's Recommendation

Clearly the need for expanded access to legal services is evident in the testimony provided at the hearings on Civil Legal Services and the research done by the Task Force to Expand Access to Legal Services. We feel this need every day in the clients we turn away, the caseloads our staff handle and the stress we witness among the front line staff across the state.

We deeply appreciate the leadership role the Chief Judge has taken in establishing a thoughtful and thorough process to assess the need for funding for these vital services. We look forward to working with the Office of Court Administration in support of the 2012-13 recommendations of the Chief Judge.

Legal Aid Society of Northeastern New York, Inc.

Legal Aid Society of Northeastern New York, Inc.
Fighting for Fairness Promoting Justice

Serving Northeastern New York with offices in
Albany, Amsterdam, Canton, Plattsburgh and Saratoga Springs

Amelia M. Klein, *President*
Lillian M. Moy, *Executive Director*
Peter D. Racette, *Deputy Director*
Wendy Wahlberg, *Deputy Director*

TESTIMONY OF

Lillian M. Moy
Legal Aid Society of Northeastern New York

To the

Chief Judge's Hearing on Civil Legal Services
Third Department
October 3, 2011, 10 AM to 1 PM
NYS Court of Appeals, 20 Eagle Street, Albany, NY 12207

LSC

Main Office: 55 Colvin Avenue, Albany, New York 12206
(518) 462-6765 ● (800) 462-2922 ● Fax (518) 427-8352

United Way of Northeastern New York, Inc.

Thank you to Chief Judge Jonathan Lippmann, Chief Administrative Judge Anne Pfau, Presiding Justice Thomas Mercure and President of the New York State Bar Association, Vince A. Doyle, for the opportunity to present this written testimony in response to the Notice of Public Hearing on Civil Legal Services. I am the Executive Director of the Legal Aid Society of Northeastern New York. The Legal Aid Society of Northeastern New York (LASNNY) is the primary provider of civil legal services to low income New Yorkers throughout northeastern New York. As of the date of this hearing, we have a total staff of 61: 32 attorneys, 10 paralegals, 12 support staff and seven management staff.

LASNNY serves 16 counties including the Capital District, part of the Catskill Mountains, the Lake Champlain Valley, the St. Lawrence River Valley, and most of the Adirondack Park. This area comprises much of the Third Department. Our main office is located in the City of Albany, New York's Capital. The service area is about 16,264 square miles, 30% of all of New York. Our service area is rural, urban and suburban.

I am pleased to offer this testimony in response to the issues outlined in the Notice of Hearing.

Current State and Scope of the Unmet Need

As of 2009, in northeastern New York, 383,838 people in the service area have incomes below 200% of poverty. The 16 counties in our service area have a total population of 1,480,157 according to the 2005-09 ACS estimates; fully 25% of all here are low income. As of today, 2010 data is only available for the six counties in our service area (Albany, Clinton, Rensselaer, Saratoga, Schenectady, St. Lawrence and Warren). Those counties experienced a 10.1% increase in the population with incomes at 200% of poverty in only one year. Poverty rates in individual communities range as high as 45% in the inner city of Albany to 28% in the Town of Gouverneur, one of our most impoverished rural communities. The overall poverty rate – about 11.7% based on the 2005-09 ACS data -- is also significant in northeastern New York. The 2005-2009 aggregate American Community Survey data shows that there are about 173,115 people living in poverty, a 17.6% increase since 2000 and a 3.8% increase since the 2008 estimates. As of 2010, the poverty population in six of our counties increased by 5.7%, with the poverty rate increasing significantly in Albany, Clinton, Rensselaer and St. Lawrence counties.

As of March 2011, there were 64,202 temporary assistance and SSI recipients in the service area. Based on the 2009 population estimates, 63% of people living in poverty have no public assistance or SSI income at all.

LASNNY strives to be one of the most efficient and effective legal services providers in the state. We have aggressively developed a diverse funding base, with 36 funding sources. We consistently seek funds to further our mission, which is to provide effective, free civil legal services and education to and advocacy for people with low income or other barriers to accessing the legal system. We secure basic needs, protect and preserve legal rights, provide equal access to justice and seek fairness and dignity for our clients.

Unfortunately, there remain significant areas of unmet need for civil legal services in northeastern New York, especially with respect to legal problems involving "the essentials of life".

Last year, when LASNNY was blessed with several staff funded by federal stimulus funds, we estimate that we turned away even more eligible clients than the almost 8700 turned away during our 2009 count. Clients with problems in every area of "the essentials of life," housing, benefits, domestic violence, consumer, are turned away every day. According to the most recent Legal Needs Study performed for the Chief Judge's Task Force last year, approximately 47% of all low and moderate income New Yorkers experience one or more legal problem per year. Given the low income population in our 16 counties, approximately 186,404 low income northeastern New Yorkers experience one or more civil legal problems in a year. Current funding allows us to assist only a small fraction of the eligible population who need a lawyer or paralegal.

Much of LASNNY's work has always focused on providing "the essentials of life" to our clients. With the new infusion of Judiciary Civil Legal Services funds, LASNNY will continue to concentrate resources on maintaining housing, protecting victims of domestic violence, providing preventative education and advice to clients with consumer debt, housing or public benefits issues, and providing representation in public benefits, particularly in disability benefits cases to ensure health care and income to those who are too disabled to work. Each area faces continuing unmet needs.

There is a significant issue with respect to domestic violence in northeastern New York. In 2010, in the 16 counties we serve, there were 8150 domestic violence victims reported to the police. In that same year, only 4787 family offense petitions were filed originally in the family court; it is clear that civil remedies cannot keep pace with domestic violence. The need for safety is particularly acute for a battered immigrant. While hard numbers are not available, it is estimated that there are almost 7000 female undocumented immigrants in the Capital Region. If the prevalence of domestic violence is about 30%, as it is in the general population, there are thousands of battered immigrants. Undocumented victims of domestic violence cannot ever attain safety, the most essential of "the essentials of life," without gaining legal status. LASNNY provides some representation to ensure safety for battered spouses and crime victims who need immigration relief, e.g., T and U visas and self-petitions, but more is needed.

Although mortgage foreclosures have slowed in the last few months while lenders regroup in the wake of the Robo-signing scandal, as of September 1, 2010, there were more mortgages in distress (90+ days past-due – 4182) in the Capital Region and North Country than were currently in foreclosure (3,761). Indeed, in all but two of the Capital Region counties there were more loans in distress than in foreclosure as of September 2010. And Albany County, one of the top 20 counties in New York for foreclosure filings, has twice as many loans at risk than in foreclosure. We expect a flood of foreclosures to be filed just as our NYSDHR funding lapses at the end of 2011. We will use Judiciary Civil Legal Services funds for eligible clients facing mortgage foreclosure, but after March 2012, these funds will be exhausted.

Tenants are also at constant risk of homelessness throughout northeastern New York. Given the increasing poverty population, the lack of affordable housing is acute. Households with only public assistance income are at constant risk as the shelter allowance they receive does not even approach the actual cost of local rents. For example, in Saratoga County the three person shelter allowance for a public assistance household is only 35% of the fair market rent for a two bedroom apartment of $900.

Beyond representation from LASNNY, few tenants can access a lawyer for representation in an eviction case. In July 2011, LASNNY conducted an informal collection of eviction data from local Courts. Although responses were inconsistent, in Saratoga, Warren and Washington Counties, 18 courts reported that 767 evictions were filed. In one of the busiest courts, Hudson Falls, the clerk's office estimated that 100% of landlords are represented but only 10% of tenants. Saratoga Springs City Court reported that 78% of the landlords and 23% of the tenants were represented in 136 evictions. In Glens Falls City Court it is estimated that 45% of the landlords were represented and less than 1% of the tenants in the 186 evictions filed last year.

Whether a homeowner or tenant is at risk of homelessness, what could be more essential than one's housing? Although Judiciary Civil Legal Services funding is available until March 31, 2012, more is needed to ensure continued access to an attorney.

Consider also the number of disabled individuals in northeastern New York. The 2000 Census data shows there were 92,829 unemployed disabled individuals in northeastern New York. ACS data for 2009 indicates that about 425,664 people over the age of 16 are not in the labor force. 2010 Bureau of Labor Statistics (U. S. Department of Labor) data shows that nationwide 24.7% of those not in the labor force are people with a disability; thus about 105,565 over the age of 16 in Northeastern New York are not in the work force, have a disability and may need SSI/SSD benefits. Even with LASNNY's success in increasing the number of SSI recipients in our service area, as of March, 2011, the New York State Office of Temporary & Disability Assistance (OTDA) statistics show that only 39,270 were on SSI and 24,932 on temporary assistance (either TANF or Safety Net). At least 63,303 unemployed disabled people are without public assistance or SSI income. Additionally, both Safety Net and Family Assistance households often have an incapacitated household member who could qualify for SSI. Overall, the number of welfare recipients continues to decrease while the number of unemployed is on the rise – indeed, St. Lawrence and Schoharie Counties are among the counties with the highest unemployment rates (11.4% each as of February 2011) in all of New York. More Judiciary Civil Legal Services funding is needed to maintain and increase advice, brief service and representation in public assistance, unemployment and SSI/SSDI disability cases.

Finally, we count low income children among those with unmet legal needs. The 2005-09 ACS estimates that there were 49,279 children living below poverty throughout our service area. Even more recently, the March 2011 OTDA statistics indicate that 14,257 children were receiving temporary assistance benefits, only about 28% of all children living in poverty. More and more children live without even the most basic safety net assistance. Their future is at risk without access to the resources legal advocacy can help obtain. In 2010, LASNNY implemented a small Medical/Legal Project serving children who are patients of the Albany Medical Center. More funding is needed to help children with disabilities or illness access the "essentials of life;" health care, housing, income or education.

The need for increased legal services to assist clients with legal problems involving "the essentials of life" remains significant. Between 2009 and 2010, eviction intakes increased by 15%, domestic violence intakes increased by 12% and unemployment intakes increased by 18%. Our experience shows that the demand for such services, and the unmet need, continues to rise.

Cost and Benefits to the Courts and to Communities from the Provision of Civil Legal Services

You will hear substantial testimony from judges, business leaders and community partners with respect to both the cost and benefits to the courts and to communities from the provision of civil legal services in northeastern New York. In my testimony, I wish to highlight the economic benefits generated by the work of LASNNY in particular.

LASNNY's work provides substantial economic benefit to this region. In calculating our approximate 2010 economic impact, LASNNY considered the federal funds we attained for SSI/SSD beneficiaries. Taking only five years of such benefits and the retroactive benefits received by our clients in 2010, LASNNY lawyers and paralegals brought approximately $5,978,083 in SSD/SSI benefits into northeastern New York. In addition, considering the safety and stability brought to victims of domestic violence through a variety of cases, and using the savings per case relied on by the Task Force last year, LASNNY estimates it saved $470,028 through its successful representation of victims of domestic violence. Finally, considering all of the eviction prevention work done by Legal Aid lawyers in 2010, and assuming only a modest portion or 30% would have resulted in emergency shelter, we estimate that we saved local counties approximately $265,597 in avoided emergency shelter costs.

LASNNY's Nutrition Outreach and Education Project helps low income people qualify for food stamps. In the program year that spanned 2010-11, a total of about $2,184,840 food stamp benefits were earned for 630 households in Albany, Montgomery and Saratoga Counties. Using the formula developed by our funder, Hunger Solutions New York, an estimated economic impact of $3,932,712 accompanied the food stamps that we generated. Taking half of that as earned in 2010, the total approximate benefits plus economic impact of LASNNY's services was $3,058,776. Our estimated total economic benefits generated in 2010 is $18,641,568. For every dollar LASNNY received in 2010, another $3.32 was generated for the community of northeastern New York.

Potential for Reduction in Unmet Need

The Society is one of the most efficient and effective legal services providers in the state. We have taken early and aggressive steps to meet the legal needs of low income people for "the essentials of life" in cost-effective ways. With respect to preventive and early intervention services, the Society has long been committed to an effective community legal education program. Our series of 55 Legal LifeLines provides up to date legal information in a form that clients find easy to understand. The complete list of our Legal LifeLines is attached as Exhibit A. Additionally, LASNNY lawyers do regular outreach and community legal education in order to spread the word about the availability of legal services and particular rights and responsibilities that low income people have with respect to their housing, income and personal safety. In 2010, our program of community legal education in person, in print and on the internet reached approximately 34,000 people throughout northeastern New York.

The Society is also a leader in the use of technology. We use technology every day to provide legal services effectively and efficiently. We also have a current application pending at the Legal Services Corporation for a Technology Initiative Grant to build a national gateway for Limited English Proficient (LEP) speakers to the national and local Lawhelp platform.

We are known for our strategic partnerships with non-legal services providers. Indeed, LASNNY is the hub that anchors the wheel of social, human, legal and pro bono services to low income residents of northeastern New York. LASNNY is well known for its collaborations with social services agencies and other legal services providers.

With respect to assuring that our clients have "the essentials of life", LASNNY has a number of strategic partnerships and community collaborations. For example, LASNNY has funded relationships with nine domestic violence service providers in the following rural counties: Clinton, Columbia, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Saratoga, St. Lawrence, Schoharie, Warren and Washington Counties. Through our Legal Assistance to Victims (LAV) grant, we are able to provide funding to domestic violence service provider partners to provide referrals, safety planning and social services to our domestic violence clients. In addition, LASNNY attorneys also provide an advanced legal issues training to the staff of domestic violence service provider partners.

Our homelessness prevention and intervention projects, which serve all of northeastern New York, involve collaborations with local departments of social services, community action programs such as Schenectady Community Action Program and other human services agencies such as ETC Housing Corporation, Wait House and various county-based departments of social services. Our Foreclosure Prevention Project similarly involves collaborations with other local legal services providers such as The Legal Project and the Empire Justice Center, as well as a number of housing counseling agencies including Housing Assistance Project of Essex County, Friends of the North County, Albany County Rural Housing Alliance and the HomeSave Project in Albany. With respect to ensuring that our clients have access to safety and security, our Upstate New York Immigration Law Project is a collaboration with the Legal Aid Society of Rochester and ensures that representation for domestic violence immigration matters is available in all 16 counties in northeastern New York. With respect to public benefits, our Disability Advocacy Project (DAP) is a collaboration with the Empire Justice Center and various local departments of social services. Through the Disability Advocacy Project, DAP funds and our judiciary civil legal services funds are used to ensure that clients have access to income and health care services they need. Our Medical/Legal Project for children with disabilities also provides a range of civil representation and is a growing collaboration with the Albany Medical Center.

Through these collaborations, we have also had the chance to work effectively with non-lawyers in narrowing the issues that our attorneys address. Our staff includes paralegals who provide case management services to homeless or formerly homeless clients. We also work closely with non-lawyers from community partners who provide information, referral and lay advocacy to victims of domestic violence and low income individuals at risk of homelessness. This work targets the cases that require the assistance of a lawyer.

Finally, the Society is committed to collaborating with other local legal services providers to maximize available legal services. The local legal services providers work closely to increase the availability of pro bono legal services. In both the Third and Fourth Judicial Districts, the Society has worked closely with the New York State Bar Association, Albany County Bar Association, the Empire Justice Center and The Legal Project to do outreach with respect to

increasing pro bono services, to develop an innovative community law day program and doing joint trainings to recruit and retain pro bono volunteers.

Providers such as LASNNY are committed to exploring the potential for reduction in the unmet need for legal services to preserve "the essentials of life" through a variety of means. However, there remains significant unmet need for an attorney's service to provide legal services to preserve the essentials of life for our low income clients.

Clearly the work of the Society is good for our clients, the local courts and for the communities in which we practice. We are grateful to the Chief Judge for holding these hearings and championing the cause of civil legal services. We stand ready to provide any additional information as may be requested or desired.

Legal Aid Society of Northeastern New York, Inc.

Fighting for Fairness
Promoting Justice

Legal Lifelines

This Lifeline contains general information, and does not constitute individual legal advice about your situation. You should consult with an attorney for individual legal advice about your situation and to find out how this information applies to your situation. To see if you qualify for free legal services, call the Legal Aid office nearest you.

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New York State Bar Association

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THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES
OCTOBER 6, 2011
TESTIMONY OF VINCENT E. DOYLE III
PRESIDENT OF THE NEW YORK STATE BAR ASSOCIATION

The Task Force to Expand Access to Civil Legal Services
October 6, 2011
Testimony of Vincent E. Doyle III
President of the New York State Bar Association

My name is Vincent E. Doyle III, and I am the President of the New York State Bar Association. On behalf of the State Bar, I would like to commend the Task Force for its work, and thank you for involving our Association in the process. I submit this testimony, however, to address the specific need for civil legal services for our nation's veterans.

Many veterans face a host of difficult issues as they re-enter civilian life. As a result of our country's involvement in multiple armed conflicts around the world in the past decade, many members of the military have experienced combat-related physical and psychological injuries or disability. When they return home, they may have trouble accessing their benefits, or suffer from indirect consequences related to active duty, such as financial hardship, stress in their family lives, mental health issues, and even substance abuse or homelessness. Some veterans may be reluctant to seek assistance, fearing that it could be viewed as a sign of weakness or failure, and those who wish to seek help may not know where to turn. Many civilian lawyers are unfamiliar with the benefits and services available to veterans, and military lawyers may lack experience with state laws governing landlord-tenant disputes, or matrimonial or family law cases. And although many veterans' legal matters are substantively routine, the issues may be compounded by untreated emotional problems or substance abuse.

When I became president of the State Bar earlier this year, I designated veterans' issues as a top priority and we formed a Special Committee on Veterans to focus on this important area. The committee has already begun its work identifying issues that merit further examination and developing proposals for reforms. The committee is working to help veterans identify their legal problems and to connect them with qualified attorneys, many of whom are eager to help for a low fee or on a pro bono basis. The committee will compile information about existing legal services that are currently available and develop a manual for distribution to veterans to help them find free or affordable legal services. It will work to bolster the quality and availability of legal representation by identifying areas in which civilian lawyers may need specialized substantive training, such as how to navigate the various benefit systems. The committee is developing training in those areas that will also address issues related to military culture and encourage sensitivity to veterans' unique needs. The committee will also examine existing lawyer referral services and propose ways in which they could be revamped to screen for veterans in need of legal assistance.

Unfortunately, some veterans become involved in the criminal justice system. Due to issues that may be present in these cases, such as post traumatic stress disorder, traumatic brain injury, depression, and other mental health issues, a separate intervention is often more conducive to veterans' rehabilitation than typical criminal prosecution. Veterans courts or special veterans treatment tracks are currently operating in several areas throughout the state. These specialized courts and programs recognize that issues related to veterans' service may contribute to involvement in criminal activity, and deal with veterans in a constructive, non-adversarial manner. With the cooperation of judges, prosecutors, members of law enforcement and dedicated volunteers, they work to treat the underlying factors and help veterans get their lives back on track. The Special Committee aims to facilitate the implementation of additional

Veterans Courts around the state and to encourage the transfer of veterans' criminal cases to these programs.

One of the Special Committee's goals is to improve the quality and availability of pro bono services for veterans, and the generosity of volunteer lawyers has had a significant, positive impact in many lives. However, in this and so many other areas, pro bono services cannot completely address the need. Pro bono work will continue to play a critical role in this mission, but there are costs associated with these efforts, and additional full-time advocacy is also necessary to ensure that veterans receive the benefits and assistance they deserve. In order to provide quality representation, pro bono work must be coordinated by organizations that require funding to perform important functions such as maintaining and updating educational resources, training attorneys, operating referral services, screening cases and providing mentorship and guidance to volunteers.

In today's challenging economy, where resources and job opportunities can be scarce, it is especially important that we provide our veterans with the help they need after they have sacrificed so much to serve our nation. I urge the Task Force to support policies that will provide an adequate and consistent source of funding for organizations that provide these important services. I would like to thank you for your consideration.

Prisoners' Legal Services of New York

PROPOSED TESTIMONY

OF

PRISONERS' LEGAL SERVICES OF NEW YORK

BEFORE

CHIEF JUDGE LIPPMAN'S TASK FORCE TO

EXPAND ACCESS TO CIVIL LEGAL SERVICES

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I. INTRODUCTION

We would like to thank Judge Lippman and the members of this Task Force for inviting Prisoners Legal Services (PLS) to testify about our knowledge of the need to expand civil legal services. PLS is a statewide agency that was created by New York State in 1976 in response to "the bloodiest prison confrontation in U.S. history": the Attica uprising. Since then, PLS has worked tirelessly to address the civil legal issues that were found to have caused the Attica riot.

Our testimony demonstrates that PLS, like other civil legal organizations in New York State, provides vital civil legal services to thousands of low income New Yorkers every year. Like other civil legal services groups, PLS addresses significant legal problems associated with the "essentials of life" such as the living conditions of institutionalized persons, family stability, personal safety and access to health care and education. Like other civil legal services groups, we were created in response to recognition that indigent individuals need competent legal representation to ensure that their civil and constitutional rights are protected. Like other civil legal services organizations, the indigent client population we serve consists predominately of people of color, as well as the illiterate, the physically impaired and disabled and those who suffer from developmental disabilities and/or mental illness. And like the majority of civil legal services organizations in New York State, although the need for our services continues to grow, our funding has been significantly reduced. The only difference

between PLS and other civil legal services organizations is that the low income New Yorkers whom we represent happen to be incarcerated. Moreover, unlike other low income New Yorkers – who, however limited it may be, at least have access to a wider range of legal service providers – our client population has very limited options for, and access to, legal assistance. As is shown in our testimony below, PLS is the only legal services organization in New York State that is equipped and devoted to responding to the direct civil legal services needs of low income incarcerated New Yorkers.

II. THE CURRENT STATE AND SCOPE OF THE UNMET NEED FOR CIVIL LEGAL SERVICES FOR PRISONERS

As noted above, PLS' clients share many of the same "essentials of life" issues with the clients of other civil legal services organizations such as lack of access to adequate health care and education and the need to ensure family stability, and with other institutionalized persons, such as the conditions in the institutions where they are confined. In addition, there are other "essentials of life" issues that are unique to prisoners, notably, basic, fundamental human rights issues such as protection from torture and cruel and inhuman treatment and the fundamental right to freedom which, for prisoners, manifests itself as the right to be released from prison on the court ordered release date.

A. THE STATE OF THE UNMET NEED

1. The unmet need to protect individuals from prolonged solitary confinement.

New York State prisoners can be disciplined for a host of prison rule violations including, e.g., failing to have an ID card; being out of place; creating a disturbance; fighting; drug charges; and assaults. If a prisoner is charged with misconduct, a disciplinary hearing is held against him. Although prisoners have some limited rights at these hearings such as notice of the charges and the right to call, but not cross-examine, witnesses, for the vast majority of prisoners facing disciplinary hearings, there is no right to counsel.

The punishment for violating a prison rule can range from 'counsel and reprimand' to placement in solitary confinement, loss of good time and loss of packages, phone and commissary privileges and loss of good time. Although the Department of Corrections and Community Supervision (DOCCS) has internal "guidelines" for imposing solitary confinement,[1] these "guidelines" are not mandatory and are often exceeded. The fact is that there is no limit to the amount of time a prisoner in New York State can be placed in solitary confinement.[2]

[1] For instance, DOCCS' guidelines for an assault without a weapon and minor or no injury has a guideline range of 3 to 9 months in solitary confinement and 3-6 months loss of good time; an assault with a weapon with serious injury has a guideline range of 12-24 months in solitary confinement and 12-24 months loss of good time.

[2] Due to litigation by PLS, Prisoners' Rights Project and Disability Advocates, Inc. and legislative efforts by various advocacy groups, there has been a movement in New York State to reduce the

Whether DOCCS follows its existing guidelines, however, is not really the issue. The research on the effects of solitary confinement on humans shows that even the application of DOCCS' existing guidelines can result in conditions of confinement that jeopardize the physical and mental health of people so confined. Human rights experts across the world, including Human Rights Watch, the Human Rights Committee and the Committee against Torture, have criticized the use of long term solitary confinement.[3] The U.N. Commission on Human Rights through its Special Rapporteur on Torture has found that prolonged solitary confinement may very well violate the International Covenant on Political and Civil Rights. A noted human rights scholar wrote: "Solitary confinement and prolonged segregation in U.S. prisons follow neither international standards for prison management nor internationally established protections for prisoners rights."[4] A Human Rights Watch report on "*Solitary Confinement: International Norms and Health Consequences*," notes that: "Empirical research on solitary and supermax-like confinement has consistently and unequivocally documented the harmful consequences of living in this kind of environment . . . ."[5] Presidential hopeful John McCain talked about his experience in solitary confinement

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amount of time a mentally ill prisoner might face in solitary confinement, but there is no such limit for other prisoners.

[3] See: http://www.hrw.org/en/news/2010/03/22/solitary-confinement-and-mental-illness-us-prisons

4 Elizabeth Vasiliades, "Solitary Confinement and International Human Rights: Why the U.S. Prison System Fails Global Standards," *American University International Law Review*, vol. 21, p. 98, 2005.

as a prisoner of war in Vietnam where he spent five and a half years in isolation in a fifteen-by-fifteen-foot cell. He stated: "It's an awful thing, solitary . . . . [i]t crushes your spirit and weakens your resistance more effectively than any other form of mistreatment."[6]

But even if one should take issue with the notion that solitary confinement is *per se* torture, we can all agree that placing someone in solitary confinement, often for years at a time, without sufficient evidence that such punishment is warranted, is unjust and violative of the Constitution; yet, such incidents occur within our State prisons all too often.

Since 2009, PLS has received requests from prisoners to review over 2400 disciplinary hearings – hearings that resulted in dispositions of prolonged placement in solitary confinement. Due to our limited funding we were only able to review approximately 16% of those hearings. Of the 389 cases that we were able to review we found that, in many of the hearings, there were procedural and substantive errors that warranted the filing of an administrative appeal and, if unsuccessful, an Article 78 proceeding. **PLS' advocacy on those cases resulted in expungement of a total of**

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[5] Craig Haney, "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement," *Crime and Delinquency*, vol 49, no. 1, January 2003, p. 130.

[6] Antul Gwande, "Hellhole," *New Yorker*, March 2009. "And this comes from a man who was beaten regularly; denied adequate medical treatment for two broken arms, a broken leg, and chronic dysentery; and tortured to the point of having an arm broken again. A U.S. military study of almost a hundred and fifty naval aviators returned from imprisonment in Vietnam, many of whom were treated even worse than McCain, reported that they found social isolation to be as torturous and agonizing as any physical abuse they suffered."

over 80 years of solitary confinement time from prisoners' records. PLS' ability to review those hearings and advocate accordingly resulted in numerous men and women across New York State being removed from wrongfully imposed solitary confinement, but there are hundreds of other prisoners who were not as fortunate.

2. The unmet need to ensure an individual's right to freedom.

Our Constitution ensures the right of liberty for all citizens, but often prisoners are held beyond their court ordered release date. Whether the error is due to a jail time or sentencing computation mistake, or loss of good time as a result of a due process violation at a disciplinary hearing, denying an individual's right to freedom flies in the face of one of the most fundamental "essentials of life' that exists in America.

For 2010 and the first two quarters of 2011, PLS received 5053 requests from prisoners to investigate parole, jail time, sentencing and good time issues. Once again, due to our limited resources we were only able to accept a fraction (13%) of those cases for review, but even with the limited number of cases we were able to accept, **PLS' advocacy resulted in over 96.5 years of jail time, sentencing time and good time being restored to prisoners across New York State.** Although the clients whose freedom we were able to protect are very appreciative, there are literally thousands of others for whom our services were unavailable due to our lack of adequate resources.

3. The unmet need to prevent cruel and inhuman treatment.

PLS' work over the past 35 years to eliminate the use of excessive force in the State's prisons has resulted in the placement of cameras in most facilities, better training in the use of force and alternatives to using force for prison guards, a requirement that officers submit detailed use of force reports and improved medical exams after the use of force. In spite of these gains, in 2010 PLS received over 600 complaints alleging excessive use of force or harassment by correctional officers. Although the use of excessive force is not the norm, when it does occur, there is a need for swift and strong advocacy. Take, for example, the case of Mr. Williams.[7] Mr. Williams was assaulted in a State prison by a number of corrections officers. He suffered a broken nose, fractured orbit, fractured thumb and possibly fractured rib. He also had a large laceration around one eye requiring 32 sutures. His broken nose required surgical repair. His broken thumb required immobilization in a cast for six weeks. PLS filed a federal 42 U.S.C. Section 1983 action and engaged in extensive discovery lasting over two years and, just recently, the State agreed to settle the case.

Interestingly, although the prison population has decreased approximately 7.4 percent since January 1, 2008,[8] the volume of requests for assistance with excessive use of force complaints does not appear to be following the same trend. In 2008,

[7] The name of the client has been changed to protect honor attorney-client confidences.

[8] http://www.pewcenteronthestates.org/uploadedFiles/Prison_Count_2010.pdf DOCCS' reported prison population as of January 1, 2008 was 60,347. DOCCS' reported prison population as of June 22, 2011 was 55,871.

PLS received 609 complaints of brutality by guards and, as stated above, we received 600 such complaints in 2010. These figures demonstrate that brutality complaints are on the rise.

Once again, even though PLS receives hundreds of complaints annually, we are only able to fully investigate a handful of them, and although not all of the allegations of excessive use of force result in the need for PLS to intervene, the sheer number of complaints, the evidence that such complaints may be increasing and the results of our advocacy in the cases we do accept, highlight the need for civil legal services in this area. Moreover, experience, as well as anecdotal evidence, strongly suggests that PLS' mere presence and proven ability to investigate and litigate such claims when necessary, serves as an important deterrent to staff abuse and misconduct.

4. ***The unmet need to ensure access to adequate medical and mental health care.***

Adequate medical and mental health care for prisoners is not only constitutionally required, but critically important to public health and safety. PLS investigates hundreds of allegations of inadequate medical and mental health care claims annually. We successfully advocate in many of those cases. As a result of our work, many prisoners receive the medical and mental health attention that they need which translates into a reduction in tension within the prison population. Additionally, because they are treated for their medical and mental health issues, upon release, they

are better able to reintegrate into society and reunite with their family and loved ones which often lessens the likelihood that they will re-offend and return to prison.

In 2007, together with Prisoners' Rights Project and Disabilities Advocates, PLS settled a lawsuit focused on the treatment of the mentally ill in prison. As a result the treatment of the seriously mentally ill in prison has improved. However, as reported by the *Poughkeepsie Journal* on December 26, 2010, there remain significant deficiencies in the care and treatment of the mentally ill in our State prisons as suicides are on the rise and "mental health care was criticized in 9 of the 21 suicides that occurred since the prison lawsuit was settled."

As reported in the Dec. 26th article in the *Poughkeepsie Journal*: "Suicides in New York state prisons soared in 2010 to their highest rate in 28 years as 20 inmates took their own lives." Since 2010, PLS has received over 1135 complaints concerning inadequate medical and mental health care but was only able to accept approximately 20% of those cases. Such statistics demonstrate the critical need for the type of civil legal services that PLS provides.

5. *The unmet need to help maintain family stability*.

Maintaining family ties is crucial to successful reentry. A strong family support system upon release has been shown to be a significant factor in reducing recidivism rates. Strong family ties translates into safer prisons. In 2010, PLS received approximately 200 complaints from prisoners involving family issues such as visitation

and custody and although we were unable to accept every case, because of our involvement in many of them, visitation was restored and our clients were able to maintain and strengthen their family relationships.

B. THE SCOPE OF THE UNMET NEED

As can be seen from the case acceptance numbers set forth above, the scope of the unmet legal needs of prisoners is wide spread and significant. Our inability to accept a greater number of cases stems from the reduction in funding that has occurred over the past decade, which has, in turn, resulted in a significant reduction in staff.

In the 1990's when the prison population reached 72,000, PLS had a staff of 40 attorneys plus additional support staff and an allocated State budget of over $4,000,000.00. Today the prison population is approximately 55,000.00, our State budget is $1,000,000.00 and PLS has a staff of 11 attorneys.

To understand the breadth of the unmet legal need for prisoners in New York State it is helpful to look not only at case acceptance numbers and current PLS staffing, but at a comparison of the number of private attorneys providing civil legal services to the general population with the number of PLS attorneys providing civil legal services to New York State's prison population. Per a 2007 report by the Legal Services Corporation entitled "Documenting the Justice Gap in America"[9] the ratio of private attorneys providing civil legal services to the U.S. population in 2000 was roughly 1 to

[9] http://www.lsc.gov/justicegap.pdf

525. The present ratio of PLS attorneys providing civil legal services to prisoners is 1 to 5090.

III. ECONOMIC AND SOCIAL CONSEQUENCES OF REDUCED OR ELIMINATED PLS' SERVICES

A. PLS' WORK HAS HELPED PREVENT ANOTHER "ATTICA"

PLS was created to address the issues that were found to have caused the Attica rebellion. We have helped reduce the use of excessive force against prisoners, we have significantly reduced the use and misuse of solitary confinement, we have worked to increase programming and education for prisoners, we have assisted prisoners in peacefully airing and resolving their grievances and we have been instrumental in improving the overall conditions of New York State prisons. In addition, over the years PLS has been instrumental in the development of significant case law in the areas of prison discipline, jail time and sentence calculation, and parole, as well as federal civil rights and due process protections.

The benefit that PLS provides to New York State in helping to prevent another Attica is immeasurable. The New York State Association of Criminal Defense Lawyers (NYSACDL) has stated that PLS' "work has made the prisons safer, more humane and less violent." New York State Bar Association Past President Stephen Younger stated: "One of the greatest values of PLS is that it works to avoid conditions of confinement that resulted in the devastating Attica riot. PLS is – and should remain – a vital,

integral part of the state's criminal justice system and a critical component of public safety." The cost of another Attica would be astronomical; not just in dollars but in lives and in the threat to the future stability of our criminal justice system. Thus, the economic and social consequences of continuing to reduce PLS' services cannot be overstated.

B. PLS IS THE ONLY STATEWIDE LEGAL SERVICES ORGANIZATION WITH THE EXPERTISE AND CAPACITY TO FULFILL THE LEGAL MANDATE OF PROVIDING PRISONERS ACCESS TO THE COURTS

The State has a legal responsibility to provide meaningful access to the courts for inmates confined in state prisons. Bounds v. Smith, 430 U.S. 817 (1977). New York has, in the past, wisely chosen to fund PLS to provide this access to at least part of the inmate population. In a letter to Governor Pataki several years ago, the then President, the immediate past President and the President-Elect of the New York State Bar Association, addressed the need for PLS' continued funding: "Experience demonstrates that citizens are not able to adequately represent themselves in litigation, particularly that which requires discovery or trial. And inmates who are not literate, who do not speak English well or who are mentally ill surely are entitled to the services of lawyers. The fact is that lawyers are essential to the fair administration of justice for prisoners."

C. PLS IS THE ONLY LEGAL SERVICES ORGANIZATION THAT PROVIDES DIRECT LEGAL REPRESENTATION TO ALL NEW YORK STATE PRISONERS

Although significant improvements have been made within our prison system, abuses still occur, and PLS is the only statewide legal services organization that prisoners can turn to for direct legal services representation. [10] This is borne out by the hundreds of referrals PLS receives annually from outside agencies, organizations and individuals including requests from the Executive, Legislative and Judicial branches including Assembly members, Senators, Judges and lawyers asking us to investigate prisoner complaints that are received in their offices.

The New York Civil Liberties Union (NYCLU) notes that NYCLU, "which is not a direct legal services organization, receives many hundreds of compelling requests for assistance each year, from prison inmates who have been assaulted, deprived of necessary medical or mental health care, and denied fundamental constitutional rights. ***Almost all of these cases are referred to PLS, as only it has the mandate, the expertise, and the capacity to address these matters***." (emphasis added)

The Office of the Appellate Defender points out that, "PLS is the sole organization that serves the entire population of incarcerated individuals in the State….PLS serves as a vital resource to other legal service providers in the State, as well as families of incarcerated persons. Our attorneys often call upon our PLS

[10] Although the Legal Aid Society's Prisoners' Rights Project does handle some prison related cases, PRP focuses primarily on class action litigation in the State prisons and in the New York City jails concerning sexual assaults.

colleagues for advice on handling certain matters within their expertise. Moreover, when we encounter situations that are outside of our purview, we will refer individuals directly to PLS for representation….As a matter of fairness and decency, and as a matter of public safety, PLS must not be permitted to close."

Disability Advocates, Inc. states:" We have worked with PLS for many years, and can assure you that if this fine organization goes out of existence there is no other organization that can pick up the task."

The Correctional Association of New York notes that PLS provides "an essential avenue for incarcerated persons to obtain meaningful access to civil lawyers, the courts, and legal rights information. It is a strength of New York State that the Executive and Legislative branches have consistently recognized this fact and protected this civil legal access."

The New York State Defenders Association noted the overwhelming requests for assistance that were received when PLS went unfunded for one year in 1998. "Before the demise of PLS, we received approximately 300 requests a year from prisoners. A majority were referable to PLS, most of which were resolvable by PLS without litigation. At least three times that many cases are now coming into our office, most not referable."

And solo practitioners across the State are also urging funding for PLS. One such attorney writes: "PLS has helped me perform my job as an Assistant Public

Defender better. I often get letters requesting assistance that my office cannot provide; I refer them to PLS and never get letters back saying they were not able to help. PLS provides services that help us all in ways many do not see or understand."

The above is just a small sample of the comments made by organizations and individuals who understand the purpose and need for Prisoners' Legal Services and who know, first-hand, that PLS is the only organization they can turn to for individualized legal assistance in cases concerning conditions of confinement in State prisons.

D. PLS SAVES THE STATE MILLIONS OF DOLLARS EVERY YEAR

By correcting jail time and sentencing errors and successfully seeking restoration of good time, **PLS saved the State over $3.6 million in 2010, and over $4.6 million in 2009.**[11] PLS' work since 2009 has resulted in a total of 205.5 years being credited to prisoners' sentences and, through the reversals of disciplinary hearings, the expungement of 80 years of solitary confinement. But for PLS' work, men and women would have been illegally held in our prisons or in solitary confinement for years, costing the State millions of unnecessary dollars in actual confinement costs and untold dollars in subsequent wrongful confinement awards. NYSACDL has stated that: "***It is quite probable that the work of PLS has protected***

[11] Attached as an Appendix to this testimony is a document setting forth how PLS saves the State millions every year.

the State from litigation and judgments for faulty jail time calculations or sentencing errors."

IV. COST AND BENEFIT TO THE COURTS AND COMMUNITIES

PLS, by answering over 12,000 prisoner complaints annually, has discouraged, and often prevented, the filing of many lawsuits that would have otherwise been a costly burden to DOCS, OMH, the Judiciary and the Attorney General's Office. In addition, when PLS accepts a case, the courts benefit from having experienced legal counsel steering the litigation. Finally, through our *Pro Se* newsletter, Facebook page and website, PLS educates, not only prisoners, but their families and society at large on the constitutional and regulatory rights of prisoners, our criminal justice system in general, prison conditions and reentry resources.

In addition, there are benefits to the community in terms of public safety. Because of our work, many prisoners receive the mental health care, medical care, programming and education they need to succeed in life once they are released. Through our work, prisoners learn that society will not tolerate unjust treatment of its people. Our work instills in prisoners the sense that the criminal justice system is fair and just. Thus, when they are released from prison, our clients are much more likely to successfully adjust to life outside the prison walls and become law-abiding productive members of society.

V. POTENTIAL FOR REDUCTION IN UNMET NEED THROUGH PREVENTION AND EARLY INTERVENTION, CLIENT EDUCATION, COLLABORATION AND COST SHARING AND EXPANSION OF PRO BONO EFFORTS

A. PREVENTION AND EARLY INTERVENTION

By intervening early in disciplinary, medical and mental health, visitation and other conditions of confinement matters, PLS helps prevent prisoners from being subjected to constitutional violations. Our interventions also help them prepare for successful release into society, thus reducing the "essentials of life" issues that typically arise upon release. In addition, PLS is currently collaborating with DOCCS to produce educational videos that DOCCS will show to all prisoners upon reception into custody to educate and advise them of their rights and obligations while in prison and to help guide them on a path to early and successful release and reentry. Early intervention on these issues will help prisoners better navigate and understand the prison system, thus helping them to avoid the many pitfalls of incarceration.

B. CLIENT EDUCATION

PLS publishes a bi-monthly newsletter, *Pro Se*, that advises prisoners of changes in the law, provides practice pieces to assist its readership in complying with statutory and regulatory requirements, and explains technical aspects of various laws affecting prisoners. *Pro Se* is provided free of charges to all prison law libraries, over 7800 individual prisoners and over 250 outside organizations, including the NYS Bar

Association, judges, professors, the Division of Criminal Justice, community activists and DOCCS. PLS also publishes over 75 self-help and educational memos covering a wide-variety of legal topics typically encountered by prisoners.

Our educational and self-help materials give guidance to prisoners in many areas including, for example, how to access and navigate the prison grievance system. Proper use of the grievance system can, in turn, result in the resolution of issues without court intervention. In addition, our materials advise prisoners on how to cope with issues such as guard harassment in a peaceful non-adversarial way which, in turn, helps prevent escalation of emotions which inevitably result in charges of misconduct that might otherwise occur. Finally, our educational materials help prisoners realistically assess the merits of their cases, thus reducing the burden on both counsel and the judiciary.

C. REGIONAL PROVIDERS, COLLABORATION AND COST SHARING

On a number of occasions, PLS has partnered with various legal services organizations and law schools to leverage resources, thereby increasing the number of prisoners whom we can assist. An example of this is our partnership with City University of New York Law School (CUNY) and the students in CUNY's Criminal Defense Clinic. PLS provides training to the clinic students on the procedural and substantive issues surrounding disciplinary hearings. The students are then supervised

by a CUNY professor in their review of and advocacy on prison disciplinary hearings that PLS refers to them. If PLS were given additional funding, we would be able to expand such efforts and, in turn, provide additional legal services for our clients, thereby further reducing the unmet need for legal services within our prisons.

PLS also works with DOCCS in its Reentry Program at both Orleans and Hudson Correctional Facilities. These programs are available to between 60 and 90 prisoners at each facility and are offered to inmates who are scheduled for release to the Buffalo and Albany regions. As part of the program, PLS, the Legal Aid Bureau in Buffalo and a number of other volunteers, make presentations on issues such as education, employment, parole and family law. Additional projects along these lines would help in providing positive guidance to our clients, all of which result in reduced tension and concomitant improvements in overall conditions of confinement, including the safety and security of our prisons.

D. EXPANDING PRO BONO SERVICES

As a result of a one year grant from the Tides Foundation, PLS recently hired a Pro Bono Coordinator. Since beginning at Prisoners' Legal Services, on July 18, 2011, our Pro Bono Coordinator has been working steadily on developing a comprehensive pro bono program. Our goals for the year are to: improve collaboration among civil legal services providers; develop procedures,

forms and manuals for the pro bono program; form partnerships with the courts, law firms, law schools, similarly-tasked organizations and state agencies; identify cases that can be referred through the Pro Bono Program; create a network of support services for pro bono attorneys; develop a training component for volunteer attorneys and law students; and organize a kick-off event to advertise the existence of the program.

Over the last two months, many of these goals have been achieved. We have improved collaboration between organizations who provide referrals for prison-related cases by creating a resource referral spreadsheet.[12] We have drafted a manual to be provided to the attorneys volunteering through our Pro Bono Program. We have met with the Chief Clerk of the Albany County Supreme Court, to discuss a partnership through which law students would screen *pro se* petitions submitted by prisoners, identifying those that would benefit from an attorney's assistance.[13] We are also exploring a collaboration between DOCCS, Albany Law School's Pro Bono Program and PLS.[14]

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[12] The spreadsheet lists the civil legal service and referral agencies throughout New York, and details the services, if any, offered to prisoners. This information has been distributed to over 100 bar associations, legal service providers, and law school clinics.

[13] The proposal we have put forth consists of law students reviewing prisoners' *pro se* Article 78 filings at the Albany Supreme Court Clerk's office twice weekly. Students, trained by PLS staff, would examine the papers, focusing on procedural compliance, timeliness and substantive issues to determine if the case would benefit by being referred to a pro bono attorney. If referral is deemed appropriate, PLS' Pro Bono Coordinator would work to locate appropriate pro bono counsel.

[14] Specifically, we have proposed to train student volunteers on prisoners' rights issues to enable them to visit two state prison facilities monthly, and conduct seminars on issues relate

To recruit attorneys, our Pro Bono Coordinator has engaged in targeted outreach to various law firms, the Albany Law School Pro Bono Program, the Syracuse Law School Pro Bono Advisory Board and Volunteers of Legal Services. In an effort to create a support system for volunteer attorneys, our first venture will involve a CLE training on handling disciplinary hearings. The training will initially be offered to Albany Law School Pro Bono students and will also be made available on the American Bar Association's website.

To ensure that people are aware of our new Pro Bono program we have organized a kick-off for the Pro Bono Program during National Pro Bono Recognition Week (October 23-29, 2011).[15]

Though still in its infancy, a bright future shines for this program. Over the course of four weeks, seven cases have been referred to our Pro Bono Coordinator in the hope that pro bono counsel can be found. Clearly a need exists for additional resources – resources that would allow PLS to extend the Pro Bono Coordinator's position beyond one year and hopefully expand our pro

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to incarceration and reentry.

[15] On October 26th, we will host a screening of the film *Crime After Crime*, a documentary about one woman's fight for freedom, following her conviction for the murder of her abusive husband. Her case was accepted pro bono by two attorneys, who demonstrate the value of pro bono work as well as working with incarcerated persons. We are advertising the event through the New York State Bar Association, the Albany County Bar Association, and the ABA's Celebration website (http://www.probono.net/celebrateprobono/), as well as e-mailing announcements to approximately 350 individuals throughout New York State. We will also be providing information about the event to local news outlets and posting fliers throughout the Capital Region.

bono efforts statewide. Increasing the chances for successful pro bono referrals will help reduce the unmet need for the civil legal services prisoners desperately need.

CONCLUSION

For 35 years, PLS has worked tirelessly to address the "essentials of life" legal problems so often confronted by its clients, the indigent New Yorkers who have ended up confined in our State's prisons. PLS has helped keep the peace in our State prisons and has increased the likelihood that prisoners will be able to successfully reintegrate into society when they are released. PLS is a critical and necessary component of New York State's civil legal services infrastructure. PLS is also an important, necessary and sound investment, not only from an economic, but also from a moral, ethical and human rights vantage point.

Additional resources will enable PLS to increase its ability to respond to the critical, but unmet civil legal services needs of this State's indigent and oft-forgotten prison population.

Dated: September 9, 2011

John R. Dunne, Esq., Member, PLS Board of Directors
John S. Kiernan, Esq. Chairman, PLS Board of Directors
Karen L. Murtagh, Esq., PLS Executive Director
Prisoners' Legal Services of New York
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APPENDIX
PLS SAVES THE STATE MILLIONS ANNUALLY

I. TIME SAVED

A. Good Time, Jail Time Sentence Computation Time and Parole Release Time

PLS ensures that prisoners' sentences are calculated accurately and that they receive all of the jail time to which they are entitled. PLS' also ensures that prison disciplinary hearings comply with procedural and due process requirements and when they do not, PLS' advocacy results in prisoners recovering lost good time and being removed from solitary confinement, commonly referred to as the "special housing unit" or SHU. PLS' advocacy in these areas results in millions of dollars of savings for the State annually. For every year of good time restored and jail time and sentence computations corrected, PLS saves the State at least $36,835.00.[16]

B. SHU Time

When inmates are released from SHU they are able to participate in educational and other rehabilitative programs. Participation in such programs increases the likelihood of early release and dramatically reduces the recidivism rate. In addition, if an inmate is in general population as opposed to SHU when he/she appears before the parole board, release is much more likely. Thus, although release from SHU may not save the State the entire $36,825,00 per inmate, it does significantly reduce the overall cost to the State. Factoring in SHU time at only half the time saved results in the following savings:

TOTAL TIME SAVED FOR 2009

SHU Time Cut	436 months
Good Time Restored	352 months
Jail Time Credit	222.5 months
Parole Release	9 months
Sentence Computation	727.5 months

Total Good Time, Jail Time, Sent. Comp. & Parole Release:
109.25 years x $36,835.00 = $4,024,223.75

½ SHU time: 18.17 years x $36,835.00 = $ 669,169.17

Total State Savings for 2009 **$4,693,392.92**

[16] Bureau of Justice Statistics Special Report June 2004 reported that in 2001, the average yearly cost of housing an inmate in a New York State Prison was $36,835.00. See: http://www.ojp.usdoj.gov/bjs/pub/pdf/spe01.pdf.

TOTAL TIME SAVED FOR 2010

SHU Time Cut	352 months
Good Time Restored	139 months
Jail Time Credit	168 months
Parole Release	0
Sentence Computation	692 months

Total Good Time, Jail Time, Sent.Comp. & Parole Release:

83.25 years x $36,835.00 = $3,066.513.75

½ SHU time: 14.06 years x $36,835.00 = $ 540,246.67

Total State Savings for 2010 **$3,606,760.42**

TOTAL TIME SAVED FOR JAN. 2011- JUNE 30, 2011

SHU Time Cut	184 months, 5 days
Good Time Restored	72 months
Jail Time Credit	41 months, 12 days
Parole Release	14 months, 29 days
Sentence Computation	34 months, 26 days

Total Good Time, Jail Time, Sent.Comp. & Parole Release:

13.5 years x $36,835.00 = $ 497,272.50

½ SHU time: 7.6 years x $36,835.00 = $ 279,946.00

Total State Savings for 2010 **$ 777,218.50**

Alyssa L. Talanker, Esq.

Judicial Hearing on Civil Legal Services
October 3, 2011, Albany, New York
Statement by Alyssa L. Talanker, Esq.

Thank you for the opportunity to present a statement on the need to fund representation for low-income New Yorkers at unemployment benefit hearings. I am Alyssa Talanker, an attorney in Troy, New York. For the past year, I have volunteered weekly at the Legal Aid Society's unemployment clinic in Albany and met with over 75 unemployment claimants. The clinic helps claimants to represent themselves at benefit hearings by providing an understanding of their hearing rights, the hearing process, and the legal standards for denying unemployment benefits in their particular case. The unemployed workers who use the clinic would prefer to have legal representation at their hearings. Many choose self-representation, however, because they cannot afford the legal fees they would owe if successful at their hearing. Most low-wage workers live paycheck to paycheck, and have no savings when they lose their jobs. Unemployment benefits are their sole source of income to pay for rent, food and other basic needs to support their families until they can find new work.

Providing funding for legal services for unemployment representation may reduce the demand for other types of legal services for the poor. As Chief Justice Burger recognized, "Unemployment benefits provide cash to a newly unemployed worker at a time when otherwise he would have nothing to spend, serving to maintain the recipient at subsistence levels without the necessity of his turning to welfare or public charity." California Human Resources Department v. Java, 402 U.S. 121, 131-132. At the clinic, it is not unusual to learn that unless a claimant can get unemployment benefits, the family will have to move into a shelter or apply for public assistance.

Without representation at their unemployment hearings, claimants are less likely to receive unemployment benefits. A study by the National Employment Law Project found that claimants are twice as likely to win their unemployment benefit hearings when they are represented. Another study by the Massachusetts Division of Unemployment Assistance to the Massachusetts Supreme Judicial Court's Access to Justice Commission

in 2006 reported that in cases where the employer was represented and the claimant appeared pro se, the claimant succeeded 49% of the time, but when both parties were represented, the claimant's rate of success rose to 68%.

These findings are not surprising. Most unemployed workers who come to the clinic have never participated in any type of administrative hearing. Many are not comfortable with the idea of cross-examining their former employer or co-workers. For some, recalling their discharge and the circumstances leading up to it may be too emotional or challenging to effectively present their own case. They need counsel who "can help delineate the issues, present the factual contentions in an orderly manner, conduct cross-examination, and generally safeguard the interests" of a claimant. Goldberg v. Kelly, 397 U.S. 254, 270-271 (1970).

Most of the cases at the clinic involve disqualifications on the grounds that a former worker quit without good cause, or that her acts constituted misconduct. In some cases, the employers did not object to the claim until after the claimant had been collecting unemployment benefits for several weeks, or even months. The need for effective legal representation becomes readily apparent. In the majority of the misconduct cases, the facts as explained by the claimant do not indicate any volitional act or omission detrimental to the employer's interest that would satisfy the disqualification standard under the case law. Often, claimants are able to recall other instances where their employer condoned the same conduct as part of its ordinary operations, and can identify witnesses who would testify in support. With counsel to cross-examine the employer and present witnesses to refute any suggested detrimental impact from the claimant's conduct, an effective argument for benefits can be presented to the administrative law judge. For a claimant who unsuccessfully represents herself at the hearing, however, the consequences can extend well into the future. Once disqualified for misconduct, she remains ineligible to receive unemployment benefits until she returns to work and earns five times her weekly benefit rate. This impact can be especially severe for many low-wage workers in

New York where the 2010 unemployment rate for african-americans was 14.4%, 12.2% for latinos, and 17.2% for youths.

At the clinic, a claimant has the opportunity meet for an hour with an attorney and share -- often for the first time -- the details of her work experience. This consultation often brings out important facts to present at an unemployment hearing for quitting without good cause. During the consultation, it is not uncommon to hear about wage violations or job discrimination involving hostile work environments that contributed to the reasons for quitting. This information, however, does not always come to light during the claimant's telephone conversation with the Department of Labor's unemployment representative. Often, claimants may not realize their employer's actions were unlawful and never bring them up to the representative who initially determines the claim.

A smaller number of claimants seek help because the Department has stopped their benefits and sent a notice of overpayment to recover the benefits paid. These cases often involve charges that the claimant stated the wrong reason on the claim form for job termination and willfully misrepresented eligibility for benefits. Several decisions by the Unemployment Insurance Appeals Board have recognized that inadvertent errors, such as claiming "lack of work" where downsizing was imminent but layoffs had not yet started, is not willful misrepresentation. Many claimants at the clinic do not understand these fine points or their disqualification notices. Although they are advised to articulate any inadvertent misunderstanding to the judge, the need for counsel is again apparent. Ineffective self-representation may result in an order to repay several thousand dollars in benefits already spent for rent, utilities, food and clothing to support the claimant's family.

Unemployment benefits are as crucial as public benefits to the support of low-income New Yorkers. The safety net provided by unemployment benefits though can disappear instantly and permanently once a benefit claim is denied. The cost of funding representation for unemployment hearings is far outweighed by the benefits. Unemployment benefits are spent in the local community on basic necessities such as

rent and food. Costly public assistance by the government can be avoided and claimants must pay taxes on their benefits. As you consider how to improve the delivery of legal services to those most in need, I urge you to support funding legal representation at unemployment hearings for low-income New Yorkers. Thank you again.

Alyssa L. Talanker
Attorney at Law
P.O. Box 1344
Troy, New York 12181

APPENDIX 14:

Written Statements submitted at the Fourth Department Hearing held on October 6, 2011

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Written Statements Submitted at the
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Jack Hagen (Client of Legal Services for the Elderly, Disabled or Disadvantaged of Western New York, Inc., accompanied by William W. Berry)

Bryan D. Hetherington (President, Monroe County Bar Association)

Stephen L. Johnson (Member, Bond, Schoeneck & King, PLLC)

Hon. Deborah H. Karalunas (Supreme Court, Onondaga County)

Michelle Kilian (Client of Neighborhood Legal Services, Inc., accompanied by William J. Hawkes)

Makau W. Mutua (Dean and SUNY Distinguished Professor, University at Buffalo Law School)

Hon. E. Jeannette Ogden (Buffalo City Court; Acting Judge, County and Family Courts)

Arthur A. Russ, Jr. (President, Bar Association of Erie County; Of Counsel, Phillips Lytle LLP)

Gabrielle Threet (Client of Erie County Bar Association Volunteer Lawyers Project, accompanied by Robert M. Elardo)

Justin L. Vigdor (Chair, Telesca Center Capital Campaign; Past President, New York State Bar Association and Monroe County Bar Association; Senior Counsel, Boylan Code LLP)

(Non-Testifying Witnesses are listed on the following page)

Written Statements Submitted at the
Fourth Department Hearing on October 6, 2011

Statements of Non-Testifying Witnesses

Erie County Bar Association Volunteer Lawyers Project, Inc.

Farmworker Legal Services of New York, Inc.

Legal Aid Society of Rochester, NY

Legal Assistance of Western New York, Inc.

Legal Services of Central New York

Legal Services for the Elderly, Disabled or Disadvantaged of Western New York, Inc.

New York State Unified Court System Law Libraries Association

Syracuse Law School

Western New York Law Center

Women's Bar Association of the State of New York

Written Statements of Testifying Witnesses

Karen and Bernard Dent

Clients of Western New York Law Center,
accompanied by Joseph Kelemen

Good morning.

My name is Bernard Dent and I am pleased to have this opportunity to provide testimony describing the assistance I received as a client of the Western New York Law Center. Like many in New York I have had to deal with the loss of my job, having been laid off in 2009. Aside from temporary employment as a Census worker, the drop in our household income was a serious problem. As a result, the stress and the financial difficulties have been quite significant. Had it not been for the fact that my wife's teaching position allowed us to stay afloat, this story may not have had a happy ending.

While I sought new employment, my wife and I, who support three children and an elderly parent, began to see that it would be impossible to continue to keep up with all of our expenses. We were faced with the reality that our expenses, which includes consumer debts, would need to be prioritized and unfortunately that meant spending what little money we had on the essentials - food and transportation, over our mortgage payment, even though we realized that had the potential to cost us our home. Despite our best attempts at negotiating with the bank, our requests for an affordable restructuring or forbearance fell on deaf ears, and in the end we were offered a repayment plan that increased our monthly payment by $750 and required a $4,000 down payment. Compounding an already challenging situation, our mortgage servicer notified us that we were being charged a substantial amount in legal fees, even though the foreclosure action had yet to commence.

My mortgage servicer did not see a need to act in good faith and work with me to find a beneficial resolution for both parties. The average homeowner simply does not have the background and expertise to be able to provide the necessary defense of a foreclosure action. Furthermore, putting in the necessary hours to prevent a foreclosure while searching for employment is a tremendous challenge. Clearly, the average homeowner simply does not have the background and expertise to be able to provide the necessary defense of a foreclosure action. Thankfully I was able to enlist the services of the Law Center.

After I met with one of their attorneys, Amy, she began to communicate with the bank on my behalf, and the result was nothing short of incredible. Amy convinced the bank to offer me a loan modification that only slightly increased my payment. On top of that, she also convinced them to fundamentally restructure the mortgage itself to where the high adjustable interest rate, which could rise to 14%, was switched to a lower fixed rate. In addition, the legal fees were also reduced by over $800 and the requirement of a down payment was dropped. Since signing the modification agreement, I have found new employment and have had the privilege of resuming my mortgage payments. The Law Center has literally saved my home and I have the confidence that in time I will have it paid off in full.

Bernard Dent

Hon. Paula L. Feroleto

Administrative Judge, Eighth Judicial District; Co-Chair, Eighth Judicial District Pro Bono Committee

HONORABLE PAULA L. FEROLETO
Administrative Judge of the 8th Judicial District

92 Franklin Street, 2nd Floor
Buffalo, New York 14202
(716) 845-9438

Administrative Judge — 2009 - Present
8th Judicial District

Supervise 11 City courts, Family Courts, Surrogate's Courts, County Courts and Supreme Court for the 8 counties comprising the 8th Judicial District.

New York State Supreme Court Justice — Elected 2005
8th Judicial District

Brown & Kelly, LLP
Partner and Associate Attorney — 1983 - 2005

Education

State University of New York at Buffalo Law School — 1982
Juris Doctorate

Georgetown University — 1978
Bachelor of Science

Memberships & Service

National Association of Women Judge's and Supreme Court Judge's Association
Past President of the WNY Trial Lawyers Association
Women's Bar Association, having served on the Judiciary Committee
Women Lawyers of WNY
Member and former Officer of the Bar Association of Erie County
Served on the Board of the SUNY at Buffalo Law Alumni, as Director, Secretary and Vice President
Diversity Steering Committee for the 8th Judicial District
Pro Bono Committee for the 8th Judicial District
Gender and Racial Fairness Committee for the 8th Judicial District
Lawyers for Learning, Inc., Director and volunteer tutor

Awards

Minority Bar Association 2011 Legal Service Award
Women in the Law Award 2011 - Gender and Racial Fairness - 8th J.D.
UB Law Alumni Association - Judiciary Award - 2011
Judicial Award - 2010 from Volunteer Lawyers Project
Sandy Kulick Award - 2010
Commitment to Education Award 2009
Lawyer of the Year Award - 2006 from Women Lawyers of Western New York

Short Summary of Planned Testimony
Task Force to Expand Access to Civil Legal Services in NY
Fourth Judicial Department Hearing
October 6, 2011

Hon. Paula L. Feroleto
Administrative Judge
Eighth Judicial District

I will be discussing the effect of pro se litigants on the efficient operation of the Courts and on the fair administration of justice in the Eighth Judicial District. I will also discuss how having a pro bono lawyer or a lawyer from one of the legal services programs appear for a litigant greatly improves efficiency and leads to fairer administration of justice. I will also discuss some of the specific initiatives that we have under taken in the Eighth Judicial District and their success. I will close by discussing the overwhelming need for increased resources to support legal services and pro bono programs.

Testimony
Task Force to Expand Access to Civil Legal Services in NY
Fourth Judicial Department Hearing
October 6, 2011

Hon. Paula L, Feroleto
Administrative Judge
Eighth Judicial District

My name is Paula L. Feroleto and I am the Administrative Judge for the Eighth Judicial District. In addition, I serve as Co-Chair of the Eighth Judicial District Pro Bono Committee. Prior to being elected to serve as a Justice of the New York Supreme Court, I was a partner at Brown & Kelly where I served as the firm's Pro Bono Coordinator.

I want to thank Judge Lippman and the Task Force for conducting these hearings, elevating the level of the Court's role in ensuring access to justice and raising awareness of the overwhelming need for civil legal services for low income people.

The staff attorneys and pro bono lawyers in the Eighth Judicial District dramatically improve access to justice and aid tremendously in the efficiency of our Courts' administration of justice.

Low income litigants are the most likely ones to appear pro se. When they do, proceedings generally slow down as they fumble through basic tasks like presenting their facts, making the right arguments, and staying on point. Things can get even more difficult if they are trying to admit evidence, examine a witness without leading, cross examine a witness or qualify an expert witness. Not only do many pro se litigants make the Court take much longer, they can make it more difficult for the administration of justice to be fair.

Having lawyers for low income litigants makes the Courts more efficient and levels the playing field leading to better and fairer administration of justice by the Courts. This is especially true in the high volume Courts.

We are lucky to have the cooperation of the local legal services and pro bono programs in general, but also specifically for some of our higher volume Courts.

For example, for more than 15 years, VLP and NLS have worked cooperatively with Buffalo City Court to operate the Attorney of the Morning Program. Through their efforts, every low income tenant that wants legal assistance when facing eviction at Buffalo City Court is represented. Not only does this program level the playing field for tenants and help achieve fairness in the proceedings, they also do a tremendous service for the Court as nearly 70% of the cases are settled in the hallway. Those that do need the Court's intervention, have the benefit of a trained pro bono lawyer or staff attorney to narrow the issues and focus the evidence and testimony so that the case can be expeditiously handled by the Court.

A similar effort takes place each year in the lead up to the City of Buffalo In Rem Tax Foreclosure sale. Attorneys for the Legal Aid Bureau of Buffalo, Legal Services for

the Elderly and the ECBA Volunteer Lawyers Project team together to represent low income and elderly home owners facing tax foreclosure. Every low income owner/occupier that wants legal help gets. The lawyers are able to settle and save homes for almost everyone that comes to them. Their efforts make the process manageable for the Erie County Court, instead of completely overwhelming the Court with hundreds of Orders to Show Cause broght by unrepresented litigants..

On a year round basis, the Western NY Law Center, Legal Services for the Elderly and the Legal Aid Bureau work together to represent every low income home owner that is facing a mortgage foreclosure settlement conference.

From 2007 until May of this year, the Eighth Judicial District benefitted from having an Eighth Judicial District Pro Bono Coordinator funded full time through the Office of Court Administration's Access to Justice Program, *ProBonoNY*. This coordinator worked with the Eighth Judicial District Pro Bono Committee, Co-Chaired by myself and Hugh Russ of Hodgson Russ, to improve access to justice for Western New Yorkers by getting more attorneys involved in pro bono work throughout the Eighth Judicial District.

This staffed position gave several legal services programs in the District the assistance and support needed to create organized pro bono programs and projects and recruit attorneys in their communities to get involved in ways that were not previously possible due to the ever present strain on man power and limited program resources.

For example, the Pro Bono Coordinator organized a group of attorneys and judges in Chautauqua County in 2008 to discuss the county's most pressing unmet client needs, current resources and a strategic plan for getting private attorneys involved in an organized pro bono program. At the time, I was a member of the Eighth Judicial District Pro Bono Committee with prior experience as a seated Judge in Chautauqua County, and I offered to be involved in efforts affecting the county. Together with the rest of the group, I assisted the Pro Bono Coordinator in organizing a free CLE program that year to start the conversation in the greater legal community about the county's great need for pro bono assistance, the importance of attorney participation in pro bono to the courts and in improving access to justice for the poor, ethical considerations in pro bono practice, and opportunities for new partnerships in pro bono in the region.

As a follow up to this program I organized a judicial letter campaign in December 2008, in which the bench, private bar and legal services' lawyers collaborated on a letter signed by all Chautauqua County judges which was sent to all Chautauqua County attorneys, expressing the need for participation in an organized pro bono effort in collaboration with Southern Tier Legal Services (a division of Legal Assistance of Western New York) and Legal Aid of Chautauqua Region. As a result, 33 attorneys sent in their questionnaires indicating a willingness to participate in pro bono in some fashion, covering all six delineated areas of unmet need.

To keep the momentum going from this tremendous response, the Pro Bono Coordinator worked with the Chautauqua group to organize another free CLE program covering the basics of matrimonial practice, this time requiring attorneys to take a case

in exchange for the free CLE. This training resulted in a total commitment to handle 20 cases over the course of a year.

Shortly thereafter, in January 2010, a monthly pro se divorce clinic was organized through collaboration between the local legal services agencies, courts and pro bono attorneys. The clinic is still in operation today, and approximately 110 clients have been assisted by obtaining a Judgment of Divorce or advice and legal counsel.

It is unlikely that any of this progress toward establishing an organized pro bono program in Chautauqua County would have been made without the facilitation, leadership and support of the Eighth Judicial District Pro Bono Committee and the Pro Bono Coordinator. While there clearly was a need, and members of the legal community were willing to collaborate in order to improve access to justice for low income residents of Chautauqua County, day to day demands and limited resources prevented the key stakeholders from prioritizing the creation of new programs and initiatives. The Pro Bono Coordinator was able to do the initial networking, collaborating and organizing necessary to build momentum toward a sustainable pro bono program.

In Erie County, where there was already a well established pro bono program for residents through the Erie County Bar Association Volunteer Lawyers Project, the staffed Pro Bono Coordinator position similarly allowed for the addition of new initiatives as well as the expansion of existing efforts to increase attorney participation in pro bono. This was particularly true for increasing attorney involvement in pro bono at Buffalo's 20 largest firms, several of whom had no prior relationship with VLP, as well as for reaching out to, recruiting and training newly admitted attorneys to get involved with pro bono early in their careers.

The Large Firm Subcommittee was formed by the Eighth Judicial District Pro Bono Committee in 2009 as a way to more comprehensively answer firms' questions about pro bono, assess firms' interests and effectively present "good fit" pro bono opportunities for their lawyers to engage in through the VLP. It also provided a forum for Buffalo's largest firms to compare pro bono policies, projects and opportunities and allow them to actively take part in initiatives to increase pro bono involvement in their firms. Formation of this subcommittee led to identifying pro bono opportunities that offer lawyers great experience with a fairly limited time commitment and also represent areas in which VLP has a need for greater pro bono participation, which led to greater large firm buy in and participation.

For the same reasons, these opportunities were also attractive to newly admitted attorneys. As a result of targeted recruitment strategies to these two groups, VLP's Attorney of the Morning program is more well staffed than it has been in years, and a significantly greater number of unemployment insurance claimants have received assistance in the past year and a half than had ever before.

The Eighth Judicial District Pro Bono Committee had hoped to build off of its success in Chautauqua County in facilitating pro bono programs in the other rural counties of the District. Unfortunately, ProBonoNY lost its funding this spring, and Pro Bono Coordinator positions across the state were dissolved as a result. Thus, it remains to be seen how legal services programs in those rural counties will manage to facilitate pro bono programs when they are faced with threats of budget cuts and an ever

growing client demand far greater than their capacity and hard working staffs can accommodate.

In Allegany County, with the opening of a new court facility with additional space we are working on a bench and bar program through the efforts of Judge Terrence Parker to provide attorney rooms with computer access with set hours for a clinic where attorneys will assist pro se litigants with completing forms for Family Court and Supreme Court matters.

In short, while the Judges and attorneys are very cooperative with working with pro bono litigants and providing services, a dedicated funding source would help to insure continuity in providing services.

Respectfully submitted by:
Hon. Paula L. Feroleto
Administrative Judge
Eighth Judicial District

Jack Hagen

Client of Legal Services for the Elderly, Disabled or Disadvantaged
of Western New York, Inc.,
accompanied by William W. Berry

LEGAL SERVICES
FOR THE ELDERLY, DISABLED OR
DISADVANTAGED OF W.N.Y., INC.

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by e-mail to CivilLegalServices@nycourts.gov

To: Helaine M. Barnett, Chair
Task Force to Expand Access to Civil Legal Services in New York
From: Karen L. Nicholson, Esq.
Re: Task Force Hearings in Buffalo on October 6, 2011
Date: September 22, 2011

Biography of Client Jack Hagen

John Hagen (1) grew up in Buffalo/Tonawanda, New York. He graduated from Canisius High School in Buffalo and Clarkson College in Potsdam, NY. He worked for several companies as an Industrial Engineer, IE Manager, Production Manager and Plant Manager before starting his own business. He was diagnosed with Chronic Myelogenous Leukemia (CML) in 1999 and underwent a Bone Marrow Transplant followed by high dose chemotherapy followed by Radiation Treatment and a Stem Cell Transplant in 2002. He was referred to Legal Services for the Elderly, Disabled or Disadvantages of Western New York, Inc. for the first time in 2006, by a relative who was a board member of the organization. He has been a client of Legal Services for the Elderly on three separate occasions.

Summary of the Testimony of Jack Hagen

Jack Hagen was forced to leave his employment after undergoing a bone marrow transplant in May, 1999. He underwent a stem-cell transplant in 2002 and was taking 12 different drugs to protect him from chronic Graft Versus Host (G.V.H.) disease, a condition in which the white blood cells produced by the transplanted bone marrow attack every part of the body as foreign.

Mr. Hagen owned a home and lived in Niagara County and, therefore, received Medicaid from Niagara County. However, during his illness he temporarily resided with his mother, Mary Hagen, in Erie County because of his need for assistance from her, given his illness and debilitating symptoms. Despite his serious illness and consistent candor, the Niagara County Department of Social Services unconscionably harassed Mr. Hagen, threatening his "Medicaid eligibility," essentially his lifeline, and his freedom. After requesting an onerous amount of paperwork to "prove" that he still resided in the county, they discontinued his coverage. Not only did Niagara County cut off his Medical coverage, but they referred the case to the fraud unit and he was interviewed by the Sheriff's Department. All this occurred during the time of his illness and treatment.

Legal Services for the Elderly, Disabled or Disadvantaged of Western New York, Inc., represented Mr. Hagen at a fair hearing and had his Medicaid reinstated. At the hearing the hearing officer found that no facts were presented to contradict Mr. Hagen's evidence that he was a resident of Niagara County. He was, therefore, able to continue his life-saving treatment and medication. Mr. Hagen is very enthusiastic about testifying, despite his mobility issues and will make an engaging witness. He will be transported to the hearing by his attorney, William Berry. Mr. Berry will also appear with Mr. Hagen at the hearing and can answer questions by the panel, if necessary.

Task Force to Expand Access to Civil Legal Services in New York

Good day. My name is Jack Hagen.

I was diagnosed with Chronic Myelogenous Leukemia (CML) in January 1999. The treatment that was recommended at Roswell Park Cancer Institute was for me to undergo a Bone Marrow Transplant (BMT). Since my siblings were all perfect donors I decided to go ahead with that procedure. I had to leave my job and apply for Disability Insurance. After 6 months, that procedure was deemed to have failed and I had progressed to Stage 4 of my illness. I was then treated with high dose chemotherapy for several months which worked and provided time for some recovery. The chemotherapy put me in remission but it was recommended that I have a second transplant since I had another sibling donor available. I underwent a Stem Cell Transplant (SCT) in December of 2002. It was successful and I was considered "in remission" five years later.

Initially, I paid for health insurance and prescription drug coverage through my employer's group plan with Independent Health. When my ability to keep my prescription coverage ended (due to cost) I received help from the Assistant Attorney General, located at Roswell Park, in getting me qualified for Medicaid in Niagara Falls, NY which was my permanent address at that time. I was living with my mother

temporarily after my two transplants. When the Niagara Falls Department of Social Services realized that I didn't physically live in Niagara Falls, they decided to terminate my Medicaid qualification even though I proved that the address in NF was my permanent residence.

I mentioned this problem to my lawyer Tom Keefe when he was preparing my will. It turned out that he was President of Legal Services for the Elderly, Disabled or Disadvantaged of WNY at that time.

He recommended LSED to help me with the situation. I soon met Bill Berry, a lawyer at Legal Services for the Elderly and we discussed my situation and asked for a Fair Hearing on my termination from Medicaid. At the hearing, when NFDSS was unable to provide any facts to contradict my residence in Niagara County, we won the case. I don't think I could have accomplished this result without the help of Mr. Berry and Legal Services for the Elderly because I was still dealing with the side effects of my procedures.

But the story didn't end there.

Several years later Niagara County Department of Social Services again decided to challenge my residence, and again cut off my Medicaid qualification. They implied that I was a fraud case and sent the Niagara County Sheriff's Department to interview me. When I met with the officer we discussed my case and he stated that the interview was

unfortunate and a waste of time because there are so many other cases which warrant fraud rulings and my case was not at all comparable to most such cases. As a result of that interview no fraud case was filed. But I was feeling somewhat harassed over time by Niagara County DSS and I thought that I could simplify my case by changing my permanent residence to Erie County.

In 2010, while dealing with skin cancers on my head, I decided to change my residence to Erie County and transfer my situation to Erie County Department of Social Services. That turned out to be another set of problems since Niagara County and Erie County do things differently. I again called on Bill Berry at Legal Services for the Elderly to help resolve the problems. In this case I am almost certain that I would not have been able to resolve the problems without Mr. Berry's help. He intervened and communicated with the Erie County representative to resolve the issues and had my Medicaid coverage continued without interruption. His expertise and research were things that I do not have and could not have done alone.

My initial need for Medicaid was to actually pay for part of my drug costs. Those costs were extremely high after my two blood transplants. I could not have come close to paying for those drugs which were prescribed to help protect me from Graft vs. Host disease which is the cause of death for most of the people who die after transplantation.

The situation became less costly but still very expensive when Medicare Part D was enacted in 2006. Being qualified for Medicaid enables me to receive Extra Help from Part D which, once again, greatly reduced my total drug costs.

I believe that without the help of Bill Berry and Legal Services for the Elderly, I would have been put in the precarious position of having to decide which drugs to take and which to forego. That is a choice that could risk my life. It was a very good day for me when I learned about Legal Services for the Elderly and Disabled. I am totally supportive of their work and greatly appreciate everything they have done for me.

Thank you for asking to hear my story and I'm happy to answer any questions that you have.

Jack Hagen

Bryan D. Hetherington

President, Monroe County Bar Association

Bryan Hetherington
President, Monroe County Bar Association

Short Bio

Chief Counsel, Empire Justice Center, a statewide not for profit law firm that provides direct legal representation to clients, advocates on their behalf on policy matters, and provides training and support to the legal services providers throughout New York. As Chief Counsel, Bryan is responsible for managing the legal work of Empire Justice. Bryan works in the Rochester office.

Most of his career has involved complex litigation and other non-litigation advocacy with regard to social services programs, education, housing and civil rights.

Bryan came to Rochester in 1980 to serve as Litigation Director of Monroe County Legal Assistance Center. He remained in that position until 1996 when he founded the Public Interest Law Office of Rochester. He became Chief Counsel of Empire Justice Center in 2004.

He serves on the boards of a number of not-for-profit health, affordable housing and community organizations. He served on the Advisory Committee to the State Commissioner of Social Services for 19 years. He is past chair of the Greater Rochester Health Foundation and is President- of the Monroe County Bar Association.

He is a graduate of LaSalle College and the Cornell Law School.

Summary of testimony

I will be testifying about how the co-location of civil legal services providers, with the Bar Association, in the Telesca Center for Justice has:

- provided better services to prospective clients and clients whose cases are accepted,
- saved money for the providers that can be used for additional staff,
- made it possible to compete successfully for additional funding, and
- promoted pro bono recruitment.

In my testimony I will also discuss how the Telesca Center was created.

Testimony of Bryan Hetherington
President, Monroe County Bar Association
Before the Chief Judge's
Task Force to Expand Access to Civil Legal Services in New York
October 6, 2011
at Buffalo, New York

Chief Judge Lippman, Presiding Justice Scudder, Justice Pfau, President Hassett, Chair Barnett and Members of the Task Force, it is an honor to appear before you today to discuss how the Monroe County Bar Association worked with our excellent providers of civil legal services to create the Michael A. Telesca Center for Justice, in which the Bar Association and the four civil legal services providers:

- Empire Justice Center
- The Legal Society of Rochester,
- Monroe County Legal Assistance Center of LawNY, and
- Volunteer Legal Services Project,

are co-located.

This effort has:

- provided better services to individuals seeking and receiving legal services;
- saved the providers significant costs through below market rents, as well as shared space and services, which allowed them to employ more staff and thus, represent more clients;
- promoted pro bono participation by private attorneys in our community; and
- allowed the legal services providers to obtain additional funding to expand services because of their ability to collectively provide services in the full range of areas of law,

using attorneys who concentrate their practices in the areas, and are thus, very highly skilled and efficient.

Justin Vigdor, who so ably led the effort to bring about the co-location and to raise the funds needed to make it economically possible, will be testifying before the Task Force in Albany. He will provide more information about the history of the project and how the Partnership for Equal Justice, which he headed, raised over $2.4 million to pay for the partners' moving expenses, pay for the cost of build out so that the partners could have below-market rents ($10 per square foot for the first 15 years of a 30 year lease), and create an endowment at the Foundation of the Monroe County Bar for the support of the partners.

The four legal services providers now co-located at the Telesca Center for Justice each provide services to low income people in different areas of the law. Before the co-location prospective clients in need of legal services often were not aware of the types of cases that each program handled. They would call multiple providers, sometimes all four as well as the Bar Association, trying to get the help they needed. Each time the prospective client would tell their often long and involved story to a receptionist who would then tell the person on the phone to try to seek help from another provider. Now, the receptionists for all four providers are located in a shared reception area on the 8th floor of the Telesca Center. All of the telephone systems are connected and the receptionists are trained to answer the telephones for all the providers.

A prospective client who calls the wrong provider is not given some other number to call, but instead is told that the organization she called does not handle that type of case. She then is asked if she would like to be connected to the intake staff at the organization that does

provide the services that can help her. If none of the providers is able to help, the prospective client is told that none of the providers can help her- so that she does not waste her time calling all the other providers. Prior to the co-location each organization had its own receptionist. Now a team of two and a half receptionists is able to serve all four providers.

It is not just prospective clients who receive better services. The co-location has allowed the providers to give higher quality services to clients whose legal problems are such that they need help from attorneys at more than one provider. For example, while the Legal Aid Society represents families facing eviction in City Court, it is Monroe County Legal Assistance Center which represents families whose public assistance benefits are wrongly reduced or terminated. When a family is faced with an eviction proceeding because of the wrongful termination of public assistance benefits, staff from the Legal Aid Society and MCLAC can work together as a team to solve the client's problem. Since they are in the same building, and on the same telephone system, communications with the client and each other are much easier. As the former Executive Director of the New York IOLA program said, “you are like a large law firm with multiple departments."

And those legal services are received in far more dignified office space than the providers were able to afford before co-location. It is hard to have confidence in your attorneys when they are in rundown office space with falling light fixtures, or lack of heat, or an elevator that constantly breaks down.

The civil legal services programs can provide more services to their clients because of the co-location. They benefit from below-market rents, the fact that they can use the Bar Association's conference rooms and continuing legal education Center for their meetings, and

through the lower costs of shared services, like the joint reception. Because the rent costs are fixed for 15 years and subject to only small increases for the next 15 years, the savings increase every year. The savings on the below-market rent alone are substantial. For example, this year Empire Justice Center, one of the partners, will save the cost of an entry-level attorney because of its below-market rental rate. The office administrators of the Bar Association and the partners meet monthly to explore opportunities for joint purchasing and contracting to reduce their costs. The Directors also meet monthly to explore collaboration opportunities.

The co-location of the Bar Association with the volunteer legal services project (VLSP) helps promote the recruitment of volunteer attorneys and the placement of cases. When an attorney comes in to join the Association the staff take or send that attorney down the elevator to VLSP to sign up as a volunteer. We consciously placed the VLSP offices next to the Rubin Continuing Legal Education Center. This allows the VLSP staff to, for example, pop into a trust and estates CLE program when they need to recruit additional volunteers to do wills for individuals with AIDS. An attorney coming to a CLE event has a visual reminder as she or he steps off the elevator that it has been a while since they last volunteered for a case. The attorney need only walk through the VLSP door to sign up for a new one. A listing of available cases is right inside. Finally the co-location assists in the training of pro bono volunteers. The legal services attorneys, who are the subject matter experts in legal fields like foreclosure prevention or SSI eligibility, are already in the building and the training sessions can be held right in the CLE Center.

The co-location has also expanded access to civil legal services in Monroe County by making it easier for the civil legal services providers to collaborate with each other to secure

additional funding, for which they would not be competitive applying on their own. A fair amount of grant funding is focused on providing legal services to some defined population like seniors, veterans, or families affected by a particular disease. The Coordination of Service Report that the providers file annually with the IOLA fund identified half a dozen of these new collaborative grants. In these collaborations the clients benefit from have the most expert attorneys with their type of problem handling their cases rather than an attorney who is trying to do cases in every area of the law. And because they are being handled by experienced attorneys, they are also handled more efficiently.

Three of our legal services providers jointly raise over $225,000 a year, primarily from our attorneys and law firms, through the annual Campaign for Justice, which is heavily supported by the Association. Our Foundation is exploring the creation of a planned giving program to build on the endowment funds established during the Partnership for Equal Justice campaign.

While the Monroe County Bar Association, and its Foundation, have been pleased to do what we can to expand access to civil legal services, we are painfully aware of how far away we are from the goal set forth by the Chief Judge that every individual faced with a legal proceeding involving the basic necessities of life would have access to an attorney. We have one of the best pro bono programs in the nation, with over 1,500 volunteer attorneys. We have civil legal services providers who have aggressively sought private and foundation funding as well as government grants and contracts to expand access to justice. The have achieved the efficiencies dI described earlier. Yet despite all of this hard work to expand access, every day the receptionists must tell many individuals that there is no attorney at any of the programs in

the entire Telesca Center that can help them with their important legal problem. We know this is not how things should be in a county whose Constitution lists 'to establish justice" as the second purpose of document in its Preamble.

As attorneys we know that in an adversary system of justice all parties need to be represented by someone who understands the law, as well as the rules of evidence and procedure, if we expect a judge or jury to reach a just result. We are tremendously grateful to the task force for the extraordinary work that you have done to date and pledge to you our cooperation as you move forward in your efforts to expand access to civil justice in New York State.

Stephen L. Johnson

Member, Bond, Schoeneck & King, PLLC

Good morning. My name is Steve Johnson. I am a member the law firm of Bond, Schoeneck & King, where my practice is focused on real estate matters. On a pro bono basis, I am serving as legal counsel to what has become known in Syracuse as the "One Roof Committee." This committee is made up of the following:

1. The President of the Onondaga County Bar Association;

2. The Coordinator for the Onondaga County Bar Association's Volunteer Lawyers Project;

3. A representative of the Syracuse University College of Law's clinical programs;

4. A representative of the Federal Court Bar Association for the Northern District of New York; and

5. The executive directors for the legal services providers in Syracuse, Onondaga County, and Central New York – the Hiscock Legal Aid Society, Legal Services of Central New York, and the Legal Aid Society of Mid-New York.

The offices of Legal Services of Central New York and Legal Aid Society of Mid-New York are now located in the same building. All of the remaining organizations are scattered around the City of Syracuse. Literally, for decades some leaders of the private bar have had a vision of all of these organizations being located under "one roof." But it took the remarkable success of the Telesca Center, and, most recently, the focus of this Task Force on the benefits of collaboration and sharing costs, to galvanize the "One Roof Committee."

1. The Board of Directors for each organization has passed a resolution supporting the concept of "One Roof;"

2. A space design firm has conducted an analysis of the space needs for each organization and the potential for shared spaces;

3. With one exception, the leases expire in 2014. Therefore, all of these organizations will be poised to go under "one roof" on January 1, 2015, and that is our target date. The one exception is significant, however: the current lease of one organization expires on September 30, 2019. This presents a significant, but in our view not insurmountable, problem.

4. The Committee currently is working on a request for proposal for presentation to the owners of commercial property in Syracuse. (I should note here that the combined organizations would have approximately 117 employees and would require approximately 35,000 square feet of space. This should make us very attractive to owners of commercial property in the Syracuse market.)

5. Once the request for proposal is issued, and proposals are received, we will confront what we believe to be the primary obstacle to the "one roof" concept, and that is the "Justin Vigdor factor," i.e., raising the money to cover the moving costs for each organization and the build-out costs for the "one roof" building. Justin and his son Rob have been most accommodating, and have met with us to share their fund-raising strategies. We are cautiously optimistic that the lawyers and community leaders of Onondaga County will meet the challenge.

Thank you for providing us with this opportunity to report on the efforts of Syracuse, Onondaga County, and Central New York.

Hon. Deborah H. Karalunas

Supreme Court, Onondaga County

Good afternoon Chief Judge Lippman, Chief Administrative Judge Pfau, Justice Scudder, and Mr. Hassett. Thank you for inviting me to give testimony today on the topic of access to civil legal justice.

As you may know, for 20 years I practiced law with Bond, Schoeneck & King, a large upstate law firm. During that time, primarily through clinics organized by the Onondaga County Bar Association and the Central New York Women's Bar Association, I devoted many hours representing the poor in civil legal matters. For the most part, those were the "good years." Families were more stable, unemployment was low, foreclosure actions were sparse, and the economy was stronger.

I also am very active in an urban Syracuse church whose mission is to serve and assist members of our community who live in poverty, are undereducated, or face unique physical or mental health challenges. I believe in the goodness of people and the strength and power of community. I believe in helping people help themselves.

In 2002 I was elected Supreme Court Justice in the Fifth Judicial District. The Fifth Judicial District encompasses Onondaga, Oneida, Oswego, Jefferson, Lewis and Herkimer counties. For my first two years on the bench I was assigned to the Matrimonial Part. In that Part, I dealt with issues of divorce, child custody and equitable distribution. From my recollection, fewer than five percent of the litigants who appeared before me in contested matrimonial actions were unrepresented. In contrast, a significant proportion of the litigants in uncontested divorces appeared *pro se*. In January 2005, I was assigned to the General Civil Part. I continue in that Part although I also now serve as the Commercial Division Judge for Onondaga County. My cases include business disputes, a variety of tort claims, and foreclosure and consumer debt actions. Generally, the parties who appear before me are

represented by counsel. Exceptions include persons seeking *ex parte* applications for name changes, petitioners seeking early access to structured settlement awards, and defendants in foreclosure and consumer debt actions. In the latter categories, the *pro se* litigants generally do not dispute the validity of the underlying loans/debts; they simply are unable to make the required payments.

New York's current economic condition is poor. Indeed, the budgets in the executive and judicial branches of government, and in many governmental and non-profit agencies, have been slashed. Nonetheless, the legislature has imposed many unfunded mandates on the courts, and increasingly we are being used to resolve pressing social issues. The judiciary is asked to do more with less. So, too, are the three organizations in Central New York that represent the poor in civil legal matters. These organizations, Hiscock Legal Aid Society, Legal Aid Society of Mid-New York and Legal Services of Central New York, are staffed with quality lawyers who provide quality legal services. These organizations, along with Onondaga County Bar Association's Volunteer Lawyer's Project, work tirelessly to ensure justice for the people they serve. Traditionally, these organizations were funded by federal, state, county and local governments, various grants, United Way, IOLA and private contributions. More recently, however, some of these funding sources have been cut. For example, I understand that in the last year the State pulled most, if not all, of its funding for the Hiscock Legal Aid Society.

While I support access to legal services in civil matters involving the "essentials" or "necessities" of life, I have grave concerns about increasing the role of the courts in funding and administering programs to meet that challenge.

The judiciary is a separate and co-equal branch of government. Generally, the role of the judiciary is to protect private interests and the role of the legislature is to safeguard broad public interests. In other words, the judiciary is empowered to determine the rights and obligations of parties in discreet cases and controversies; the legislature is empowered to make policy decisions and to allocate limited public dollars consistent with those policy decisions. *Of Money and Judicial Independence: Can Inherent Powers Protect State Courts in Tough Fiscal Times?*, 92 Ky. L.J. 979, 1044 (2003-2004). By taking on responsibility to fund and administer civil legal services, the judiciary assumes the policy making role of the legislative branch and the managerial role of the executive branch. Moreover, when the judiciary pays for a lawyer to represent one of two sides in a dispute, our role as a neutral arbitrator is severely compromised.

With that said, the Task Force to Expand Access to Civil Legal Services in New York has asked for "outside the box" ideas to better insure that we meet the legal needs of the poor in matters concerning the "necessities of life."

The legislature and/or the executive branch can and should do more. Recognizing that many matters can be kept out of court if civil legal assistance is provided before a legal problem escalates into a court case, among the many options available to the legislature and/or executive branch are:

1) establishing "Know Your Rights" community legal education programs;

2) establishing programs and other means to provide preventative legal assistance;

3) mandating some form of pre-action ADR;

4) authorizing "fee-shifting" in various actions; and

5) providing a reliable, dedicated source of funding, independent of the judiciary, targeting legal assistance for matters concerning the "necessities of life."

I believe the judiciary also can and should do more to insure access to justice in civil cases. Among the many options are:

1) simplifying forms, rules and procedures in family, landlord-tenant and foreclosure cases;

2) dedicating staff to assist *pro se* litigants in understanding and completing forms and procedures;

3) waiving/reducing attorney registration fees for attorneys who devote 60+ hours bi-annually to *pro bono* service in areas involving the "necessities of life;"

4) mandating that all practicing attorneys bi-annually provide a fixed number of *pro bono* hours of service in areas involving the "necessities of life;"

5) working with local bar associations, law schools, and legal aid organizations to train *pro bono* lawyers;

6) expanding the program that allows "retired" lawyers to practice law; and

7) allowing judges and their law clerks to engage in *pro bono* work outside of court.

In these hard economic times, we have unemployed and underemployed lawyers who, with adequate training, can address and meet the needs of many litigants in areas involving the "necessities of life." While the burden of addressing these needs should not fall solely on the shoulders of the legal profession -- a profession that consistently has stepped up to and beyond the plate – I have focused my comments here today on what I know best: the strength, integrity and compassion of the many men and women who serve as lawyers and judges in our great State.

Thank you again for the opportunity to be heard.

Hon. Deborah H. Karalunas
Supreme Court Justice
Fifth Judicial District
Syracuse, New York

Michelle Kilian

Client of Neighborhood Legal Services, Inc.,
accompanied by William J. Hawkes

New York State Office of Court Administration

Fourth Judicial Department
Hearing on:

Access to Legal Services

October 6, 2011
11:00 a.m. to 2:00 p.m.

Ceremonial Courtroom
Old County Hall
92 Franklin Street
Buffalo, New York 14202

Testimony of Michelle Kilian

My name is Michelle Kilian, I am 29 years old and I am the mother of a beautiful 2 1/2 year old daughter named Eva.

In April 2010 while my now ex-husband was away for the weekend for a military training, I packed up my belongings, myself and my one year old daughter Eva and sought refuge at the Haven House (a local DV homeless shelter) because I was a victim of Domestic Violence.

I had no money, no safety plan and I was in panic and worried about the life I would be able to provide for my daughter now that I left my abuser. All I took from my marital home were material possessions, my child and a damaged self esteem.

Once at the shelter, they instructed me to apply for public assistance and Food Stamps. I went and applied. After 30 days I received my public assistance grant of $90 a month for me and my daughter. I also received $45 a month in food stamps for the both of us. My stay at the shelter was challenging and scary and I was always concerned about our personal safety. I wanted to get out and try to make a go of it on my own and after being at the shelter for two and a half months I finally found permanent housing in Cheektowaga.

I vigorously continued my job search because I did not want to be reliant on the public assistance system. I had never been on public assistance before, and

although I was grateful for the assistance when I needed it, I really wanted to get off public assistance and work. After months of searching, the temporary agency finally found me a placement at Neighborhood Legal Services.

My income from employment quickly affected my Public Assistance grant and my case was closed due to excess income in about two months after I started working. Although it felt like a success to get out of shelter and off of public assistance, once off of public assistance, I faced many economic challenges that made it difficult to make a successful transition from welfare to work. That's what I would like to talk to you about today.

Without the assistance of Neighborhood Legal Services, it is likely that I would have been unable to maintain my housing, utilities and day care (and thus my employment) and would have then been forced back onto public assistance. I truly feel that God has placed me in this position at NLS for a reason. Because if I weren't at NLS, I would never have gotten the legal advice that I needed to get off and stay off public assistance.

I was in a tenuous financial position once my rent came off voucher. I fell behind on my rent. I did not know that DSS helped with rent arrears. NLS informed that DSS has a legal obligation to help prevent the eviction. NLS represented me at court and was able to stop the eviction. NLS was able to help me get the rent arrears from DSS and the eviction was avoided. I was able to stay in my home.

My next financial crisis occurred when I fell behind on my utilities. Although I was working, the gas bills in Buffalo in the winter are really high and I could not afford to pay the entire bill each month. I fell behind on my utilities and received a shut off notice from the gas and electric company. I did not know DSS could help with utility arrears and shut-offs. Neighborhood Legal Services advised me about the availability of HEAP and emergency HEAP. I applied for both of these benefits and was found eligible. The shut off was ultimately avoided and I was able to stay in my apartment with my daughter.

I was barely staying afloat financially and my child's father was not helping us financially at all. He never paid any child support. Previously, I had been advised by a private attorney that I was not eligible for child support from my ex-husband because I was a public assistance recipient at the time of the divorce. NLS advised me that that was not correct and a family law attorney from Neighborhood Legal Services advised me of my legal right to obtain child support. She helped me fill out the necessary paperwork in order to get the support that I needed. I was granted a support award and am now getting money from my child's father.

My third economic crisis occurred when I received a notice threatening to discontinue my child care benefits because I was no longer receiving public assistance. DSS sent me the notice stating that because I was no longer

participating in a DSS work program, I was no longer eligible for child care benefits. I was not participating in DSS work program because I was employed at the time. I told my worker that I was employed and I provided documentation regarding my employment. Nonetheless, DSS tried to discontinue my child care benefits. NLS informed me that this was an illegal discontinuance. They contacted DSS on my behalf, advocated that the discontinuance be withdrawn and as a result, I continued to receive my child care without interruption so that I could maintain my employment.

Recently, I received another notice from DSS threatening to discontinue my child care benefits again….this time due to excess income from employment. Without a subsidy from DSS, my child care costs would have been prohibitive and would have forced me to quit my job at NLS in order to care for my child. The day care center would have charged me $800 a month. My net pay every two weeks is $699.00. After paying for child care, I would only have about $564.00 to pay for the cost of living, rent, food, diapers, and utilities. I could not have paid day care and worked. I would have had to make a choice. NLS advocated on my behalf. They contact DSS and told that the discontinuance was illegal and that they had not evaluated me for transitional childcare. DSS withdrew their notice and issued a new one agreeing to provide me with the Transitional Child Care benefits that I am legally entitled to. Although I pay a parent share of $318.00 each month, I am able to keep my job.

While I was preparing for this hearing and the testimony I was going to offer before you, I took some time and re-read my “story”. Reading this testimony made me both very sad and angry. I become more emotional than I had expected. I didn’t realize all the hardship that I went through until I sat down and reflected on it all.

Now, with some hindsight, I wonder how I managed to go though all of this, with my daughter, an abusive husband always lurking in the background, DSS trying to thwart me at every turn…. and yet somehow I was able to stay strong emotionally for myself and for my little girl.

DSS put me through a lot, a lot more than I ever thought I could tolerate. A lot more than they should have. I realize now how strong I am and that is a good thing for me to know.

But I wonder how other people can do it… those people who don’t have Neighborhood Legal Services to help them and guide them through every illegal denial and discontinuance.

I thank God every day that I work where I do. I made it because of NLS.

What happens to the woman out there who weren't as blessed as I am? I wonder what they are going through now. Were any of them able to get off and stay off public assistance like I did…?

Makau W. Mutua

Dean and SUNY Distinguished Professor, University at Buffalo Law School

DEAN MAKAU MUTUA
University at Buffalo Law School
Access to Civil Legal Services

- First of all let me thank Chief Judge Jonathan Lippman for convening these important hearings. Together with Judge Feroleto, a pillar of the Western New York community, he has underscored the importance that civil legal services play in a democracy.
- At UB Law, we educate lawyers with a social conscience – women and men who are ready on the first day to serve our diverse publics
- At the University at Buffalo Law School--our faculty, students, and staff--are involved in many initiatives and activities that provide "access to justice." We are proud of these efforts. At the same time, we can do more--and I am confident that we will—because the rule of law is the foundation of our society. Let me just highlight a few of our current efforts:

- Our Clinical Legal Education program allows students to study law while providing needed, free legal services to individuals and organizations in western New York. Each clinical faculty member at UB has been teaching for over a decade, and together with students they serve needy clients each semester.

- The Women, Children & Social Justice Clinic places students in supervised community placements and projects. These include placements in governmental agencies, legal service agencies, law enforcement agencies, social service agencies, and community outreach programs throughout Western New York. In addition, the Domestic Violence Task Force has traditionally assisted with the on-site legal assistance program at Haven House, the largest local shelter for female victims of domestic violence and their children.

- The William and Mary Foster Elder Law Clinic provides services through a working agreement with the law firm Legal Services for the Elderly, Disabled, or Disadvantaged of Western New York. The clinic handles individual cases. Clinic student attorneys are responsible for all aspects of such cases, including client counseling, informal advocacy, and negotiation.

- We also have other clinical programs which serve low-income individuals and groups more systemically:

    - The Affordable Housing Clinic works with local organizations to create desperately needed housing for elderly, disabled and homeless people.

    - The Community Economic Development Clinic assists community development corporations and other non-profits with legal transactions, with particular emphases on child care policy and helping low-income families build assets.

- The Environmental Policy Clinic focuses on environmental policy issues that have direct impact upon the Western New York community – especially the proliferation of hazardous waste and solid waste landfills and formerly used and heavily polluted defense sites located within the New York State Department of Environmental Conservation's Region 9 (comprised of Niagara, Erie, Wyoming, Chautauqua, Cattaraugus and Allegany Counties).

- The Mediation Clinic works on cases referred by local courts or other mediation agencies, and enrolled students help resolve disputes in family law, small claims, and the community.

- Our students also serve many organizations and individuals seeking justice through our extensive Externship and Judicial Clerkship program. Some recent examples of externship placements include: Empire Justice Center (Rochester), Legal Aid of Buffalo, Monroe County Public Defender, the NYS Attorney General's Office, and the US Attorney's Offices.

- Through both fundraising (BPILP and our fundraising program generally), as well as money from our general budget, the Law School provides a number of fellowships and grants--typically at least 25--for our students to pursue public interest work in the summer. This funding allows students to take unpaid internships at public interest law organizations throughout Western New York and the world.

- Finally, the Law School publicizes pro bono opportunities in a number of ways. It publicizes pro bono opportunities through e-mail, postings, and information tables in the Law School lobby and panel presentations. For example, Law Students in Action Project, an Equal Justice Works program, holds informational sessions and tables in the lobby to promote its pro bono opportunities. Volunteer Lawyers Project (VLP), a program of the Erie County Bar Association, places postings for assistance. Students also engage in pro bono work at Neighborhood Legal Services, and other legal services agencies.

Hon. E. Jeannette Ogden

Buffalo City Court; Acting Judge, County and Family Courts

JUDGE E. JEANNETTE OGDEN

Judge E. Jeannette Ogden was appointed to the Buffalo City Court by Mayor Anthony Masiello in June of 1995. Mayor Masiello cited Judge Ogden's broad based experience in the law as the basis for her appointment. In November of 1995, Judge Ogden was elected to serve a ten (10) year term on the Buffalo City Court and reelected to serve another (10) year term in 2005. In January 2001, Judge Ogden was appointed as an Acting County Court Judge. The appointment was expanded to Acting Family Court Judge in January, 2003. Judge Ogden's appointment to the Erie County Family Court gives her the distinction of being the first African American Woman to serve on the Family Court in Western New York. Judge Ogden has also presided in all of the "problem solving courts" in the City of Buffalo, She has developed a reputation as a "no nonsense" judge as a result of her firm but fair handling of thousands of cases.

Prior to her judicial appointment, Judge Ogden worked as a Trial Lawyer for CIGNA Insurance Companies defending corporations, school districts, hospitals and municipalities, while at the same time operating her own private general law practice. She is also a former Prosecutor with the Erie County District Attorney's Office and a former Assistant Erie County Attorney, where, she litigated personal injury cases on behalf of Erie County and served as legal counsel to the Erie County Medical Center, Erie Community College and Erie County Purchasing Department.

Judge Ogden is a graduate of Buffalo Public Schools. She earned a degree in Criminal Justice from Buffalo State College and periodically returns there to teach. She received her Juris Doctorate Degree from the University of New York at Buffalo Law School where she presently instructs courses in Trial Technique and Mental Health Issues in Criminal Law.

Her professional affiliations include memberships on the New York State Advisory Committee on Judicial Ethics;Vice Chairperson of the Gender and Racial Fairness Committee for N.Y. Courts in the 8th Judicial District; the Character & Fitness Committee of the NYS Supreme Court Appellate Division 4th Dept.; the Erie Community College Criminal Justice Advisory Committee; the Phi Alpha Delta Law Fraternity, International; the Women's Bar Association of WNY; the American, New York State and Erie County Bar Associations, Vice President of the New York State Association of Women Judges and a Past President of the University of Buffalo Law Alumni Association, the Erie County Bar Foundation, Inc., the Women Lawyers of WNY and the Minority Bar Association of WNY.

Hard work and community service have always been important values to Judge Ogden. Her community memberships include The Black Leadership Forum, The Erie County Chapter of Links, Inc., the Women's Group, the Business and Professional Women's Association, the NAACP, the League of Women Voters, the Metropolitan Alliance of Black School Educators, the Board of Directors of the United Way of Buffalo and Erie County and the City of Buffalo Ethic's Nominating Committee.

Judge Ogden presently serves as a mentor to students in high school, college and law school and regularly appears as a speaker for civic and community organizations, public schools and churches. Her message and her motto is to "lift as you climb."

Judge Ogden is the recipient of many awards and acknowledgments for her long standing community involvement. Judge Ogden attributes all of her accomplishments to the support of a loving family and a strong belief in God.

Email: CivilLegalServices@nycourts.gov
Helaine M. Barnett, Chair
Task Force to Expand Access to Civil Legal Services in New York

Dear Ms. Barnett:

My name is Judge E. Jeannette Ogden. I have served as a Judge on the City Court of Buffalo, New York, for the past sixteen (16) years. Buffalo City Court is a major gateway to the criminal justice system and the primary forum in the Buffalo area where individuals are afforded an opportunity to resolve civil disputes. Buffalo is the sixth (6^{th}) poorest city in the nation and as such, there are many poor and low income persons for whom the lack of civil legal assistance can be a major factor in keeping a family in a state of turmoil and financial crisis.

In Buffalo City Court, I preside over cases involving evictions and other landlord and tenant disputes, housing ordinance violations, consumer debt/collection issues and small claims. Many of the litigants are poor and low income individuals. For these individuals, access to a lawyer can be the difference between having or not having a place to live, maintaining a credit rating that enables them to purchase essential items and otherwise contribute to the economy or destroying their credit and causing them to become a burden on society.

I am also an Acting Erie County Family Court Judge and have served in that capacity for the past eight (8) years. My Family Court responsibilities include the prosecution, protection and placement of children and the resolution of custody and visitation disputes. At least a third of the Family Court docket involves self represented, poor, low and moderate income litigants.

I presided exclusively over cases involving domestic violence for approximately five and a half

(5 ½) years in Buffalo City, Erie County Criminal and Erie County Family Courts. In this capacity, I regularly encountered the collateral consequences experienced by victims of family violence who did not have meaningful access to civil recourse.

In addition to my judicial responsibilities, I am a member of the Board of Directors of the United Way of Buffalo and Erie County. This agency brings people, organizations and resources together to improve community wellbeing. My position here exposes me to the injustices that occur as the economic crisis in our community deepens and people who have lost their jobs, health benefits, disability assistance and homes from foreclosure suffer without vitally needed civil legal services.

It is against this background that I am here today. I firmly believe that fundamental individual rights are at stake whenever a person enters a courtroom. Therefore, access to justice for all is a basic obligation of our society. As a Judge, I have an obligation to advocate for equal access to justice for all. However, you cannot have equal access to justice for all when you don't have equal access to an attorney.

For poor, low and moderate income people, access to justice is critical. Their lives intersect with the law and legal systems in the most fundamental areas of life, including housing, income support and debt collection. Access to an attorney can mean the difference between being put out or staying your home, suffering from domestic violence or finding refuge, staying in jail or reuniting with your family.

I would like to emphasize the need to improve the availability and the quality of civil legal services to poor, low and moderate income individuals in Western New York as well as the challenge that self represented litigants pose to the court system and the concept of justice.

I can state from personal experience that there are few things worse than when a Family Court Judge refers a person to the Assigned Counsel Program which provides legal representation to indigent people in a Family Court proceeding and the person returns to court and says, “They can’t help me because I earn five dollars ($5.00) more than their guidelines permit.”

or

Hearing a case where a Grandparent has petitioned the Court for guardianship and/or visitation of a grandchild because the child’s parent can no longer adequately care for the child. The Family Court has a Grandparent Advocacy Program that offers free legal assistance to eligible grandparents seeking custody of their grandchildren but does not offer the same legal services if the Grandparent is seeking guardianship and/or visitation, solely because of a lack of resources available to the program operators.

The Grandparent may not be in a position to take custody of the child because of financial reasons and/or housing restraints. Many times the Grandparent cannot afford the cost of an attorney but appears pro se in an effort to prevent the child from being placed in the child welfare system. The absence of an attorney can result in the child becoming a ward of the state thereby requiring taxpayers to provide for the child’s financial support, with little to no emotional support for the child.

Then there are the instances in custodial cases where one parent qualifies for free legal representation and the other parent does not. The non-qualifying parent is usually working a minimum wage paying job that does not compensate them for time lost from work as a result of their attendance in court proceedings. The non-working parent often manipulates the system by obtaining repeated adjournments and/or the attorneys may seek repeated adjournments because of scheduling difficulties caused by the large court dockets. The repeated adjournments may ultimately jeopardize the employment of the working party/parent by requiring them to choose between maintaining gainful employment or attending court proceedings to fight for the custody of their children.

This is compounded by the fact that the working party/parent is usually self-represented. Thus, the poor and working poor are not only the hardest hit by the financial impact of our depressed economy, but they are also denied meaningful equal access to the legal system. A person who cannot resolve outstanding legal issues may become permanently unable to obtain and/or keep a job or benefit from programs designed to lead to employment or family preservation.

In addition, from a judicial perspective, “fact finding” is difficult because pro se litigants are unable to identify the relevant issues, make objections and/or properly present evidence. As a result, the Judge’s ability to preside as a neutral arbiter of the dispute is greatly compromised.

These are just examples of how the lack of adequate civil legal services can contribute to a family in crisis.

In the area of debt collection, which I frequently see in City Court, these cases clog court calendars because there is no one to negotiate with the attorney for the credit card companies in order to reach a pretrial resolution of the outstanding indebtedness. The debtors frequently appear pro se and are unfamiliar with strict filing procedures, potential defenses and other rights and remedies recently made available to them. They are also unable to identify legal technicalities that may prevent the creditors from securing judgments against them. Civil collection proceedings can also compromise the Court's ability to be impartial and present ethical issues as well.

The provision of free and/or reduced legal services would result in a more efficient and effective resolution of these disputes, enhance the debtor's chances of becoming economically sound, thereafter enabling the debtor to contribute to the economy with by purchasing food, and clothing, and other goods and services with the money saved instead of being subjected to criminal contempt orders for noncompliance that result in incarceration, loss of employment, and further cost to the taxpayers.

The need to strengthen the delivery of civil legal services to the poor, low and moderate income individuals also arrives when they need to exercise their right to appeal adverse decisions. The unfamiliarity with strict time guidelines and the inability to access trial and/or hearing transcripts further deprives their access to justice.

SUGGESTION:

I would like to suggest that the system by which civil legal funds are available to legal service

organizations that provide service to the indigent be modified to enable indigent grandparents who file visitation and guardianship petitions to receive the same free legal representation as indigent grandparents in custody proceedings. By creating this broader right to counsel in this type of civil matter, we are reducing the cost that society would have to pay as a result of the collateral consequences of foster care placement.

CONCLUSION:

The assistance of an attorney is critical for a fair and just resolution of a legal matter. Yet the majority of the poor, low and moderate income individuals living in Western New York do not have access to an attorney for their civil matters, primarily due to the lack of a recognized constitutional right to an attorney in civil cases, as well as the inadequate funding for nonprofit civil legal service programs.

I applaud the Office of Court Administration for spearheading efforts to address the critical issues related to civil legal services.

I would also like to thank you for the opportunity to be heard and for creating a forum where the issues of equal access to justice can receive attention, meaningful consideration and support.

Very truly yours,

Judge E. Jeannette Ogden

Arthur A. Russ, Jr.

President, Bar Association of Erie County;
Of Counsel, Phillips Lytle LLP

ARTHUR A. RUSS, JR.

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Mr. Russ is the President of the Bar Association of Erie County and previously served on the Board of Directors for the Erie County Bar Association Volunteer Lawyers Project, Inc. He is currently a member of the New York State Bar Association House of Delegates. He focuses his practice in the areas of corporations, general business and finance, real estate, subsidized housing, industrial revenue bonds, taxation, securities, estate and trust planning and health care.

HONORS & AWARDS

- Listed in *The Best Lawyers in America*®
- Selected for the *Upstate New York Super Lawyers*® list, 2007-2008
- Who's Who Among Executives and Professionals, 2008

EDUCATION

State University of New York at Buffalo School of Law, LL.B., *cum laude*, 1967
Northwestern University, B.A., 1964

ADMITTED TO PRACTICE

New York
U.S. Tax Court
U.S. Supreme Court

JUDICIAL CLERKSHIPS

- NYS Supreme Court, Appellate Division, Fourth Judicial Department, Confidential Law Assistant, 1967-1969

PRESENT ACTIVITIES

- Mercy Hospital Foundation
  - Board of Trustees, Chairman
- Catholic Health System of WNY
  - Compliance Committee, Chairman
  - Board of Directors
  - Audit Committee, Vice Chairman
- University at Buffalo Foundation, Inc., Board of Trustees and Audit Committee
- Gibraltar Industries, Inc., Director
- Buffalo Renaissance Foundation, Director, President, 2005-2006
- Holy Cross Cemetery, Secretary of Advisory Board
- National Council of The Multi-Family Housing Industry
- The Buffalo Club, Director, 2008-2011

PAST ACTIVITIES

- National Multiple Sclerosis Society, Western New York Chapter, 2002 Annual Dinner Chair
- University Heights Community Development Association, Inc., Former Director
- Mercy Hospital of Buffalo, Chairman, 1992-1998
- The Buffalo Club, Director, 1996-1998
- Country Club of Buffalo, President, 2001-2002
- Catholic Health System of WNY, Director, 1998-2008

Short Summary of Planned Testimony
Task Force to Expand Access to Civil Legal Services in NY
Fourth Judicial Department Hearing
October 6, 2011

Arthur A. Russ, Jr., President
Bar Association of Erie County

I will be discussing the level of poverty and the overwhelming need for free civil legal services in the Buffalo area. I will briefly discuss the 5 local providers of free civil legal services and the collaborative steps that they have already taken by co-locating in one building and how some of the programs are sharing space, a phone system and other equipment, and working collaboratively to obtain funding and provide services. I will also discuss how this has lead to cost savings, easier access by clients, better and more efficient service for clients, and better overall cooperation/collaboration among the providers of these services. Even after all of these collaborative efforts, the need is still overwhelming.

Testimony
Task Force to Expand Access to Civil Legal Services in NY
Fourth Judicial Department Hearing
October 6, 2011

Arthur A. Russ, Jr.
President
Bar Association of Erie County

My name is Arthur A. Russ, Jr. I am Of Counsel at Phillips Lytle LLP and I am the current President of the Bar Association of Erie County. I am also a former Board Member of the Erie County Bar Association Volunteer Lawyers Project and a current member of the New York State Bar Association House of Delegates.

I want to thank Judge Lippman and the Task Force for conducting these hearings and raising awareness of the overwhelming need for civil legal services for low income people.

With such overwhelming need, collaborations and cost sharing efforts are essential for making every dollar go further. This is especially true here in the Buffalo area where there is such a high level of poverty. Buffalo, the second largest city in the state, and the third poorest large city in the nation, with 30% of its population living below the poverty level. http://bit.ly/sCaaU. 38.4% of Buffalo children under the age of 18 and 14.0% of people 65 and older in Buffalo are living below the poverty line.

Here in Buffalo, we have five (5) legal services and pro bono programs serving the counties at the western end of New York State. The geographic area that they collectively serve consists of the counties of Erie, Niagara, Chautauqua, Cattaraugus, Allegany, Wyoming, Genesee and Orleans, and the cities of Buffalo, Niagara Falls, Lockport, Jamestown, Albion and Dunkirk. The area is both urban and rural. Erie County is the largest county in the region with a population of over 900,000 (91% urban, 9% rural).

I want to tell you about some of the terrific collaborations occurring here in the Buffalo area. Some of their best collaborations have included the Courts as a partner – like VLP and NLS's Attorney of the Morning Program representing low income tenants facing eviction and the Eighth Judicial District Pro Bono Committee which works to recruit, train and support pro bono attorneys. It is my understanding that the Honorable Paula L. Feroleto, Administrative Judge for the Eighth Judicial District will be describing those efforts, so I will concentrate on the other efforts of the local legal services providers.

The five (5) local programs are:

Legal Services for the Elderly, Disabled or Disadvantaged was incorporated in 1978 to provide free civil legal services to seniors, disabled and low- income people in a six county area and on the Seneca Nation of Indians reservation. They also provide guardian services to an additional 67 elderly and disabled individuals and are trustees for another 300 disabled persons utilizing the Western New York Coalition Pooled Trust. Their goal is to use the legal system to help their clients live independently and with dignity. Their current priority areas are health care, housing, veterans' support, income maintenance, grandparent's advocacy and elder abuse prevention.

The **Erie County Bar Association Volunteer Lawyers Project**, Inc. (VLP) has a dual mission to: (1) provide quality free civil legal services for low income people and smaller not for profit groups; and (2) to effectively involve volunteers in the delivery of those services. VLP recruits, trains and coordinates the efforts of pro bono attorneys, Its staff attorneys and volunteers provide representation in a wide array of civil legal services cases. All of VLP's services are available in Erie County, while an increasing array of its services are now also available to clients throughout the entire 8th Judicial District.

The **Western New York Law Center** ("WNYLC") is a not-for-profit legal organization (501 (c) (3), established in 1996, that provides legal and technology assistance for the benefit of low-moderate income clients and communities and legal assistance organizations. WNYLC engages in fair lending advocacy and direct representation of homeowners facing foreclosure, and has initiated class actions on behalf of public assistance recipients in Western New York whose benefits are illegally being delayed or denied.

Neighborhood Legal Services, Inc. provides legal services to the poor and disabled in the five-county region of Erie, Niagara, Wyoming, Genesee, and Orleans. Services are provided in the areas of: family law including kinship custody matters, domestic violence, divorce, custody and legal assistance to victims of HIV or cancer; housing law including landlord/tenant, public housing and housing discrimination; public benefits advocacy for people cut off or denied governments benefits including public assistance, Food Stamps, Medicaid, Social Security Disability and SSI. NLS also provides community education and training to over 3,000 clients, attorneys and community advocates each year.

The **Legal Aid Bureau of Buffalo** was founded 100 years ago and provides free civil legal services, representation for children and criminal defense work for low income people. Their civil unit handles family law, housing and unemployment cases.

The five programs work together to keep people out of homeless shelters by providing eviction defense and mortgage and tax foreclosure defense. They keep people off of the welfare rolls by helping people with SSI benefits, unemployment insurance claims and child support cases. They keep kids out of the expensive foster care system by handling adoptions, representing grandparents (and other relatives) who step in to seek custody when families become dysfunctional, and parents who setting

up standby guardianships so that when they become incapacitated or die, the standby guardian seamlessly becomes the guardian. They help people with fresh starts financially and emotionally by providing assistance with bankruptcies and divorces including victims of domestic violence.

These programs cumulatively served more than 11,000 low income and elderly clients last year. Their efforts saved taxpayers an estimated $7.48 million in tax dollars by keeping people out of homeless shelters through representation in evictions, mortgage foreclosures and tax foreclosures and by getting people off of the welfare rolls by winning SSI benefits and unemployment benefits.

In addition to the taxpayer savings, our five (5) local programs' efforts resulted in at least $9 million coming into the pockets of low income people by winning SSI benefits, unemployment insurance benefits and child support cases. I cannot overemphasis the importance of bringing that money into our local struggling economy. Putting extra money into the hands of low income people immediately stimulates a wide variety of sectors of the local economy. Low income people cannot afford the luxury of saving. Peter R. Orszag, Congressional Budget Office Director, wrote, "To boost cost-effectiveness further, policymakers would need to focus on lower-income households and those with difficulty borrowing. The studies of the 2001 tax rebate suggest that such lower-income and credit-constrained recipients increased their spending substantially more than the typical recipient."

One reason that the local programs are able to serve so many clients is that four (4) years ago, all five (5) programs co-located in one building here in downtown Buffalo. Three of the organizations (LSED, WNYLC and VLP) share common space, including a library, a student/volunteer clinic room, two conference rooms, a reception area and a lunch room.

They also share a telephone system, and all of the organizations share various types of technology. The shared telephone system is administered in-house, and long distance billing is allocated between the organizations sharing the system. At the time, each of the 3 programs was in need of an updated telephone system. The system that they bought collectively, is at the same level as they would have each needed to by individually. The shared system cost $22,800 to purchase, and for the phone system alone, they collectively saved $45,600. They have taken their collaboration to another level with the phones as WNYLC, LSED and VLP are now also on a shared phone bill (saving over $5,000/year) and sharing internet bandwidth (saving another $1200/year). The shared telephone system not only saves costs, but it is convenient for connecting misdirected calls to other agencies. Although each of the organizations sharing the system has a separate number, they can transfer calls internally to any advocate on the system.

In addition, the telephone system is set up like a computer network, with patch panels, and the wiring can easily be changed by plugging and unplugging connections,

without the necessity of purchasing a maintenance contract or calling in a phone technician.

The shared conference room includes an overhead projector and screen, and a sound system for holding trainings and other events requiring multimedia support. The large conference room can be set up with various configurations to accommodate trainings, meetings, presentations, etc. It is often used by the other two legal services organizations in the building. The shared clinic space also includes shared high speed Internet connections. The shared spaces are reserved through the use of a common calendar system, available to all advocates on their desktops.

By working together, they were able to raise additional special funding to buy all of the shared equipment and furniture. This special funding also allowed them to pay for the build out costs of their new shared space – which amounted essentially pre-paying over $120,000 in rent and thus reducing their rent over the life of their 10 year shared lease.

All of these cash savings allow the programs to put more dollars into hiring more staff to represent more clients in need. All of the organizations are exploring other cost savings ventures, such as joint purchase of supplies, insurance and audit services.

In addition to the cash savings, there are several benefits that flow from this arrangement. Because all of the organizations are housed in the same building, clients have been provided a “one stop” option. The organizations maintain and share referral lists by organization and by case type. Clients who walk in asking for assistance are quickly directed to the correct organization so that they do not have to go from organization to organization seeking services.

The 5 programs’ lawyers and paralegals all being in one building facilitates the advocates from different programs working together on issues and cases. Rather than having to spend time going across town to meet, they can simply go down the hall or up the elevator to work together.

In addition, VLP has a wonderful collaboration with our local Bar. Each year, about 400 local lawyers handle about 1000 pro bono cases through VLP. The collaboration with these pro bono lawyers compliments the efforts of the staff lawyers to help provide more and better service for clients.

However, even with all of these superlative efforts and collaborations, the need remains overwhelming. Statistics gathered over a sample 2 month period indicate that **40,000 low income clients in the Buffalo area per year are being turned away and facing their important civil legal problems without the help of a lawyer.**

It is a black eye on the principles of justice that we all hold so dear that people in need are being denied access to justice concerning basic human needs such as housing, pubic benefits and family matters.

Conclusion

I want to close by thanking the Chief Judge and the Task Force for your exemplary efforts and results. In these very difficult economic times the State must be more vigilant, more active and more aggressive in making sure that people in need do not fall prey to denial of life sustaining benefits, loss of their home or further injustice. Your leadership is helping to expand our investment in civil legal services and ensuring greater access to justice.

Access to justice – funding for legal services -- is NOT a special interest. Providing legal assistance to the poor and the elderly is a fundamental public interest. Thank you.

Respectfully submitted by:
Arthur A. Russ, Jr.
President
Bar Association of Erie County

Gabrielle Threet

Client of Erie County Bar Association Volunteer Lawyers Project, accompanied by Robert M. Elardo

Task Force to Expand Access to Civil Legal Services in NY

Fourth Judicial Department Hearing

October 6, 2011

Gabrielle Threet
Client of
Erie County Bar Association Volunteer Lawyers Project

Background

Gabrielle Threet is a former client of the Erie County Bar Association Volunteer Lawyers Project for an unemployment insurance benefits hearing. Ms. Threet has a 4-year-old daughter, Jayla, and is a recent graduate of Buffalo State College. From October 2007 until her discharge in October 2010, Ms. Threet worked at Erie Community College as a student assistant to foster care and at risk youth. At the time of her discharge, Ms. Threet was simply told her position was no longer available. However, ECC later challenged her receipt of unemployment benefits alleging she falsified her time cards during the week she was undergoing surgery at Roswell Park. A pro bono attorney provided through the Volunteer Lawyers Project worked with Ms. Threet to successfully defend her benefits against the misconduct allegation. Ms. Threet currently works as a counselor at Berkshire Farms Center for Youth and at Gateway Longview.

Summary of Planned Testimony

In October 2010, Ms. Threet was discharged from her position as a student assistant at Erie Community College. Ms. Threet contacted the Erie County Bar Association Volunteer Lawyers Project after receiving notice that her employer was challenging her unemployment benefits. VLP provided a volunteer attorney who worked with Ms. Threet throughout the course of an extended and complex hearing process to preserve her unemployment benefits. Having a volunteer attorney provided not only legal advice and representation, but also emotional support throughout the hearing process. In addition, having an attorney allowed Ms. Threet to focus her attention on her search for a new job. Ms. Threet's unemployment benefits enabled her to provide basic necessities for her family, maintain payments on her electricity and gas bills, purchase school supplies for her daughter, continue repaying her student loans to avoid default, and finance her job search. By the time the final unemployment hearing concluded, Ms. Threet had obtained employment as a counselor for Baker Victory Services. Her unemployment benefits and her access to legal services allowed Ms. Threet to provide for her family and maintain her finances until she could find a new job.

Testimony

Task Force to Expand Access to Civil Legal Services in NY

Fourth Judicial Department Hearing

October 6, 2011

Statement of Gabrielle Threet
Client of
Erie County Bar Association Volunteer Lawyers Project (VLP)

Good morning. My name is Gabrielle Threet and I'm a former client of the Erie County Bar Association Volunteer Lawyers Project. VLP, and a pro bono attorney assigned by VLP, represented me from February through May of 2011 in my unemployment insurance benefits case.

From 2007 through 2010, I worked as a student assistant with the Independence Bound Program at Erie Community College, which provides counseling for at-risk foster care youths. My job responsibilities included helping to run programs and workshops and maintaining student files. In October 2010, I was told my position in the Program was no longer available. At the time, I was not given any reason for why I was being let go. Later, I discovered my employer fired me for allegedly falsifying my time cards in August 2010. The time period at issue was when I took four days off to have surgery at Roswell Park. In order to make up the time I knew I was going to miss, I worked extra hours in the weeks leading up to and after the surgery. In the past, my supervisor had always allowed me to count these extra hours on days on my time card when I was not physically in the office. This is exactly what I did, and I submitted my time card which was approved by my supervisor. Not until after I was fired did I learn this was against my employer's policy.

The Department of Labor initially granted my unemployment benefits. However, I soon received notice that my employer was contesting my eligibility for benefits. They were arguing that I was discharged for misconduct for falsifying my time cards, and therefore I should not be eligible for benefits. Since I had already been receiving benefits, I was very concerned not only that my only source of income would be taken away, but also that I would be required to repay the money I had already received.

After contacting Volunteer Lawyers Project, the first step in their program is to attend a general orientation and meet with a staff attorney. Before even being assigned a pro bono attorney to handle my case, VLP had already started to ease my nerves by teaching me about the unemployment benefits hearing process. VLP staff attorneys ensured I had complied with the appropriate procedures to request a hearing and explained the law to me as it applied to my case. They also made sure I understood how to effectively present the documents and witnesses for my case before the administrative law judge.

When I was informed a volunteer attorney had accepted my case, I felt relieved and empowered. I felt confident that I'd be able to fight my case and fight for the correct outcome. I felt like I finally had a voice in a system I was completely unfamiliar with.

As it turned out, my case was far more complex than I initially imagined. First, my employer was represented by a highly experienced attorney. Second, my case lasted three full hearings that spanned three and a half months. There were 25 documents submitted into evidence, 5 witnesses to examine or cross-examine, and several subpoenas to review and comply with. And last, as if going into court weren't intimidating enough, my employer showed up to each hearing with a team of lawyers, assistants, supervisors, and witnesses. Having my attorney throughout the process gave me confidence and emotional support to know that my side of the story was going to be heard. He helped me focus on the relevant legal issues, relevant evidence, and made sure I was prepared for each hearing.

Ultimately, the judge ruled in my favor, finding that I had not committed misconduct because I had not falsified my timecards, and had been following my supervisor's instructions.

Throughout the entire process, my unemployment benefits were my only source of income to support me and my four year old daughter. Having these benefits allowed me to keep a promise I made to myself: to never go on welfare. The benefits also provided financial stability throughout the hearing process. I was able to meet the small, day-to-day living expenses for my family, simple things like paying for toiletries. I was able to make payments on a budget plan to keep my electricity and gas on. I was able to provide my daughter with school supplies and school uniforms. And I was able to continue paying my student loans to prevent them from going into default.

In addition to meeting these expenses, my benefits and my volunteer lawyer gave me the opportunity to focus on my job search rather than my unemployment hearing. I was not content to live off my unemployment benefits until they ran out. I started applying for new jobs immediately. Time, money, and energy that would have been spent on my hearing was instead spent on job applications, Department of Labor job trainings, and travelling to interviews.

By focusing on my job search, I was able to find a job as a counselor for Baker Victory Services that started just before my unemployment hearings finally ended. My unemployment benefits had kept me on my feet throughout the process until I was able to earn my next paycheck. Since then, I have switched to a new position as a counselor at Berkshire Farms Center for Youth and I am also working as a counselor at Gateway Longview.

As I'm sure is clear by now, I truly enjoy working with youth and I am grateful for the assistance the Volunteer Lawyers Project provided throughout the hearing process as a bridge between jobs. I feel that VLP truly believed in me and fought for me. Without their assistance and without my unemployment benefits, I would not have been able to meet my basic living expenses, I would have needed to apply for welfare, and my job search would have been significantly more difficult. I hope that all low income families and individuals living in poverty continue to have access to the unemployment law services I received from the Volunteer Lawyers Project and my pro bono lawyer.

Thank you.

Justin L. Vigdor

Chair, Telesca Center Capital Campaign;
Past President, New York State Bar Association and Monroe County Bar Association;
Senior Counsel, Boylan Code LLP

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Areas of Practice

Business, Corporate & Securities
Alternative Dispute Resolution

Education

LLM, New York University
LLB, *magna cum laude*, St. John's University
B.S., University of Maryland

Professional Affiliations

As a member of the Monroe County Bar Association, Mr. Vigdor served as its President (1977), was Chairman of its Corporation, Banking and Business Law Section (1972-1973) and was President of its Foundation. He has served as President of the New York State Bar (1985-1986), is a director and has been President of its Foundation and has served as a member of its House of Delegates since 1977. He is also a Founder of the Senior Lawyers Section of the NYSBA, serving as Chair from 2009-2011. Mr. Vigdor was also a member of the House of Delegates of the American Bar Association from 1984 to 1996 and was a Trustee of the National Conference of the Bar Foundations. He is a Life Fellow of both the New York Bar Foundation and the American Bar Foundation. For five years from its inception, he chaired the Board of the New York IOLA Fund. He is a member of the Society of Corporate Secretaries and Governance Professionals, an Official Referee of the New York State Commission on Judicial Conduct and a Director of the Committee for Modern Courts. He is a member of the Estate Planning Council of Monroe County. He was a director of IEC Electronics Corp. and was the President of the U.S. Arbitration and Mediation Service of Upstate New York. He is a Trustee of the Ames-Amzalak Charitable Trust. As one of four New York State Uniform Law Commissioners, Mr. Vigdor has served on the Executive Committee of the National Conferences of Commissioners on Uniform State Laws and has chaired several Uniform Law Drafting Committees. He was elected a Life Member of the Uniform Law Conference in 2008. He is also admitted to the Florida Bar and numerous federal courts and commissions.

Professional Honors and Achievements

Mr. Vigdor has been listed in *The Best Lawyers in America*, *Who's Who*, *Who's Who in American Law*, *Who's Who in the World* and *New York Super Lawyers* for many years and has

been the recipient of numerous awards including the Rodenbeck Award for Service to the Community and Legal Profession; the Nathaniel Award for Community Service and Professional Accomplishments; Board Leadership Award from the United Way and Rochester Business Journal; the Humanitarian Award from the Foundation of the Monroe County Bar; the Professionalism Award from the Monroe County Bar Association; and awards from the Al Sigl Center, Mary Cariola Children's Center, Quad A for Kids, Brighton Chamber of Commerce, Association of County Clerks, Jewish Community Federation and U.S. Committee on Sports for Israel. An annual *"Justin L. Vigdor Award"* to New York State Banks has been established in his honor by the New York IOLA Fund. An annual *"Justin L. Vigdor Senior Lawyer Award"* was created by the Monroe County Bar Association, and he was the first recipient. He has served as a panelist on numerous topical and professional subjects and has contributed published articles to various periodicals. Mr. Vigdor recently received a 2009 Philanthropy Award from the Rochester Area Community Foundation, and was also honored with the Woerner Kollmorgen Award for community leadership by Nazareth College.

Community Activities

Civic leadership has been a hallmark of Mr. Vigdor's career, and his community involvement includes: Past President and Director, AAA of New York State; Past Chair, AAA of Western and Central NY; Past Chair, Board of Governors, Al Sigl Center Partners' Foundation; Past Chair, Board of Directors, Al Sigl Center for Rehabilitation agencies; Chairman of the Board of Rochester Arts Festival, Inc.; Trustee, Ames-Amzalak Charitable Trust; Member of the Dean's Advisory Committee of the Eastman School of Music; Director, Jewish Community Federation of Greater Rochester; Past Chair, Professional Advisory Committee Jewish Community Foundation of Greater Rochester; Past President Jewish Family Service of Rochester; Past Member Advisory Board; Kidney Foundation of Upstate NY; Past Director, Mary Cariola Children's Center; Member, Past Member of Professional Advisory Committee, Home Care of Rochester; Member, Advisory Board, Quad A For Kids; Director, Philip Bernstein Society; Past Member Advisory Board, High Technology of Rochester; Past Director, United Way of Greater Rochester and Monroe County; Past Director, Rochester Chapter, American Red Cross; Past Member, Advisory Committee, League of Women Voters; Past Director, Rochester Downtown Development Corporation; Past Discussion Leader, Great Books Foundation.

Testimony of Justin L.Vigdor

Past President, New York State Bar Association
Past President. New York State Bar Foundation
Past President, Monroe County Bar Association
Past Chair of New York Iola Fund
Chair of Telesca Center Capital Campaign

Before the Chief Judge's Task Force to Expand Access to Civil Legal Services in New York, October 6, 2011 at Buffalo New York.

Chief Judge Lippman, Presiding Judge Scudder, President Hassett, Chair Barnett and members of the Task Force, it is both an honor and a pleasure to appear before you today.

I have been told that my task is to describe the origin of the Telesca Center For Justice (the "Center") in Rochester New York. I know that Bryan Hetherington has appeared, or will shortly be appearing, before you to discuss the Center's benefits to its constituent Agencies and its operations. Please forgive us if we overlap.

The Center is the realization of a vision and a dream of Monroe County's bar leaders and legal service providers going back several decades to bring under one roof the Monroe County Bar Association ("MCBA"), the Foundation of the Monroe County Bar ("Foundation") and Monroe County's legal services providers: the Legal Aid Society, Empire Justice Center, Monroe County Legal Assistance Center and the Volunteer Legal Services Project (the "Providers").

Indeed, Hanna Cohn, whom some of you may have known, the founder of the Volunteer Legal Services Project, was one of the most vocal proponents of the concept. Sadly, Hanna died prematurely, several years before her dream was realized.

For years the Providers were scattered around the City in shabby, antiquated but affordable buildings. Because of their different funding sources they each were charged with accommodating only certain civil legal needs and poor people were often obliged to shuttle by bus from one to another.

The MCBA attempted to ameliorate the problem by creating a central telephone intake process which was of very limited effectiveness and was eventually discontinued. The Directors of the Agencies themselves convened annually for a coordination of services meeting during which they discussed programming and plans for addressing community problems.

In 2005, the MCBA established in 1896, and the Foundation established in 1951, moved to a functional ten-story building at Rochester's Four Corners, the very center of the legal community, and convenient to public transportation and both the federal and state courts. The building was largely vacant but for a bank on the ground floor and a tenant on one other floor. Serendipitously, the leases of the four Providers had recently expired or were near expiring. This provided the MCBA, the Foundation and the Providers with real leverage in negotiating with the building's owner as they had the ability to occupy most of the building. Leases for 15-year terms were negotiated at a very reasonable market rates which obligated the Landlord to advance $550,000 for renovations and build-outs. The leases gave the MCBA, Foundation, and the Providers the right to name the building and provided that if the Landlord were reimbursed for the $550,000, the rental rate would be locked at a below market rate of $10 per square foot for the entire term. Mary Corbitt Lowenguth, the splendid Executive Director of both the MCBA and the Foundation, and the Executive Directors of the Providers came together to determine whether they could raise funds to reimburse the $550,000 and to finance relocation costs of approximately $200,000. I was honored to be asked to chair a fund campaign to accomplish that as I had chaired a similar campaign for another collaborative relocation of several community non-profit agencies.

We formed a Campaign Cabinet and began planning to create a unique national model for delivery of legal services. We drafted a formal partnership agreement to create "The Partnership For Equal Justice". The agreement, approved by all six Boards (the "Partners") was designed to govern certain aspects of the campaign. An initial goal of $1 million was established; $550,000 for the reimbursement to the Landlord, $200,000 for moving and relocation costs, $200,000 for campaign expenses and the balance to add to the Foundation's endowment for future grants to the Providers. .The Foundation, being a 501(c)(3), entity agreed to serve as the conduit for the

funds. All parties agreed to suspend other fundraising during the period of the campaign, to share their existing donor data bases and to make available solicitors. A distribution formula was agreed upon for funds raised in excess of the goal. The next $200,000 was to go to the Foundation and the balance shared equally among the Partners.

That being done, it was agreed that we needed to give the building a compelling identity. We asked our senior federal district court judge for permission to name the building in his honor. Everyone involved agreed that he has been an inspiration to the bar of western New York. His life's work has epitomized equal justice. Rich and poor, black and white, men and women, individuals and corporations, have had access to his court and received sensitive and empathetic hearings. Finally, he agreed and so, we formally named the building "the Telesca Center for Justice".

We engaged a consultant to conduct a feasibility study which confirmed that we could be successful. We proceeded to design the campaign structure and named Chairs and committees to solicit the various categories of potential donors, e,g. large law firms, medium size law firms, small law firms, banks, corporations and title companies, the boards of each of the Partners, foundations, well known local philanthropists and friends of Judge Telesca.

With the enormous dedication of Mary Lowenguth, who throughout was wearing three hats, and the invaluable assistance of Kristi Hughes, the Development Director of the Empire Justice Center for whose services we contracted, we did all the remaining groundwork, e.g. developed campaign kits, with a case statement, donor commitment forms, frequently asked questions, history of the agencies, new releases and other material, held solicitation training sessions and moved forward to raise the funds.

After some quiet fund raising during 2006 among the members of our cabinet, the Partners' boards, some friends of Judge Telesca, a few major law firms and others we had received pledges of approximately $600,000 of which about $400,000 was from the legal community. In January of 2007, we raised the goal to $1.2 million and launched the public phase of the three year campaign. By the end of 2009, we had pledges of over $1.8 million. We

received financial support from the New York IOLA Fund and the New York State Bar Foundation. We had enthusiastic encouragement and support from the Mayor of Rochester, the County Executive of Monroe County and the Rochester Downtown Development Corporation for helping to revitalize a part of downtown by bringing more than 100 lawyers, paralegals and other personnel to what had been a virtually vacant building.

The Telesca Center has exceeded all expectations. The Providers have up-to-date quarters. Numerous efficiencies have been realized. There is central intake, shared reception areas, shared conference rooms, joint janitorial and payroll services, shared knowledge and talent. A Center for Education has been established in the building seating up to 125 people which is used for CLE, community programs and speaker forums. Each agency has access to the donor base and a planned giving program is contemplated.

In 2008, we received the American Bar Association's Harrison Tweed Award "in recognition of extraordinary achievement to develop or significantly expand access to legal services for low income and indigent persons". We have been visited by other bar associations who seek to replicate The Telesca Center. That is exactly what we had hoped would happen.

We are pleased to report that the fund raising has continued, State grants have been obtained for additional technology and for renovation of the building's lobby which was not in the original plan. Work on the lobby will shortly begin. The total committed is approaching $2.4 million. We are grateful to this Task Force for its efforts to address the limited availability of legal service to the poor and we pledge to continue to do our part to achieve our shared objectives.

Written Statements of Non-Testifying Witnesses

Erie County Bar Association
Volunteer Lawyers Project, Inc.

The Task Force to Expand Access to Civil Legal Services in New York

Public Hearing

October 6, 2011

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Comments of:

Robert M. Elardo[i]

Managing Attorney/CEO

Erie County Bar Association Volunteer Lawyers Project, Inc.

RE: Civil Legal Services

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Intro:

My name is Robert Elardo and I am the Managing Attorney/CEO of the Erie County Bar Association Volunteer Lawyers Project, often referred to as simply VLP. VLP is a member of the Legal Services Funding Alliance, a coalition of the 15 civil legal services providers from outside NYC.

I want to thank Judge Lippman and the Task Force for conducting these important hearings.

Background About VLP:

At VLP, our staff and volunteers have provided free civil legal services to low income people and smaller not for profit groups since 1983. Our staff that had shrunk to 13 people has now grown to 15 thanks to the funding that was recently awarded to us by the Oversight Board for Judiciary Civil Legal Services Funds. During 2010, our program represented clients on 3507 cases. Nearly 1,000 of those cases were handled by local attorneys that we recruit, train and coordinate to provide pro bono civil legal services for our clients. The remainder of the cases was handled directly by our staff.

VLP primarily serves people in Erie County, although an increasing array of our services, such as unemployment insurance benefits, Immigration, tax and help for

individuals and families affected with HIV/AIDS, extend into the surrounding counties of Niagara, Orleans, Genesee, Wyoming, Cattaraugus, Chautauqua, and Allegany.

Role of VLP:

At VLP, we see the terrible choices that people near or below the poverty line face. Should they pay their car payment or the rent? Should they buy new school clothes for their kids or pay the electric bill? Our clients need to be continually making those choices because there simply is not enough money to take care of everything that they should be paying. When people are living constantly under that type of pressure, they get evicted or, if they were lucky enough to have had a house, it gets foreclosed upon. Their car gets repossessed, which leads to trouble getting to work and they lose their job. They end up needing to file bankruptcy and all of the stress and trouble leads to family problems that end up in divorce, custody battles and child support problems. Unfortunately, this is not an exaggeration. It is a reality for our clients and each problem in this continuum is a legal problem. VLP works cooperatively with the other legal services providers locally and state-wide to try to provide our services as efficiently as possible. The local providers are all in the same building and VLP has entered into a collaboration with Legal Services for the Elderly and the Western NY Law Center to share conference rooms, other space and a phone system.

At VLP, we try to keep people out of homeless shelters by providing eviction defense and mortgage and tax foreclosure defense. We try to keep people off of the welfare rolls by helping people with unemployment insurance claims and child support cases. We try to keep kids out of the expensive foster care system by handling adoptions, representing grandparents (and other relatives) who step in to seek custody when families become dysfunctional, and parents who setting up standby guardianships so that when they become incapacitated or die, the standby guardian seamlessly becomes the guardian. We try to help people with fresh starts financially and emotionally by providing assistance with bankruptcies and divorces.

I have attached a page briefly describing 5 other cases that were recently handled by VLP.

Overwhelming Need:

In the past year, VLP handled about 3,500 cases and provided information and referral services to about 2,500 more. Yet we turn away more clients than we can fully help.

Working together with the other 4 local programs, we cumulatively served more than 11,000 low income and elderly clients last year. However, even with all of our collaborations, the need remains overwhelming. Statistics gathered over a sample 2 month period indicate that **40,000 low income clients in the Buffalo area per year are being turned away and facing their important civil legal problems without the help of a lawyer.**

In the past couple of years, the need has grown as previously middle class workers have lost their jobs and become eligible for our services (in many cases, for the first time in their lives). We have tried to focus increased resources on obtaining unemployment insurance benefits for displaced workers. If we can get them the benefits that they deserve, perhaps they can avoid homelessness, loss of health insurance, repossession of their car and other serious problems. We are using funding from the Oversight Board for Judiciary Civil Legal Services Funds to fund a full time attorney to work on these cases and we have expanded our geographic service area for UIB case from just Erie County to Erie, Niagara, Allegany, Cattaraugus, Chautauqua, and Orleans. Adding one staff attorney to our current efforts will not meet the need, but it will allow us to serve many more clients and keep their families afloat.

Pro Bono:

The time, talent and expertise of the members of the private bar present a tremendous asset and opportunity for getting more clients served. Private attorneys will never be able to meet the entire need or replace the need for dedicated staff attorneys. However, with training and support, the private bar can fill a significant part of the need. Our program supported pro bono attorneys handling nearly 1,000 cases last year.

Pro bono is extremely cost effective, but it is not free. Coordinating the pro bono work of hundreds of lawyers takes a significant amount of our staff time, but it is well worth the effort.

When the funding for ProBonoNY was cut, we lost a terrific asset – the Pro Bono Coordinator for the Eighth Judicial District. She had been working to recruit, train and support pro bono attorneys throughout the entire Eighth Judicial District. She served as staff to the Eighth Judicial District Pro Bono Committee and kept pro bono in the news. Pro bono development is a long term commitment. The culture in the legal community does not change overnight. It is a gradual process. She was making progress, but it set things back when she was laid off.

We have used some of the funding from the Oversight Board for Judiciary Civil Legal Services Funds to hire her back on a part time basis to continue her work in Erie County.

Conclusion

I want to close by saying, that it is in these very difficult economic times that the State must be more vigilant, more active and more aggressive in making sure that people in need do not fall prey to denial of life sustaining benefits, loss of their home or further injustice. It is in these times – at this very moment – that we should be expanding our investment in civil legal services and ensuring greater access to justice.

Access to justice – funding for legal services -- is NOT a special interest. Providing legal assistance to the poor and the elderly is a fundamental public interest.

The funded awarded by the Oversight Board for Judiciary Civil Legal Services Funds is making a difference, but much, much more is needed.

Thank you.

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[i] Robert M. Elardo has been the Managing Attorney of the Erie County Bar Association Volunteer Lawyers Project, Inc. (VLP) since 1984. During that time, he has also spent periods serving as President of the National Association of Pro Bono Coordinators (NAPBCO), Co-Chair of the New York Pro Bono Coordinators Network, and as a consultant to the American Bar Association's Center for Pro Bono. He is a member of the NY State Bar Association (NYSBA) President's Committee on Access to Justice and a member of the NYSBA Committee on Legal Aid. He has been a trainer numerous times on pro bono topics for the ABA, NYSBA and within Erie County. Prior to starting with VLP, he was an Associate Member of the Law Faculty at Boalt Hall, University of California at Berkeley. He was awarded a Distinguished Alumnus Award by the University at Buffalo Law Alumni Association in 2002 and an Award of Merit from the Bar Association of Erie County in 2009.

ERIE COUNTY BAR ASSOCIATION

VOLUNTEER LAWYERS PROJECT, INC.

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These are just five of the over 3500 cases that VLP handled last year:

1. A man who suffered a stroke during surgery and ended up in a skilled nursing facility received help from us with two matters. First, we helped with a supplemental needs trust. Then when he was served with divorce papers, we found a volunteer attorney to represent him in the action for divorce.

2. A man suffering from a traumatic brain injury lives in the home that was owned by his now deceased parents. He needed to get title into his name in order to qualify for community development funding to repair the home. We found a pro bono lawyer who opened the estate and obtained an administrator's deed to the client.

3. A man suffering schizophrenia was facing tax foreclosure for the home that he and his two children lived in. He had not been opening mail because it was too traumatic for him and the sale was imminent. He made it here and we found a law firm to assist him in getting a repayment plan to save his home.

4. Last year, the International Institute of Buffalo closed its Immigration Legal Department. VLP stepped in to keep the funding in WNY and to take on added responsibility for more immigration cases. One case handled by VLP's Immigration Project resulted in the Immigration Court granting asylum for a gay man from a country in Eastern Africa. We presented volumes of evidence from American medical professionals that he had been tortured by his own family and authorities in his country with violent beatings, electrical shocks, mock asphyxiation, and burning—all in an attempt to make him give up his "abhorrent" behavior. He was able to flee his country with a visa because he worked for an American company. He had hoped to get to Canada, but was stopped and detained by U.S. immigration officials. Today he is a patient at the Center for Victims of Torture in Minneapolis where he receives treatment for PTSD and is rebuilding his life. He is now working and studying English, and in one year, will apply for lawful permanent residence in the U.S.

5. A woman suffering from post traumatic stress syndrome stemming from severe domestic violence (at the hands of first her ex-husband and then by their adult son) came to us after these two men had intimidated her into signing a document which purported to give up her rights to pension payments from her ex-husband's pension that had been in payment status for several years. She came to VLP when her ex-husband brought an Order to Show Cause asking for vacature of the QDRO which provided for her pension rights. When she first came to us, she could barely describe what had happened. We obtained counseling for her through Haven House and successfully defended the Order to Show Cause so that she could keep her pension rights which she needed to support herself.

Farmworker Legal Services of New York, Inc.

Servicios Legales para Los Trabajadores Agrícolas

Farmworker Legal Services of New York, Inc.

Trayayè-Fèm Sèvis Legal de New York

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TESTIMONY OF FARMWORKER LEGAL SERVICES OF NEW YORK, INC
For

The Chief Judge's Hearings on Civil Legal Services
FOURTH DEPARTMENT HEARING

October 6, 2011

My name is Lewis Papenfuse and I am the Executive Director of Farmworker Legal Services of New York, Inc., (FLSNY). FLSNY is the only law project in New York State that provides legal representation and education on employment and housing issues to migrant and seasonal farm workers, regardless of their immigration status. FLSNY has been providing exceptional legal services to members of the most hidden and ignored populations for over thirty (30) years. FLSNY currently employs legal staff, including a contracted mentor/supervisor with experience ranging from six (6) to fifteen (15) years. Each of FLSNY's legal support staff that includes two (2) Domestic Violence advocate, a labor Human Trafficking expert and a workplace safety specialist have over ten (10) experience in the field. FLSNY's Domestic Violence Project works with the victim to access the courts to protect her, to file necessary papers to obtain documentation, and to insure she and her children get medical assistance, and provide her with a support network that is sensitive to her needs and culture. Likewise, FLSNY's trafficking project provides legal protection and representation to trafficked victims while working in tandem with law enforcement and other NGO's to provide services for the victims. FLSNY's workplace safety education program conducts extensive outreach to farm

workers to provide education on the dangers of pesticide exposure, other workplace hazards and the preventative measures they can take to protect themselves and their families. Our work at FLSNY means hours of travel to remote locations, repeated visits to these same locations and intensive advocacy for some of the most basic rights that all should have. The project has, for over thirty years, conducted outreach 3 to 4 times a week to labor camps, community sites and other farm worker housing to conduct community legal education and for case development work.

We are part of a consortium of upstate legal services programs entitled PULSE, the Partnership of Upstate Legal Services. PULSE was established as part of an effort to respond to the unmet legal needs of the underserved and rural poor in upstate New York. We foster collaboration and resource sharing among our members in the provision of direct legal services and statewide policy advocacy to low-income, rural and other underserved populations. PULSE consists of Farmworker Legal Services of New York, Legal Services for the Elderly, Disabled or Disadvantaged of Western New York, Inc., the Rural Law Center of New York and The Legal Project. Our intent is to enable our programs to expand our current individual capacities to provide services to New York's most vulnerable, including the elderly, the disabled, the working poor, the farm worker community, and domestic violence and sexual assault victims, as well as other underserved low-income rural residents of upstate New York. Additionally, FLSNY partners with a migrant health center, two worker centers and other legal service providers to work with prospective clients at sites throughout New York State. FLSNY is constantly accessing new forms of telecommunication and specifically teleconferencing to interview clients at remote locations throughout the state. Additionally, FLSNY has partnered with another OCA recipient, the Workers' Rights Law Center, to staff an office in the Hudson Valley Region of the State. We are currently involved in merging the two entities to reduce costs and increase coverage to our client base.

The Court System and Chief Judge have been tremendous supporters of civil legal services, and we know that you are well aware of the importance of the work that we do across the state to help provide a vital safety net to the poor and working poor with life crises such as domestic violence, unemployment, wage theft and homelessness. The economic downturn has only added to the overwhelming needs of our clients. We appreciate that the Office of Court Administration has been supportive of the variety of programs throughout New York State. Our state simply is too large and too diverse to apply a "one-size-fits-all" approach to legal services delivery and we hope that the court system will continue to encourage the creativity that occurs when many types of programs are maintained and, hopefully, expanded. Specialized programs for special populations such as the elderly, farm workers, rural poor and domestic violence victims ensure that the most vulnerable among us will not be forgotten.

In conclusion I would like to offer a view of the type of work we do and a picture of the clients we serve. Below are three vignettes that attempt to illustrate the quality of work that is being done while highlighting the courage and tenacity our clients posses.

CASE EXAMPLES

J……, is a person we first encountered on general outreach. He was living in a building that had no heat, no running water, sewage on the bathroom floor and was infested with rats and cockroaches. J….., was not paid for his last few weeks of work, continually getting promises of pay that never came. He was out of food and had no transportation to either go to a food bank or seek other assistance. Our first step was to take care of his immediate needs of warm clothing, bottled water and food. Once these immediate needs were taken care of, we then were able to address his legal issues. Had he received his wages promptly, he would not have been in such desperate need. Unfortunately, J…'s situation is more the rule than the exception. Most farm workers are victims of multiple employment violations. Many are victims of human trafficking, both labor and sex. Many are victims of gender discrimination in employment and domestic violence at home and at work.

M… lived with her parents in Mexico. She was just 14 years old when her parents arranged for her to marry a much older man. Her husband often hit her, called her names, and degraded her in front of her family. He told her that if she told anyone about the beatings he would kill her and her family. She believed him. She once called the police but they told her it was her fault and she should go home and be a "good wife". This treatment continued for 6 years. In 2008, her husband came to the United States. He begged her to come and live with him and that he had changed. She came to the United States and worked in the fields picking crops. The abuse, however, continued. When she became pregnant, he beat her so badly that she was hospitalized and lost the baby. She still didn't tell anyone about being abused. She was told by her husband that the police would not believe her and they would send her back to Mexico and take her children away from her. She didn't speak any English so she didn't know that this was not true. Finally, she could hide the abuse no longer. The police were called and she showed them the bruises that nearly covered her entire body. The police arrested her husband. She was then referred to Domestic Violence Program that Farmworker Legal Services operates. When our advocates met her and talked to her about her case, we told her that she could be protected from her husband, that we would help her with the immigration court so she wouldn't be deported. Her husband was deported and she feared that she would be deported and she would be under the control of her husband again. FLSNY conducts monthly meetings with many farm worker women to talk about domestic violence and how the laws in the United States can protect them from being beaten and abused. At the meetings, we provide food, babysitting, and transportation for the women to come together to learn about the laws that help protect them and their families.

J…. was 16 when he came to the United States to work on a farm. He was told that he could make enough money that he will be able to send extra money back to his family. He also was told that he would have a place to live. He was also told that he would have "legal" papers. He was taken across the border in the back of a truck that was packed with 15 other workers. They first took him to Arizona where he spent many days in a trailer with other workers. He was told that if he wanted to work, he would have to pay the crewleader $2,000 and the cost of his

transportation. He was told that by working in New York State that he would easily make this much money. He agreed to come to New York. When he came to New York, he was put in a house with many other workers. He did not have a bed. He slept on the floor in the kitchen with an old blanket someone had given him. He worked for two weeks and when he received his pay, he was surprised at how little he received. He was told that the rest was used for rent and expenses from his transportation. To cash the check, he had to give it to the crewleader who took some of it as a check cashing fee. After buying food, he did not have any money to send home. After two months, he asked how much more he owed and found out that the debt had decreased very little. He realized that he would never be free of the debt. He was told that if he complained he would be deported and sent back home in shame. The crewleader had taken his papers so he couldn't prove who he was or how old he was.

FLSNY's outreach worker met J….. He suspected that J…. was underage, but J….told him he was 19. J…. was told that he must not tell people his real age. Our staff member talked to J….and the other workers in the house about their legal rights, he told them that some crewleaders did illegal things, like making people work off a debt by threatening them with physical harm. After several visits, J….finally told our staff member about the threats, how he was tricked into coming to New York, how many promises were made to him and finally about how old he really was. Our staff member explained to J….that he appeared to be a victim of human trafficking. We told J,…. that we could help him by using the United States and New York laws to free J…. from his bondage.

Sincerely,

Lewis Papenfuse
Executive Director

Legal Aid Society of Rochester, NY

TO: Task Force to Expand Access to Civil Legal Services in New York

FROM: The Legal Aid Society of Rochester, NY

Contact: Carla M Palumbo, Esq, One W Main St Suite 800 Rochester NY 14606 585-295-5760, cpalumbo@lasroc.org

DATE: October 6, 2011

RE: Impact on Funding from the Oversight Board

The Legal Aid Society of Rochester is grateful for the funding spearheaded this year by Chief Judge Lippman and received from the Oversight Board. This funding will allow us to retain 3 attorney positions and maintain services in our Housing, Family Law and Immigration Units.

Without this funding, and given reductions from other funding sources, LAS was facing the loss of, at a minimum, three attorneys. Two support staff positions were already eliminated from the budget. Unfortunately, even given funding from the Oversight Board, we are not able to restore the support staff positions.

The loss of three attorney positions would have had a devastating effect on our community. In our Family Law Unit, victims of domestic violence, parents seeking to settle their rights with regard to custody and visitation and litigants seeking financial resolution on issues such as child support would have been turned away. In our Housing Unit, tenants seeking homelessness prevention, foreclosure prevention, consumer help, bankruptcy and first time home-buyers seeking to stabilize their housing situation would not have had access to service. In Immigration our clients seeking legal status and asylum would not be assisted.

Even with current staff, LAS must turn away eligible clients who have meritorious causes of action but we cannot help given our resources. In 2011, we saw a 70% increase in the demand for service over 2009 for victims of domestic violence that we could not assist, even with an increase in staff for the domestic violence program. Also in 2011, there was a 67% increase over 2009 in "turn aways," that is, people who qualify and who otherwise would have been accepted, if we had the resources to do that work. The areas of the highest unmet need for service at LAS were in divorce, orders of protection, foreclosure and consumer/bankruptcy issues.

Continued and increased funding is imperative in order to maintain our current service level and meet more of the needs of our community. Legal services in the area of foreclosure prevention, homelessness prevention, divorce representation, immigration and youth advocacy face severe cuts in 2012; if funding is not maintained and increased we will face the loss of services and program closures for the coming fiscal year.

The impact of this funding on our agency is clear, without it, programs will close and services will be reduced; ultimately however, it is the most vulnerable members of our community who will suffer and go without the legal assistance they so desperately need if funding is not maintained or increased.

Legal Assistance of Western New York, Inc.

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TESTIMONY:

TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK

October 7, 2011

By: C. Kenneth Perri
Executive Director

I. **Introduction:**

On behalf of Legal Assistance of Western New York, Inc.® (hereinafter LawNY®), I thank you for conducting the hearings on civil legal services in the Second Department on September 20, 2011, in the First Department on September 26, 2011, in the Third Department on October 3, 2011 and in the Fourth Department on October 6, 2011. I thank you as well for the opportunity to share these very brief comments with regard to the crisis facing the civil legal services infrastructure in New York State and how it impacts those unable to access the justice system because of their inability to pay for an attorney.

I extend my thanks in particular to the Chief Judge of the State of New York, Honorable Jonathan Lippman, as well as the other members of the hearing panels, Chief Administrative Judge Ann Pfau, New York State Bar Association President Vincent E. Doyle, III and Presiding Justices Anthony V. Cardona, Luis A. Gonzalez, A. Gail Prudenti and Henry J. Scudder. I also extend my thanks to Helaine M. Barnett, the chair of the Task Force To Expand Access To Civil Legal Services In New York, as well as the other distinguished members of the Task Force.

II. **LawNY®**:

My name is C. Kenneth Perri and I am the executive director of LawNY®. LawNY® is a 501(c)(3) not-for-profit law firm whose mission is to provide access to the justice system to low-income New Yorkers and other vulnerable populations in our 14 county service area. I have been a civil legal services practitioner for 29 years

LawNY® has seven staffed offices which provide services to low-income people in 14 counties. Our office in Bath serves the residents of Allegany and Steuben Counties. Our office in Elmira serves the residents of Chemung and Schuyler Counties. Our office in Geneva serves the residents of Livingston, Ontario, Seneca, Wayne and Yates Counties. Our office in Ithaca serves the residents of Tioga and Tompkins Counties. Our office in Jamestown serves the residents of Chautauqua County. Our office in Olean serves the residents of Cattaraugus County. Our office in Rochester serves the residents of Monroe County.

With the exception of the urban center in Rochester and the small cities of Canandaigua, Elmira, Geneva, Ithaca, Jamestown, Olean and Salamanca, the 14 county service area covered by LawNY is primarily rural. In the counties in which we do not have staffed offices, we have sites where we can meet with and interview clients located in Belmont, Lyons, Montour Falls, Mt. Morris, Ovid, Owego and Penn Yan.

III. **Continued Need for Funding**:

On September 29, 2010 I submitted written testimony and had the honor of providing oral testimony at the Chief Judge's hearing held in Rochester, New York. At that time I provided detailed information regarding the extremely high demand for services from

LawNY® by the members of our low-income communities. The sum and substance of my September 2010 testimony remains unchanged, and is briefly able to be summarized as follows:

- the number of persons living in poverty in the 14 counties served by LawNY® continues to grow;

- Present economic conditions are dramatically affecting the demand for civil legal services among low-income people, including those who, because of loss of jobs, have recently fallen below the federal poverty level;

- The unemployment rate remains high;

- Employers continue to downsize, relocate or close;

- The number of people participating in the poverty programs of last resort – public assistance, food stamps and medicaid – continues to rise;

- LawNY® continues to struggle to meet gaps in our service delivery system which we have self identified, including in the areas of foreclosure prevention services, mobile home owners' rights, services for domestic violence victims, services for seniors and services in the areas of employment law, education law and land sale contracts; and

- LawNY® also continues to grapple with the barriers which we have identified to providing civil legal services, including our large geographic expanse; low starting salaries for our professional staff of attorneys; the difficulty of recruiting and retaining volunteer lawyers to provide pro bono services in the rural counties in our service area; recent reductions in and actual elimination of some of our state funding sources; and the impending loss of one-time funds from federal sources at the close of our current fiscal year on December 31, 2011.

Moreover, a new threat to our stability has emerged in connection with our funding from the Legal Services Corporation. For the federal fiscal year 2012 budget, the Appropriations Committee of the United States House of Representatives has reported out a Commerce, Justice and Science bill that reduces LSC funding for FY 2012 by $104.2 million, entirely from basic field funding, amounting to a reduction of 27.5% for programs from FY 2011 levels. The possibility of this significant reduction in funding comes on top of the 4% reduction in funding which LSC grantees have already received in FY 2011.

In addition, at the present time, the board of directors of LSC is in the process of making a recommendation to Congress regarding the manner in which LSC funding should be reallocated among geographic areas in the United States based on updated poverty population determinations. Based on information presently available to us, the seven LSC

grantees in New York State estimate that we will collectively lose nearly 21% of our LSC basic field funds, a loss of nearly $5,700,000 based on present FY 2011 funding levels.

IV. **LawNY®'s Use of Oversight Board Judiciary Civil Legal Services and IOLA Funds**:

In the current state fiscal year, which runs from April 1, 2011 – March 31, 2012, Chief Judge Lippman was able to secure funding for civil legal services in the sum of $12.5 million allocated by the Oversight Board for Judiciary Civil Legal Services grants, as well as a supplemental allocation of $15 million for the Interest on Lawyer Account Fund, which has seen a devastating reduction in its grant making ability due to low interest rates. Following competitive RFP processes for both funds, LawNY® was awarded a portion of each.

LawNY®'s fiscal year runs from January 1 – December 31. On December 14, 2010 the LawNY® board of directors adopted a budget for LawNY® which included a structural operating deficit of nearly $1,100,000. We projected revenue to come in at $4,989,000, while carrying expenses of $6,080,000. Thanks in large measure to the sums awarded by the Oversight Board for Judiciary Civil Legal Services and by the IOLA Board of Trustees, LawNY®'s staffing and our service delivery system have, for the most part, been able to be maintained intact. In 2010, we lost one full-time administrative assistant position through attrition. We serve as a site for two very robust AmeriCorps programs, but we also had to reduce our AmeriCorps paralegal member staffing by 4.25 positions. In 2011, we reduced our staff by eliminating a case manager position. We also anticipate eliminating at least one attorney position in January 2012 due to the loss of one-time funds from federal sources.

Combined, the funds from the Oversight Board and IOLA allow LawNY® to retain approximately 15.5 FTE attorney staff members, three FTE paralegal staff members and two FTE support staff members. This provides LawNY® with the capacity to provide representation to approximately 2,775 families.

V. **Conclusion**:

For the period from January 1, 2010 – December 31, 2010, LawNY® staff in all seven offices, with all of our funding streams, cumulatively closed a total 6,668 cases benefiting 15,901 people. The three highest substantive law areas in which cases were closed were in those in which clients presented with legal problems affecting the essentials of life – government benefits (44%), housing (27%) and family law (14%). LawNY® used a variety of strategies to meet these critical legal needs of our clients, including representation in judicial and administrative forums, preventive legal education, pro se information, short-term services such as counsel and advice and holistic community partnerships.

In 2012, absent renewed funding from the Oversight Board for Judiciary Civil Legal Services and IOLA, LawNY® will need to develop and implement a plan for significant

reductions in force which will destabilize our ability to continue to provide civil legal services in a broad variety of areas affecting the essentials of life of the members of our low-income communities.

I am grateful for the efforts of the Chief Judge and the Task Force and fervently urge that the Task Force recommend that funding from New York State for the provision of civil legal services to low-income people be enhanced in the state fiscal year which begins on April 1, 2012 so that LawNY® and the entire community of civil legal services providers can continue to respond as effectively as possible to the ever growing need for our services. The continuing demand by our low-income neighbors for assistance from the legal services provider community in turn demands ongoing and stable funding for the providers from the State of New York.

LawNY® and the other civil legal services providers throughout New York State welcome the opportunity to work with the Task Force To Expand Access To Civil Legal Services In New York to achieve this result.

Thank you for your time and your consideration.

Legal Services of Central New York

LEGAL SERVICES OF CENTRAL NEW YORK
MAKING JUSTICE ACCESSIBLE

Testimony of

Dennis A. Kaufman, Esq.

Executive Director, Legal Services of Central New York, Inc.

Before

The Task Force to Expand Access to Civil Legal Services

Fourth Department Hearing

October 7, 2011

Buffalo, New York

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My name is Dennis Kaufman and I am the executive director of Legal Services of Central New York. I thank the Task Force to Expand Access to Civil Legal Services for the opportunity to provide this written testimony.

In 2004, Legal Services of Central New York (LSCNY) and the Legal Aid Society of Mid New York (LASMNY) formed the Justice Alliance of Central New York. The Justice Alliance created a comprehensive civil legal services delivery system for low-income families and individuals in Central New York by ensuring that Legal Services Corporation (LSC) restrictions did not prevent region residents from having access to a full range of legal strategies to meet critical legal needs. LASMNY accepts all of the LSC funds for the region; LSCNY does not accept these funds, therefore, client representation is not prevented by LSC restrictions. This also ensues that state and local governmental and private funds are used solely for the purposes determined by the funder. When the New York LSC regions were reconfigured, only the Central Region adopted this comprehensive delivery system.

The Legal HelpLine of Central New York, a single point of entry to LSCNY and LASMNY services, operates at the heart of the Justice Alliance. The HelpLine gives advice and counsel and brief service to callers and refers callers in need of extended representation to experienced LSCNY or LASMNY staff, depending on the services required. More than 14,000 calls annually come through the single point of entry system. At current staffing levels, the HelpLine closes about 4,500 brief service or advice and counsel cases annually. Because callers can speak to a

HelpLine attorney immediately for a crisis, and usually on the day of the call for other legal matters, the advice and information can and does prevent matters from escalating. The access to early intervention is especially critical for the elderly, people with disabilities, people with limited means of transportation, and residents of rural areas who have difficulty travelling to a Justice Alliance office.

The Oversight Board's announced priorities of essentials-of-life legal services coincide with the core representation historically provided by LSCNY and LASMNY. The priorities for LSCNY and LASMNY have been established through a legal needs study completed following the reorganization, and current being updated, and an annual "gap analysis" by LSCNY staff. The analysis identifies legal matters and client populations where significant needs are unmet in the region. Identifying such gaps in available services prevents duplication and results in a more effective and efficient use of available resources.

For 2011, the gap coverage, funded in substantial part by the Oversight Board CLS grant recently awarded, is as follows.

Housing. LSCNY staff lawyers engage in housing advocacy in areas of law that are not being done by LASMNY lawyers. LSCNY reviews cases involving:

Accessing subsidized housing,
Systemic code enforcement problems,
Water and utility shut-offs due to landlord failure to pay,
Privatized municipal foreclosure on taxes,
Property flipping schemes,
Foreclosures,
Tax foreclosures,
Predatory mortgages,
Mortgage scams,
Housing discrimination, and

Equity stripping schemes.

LSCNY currently receives state funding to represent homeowners in foreclosure. That funding ends on December 31, 2001. The Oversight Board CLS grant will help transition foreclosure work to the point where the state stream is, hopefully, again available.

Income Security/Benefits. LSCNY represents clients in both individual and systemic problems with public benefits. LSCNY lawyers recently settled class action litigation challenging a county Department of Social Services policy that unlawfully and arbitrarily delayed thousands of applicants for benefits, denying applicants even the opportunity to apply for public assistance, Food Stamps and Medicaid. Applicants would stand in line outside the Department starting at 6:00 am in order to obtain one of the limited number of appointments made available each day. Those turned away had to return repeatedly to just file an application. Applicants who had to get their children off to school often arrived too late to obtain an appointment. The settlement agreement, among other things, removes barriers to application, holds the department to mandated time periods for decisions on applications, and provides for compliance monitoring.

Language Access. LSCNY represents people who have had language issues with law enforcement agencies, access to health services, and access to government benefits and services. Resettlement efforts by local religious and human services organizations have made this problem more acute in communities served by LSCNY. LSCNY recently prevailed in a challenge to the Utica City

School District voter qualification policy mandating the ability to read and write English. LSCNY has also sued a local jail for failing to provide adequate interpretation services, resulting in physical injury and denial of medical care.

Access to Health Care. LSCNY will monitor the impact of the Patient Protection and Affordable Care Act of 2010 on New York residents as portions of the ACA become effective. Oversight Board CLS funds will continue LSCNY's pro bono/staff medical-legal partnership at local hospitals.

Consumer/Debt Problems. Specific issues for LSCNY representation include:

Collection practices,
Deceptive sales,
Predatory lending,
Gutter service in consumer collection cases,
Payday loans, and
Debt Rescue scams.

Wage Theft Project. With the former executive director of the National Employment Law Project on staff, LSCNY has initiated the Wage Theft Project. Issues include, but are not limited to:

Failure to pay minimum wage,
Failure to pay for overtime,
Miss-classifying workers as independent contractors,
Miss-classifying workers as exempt, and
Abuse of vulnerable workers, including domestic and farm workers.

Access to Justice. New Yorkers have a right to counsel in criminal and many Family Court cases, but our system of assigning competent lawyers is broken in many of the counties in the region. County systems often operate under

procedures that are designed to deny rather than facilitate representation. LSCNY has effectively advocated on behalf of people who have been denied assigned representation in criminal and Family Court matters. LSCNY is preparing to challenge, in one or more counties, policies and practices that inappropriately deny statutory and constitutionally protected rights to assigned counsel.

Education. LSCNY represents students subjected to disciplinary proceedings threatening their ability to stay in school, parents and students who have issues with school authorities because of language barriers, and students who have been denied registration in their home school district. Matters that relate to students with disabilities are referred to the LSCNY Protection & Advocacy Unit.

LSCNY, with the addition of Oversight Board CLS funding, will continue to represent clients in the following circumstances prohibited to LASMNY, an LSC grantee.

Legislative and Administrative Advocacy. LSCNY lobbies at the state and local level on issues impacting our clients. We comment on proposed legislation and regulations without restriction. We join coalitions to advocate for law changes in the state legislature.

Class Actions. LSCNY brings class actions. On referral from a LASMNY advocate, LSCNY successfully challenged the Oneida County Department of Social Service practice of limiting new applicants to 12 each day. Another pending class action has challenged the practice of evicting tenants from housing connected to social services programs without a court order. A class action challenges a county

sheriff's sale of "criminal background checks" to employers to "screen" applicants where the reports contain only arrest information in violation of the state Human Rights Law.

Citizenship. LSCNY represents clients without regard to their citizenship.

Prisoners. LSCNY can represent persons incarcerated in local, state and federal correctional facilities on most civil matters within our case priorities, including the pending language access litigation against a local jail.

Welfare Reform. Even after the US Supreme Court decision permitting LSC grantees some latitude in this area, there are systemic welfare issues where an LSC grantee may not represent. LSCNY represents clients in these matters.

Client Identification. If it is in a client's best interest not to comply with LSC regulation §1636.2 and sue as a "John Doe" plaintiffs, LSCNY can and does bring the litigation under fictitious names, as in the sheriff arrest report case described above.

Restrictions on Certain Eviction Proceedings. LSCNY can represent in cases without regard to issues of drug involvement in eviction cases.

Solicitation. LSCNY is not restricted in soliciting clients.

Attorney fees. Although LSC restrictions have recently been relaxed, LSCNY has experience in litigating potential fee-award cases to gain strategic advantages in settlement and create additional resources.

Funding from the recent Oversight Board Civil Legal Services grant has dramatically increased LSCNY's capacity to serve clients. Five staff attorneys have

been hired under the grant. Four attorneys have been assigned to the work described above and one staff attorney will work on the HelpLine. Previously, the work described above was conducted primarily through a grant from the NY Interest on Lawyer Account Fund. For the past several years, more than 1,525 cases were closed annually with that funding. We anticipate that at the current level of funding from the Oversight Board were extended, the work we do would double.

It is difficult to determine the number of people helped by LSCNY as the successful class actions help an unidentified number. For example, in the class action to prevent the county sheriff from selling unlawful "criminal background reports" for employment screening, we estimate that 4,000 people annually have these reports made available to prospective employers. The litigation against the county Department of Social Services benefits thousands of applicants for cash assistance, Food Stamps, and Medicaid in the future.

With the advent of the Oversight Board funding, our ability to meet the critical legal needs of low-income families and individuals in the region, while far from being completely met, has significantly increased. Undoubtedly, the thousands of people in our region who have civil legal needs appreciate the work of the Task Force. We are hopeful that the funding available in the future will increase so that many more of our neighbors will be helped.

Legal Services for the Elderly, Disabled or Disadvantaged of Western New York, Inc.

TESTIMONY OF

Karen L. Nicolson, Esq.
Chief Executive Officer
Legal Services for the Elderly, Disabled or Disadvantaged of Western New York, Inc.

On behalf of PULSE, Partnership of Upstate Legal Services

on
The Need for Civil Legal Services Funding

October 6, 2011

My name is Karen Nicolson and I am the Chief Executive Officer of Legal Services for the Elderly, Disabled or Disadvantaged of WNY, Inc. (LSED). We are located in Buffalo and usually referred to as Legal Services for the Elderly. Since 1978 my program has provided free civil legal services to seniors, disabled and low income people in a six county area and the Seneca Nation of Indians reservation. We also provide guardian services to an additional 64 elderly and disabled individuals (soon to increase to 100). As guardian we are responsible for legal representation as well as, financial management, medical and end-of-life decision making and service coordination. Most of these clients are victims of elder abuse by family members and have no one left to help them.

At LSED our goal is to use the legal system to help our clients live independently and with dignity. As a small, non-restricted provider, we rely on our partnerships to stretch our resources. Our agency is networked not only with the statewide legal services community, but also with the aging services community. We are part of the patchwork of agencies that provide services to older adults and frequently apply for grants as part of a "team" of service provides.

We are part of a consortium of upstate legal services programs entitled PULSE, the Partnership of Upstate Legal Services. PULSE was established as part of an effort to respond to the unmet legal needs of the underserved and rural poor in upstate New York. We foster collaboration and resource sharing among our members in the provision of direct legal services and statewide policy advocacy to low-income, rural and other underserved populations. PULSE consists of Farmworker Legal Services of New York, Legal Services for the Elderly, Disabled or Disadvantaged of Western New York, Inc., the Rural Law Center of New York and The Legal Project. Our intent is to enable our programs to expand our current individual capacities to provide services to New York's most vulnerable, including the elderly, the disabled, the working poor, the farm worker community, and domestic violence and sexual assault victims, as well as other underserved low-income rural residents of upstate New York.

The Court System and Chief Judge have been tremendous supporters of civil legal services, and we know that you are well aware of the importance of the work that our programs do across the state to help provide a vital safety net to the poor and working poor. The economic downturn has only added to the overwhelming needs of our clients. Increasingly, seniors are sliding into the realm of poverty, many of whom saw their life savings evaporate in the stock market crash and no longer have the income, or time, left to rebuild their assets. With the needs ever increasing, the justice gap between those who can afford legal help and those who cannot is expanding exponentially.

CIVIL LEGAL SERVICES IS AN ISSUE FOR SENIORS

Seniors, and other vulnerable populations, need lawyers to advocate for them in every aspect of their lives including housing, food, shelter and safety. In New York State, many seniors are left alone when their younger family members leave the area for better opportunities. They turn to legal services programs in greater numbers since their traditional supports are no longer available.

At the hearings held last year by the Task Force to Expand Access to Civil Legal Services in New York convened by Chief Judge Jonathan Lippman, many of our community partners testified to the importance of having available civil legal services for their clients. There was testimony from business leaders, educators, police, district attorneys, housing programs, domestic violence advocates, judges and many others who reinforced the critical need of support for legal services for the poor. Time after time, they made clear that available civil legal services help avoid further negative economic impacts not only for the individual, but for the community. Civil legal services is cost effective—, for every dollar spent on civil legal services in NYS, $5 of federal funds funnel back into the state, and costly problems like increased homelessness, hunger and domestic violence can be avoided.

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The need for specialized services for underserved populations has been a particular challenge. The partners in PULSE are examples of programs that do not receive any federal Legal Services Corporation funding and whose core programs provide services to the most vulnerable, hard-to-reach populations. We are independent, non-profit programs that get our support largely from private donations, foundations, government funding from a variety of sources and IOLA funds. At the same time that our funding has been cut, or is being threatened, we have seen a tremendous increase in demand for our services in responding to the needs of some of the most at risk—the elderly, victims of abuse, seasonal workers and the rural poor.

The demand on local senior services programs is overwhelming. In the 2000 census, Erie County had a percentage of seniors which was 3% higher than the National Average. That number continues to grow. By the year 2015, the Erie County Department of Senior Services estimates that nearly 1 in 4 residents will be age sixty or older and that there will be a 73.8% increase in the number of seniors age 85 and older as compared to 1990.

In order to meet the legal needs of older adults, senior legal services programs across the country rely on several core funding streams: Title III of the federal Older American Act, Federal Legal Services Corporation funding, Interest on Lawyer Account (IOLA) funds, and state funding. Neither Legal Services for the Elderly, nor any of the members of PULSE receive Legal Services Corporation funding.

Federal Older American Act Funding - Congress passed the Older Americans Act (OAA) in 1965 in response to concern by policymakers about a lack of community social services for older persons. The original legislation established authority for grants to States for community planning and social services, as well as legal services for seniors. However, the funding available for legal services has not kept up with the need. For the past decade, federal Older Americans Act funding has remained virtually stagnant, while programs funded by these dollars are seeing an increased demand for services due to the explosion of the over sixty population. Although this funding was our sole source of revenue upon our incorporation thirty years ago, our funding from this act has increased only $60,000 in the last twelve years. In fact, that funding which represented 100% of our funding in 1978, now makes up less than one quarter of our yearly budget.

State Funding - While the Assembly has provided funding for civil legal services in their budget since 1993, that funding is not specifically allocated to senior civil legal services providers and senior programs get a much smaller share of these allocations. For example, my agency receives only about $9,000 out of the 4.26 million allocated by the Assembly to the Department of State for civil legal services. Our state funding tends to be piecemeal and grant specific, in that we receive funding for specific projects such as the project through the Empire Justice Center to handle appeals under the Medicare Prescription Drug Plan, or funding for mortgage foreclosure prevention. However, these grants are often removed in the state budget process (which is what happened to all of our mortgage foreclosure funding this year) making planning impossible. The funding last year from OCA was a tremendous help; however, it simply made up for the state funding we lost for our mortgage foreclosure work.

Interest on Lawyers Account (IOLA) – One of our most significant funding sources is the money we receive from the IOLA Fund. It also funds most legal services organizations in New York State. Interest earned by attorney escrow accounts is pooled and used to fund programs that provide legal services to poor persons, including seniors. However, due to its reliance on interest rates, IOLA is facing another year of significantly reduced grant funds, which is directly tied to the economic downturn. This is particularly traumatic for smaller programs without a solid base of dedicated funding.

In addition to being the right thing to do, civil legal services programs make the courts run more efficiently. In Erie County, my program and the other legal services programs appear on landlord/tenant days to handle evictions, are at the courthouse everyday for one week prior to the City of Buffalo Tax Foreclosure sale and handle settlement conferences in mortgage foreclosure cases *mandated* by New York State Law. Most of our intake is done by lawyers and paralegals right at the courthouse. My program provides additional support to

the court, by appearing at the Veterans Treatment Court at each session to offer our services to the litigants and we accept referrals from the judges on indigent Guardian matters, often without any payment source, either private or public.

Although the United States Supreme Court has ruled that the federal constitution guarantees every person accused of a crime a right to free counsel, persons involved in civil litigation have no such federal right to an attorney. As a result, an estimated 2.1 million people appeared in court last year without an attorney. This places an enormous burden on the courts, which must take additional time with those litigants at a time when the courts are already overburdened with a record breaking court docket of 4.7 million new cases. As Chief Judge Lippman said:

> *"And of course, the ones who suffer the most in this situation are the vulnerable in our society-the elderly, children, struggling families, disabled people, and abuse victims. How many of us can imagine what it would be like to have to fight for life's most basic necessities- shelter, person safety, health services- and to have to fight alone without the help of a trained professional who knows the ins and outs of the law and our complex legal system? Today, unfortunately, too many of our citizens never feel, or have reason to believe, that justice is available to them-the very justice that most of us take for granted as our God given right. From my perspective as Chief Judge, no issue is more fundamental to the mission of the courts than ensuring that the scales of justice are balanced for every one of our citizens."*

Conclusion

We appreciate that the Office of Court Administration has been supportive of the variety of programs throughout New York State. Our state simply is too large and too diverse to apply a "one-size-fits-all" approach to legal services delivery and we hope that the court system will continue to encourage the creativity that occurs when many types of programs are maintained and, hopefully, expanded. Specialized programs for special populations such as the elderly, farmworkers, rural poor and domestic violence victims ensure that the most vulnerable among us will not be forgotten.

New York State Unified Court System
Law Libraries Association

Email to CivilLegalServices@nycourts.gov

I respectfully submit these written comments on behalf of the New York State Unified Court Law Libraries Association.

The officers of the Association are:

John W. Handler, President
Senior Law Librarian
Supreme Court Law Library (Central Islip/Suffolk County)

Andrew Kloc
Automation Services Law Librarian, Appellate Division, 4th Department Law Library, Rochester

Laura Barber
Principal Law Librarian, 3rd Judicial District
F. Warren Travers Supreme Court Library (Rensselaer County)

Cindy Kesler
Principal Law Librarian, 5th Judicial District
Syracuse Supreme Court Library (Onondaga County)

Deborah Payne
Senior Law Librarian, 5th Judicial District
Syracuse Supreme Court Library (Onondaga County)

Written Comments of the New York State Unified Court Law Libraries Association

Submitted to the Task Force to Expand Access to Civil Legal Services, Fourth Department Hearing

September 26, 2011

The New York State Unified Court Law Libraries Association is a well established organization within the state court system whose mission is to help ensure that court system law libraries develop and evolve to meet the legal information needs of all persons accessing the libraries for essential resources, services and information. We truly thank Chief Judge Lippman and the Task Force to Expand Access to Civil Legal Services for conducting these hearings and appreciate the opportunity to submit written comments.

The New York State Unified Court System (UCS) operates and maintains a network of libraries that are both unique and geographically diverse. In their traditional role, court libraries provide resources and reference services to the judiciary, bar and the public. Library services to the public are extensive and offer public access to legal information including:

- Internet access to the locations and phone numbers of the public access court libraries.
- Internet access to an online searchable catalog of the trial court collections including online hypertext links where available.
- Internet access to an online index for the Appellate Division Records and Briefs and other useful finding aids.
- Access and use of the libraries' state and federal primary and secondary resources, including electronic media and print collections. While not permitted to provide legal advice, library staff can assist patrons in locating legal information, sample forms and basic legal research instruction in researching legal issues.
- Public access computers with subscription access to premium legal databases at no cost to users to retrieve caselaw, statutes, regulations, and secondary materials and to formulate natural language searching of legal issues. Library staff can provide computer resource instruction.
- UCS Do It Yourself (DIY) forms and instructions for patrons as well as other CourtHelp forms and information. Court librarians have participated in several DIY workshops initiated by the New York State Courts' Access to Justice Program and given to public and special librarians throughout the state.
- Library Document Delivery service, where email requests for caselaw and other queries are filled by court librarians in a timely manner.

- 1-800-CourtNY, a toll free number answered daily by a team of librarians and court personnel, including interpreters when needed.
- Library Resources for the Public Program (LRPP*),* a program in some public access libraries which helps unrepresented litigants with procedural advice and forms. LRPP patrons often come back to the library for additional forms and to research their issues.
- Interlibrary loan services for legal materials. Court libraries participate in library networks that share their collections and resources and can provide access to legal materials on demand.
- General reference services and referrals to other agencies.
- The distribution and dissemination of government agency, non-profit organization brochures and other reference and resource information. Libraries routinely post test and civil service announcements for state and local public employment opportunities.

Although the libraries and their staff cannot provide legal advice, the libraries can and do provide access to timely legal information in a variety of electronic and print formats. Library standards set forth from the American Association of Law Libraries State, Court and County Law Libraries Special Interest Section state that "access to justice is a fundamental right of every citizen of the United States. Legal information is an essential element of this right. Law libraries are integral to the administration of justice as providers of legal resources."[1] As Hon. Fern Fisher, Director, New York State Courts Access to Justice Program and Deputy Chief Administrative Judge for New York City Courts, expressed in her written comments to the Civil Legal Services Hearings for the Second Department in 2010, "we must fit in maximizing the use of pro bono attorneys and self-help measures where appropriate and insure that all civil legal services are delivered efficiently and effectively"[2]. The public access libraries of the Unified Court System provide reliable reference and resources to the courts and deliver legal information to the unrepresented, pro bono attorneys, and all seekers of legal resources. The Law Libraries Association looks forward to a renewed collaboration with all interested parties, including the Task Force to Expand Access to Civil Legal Services and the New York State Courts' Access to Justice Program, in effecting solutions to the urgent need for civil legal services for all.

[1] Standards for Appellate Court Libraries and State Law Libraries, American Association of Law Libraries, State, Court and County Law Libraries Special Interest Section, Approved by the AALL Executive Board, July 2005
http://www.aallnet.org/main-menu/Publications/llj/LLJ-Archives/Vol-98/pub_llj_v98n01/2006-08.pdf

[2] Closing Statement of Justice Fern Fisher, Deputy Chief Administrative Judge for New York City Courts, Director, New York State Access to Justice Program, 2010 Hearings on Civil Legal Services, Second Department, October 7, 2010,
http://www.nycourts.gov/ip/access-civil-legal-services/PDF/2d-Dept-Testifying-Witnesses.PDF

Syracuse Law School

Testimony of Dean Hannah R. Arterian
Dean and Professor of Law
Syracuse University College of Law

Prepared for the Task Force to Expand Access to
Civil Legal Services in New York
Hearing on October, 6, 2011, Buffalo, New York

Syracuse University College of Law has a very strong commitment to providing access to civil legal services. In 1971 the first official clinical programs were offered, followed shortly by externship program offerings. In 1977, the College of Law committed itself to clinical legal education by appropriating funds to hire faculty to teach clinics.

In addition to the programs offered by the Office of Clinical Legal Education, the Office of Student Life directs the Pro Bono Program that collaborates with legal service providers and pro bono attorneys to enhance the delivery of legal services to those most in need. I will address programs offered by the clinic, first, and then follow with a description of activities conducted by the Office of Student Life.

The Office of Clinical Legal Education. The Office of Clinical Legal Education operates an in-house law firm, where students provide legal services to low income clients in eight different practice areas (seven of which are civil). Students enroll for one or two semesters in the following clinical courses: Community Development Law Clinic; Children's Rights and Family Law Clinic; Elder Law Clinic; Low Income Taxpayer Clinic; Disability Rights Clinic; Securities Arbitration and Consumer Law Clinic; and the newest clinic: The Bankruptcy Clinic. Students represent low-income clients, not-for-profits, or small business owners who are low and moderate income. In addition to training students in the practice of law, a major objective of the programs is to provide much-needed legal services to individuals and entities that would not be able to secure representation otherwise.

Description of the Clinics at Syracuse University College of Law and Collaborations with Other Agencies.

The Community Development Law Clinic represents not-for-profit organizations and for-profit businesses in all aspects of creating their legal structures. After the corporation or business is created, the student attorneys act as general counsel, advising and representing clients in a variety of legal matters. The student attorneys also represent first-time home buyers in real estate closings.

The Children's Rights and Family Law Clinic represents families and children in federal and state courts and before administrative agencies. It is also engaged in limited non-litigation advocacy and outreach. Students provide services in a number of areas, including custody and visitation, child and spousal support, domestic violence,

matrimonial matters, general and special education issues and other children's rights issues.

The Disability Rights Clinic represents clients with disabilities facing discrimination or needing legal advice and unable to secure representation due to limited income, health or limited access to an attorney.

Elder Law Clinic represents clients aged 60 and older facing problems or needing legal advice and unable to secure representation due to limited income, health or access to an attorney.

The Low Income Taxpayer Clinic offers legal assistance to low-income taxpayers who have controversies with the Internal Revenue Service. Student attorneys represent clients in administrative proceedings before the I.R.S. and in judicial proceedings before the United States Tax Court or Federal District Courts.

The Securities Arbitration and Consumer Law Clinic assists small investors and other consumers with problems in the financial and consumer markets. Consumer cases range from shoddy home repairs to fraudulent car sales to aggressive collection practices. Students also become involved in policy advocacy and community education.

The Bankruptcy Clinic is an extension of the Pro Bono Bankruptcy Program that was started in 2009. In its first year of operation, the program received the President's Award from the New York State Bar Association for excellence in pro bono service. Clinic students will represent indigent individuals in need of bankruptcy protection.

The Syracuse Medical Legal Partnership Program is a medical/legal collaborative venture with SUNY Upstate Medical University through which student attorneys work with medical students and health professionals to address legal needs that affect a client's health.

Thirteen faculty and five staff support approximately 140-150 students each year who learn to become able practitioners while delivering a plethora of legal services to low-income clients and communities in Central New York. (This number includes students who participated in the Criminal Defense Clinic.) The Clinic estimated that it provided about 43,000 service hours in the 2009-2010 Academic Year (including the Summer 2010 session).

The Clinic also collaborates with a number of community agencies. In 2009-2010 the Clinic collaborated with SUNY Upstate, the Visiting Nurses Association, Onondaga County Office of Aging and Youth, Onondaga County Department of Social Services, ARISE, Enable, Vera House, Caring Community Advocates, St. Camillus Rehabilitation Hospital, Onondaga County Bar Association Pro Bono Program, Aurora of Central New York, AAPR, Oasis Program, Center for Community Alternatives, Home Headquarters, Veterans Administration, Legal Services of Central New York, Legal Aid of Mid-New York, Hiscock Legal Aid Society, Catholic Charities, Elderly Services, Jewish Family Services, Alzheimer's Association and other government agencies.

Description of Office of Student Life Programs.

The Office of Student Life Pro Bono Programs offer students many opportunities to undertake important pro bono activities. This year the entering class of 255 performed 875 hours of community service during Orientation. The class of 2011 logged 6,579 hours of pro bono or community service; the class of 2010 logged 4,794 hours of pro bono or community service; the class of 2009 logged 3,701 hours of pro bono or community service.

All members of the College of Law community—students, faculty and staff—are welcome to become involved with the many pro bono activities. The Pro Bono Program partners with many community service organizations to make service opportunities available throughout the year. The College of Law hosts and participates in blood drives, walk-a-thons, and days of service on behalf of the United Way and other organizations. Several student-led organizations also sponsor service projects and volunteer opportunities.

The Pro Bono Program collaborates with legal service providers and pro bono attorneys to enhance the delivery of legal services to those in most need. Students are also able to assist in client intake, screening, law-related education, and community presentations. The new Pro Bono Legal Research Projects teams students with attorneys who need assistance with legal research and writing pertinent to pro bono bases. Some of the projects our students are involved in follow.

CCJI. The Cold Case Justice Initiative (CCJI) project was founded in response to the 1964 Ferriday, Louisiana murder of shoe shop owner Frank Morris, which remains unsolved. The CCJI project conducts investigations and research on unresolved cases, offers academic courses, public forums and other special events, and serves as a clearinghouse for sharing and receiving information on active cases. The CCJI insists on vigilant attention to these long unresolved racially motivated killings and continuing issues of racial justice.

Blodgett After School Project. Students volunteer as mentors at the after school program for students in the first through eighth grades, located at the local Blodgett Middle School. The after school program focuses on academics, enrichment and various other activities.

Family Law - Child Support Clinic. The Family Law & Social Policy Center students assist with a new Child Support Clinic at Legal Aid Society of Mid-NY (Syracuse office). The students assist low-income parents with completing paperwork to be submitted to court regarding child support modifications, new orders, arrears, enforcement, etc.

Family Law - Family Law & Policy Center. The Center provides various opportunities for students to engage in service to the community. Many of these opportunities are "legal" in nature and require the assistance of a student with experience in family law.

Onondaga County Pro Se Divorce Clinics. Students assist clinic participants with completing required paperwork for court.

Vera House (local battered women's shelter). Students work at the Vera House Family Court Program, assisting domestic violence victims with petitions for orders of protection.

Legal Aid Society of Mid-NY Child Support Clinics. Students assist clinic participants with completing required paperwork for court.

Housing Issues - Landlord Tenant Court. This opportunity allows students to assist volunteer attorneys represent tenants facing eviction and to observe the landlord/tenant court proceedings and negotiation process. Responsibilities include interviewing tenants, collecting information, and presenting the case to an attorney.

The College of Law also supports summer public interest work. Throughout the year, the Professional and Career Development Office, along with the Pro Bono Program and the Syracuse Public Interest Network (SPIN) advertise summer employment opportunities and information on to receive funding for such positions.

In conclusion, the Syracuse University College of Law provides many opportunities for students to aid those less fortunate. The College of Law has a fully staffed clinic, offering seven civil clinics. Over 40,000 hours of service are provided each year by the clinics. The Office of Clinical Legal Education collaborates with many community groups and government agencies to provide excellent legal services to low-income clients and community organizations. The Office of Student Life encourages students to undertake many pro bono and community service opportunities. Recent classes have given thousands of service hours for pro bono and community service projects.

Western New York Law Center

My name is Joseph Kelemen and I am the Executive Director of the Western New York Law Center ("WNYLC") in Buffalo, NY. I would like to thank Chief Judge Lippman and the members of this Task Force for this opportunity to present written testimony on the issue of access to legal services.

The Western New York Law Center provides representation to individuals facing foreclosure in Erie County and litigates class actions on behalf of clients on a variety of issues such as denial of public assistance and illegal foreclosures.

There are two large categories of cases in Erie County in which current civil legal services needs are unmet, foreclosures and consumer debts. Erie County, which is the largest county in the service area of WNYLC, is home to Buffalo, the second largest city in the state, and the third poorest city in the nation.

According to statistics kept by the Office of Court Administration, in 2010, only six counties in the state had more residential foreclosure filings than Erie County. The counties with a higher number of foreclosure filings were in and around NYC, and all had significantly more population than Erie County. Therefore, proportionally, Erie County has an even higher number of properties in foreclosure than the statistics would suggest. For example, twice as many foreclosures per County resident have been filed in Erie County than have been filed in Bronx County since 2006.

Municipalities	2006	2007	2008	2009	2010	Total
Suffolk	2862	4679	7111	7531	8396	30579
Kings	2299	3128	3791	5484	5125	19827
Queens	2397	4007	5453	5839	4674	22370
Nassau	1781	2852	3920	5487	4649	18689
Westchester	883	1239	1676	1970	2173	7941
Bronx	892	1250	1589	1901	1863	7495
Erie	2285	2187	1971	1743	1616	9802

Because all people facing residential foreclosures are entitled to a mandatory settlement conference before the foreclosure action can proceed, these litigants all end up in courts seeking redress. Some unrepresented people default, and others turn to self representation. But as the NY Times noted:

> *The law of mortgages and foreclosures is complicated even for many lawyers. It is hard to imagine what it must be like for a poor person with little legal knowledge to have to fight on his or her own to keep a home.*

> *Homeowners often have legal defenses, but laypeople are unlikely to know what they are or how to use them. A lawyer can also persuade lenders to slow down foreclosure proceedings, or to renegotiate terms, by invoking the appropriate federal, state and local laws*.

Simply put, no matter how hard the court system tries to accommodate the unrepresented facing foreclosures, the unrepresented will simply not be able to attain justice in an adversarial system. In fact, over 75% of the clients we represent who have tried to obtain loan modifications on their own tell us that until an attorney became involved to advocate for them, no matter how many documents the clients submitted to the banks, the clients never satisfied the bank requests. Once an attorney became involved and told the banks and opposing counsel that adequate documentation had been submitted, the bank evaluation process for the loan modification truly began. And many of the clients homes were saved from foreclosure once we entered the case.

The issue of consumer debts in this area of the state is often closely tied to the issue of the high number of foreclosures because homeowners are often forced into foreclosures by questionable consumer charges. Homeowners often owe money for shoddy work done on their homes, or for loans they have already satisfied. This affects their ability to pay their mortgages.

With over 100 collection agencies locally, Buffalo has been called the epi-center of the national debt industry. In contrast to the strong presence of debt collectors, Western New York currently has no legal services offices offering representation to consumers engaged in debt litigation. Abusive debt collection practices, sewer service/inaccurate summons and complaints, and exorbitant plaintiff legal fees face low income debtors who have no means to file an answer in these cases, or to challenge the secondary debt buyers' system generally.

In the City of Buffalo alone, in 2010 15,163 Consumer Credit cases were filed in Buffalo City Court. 8920 of those cases resulted in default judgments, a clear indication that people are not addressing these problems locally because they do not have access to counsel. These figures reinforce the findings in *Due Process and Consumer Debt: Eliminating Barriers to Justice in Consumer Credit Cases,* a report done with the cooperation of Judge Fischer. That report noted that "[s]tudies show that less than 4 percent of defendants in consumer debt actions are represented by counsel, while 100 percent of plaintiffs bringing these actions have legal representation." *http://bit.ly/j3cWnG*.

The economic and social harm to the community, both direct and indirect, when these critical legal needs are unmet is very great. The Journal of Housing Studies, Vol. 21, No. 6, 851–866, November 2006, noted:

> *Foreclosures can entail significant costs and hardships for the families affected. [F]oreclosures can involve losing not only accumulated home equity and the costs associated with acquiring the home, but also access to stable, decent housing. Moreover, foreclosures can damage credit ratings, hurting the owners' prospects not only in credit markets but also in labor and insurance markets and in the market for rental housing. Moreno (1995) estimated average losses to a foreclosed family of $7200. But the economic and social costs of foreclosures may affect more than the families most directly involved. Foreclosures can have implications for surrounding neighborhoods and even for their larger communities. Cities, counties and school districts may lose tax revenue from abandoned homes. In examining FHA foreclosures, for example, Moreno (1995) estimated average city costs of $27,000 and neighborhood costs of $10,000. Moreover, these figures do not account for all of the social and psychic costs of foreclosures, either to the family or the community. One of the possible social costs is increased crime.*

http://www.prism.gatech.edu/~di17/HousingStudies.pdf

The economic and human impact of not meeting the needs of litigants who have consumer issues is similarly devastating:

> *A creditor with a judgment can garnish wages and freeze bank accounts. Once an account is frozen, the debtor may be unable to pay rent and utility bills, obtain medicine, or pay for food and other necessities. Often, due to additional penalties, interest, fees, and costs, the ultimate judgment obtained far exceeds any original debt that may have accrued. In some cases the defendant never owed the alleged debt, which may have been the result of identity theft, mistaken identity, clerical errors, or illegal fees and charges. In addition, when the judgment shows up on credit reports, it becomes difficult for the debtor to find an apartment, get a better job, and obtain credit. The result is that a single consumer credit judgment can severely impair a person's attempt to become self-sufficient, further perpetuating poverty.*
>
> * * *
>
> *While debtors' prisons may have been abolished in the mid-1800s, many working families today find themselves in a virtual prison of debt. With household debt and credit default at an all-time high—and joblessness and underemployment on the rise—the effect of the current consumer credit crisis will be felt for the next decade. Although we no longer imprison debtors, the legal system and, specifically, the civil courts remain the epicenter in the cycle of debt.*
>
> *On a daily basis, thousands of New Yorkers find themselves in the city's legal system as a result of alleged unpaid debt, facing complicated litigation and a daunting courtroom battle. Almost 100 percent of these defendants lack counsel of their own.*

http://bit.ly/j3cWnG

Local legal services providers have tried to address the foreclosure problem in Buffalo and Erie County by building a seamless network that provides representation to all homeowners in Erie County who cannot afford counsel. By piecing together funds from various sources, WNYLC has become the largest provider of foreclosure services in this judicial district and one of the largest in the state. We partner with the local courts and other legal services providers to send attorneys to court in Erie County to intake clients directly at the courthouse. We provide representation to clients showing up at settlement conferences when they cannot afford an attorney. We have an interactive website with pleadings for clients who want to know more about foreclosure, http://foreclosure.wnylc.com/ and we own and manage another website that several community agencies participate in, http://www.stopforeclosurewny.com/. The stopforeclosure website intakes clients online, and the site directs clients to community agencies depending upon the answers a client enters on an online intake form. WNYLC has also just launched a foreclosure blog.

From April 1, 2010 – March 31, 2011, WNYLC alone prevented 364 residential foreclosures for low income homeowners after representing them in court. Other agencies we partner with have also had great success in helping property owners in Erie County remain in their homes. We have reached thousands of homeowners we never directly represented with spots we have done on local public access TV and radio which explain the foreclosure process and help educate homeowners on avoiding foreclosure, and we have organized and staffed events in the community at which loan officers from banks have come to help homeowners work out loan modifications prior to the foreclosure process beginning so that the homes will not go into foreclosure. These efforts have helped to reduce the burden on the courts and taxpayers, and have helped the community take a small step toward stabilizing the neighborhoods most affected by foreclosures.

These efforts were helped immensely by the Office of Court Administration funds provided to us through the New York State Interest on Lawyer Account Fund ("IOLA"). The state funds to fund such efforts will disappear on December 31, 2011. Without the help of the Office of Court Administration funds, most representation of clients facing foreclosure in Erie County would have ceased at the end of this year, and those unrepresented litigants would have had to try to negotiate the judicial system on their own, placing an extra burden on the already overworked courts.

On behalf of those clients who cannot appear in person, and on behalf of the staff of WNYLC, I offer my thanks for your work to insure financial stability for Civil Legal Services. Thank you for allowing me to provide input to the Task Force.

Joseph Kelemen

Women's Bar Association of the State of New York

WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK

The Women's Bar Association of the State of New York ("WBASNY") maintains a statewide presence with 18 chapters throughout New York. Our membership is as diverse as our geographic scope, including judges in state and federal courts and attorneys in all areas of law. Our mission is to promote the advancement of women in the legal profession and in society, promote the fair and equal administration of justice and ensure access to the courts by all.

Many of our members work for organizations that receive funding for civil legal services from New York State. In fact, an informal telephone survey conducted in 2009 by The Legal Project, Inc. revealed that more than 70% of attorneys working at the major civil legal services programs across the state are women. In addition, the survey estimated that the majority of clients served are women. The Legal Services Funding Alliance estimates that more than 2/3 of legal services clients are women, many mothers with young children. As a result, the funding insecurities facing legal services providers and the effect on their clients are of tremendous concern to us.

WBASNY commends Chief Judge Lippman's commitment to this issue, as evidenced by the creation of this task force and the allocation of $27.5 million in judicial funds for civil legal services this year. However, we also recognize that this funding, as well as funding from other sources, remains precarious. Therefore, we reiterate the need for a reliable source of adequate funding for civil legal services, as well as a predictable process for timely disbursement of these funds.

Stable funding will reduce turnover among civil legal service providers and allow programs to affirmatively plan to meet the growing and increasingly complex needs of the communities they serve. Stable funding will also allow organizations to develop programs that emphasize early intervention and reduce the stress on our over burdened court system.

WBASNY submitted written testimony to the Task Force during the public hearings on this issue last year. Since that time, funding cuts for civil legal services, combined with budget cuts to the court system, have exacerbated the difficulties confronting poor people seeking justice. In addition, the percentage of New York's population living in poverty is increasing – more than 40% of women who head families currently live in poverty -- leaving ever more citizens without the means to pay for private counsel and in

need of greater access to *pro bono* or reduced fee civil legal service programs and innovative dispute resolution mechanisms. The Legal Project, for example, reported a 40% increase in clients seeking representation within their domestic violence program last year and expects to exceed those numbers this year.

In addition, budget cuts to the court system have caused significant staff reductions, leaving fewer court personnel to assist increasing numbers of unrepresented litigants through the judicial process. As a result of reductions in hours of court operations, less time is available for judges to spend on each case. As a result of funding cuts to Children's Centers, more litigants are bringing children into the court room. It is not hard to imagine the chaos that the combination of these circumstances can create in our courtrooms on any given day. While our judges and court staff are to be commended for their commitment to minimizing the consequences of these circumstances, we must recognize that they are not conducive to the effective administration of justice.

As the Task Force's 2010 Report recognized, civil legal assistance can reduce litigation costs and relieve court congestion. Alternative Dispute Resolution programs are particularly effective in this regard, as they can offer parties the opportunity to frame their dispute in a constructive manner and to work together, with a mediator, to resolve the dispute, clarify rights and responsibilities or restructure relationships. Increased emphasis on alternative dispute resolution can resolve more disputes at lower cost and with higher participant satisfaction. Even when matters are not fully resolved in the alternative dispute resolution process, issues are often identified and narrowed so as to facilitate swift resolution by the courts.

In Western New York, for example, the Community Dispute Resolution Centers run by Child and Family Services' Center for Resolution and Justice offers a cost-efficient, consumer friendly program that mediates disputes involving divorce, special education, landlord tenant relationships, and contracts. One component of their program is a family court mediation program for parenting (Custody & Visitation) matters. Provided through a contract with OCA and working under the umbrella of the 8th Judicial District Martin P. Violante Alternative Dispute Resolution Program, this year the program has already resolved over 250 cases with payments to the roster of mediators of less than $31,000.

However, a dramatic 40% retroactive funding cut has left the program without sufficient resources to fund parenting mediation sessions for the remainder of the year. In the absence of funding for the program, individuals have no option but to navigate a procedurally complex court system at significantly increased expense to both the individual and the judiciary.

It also bears repeating that the provision of civil legal services has a positive effect upon New York's economy, bringing federal benefit payments into New York and reducing reliance upon state funded social services. For example, the Mental Health Association of Erie County has received annual funding of approximately $240,000 to represent approximately 300 individuals with mental illness each year, resulting in more than $180,000 in retroactive federal benefits, not to mention ongoing future benefits. However, funding cuts of 20% necessitated the elimination of a full-time employee to the program, creating a wait list of deserving clients and incurring costs to local social service programs in the interim.

Simply put, the cost of providing adequate civil legal services pales in comparison to the economic and human costs of failing to meet the basic legal needs of our citizens. WBASNY commends this task force for its continuing efforts to address this problem and offers its continued support for adequate and stable funding to achieve the fundamental ideal of justice for all.

APPENDIX 15:

Public notice of the Chief Judge's Hearings published on the Unified Court System's website

NOTICE OF PUBLIC HEARINGS

The Chief Judge's Hearings on Civil Legal Services

The Hon. Jonathan Lippman, *Chief Judge of the State of New York, will be conducting his second annual series of four public hearings to evaluate the continuing unmet civil legal services needs in all parts of the state and to assess the level of resources necessary to meet those needs. As requested in the June 2010 Joint Legislative Resolution, the Chief Judge will report to the Legislature on the information obtained at the hearings, as well as the continuing work of the Task Force to Expand Access to Civil Legal Services in New York, and will request State funding to meet these unmet needs.*

The Chief Judge will conduct one hearing in each of the four Appellate Division Departments together with the Presiding Justice of that Judicial Department (Presiding Justice Luis A. Gonzalez of the First Department, Presiding Justice A. Gail Prudenti of the Second Department, Presiding Justice Anthony V. Cardona of the Third Department, and Presiding Justice Henry J. Scudder of the Fourth Department), Chief Administrative Judge Ann Pfau, and the President of the New York State Bar Association, Vincent E. Doyle, III.

THE HEARINGS WILL TAKE PLACE AS FOLLOWS:

SECOND DEPARTMENT

Tuesday, September 20, 2011....10:00 a.m. to 1:00 p.m.
Ceremonial Courtroom
Westchester County Courthouse
111 Dr. Martin Luther King Jr. Boulevard, White Plains

FIRST DEPARTMENT

Monday, September 26, 2011....10:00 a.m. to 1:00 p.m.
Appellate Division, 27 Madison Avenue, Manhattan

THIRD DEPARTMENT

Monday, October 3, 2011 .....10:00 a.m. to 1:00 p.m.
Court of Appeals, 20 Eagle Street, Albany

FOURTH DEPARTMENT

Thursday, October 6, 2011.....11:00 a.m. to 2:00 p.m.
Ceremonial Courtroom, Old County Hall
92 Franklin Street, 2d Floor, Buffalo

The purpose of the public hearings is to receive the views of interested individuals, organizations and entities on the following issues:

- The current state and scope of the unmet need for civil legal services by low income New Yorkers confronting legal problems involving the "essentials of life," including housing, family stability and personal safety in domestic relations, access to health care, or education, or subsistence income and benefits.
- The economic and social consequences of reduced or eliminated civil legal services in communities and for the courts.
- The costs and benefits, to the courts and to communities, from the provision of civil legal services in matters involving the "essentials of life."
- The potential for reduction in the unmet need through
  - Preventive and early intervention services by providers.
  - Simplification of court and administrative processes.
  - Enhanced use of technology, self-help programs, community legal education, non-lawyer advocates, provider collaborations with non-legal entities, and alternative dispute resolution techniques.
  - Regional providers' collaborations and cost sharing.
  - Expanding the availability of pro bono legal services.

THE CHIEF JUDGE'S HEARING PANEL WILL CONSIDER BOTH ORAL TESTIMONY (BY INVITATION ONLY) AND WRITTEN SUBMISSIONS. Persons interested in presenting oral testimony or making a written submission are asked to follow the procedures and deadlines described below. Please note that the Hearing Panel cannot accept any comments, written or spoken, addressing details of individual litigation or complaints about individual judges or attorneys.

Because of the limited time available for the hearings, oral testimony is by invitation only. If you are interested in being invited to testify at a hearing, you should send an email to **CivilLegalServices@nycourts.gov no later than 14 days in advance of the hearing** at which you propose to testify. **Proposed testimony should be no more than 10 minutes in length.** If requesting an invitation, please (1) identify yourself and your affiliation (and if you are requesting an invitation for someone else to testify, that individual's name and affiliation); (2) attach a prepared statement or a detailed outline of the proposed testimony and specify which of the topics described above will be addressed; (3) indicate at which of the hearings the testimony is proposed to be given. In advance of the hearing, invitations to testify will be issued and will include an approximate time period for each presenter's testimony. For those not invited to present oral testimony, your proposed testimony will be deemed a written submission.

Persons unable to attend the hearing, or those interested only in making a written submission, may submit their remarks by emailing them to: **CivilLegalServices@nycourts.gov at least seven (7) days in advance of the hearing,** or by mailing the submission to the **Task Force to Expand Access to Civil Legal Services in New York** at the address below. The Task Force is assisting the Chief Judge in preparing for the hearings and in reporting on its results.

The Task Force to Expand Access to Civil Legal Services

c/o Lara J. Loyd, Esq.
Sullivan & Cromwell
125 Broad Street
New York, NY 10004-2498

Email address

CivilLegalServices@nycourts.gov

For further information please visit the Task Force's website

www.nycourts.gov/ip/access-civil-legal-services

7-22-11

APPENDIX 16:

Report of the Task Force's Working Group on Court Simplification

Task Force to Expand Access to Civil Legal Services
Working Group on Court Simplification

Proposals for Reform

October 18, 2011

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I. Introduction

Throughout 2011, the Working Group on Court Simplification (the "Working Group") has collected and summarized ideas for improving litigants' access to New York State courts. The primary sources for this collection have been:

1. Surveys on Court Efficiency. On May 13, 2011, the Working Group distributed a survey to thousands of recipients with the assistance of the Fund for Modern Courts, asking for suggestions on how to improve the efficiency of the New York court system. The survey covered substantive topics such as employment and housing, as well as administrative topics such as the use of technology and written materials. The survey received more than 170 responses from legal services providers, bar association leaders and members, law firm partners and associates, educators, businesspeople, and government officials from half the counties in the state, providing a wealth of information and a variety of recommendations. A detailed outline of the survey results can be found in Appendix A. On June 9, the Working Group distributed a similar, shorter survey to every judge, town and village justice, and chief clerk in New York State, resulting in 108 substantive responses from judges and staff. A detailed outline of these results can be found in Appendix B.

2. Legislative Proposals. The Working Group researched new and modified legislative proposals made by the Chief Administrative Judge's Advisory Committees on Local Courts, Civil Practice, Criminal Law and Procedure, Family Court, and Surrogate's Court (the "Advisory Committees") in the past three years. A detailed outline of new and modified legislative proposals not enacted into law can be found in Appendix C.

3. Reports from Legal Service Providers, Academics, and Former Judges. The Working Group researched proposals for reform of the New York court system, including published reports and articles from the New York Bar Association, the Fund for Modern Courts, the Brennan Center, law journals, and academic symposiums.

4. Other Jurisdictions. The Working Group reviewed recent judicial reforms implemented by other states and the federal government to determine whether any reforms can be successfully applied to improve the efficiency of the New York court system.

These surveys and research generated hundreds of ideas for reforming, simplifying, and improving the efficiency of the New York court system. This memorandum expands on three suggestions that (i) appear to be relatively cost-efficient, are widely and frequently discussed in the surveys or research, and (ii) should be acceptable to all stakeholders in the New York court system. In selecting these proposals, the Working Group emphasized those suggestions likely to provide immediate and widespread benefits to a variety of participants in the court system.

II. Selected Proposals for Reform

The Working Group recommends initial focus on the following three initiatives: a) standardization of forms and procedures; b) improvement of New York court websites; and c) expansion of outreach programs. These three initiatives would provide immediate and widespread benefits to a variety of participants in the court system. The Working Group also recommends further study on alternative court hours and the needs of participants in the town and village court system.

A. Standardization of Forms and Procedures

The Working Group recommends that the courts standardize and simplify all forms and procedures to improve predictability and uniformity for litigants. There is widespread demand for forms to be standardized, simplified, and otherwise improved. Requests for improvement and standardization of forms came from large numbers of surveyed practitioners and judges.

Inextricably tied to the standardization of forms is the standardization of certain procedures across the state. For example, changing one's name in New York City involves going to the New York Civil Court and costs $65, while changing one's name in the Supreme Court costs $210. In certain jurisdictions, and not in others, a name change requires a request for judicial intervention in triplicate.[1] Below are recommendations on those forms and procedures that might be improved. As an example only, we discuss the *Pro Se* Divorce Advice Packet and suggestions on how it might be improved.

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[1] *Forms: Name Change Forms & Requirements*, NEW YORK STATE UNIFIED COURT SYSTEM, http://www.nycourts.gov/forms/namechange.shtml (last updated Mar. 26, 2009).

As a general matter, improvements in this area should focus on: 1) increasing ease of access to forms and instructions on the court system website; 2) improving the clarity of instructions and availability of sample forms; 3) providing instructions and sample forms in languages other than English; 4) ensuring that instructions specifically address the needs of low-income individuals; and 5) simplifying and unifying processes and procedures throughout the state and eliminating unnecessary or duplicative forms and procedures.

Example: The *Pro Se* Divorce Advice Packet

The *Pro Se* Divorce Advice Packet, available on the New York State court system website, is an often-cited form that many survey respondents believe could be improved. Only one instructional packet on divorce is currently available on the court system website; this packet is intended for applicants with children under 21 years (though it includes some instructions for applicants without children).[2] These instructions were created when the state adopted irretrievable breakdown as a ground for divorce. In part because of the sheer number of forms required for an uncontested divorce in New York (*see* Appendix D), the instructions can be difficult to follow.[3]

Accordingly, improvement of the *Pro Se* Divorce Advice Packet should include the following initiatives:

- *Improve the court system's Divorce Resources website*. Links to the packet should be prominent, and the packet should be locatable by searching the site. Currently, the instructions for the packet are hyperlinked in three places on the website, but each link is embedded in text or a subsection of the site.[4]

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2 *See Divorce Resources: Uncontested Divorce Forms; With Children Under 21*, NEW YORK STATE UNIFIED COURT SYSTEM, http://www.courts.state.ny.us/divorce/divorce_withchildrenunder21.shtml (last updated Sept. 2, 2011). The link to the packet for applicants who do not have children under 21 leads to a page that states the packet is not yet available.

3 For example, the packet explains how to fill out form UD-6 (Affidavit of Plaintiff) using numbered fields, but this is confusing, because there are two sets of numbers on the form. To correctly complete form UD-13, applicants must understand what constitutes a "related case," without any guidance or instructions. The USC-111 Child Support Summary is confusing and can be seen as inapplicable to low-income individuals.

4 *See Divorce Resources*, NEW YORK STATE UNIFIED COURT SYSTEM http://www.courts.state.ny.us/divorce/ (last updated Aug. 24, 2011).

- *Improve instructions and provide a set of sample completed forms*. Consider using the earlier version of the Divorce Booklet for Uncontested Divorces Without Children Under 21 for guidance.[5] This booklet included a checklist to ensure that litigants completed every necessary form; all divorce packets should include such a checklist. The instructions should also include a timeline explaining when to file each form.
- *Provide translations* of the divorce packet instructions and practice forms.
- *Provide clearer instructions for requesting fee waivers and applying for poor person status.* The current instructions state: "You *may* be required to serve a copy of each set of papers upon the County Attorney (outside of New York City) or Corporation Counsel (within the City of New York) and your spouse or his/her attorney." (Emphasis added.) Any litigant who does not file the relevant forms with the County Attorney's office, however, is automatically denied. The instructional form for the poor person status request includes this information; this form should be distributed along with the request form.
- *Simplify the divorce process*. Eliminate unnecessary or duplicative forms. For example, the complaint and the plaintiff's affidavit duplicate each other; both could be included as an extension of the Summons. The Summons, Request for Judicial Intervention ("RJI"), and Note of Issue can be condensed into a single form; or, alternatively, the Index Number Application can be combined with the RJI and the Note of Issue.

General Recommendations

Aside from the *Pro Se* Divorce Advice Packet, the following is a non-exhaustive list of other forms that survey takers believe should be simplified, accompanied by clearer instructions, or otherwise improved:

- *Affidavits of net worth.* These affidavits currently call for more information than necessary from poor litigants, including information about yachts and maids.
- *Pro se housing court forms*. In particular, courts should provide a checklist of tenants' defenses against summary eviction for litigants signing stipulations or defending an eviction proceeding.
- *Contested and uncontested divorce checklists*. These forms are not standardized.
- *Article 6 custody and visitation forms for those other than biological parents*.
- *Petitions for orders of protection, custody, and child support, and related summons.*

[5] NEW YORK STATE UNIFIED COURT SYS., UNCONTESTED DIVORCE BOOKLET: FOR UNCONTESTED DIVORCES WITHOUT CHILDREN UNDER 21, *available at* http://www.nycourts.gov/litigants/divorce/ucs_divorcebklt.pdf (last visited Oct. 3, 2011).

Survey respondents also called for better instructions and sample forms, especially in languages other than English, relating to court procedures and rules, including: service of process; filing deadlines; pleading requirements; requests for an interpreter; items a litigant must bring to court; and tenants' rights with respect to housing and eviction. Respondents suggested that judges accept comprehensibly but imperfectly completed forms from *pro se* litigants, and explain the defects in rejected forms. Finally, respondents recommended expanding the content and awareness of the court system's forms database, and increased use of online filing.

B. Improving New York Court Websites

The Working Group recommends that court websites be made more uniform and user-friendly. New York court system websites host extensive resources, but these resources are difficult to access, may provide inconsistent information, and are generally unavailable to non-English speakers.

The New York court system website (nycourts.gov) hosts "CourtHelp," a website devoted to aiding *pro se* litigants. Though helpful, this resource can be difficult to find. For example, the Judicial District and County pages on the court system website do not link to the CourtHelp page. Such a link could easily be placed on the sidebar of the court system website. (*See* Figure 1 in Appendix E.) CourtHelp also does not provide direct access to local court websites. While the CourtHelp page provides information on local courts, it does not link to the websites of those courts or of the Judicial Districts in which they are located. Furthermore, the "Courts" tab on the main court system site links to a landing page with yet another link to a list of the county courts. Entries on the list link only to information about each court's hours.

Search engines do not prioritize district websites. Local court websites are difficult to locate using a search engine. In Google search results, for example, they are often several entries from the top and do not have clear website titles.[6]

[6] To use Albany as an example, the website for the Third Judicial District is the third website to appear in a search for "Albany court New York" in Google. The title in the Google display is "Albany City Court - New York State Unified Court System," whereas the website title (after clicking through) is "3rd Judicial District." Allegany is no better: in a Google search for "Allegany court New York", "8th JD - Allegany County - New York State Unified Court System" is the eighth result.

The CourtHelp and Litigants pages host different resources. Court forms online are not available from a centralized location, and each form's section is organized differently. On the court system website, one can download forms through the CourtHelp or Litigants tab. Some forms, however, appear in the latter but not the former. (*See* Figures 2–3 in Appendix E.) For example, litigants searching for divorce forms through CourtHelp will find only uncontested divorce forms. (*See* Figure 4 in Appendix E.) If they go through the Litigants tab, however, they will find additional resources. (*See* Figure 5 in Appendix E.)

Form instructions are not consistently available. Fewer forms on the CourtHelp tab have instructions than on the Litigants tab. Both tabs provide some forms without instructions. (*See* Figure 6 in Appendix E.)

Organization of forms on local Judicial District websites is inconsistent. Some Judicial District websites link to the centralized Forms and Fees page within the Litigants section of the court system website. On other Judicial District websites, users must click on a link corresponding to a specific court (*e.g.*, Supreme Court) and from there may find a link to the forms either on the Litigants section or the Courts section of the court system website. Finally, some Judicial District websites link directly to forms rather than to the central forms database on the court system site.

Information on local courts is inconsistent. Both the Courts tab and the CourtHelp tab offer information about specific local courts (such as location and hours of operation). This information is not always consistent. For example, the Courts tab states that the Albany County Supreme Court's hours of operation are 8:00 a.m. to 5:00 p.m., whereas the CourtHelp tab states that the same court's hours of operation are 9:00 a.m. to 5:00 p.m.

The New York court system website itself is not translated. The front page of the website provides links representing five non-English language options: Russian, Chinese, Spanish, French and Korean. These links lead not to a translated version of the website, but to a list of documents available in the listed language. Few documents on the New York court system website are translated. For example, documents translated into French include, in their entirety: the FAQ section, the glossary of legal terms, and the Criminal Justice System Handbook. This represents only a fraction of the information that could be made available to non-English speakers. Translations are often difficult to find. The front page of the central court

system website links to documents in five languages, but translated forms are available elsewhere on the website in other languages, including Punjabi, Wolof, Arabic, and Haitian Creole.

General Recommendations

Improving the website of the New York State's Unified Court System is an essential cost-saving and unifying measure.[7]

i. Consolidation and Standardization of Online Forms

Make all forms available from a single central library. The court system website, nycourts.gov, should host a central repository for all forms. Other locations (CourtHelp, Judicial District, and local pages) should link to that central library. This would ensure uniformity and simplify the process of updating the forms.

Organize forms by subject and provide instructions. All forms should be labeled and grouped in a uniform manner according to which forms and procedures are involved in each process, accompanied by explanations and instructions grouped according to issue. Each group of forms should include an overview of the forms and procedures involved in the relevant judicial process. Each individual form should come with a brief explanation of the form and how to fill it out. Those forms that already have written instructions should be reviewed to ensure that they are correct and up-to-date.

Direct users from District websites to find forms on CourtHelp. Each local court website should direct users to relevant forms available on the central court system website. If different forms are required in different localities, efforts should be made first to change the form to the common statewide form. If such a change is not feasible, local forms should be included in the comprehensive nycourts.gov library, or a link should appear on CourtHelp and on the central court system site directing citizens to the appropriate locally specific resource.

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[7] BERKMAN CTR. FOR INTERNET & SOC'Y, PRELIMINARY REPORT: BEST PRACTICES IN THE USE OF TECHNOLOGY TO FACILITATE ACCESS TO JUSTICE 5 (2010), *available at* http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/A2J_Report_Final_073010.pdf (last visited Oct. 3, 2011) (citing reports from judges that "those who use interactive forms are much more likely to have all their paperwork in order so that the case can be completed in one session and with the minimum of assistance from the court").

ii. Accessibility of Online Resources

Standardize the formats of all New York court websites. Each local court website should have the same consistent format as the central court system website, nycourts.gov. Staff responsible for nycourts.gov should work with local court staff to ensure that local court websites remain uniform and up-to-date, and provide consistent information.

In the alternative, all local court websites could also be brought onto the central court system website, and redesigned and supervised by central court system website staff. Each individual court would not design or update its own webpage: instead, nycourts.gov staff would be responsible for redesigning and updating all New York court websites, including the main nycourts.gov website, Judicial District websites, and other local court websites. This central staff would consult local court staff to ensure that local court websites are updated in accordance with changes in local rules.

Include direct links to local court websites on CourtHelp and nycourts.gov. The central court system website should link to each Judicial Department's site, instead of informational PDFs, and each Judicial Department page should link back to the front page of the central court system website and the CourtHelp page.

Optimize search engine results. Linking between court websites would have the collateral effect of improving the positioning of the central court system website and local court sites in search engine results. Other simple solutions, such as regular content updates, also improve search engine results. Finally, the titles of New York court websites should be uniform, identifying the type and location of the court in a consistent manner.

Provide consistent information across the central court system website. The disparities noted above between the court information available on the Courts page and the CourtHelp page should be eliminated. Both should direct the searcher to a single page containing up-to-date information.

Publicize and explain existing resources. CourtHelp links to resources on YouTube and Twitter without explaining what these resources are, or mentioning them elsewhere on the central court system website. A simple explanation under each link ("Watch

instructional videos on YouTube"; "Find out about the latest New York Courts trainings on Twitter") would direct many *pro se* litigants to these resources.

iii. Foreign Languages

Translate the central court system website. Google Translate can be used to translate most of the website text immediately. Court employees (or volunteers) can then verify that the translation is correct and update translations as changes are made to the website.

Display all available languages at the front page of the court system website. If the central court system website hosts resources in a particular language, a link to those resources should appear on the front page.

C. Expansion of Outreach Programs

The Working Group recommends encouraging and expanding outreach programs which benefit poor and low-income litigants and improve the efficiency of the court system, following are a few examples of the types of initiatives that should be encouraged: (1) expansion of attorney volunteer programs; (2) development of additional mobile help centers; and (3) increased use of teleconferencing and videoconferencing.

1. Volunteer Programs

The Working Group recommends the expansion of the Volunteer Lawyer for a Day ("VLFD") program and other Volunteer Lawyer programs.

Volunteer Lawyer for a Day

The VLFD program pairs unrepresented litigants with volunteer attorneys for a day of courtroom proceedings. Currently, the program operates in New York City's Housing Court for nonpayment proceedings; New York City Civil Court for consumer debt proceedings, including settlement negotiations and vacating default judgments; and Queens County Supreme Court for foreclosure conferences.[8] Volunteer lawyers commit to serving at least two days per year, and earn Continuing Legal Education credits. The VLFD program was introduced after a successful pilot in 2006–2007. A report evaluating the program found that it improved access to

[8] *Court Sponsored Volunteer Attorney Program: Volunteer Program Descriptions*, NEW YORK STATE UNIFIED COURT SYSTEM, http://www.courts.state.ny.us/attorneys/volunteer/vap/program_descriptions.shtml (last visited Oct. 3, 2011).

justice, perceptions of fairness, and courthouse efficiency, and provided an attractive *pro bono* opportunity for attorneys.[9]

Lawyers may also volunteer in non-courtroom settings, advising clients on housing and consumer debt issues, through the Housing Volunteer Lawyers Program and Civil Volunteer Lawyers Program; acting as guardians *ad litem* on behalf of mentally or physically impaired litigants in landlord-tenant cases; advising clients on support, paternity, custody, visitation, family offense, and guardianship matters through the Family Court Volunteer Attorney Program; and assisting in the preparation of uncontested divorce materials through the Uncontested Divorce Program.

Similar programs in other parts of the country have provided for *pro bono* services in family law matters such as marital dissolutions, child custody, child support, and guardianship; housing law matters such as representation of clients in settlement conferences in eviction cases; tax law; tort defense; and credit collection.[10]

Retired Attorneys

The Working Group recommends the expansion of opportunities for retired or retiring private-sector attorneys to represent low-income litigants. New York already targets lawyers nearing the ends of their careers with the Attorney Emeritus Program, which began in 2010. Through this program, attorneys 55 years and older provide at least 30 hours per year of unpaid legal assistance through qualified legal services providers, bar associations, and court-

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9 CIVIL COURT OF THE CITY OF NEW YORK ET AL., VOLUNTEER LAWYER FOR A DAY PROJECT REPORT: A TEST OF UNBUNDLED LEGAL SERVICES IN THE NEW YORK CITY HOUSING COURT (2008), *available at* http://www.nycourts.gov/courts/nyc/housing/pdfs/vlfdreport_0208.pdf (last visited Oct. 3, 2011).

10 For example, the Bar Association of San Francisco coordinates lawyer for a day services for all of these types of cases, and the Boston Bar Association manages programs in housing, probate, and family courts. *See Volunteer Legal Services Program*, THE BAR ASSOCIATION OF SAN FRANCISCO, http://www.sfbar.org/volunteer (last visited Oct. 3, 2011); VOLUNTEER LAWYERS PROJECT OF THE BOSTON BAR ASSOCIATION, http://www.vlpnet.org (last visited Oct. 3, 2011).

sponsored volunteer lawyer programs. These lawyers assist with a range of civil and family *pro bono* matters.[11]

General Recommendations

The VLFD program and other volunteer lawyer programs should be expanded to more divisions of more courts across the state. As discussed in the Volunteer Lawyer for a Day Project Report, this type of program is best suited for unbundled legal services in cases that are both factually and legally simple. For example, the VLFD Program's success in New York City's housing courts could be replicated in housing courts throughout the state, as well as in other simple but high-volume employment, consumer debt, or family law cases.

Improve recruiting of private-sector attorneys. It should be easier for private-sector attorneys to volunteer. More volunteers could be recruited at little cost through increased publicity and an improved website. Currently, for example, the central court system website's volunteer sign-up link is broken; it does not appear to be possible to sign up online.[12] Unifying various volunteer programs may also make recruiting and managing volunteers easier and more efficient.

Continue to publicize and expand the Attorney Emeritus Program by encouraging partnerships with law firms. The program should explore the possibility of commitments from law firms to institutionalize a structure that encourages senior attorneys to take on *pro bono* clients as they transition from private-sector work. Such *pro bono* work might include serving as an arbitrator or mediator. The D.C. Senior Attorneys Initiative for Legal Services ("SAILS") program has attempted to "reduce barriers and create incentives for senior lawyers to consider a '*pro bono* path' as they transition from full-time billable work," and could serve as a model.[13]

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11 *See Attorney Emeritus Program*, NEW YORK STATE UNIFIED COURT SYSTEM, http://www.courts.state.ny.us/attorneys/volunteer/emeritus/index.shtml (last visited Oct. 3, 2011); *see also* William Glaberson, *Courts Seek More Lawyers to Help the Poor*, N.Y. TIMES, January 7, 2010, at A26, *available at* http://www.nytimes.com/2010/01/07/nyregion/07lawyers.html.

12 *See, e.g.*, the links displayed at *Court Sponsored Volunteer Attorney Program: Brooklyn*, NEW YORK STATE UNIFIED COURT SYSTEM, http://www.courts.state.ny.us/attorneys/volunteer/vap/brooklyn.shtml (last visited Oct. 3, 2011).

13 *Senior Attorneys Initiative for Legal Services*, THE DISTRICT OF COLUMBIA BAR, http://www.dcbar.org/ for_lawyers/pro_bono/sails/index.cfm (last visited Oct. 3, 2011).

Any work in this area should be done in coordination with the Attorney Emeritus Council, whose role is "to ensure that volunteers provide high-quality representation; to make the volunteers' experience as satisfying and desirable as possible; and to develop outreach and recruitment strategies," and whose members include legal services providers, law firm partners, bar association leaders, and educators.[14]

2. The Mobile Help Center Program

In the spring of 2011, funded by a private grant, the first and only Mobile Court Help Center in New York State began operating as a joint effort of the New York State Courts Access to Justice Program and the New York Legal Assistance Group ("NYLAG"). The Mobile Court Help Center is a 35-foot vehicle staffed by court employees, volunteer attorneys, and NYLAG staff attorneys. The vehicle is equipped with video stations, computer terminals which can be used to access the court system's website, Do-It-Yourself forms, and other self-help materials. It also serves as a mobile courtroom for emergency proceedings.

The Mobile Court Help Center provides the same informational assistance, educational materials, and referrals to non-profit agencies and organizations available at existing court-based Help Centers. The mobility of the unit permits travel to neighborhoods geographically remote from courthouses, accommodating groups who have difficulty reaching a courthouse, such as the elderly, disabled, and homeless, and victims of domestic violence. The Mobile Help Center is also available in the event of a natural disaster or other emergency.

General Recommendations

Secure funding for more Mobile Court Help Centers. The courts should partner with non-profits, community leaders, law firms, and foundations, and encourage them to work toward creative funding solutions to expand this extremely helpful program. This would not require the court or judges to solicit donations, but instead to work with non-profits to raise awareness. Mobile Court Help Centers should visit areas such as Buffalo, Rochester, Syracuse,

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The SAILS program was founded by and works in partnership with a number of major D.C. law firms.

[14] *See Attorney Emeritus Council*, FORDHAM LAW SCHOOL, http://law.fordham.edu/feerick-center/21706.htm (last visited Oct. 3, 2011).

Utica, and Binghamton, where access to local court Help Centers may be difficult due to lack of public transit or other constraints.

Develop a multilingual Mobile Court Help Center. Mobile Court Help Centers could target neighborhoods where the predominant languages do not include English, ensuring that litigants in these neighborhoods, especially lower-income litigants, have equal access to legal information.

3. Use of Teleconferencing and Videoconferencing

The Working Group recommends that courts encourage judges to hold phone and video conferences with litigants when feasible.

Teleconferences and videoconferences are currently unavailable to litigants in most courts, even for brief or routine hearings. The requirement to appear in person at such hearings can be particularly onerous to some litigants, such as those who must find child care in order to attend.

General Recommendations

Advertise and encourage the use of teleconferencing and videoconferencing as a reasonable accommodation for individuals with disabilities. Expand the use of teleconferencing and videoconferencing generally to reduce the burden of travel and wait time on litigants, especially in family courts. For predictability and consistency, judges can specify in advance which hearings can be held over the phone or video.

The Working Group recognizes that use of these technologies may not be suitable or feasible in all cases. Courts should develop procedures for verifying the identity of the parties; for example, requiring all litigants to appear at their initial hearings, then providing litigants with private identification numbers or requiring other information to verify the person's identity in later telephone conferences. For videoconferencing, courts would require picture identification.[15]

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[15] THE FUND FOR MODERN COURTS FAMILY COURT TASK FORCE, A CALL TO ACTION: THE CRISIS IN FAMILY COURT (2009), *available at* http://www.moderncourts.org/documents/a_call_to_action.pdf.

D. Ideas for Further Study

1. Court Scheduling

The Working Group recommends further study of the possible benefits of staggered or time-certain scheduling. The New York Unified Court System should consider the use of staggered or time-certain scheduling. In staggered scheduling, courts would define up to five separate time slots and direct litigants to arrive at the courtroom for only one slot. Increasing the number of time slots would likely decrease wait times. In time-certain scheduling, courts would give an exact time when litigants must arrive at the courtroom.

2. Working Group on Town and Village Courts

The Working Group recommends the formation of a separate working group to assess whether the needs of all participants in these local courts are being fully supported. While recognizing that the Town and Village court system provides robust benefits in terms of local control and flexibility, a significant number of survey takers suggested changes to the town and village courts, describing problems with the availability of resources and the need for improved training and uniformity. An extensive review of the town and village courts, however, is outside our purview.

APPENDIX A

Survey and Research Results

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15. OTHER AREAS OF CONCERN 14

I. Main Themes from Surveys

- **Simplification and explanation.** Language in court forms and notices should be made simpler and clearer and should be accompanied by step-by-step instructions, checklists, and examples of properly completed forms. Forms in major non-English languages spoken in New York should be made available. Explanatory videos and instructions—on such topics as court procedures, drafting complaints, enforcing judgments, and others—should be made more widely available.
- **Protection from predatory practices.** Courts should penalize litigants that use tactics intended to harass others or deliberately hamper the judicial process.
- **Scheduling.** Some court hours should be shifted from normal business hours to evenings and weekends in order to accommodate working litigants. Appearance times should be staggered so that litigants do not all arrive at the same time, thus minimizing the time they must spend away from work and in court. Many court proceedings—especially for simple administrative matters—should be handled by telephone or videoconference.
- **Technology.** Computers should be made more widely available in courthouses or other public areas for litigants without access to a computer at home. Use of e-forms and document assembly systems should be encouraged, but administrators must keep in mind that such resources will do the most good if they are accessible to litigants with only basic computer literacy. Case-related information should be made more readily available on courts' websites, including the timeframe in which a case will be called, contact information, relevant rules and requirements, and other essential information.
- **Accommodations for the disabled and elderly.** Allowing appointment of guardians in more cases and encouraging telephone participation rather than in-court appearance would be a cost-neutral way of accommodating those with limited mobility, mental disabilities, or other strong reasons for being unable to attend an in-person conference.
- **Unification of the judiciary and administration.** Allowing judges of broader expertise or courts of broader jurisdiction to handle cases currently designated for jurisdiction-specific courts could take pressure off the jurisdiction-specific courts.
- **Communication.** Communication by telephone and e-mail between court officials, *pro se* litigants, and legal services providers should be encouraged.

II. Survey Results from Practitioners

1. CIVIL RIGHTS

A. Disability Rights

- Train court personnel to recognize indicators of mental or cognitive disability, and be aware of the accommodations and modifications to which individuals with disabilities are entitled. Provide individuals who have disabilities with continuing notice of these rights as their needs change.
- Instead of referring all homebound litigants to Adult Protective Services (which requires potential clients to undergo a psychiatric evaluation before appointment of a guardian *ad litem*), set up telephone conferences with litigants who are homebound.
- Train court personnel to recognize when Adult Protective Services should be called (*e.g.*, when litigant obviously does not comprehend what is said or appears mentally ill).
- Allow alternative forms of communication for court notices (*e.g.*, communication in Braille, a navigable Microsoft Word CD, and oral communication).

B. Limited English / Language Access

- Adopt the American Bar Association Standards for Language Access in the Courts, which are intended to alleviate some of the financial burden on individual courts by describing ways to share and create language assistance resources.
- Provide translations of key notices, forms, self-help materials, and other documents (*e.g.*, Orders of Protection) into the six main languages spoken in New York City (Spanish, Korean, Chinese, Russian, French / Creole, and Italian). Ensure through use of such notices that all litigants with Limited English Proficiency ("LEP") are aware of their right to an interpreter.
- Publicize the mechanism by which LEP litigants can file complaints against interpreters who do not do their jobs properly or who become involved in cases and clients' lives inappropriately.
- Increase the use of remote interpreting when it is not practical to have an in-person interpreter. This will reduce costs and increase courts' ability to provide language access to LEP litigants.
- Post more signs and release more videos explaining court procedure (respondent notes that the NYC Office of Administrative Trials and Hearings video on building violations hearings is excellent).

- Translate the Third Department Unemployment Insurance appeal *pro se* packets that are sent to appellants into various languages.

2. CONSUMER

A. Procedural Issues

- Provide more stringent guidelines and penalties for process servers in consumer credit cases in order to protect against ineffective service of process such as "sewer service," where process is not actually served.
- Provide *pro se* litigants with easy-to-follow lists of the statute of limitations in each kind of consumer credit case and a clear explanation of when the statute of limitations begins to run.
- Require creditors or debt collectors to provide the original signed contract in every consumer credit case, regardless of whether the defendant appears or submits an answer.
- Make the creditor's standard of proof for obtaining default the same as for a contested summary judgment motion.
- Prohibit creditors from setting summary judgment and other motion dates earlier than the return date. The date for any motion should be set to the next court date—not an interim date.
- Merge the trial and conference calendars within the *pro se* part.
- Dismiss all complaints not acted upon within one year after filing of an answer.
- Require plaintiffs to provide proof of defendant's liability for the debt, and that it is owed to this plaintiff, at the first return date.
- Provide *pro se* defendants with documentation reflecting what happens in court, including a summary of the proceedings and outcomes, such as the stipulation or the court's decision or order.
- Record every stipulation and order in the Court record.

B. Resources

- Make the Court's computer "document assembly" programs more accessible to litigants with limited computer skills, literacy, or English proficiency. These systems should be improved by adopting an interface based on visual and verbal prompts in the user's native language—such as the I-Can model.[16]
- Expand the Civil Legal Advice and Resource Office ("CLARO").

C. Behavior/Actions of Judges, Clerks, and Creditors' Attorneys

- Encourage judges to be on the bench on time.
- Sanction creditors who do not come prepared to pre-trial conferences. Creditors often show up without necessary proofs, intentionally delaying to get the debtor to default. The *pro se* defendant must continue to miss work to return to court if she wants to contest the debt, and creditors can obtain a default judgment if the defendant fails to appear. On the other hand, when a *pro se* defendant asks for an adjournment, the Court rarely grants it absent a showing of cause—sometimes even denying adjournments in spite of a showing of good cause.
- Limit creditors to no more than two pre-trial conferences without cause.
- Grant debtors as many adjournments—cause or no cause—as are granted to creditors.
- Prevent plaintiffs' attorneys from behaving as though they are court employees, approaching the bench and talking with the judges. This creates confusion as to who they are, and an appearance of bias. Attorneys and *pro se* litigants should be treated equally in the courtroom.
- Civil Court judges must set traverse hearings when a *pro se* litigant properly raises lack of service in an Order to Show Cause to Vacate a Default Judgment or a Motion to Dismiss. Even though "sewer service" is well-documented in consumer debt cases and CPLR 5015(a)(4) and CPLR 3211(a)(8) require dismissal of the action if a person has not been served according to law, is the practice of many Civil Court judges not to order a traverse hearing or even hear oral argument on the issue.
- The Clerks' and Court's self-help materials need to include information on where to go for information and advice (for example, CLARO or the court Help Centers) before the clerk accepts an Answer. *Pro se* litigants who come to clerks asking how to respond to complaints are routinely directed to file answers that waive pre-answer defenses.
- When debtors come to file an answer in a debt collection case, the clerks should provide an explanation sheet to review and encourage them to check any defense they think applies.

16 For more information, see I-CAN! LEGAL CALIFORNIA, http://www.icandocs.org/ca/ (last visited Oct. 3, 2011).

D. Other

- Guardians *ad litem* should be allowed in consumer debt cases. In far too many cases, elderly or severely disabled people are sued in Civil Court and are unable to physically come to court to defend themselves. When friends or family members come to court and request a guardian, they are told that guardians are not given in consumer debt cases. No notation is made in the file and default judgments are granted when the person fails to appear in court.
- Require more complete proof of debts, even in default posture.

3. PUBLIC BENEFITS

- When requesting a fair hearing, applicants should be provided with a summary of an appellant's rights and information about rules, regulations, and the procedure for raising concerns regarding the court's treatment of their case.
- Emergency assistance fair hearings should take place within 72 business hours of any denial of assistance in order to prevent homelessness and other problems associated with denials of emergency assistance.
- Ensure that parents' applications for public assistance have no negative impact on their ability to have children returned to their care from foster care.

4. EMPLOYMENT

A. General

- Provide court assistance to employees or former employees who want to collect wage and hour awards they have won against their employers or former employers. Any costs incurred by the courts could be offset by a reasonable collection fee or a reduction in redundant collection actions and suits by future employees or former employees (if employers do not have to pay judgments they are more likely to repeat the behavior that induced the lawsuit in the first place).
- Have a single judge manage each entire employment case from discovery through disposition. This will enable the judge to assist the *pro se* litigant in areas where he needs extra help, and cut down on confusion, repetitive filings, and other inefficiencies.
- Unemployment insurance appeals must be filed in the third department, which requires travel to Albany. The other appellate departments should be permitted to hear appeals for these claims. Traveling to Albany is extremely difficult for poor people, especially those who do not have cars or speak English.
- Increase wage and hour training (both in substantive law insofar as they answer questions about it, and in how to fill out appropriate forms) for clerks and other officials who are tasked with supporting *pro se* litigants. This would increase efficiency and reduce flawed filings.

B. Prisoners and Employment

- The Office of Court Administration ("OCA") should issue a Policy Directive indicating that all successful participants of any treatment court program must receive CRDs automatically upon graduation. This model is in place in Rochester and has been successful in promoting reentry for graduates.
- Shorten the application process by which a formerly incarcerated individual obtains a CRD, Certificate of Good Conduct, and Licenses. Many people cannot obtain employment without these certificates.
- At or soon after sentencing, clients should be provided with an explanation of how to obtain a CRD and explanation of rights protected under Correction Law 750.
- Courts should provide applicants with written documentation of CRD denial and the reasons for the denial.
- Courts should clarify to judges and clerks that the only eligibility requirement for a CRD is that the applicant have been convicted of no more than one felony.
- The court needs to improve the procedure for record keeping and access around CRDs. Many jobseekers who have obtained CRDs see no record of the CRDs on background checks run by employers because many courts keep no records of CRD application, denial, or issuance. In many instances where judges request a report from probation, judges fail to provide a copy of the probation report to the applicant, despite the 2006 amendment to Correction Law 702(6) mandating that such reports be made available to the applicant.

C. Process of Litigation and Administration

- Allow adjournments similar to those allowed in Article 3 courts, instead of issuing decisions that need to be reopened, causing duplicative hearings and penalizing claimants who seek representation. Administrative Law Judges in the Unemployment Insurance Appeal Board should follow proper procedures to adjourn claimants' hearings in a timely manner.
- When a hearing cannot be concluded on a single day and must be adjourned to take further testimony or evidence, ALJs should select a specific adjournment

date while all the parties are in the room, rather than rescheduling at a later date, often months later, without consulting the parties involved in the initial hearing.

- Documents should be shared electronically between regional appeal board offices.

D. Court Procedures and Support Staff

- Unemployment insurance benefits hearings have to take place over the telephone in many rural areas; a claimant who misses a single call will not get benefits for the month. These claimants should have the opportunity to face their opponents in a hearing. Failing that, more of an effort must be made to contact claimants.
- Hold more local unemployment hearings (in smaller cities such as Ithaca or Elmira), or set up videoconferencing capabilities.
- The Office of the Unrepresented should assist *pro se* litigants in completing, serving and filing papers.
- Court attorneys, clerks and the Office of the Unrepresented should be trained on wage and hour claims, employment discrimination due to prior convictions, and general discrimination claims.
- *Pro se* plaintiffs should be informed as to how to enforce judgments.
- Currently New York penalizes false statements and willful misrepresentations made by claimants applying for unemployment insurance benefits (Labor Law Sections 594 and 597(4)) but there is no equivalent provision that applies to their former employers. The penalties should be equal.

E. Access to Documents and Revision of Forms

- The *pro se* packets should be reviewed for clarity, accuracy, and readability.
- Low-income claimants and their *pro bono* representatives should be allowed free copies of their case file in preparation for an appeal before the Appeal Board. Currently they are only given free access in preparation for their initial hearing before an Administrative Law Judge.

5. EDUCATION

- Assign children, especially special education students, counsel in school disciplinary proceedings to ensure the student's interests are protected.
- Allow for greater scheduling flexibility in school proceedings to accommodate parent work schedules.

6. FAMILY LAW

A. General

- Post court rules that are uniform in structure on the court website, including telephone directories and information on reaching assistants and court attorneys who can resolve administrative issues such as adjournments.
- Provide non-English-speaking litigants with copies of orders of protection in their native language.
- Provide clear and consistent information regarding how many copies of a motion or petition must be filed. Clerks request anywhere from two to eight copies and this number varies on a daily basis.
- Provide a simplified set of papers for low asset, irreconcilable grounds divorces.
- Matrimonial rules regarding the filing of uncontested divorces need to be consistent throughout the counties. There should be one checklist for contested cases and one checklist for uncontested (or two of each - with children and without children).
- Attorneys should be held accountable for excessively late appearances through the imposition of fines. This will increase the speed of proceedings and provide money the court can use to implement other programs.
- Create more uniformity of court-related costs (*e.g.*, for transcripts, experts, and attorney for the child fees) between Family and Supreme Courts. Current rules and costs can vary depending on where the proceeding is, even for related proceedings, which is confusing and frustrating.
- Increase use of the court website in divorce cases. Create a very basic pamphlet or website providing examples of what a court can and can't do. For example: "The court can enter an order scheduling visitation between your child and your child's other parent; the court *cannot* ensure that the child's other parent actually takes the child for the scheduled visitation. The court can order both parents to attend a session to improve parenting skills; the court *cannot* order the noncustodial parent to agree with the custodial parent on every parenting issue, like bed time or amount of snacks given."
- Provide basic definitions of terms: custodial parent, noncustodial parent, return date, hearing date, physical custody, legal custody, etc.
- Encourage better scheduling practices in Family Court. Do not require litigants to come in for scheduling conferences that could be handled by phone. Do not require litigants or attorneys to attend

when filing a violation of an order of protection without requesting additional sanctions.

- One family, one judge. Having a single judge handle all the legal matters resulting from one underlying dispute would increase efficiency because the judge would be aware of surrounding issues like domestic violence and indigence that impact multiple aspects of a family's situation and have to be proved repeatedly under the current system.
- Expand the jurisdiction of family court judges to issues surrounding a family's overall situation, such as housing matters. Coordination between courts could be increased so that a housing court judge has access to the records of family court proceedings, cutting down on duplicative showings and waste of resources.
- Eliminate or change antiquated but expensive notification alternatives to actual service such as taking out ads in newspapers. They are ineffective and create a high bar for poor litigants. The bar is especially high for people who want to get divorced but cannot locate their spouse.
- Clarify and define the rules around no-fault divorce. Some judges permit parties to contest divorces filed as no-fault by arguing that the marriage is not irretrievably broken, effectively leading to a trial on the grounds, which is both expensive and time consuming. This practice should be prohibited because it vitiates the no-fault statute. If that is not possible, the rules around this should be defined and clarified.
- Control frivolous filings in family court. Batterers and angry ex-spouses often use frivolous filings as a means of control and harassment. Attorney fees for frivolous filings or a low fee for all filings (or all filings after a certain number) are ways that these filings might be controlled.
- Better information about applying for poor-person status in civil court would enable litigants to access this status and avoid flawed and misdirected filings.
- Allow more flexibility for non-testimonial court appearances for litigants who would otherwise have to take unpaid time off of work.
- Create an Article 6 Custody / Visitation form that is designed for people other than biological parents, specifically biological grandparents who often try to intercede in custody cases to take custody when the biological parents are unfit or unwilling but must allege extraordinary circumstances in order to do so. Instructions on how to make this allegation would be useful.
- Make petitions for custody or modification of a custody order less confusing to petitioners and more user-friendly. Choices are often embedded within a sentence and go unnoticed or unchecked by petitioners. There is not enough space for handwritten allegations, resulting in short and vague allegations that must be amended later. Adoption petitions, including step-parent adoption petitions, are particularly difficult to understand without the assistance of an attorney.
- Make an easier-to-fill-out financial disclosure affidavit for child support for poor people. Statements of net worth in divorces are often irrelevant to people in poverty.

B. Web Resources

- Many survey respondents requested e-filing and availability of electronic documents, though most do not want e-filing to be the only option.
- Better web support, with instructions and checklists for *pro se* litigants on how to do things that are frequently done *pro se* (such as uncontested divorces or basic motion practice). Web resources and forms should be kept up-to-date and monitored for outdated, incorrect, and broken links.
- The court website should link to the Child Support Standards Act ("CSSA") chart, as well as the self-support guidelines and temporary maintenance guidelines and child support calculator.
- Evaluate the potential benefits of a system by which order of protection summons can be electronically mailed to the New York City Police Department ("NYPD") or Sheriff's office (preferably the Sheriff's office). This should work both ways so that the NYPD or Sheriff's office can email back proof of service.

C. Clerks

- Clerks should not tell petitioners they cannot file petitions in family court based on jurisdiction, since jurisdiction decisions do not belong to a clerk.
- Give clerks access to up-to-date information on the status of a case so they can, for example, help parties who defaulted due to failure to appear for a court date know what petition to file to remove the default. This would reduce faulty and duplicative filings and save court resources.

D. Education

- Create more mediation opportunities for issues around special education. This would help parents and schools work together more productively and reduce the burden on the courts when parents seek resources

for struggling students. This mediation should be at the option of the parent rather than requiring school consent, as schools in rural areas often prefer litigation, which they think deters parents from seeking accommodations.

- Permit Legal Services Corporation attorneys to collect attorney's fees in special education cases to increase representation for poor litigants in rural areas.

7. HOUSING

A. General

- Provide judges (especially in smaller courts) with more training about protections that are already in place.
- Provide a simple "bench book" on housing issues to each court. (This book could either be a resource compiled by the court system, or a commercially available resource like the *Thomson-West Residential Landlord Tenant Law in New York.*)
- Courts should open on time and should require strict adherence to calendar calls. An attorney who checks in should be available to negotiate or to appear before the judge. The court should have a procedure for defaulting attorneys who check in and then disappear. For example, the court could have a complaint form for attorneys or litigants who cannot locate the opposing attorney, then have the bailiff search for the opposing attorney. If he or she can't be found or isn't actually engaged but refuses to appear, he or she should be defaulted.
- Judges and clerks should not chat or fraternize with landlords' attorneys informally in and out of the courtroom, listen to hearsay, make decisions based on sidebar conferences, or engage in other informal avenues by which tenants may be prejudiced. To the extent possible, all proceedings should be on the record and should adhere to the rules of evidence.
- Check-in and calendar procedures should be uniform and should be clearly posted at each courtroom in multiple languages. For illiterate litigants, bailiffs should slowly, loudly, and clearly explain the check-in and calendar procedures before opening courtroom doors.

B. Foreclosure

- Amend Rule Sec. 201.12-a to require an affidavit of service and Request for Judicial Intervention to be filed with the court within 10 days of the filing of the summons and complaint. Enforce the requirement that plaintiff's counsel file an attorney affirmation verifying accuracy of pleadings in foreclosure cases with the filing of the Request for Judicial Intervention.
- Proclaim a uniform statewide form order for the scheduling of tasks to be executed by each party in the settlement conference process and that empowers judicial hearing officers, referees, and judges presiding over settlement conferences to employ the range of appropriate remedies when parties fail to comply with their CPLR 3408 obligation to negotiate in good faith.
- Ensure that all deadlines and rules are established by the court or through negotiations during the settlement conference and set forth in the uniform scheduling order, rather than allowing foreclosing banks to unilaterally set the rules for the process.
- Ensure that notices to foreclosure defendants (particularly Settlement Conference notices) are in a language the defendant can understand.
- Require plaintiff to provide verification of his or her standing to sue, including a copy of the mortgage, the note and any assignment or other document showing that ownership of the mortgage and the note has been properly transferred to plaintiff, with the filing of the summons and complaint, or to the court or defendant(s) at the time of the first scheduled settlement conference.
- Schedule CPLR 3408 settlement conferences in foreclosure cases for individual appointments at specific times, instead of a mass calendar call, to cut down on waiting time.
- Allow service of orders to show cause on plaintiffs who are represented by counsel to be effected by overnight delivery service or by mail. Insisting on personal delivery may cause needless expense to defendants, because most foreclosure plaintiffs' firms are located in upstate New York.
- Promulgate a uniform order memorializing the results of settlement conferences in foreclosure cases, providing for a range of consequences for the failure to negotiate in good faith and causing a delay of process. Consequences may include a provision for tolling of interest, requiring a client representative to attend conference, and dismissal.
- Train judges (especially town and village justice court judges) in summary eviction and foreclosure proceedings, and provide easily accessible resources they can distribute to answer frequently asked questions.
- Enforce required procedures in foreclosure cases to cut unnecessary delays. Make sure that banks file a special request for judicial intervention form along with the complaint and summons in the case.

- Outline for the courts enforcement mechanisms to employ against parties who negotiate in bad faith or otherwise violate the provisions of the CPLR 3408 and the Administrative Order of the Chief Administrative Judge of the Courts Sec. 202.12-a and provide for enforcement mechanisms for clerks, referees and other court personnel overseeing the settlement conference process.
- Examine creditors' unopposed motions to ensure that they meet pleading requirements rather than summarily granting them.

C. Landlord-Tenant

- Mail a copy of the judgment to the tenant so the tenant knows how much rent, fees and costs are due.
- Establish a procedure for identifying disabled or homebound *pro se* tenants in landlord-tenant cases. The requirement that *pro se* tenants appear in housing court and answer in person disproportionately affects homebound poor people.
- Ensure that the City Court Clerk's office, (or, in New York City, the Housing Court Clerk's Office) has a system for ensuring that *pro se* answers are recorded accurately.
- Reform RPAPL 749, which states that a court can direct issuance of a warrant to any constable of the county. This can be an extreme hardship to some tenants. Constables should be local and authorized by the town or village to effectuate evictions. Landlords' attorneys should not be able to select the constable, marshal, or sheriff who serves the 72-hour notice and executes the warrant.

D. Other Proceedings

- Ensure that court staff follow required procedures when dealing with *pro se* litigants, specifically that they do not dissuade litigants from using permissible defenses.
- Have judges set specific times for landlords and tenants to appear in court to negotiate, to reduce the amount of time *pro se* plaintiffs have to spend waiting in the courthouse.
- *Pro se* answers in housing court need to be clarified. A large number of relevant defenses are not indicated on these forms and *pro se* litigants have no means of discovering these defenses or how they might apply to their cases.
- Only require *pro se* litigants to file *in forma pauperis* papers once during the course of a case.
- Require judges and court attorneys to explain the implications and ramifications of stipulations before parties accept them.
- Examples of completed forms (*e.g.*, complaint, Article 78 proceeding) should be made available for *pro se* litigants.
- Increase minimum fines and find more effective enforcement methods to ensure landlords maintain safe and habitable buildings.
- More care should be taken by clerks when advising *pro se* tenants to file orders to show cause. Clerks currently almost always suggest filing these orders, which have their place, but when used excessively can actually harm a tenant's case.

8. INCOME

A. Appeals

- *Pro se* litigants need assistance appealing when they are denied services. Information about court locations, the availability of legal services, and *pro se* assistance mechanisms should be given to anyone who wants to appeal, and, at minimum, they should be told what court to go to.
- The courts should assist in serving papers to commence Article 78 proceedings.
- *Pro se* appeals from administrative hearings should be easier. Court rules regarding *pro se* appeals from administrative hearing decisions are too difficult for *pro se* litigants to understand. *Pro se* litigants often cannot even obtain copies of the record to help them prepare arguments.
- There is insufficient information about Article 78 proceedings on the court website.

B. Technology

- Telephone or videoconferences should be optional. Telephone and video conference can make *pro se* litigants nervous, which can affect the apparent credibility of the litigant.
- Make paper copies of records available to all appellants who request a fair hearing or other proceeding.
- Benefits calculators should be available for anyone who needs them, and letters indicating benefits levels should be comprehensible to people with limited educations.

C. Miscellaneous

- Fair hearing decisions on emergency decisions should be expedited and compliance should be mandatory within 10 days of the decision.
- Tenants who are Family Eviction Prevention Supplement eligible should be considered as if public assistance would grant them that assistance and that number should be used against their current income to determine eligibility.
- Courts should encourage DSS to be more responsive to people who need assistance. If the applicant is over income for services, DSS should give responses more quickly.

9. IMMIGRATION

A. Interpretive Services

- The Office of the Unrepresented in Supreme, Civil and Small Claims Court should have staff who speak various languages such as Mandarin, Cantonese, Spanish, Korean, and Russian. The Office of the Unrepresented should have all forms with simple instructions available in various languages.
- Better publicize the mechanism by which an LEP litigant can file a complaint against an interpreter. The Office of the Court Administrator suggests that potential complainants should "go to our website to file a complaint." Unfortunately, many litigants do not have access to computers. Because the procedure on how to file a complaint is not available at clerks' offices or information desks, a litigant is unlikely to know how to file a complaint about an interpreter unless the litigant is represented by counsel. There should be a designated place where litigants can file a written complaint at the court about an interpreter's poor performance.
- The OCA should increase the use of remote interpreting when it is not practical to have an in-person interpreter. Not only will this reduce costs (interpreters will not have to travel from court to court and could be available to interpret at more than one hearing), it will also increase the courts' ability to provide language access to LEP litigants.

B. Legal Communications

- Orders of protection and other standard court orders should be translated into the six main foreign languages spoken in New York City (Spanish, Korean, Chinese, Russian, French/Creole and Italian).
- Take measures to prevent denial letters from being sent in the wrong language to clients.
- Remove the requirement that papers served by mail be mailed from within the state of New York.

C. Printed Materials & Signage

- Court notices should be in plain, understandable language. Rules also have to be clear for the many litigants who do not have an attorney.
- Ensure that all courts have clearly visible signage indicating that language services are available, and that signage is easily visible. Ensure that all court personnel know that the court offers interpretation services for languages other than Spanish.

D. Procedures

- For special immigrant juveniles who have been abandoned, neglected or abused, some of the service of process requirements of the family court in guardianship proceedings are unduly burdensome when they require personal service to a parent that may reside in another country. Loosen the service of process requirements or allow access to benefits while service is pending.

10. RE-ENTRY

A. Training for Judges and Court Clerks

- Educate judges about Certificates of Relief from Disabilities (CRDs). Many judges either are entirely unaware of the existence of CRDs or harbor misconceptions about eligibility, their power to issue CRDs, or the CRD's effect. Some judges believe that a CRD will seal or expunge the record of the underlying conviction, and others believe that they cannot issue a CRD for a violation conviction. Many believe that they are not authorized to issue a CRD without a report from Probation. Some judges set arbitrary standards for applicants; for instance, refusing to consider applications until a person has successfully completed two years on probation, or refusing to issue a CRD to someone in recovery because of past drug use. Judges have also applied standards that are inconsistent with those set forth in Correction Law §§ 701-703, stating, for example, that a CRD is "extraordinary relief" to be granted only in extraordinary circumstances.
- OCA should issue a Policy Directive to all judges, supplemented by formal training in Article 23 of the Correction Law and other relevant laws and court rules, emphasizing the following:
- Pursuant to Section 200.9 of the Uniform Rules for New York State Trial Courts, judges must either issue a CRD at sentencing or notify the person appearing in front of them of the right to apply at a later date.

- When considering a CRD application, judges must also consider Penal Law § 1.05(6), which adds "successful and productive reentry and reintegration into society" as a fifth goal of sentencing.
- The law lays out only two conditions that must be met for a CRD to be issued: the relief to be granted by the CRD must be consistent with (1) the rehabilitation of the person, and (2) the public interest. (Correction Law § 702.) There is no requirement of "extraordinary circumstances."
- Related to the above, the CRD is not exclusively a reward for those who can demonstrate rehabilitation—it is a tool for people who genuinely wish to be integrated into society, but for whom a conviction poses a barrier to employment, housing, voting, or other goals critical to successful reintegration.
- A CRD never guarantees that the holder will obtain a job, license, or housing placement. The Certificate merely overcomes mandatory statutory barriers, and restores discretion to employers, licensing agencies, and landlords to consider applicants on their merits.
- Judges may issue CRDs without any investigation or report from Probation. If judges choose to rely on a report from Probation, (1) they are free to depart from recommendations in the report, and (2) they must provide a copy of such report to the applicant or the applicant's advocate.
- Make sure public defenders request CRDs at sentencing.

B. Application Process, Forms, and Recordkeeping

- Create one uniform application for services available for re-entry available online, at probation offices, and in every clerk's office and courtroom.
- Ensure that forms provide more complete information to the applicant, including information about gathering evidence of rehabilitation when applying after sentencing and instructions for applying for special endorsements for specific jobs (*e.g.*, bus driver). It should have room for multiple docket numbers. The application form itself should also serve as a court order to release any report created by probation to the applicant or applicant's advocate.
- Clerks should accept forms downloaded from the Division of Probation and Correction Alternatives ("DPCA") or the court system's own website, especially given that application forms are not available in every courtroom.
- Standardize the application process across the five boroughs. In some boroughs, cases are calendared relatively quickly and applicants obtain decisions within timeframes sufficient to influence an employment or housing application. In others, waiting periods can stretch to a year. Some courts allow applicants who have been denied to re-apply immediately. Others require arbitrary waiting periods of a year and longer, even when applicants can demonstrate substantial changes in circumstances.
- Eliminate the arbitrary conditions and requirements that clerks' offices impose on applicants. Some clerks' and probation offices require birth certificates, social security numbers, and other documentation; some require clients to submit to fingerprinting in order to apply for CRDs.
- Certificates themselves (to be signed by judges) should be available in every central clerk's office and every courtroom where criminal cases are heard.
- Improve the recordkeeping process for CRD application, denial, or issuance. In countless cases, jobseekers who have obtained CRDs see no record of the Certificates on background checks run by employers. The original application form and probation report, and copies of issued CRDs or denials, should be forwarded to the central clerk's office to be kept on file.
- When a CRD is issued, it should be entered in WebCrims, New York State's criminal database, using the original docket number.
- An electronic recordkeeping solution should allow clerks to automatically generate certified copies of issued CRDs as needed, as they currently do for Certificates of Disposition. It should also be clear that calendared applications are not open cases.

C. Denials of Applications

- Create a CRD denial form, to be signed by the judge reviewing the application, which contains reasons for the denial, information about re-application, and boilerplate language directing release of the probation report to the applicant or his advocate.
- Clarify to judges and clerks that the only eligibility requirement for a CRD is that the applicant has been convicted of no more than one felony.

D. Other

- The OCA should issue a Policy Directive indicating that all successful participants of any treatment court program must receive CRDs, automatically, upon graduation. This model is in place in Rochester and has been successful in promoting reentry for graduates. By statute, forms are distributed by DPCA. The statute also requires that the forms be agreed on

by the Commissioners of Department of Correctional Services, the Chairperson of Parole, and the administrator of the state Judicial Conference. (Correction Law § 705.)

- When requesting a report from probation, judges should be required to provide a copy of the probation report to the applicant, in accordance with the 2006 amendment to Correction Law § 702(6) mandating that such reports be made available to the applicant.

11. WRITTEN MATERIALS

A. Forms to be Simplified

- Third Department unemployment insurance appeal *pro se* packets sent to appellants should be reviewed for clarity, accuracy and readability.
- Uncontested divorce forms can be shortened and simplified. Half the forms could be eliminated entirely. The complaint and plaintiff's affidavit duplicate each other and the Summons, Request for Judicial Intervention, and Note of Issue could be one form.
- The Statement of Net Worth. The new USC 111. The registry forms for Domestic Relations Law § 240. Order to Show Cause.
- Article 78 papers and instructions are too complicated for many of the indigent people who qualify.
- Place forms on the OCA website in the order in which people usually use them. Add a column with a brief explanation of the purpose of each form. Implement a series of boxes to check instead of the current forms.
- *Pro Se* Order to Show Cause form affidavits in Housing Court should explicitly prompt and provide more space to describe efforts to obtain arrears, since many claims are denied solely on this basis, despite its lack of emphasis on the forms.
- The Financial Disclosure Affidavit for use in child and spousal support needs to address both current expenditures and past expenditures, and consider expenses that are not being paid because there is no child support.

B. Forms and Written Materials to be Created

- How to contest a divorce.
- Literature should be created on the fair access law.
- Written clarification on what an Order of Protection means for both parties, in both civil and criminal courts.
- The tenant *pro se* answer form should include counterclaims.
- Answers for tenants in landlord-tenant proceedings.
- Complete forms with regard to Appellate Division Practice.
- A brochure for litigants that addresses their rights in court, including their right to an interpreter and counsel. This brochure should be provided to all litigants when they file their petition.
- Basic information such as what Family Court does and does not do and a glossary of terms likely to be used by the judge.
- The OCA website has no information about public benefits cases, Article 78 proceedings, translation and interpreting services, accommodations for disability, child care, or options to avoid missing work.
- Any materials created would have to be very user friendly for a population with limited literacy, would be needed in at least the six languages required by Local Law § 73, and would have to take into account the lack of access to computers for most public assistance recipients and the lack of telephone access for many. Public libraries and informational tables at courthouses would be important ways to distribute printed materials, and some informational brochures could be included with adverse hearing decisions. User-friendly, multi-lingual public access online could be provided via libraries and community organizations.

C. Other

- Justice Courts do not understand that they must write and sign "denied" on an OSC so the tenant can present a 5704 application to the App Term. Justice Courts frequently have no judge available because courts shut down early and judges are often out of town, so there is no judge to sign an OSC.
- Revise all forms to increase consistency across court systems and simplify the language as much as possible, preferably to a less-than-high school reading level.

12. COURT STRUCTURAL OBSTACLES

A. General

- Provide protections to ensure that elder abusers are not appointed as Guardians in a later civil Article 81 action. For example, require a single court to hear both criminal elder abuse cases and civil Article 81 Guardian cases. Contra Costa County, California, may provide a model.
- Create a Wage and Hour specialty part in civil court and small claims court to alleviate the backlog at both the New York Department of Labor and the United

States Department of Labor, where plaintiffs wait years to receive compensation.

- Require agencies to provide information about Article 78 proceedings, highlighting the necessary steps for appeal, the importance of not missing appeal deadlines, the availability of help from *pro se* clerks to commence an appeal, locations of courthouses and availability of filing fee waivers.
- Require longer terms of service in the matrimonial part of the Supreme Court. Currently, Supreme Court justices appointed to the matrimonial part mostly move on after one year, so few judges have any expertise.
- Impose uniform rules and procedures on all litigants, counsel, and judges. Provide online information and timelines about individual cases, including information about deadlines and required and expected submissions from each party.
- In the Judges Directory, provide a list of cases appealed from each judge with a link to the Appellate Division's or Court of Appeals ruling and disposition.
- Provide written information to *pro se* litigants as to the purpose of a Court Ordered Investigation and access to their own ACS records.
- Provide better access to information for *pro se* litigants, including clerk offices dedicated to helping *pro se* litigants with answers, petitions, complaints, etc.
- Provide assistance with serving papers in Article 78 proceedings and other actions initiated by *pro se* plaintiffs or petitioners.
- Provide easier ways for people with disabilities to request accommodations.
- Particularly in family court but also more generally, schedule trials on consecutive dates rather than adjourning for weeks or months at a time.
- Currently, the time to take an appeal to the Court of Appeals varies depending upon semantic, non-substantive distinctions in the language used by the Appellate Division. Eliminate this uncertainty and establishing a definite time for taking appeals.
- There are jurisdictional gaps for cases where New York State has jurisdiction, but no county has a specific jurisdictional basis to prosecute. This arose in *People v. Zimmerman* (2007), in which a perjury prosecution was dismissed for lack of county jurisdiction. Fill this gap to provide jurisdiction in such cases.

B. Family Court

- Provide training in how to recognize patterns of control whether through physical violence or not.
- Place all family law cases in one court, preferably Family Court, as a cheaper and friendlier alternative to the Supreme Court.
- Create a Family Court remedy for adoptive and foster parents, who currently have no remedy in Family Court against abusive natural parents, by allowing orders of protection to be issued in conjunction with the disposition of termination of parental rights cases and permanency hearings regarding children freed for adoption.
- Establish "destitute child" as a discrete category of child protective proceeding.
- Close procedural gaps in the framework governing juvenile delinquency and Person in Need of Supervision cases in the area of violations of court orders.
- Clarify that the violation procedures and consequences contained in Article 8 of the Family Court Act apply to all orders of protection and temporary orders of protection issued in various proceedings; amend the Act to authorize the Family Court to place respondents under probation for periods of two or five years, to be coextensive with the duration of the order of protection.

C. Integrated Domestic Violence Court

- To the extent possible, clear the courtroom during these proceedings or offer a separate courtroom solely for these cases. Family law cases are heard in tandem with the criminal cases and domestic violence victims are forced to publicly share very personal details of their lives. Niagara County may provide a model: matrimonial testimony used to be taken in an empty courtroom while other cases waited in the hallway.
- Keep support issues in front of the judge rather than transferring to a support magistrate.

13. TECHNOLOGICAL RESOURCES

- Provide accessible computers, with printers, for low-income people to complete court forms. These could be either library computers or kiosks in courthouses themselves.
- Provide wireless internet in all courts. Allow and encourage e-filing in more situations (*e.g.*, family and matrimonial cases). Design simple methods for accessing and filling out electronic forms.

- Advertise videoconferencing to ensure everyone knows about its availability. Advertise e-courts, to ensure that litigants are aware of this helpful resource.
- Create a video explaining the court process that plays in court waiting rooms. Create a video in various languages on how to draft, file and serve wage and hour complaints. Create a video in various languages on how to enforce a judgment.
- Encourage court officials to use e-mail to communicate with attorneys and litigants.
- Design a scheduling system that would send attorneys a text message when their case is about to be called, allowing them to take on more cases.
- Make court archives available online. Make case-related information more readily available on the court website, including, in part, a specific range of time within which a case will be called, telephone numbers, fax numbers, court attorney and clerk information, decisions appealed from, part rules, information about planned absences and coverage, information about which other relevant personnel, etc.

14. ALTERNATIVE DISPUTE RESOLUTION

A. General

- Make mediation and ADR services more readily available to parties engaged in family court proceedings (*e.g.*, provide notice of ADR services available in the county).
- Create free, voluntary mediation and collaborative law services.
- Mediation should be made available and encouraged in virtually all dispute resolution venues, and should be an option prior to filing some claims such as minor fee disputes (with merchants), child custody and visitation, credit card collections and others. The State of Maryland has a statewide mediation program that should be explored as a starting point.
- Mandatory attempts at mediation after custody petitions are filed.
- Improve and standardize screening and training for all who provide ADR procedures.
- There should be a stronger partnership between legal and mediation services. There should be a triage system where clients can choose the avenue that will work best for them.
- Attorneys should be encouraged to receive mediation training.
- Reduce the 40 hour training requirement necessary for practicing attorneys to volunteer with the Court's ADR office (the training mostly consists of basic legal knowledge, and discourages busy attorneys from participating).
- Courts should make mediators trained in employment disputes available to potential litigants, to reduce the burden on the court system and on litigants.

B. Language/Immigrant Access

- The court should provide more language assistance for *pro se* litigants. Interpretation services should be accessible at all court locations and documents of all types, including the Third Department appeals package, need to be translated into more languages than just English and Spanish. This could be done relatively cheaply through telephone-based interpretation services and print-on-demand forms and documents.
- Expand programs like Empire Justice Center, which focuses on research and litigation for individuals who are poor, disabled or disenfranchised, and provides immigration law training workshops to attorneys.
- Make more information available to immigrants on the definition of a Public Charge by U.S. Citizenship and Immigration Services, which means "an individual who is likely to become primarily dependent on the government for subsistence" and which benefits would not be considered in that category.
- Increase awareness among the immigrant population of available services at Family Justice Centers.

C. Health Care

- Encourage *pro bono* partnerships where private firms with significant resources can help negotiate medical care debt collection cases, and help people assert their rights to medical care options.

D. Personnel Training

- For training, work with legal services and ADR organizations experienced in working with legal services populations. The Center for Mediation in Law might be one such organization. Jack Himmelstein of the Center co-taught a mediation training with Dan Weitz of OCA in the Fall of 2010; the training was attentive to the unique challenges of structuring a meaningful ADR process for legal services clients.
- Mediations should be conducted by individuals with expertise in mediation or collaborative law and knowledge of the substantive legal area. The latter knowledge is important in enabling the mediator to properly spot where parties are making decisions without an understanding of the law (*e.g.*, in a divorce

case, where parties misunderstand the separate or marital nature of a significant asset) and need legal consultation. Ideally, there would be a volunteer roster of consulting attorneys for parties in mediation to consult with during the mediation process. A pre-mediation class (or two) outlining substantive rights, obligations and available relief might also go a long way to informing parties.

- The courts should have a roster of mediators that have been through proper training.
- Mediation would be useful for Family Court only if everyone involved were conversant with domestic violence ("DV") issues. Not every case where DV is alleged should be excluded, but the court also can't rely on the litigant to identify when s/he feels comfortable. Someone skilled would have to look at the whole picture and make the call.
- Personnel should be evaluated on a regular basis.
- There should be follow up on whether new litigation has ensued after the mediator has met with parties.

E. Printed Materials

- OCA should work with legal services organizations serving low-income parties to design an informational class or pamphlet (interpreted or translated appropriately) that explains the different processes available and confirms that parties are free to choose the process that suits them.
- A mandatory questionnaire that is given to parties before and after engaging in ADR or litigation to measure their understanding of whether, and to what degree, the process is voluntary.
- Part of an evaluative questionnaire that should be administered to parties should include questions about the degree to which they felt treated differently by the judge for their failure to resolve their case in ADR.

F. Procedures / Exceptions

- There should be effective screens implemented to identify cases where DV, substance abuse or mental health or capacity issues are present. These screens should not automatically exclude anyone from ADR processes. Rather, individuals who wish to resolve their conflict in mediation or collaborative law–after understanding the potential risks and benefits vis-à-vis litigation–should be creatively supported in doing so, where possible.
- Establish a monitoring and evaluation process that ensures parties' understanding of ADR and of its voluntary nature, but also measures their experience of the process more broadly and the outcome and its impact on their family.
- Monitor and evaluate parties' understanding of and experience in litigation. Some suggested metrics to measure parties' understanding of and experience in either ADR or litigation are: Did they feel able to express their concerns openly and fully? Did they feel that the judge, hearing officer, or ADR professional was truly neutral? Did they feel that the judge, hearing officer, or ADR professional treated them with respect? Did they feel that they understood the law relevant to their case? When they didn't understand something in the process, were they able to ask for clarification (from the ADR professional, judge or their attorney)? Did they feel able to end the process when they wanted to, without resolution (ADR only)? How did they feel about the speed of the process? Slow, fast, neither. Are they satisfied with the outcome of the process? What kind of impact did the process have on their lives? Their children's lives? Their relationship with the other party? Their children's relationship with the other party (positive, negative, neutral)?
- DV survivors should not use ADR.
- ADR procedures are not helpful for public benefits clients, who need access to the courts to review the agency proceedings—often informal—which have already taken place.
- Mediation education should be mandatory for all litigants, perhaps as a half-hour video.

15. OTHER AREAS OF CONCERN

- Courts should have a more considerate security force that treats people with more respect. Often court security is overzealous and intimidating.
- Orders of protection issued under Article 10 of the Family Court Act are not included in the registry and this practice prevents enforcement by law enforcement, often on behalf of children. All orders of protection should be in the registry.
- Authorize courts to seal court records in a criminal action or proceeding when charges are dismissed upon motion by the prosecutor. Currently, although courts may seal the records of a criminal action which has terminated in favor of the defendant, current law does not expressly so authorize where the prosecutor voluntarily dismisses a case.
- Explicitly authorize of the vacatur of a guilty plea for a defendant who successfully completes a drug treatment or mental health treatment court program. Currently, courts are not explicitly authorized to do so.

APPENDIX B

Judges Survey Results

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Among those judges and clerks that responded substantively, there was an overwhelming and passionate emphasis on many of the same topics addressed in the responses to the court simplification survey, including a call for expanded or flexible court hours, and the improvement of forms and instructions. A third of the judges surveyed expressed passionate support for ADR initiatives, indicating that mediation, arbitration, and other ADR should be given more funding, weight, and enforceability.

This list of suggestions is not an endorsement of any particular suggestion.

A. Court Hours

- Give judges discretion to keep their courts open for longer hours on the weekdays and over weekends, and implement a mechanism to account for the time they spend doing so to ensure proper use of time.
- Create an interactive online calendar for scheduling hearing times that automatically updates to reflect open times.
- Designate at least one evening a month in which court hours are extended to expedite quick open and shut issues.

B. Forms

- Create a statewide access point for self-represented litigants to get information regarding filing requirements and basic how-to guides, readily available online with an intuitive search capability.
- Provide or revise "how-to" guides, instructions, and examples to help *pro se* litigants fill out forms.
- Provide simple example forms for guardianships and supplemental needs trusts annual accountings.
- Provide an "approved set of instructions" to give civil defendants with the services of papers or at first appearance.
- Provide instructions for settling estates.
- Make the Guide to Small Claims booklet more easily accessible to those without legal experience.
- Provide instructions on tenant's rights and landlord's rights.
- Provide instructions on defending an eviction.
- Provide instructions on summons, warrants, and form letters.
- Create a summary proceeding pamphlet.
- Provide a flow chart for various court protocols.
- Provide a glossary of useful terms.
- Simplify complicated forms, particularly in guardianship proceedings where the guardians are often family members or laypeople, and eviction cases. Examples of forms in need of simplification include the OCFS 3909 Guardianship form, forms for Annual Accountings and Inventory, custody and visitation forms, and UCCJEA forms.
- Revise or create template forms to be more accessible to laypeople, especially in courts where many parties are laypeople, *e.g.*, Family Court and Housing Court. One suggestion called for converting Family Court forms to questionnaires with appropriate summary affirmations or decrees.
- All family court case types should have do-it-yourself forms.
- Simplify uncontested divorce packets. Consider consolidating divorce forms into one single questionnaire.
- One clerk in Warren County wrote that (s)he has created a blank form to provide to *pro se* litigants in various situations.
- Create generic forms for certain common processes in guardianships, affidavits, etc.
- All forms of all Justice Court systems should be available on a Resource Center website in a "fill-in" format PDFs with instructions.
- In Surrogate Court, offer the following forms online: Petition to Compel Production of Will; Petition to Dispense with Bond or Accounting; Petition for Appointment of Successor Trustee; and Petition to Remove or Suspend Executor, Administrator, or Trustee.

C. Arbitration

- Bring in volunteer arbitrators for the day.

D. Other

- Categorize cases in Family Court as "standard", "complex" or "expedited" to expedite the process of one family's involvement with the court system.
- Use third-year law students in small claims court for claims under a certain amount to reduce the number of *pro se* litigants and allow third-years to have direct court experience. This could incorporate a supervising lawyer.
- Provide better publicity. Court programs already implement some of these suggestions, but not all judges know these resources exist, and laypeople certainly do not.
- Make more CLEs available in Ontario County to train attorneys on the required procedures in Surrogate's Court.
- Provide every civil court with a kiosk printer that can prepare and print simple forms, and electronically transmit them to the clerk.
- Allow tenants to bring rent abatement cases to court. At present, the only practical way for a tenant (whose landlord won't make repairs) to get an rent abatement is to withhold rent and then wait until the landlord decides it is time to sue for the rent. This puts the timetable in the landlord's control. Currently, a tenant not getting heat in February would have to withhold rent and then wait until the landlord sues in the following May to raise the defense that the rent should be abated.
- Encourage the use of summary proceedings and allow clerks to aid plaintiffs in these cases so an attorney is not needed.

APPENDIX C

Unified Court System Legislative Proposals

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This appendix summarizes the new and modified legislative proposals, not yet enacted into law, as proposed by the Advisory Committees established by the Chief Administrative Judge of the Courts on Local Courts, Civil Practice, Criminal Law and Procedure, Family Court and Surrogate's Court (the "Advisory Committees") in the past three years.[17]

[17] Legislation proposed in 2009 or 2010 and later re-proposed in modified form is indicated below with an asterisk. The proposal titles given here differ from those that appear in the Advisory Committee reports. These reports can be found at *Judiciary's Legislative Program*, NEW YORK STATE UNIFIED COURT SYSTEM, http://www.nycourts.gov/ip/judiciarys legislative/index.shtml (last visited Oct. 3, 2011). All new proposals endorsed by the Surrogate's Court Advisory Committee have been enacted into law.

UNIFIED COURT SYSTEM LEGISLATIVE PROPOSALS FOR 2011

Advisory Committee on Local Courts:

1. **Error! Reference source not found.** Authorizing the appointment of a Town or Village Court justice to serve as an acting judge of the District Court.

2. Error! Reference source not found. Authorizing the law enforcement officer issuing a simplified information to issue the supporting deposition simultaneously with the ticket and place on the supporting deposition to be filed in court an attestation concerning the service of the supporting deposition.

3. Error! Reference source not found. Authorizing the New York City Civil Court to dismiss a case after the case is struck from the Court's calendar due to plaintiff's default on a calendar call.

Advisory Committee on Civil Practice:

4. Error! Reference source not found. Clarifying that plaintiff's negligence should be considered in calculations of comparative negligence; giving plaintiff the right to demand a bill of particulars concerning an Article 16 defense, specifying which persons were alleged to have negligently caused the plaintiff's injury and in what respect those persons did so.

5. Error! Reference source not found. Limiting intervention by health insurers into personal injury, wrongful death, and medical malpractice actions; affirming the right of the parties to settle absent consent of such an insurer.

6. Error! Reference source not found. Permitting service of a levy, restraining notice, or attachment order on any branch of a financial institution to be effective as to any account as to which the institution is a garnishee.

7. Error! Reference source not found. Allowing an award of attorneys' fees to persons whose actions benefit the class.

8. Error! Reference source not found. Requiring that parties affirmatively opt to be served by fax.

9. Error! Reference source not found. Allowing Supreme Courts to require redaction of confidential personal identifying information in papers filed in civil proceedings.

Advisory Committee on Criminal Law and Procedure:

10. Error! Reference source not found. Clarifying that notification of a school official that a student at the school has been convicted of a crime under the "Safe Schools Against Violence in Education Act" is required only where the student is sentenced to a period of incarceration that will interfere with the student's school attendance.

11. Error! Reference source not found. Authorizing a court to review an order of recognizance issued pursuant to section 180.80 of the CPL when the defendant subsequently fails to appear in court as required.

12. Error! Reference source not found. Providing that a final order of protection issued in connection with a youthful offender adjudication is not sealed for law enforcement purposes.

13. Error! Reference source not found. Codifying the agency defense to the crime of selling or possession with intent to sell a controlled substance; allowing consideration of criminal possession charges if defendant raises the defense and there is a reasonable view of the supporting evidence.

Advisory Committee on Family Court:

14. Error! Reference source not found. Requiring that lead diversion agencies consult school districts or local educational agencies, and document diversion efforts and services provided, as a prerequisite to filing a supervision petition.

15. Error! Reference source not found. Clarifying that personal service is required for family court proceedings; allowing temporary orders of protection to cover adjournments; expanding family court jurisdiction to strangulation and criminal obstruction of breathing and blood circulation.

16. Error! Reference source not found. Replacing the term "support obligor" with the term "respondent" with respect to obligations to seek employment, because a parent liable for child support is not always the respondent.

17. Error! Reference source not found. Establishing jurisdiction of a court issuing a child support order over motions to recoup overpayments.

18. Error! Reference source not found. Requiring in cases of parallel administrative hearings and family court matters that the administrative fair hearing process await the resolution of the Family Court matter.

19. Error! Reference source not found. Proposing that stipulations and agreements for child support that do not meet the standards set in the Child Support Standards Act be automatically null and void.

20. Error! Reference source not found. Authorizing courts in a matrimonial, child support or paternity case to order non-custodial parents to establish a security account for the benefit of the child, as in the case of a one-time windfall.

UNIFIED COURT SYSTEM LEGISLATIVE PROPOSALS FOR 2010

Advisory Committee on Local Courts:

21. Error! Reference source not found. Authorizing courts to seal court records in a criminal proceeding where charges are dismissed upon motion by the prosecutor. Current law expressly authorizes courts to seal the records of a criminal action terminating in favor of the defendant, but not where the prosecutor voluntarily dismisses a case.

22. Error! Reference source not found. Authorizing submission of sworn statements from medical experts in lieu of trial testimony on the issue of the necessity of medical treatment in motor vehicle no-fault insurance cases. The vast majority of

no-fault insurance claims involving this issue are for $5,000 or less.

23.Error! Reference source not found. Requiring that plaintiffs in actions arising out of a consumer credit transaction plead the last four digits of the number of the credit card used to incur the debt at issue so that the debtor can verify the obligation and have proof of payment when the debt is satisfied.

24.Error! Reference source not found. Authorizing city courts to set bail when a defendant is charged with a felony, such that arraignment in the city court will be dispositive on the issue of bail on the charge, eliminating the need to apply for bail in a county court.

25.Error! Reference source not found. Authorizing the city courts to remit bail forfeitures. Currently, city court defendants must obtain an order from the Supreme Court directing remission of bail.

26.Error! Reference source not found. Authorizing use of electronic signatures in criminal proceedings by defining an electronic signature to comport with due process in criminal cases, and provide the same force as to the signer's intent as a hand signature.

27.Error! Reference source not found. Authorizing bench trials, rather than jury trials, in local criminal courts where the term of imprisonment for an offense is less than six months.

28.Error! Reference source not found. Authorizing a judicial hearing officer to hear and report on a motion to vacate a judgment or set aside a sentence in a criminal proceeding.

29.Error! Reference source not found. Authorizing a term of probation of three to five years for the offense of endangering the welfare of a child.

30.Error! Reference source not found. Authorizing the fingerprinting of a defendant charged with aggravated unlicensed operation of a motor vehicle in the second degree.

31.Error! Reference source not found. Authorizing the fingerprinting of a defendant charged with aggravated unlicensed operation of a motor vehicle in the third degree.

32.Error! Reference source not found. Authorizing the fingerprinting of a defendant charged with driving while ability impaired.

Advisory Committee on Civil Practice:

33.Error! Reference source not found. Allowing papers served by mail to be mailed from outside the state of New York.

34.Error! Reference source not found. Allowing service of process in matrimonial matters by publication in non-English newspapers, where such service is most likely to give notice to the person to be served.

35.Error! Reference source not found. Eliminating the requirement of prior notice to a defendant in a medical malpractice action.

36.Error! Reference source not found. Extending the judgment lien on real property from ten to twenty years to match the term of enforceability of a judgment.

37.Error! Reference source not found. Giving plaintiff the right to demand a bill of particulars concerning an Article 16 defense, specifying which persons were alleged to have negligently caused the plaintiff's injury and in what respect and in what respect those persons did so; expanding the categories of information required in any bill of particulars, to prevent unfair surprise and serve judicial economy.

38.Error! Reference source not found. Clarifying that motions to replead are not barred by granting of a motion to dismiss for failure to state a cause of action unless otherwise ordered; setting time limit for motions to dismiss for failure to state a cause of action; allowing extension of summary judgment period for cause.

Advisory Committee on Criminal Law and Procedure:

39.Error! Reference source not found. Codifying the writ of *coram nobis* in the Criminal Procedure Law, to subject all *coram nobis* filings (collaterally attacking a conviction) to statutory procedural rules.

40.Error! Reference source not found. Providing discretion for the court and parole board to modify conditions of probation or parole for sex offenders to avoid absurd or unjust punishments.

41.Error! Reference source not found. Authorizing a court to commit a misdemeanor defendant to the custody of the sheriff to determine whether the defendant is an "incapacitated person."

42.Error! Reference source not found. Allowing jury trial on all charges for a defendant in a consolidated proceeding of multiple charges, only one of which requires a jury trial.

43.Error! Reference source not found. Allowing a judicial hearing officer to issue and vacate bench warrants, preside over sentences on negotiated pleas, and adjudicate violations of a sentence of conditional discharge, thus relieving pressure on judges.

44.Error! Reference source not found. Correcting an apparent error in the definition of "sexually violent offender" as it pertains to out-of-state offenders residing in New York.

Advisory Committee on Family Court:

45.Error! Reference source not found. Requiring that all conditions accompanying a surrender of a child in or out of foster care must be approved by the Family or Surrogate's Court as being in the child's best interests.

46.Error! Reference source not found. Clarifying that adjournment in contemplation of dismissal may be ordered either before entry of a fact-finding order or after fact-finding but before the entry of a final disposition, and that it may be extended by up to a year; requiring that orders suspending judgment delineate the duration, terms and conditions or the order, and warn in conspicuous print that failure to comply may lead to revocation.

47.Error! Reference source not found. Authorizing local probation departments to access statewide protection order registry; authorizing courts to request the assistance of probation departments.

48.Error! Reference source not found. Limiting duration of probation sanctions in child support cases; establishing violation procedures; allowing combined sentences of probation or rehabilitation with incarceration.

UNIFIED COURT SYSTEM LEGISLATIVE PROPOSALS FOR 2009

Advisory Committee on Local Courts:

49.Error! Reference source not found. Authorizing courts to reduce the supplemental sex offender victim fee to a civil judgment in order to facilitate collection.

50.Error! Reference source not found. Allowing arrest warrants to be issued upon a simplified traffic information that charges a misdemeanor. A "simplified traffic information" is currently insufficient basis for an arrest warrant.

51.Error! Reference source not found. Establishing a procedure under which records are automatically sealed after 36 months from the date of sentence or after an application from the defendant, unless opposed by the District Attorney. Currently, official court records and papers are not sealed.

52.Error! Reference source not found. Requiring defendants charged by a simplified traffic information to request a supporting deposition from the Court, rather than being entitled to service.

53.Error! Reference source not found. Explicitly authorizing vacatur of a guilty plea for a defendant who successfully completes a drug treatment or mental health treatment court program.

54.Error! Reference source not found. Authorizing the Court to suspend the driver's license of a person under 21 years old who is charged with unlawful possession

of an alcoholic beverage, in order to compel his or her appearance in court. Current law expressly prohibits arrest, preventing compulsion of the defendant to appear.

55.Error! Reference source not found. Authorizing the Court to suspend the driver's license of a person charged with possession of marijuana in order to compel his or her appearance in court. Current law expressly prohibits arrest, preventing compulsion of the defendant to appear.

Advisory Committee on Civil Practice:

56.**Error! Reference source not found.** Establishing a single, definite time within which to take appeals to the Court of Appeals; the time runs from the later of service of the order, or service of the amended judgment, of the Appellate Division.

57.Error! Reference source not found. Adopting the Uniform Mediation Act of 2001 (as amended in 2003), to address confidentiality, privilege, and other issues in mediation proceedings.

58.Error! Reference source not found. Establishing that commencement of the four-month commencement period for actions against bodies or officers is to commence upon delivery to a petitioner of written notice stating that the petitioner is entitled to seek review within that period.

59.Error! Reference source not found. Authorizing courts to allow further disclosure of experts expected to testify at trial in commercial cases involving over $250,000.

60.Error! Reference source not found. Setting specific deadlines for expert disclosures and expert responses.

Advisory Committee on Criminal Law and Procedure:

61.Error! Reference source not found. Establishing county jurisdiction based on a "logical nexus" between criminal conduct and a county, to close a legislative gap whereby, in some cases, the state has jurisdiction but no county does.

62.Error! Reference source not found. Allowing a prosecutor to file a special information when a court decides to submit a lesser included traffic infraction. To sentence a defendant to misdemeanor penalties for a third traffic infraction, the prosecutor must charge the previous infractions, but these may not be relevant until the court submits the lesser included infraction.

63.Error! Reference source not found. Authorizing courts to dismiss a traffic infraction charge that remains after more serious charges made at the same time are dismissed for lack of timeliness.

64.Error! Reference source not found. Authorizing courts to grant a 30-day "hardship privilege" to defendants charged with traffic violations involving an blood-alcohol level of .08 or higher (who have their licenses automatically suspended absent "extreme hardship"), who need to operate a vehicle as part of their employment.

65.Error! Reference source not found. Expressly clarifying that the Sex Offender Registration Act prohibits law enforcement agencies from releasing certain information about level one sex offenders to the general public over the internet. Currently, some law enforcement agencies interpret the statutory "entity with vulnerable populations" to include the general public, thus authorizing them to post sex offender information on the internet.

66.Error! Reference source not found. Authorizing courts to unseal records where justice so requires, on notice to the adverse party and the subject of the records.

67.Error! Reference source not found. Allowing merging of sentences for defendants who are sentenced to more than one indeterminate or determinate sentence, at least one of which is a Class A drug felony.

Advisory Committee on Family Court:

68.**Error! Reference source not found.** Establishing permanency procedures as part of a juvenile delinquency proceeding or person in need of supervision proceeding, including: orders for provision of mental health and other services and assistance;

supervision by the probation department; visitation and service plans for juveniles placed with the office of children and family services or commissioner of social services; cooperation of placement agencies with school district; and submission of permanency reports and post-release plans.

69. **Error! Reference source not found.** Authorizing the Family Court to issue orders of protection in conjunction with an order committing guardianship and custody of a permanently neglected child when parental rights are terminated or a disposition order at a permanency hearing, extending protection to persons with whom a child has been placed.

70. Error! Reference source not found. Expanding the circumstances under which a non-marital father is to receive notice of a child's adoption proceedings, and when such father's consent is required for adoption of a child.

71. **Error! Reference source not found.** Establishing procedures under Article 10 of the FCA relating to care and custody of destitute children.

72. Error! Reference source not found. Authorizing courts to order diversion services at any time during the pendency of persons in need of supervision proceedings; allowing orders of protection for a petitioner against a child and warrants for children who have absconded.

73. Error! Reference source not found. Clarifying procedures and requirements for establishing violation of an adjournment in contemplation of dismissal, order of probation, or order of suspended judgment; providing for tolling of an adjournment in contemplation of dismissal during violation proceedings and tolling of placement with Department of Social Services when a child is absent without leave; establishing an allocution procedure for accepting admissions in persons in need of supervision cases.

74. Error! Reference source not found. Incorporating existing conditions for orders of protection into orders issued in matrimonial proceedings; clarifying that Article 8 violation procedures and remedies apply to all Family Court and matrimonial proceedings; authorizing probation for violation of an order.

75. Error! Reference source not found. In a foster care or child protective proceeding, requiring an agency with which a child has been placed to report any change in the child's placement status 10 days in advance of the change (or within one business day after an emergency change), as well as any reports of child abuse or maltreatment, to the parties' and children's attorneys.

APPENDIX D

Divorce Packet: List of Required Forms and Forms Referenced in Report

List of Required Forms:

Forms necessary to obtain an uncontested divorce in New York State:

Notice of Automatic Orders
Notice Concerning Continuation of Health Care Coverage
Summons with Notice (Form UD-1) OR Summons (to be served with Verified Complaint) (Form UD-1a)
Verified Complaint (Form UD-2)
Affidavit of Service (Form UD-3)
Sworn Statement of Removal of Barriers to Remarriage (Form UD-4) and Affidavit of Service (Form UD-4a)
Affirmation (Affidavit) of Regularity (Form UD-5)
Affidavit of Plaintiff (Form UD-6)
Affidavit of Defendant (Form UD-7)
Child Support Worksheet (Form UD-8)
Support Collection Unit Information Sheet (Form UD-8a)
Qualified Medical Child Support Order ("QMCSO") (Form UD-8b)
Note of Issue - No Children Under 21 Subject of the Matrimonial Action (Form UD-9) OR Note of Issue - Children Under 21 Subject of the Matrimonial Action (Form UD-9a)
Findings of Fact/Conclusions of Law (Form UD-10)
Judgment of Divorce (Form UD-11)
Part 130 Certification (Form UD-12)
Request for Judicial Intervention ("RJI") (Form UD-13) - Outside of New York City
Notice of Entry (Form UD-14)
Certificate of Dissolution of Marriage
Self-Addressed and Stamped Postcard
UCS-111 (UCS Divorce and Child Support Summary Form)
New York State Case Registry Filing Form

6. AFFIDAVIT OF PLAINTIFF (Form UD-6):

Field 1:	Insert the county in which you are bringing the action.
Field 2:	Print the Plaintiff's name.
Field 3:	Insert the index number for the action.
Field 4:	Print the Defendant's name.
Field 5:	Insert the state and county where Plaintiff signed this document.
Field 6:	Insert the Plaintiff's name.
Field 7:	Print where the Plaintiff resides, the Defendant resides and their social security numbers.
Field 8:	Address the residency requirements as explained on page two of this instruction booklet by checking the appropriate box or boxes.
Field 9:	Insert the date the parties were married and the city, town or village; the county; and the state where they were married. Strike the italicized word "not" in the following sentence if the parties were married by a clergyman, minister or by a leader of the Society for Ethical Culture.
Field 10:	If the word "not" is deleted, you must check one of the three options.

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[Do not complete Fields 11-13 if there are no children of the marriage (see page 7)]

Field 11: List the number and name (if any) of the children of the marriage, their social security number, their date of birth and the present address of each child as well as any other addresses they may have had for the previous five (5) year time period. You must also list the name and present address of the person that each child has lived with for the past five (5) years.

Field 12: Check the boxes as appropriate. If you check "yes", you must attach a statement explaining the circumstances, and if a Family Court order was issued, you must provide the court with a copy.

Field 13: Fill in the required information about Plaintiff's and Defendant's insurance coverage. Make sure to include the type of coverage, such as medical, dental or optical coverage. If either party has more than one insurance plan, you must list the additional coverage. Check the not applicable box if child support is not an issue or if there is no health insurance available to either party for the benefit of the child(ren) of the marriage.

Field 14: List any additional relief that you are requesting. Examples include but are not limited to maintenance, counsel and/or experts fees, custody, visitation, child support and exclusive occupancy of the marital home. Refer back to the Summons with Notice and Verified Complaint forms. In addition, check the appropriate box addressing how you want the marital property to be distributed. You should also list any existing Family Court orders (with the docket number) that you want to be continued or any stipulations or agreements that you have made in writing with the Defendant that you wish to become a part of the judgment, and attach copies.

Field 15: List the grounds for divorce, filling in any relevant facts to prove the grounds alleged. Refer to Grounds for Divorce on pages 2 through 5 of these instructions. See the bottom of the Summons With Notice (Form UD-1), which lists the different grounds for divorce, or if you filed a Summons and Verified Complaint, refer to paragraph 12 of the Complaint.

Field 16: Check the appropriate box as to the Defendant's status in the military. Strike the language that does not apply within the section that you choose.

Field 17: Strike the word "not" where appropriate.

Field 18: This section remains unchanged if there are no other matrimonial actions pending and you are still married. If there are other matrimonial actions pending, then you should seek legal assistance as noted in the Foreword.

Field 19: Leave this section unchanged if you have supplied a photograph of the Defendant to the process server. Strike or delete it if you have not.

Field 20: Check the appropriate box or boxes. If you are not the custodial parent, check Section 11A. If you are the custodial parent, check Section 11B and one of the following four statements [boxes (1),(2),(3), or (4)]. One of the four statements must be selected. If (1),(2) or (3) is selected in this Affidavit or in the Affidavit of Defendant, then you must check "Applicable" on the opening sentence (Field 8) of Form UD-11 (Judgment of Divorce).

Page 20

Field 21: Insert the Plaintiff's and/or the Defendant's surname before the marriage if different from the current surname.

Complete the rest of this section (D.R.L. §240 1 (a-1)(1) Records Checking Requirements) only if there are minor children of the marriage (see the definition on page 7). Check the appropriate boxes and list any required information.

Field 22: The Plaintiff must sign the form before a notary public.

Form UD-6

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____
----------X

Plaintiff,

Index No.:_____

-against-

AFFIDAVIT OF PLAINTIFF

Defendant.
----------X

STATE OF _____ }
ss:
COUNTY OF _____ }

_____ being duly sworn, says:

1. The Plaintiff's address is _____, and social security number is _____. The Defendant's address is _____ _____, and social security number is _____.

2. **A)** ❑ The ❑ *Plaintiff* ❑ *Defendant* has resided in New York State for a continuous period of at least two years immediately preceding the commencement of this divorce action.

OR

B) ❑ The ❑ *Plaintiff* ❑ *Defendant* resided in New York State on the date of commencement of this divorce action and for a continuous period of one year immediately preceding the commencement of this divorce action:

AND:

a. ❑ the parties were married in New York State.

or

b. ❑ the parties have resided as husband and wife in New York State.

OR

C) ❑ The cause of action occurred in New York State and ❑ *Plaintiff* ❑ *Defendant* resided in New York State for a continuous period of at least one year immediately preceding the commencement of this divorce action.

OR

D) ❑ The cause of action occurred in New York State and both parties were residents at the time of commencement of this divorce action.

(Form UD-6 - Rev. 10/10)

9 3. I married the Defendant on _____, in the City, Town or Village of _____, County of _____, State or Country of _____. The marriage was *not* performed by a clergyman, minister or by a leader of the Society for Ethical Culture.

10 (If the word "not" is deleted, check one of the following below:)

❑ *To the best of my knowledge I have taken all steps solely within my power to remove any barrier to the Defendant's remarriage.* **OR**

❑ *I will take prior to the entry of final judgment all steps solely within my power to the best of my knowledge to remove any barrier to the Defendant's remarriage.* **OR**

❑ *The Defendant has waived in writing the requirements of DRL §253 (Barriers to Remarriage).*

11 4. There is (are) _____ child(ren) of the marriage under the age of 21 (see definition on page 7 of the Instructions)

Name & Social Security Number	*Date of Birth*
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The present address of each minor child of the marriage under the age of 18 (see definition on page 7 of the Instructions) *and all other places where each child has lived within the last five (5) years is as follows:*

Child	*Present Address*
_____	_____
_____	_____
_____	_____
_____	_____

Child	*Other Address Within Last 5 years*
_____	_____
_____	_____
_____	_____
_____	_____

The name(s) and present address(es) of the person(s) with whom each minor child of the marriage under the age of 18 (see definition on page 7 of the Instructions) *has lived within the last five (5) years is:*

_____	_____
_____	_____
_____	_____
_____	_____

12 I have participated in other litigation concerning the custody of the minor child(ren) of the marriage (see definition on page 7 of the Instructions) in this or another state. Yes ❑ No ❑
I have information of a custody proceeding concerning the minor child(ren)*of the marriage* (see definition on page 7 of the Instructions) pending in a court of this or another state. Yes ❑ No ❑
I know of a person who is not a party to this proceeding who has physical custody of the minor child(ren) *of the marriage* (see definition on page 7 of the Instructions) or claims to have custody or visitation rights with respect to such child(ren). Yes ❑ No ❑

13 The parties are covered by the following group health plans:

Plaintiff	**Defendant**
Group Health Plan:_____	Group Health Plan:_____
Address:_____	Address:_____
Identification Number:_____	Identification Number:_____
Plan Administrator:_____	Plan Administrator:_____
Type of Coverage:_____	Type of Coverage:_____
OR	
❑ Not Applicable.	❑ No health plans are available to the parties through their employment

14 5. In addition to the dissolution of the marriage, I am seeking the following relief:

❑ _____
_____
_____

AND

❑ equitable distribution of marital property;

OR

❑ marital property to be distributed pursuant to the annexed separation agreement / stipulation;

OR

❑ I waive equitable distribution of marital property;

and any other relief the court deems fitting and proper.

15 6. The grounds for dissolution of the marriage are as follows:

Cruel and Inhuman Treatment (DRL §170(1)):

❑ At the following times Defendant committed the following act(s) which endangered the Plaintiff's physical or mental well being and rendered it unsafe or improper for Plaintiff to continue to reside with Defendant.

(State the facts that demonstrate cruel and inhuman conduct giving dates, places and specific acts. Conduct may include physical, verbal, sexual or emotional behavior.)

_____
_____
_____
_____
_____
_____
_____
_____

(Attach an additional sheet, if necessary).

(Form UD-6 - Rev. 10/10)

Abandonment (DRL 170(2):

❑ That commencing on or about _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant left the marital residence of the parties located at _____, and did not return. Such absence was without cause or justification, and was without Plaintiff's consent.

❑ That commencing on or about _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant refused to have sexual relations with the Plaintiff despite Plaintiff's repeated requests to resume such relations. Defendant does not suffer from any disability which would prevent *her / him* from engaging in such sexual relations with Plaintiff. The refusal to engage in sexual relations was without good cause or justification and occurred at the marital residence located at _____
.

❑ That commencing on or about the _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant willfully and without cause or justification abandoned the Plaintiff, who had been a faithful and dutiful *husband / wife*, by depriving Plaintiff of access to the marital residence located at _____. This deprivation of access was without the consent of the Plaintiff and continued for a period of greater than one year.

Confinement to Prison (DRL §170(3)):

❑ That after the marriage of Plaintiff and Defendant, Defendant was confined in prison for a period of three or more consecutive years, to wit: that Defendant is/was confined in
_____ prison on the
Name of correctional facility
_____day of _____,____, and remained confined until the
Month *Year*
_____day of_____,____; **OR** ❑ remains confined to this date.
Month *Year*

Adultery (DRL §170(4)):

❑ That on the___ day of_____,____, at _____
Month *Year* *Location*
the Defendant voluntarily committed of an act of sexual or deviate sexual intercourse with a person other than the Plaintiff after the marriage of Plaintiff and Defendant.

Living Separate and Apart Pursuant to a Separation Decree or Judgment of Separation (DRL §170(5)):

❑ (a) That the _____ Court, _____ County, _____ (Country or State) rendered a decree or judgment of separation on _____ under Index Number: _____; and
(b) that the parties have lived separate and apart for a period of one year or longer after the granting of such decree; and
(c) that the Plaintiff has substantially complied with all the terms and conditions of such decree or judgment.

Living Separate and Apart Pursuant to a Separation Agreement (DRL §170(6)):

❑ (a) That the Plaintiff and Defendant entered into a written agreement of separation, which they subscribed and acknowledged on _____, in the form required to entitle a deed to be recorded; and

(b) that the *agreement / memorandum of said agreement* was filed on _____in the Office of the Clerk of the County of _____, wherein *Plaintiff / Defendant* resided; and

(c) that the parties have lived separate and apart for a period of one year or longer after the execution of said agreement; and

(d) that the Plaintiff has substantially complied with all terms and conditions of such agreement.

Irretrievable Breakdown in Relationship for at Least Six Months (DRL §170(7)):

❑ That the relationship between Plaintiff and Defendant has broken down irretrievably for a period of at least six months.

16 7. ❑ The Defendant **is** in the military service and ❑ *has* ❑ *has not* waived ❑ *his* ❑ *her* rights under the New York State Soldiers' and Sailors' Civil Relief Act.

==========**OR**==========

❑ . Defendant is not in the active military service of this state, or any other state or this nation.

❑ I know this because: *he/she* admitted it to *me / the process server* on ___ _____.

❑ I have submitted with these papers an *investigator's affidavit / Defendant's affidavit* which states that Defendant is not in the active military service of this state, or any other state or this nation.

17 8. I am *not* receiving Public Assistance. To my knowledge the Defendant is *not* receiving Public Assistance.

18 9. No other matrimonial action is pending in this court or in any other court, and the marriage has not been terminated by any decree of any court of competent jurisdiction.

19 10. *Annexed to the "Affidavit of Service" of Summons and Complaint / Summons With Notice is a photograph. It is a fair and accurate representation of the Defendant.*

20 11A. ❑ I am not the custodial parent of the unemancipated child*(ren)* of the marriage (see definition on page 7 of the Instructions).

OR

11B. ❑ I am the custodial parent of the unemancipated child*(ren)* of the marriage (see definition on page 7 of the Instructions) entitled to receive child support pursuant to DRL §236(B)(7)(b),

AND

❑ (1) I request child support services through the Support Collection Unit which would authorize collection of the support obligation by the immediate issuance of an income execution for support enforcement.

OR

❑ (2) I am in receipt of such services through the Support Collection Unit.

OR

❑ (3) I have applied for such services through the Support Collection Unit.

OR

❑ (4) I am aware of but decline such services through the Support Collection Unit at this time. I am aware that an income deduction order may be issued pursuant to CPLR §5242(c) without other child support enforcement services and that payment of an administrative fee may be required.

If (1) or (4) is selected, the Support Collection Unit Information Sheet (Form UD-8a) should be completed and presented with your papers.

21 ❑ *Plaintiff's* **OR** ❑ *Defendant's* prior surname is: _____.

Pursuant to DRL § 240 1 (a-1)(1) Records Checking Requirements:

❑ I have been a party in an Order of Protection
List all Family/Criminal Court Docket #'s and Counties, _____
Supreme Court Index #'s and Counties _____
❑ I have never been a party in an Order of Protection

❑ I have been a party in a Child Abuse/Neglect Proceeding (FCA Art.10)
List all Family Court Docket #'s _____
and Counties _____
❑ I have never been a party in a Child Abuse/Neglect Proceeding (FCA Art.10)

❑ I am registered under New York State's Sex Offender Registration Act
List all names under which _____
you are registered _____
❑ I am not registered under New York State's Sex Offender Registration Act

WHEREFORE, I _____ (print name), respectfully request that judgment be entered for the relief sought and for such other relief as the court deems fitting and proper.

22 Subscribed and Sworn to
before me on

_____
Plaintiff's Signature

_____

_____
NOTARY PUBLIC

(Form UD-6 - Rev. 10/10)

UCS-111 (rev: 12/01,

CHILD SUPPORT SUMMARY FORM
SUPREME AND FAMILY COURT

COMPLETE FORM FOR EACH BASIC CHILD SUPPORT OBLIGATION ORDER[1]

A. Court: ☐ Supreme ☐ Family

B. County: _____

C. Index #/Docket #: _____

D. Date Action Commenced:

____/____/____

E. Date Judgment/Order Submitted or Signed:

____/____/____

F. # Of Children Subject to Child Support Order:

_____

G. Annual Gross Income:

1. Father: $ _____ Mother: $ _____

H. Amount of Child Support Payment:

1. By Father: $ _____ annually 2. By Mother: $ _____ annually

I. Additional Child Support:
(Circle as many as appropriate)

By Father:	By Mother:
1. Medical/Med. Ins.	1. Medical/Med. Ins.
2. Child Care	2. Child Care
3. Education	3. Education
4. Other	4. Other

J. Did the court make a finding that the child support award varied from the Child Support Standards Act amount? (Circle one)

1. Yes 2. No

K. If answer to "J" was yes, circle court's reason(s):

1. Financial resources of parents/child.
2. Physical/emotional health of child: special needs or aptitudes.
3. Child's expected standard of living had household remained intact.
4. Tax consequences.
5. Non-monetary contribution toward care and well-being of child.
6. Educational needs of either parent.
7. Substantial differences in gross income of parents.
8. Needs of other children of non-custodial parent.
9. Extraordinary visitation expenses of non-custodial parent.
10. Other (specify):

_____

_____

_____

L. Maintenance/Spousal Support: (Circle one)

1. None 2. By Father 3. By Mother

M. Value of Maintenance/Spousal Support:

$_____ annually

SUPREME COURT ONLY

N. Allocation of Property:

_____% To Father _____% To Mother

[1] Defined by FCA 413(2) and DRL §240(1-b)(b)(2): "Child Support" shall mean a sum to be paid pursuant to court order or decree by either or both parents or pursuant to a valid agreement between the parties for care, maintenance and education of any unemancipated child under the age of twenty-one years.

NEW YORK STATE UNIFIED COURT SYSTEM
SUPPORT SUMMARY FORM: FAMILY & SUPREME COURT

INSTRUCTION SHEET

Prepare one report for each proposed judgment or final order granted pursuant to Article 4 or 5 of the Family Court Act and DRL §240 and §236 B(9)(b) which includes a provision for child support (including modification of order).

SUBMIT COMPLETED FORM TO:

Office of Court Administration
Office of Court Research
25 Beaver Street, Room 975
New York, New York 10004

GENERAL INSTRUCTIONS: → ALL ITEMS MUST BE ANSWERED

- If a number or amount in dollars is required and the answer is none, write 0.
- If a certain item is not applicable, write NA.
- If the information is unknown or not known to the party filling out the form, write UK.
- "mm/dd/yy" means "month/day/year".

SPECIAL INSTRUCTIONS FOR PARTICULAR ITEMS:

G. Use gross income figures from the last complete calendar year. Do not include maintenance or child support as income.

H. If the child support award is calculated weekly, multiply it by 52 for the annual amount; if biweekly, multiply it by 26, if monthly, multiply it by 12.

M. If the maintenance award is calculated weekly, multiply it by 52 for the annual amount; if biweekly, multiply it by 26; if monthly, multiply it by 12. If the maintenance award calls for decreasing or increasing amounts (for example, a certain amount for five years and half that amount for another three years), then provide the average of the awards (total amount for all years divided by the number of years).

NOTE: THIS INFORMATION IS CONFIDENTIAL AND WILL BE USED FOR STATISTICAL PURPOSES ONLY. IT WILL NOT BE RETAINED IN THE CASE FILE.

APPENDIX E

New York State Unified Court System Website Screenshots

Figure 1 - Sidebar in Judicial District and County websites does not provide link to CourtHelp

Figure 2 - Forms available through the CourtHelp page

Figure 3 - Forms available through the Litigants page

Support [Family Court]	Petition for Modification of Support Order (DIY Form)
Support [Family Court]	Petition for Enforcement of Support Order

Please note: If you don't find the form you need above additional forms are available at: www.nycourts.gov/litigants/forms.shtml

UNCONTESTED DIVORCE FORMS [Supreme Court]

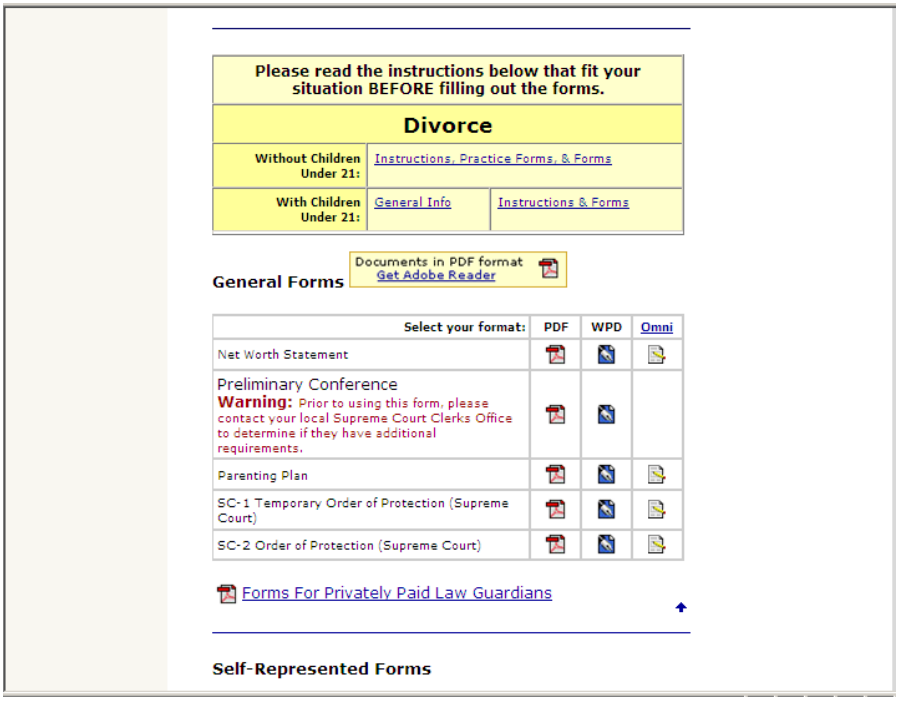
Uncontested Divorce Booklets

Please note: Other related forms and information can be found at: www.nycourts.gov/divorce/

CIVIL LAW FORMS

Kind of Case	Form Name
Name Change [NYC Civil Court]	Petition for Individual Adult Change of Name Petition for Individual Adult Change of Name (DIY Form)
	Petition for Individual Minor's Change of

Figure 4 – Only uncontested divorce forms available through the CourtHelp page



Please read the instructions below that fit your situation BEFORE filling out the forms.

Divorce

Without Children Under 21:	Instructions, Practice Forms, & Forms	
With Children Under 21:	General Info	Instructions & Forms

General Forms Documents in PDF format Get Adobe Reader

Select your format:	PDF	WPD	Omni
Net Worth Statement			
Preliminary Conference **Warning:** Prior to using this form, please contact your local Supreme Court Clerks Office to determine if they have additional requirements.			
Parenting Plan			
SC-1 Temporary Order of Protection (Supreme Court)			
SC-2 Order of Protection (Supreme Court)			

Forms For Privately Paid Law Guardians

Self-Represented Forms

Figure 5 - Sample of the divorce forms available through Resources link on the Litigants page

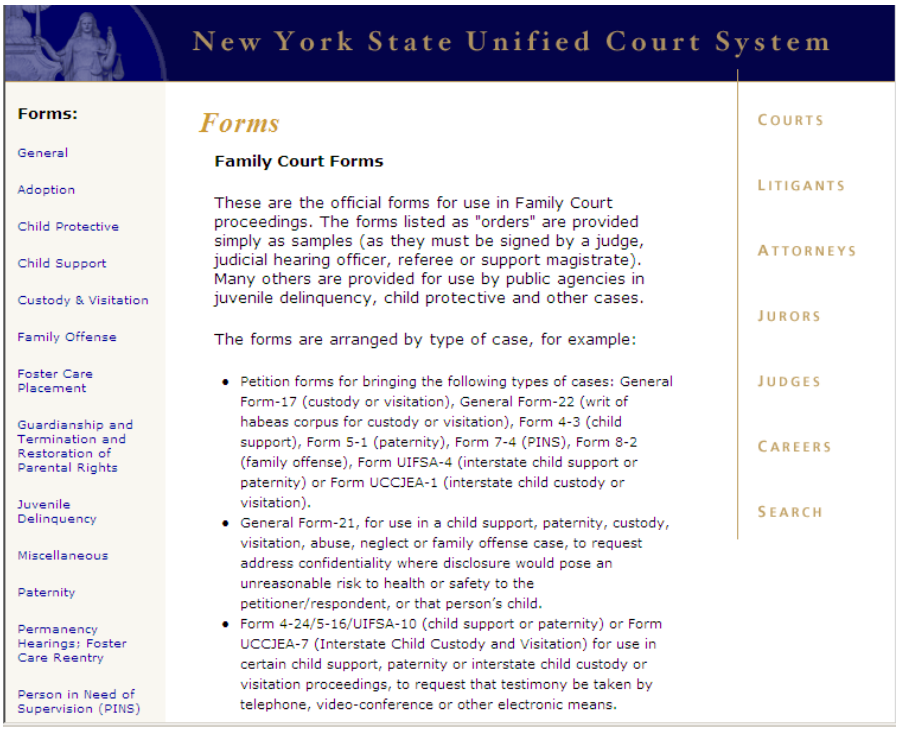


Figure 5 - Information and documents provided for Family Court forms on Litigants page

Figure 6 - Documents in Word Perfect provided for Criminal forms on Litigants page, with no explanations and labeled only with numbers.

APPENDIX 17:

Report of the Task Force's Working Group on Law School Involvement

NOVEMBER 2011

Contents

REPORT OF THE LAW SCHOOL WORKING GROUP TO
THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES[1]
OCTOBER 2011

The ethic of public service is an important part of the missions of the fifteen law schools in New York State. As the Dean of the University of Buffalo Law School, Makau Mutua, stated in testimony before New York Chief Judge Jonathan Lippmann on October 6, 2011:

> Law schools have a crucial role to play in educating socially conscious lawyers. My own belief is that the law sits at the intersection of power and powerlessness, not in a vacuum. That is why law schools have an obligation imbue in law students empathy, social consciousness, and values that emphasize concern for the most vulnerable members of society.

Law Schools do a lot to inspire and prepare their students to perform public service while they are in law school and after graduation, whether as fulltime public interest lawyers or pro bono practitioners. Faculty members and administrators also contribute significantly to closing the justice gap in New York through their scholarship, centers and pro bono service. This report focuses on the law schools' engagement of students in hands-on work to address real needs and on their provision of material support for social justice work. It is based on responses received from thirteen of the schools to a request for information that the committee sent to all of the schools in New York State. Recommendations for future work conclude the report.

LAW SCHOOL PROGRAMS THAT ADDRESS THE "ESSENTIALS OF LIFE"

Experiential Learning Programs

Experiential learning, the study of law and lawyering in context, is a key facet of legal education in the upper-years. Working with real clients who have real problems under professorial supervision and for academic credit allows law students to begin the process of becoming thoughtful, responsible, and reflective lawyers. Clinics and externships are different in some fundamental ways, but they both combine a deep study of doctrine with practical experience that serves graduates well. The justice mission is accomplished through a primary focus on representing indigent clients, non-profits, and underserved communities and issues. Clinics and externships throughout New York provide students with a wide array of choices in regard to issues, lawyering techniques, and practice settings.

The classifications "clinic" and "externship" vary from school-to-school so only a generalized

[1] The Law School Working Group consists of: Helaine M. Barnett, Chair of the Task Force to Expand Access to Legal Services, Task Force Members Matthew Diller and Alexander D. Forger, Task Force, Marcia Levy, Special Advisor to the Task Force and Ellen Chapnick, Harlene Katzman and David Udell.

definition is possible. In clinics students usually work under the supervision of a fulltime faculty member who is an expert in the field of practice and also teaches the seminar portion of the class. Pedagogically, clinics maintain a small caseload and student to faculty ratio in order to intensively teach students through multiple opportunities for supervision, reflection and feedback. Externships also provide opportunities for students to tackle the legal problems of real clients while gaining theoretical and practical knowledge of the underpinnings of their work but students work under the supervision of practicing lawyers, usually at a public interest organization, government agency or court. Working side-by-side with practitioners, students also learn what lawyers confront and achieve in real work places. Most schools combine multiple varied field placements with a seminar on legal practice. At a few schools, the seminar and field component are closely related to a single theme about a legal issue or workplace. The seminars may be taught by full-time fulltime faculty members or by adjunct faculty, often in connection with field placements at their workplaces.

Often working in collaboration with legal services providers and other public interest legal organizations, law school clinics and externship provide substantial legal assistance to poor New Yorkers regarding the "essentials of life," including housing, family stability, heath care, education and employment, benefits and consumer protection. The few pages of this report can provide only an overview that gives a sense of their creativity, breath and depth.

Housing

The nine housing-related clinics in the state address diverse legal issues through varied means. For example: The Housing Rights Clinic at Cardozo and Fordham Law School's Housing Clinic represent tenants who are facing eviction, in non-payment and holdover proceedings. Clinics at Albany and Touro focus on the more recent foreclosure crisis. The Affordable Housing Clinic at Buffalo works with local organizations to create desperately needed housing for elderly, disabled and homeless people. Working in collaboration with the New York City Civil Court, Columbia's Lawyering in the Digital Age Clinic has begun to develop an online, automated system for tenants' response to eviction proceedings for tenants who face eviction without the hope of obtaining a lawyer. Housing also arises in clinics that are not specifically housing focused. For example, students in the Medical-Legal Advocacy Clinic at NYU assist on a range of issues that impact on health, including housing. Several of the Community Economic development clinics work on the lack of affordable housing or housing conditions cases. For example, New York Law School's Justice Action Center's Economic Justice Project participates in advocacy, writes reports, provides training and technical assistance to community groups interested in using the Community Reinvestment Act and Home Mortgage Disclosure Act to promote economic development in their neighborhoods.

A majority of law schools have externships that specifically address housing issues or general field placement courses in which students work at not-for-profits or government agencies that focus on an aspect of housing for low-income New Yorkers. These include Buffalo students' work with the Buffalo Neighborhood Stabilization Company through its Community Group Legal Externships and CUNY' work with the New York State Courts' Access to Justice Program. In Brooklyn's Transactional and Community Development Externship, students work with

organizations that provide direct services to tenants. Many externships place students at legal services providers, which provide most of the housing legal support in the state. Other students work on land use and housing policy projects. Students in externships on other topics learn that their clients frequently need housing assistance. For example, students in Brooklyn's Health Law Externship who work at the New York Legal Assistance Group often work on housing.

Family Stability

Twelve law schools have clinics that work on a wide array family law matters. Several involve the representation of children such as Brooklyn's Children's Representation Clinic, which is done in conjunction with the Children's Law Center, in which students represent children in Brooklyn Family and Supreme Court. Columbia's Child Advocacy Clinic focuses on children in foster care, particularly those who are aging out of the system. Cornell's Child Advocacy Clinic combines representation of children in family court with a cross-disciplinary focus such as working with other professionals and using social science to assist clients. Advocating for disabled children is the mission of Fordham's Family Advocacy Clinic focuses on special education and other needs. At Hofstra, students advocate in New York City and Nassau Family Courts on behalf of children in cases where the allegations range from physical and sexual abuse to educational neglect, abandonment and inadequate supervision. NYU's Children's Rights Clinic places students at one of four not-for-profit organizations that provide civil legal services to children.

Other family law clinics include NYU's Family Defense Clinic, where students examine child welfare policy and practice with particular attention to preventing the unnecessary break-up of indigent families and assisting separated families to reunite by representing parents and relatives of children who are in or at risk of foster care placement. Cardozo's Divorce Mediation Clinic was a response to a call by the Office of Court Administration for help in expanding its mediation services to resolve the large backlog of cases. Columbia's Prisoner's and Families Clinic assists incarcerated parents navigate the family court and welfare systems and has worked with the Center for Appellate Litigation's Family Initiative on post-release workshops.

At least six New York law schools teach students and provide legal services on family matters through externships (some of which are called clinics but operate as externships). Students in Albany's Family Violence Litigation Clinic represent victims of domestic violence in Albany, Rensselaer, and Schenectady counties in cases that include family offenses, custody, child support, and child neglect proceedings related to domestic violence. Buffalo's Women, Children and Social Justice Clinic place students in governmental agencies, legal services providers, law enforcement agencies, social services agencies and community outreach programs throughout Western New York. The Attorneys for Children Externship at Cornell assists lawyers at the local Attorney for Children office in abuse and neglect cases, juvenile delinquency proceedings and Persons In Need of Supervision cases.

Access to health care and education

Several law school clinics have health care at their core, even if they are not the clinic's exclusive subject matter. The Health Law Clinic at Albany serves the legal needs of clients with HIV/AIDS or Cancer. Cardozo's Bet Tzedek Clinic represents dozens of elderly and disabled people seeking health, disability and housing benefits. Prisoners who are clients of the Consequences of Mass Incarceration Clinic at Columbia often have legal needs involving their medical care or disabilities. New York Law School's Elder Law Clinic teaches students about working with guardianship issues as well as Health Care Proxy drafting. Students in Pace's Disability Rights Clinic advise and represent disabled and elderly clients in a variety of transactional matters such as wills, living wills and health care proxies and on administrative proceedings and civil cases in federal and state court on matters such as denial of access to health care, Social Security Disability benefits, Medicaid and Medicare, special education needs and guardianships.

Externships also focus on health issues. At Cardozo, the Health Care Reform Field Clinic places students with high-profile health law offices to assist low-income New Yorkers as they navigate the health system by litigating Medicaid and Medicare benefits claims and appeals, providing senior assistance on drug plans, as well as researching and writing in support of impact litigation. Albany's field placement program includes placements at Disability Advocates, the NYS Temporary and Disability Assistance office and Mental Hygiene Legal Services.

Employment, Benefits and Consumer Protection

About ten schools have clinics that focus on the economic needs of poor and low-income New Yorkers such as wages, benefits, taxes and consumer debt. For example: Cardozo's Labor and Employment Clinic works with low-income workers on wage and hour claims, collective bargaining, unemployment insurance claims and other problems. Cornell students advise and may represent labor unions in its Labor Law Clinic. CUNY's Economic Justice Project helps about 100 CUNY students a year at contested welfare hearings that often concern regulations that imperil their ability to remain in school. NYU's Law, Organizing and Social Change Clinic works with Make the Road by Walking, including on cases of day laborers whose employers did not pay them. Albany, Cardozo and Touro have Low-Income Taxpayer Clinics. Fordham's clinic combines Tax and Consumer Law Litigation. In Brooklyn's Consumer Counseling and Bankruptcy Clinic, students work under the supervision of faculty members to assist low-income debtors who are considering bankruptcy or with practitioners on pro bono bankruptcy cases. They assist low-income workers with unemployment claims Brooklyn's Employment Law Clinic. Touro's Veterans' and Servicemembers Rights Clinic counsels about debt relief and reemployment rights, among other matters.

Other clinics work on community economic development projects and with small businesses to bring economic opportunities to low-income neighborhoods and individuals. Buffalo's Community Economic Development Clinic has a particular emphasis on child care policy and helping low-income families build assets. Columbia's Nonprofit Organizations and Small Business Clinic primarily represents community groups that work with low-income populations. CUNY's Community Economic Development Clinic works with about sixteen community

organizations on a wide range of issues and is discussing ways to help address the need for legal assistance in wage and hour cases. NYU's Community Development and Economic Justice Clinic partners with the Urban Justice Center to provide transactional and litigation services to grass-roots community groups and their members.

Among the few externships that address these economic issues are Cardozo's Consumer Debt Protection Field Clinic and Columbia's Community Development Law Externship.

Elder Law Clinics and Externships

Several schools have clinics that represent senior citizens on multiple "essentials of life" issues, among others, that are related to aging and incapacity. For example: CUNY's Elder Law Clinic works primarily in the areas of adult guardianships, estate and incapacity planning, and government benefits. New York Law School's Elder Law Clinic focuses on guardianships. Touro's William and Mary Foster Elder Law Clinic provides services through an agreement with Legal Services for the Elderly, Disabled or Disadvantaged of Western New York.

Pro Bono Student Projects That Address "The Essentials of Life"

In addition to classes for which they earn academic or clinical credit, students throughout New York State perform valuable legal assistance to low-income New Yorkers through pro bono service, which is voluntary at all schools and mandatory at a few. Many law schools have an administrative or program office that initiates, promotes and oversees law student pro bono. Although some pro bono service is done by individual student volunteers at legal services providers, much is done through group projects that train students together and coordinate their work. These frequently are joint ventures with public interest organizations and, on occasion, private law firms that are created by faculty or administrators at a law school (or several law schools working together) and, sometimes, student groups. Students often work in teams under the supervision of lawyers who are experts in their fields, including practitioners, faculty members and administrators. Student pro bono ranges from the global to the local and touches upon almost every conceivable legal topic. However, almost every school has significant projects the address the "essentials of life." Some of them are described here.

Housing

Through the New York City Civil Court's Housing Resolution Assistance Program, students at a number of New York law schools receive training to assist unrepresented tenants and owners/landlords, who are appearing in the Resolution Part of Housing Court as parties to nonpayment proceedings. Students in this program are assigned to one pro se litigant at each session to ensure that tenants or unrepresented landlords are aware of their rights, are not badgered by the other party, and do not sign stipulations in court that they do not fully understand.

At least seven schools have pro bono projects that address housing issues including evictions, housing conditions, foreclosure and the insufficiency of affordable housing. These projects usually are done at or in collaboration with legal services providers, bar associations and courts.

They include, but are not limited to: Brooklyn's NYCHA Tenant Eviction Prevention Project and its Homeless Appellants Project, Cardozo's Resolution Assistance Program in Housing Court, Columbia's Tenants Assistance Project, Fordham's Housing Advocacy Project and its Research Education and Advocacy to Combat Homelessness project, Pace's Mortgage Foreclosure and Predatory Lending Litigation Defense Project and Touro's Pro Bono Foreclosure Project, which is done in conjunction with the Suffolk County Bar Association.

Family Stability

Almost all schools have pro bono projects that provide assistance to children and families. The projects at ten New York City Schools are under the aegis of the Courtroom Advocates Program (CAP), which also has six legal services agencies in its consortium. CAP recruits, trains, supervises and mentors law students throughout New York City to fill the gap in advocacy, education and services in New York City's Family Courts. The most common projects involve domestic violence issues such as orders of protection, the Violence Against Women Act that protects immigrant women, child custody and support cases and uncontested divorces. Albany Law School students volunteer at the Albany County Family Court Help Desk to assist the Albany County Bar Association. In its Pro Se Divorce Clinic, Albany students are trained by the Legal Aid Society of Northwestern New York and then provide assistance to low-income individuals. Student volunteers in St. John's LIFT Project staff the family law information hotline operated by Legal Information for Families Today to provide legal information for vulnerable families struggling to make their way through the complex court system.

Health and Education

In the past few years, student pro bono projects about education have increased dramatically. Often founded and staffed by students who were classroom teachers through Teach for America and other programs, they address special education (e.g. Pace), school suspensions (e.g. at Brooklyn, NYU and Pace) and charter schools (Columbia). Fordham's student Health, Education Advocacy and Law Society creates and oversees pro bono projects.

Employment, Benefits and Consumer Protection

With chapters at Columbia, Cardozo, Hofstra, New York Law, Fordham, and NYU, the Unemployment Action Center is a nonprofit, student-run corporation that recruits and trains students to provide free representation on a volunteer basis to unemployment insurance claimants before administrative law judges and, when necessary, on appeal to the Unemployment Insurance Appeals Board. Albany provides unemployment claims assistance through its Economic Justice Project done in conjunction with the Legal Aid Society of Northeastern New York.

The Volunteers for Income Tax Assistance program is affiliated with the Internal Revenue Service and has been in existence for more than 30 years in many different schools in the United States, including Brooklyn, Cardozo, Hofstra and Touro. VITA offers free tax aid to people who cannot afford professional assistance. The VITA program provides students with the necessary training.

Other law student pro bono projects include Columbia's Low-income Tax Representation Project, consumer rights projects at Fordham and Pace, and NYU's Debtor's Rights Project.

LAW SCHOOL SUPPORT OF STUDENTS AND GRADUATES DOING PUBLIC INTEREST

Law schools commonly provide financial support to their students and graduates who do public interest work, often on behalf of poor New Yorkers. Although there is a wide range among the schools as to the number of students served and the amounts paid, these programs fall into similar categories. Summer funding allows first and second year students to work fulltime for 8-10 weeks at public interest and public service organizations that cannot afford to pay their interns. Student groups often raise money to supplement these stipends. Several schools provide scholarships to students who commit to doing social justice work after graduation. Some schools provide fellowships to their recent graduates to do social justice work. These often are funded by a specific law firm. Loan Repayment Assistance Programs assist graduates doing social justice work with the heavy debt burden of obtaining a law school education by becoming secondary lenders and then forgiving that debt in increments until full forgiveness is reached when the graduate has remained in public service for a specified period of time.

CUNY Law School's Community Legal Resource Network is a collaborative with more than 300 CUNY graduates in solo or small-group practice who serve the poor and disadvantaged in communities underserved by lawyers. They share information, mentor one another and provide other support. CUNY's Incubator for Justice, an expansion of CLRN, trains CLRN members in best business practices and in emerging and pressing subject areas such as immigration, labor and employment.

Pace plans to open its Center for Low Bono in fall 2012 to enable its recent graduates to represent low income people and community organizations. Analogous to a medical school residency, experienced attorneys will supervise participants in the program as they embark on their first experiences as attorneys representing clients. The Center will also provide participants with tools necessary to create, develop and sustain viable solo practices.

Touro Law School's William Randolph Hearst Public Advocacy Center houses twelve non-profit public interest legal advocacy organizations. The public advocacy wing of the law school fosters active engagement between the clinics and PAC tenants - creating a public interest community that has already expanded opportunities for students and services to the community. Affiliate members enjoy many of the benefits of the PAC but are not housed within the law school.

RECOMMENDATIONS

As this report shows, law schools are an important part of the matrix of organizations that provide social justice legal representation in New York State. They also are committed to exploring how they can best participate in the expansion of access to civil legal services.

We recommend that a Leadership Conversation on Law School Contribution to Filling the Justice Gap be convened in the first half of 2012 at which law schools and other important stakeholders, including legal services providers, the courts and law firms could engage in a frank exchange of views and work together on common plans for tangible results. Conferees should focus on the urgency of the need and think creatively about how law schools can use their resources appropriately to contribute to solutions alone or in collaborations.

We hope information in this report will inform law school faculty, administration and students about what their colleagues are doing and encourage them to think about which initiatives might serve as models for new programs at their own schools.

APPENDIX 18:

Report of the Task Force's Working Group on Cost-Sharing

NOVEMBER 2011

Contents

TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK
Helaine Barnett, Chair

COLLABORATIONS AND SHARED COSTS WORKING GROUP
PROPOSED HEARING TESTIMONY/WITNESSES
COORDINATED FINANCIAL SERVICES
NEW YORK COUNTY - 1st DEPT (Manhattan)(IOLA CLS Unit 1)

Sheila Gaddis, Working Group Chair
Barbara Finkelstein
Judge George Lowe
Christopher O'Malley
Michael Rothenberg

INITIATIVE SYNOPSIS:
Providers employ a certified public accountant (CPA) from a financial services company with an expertise in nonprofits to perform accounting and auditing services, data entry, payroll and other expense related matters. The financial expert attends board meetings and creates financial models.

GEOGRAPHIC REGION:
New York County

IDENTIFIED PROVIDERS/PARTICIPANTS:
New York Lawyers for the Public Interest
Make the Road New York
Advocates for Children

Non-legal services providers include:
New Yorkers for Change (formerly ACORN)
Center for Working Families
Squash Association

CURRENT AND PROJECTED COLLABORATIONS and PARTNERSHIPS
As identified above

PROGRAM OVERVIEW in brief:
See above synopsis

PROGRAM EFFICIENCIES:
Maximizes expertise of financial services professional thereby decreasing administrative staff and costs of provider—eliminates need to separately employ a director of finance, controller and bookkeeper

COST SAVINGS:
Estimated to be approximately $200,000-$300,000 annually in salaries and administrative costs.

TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK
Helaine Barnett, Chair

COLLABORATIONS AND SHARED COSTS WORKING GROUP
FORECLOSURE PROCEEDINGS/ MANDATED SETTLEMENT CONFERENCES
HUDSON VALLEY-(Orange County)-2d DEPT (IOLA CLS Unit 3)

Sheila Gaddis, Working Group Chair
Barbara Finkelstein
Judge George Lowe
Chris O'Malley
Michael Rothenberg

INITIATIVE SYNOPSIS:
Chief Judge established two pilot projects to provide legal representation for homeowners at court mandated settlement conferences intended to forestall rising home foreclosures due to the national economic downturn.

GEOGRAPHIC REGION:
Counties: Orange
The Orange County Foreclosure Project began on July 1, 2011.

IDENTIFIED PROVIDERS/PARTICIPANTS:
Legal Services of the Hudson Valley (LSHV)
Orange County Rural Development Advisory Board (RDAC)
Orange County Supreme Court
Orange County Bar Association
Women's Bar of Orange and Sullivan Counties

CURRENT COLLABORATIONS and PARTNERSHIPS
The Hearing Officer in the Foreclosure Part refers clients to RDAC for screening.
RDAC evaluates whether the homeowner is a candidate for loan modification with the lender.

TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK
Helaine Barnett, Chair

COLLABORATIONS AND SHARED COSTS WORKING GROUP
PROPOSED HEARING TESTIMONY/WITNESSES
ONE ROOF/SHARED SERVICES INITIATIVE
ROCHESTER (Monroe County) 4th DEPT (IOLA CLS Unit 6)

Sheila Gaddis, Working Group Chair
Barbara Finkelstein
Judge George Lowe
Christopher O'Malley
Michael Rothenberg

INITIATIVE SYNOPSIS:
Legal services providers and the local bar association in geographic proximity consolidate all service operations: provider owned realty/ jointly leased building with shared reception area and receptionist(s), shared telephone/internet systems, conference rooms, cafeteria space and internet research (WestLaw).
Joint capital campaign.

GEOGRAPHIC REGION:
Counties: Monroe
Cities: Rochester

IDENTIFIED PROVIDERS/PARTICIPANTS:
Empire Justice Center
Legal Aid Society of Rochester
Monroe County Legal Assistance Center (division of LAWNY)
Volunteer Legal Services Project of Monroe County

CURRENT AND PROJECTED COLLABORATIONS:
All providers and county bar association housed in a single building in downtown city center. Shared reception, conference and meeting rooms, and telephone and internet systems.
Increased pro bono partnerships with the private bar, enhanced services and fundraising.

Projected collaborations are increased fundraising, possibly resulting in endowments, collaborative grant writing and consolidation of back office functions.

PROGRAM OVERVIEW:
See above.

PROGRAM EFFICIENCIES:
Client services streamlined. Reduced administrative costs. Rent stabilization for 15 years. Joint fundraising. Monthly meetings of directors and administrators held on site.

COST SAVINGS:
Through savings on rental costs, reception services and telephone expenses the TCJ saved the partners an approximate total, over the past five years, of $75,000 per year.

If the client is a viable candidate, RDAC refers the client to LSHV for representation at the settlement conference. LSHV assigns the case to its Orange County Foreclosure Project staff attorney or to a pro bono volunteer attorney from the Women's Bar of Orange and Sullivan Counties or the Orange County Bar Association.

PROGRAM OVERVIEW in brief:
Volunteer attorneys attend training by the Empire Justice Center and receive guidance from experienced LSHV attorneys. Collateral legal matters referred to LSHV for disposition**.** No client is without representation regardless of proceeding—modification or foreclosure. Orange County Supreme Court Clerk transmits a weekly list of foreclosure filings so all distressed homeowners are contacted by RDAC with an offer of assistance.

PROGRAM EFFICIENCIES/COST SAVINGS:
Volunteer attorneys attend training by the Empire Justice Center and receive guidance from experienced LSHV attorneys. Collateral legal matters referred to LSHV for disposition**.** No client is without representation regardless of proceeding—modification or foreclosure.

TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK
Helaine Barnett, Chair

COLLABORATIONS AND SHARED COSTS WORKING GROUP
ONE ROOF/SHARED SERVICES INITIATIVE
SYRACUSE-(Onondaga County) 4th DEPT (IOLA CLS Unit 5)

Sheila Gaddis, Working Group Chair
Barbara Finkelstein
Judge George Lowe
Christopher O'Malley
Michael Rothenberg

INITIATIVE SYNOPSIS:
Concerted effort by legal services providers in geographic proximity to consolidate all service operations: provider owned realty/ jointly leased building with shared reception area and receptionist(s), coordinated calendaring and case management system, telephone/internet systems, back office operations (photocopying), library, conference rooms, cafeteria space.

GEOGRAPHIC REGION:
Counties: Onondaga, Cayuga, Oswego, Oneida, Herkimer, Lewis, Jefferson
Cities: Binghampton, Syracuse, Utica

IDENTIFIED PROVIDERS/PARTICIPANTS:
Legal Services of Central New York
Legal Services of Mid-New York
Hiscock Legal Aid
Onondaga County Bar Association
Syracuse Law School (possible)

CURRENT AND PROJECTED COLLABORATIONS:
All of the providers are working together to achieve this one roof enterprise by January 1, 2015. Discussions are underway with a real estate attorney and an architect to formulate a feasible proposal on which to base fundraising. The conference room is used by the other two providers and contains an overhead projector and screen and sound system.

PROGRAM EFFICIENCIES:
Avoids duplication of services and maximizes shared services under one roof, efficient for both providers and clients.

TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK
Helaine Barnett, Chair

COLLABORATIONS AND SHARED COSTS WORKING GROUP
SHARED SERVICES INITIATIVE
Buffalo (Erie County) 4th DEPT (IOLA CLS Unit 7)

Sheila Gaddis, Working Group Chair
Barbara Finkelstein
Judge George Lowe
Christopher O'Malley
Michael Rothenberg

INITIATIVE SYNOPSIS:
Concerted effort by legal services providers in geographic proximity to consolidate all service operations: provider owned realty/ jointly leased building with shared reception area and receptionist(s), coordinated calendaring and case management system, telephone/internet systems, back office operations (photocopying), library, conference rooms, cafeteria space.

GEOGRAPHIC REGION:
Counties: Erie, Niagara, Chautauqua, Cattaraugus, Allegany, Wyoming, Genesee, Orleans
Cities: Buffalo, Niagara Falls, Lockport, Jamestown, Albion, Dunkirk

IDENTIFIED PROVIDERS/PARTICIPANTS:
Legal Services for the Elderly, Disabled and Disadvantaged (LSEDD)
Erie County Bar Association Volunteer Lawyers Project (VLP)
Legal Aid Bureau of Buffalo (LAB), Neighborhood Legal Services, Inc. (NLS)
Western New York Law Center (WNYLC)

CURRENT AND PROJECTED COLLABORATIONS:
All of the providers are housed in a single building. All providers use the same case management system. Three of these providers share common space, including the reception area, library, student/volunteer clinic room, conference rooms and a lunchroom and the telephone system. LSED, VLP and WNYLC share scheduling calendars. The conference room is used by two providers and contains an overhead projector and screen and sound system. The clinic rooms share internet connections. Future Collaborations are joint purchases of supplies, insurance and audit services.

PROGRAM EFFICIENCIES:
Clients now have one central location in the largest county in the region. The programs have eliminated client and staff travel time. The organizations are co-counseling cases and sharing referral lists. The organizations that have shared the telephone system, library and other resources have also saved money. Use of space is maximized. Conference rooms can be reserved by accessing a unified calendar. Shared reception/telephone system. Telephone and internet/electronic services and maintenance plans purchased in bulk.

COST SAVINGS:
Reduced administrative costs. The shared telephone system cost $22,800.00, saved $45,600. The build-out cost, shared furniture, computers, telephone, and setup was $182,678. Since each organization would have had to pay this amount, by paying it once, $365,356 was saved. Amortizing this amount over 10 years means that a total savings of $36,535.56 a year. $5,818 a year by sharing telephone services. By sharing Internet services for the shared spaces, we estimate that we save $1200 a year on high speed Internet services.

TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK
Helaine Barnett, Chair

COLLABORATIONS AND SHARED COSTS WORKING GROUP
PRO BONO COORDINATION and SERVICES INITIATIVES
ROCHESTER (Monroe County) and NYC (New York)
Monroe County 4th Department and New York County 1st Department

Sheila Gaddis, Working Group Chair
Barbara Finkelstein
Judge George Lowe
Christopher O'Malley
Michael Rothenberg

INITIATIVE SYNOPSIS:
Pro bono initiatives among legal services providers, bar associations and the court system that provide one time and/or limited representation in court or at provider site.

GEOGRAPHIC REGION:
Statewide Pro bono Providers

IDENTIFIED PROVIDERS/PARTICIPANTS:
Volunteer Lawyer for a Day Program Consumer Debt - The Civil Court of the City of New York
NYSBA Pro Bono Coordinators Network

CURRENT AND PROJECTED COLLABORATIONS:
Identify increased pro bono collaborations with bar associations, private attorneys and the court system.

PROGRAM OVERVIEW:
VLDP is designed to assist unrepresented consumer debtors appearing in civil court. The VLFD program is an unbundled legal services program where the representation begins and ends the same day.
Pro Bono Programs deliver a range of services from brief advice, legal clinics, hot lines and extended representation utilizing private practitioners and attorney emeritus.

PROGRAM EFFICIENCIES:
Meaningful court proceedings for litigants who otherwise would appear pro se. There can be no motion practice or responsibilities beyond the allotted day/hour, which is scheduled in advance. Mobilizing private attorneys to meet overwhelming need.

APPENDIX 19:

Report of the Task Force's Working Group on Alternative Conflict Resolution

NOVEMBER 2011

Contents

REPORT OF

THE WORKING GROUP ON ALTERNATIVE CONFLICT RESOLUTION

TO THE TASK FORCE TO EXPAND ACCESS TO

CIVIL LEGAL SERVICES

I. Introduction

For many years, New York State has been a national and international leader in providing free and low-cost Alternative Dispute Resolution (ADR) services for those most vulnerable or who could least afford it. Since its inception thirty years ago, New York's Community Dispute Resolution Centers Program (CDRCP) alone has helped nearly 100,000 individuals in nearly 40,000 cases each year. Through the CDRCP, volunteer mediators help to resolve a wide array of minor civil, criminal, and family court cases, without the need for protracted court intervention. Community Dispute Resolution Centers (CDRCs) also partner with local law schools in several areas of the state, including New York City, to provide mediation in the lower civil and small claims courts of the State. A number of other successful initiatives --- including those utilizing court staff, volunteers, and paid rosters of mediators in Family Court --- have resolved thousands of custody and visitation and child permanency cases throughout the State, without protracted court involvement or extensive legal services. Social workers on staff in the Supreme Court in several areas of the State, who have been trained in mediation, assist with the resolution of custody and visitation disputes and help divorcing parents to access community resources and social services. A mediation project in New York City's Civil Court has resolved a great number of consumer debt cases, which have skyrocketed in recent years in part because of the downturn in the economy. But for the fiscal year beginning April 1, 2011, severe cuts totaling 170 million dollars to the Judiciary budget have significantly impacted the provision of ADR services to those who need it the most.

The following report provides an overview of the free and low-cost ADR landscape in existence in New York prior to the Judiciary budget cuts and provides a brief assessment of the impact of these cuts on ADR services to date. It also explores ideas for cost neutral ways to try to mitigate the impact of these cuts on some of these services.

II. Access to Free and Low-Cost ADR and The Landscape (Pre and Post Budget Cuts)

What is ADR?

Alternative Dispute Resolution (ADR) refers to a variety of processes that help parties resolve disputes without a trial.[1] Typical ADR processes include mediation, arbitration, neutral evaluation, parent coordination, and collaborative law. These processes --- defined below --- are generally confidential, less formal, less expensive, and less stressful than traditional court proceedings. In ADR processes such as mediation and collaborative law, parties play an important role in resolving their own disputes. This often results in creative solutions, longer-lasting outcomes, greater satisfaction, and improved relationships. There are many instances where Alternative Dispute Resolution would benefit low-income clients and is currently not available or is underutilized. Mediation, for example, provides a more efficient and effective way of resolving many of the disputes that otherwise land in court. It provides parties with a non-adversarial forum that is often more responsive to their particular needs than litigation. Mediation can relieve the crowding of court dockets or at least enable Judges and non-judicial court staff to focus on the cases that truly require adjudication. Mediation and other forms of ADR are far less time and resource intensive than litigation. Studies of family mediation have shown that when compared with non-mediated cases, those who mediate show increased compliance with mediated agreements and fewer post judgment filings, increased compliance with child-support and

[1] See Appendix G for a chart on how cases get to mediation.

improved relationships between non-custodial parents and their children (see Robert E. Emery, *The Truth About Children and Divorce* (Penguin Group 2004); see also Joan B. Kelly, *Family Mediation Research: Is There Empirical Support for the Field?* 22 no. 1-2 Conflict Resolution Quarterly (Fall-Winter 2004).

Definitions

a) "Mediation" refers to a confidential process in which a trained, neutral third party – the mediator – helps parties to identify issues, clarify perceptions, and explore options for a mutually acceptable outcome.

b) "Neutral evaluation" refers to a confidential, non-binding process in which the neutral evaluator – a trained, neutral third party with subject matter expertise – hears party presentations and then provides an opinion about the strengths and weaknesses of each party's case and the likely court outcomes. Neutral evaluators may also provide informal settlement assistance with the parties consent.

c) "Parenting coordination" refers to a confidential process in which a trained, neutral person — the parenting coordinator — tries to educate, supervise, and manage high-conflict, repetitive-litigant parents with chronic, recurring disputes such as visitation conflicts. The parenting coordinator helps parents to adhere to court orders and may decide parenting disputes consistent with existing court orders. Parenting coordinators also help parents develop better conflict management skills.

d) "Collaborative law" refers to a confidential process in which parties, their counsel, and any other retained professionals agree in writing to use their best efforts to resolve in good faith the dissolution of the relationship without resorting to judicial intervention, except to effectuate the parties agreement. The professionals retained may not serve thereafter as litigation counsel or as witnesses.

Access to Free and Low-Cost ADR[2]

The New York State Unified Court System offers parties access to free or reduced-fee mediation and other ADR services for cases that are pending or would otherwise be heard in the Family Court, the Civil, City and District Courts as well as Supreme Court. These services are available in many courthouses and in the Community Dispute Resolution Centers located throughout New York State's 62 counties. Free collaborative divorce and mediation services is also available to eligible couples in the New York City area through the court-sponsored Collaborative Family Law Center.

Community Dispute Resolution Centers (CDRCs): **Pre-Budget Cuts**

The Community Dispute Resolution Centers Program (CDRCP) is administered by the Unified Court System's (UCS) Office of Alternative Dispute Resolution and Court Improvement Programs

[2] For a comprehensive list of ADR programs offered through the NYS Unified Court System, visit www.nycourts.gov/adr

(ADR/CIP). The CDRCP funds independent not-for-profit agencies – CDRCs – throughout New York State. The CDRCP was created in 1981 with the goal of providing access for all New Yorkers to affordable or free ADR services such as mediation and arbitration.

Once a CDRC learns of a dispute through a referral from court or directly from a person in conflict, CDRC staff members conduct interviews with parties to explain the mediation process and give parties an opportunity to talk about their conflict. CDRC staff carefully screen the parties to ensure that the matter is appropriate for dispute resolution services. Cases involving a history or fear of domestic violence are not considered appropriate given the inherent power imbalance and safety risks to the victim. After this intake process, the parties involved in the case decide for themselves whether to participate in mediation or another ADR process.

CDRCs handle disputes between parents (i.e., custody and visitation),[3] parents and children (i.e., Persons In Need of Supervision (PINS))[4], families and schools (i.e., Special Education issues), landlords and tenants, neighbors, roommates (e.g., arrears, repairs, noise, and even interpersonal conflict spilling over into a court case), consumers and merchants (i.e., breach of contract), and business partners**.** CDRCs received $9.6 million dollars in UCS funds between April 2010 and March 2011, including funds from local judicial districts. During that time, CDRCs screened over 38,000 cases, resulting in more than 21,000 mediations and other dispute resolution processes with a resolution rate of nearly 75 percent. Besides diverting nearly 40,000 cases per year from the Courts, the CDRCP is internationally-renowned for its public-private partnership and its provision of appropriate dispute resolution services tailored to the specific needs of the parties in conflict.[5]

CDRC Mediators

The more than 1,300 New Yorkers who volunteer their time and expertise as mediators form the core of the CDRCP, providing communities with access to mediation services in every corner of the state. Collectively, these highly trained volunteers make up the most vibrant network of community mediators in the nation.

CDRC mediators go through a demanding and challenging certification process. First, they must complete 30 hours of initial mediation training provided by a CDRCP-certified trainer. The Office of ADR/CIP requires that mediators be trained in the dynamics of conflict, goals and purposes of the mediation process, effective listening and questioning skills, cultural diversity, ethics, agreement writing, and the limits of mediation, among other topics. In addition to successfully completing the 30 hours of initial training, mediators must complete an intensive apprenticeship with their local CDRC in order to become approved as volunteer mediators.

Apprenticeship allows CDRCs to monitor the development of their newly trained mediators. During this period, apprentices learn from experienced mediators by mediating or co-mediating at least

[3] As an illustration, Family Court mediation referrals represented 21% of the referrals to the CDRCs statewide in 2009 to 2010. See Appendix C.

[4] Parents can file a PINS petition for assistance with a child with behavioral problems (i.e., truancy issues, violating curfews) and at risk of escalating to juvenile delinquency. By bringing this petition, the child and family can get access to services which will hopefully intervene and prevent further trouble.

[5] New York State's CDRCP has been studied for purposes of replication by other states and countries including China, Japan, Brazil, the Netherlands, Israel, Thailand, and others.

two structured role-plays, observing at least one actual mediation session, and mediating or co-mediating at least five cases under the direct supervision of a coach, mentor or staff person. After at least one of these mediations, apprentices debrief with staff or complete a self-evaluation instrument. Finally, a CDRC staff person observes each apprentice and provides a written assessment. The apprenticeship gives newer mediators the opportunity to grow in their new skills with guidance and support from more experienced mediators.

Once the new mediator feels ready and the CDRC is confident in the new mediator's abilities, the mediator is certified by the local CDRC (not by the Office of ADR/CIP)[6] and is eligible to mediate cases without a mentor. To remain certified through the CDRC, mediators must mediate a minimum of three cases per year and complete at least six hours of continuing education, which is often provided by the CDRC on topical issues.

Trainer Certification

The Office of ADR/CIP certifies mediation trainers to provide Initial Mediation Training as well as Custody and Visitation Mediation Training. By certifying mediation trainers, ADR/CIP ensures that volunteer mediators are provided with mediation skills in a core curriculum of the highest quality. Trainers wishing to become certified must complete a demanding application and interview process followed by six months of extensive preparation with the Office of ADR/CIP. The process culminates in an in-person observation of a complete training.

Partnerships with Law Schools

Many law schools, including those in New York City, partner with CDRCs through law school mediation clinics. Students often complete an apprenticeship with the local CDRC (also see below on Collaborative Family Law Center partnership with Cardozo Law School Divorce Mediation Clinic). Law students trained in mediation and supervised by law school faculty help resolve hundreds of small claims and lower civil court cases in New York City, and in several counties outside New York City as well.

Community Dispute Resolution Centers (CDRCs): Post Budget Cuts

As a result of the recent cuts to the Judiciary budget, funding to the CDRCP was reduced by 50% or by roughly 4.8 million dollars for this current fiscal year 2011-2012. Many CDRC staff have been laid off or taken significant pay cuts in order for the their agencies to survive. While the Centers will still provide access to free or low-cost mediation throughout the State, it is tentatively expected to handle approximately 25 percent fewer cases as a result of reduced funding and staffing levels. By consolidating services and closing onsite offices in more remote areas of the State or reducing hours of operation in certain counties, Centers were able to set an aspirational goal of reducing their overall volume of cases by roughly 25 percent despite funding cuts of up to 50%. In general, Centers with a higher volume of cases absorbed smaller percentages of cuts with some exceptions. As a result, the impact of the cuts will be experienced the most in New York's smaller and often more rural counties. In some instances, parties may have to travel for hours to access services. Space to mediate is not

[6] New York State does not "certify" mediators. Mediators who volunteer for CDRCs or who belong to certain ADR member organizations may be certified to mediate *through the particular CDRC or member organization.*

guaranteed. Centers will seek out donated space including libraries and community centers to find places where mediation services can still be offered. Partnerships with local law schools may also be impacted in that many of them rely on evening time slots in the small claims courts. As a result, they may have fewer opportunities to provide mediation.

Unfortunately, increasing the pool of volunteers in the CDRCP would be of minimal help without the restoration of grant funds to the agencies, which enable them to administer the program. Accordingly, with cutbacks to the CDRCs, there is even greater pressure to enhance the reach of other free and low-cost ADR services.

The New York State Agricultural Mediation Program (NYSAMP): (Pre Budget Cuts)

The New York State Agricultural Mediation Program (NYSAMP) is funded by the United States Department of Agriculture (USDA) and is administered collaboratively by the Office of ADR/CIP and the New York State Dispute Resolution Association. NYSAMP provides critical mediation services to the farm community throughout the state to ensure that disagreements and disputes that threaten the economic success of farms can be addressed quickly and confidentially. Working with farm families, agri-business, and the communities around them, NYSAMP provides services in a wide range of conflicts including small claims and unpaid bills; machinery and supplier credit; bank loans; child custody and visitation; family farm succession; labor issues; and appeals of USDA decisions. In the last several years, NYSAMP's caseload has grown dramatically, making it one of the largest agricultural mediation programs in the country. With more than 400 cases last year, NYSAMP served over 900 people from more than 30 counties. The great benefit of this program is that many farm owners likely avoid default and foreclosure in New York State as a result of the collaborative problem-solving engaged in by lenders and owners in mediation.

NYSAMP (Post Budget Cuts)

The New York State Agricultural Mediation Program (NYSAMP) was largely unaffected by the Judiciary budget cuts since the funding comes from Federal as opposed to State funding sources.

Civil, City and District Courts: **(Pre Budget Cuts and Workforce Reduction)**

Mediation

The Civil Court of the City of New York has jurisdiction over civil cases involving amounts up to $25,000 and other civil matters referred to it by the Supreme Court. It includes a small claims part for informal dispositions of matters not exceeding $5,000 and a housing part for landlord-tenant matters of unlimited amounts and to address housing code violations. As mentioned above, trained and supervised volunteer mediators from local Community Dispute Resolution Centers and law school mediation clinics help parties resolve small claims and other civil matters free of charge. The Court also utilizes a mandatory consumer credit mediation program where the defenses suggest that money is owed and a settlement is sought (see Appendix A; F). The New York City Civil Court also employs a part time ADR Coordinator to oversee its mediation programs. The New York City Criminal Court houses a Court Dispute Referral Center in all boroughs except Richmond County. These dispute referral centers screen civilian-initiated complaints and police referrals and triage them to the most

appropriate forum, including Family Court, Housing Court, domestic violence services and other community based services, including New York City's CDRCs.

Arbitration

Approximately 16 counties throughout the State provide mandatory arbitration pursuant to Part 28 of the Rules of the Chief Judge. Pursuant to Part 28, cases under $10,000 in New York City or $6,000 outside of New York City may be referred to arbitration under this rule (see Appendix E). However, not all counties utilize the Part 28 program. A majority of the Part 28 cases that are referred are in Nassau and Suffolk Counties. See Appendix D. Because the program is mandatory, the parties can "erase" the arbitration award by commencing a trial de novo within certain time frames. This happens infrequently, except in Nassau, where as many as 23% of cases commence a trial de novo. See Appendix D.

In addition to Part 28 arbitration, voluntary arbitration programs exist in many of the small claims parts and lower civil, city and district courts throughout the state. Volunteer attorneys hear cases when the parties consent in writing. Since voluntary arbitration is entered into by consent, the arbitrator's award is final and binding and parties may not seek a trial de novo if they are unsatisfied with the arbitrator's award. However, these awards are still subject to limited review under CPLR Article 75, which establishes the narrow grounds for vacating an arbitration award. In New York City, arbitrators are trained through the local courts with the cooperation of the Small Claims Arbitrators Association.

Civil, City and District Courts: **(Post Budget Cuts and Workforce Reduction)**

The ADR Coordinator in New York City Civil Court was laid off as a result of the Judiciary's workforce reduction plan. Cuts to the CDRCs in New York City will likely result in a slight reduction in the number of cases mediated as well. Furthermore, to save money, courtrooms must now close at 4:30 p.m. and night court in New York City small claims court has been reduced from four nights a week to one. This will undoubtedly lead to delays in having cases heard by the Judge and many of the small claims arbitrations discussed above take place at night. Therefore, there may be fewer opportunities for these arbitrators to volunteer since many of them work during the day.

The New York City Criminal Court closed the Court Dispute Referral Centers, which screened over 12,000 cases in 2010. The dispute referral enters diverted roughly twenty-five percent of its cases to the local CDRCs in New York City. The closure of these Centers means that an influx of 12,000 new civilian-initiated complaints and police referrals will be handled through the Criminal Court's regular intake process. While referrals can still be made to the CDRCs for mediation, court staff will not have the time to triage cases with the same level of attention and precision as the Court Dispute Referral Centers.

New York State Family Court: (Pre Budget Cuts and Workforce Reduction)

As discussed above, many Family Court disputes including custody and visitation and child permanency cases outside New York City are resolved through mediation in connection with New York's CDRCP. In addition to the cases handled by the CDRCs, there are several innovative

mediation projects utilizing court staff or paid rosters of mediators in the Family Courts both within and outside New York City.

Custody and Visitation Mediation

Nassau County Family Court: Custody and Visitation Mediation

Nassau County Family Court established a roster of qualified mediators administered by an ADR Coordinator located in Family Court. Mediators are paid $60 per hour to mediate custody and visitation cases referred by the Court. The ADR Coordinator screens the cases prior to referral to ensure that they are appropriate for mediation and that no domestic violence cases are referred.

Erie County Family Court: Custody and Visitation Mediation

Erie County Family Court utilizes a paid roster for custody and visitation cases similar to the program in Nassau County. However, instead of having a court staff person serve as ADR Coordinator, the Erie County Family Court partners with the local CDRC, which employs an ADR Coordinator, to screen referrals, pay the roster of mediators, and otherwise assist the court to oversee the program.

New York City Family Court: Custody and Visitation Mediation

New York City Family Court offers free mediation services in parenting issues in custody and visitation cases pending in the Family Courts in all five boroughs. Cases are referred by either the judge or referee, but either party can request that their case be referred to mediation. All referrals are screened by a Mediation Manager, employed by a local not-for-profit agency partner, to determine whether the matter is appropriate for mediation. The program is administered by the Court in collaboration with the New York Society for the Prevention of Cruelty to Children (NYSPCC). NYSPCC is a private non-profit agency focused on child welfare (the first agency of its kind). The Office of Court Administration contracts with NYSPCC to provide necessary administrative support for the Program's operation. This arrangement allows the court to retain oversight yet avoid the expense of hiring court staff. This is similar to the contracts with the CDRCs, however, NYSPCC operates only with Family Court referrals in New York City.

In the above family court programs utilizing paid rosters, mediators join the roster by completing an application and verifying compliance with Part 146 of the Rules of the Chief Administrative Judge. They are also subject to any other additional requirements established by the local court. Mediation is offered to the parties free of charge although the mediators are compensated either directly by the court as in Nassau, or through the contract with the NYSPCC in New York City or the local CDRC as in Erie County. Referrals are not appropriate in cases involving domestic violence or child abuse.

Child Permanency Mediation

The Unified Court System's Office of Alternative Dispute Resolution and Court Improvement Programs (Office of ADR/CIP) through its Child Welfare Court Improvement Project (CWCIP) have been leaders in the development and support of child welfare mediation programs across New York

State. The Child Welfare Court Improvement Project (CIP) is supported by a federal grant administered by the United States Department of Health and Human Services, Administration for Children and Families. Grants are awarded to states to support implementation of reforms in child welfare court practices.

In early 2000, permanency mediation pilot programs were developed in several communities throughout the state, with stakeholders meeting to define needs, develop policies and work together on design and implementation. The pilots developed and grew, with programs taking root in New York City and counties in the Third, Fifth, Sixth, Eighth and Ninth Judicial Districts. Some of these programs are administered in partnerships with the CDRCs and others are managed directly by the Office of ADR/CIP.

New York City Family Court: Child Permanency Mediation

The New York City Family Court in partnership with the New York Society for the Prevention of Cruelty to Children (NYSPCC) provides free mediation in child protective cases through four court employed staff mediators and four NYSPCC staff mediators. Cases are typically referred by the court. Mediation staff convene all parties and attorneys in an effort to establish permanency and resolve the case as efficiently as possible while limiting delays. The program was first seeded with Child Welfare Court Improvement Project funds but the court staff mediators were eventually absorbed by the Family Court and integrated into the Court's budget.

Family Courts Outside New York City: Child Permanency Mediation

In 2008, with an increased interest in permanency mediation in the 5th Judicial District and taking fiscal responsibility, the Office of ADR/CIP created a district wide Child Permanency Mediation Program in order to decrease the cost of a program yet still be able to maximize the usage and benefits of the program. The district wide program is administered by an ADR/CIP staff liaison and cases are assigned to mediators on a court roster. The district wide models are funded through the Child Welfare Court Improvement Project's federal grants.

In 2010, due to an increased interest in the permanency mediation program in Erie County, the 8th Judicial District agreed to adopt the district wide permanency mediation model. This program, which officially started in January 2011, is administered by an ADR/CIP staff liaison.

New York State Family Court (Post Budget Cuts and Workforce Reduction)

Nassau County Family Court: Custody and Visitation Mediation

During 2010, with the downturn in the economy, the Court's payments to the roster of mediators for custody and visitation cases were eliminated. However, the Court's ADR Coordinator was able to recruit several of the mediators on the roster to volunteer to mediate cases and the program was maintained, albeit handling slightly fewer cases. Unfortunately, the Court's ADR Coordinator was laid off during the spring of 2011 as a result of the Judiciary's workforce reduction plan. The program is now run by two part-time staff, one of whom is a trained mediator. The Court is partnering with mediation programs in local law schools in an effort to expand the number of cases that can be mediated.

Erie County Family Court: Custody and Visitation Mediation

Despite a more than a 50 percent budget cut to the local CDRC, the CDRC employed ADR Coordinator was retained and the program plans to continue accepting referrals and paying the roster of mediators. This will have a greater adverse impact on the CDRC's lower civil court caseload as resources will be diverted to Family Court. The program expects to run out of money to pay the roster of mediators at some point during 2011-2012 given the limited finds available for such payments as a result of the budget cuts.

New York City Family Court: Custody and Visitation and Child Permanency Mediation

Due to the downturn in the economy, the New York City Family Court Mediation Program had in prior years already lost staff as result of vacancies left unfilled. It was also forced to reduce the number of counties in which on-site mediation was provided, leaving Richmond County without a program. In April 2011, with the budget cuts faced by the Judiciary, the contract with the NYSPCC had to be terminated and all of the NYSPCC child permanency staff mediators and custody and visitation mediation managers were laid off. Shortly thereafter, the Family Court's child permanency staff mediators were laid off during the Judiciary's workforce reduction plan. As a result, child permanency mediation in New York City is no longer available through the court. This is quite unfortunate as mediation has proven to be extremely helpful in expediting permanency for children innocently caught up in the child welfare system.

The New York City Family Court's Custody and Visitation Mediation program is currently being reorganized with the hope that mediation for custody and visitation cases can still be provided through the roster of mediators, who will be compensated with what little funding remains. However, already overburdened court staff will need to assume even greater responsibility for administering the program without the help of the NYSPCC and the Mediation Managers.

Other Family Courts Outside New York City: Custody and Visitation and Child Permanency

As a result of the budget cuts to the CDRCs, all permanency mediation programs administered by local CDRCs were shut down. The Office of ADR/CIP is currently working with the 6th Judicial District to create a district wide model which copies the 5th and 8th Judicial District programs. This district wide model administered directly by an ADR/CIP staff liaison is proving to be a viable alternative in the wake of the budget cuts. This of course is limited by the amount of ongoing federal funding available and the capacity of ADR/CIP staff to directly manage these programs on a district wide basis for the courts.

CDRCs will still offer mediation for custody and visitation cases, although the volume of referrals that can be accepted will decrease.

Supreme Court Matrimonial Mediation Programs: (Pre Budget Cuts and Workforce Reduction) (Kings, New York County, Nassau, Queens, Suffolk, Westchester, 8th Judicial District):

Judges may order parties to attend one free mediation session with a mediator on a local court roster. Mediators on court rosters are trained and experienced private practitioners subject to statewide qualifications and training requirements under Part 146 of the Rules of the Chief Administrative Judge. See http://www.nycourts.gov/rules/chiefadmin/146.shtml. Most family mediators on court rosters have qualifications that exceed these minimum requirements. For example, mediators in the New York County program are required to have 60 hours of family mediation training including experience mediating at least 25 cases involving at least 250 hours of face to face mediation. Referrals are not appropriate in cases involving domestic violence or child abuse.

Supreme Court Matrimonial Mediation Programs: (Post Budget Cuts and Workforce Reduction) (Kings, New York County, Nassau, Queens, Suffolk, Westchester, 8th Judicial District):

For the most part, Supreme Court ADR Programs that rely on rosters of mediators including the matrimonial mediation programs were largely unaffected by the budget cuts and layoffs. These Supreme Court Programs do not require much in the way of court funding or staff resources. However, and despite an evolving increase in the use of these programs, many remain underutilized. (See recommendation section for ideas to increase utilization of court ADR programs).

Family Counseling and Case Analysts (FCCA): (Pre Budget Cuts and Workforce Reduction)

In some jurisdictions, Judges may refer parties with parenting disputes in Supreme Court, to free, court-employed Family Counseling and Case Analysts. These staff professionals --- sometimes referred to as staff social workers -- meet each year with hundreds of parties with pending matrimonial cases in Supreme Court to help them work out parenting plans and access community resources. Most of the Case Analysts have received extensive training in both mediation as well as mental health services and counseling. They also have the capacity to serve in a quasi-parenting coordinator role for the court as well.

Family Counseling and Case Analysts (FCCA): (Post Budget Cuts and Workforce Reduction)

Unfortunately, several of the Family Counseling and Case Analysts were laid off as a result of budget cuts, including those in Queens, Richmond and Bronx Supreme Courts. The Kings County Supreme Court FCCA position was vacated prior to the budget cuts and that position remains unfilled. These losses mean that couples will no longer have the benefit of a free, trained, skilled neutral to help them come up with individually-tailored parenting arrangements that meet the needs of families. This loss of resources that encouraged parents to work together and focus on their children will be felt throughout the system.

New York City Collaborative Family Law Center: **(Pre Budget Cuts and Workforce Reduction)**

The Collaborative Family Law Center offers free divorce mediation and collaborative family law services to qualifying divorcing couples in New York City. The Center relies on specially trained pro bono attorneys and Cardozo Law School's Divorce Mediation Clinic, to meet the needs of the growing numbers of divorcing couples who do not want to subject their families to a costly, lengthy, painful, and adversarial divorce process.

In Collaborative Law, if either spouse decides to go to court, both spouses must hire new lawyers. This motivates everyone involved to continue working toward a mutually agreeable resolution. Collaborative Family Law may also involve other professionals including financial planners and child development specialists.

To date, Collaborative Law has been accessible primarily to couples who can afford it. The Collaborative Family Law Center, which opened in 2009, provides collaborative law and mediation for lower income families who could not otherwise afford it.

Cases can get referred to the Collaborative Family Law Center in one of the following ways:

1. Judges sitting in matrimonial parts throughout New York City may refer parties to the Collaborative Family Law Center for free divorce mediation or collaborative family law (if both parties are unrepresented).
2. Clerks in the Help Center refer individuals unable to complete the Uncontested Divorce Packet due to unresolved parenting or economic disputes.
3. Court employees refer individuals who want to get divorced "out of court" to the Collaborative Family Law Center, regardless of whether a divorce action has been commenced.
4. Prospective litigants read about the Center's services on the Court's web site.
5. Former users of the Collaborative Center's services refer friends and acquaintances.
6. Private practitioners and non-profit organizations refer couples who need free mediation or collaborative family law services to the Center.

After cases get referred to the Collaborative Family Law Center, the Director speaks with each of the parties separately to determine whether either process choice --- collaborative family law or divorce mediation --- is appropriate. Cases involving domestic violence or child abuse are not accepted.

In determining whether to refer parties to divorce mediation or collaborative family law (where counsel will be provided), the Center Director takes into account party preference, the legal complexity of the case, and the available pro bono resources. If the case is appropriate for either mediation or collaborative family law, and the parties can afford to pay a private mediator or collaborative family lawyer, they will usually be referred to the private sector.

If either party is already represented by counsel, the Director will refer the couple to divorce mediation, rather than to collaborative family law. Where divorce mediation is the process choice selected[7] and parties are unrepresented, the Director and the mediators strongly encourage the parties to consult with counsel. Most parties cannot afford to consult with counsel and proceed unrepresented. However, the Center's success in offering more holistic, individually tailored, and less stressful approaches to qualifying, lower-income couples attracted the attention and interest of local legal services attorneys.

To expand the provision of services to those who cannot afford it, the Center trained New York City area legal services attorneys in mediation and collaborative family law. As part of a pilot initiative, these legal services attorneys have agreed to represent a limited number of eligible clients in

[7] Mediation is often the default process choice due to a lack of resources.

collaborative family law and serve as consulting attorneys in divorce mediations referred through the Center. Because collaborative cases do not involve motion practice, repeat court appearances, or preparation for trial, another goal of this pilot is to assess the degree to which representing clients in collaborative law can increase the number of clients that a legal service provider can represent.

New York City Collaborative Family Law Center: **(Post Budget Cuts and Workforce Reduction)**

Similar to the Supreme Court ADR Programs, the Collaborative Family Law Center was largely unaffected by the budget cuts and layoffs. The Center is minimally staffed and relies on pro bono collaborative lawyers and the Cardozo Divorce Mediation Clinic for the provision of mediation. (However, see recommendations section for innovative approaches to legal service representation through the collaborative family law center)

III. Recommendations

Increasing Utilization of Existing ADR Programs

Many of the Supreme Court divorce mediation programs described above are underutilized. This is largely the result of an enduring lack of understanding of what mediation truly offers. Notwithstanding many great efforts to date, more can and should be done to educate the bench and bar as well as potential users -- the parties – about the benefits of mediation.

- Brochures explaining the benefits of ADR and descriptions of local ADR programs should be available in courthouses statewide. Attorneys should be encouraged to share these materials with their clients and to otherwise discuss ADR options with their clients.

- Courts should also be encouraged to send a letter to parties upon filing, to explain the various process options including litigation and ADR. This has been done in other States including California and can help parties make informed decisions about how to proceed and which options to pursue. (**See Appendix B for a Draft letter to litigants in the divorce proceedings)**

- Judges should be encouraged to exercise their inherent authority to refer appropriate cases to the many free and low cost ADR options available through the court rosters and CDRCs. **See Appendix A for examples of local court rules giving express authority to judges to order ADR in selected cases.**

Enhancement of Legal Service Representation Through the Collaborative Family Law Center

Many of the families who contact the Collaborative Family Law Center do not require protracted court proceedings in order to resolve their differences. They do however often require brief legal advice to ensure informed decision making. In fact, nearly all of the cases pending in the Collaborative Family Law Center arrive before the parties commence an action in Court. Upon resolution through collaborative law or mediation, these cases can proceed as uncontested matters, many of which proceed on paper without requiring a court appearance. However, these same cases would likely have ended up on the contested calendars in Court had they filed for divorce instead of contacting the Center. Alternatively, a petition for custody or support would likely have been filed in Family Court, triggering the adversarial process. Furthermore, the divorcing public's demand for the

Center's unique, free services far exceeds the Center's pro bono resources. By providing legal assistance coupled with ADR at the earliest point possible, the Center can prevent these cases from spiraling into contested matters requiring even greater judicial and legal service resources.

As discussed above, the Collaborative Family Law Center partnered with legal services providers throughout New York City to explore ways to incorporate ADR into the menu of options they offer to lower-income and indigent New Yorkers going through divorce or custody disputes. As a first step, the Center coordinated mediation and collaborative family law training for twenty-five legal services attorneys during the Fall 2010. The main purpose of the training was to prepare legal services attorneys to represent clients in collaborative law and to serve as consulting attorneys in divorce mediation through the Center.

One of the primary barriers to expanding the degree to which these legal services attorneys can take on more collaborative law cases, is the limited and often restrictive funding sources upon which many of these providers rely. Most are restricted, albeit understandably, to only representing certain parties (i.e. domestic violence victims or income eligible parties). Short of identifying new funding streams, the best way to increase the delivery of collaborative law services for low income and the working poor is to explore innovative ways of using the existing funding streams to permit collaborative law representation, and re-orienting knowledgeable attorneys toward collaborative practice as a routine method of representation. Again, by representing parties in collaborative law or even mediations, attorneys should be able to expand the number of clients they can take on given the non-adversarial nature of the process without repeat court appearances, motion practice, and trial work.

Another potential avenue for expanding the use of Collaborative Law (and other ADR processes as well) is through rule changes. Many parties commence litigation for strategic purposes even when it is their hope to resolve their divorce without protracted litigation. However, parties who have commenced litigation are less likely to seek collaborative law because of the strict time frames to which they are held by the Court. Other States including Texas have enacted court rules providing for a tolling of the case while it is pending in Collaborative Law. Without such a toll, Judges are less likely to allow the parties more time for Collaborative Law, given that they are subject to Standards and Goals.

Pilot Programs Using Volunteer and Emeritus Attorneys

Special Masters

Volunteer and Emeritus attorneys have a wealth of experience and knowledge from which many of the parties with cases in the lower civil, city and district court and in the CDRCs could benefit. While many of these experienced attorneys are not likely to volunteer to take the necessary training to serve as mediators in the CDRCs or on court rosters, they could easily qualify to serve as Special Masters in a pilot court sponsored initiative. Special Masters, while not a traditional ADR neutral role, have been used to provide settlement assistance in a wide array of cases. Special Masters, as defined herein, listen to abbreviated case presentations and offer suggestions and ideas for resolving disputes. They focus less on improving the ability of the parties to communicate and negotiate with each other, which is the essence of mediation. Instead, Special Masters function more like neutral evaluators to persuade the parties to accept reasonable offers of compromise. Special Masters have also been used successfully to handle scheduling, discovery and other non-dispositive pre-trial issues. On consent,

Special Masters, like arbitrators, can also decide issues for parties who are deadlocked. Local courts should be encouraged to create panels of Special Masters from the pool of emeritus attorneys to help conference and settle cases when the parties appear in court. Courts should also consider recruiting Special Masters from the rosters of mediators maintained by the Courts.

Consulting Counsel

Another barrier to the increased utilization of court ADR discussed above, is the lack of legal representation and advice in free and low cost ADR programs. For example, while mediators can provide legal information to parties during mediation, they are precluded from offering legal advice. As a result, advocates for the poor and even many in the mediation community resist widespread utilization of mediation for the unrepresented. Emeritus lawyers should be encouraged to provide limited scope representation for the specific purpose of consulting for parties during mediation. This can be done for parties in selected mediation cases pending in the lower Civil, City and District Courts, the CDRCs or in Family Court. This can be extremely useful in small claims, consumer-merchant and housing court cases and could further expedite cases where the parties delay signing agreements while they pursue legal advice which is often unavailable to them.

Arbitrators

Emeritus attorneys may also be used to increase the number of counties utilizing the Part 28 and voluntary arbitration programs. Given that small claims court now has far fewer night time slots and perhaps fewer volunteer arbitrators available, emeritus attorneys may be best suited to volunteering during the day.

Expanding Partnerships with Law Schools

Many law schools in New York State have dispute resolution or mediation clinics. Mediation clinics are an excellent vehicle for providing free mediation to those who could not otherwise afford it. These clinics often include instruction in mediation, client counseling and ADR advocacy combined with practical, hands-on experience for future lawyers in an ever growing area of practice. Nearly all of the law school mediation clinics in New York City, as well as in Nassau County partner with local CDRCs and small claims courts to provide free mediation. Cardozo Law School also offers a divorce mediation clinic as described above through the Collaborative Family Law Center. In light of recent New York State Bar Association recommendations to the ABA to support "practice ready" education[8], Courts and law schools should explore even more partnerships like the ones already in existence and to find more ways to utilize law school mediation clinics to help those who need it the most. Additionally, the Civil Legal Services Task Force should consider reaching out to Law Schools as well to encourage more partnerships.

Mediation Advocacy Training

Consistent with the recommendations for consulting attorneys above, OCA, Bar Associations and CLE providers should be encouraged to offer training to attorneys in how best to represent clients

[8] John Carr, *State Bar Asks ABA to Support "Practice Ready" Law School Education*, NEW YORK LAW JOURNAL, August 4, 2011.

in ADR. While much of the ADR training to date has been focused on training mediators, neutral evaluators and arbitrators, there is an emerging body of material and interest in the subject of advocacy in ADR. The more attorneys, as advocates, learn to make the most out of ADR for their clients, the more likely they are to use it as well.

Appendix A

Appendix A

Summary of Various Court Rules Authorizing Judicial Referrals to ADR

1. **The Eighth Judicial District Martin Violante ADR Protocols -** Revised February 2, 2009 http://www.nycourts.gov/courts/8jd/adr.shtml

Rule 3.1 Every action filed in the 8th Judicial District shall be assessed to determine its suitability for ADR . . . Parties ordered to ADR shall attend an initial [free] two-hour session. Counsel's attendance presumed unless specifically waived by counsel and parties

Rule 3.4 Order of Reference to ADR : The Court may direct the parties to proceed to an initial ADR session by issuance of an Order of Reference to ADR. After the initial session, the parties may agree to continue with ADR or return to the Court. The Court will include in the Order of Reference to ADR a return date for a report back to the Court which will not exceed sixty (60) days from the date of issuance of said Order. The Order of Reference to ADR shall indicate time frames in which the ADR session shall be conducted. The issuance of the Order of Reference to ADR may be directed by the Court at a conference or in response to a request from any party made on notice to all other parties.

2. **New York County Supreme Court Matrimonial Mediation Program, Statement of Procedures*** http://www.nycourts.gov/supctmanh/ADR_Programs.htm

Rule II Procedures

Supreme Court Justices may refer parties to the Program or parties on their own may request referral to it at any time. Cases involving child abuse or neglect (as defined in Family Court Act § 1012 (e) and (f) and Social Services Law § 412), domestic violence, or a severe power imbalance between the parties are not appropriate for mediation and shall be excluded from the Program.

To begin the process, the Justice will sign an Order of Reference typically at the Preliminary Conference directing parties and their counsel to appear at an initial, free, 90-minute mediation session with a mediator from the Program's Roster of Mediators. The Order of Reference will specify the topics (e.g., child custody and visitation and/or financial issues) to be submitted to the mediation. ...A party who attends the initial session complies with the Order of Reference, even if that party ultimately chooses not to proceed with mediation.

* Similar rules exist in Suffolk, Queens, Westchester and Nassau

3. **Commercial Division ADR**

PART 202. Uniform Civil Rules For The Supreme Court And The County Court
Section 202.70 (g) Rules of Practice for the Commercial Division
http://www.courts.state.ny.us/rules/Trialcourts/202.shtml#70

Rule 3. Alternative Dispute Resolution (ADR). At any stage of the matter, the court may direct or counsel may seek the appointment of an uncompensated mediator for the purpose of mediating a resolution of all or some of the issues presented in the litigation.

New York County Supreme Court Commercial Division ADR Program Rules**
http://www.nycourts.gov/courts/comdiv/PDFs/NYCounty/Attachment1.pdf

Rule 3. Determination of Suitability; Order of Reference. Cases shall be referred to alternative dispute resolution ("ADR") as soon after filing of a Request for Judicial Intervention as is practicable. The suitability of the action for ADR shall be determined by the assigned Justice or the Administrative Judge, after considering the views of the parties insofar as practicable. If the Justice or the Administrative Judge decides to refer a case to the Program or if the parties consentto a referral at a conference or in a written stipulation, the Justice shall issue an Order of Reference requiring that the case proceed to ADR in accordance with these Rules. A case not deemed appropriate for referral at its outset may be referred to the Program later in the discretion of the Justice.

**** Similar versions of these rules appear in the commercial ADR rules in Nassau, Westchester, Queens, and Suffolk

4. **Parenting Coordination** - Rules differ from rules for referral to mediation, scope of duties of the neutral differ http://www.nycourts.gov/courts/8jd/ccfguide.shtml

A Court order is necessary to provide the parenting coordinator authority to work with the parents outside of the adversarial process, to obtain information, and to make recommendations and decisions as specified in the order.

5. **Mandatory Consumer Credit Mediation- NYC Civil Court (DRP 177)**
   http://www.courts.state.ny.us/courts/nyc/civil/directives/DRP/drp177.pdf

Upon the filing of an Answer in Person in a consumer credit case for less than $10,000, where the defenses suggest money is owed and a settlement is sought, the Clerk is directed to place the action on the mandatory Mediation Calendar within 15 days. The cases will be assigned to Part 3-M. Cases will be scheduled for Fridays, and the calendar will be set for 10:00 A.M. Dates may be added depending on case volume.

The Mediation Part is a mandatory appearance part. Failure to appear by the plaintiff may lead to dismissal, and failure to appear by the defendant may allow the entry of a judgment on default. When the parties appear, an experienced mediator will assist them in reaching a mutually satisfactory resolution to their dispute.

An attorney that appears without a client must be familiar with the facts of the case, and must be able to contact that client during the course of the mediation.

Appendix B

Appendix B

To: Divorce Litigants
From:

Divorce is a legal action between married people to end the marriage relationship. To get divorced, you may need to resolve disagreements over

- Custody or parenting time with children
- Maintenance (or alimony) and child support
- Money and finances
- Divisions of property and pension rights
- What happens to the house or apartment where you have been living

If you have not resolved all ~~the~~ **necessary** issues you need to get divorced, you may want to use one of the methods below:

- **Direct discussions between you and your spouse**. If you and your spouse are able to talk to each other, you may be able to agree on some or all of the issues in the divorce. If you have resolved all the issues necessary for the divorce, you may want to use the Court's free uncontested divorce packet, located at http://www.nycourts.gov/divorce.

- **Mediation**. A neutral person called a mediator may be able to help you and your spouse reach agreement outside a courtroom setting. The mediator does not decide the case, but helps you to communicate so that you and your spouse can try to settle the dispute yourselves.

- **Collaborative Law or Collaborative Divorce**. Divorcing couples and their specially-trained lawyers agree to work respectfully to try to find out-of-court solutions that meet the needs of both spouses and their families. If either spouse wants to go to court, the collaborative divorce process ends and both spouses need to get new lawyers.

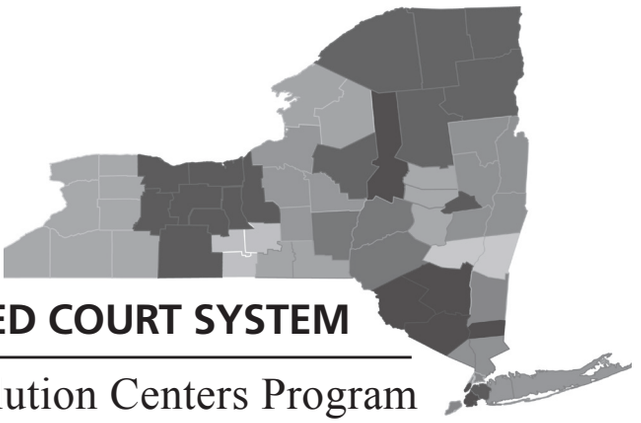
- **Litigation**. You can take your dispute to court. The process is formal, and, if during the course of a case you don't reach a settlement, a judge makes the decision.

- **Negotiations through attorneys**. Before and during litigation, attorneys for you and your spouse will probably talk about settlement. If you can reach an agreement, you will avoid some of the formal litigation process.

- **Combination of methods.** You may find one approach works for reaching an agreement on some of issues, but you need another method to resolve the other disputes.

The choice among methods is yours. The benefits of the various methods depend on you and your particular situation. You may want to discuss these options with your lawyer, if you have one. **If you do not have a lawyer**, the Court may be able to help you find a lawyer, particularly if you have a child custody or child support issue or if you are a victim of domestic violence and would like an order of protection. **If you consider yourself to be a victim of domestic violence, some of the above options including mediation may not be appropriate.** To learn more about divorce options in New York, visit www.nycourts.gov/divorce

Appendix C



NEW YORK STATE UNIFIED COURT SYSTEM

Community Dispute Resolution Centers Program

STATISTICAL SUPPLEMENT

2009-2010

INTRODUCTION

The Community Dispute Resolution Centers Program (CDRCP) is a program of the New York State Unified Court System Office of Alternative Dispute Resolution and Court Improvement Programs (ADRCIP). The goal of the CDRCP is to provide access for all New Yorkers to affordable or free alternative dispute resolution services such as mediation and arbitration. Established in 1981, the CDRCP funds independent not-for-profit agencies – Community Dispute Resolution Centers (CDRCs) – in every county of New York State.

Many common types of disputes, such as neighbor disagreements, custody and visitation arrangements, and landlord-tenant issues, are well suited to mediation. While many people who have filed in court for these issues are referred to mediation, any New Yorker, regardless of whether he or she has a case pending in court, may use the services of the CDRC in his or her local area.

Once a CDRC becomes aware of a dispute, either by walk-in or referral, CDRC staff members conduct interviews with the parties to explain the mediation process and determine whether the dispute is appropriate for mediation. Mediation is a voluntary process, so cases only proceed with the informed consent of all parties. The vast majority of cases handled by CDRCs are mediated by professionally-trained volunteers. These community members receive their training from mediation trainers certified by ADRCIP. In addition to dispute resolution services, many CDRCP work in their communities to provide educational and group facilitation services.

STATISTICAL SUPPLEMENT OVERVIEW

The CDRCP Statistical Supplement provides detailed statistical reports on the workload and funding of the CDRCs for the 2009-10 fiscal year. It is designed to supplement the CDRCP Annual Report, providing more specific information on the types of cases handled, case outcomes, referral sources, and party relationships. Many of the reports contained in the Statistical Supplement correspond to graphs from the CDRCP Annual Report. In those instances, the graphs are paired with the appropriate reports for the reader's reference.

Some reports contain aggregate case data, whereas others organize the data by county and/or judicial district. For more information on the local CDRC for a particular county, please visit **www.nycourts.gov/ip/adr/DirectoryofProviders.pdf** to view the CDRCP Directory of Providers. To learn more about how the data contained in the Statistical Supplement is collected and analyzed, see pages 6-8 of the 2008-09 CDRCP Annual Report.

www.nycourts.gov/adr
(518) 238-4351

Graph for Table 1: Dispositions and Number of Individuals Served (FY 2009-2010)

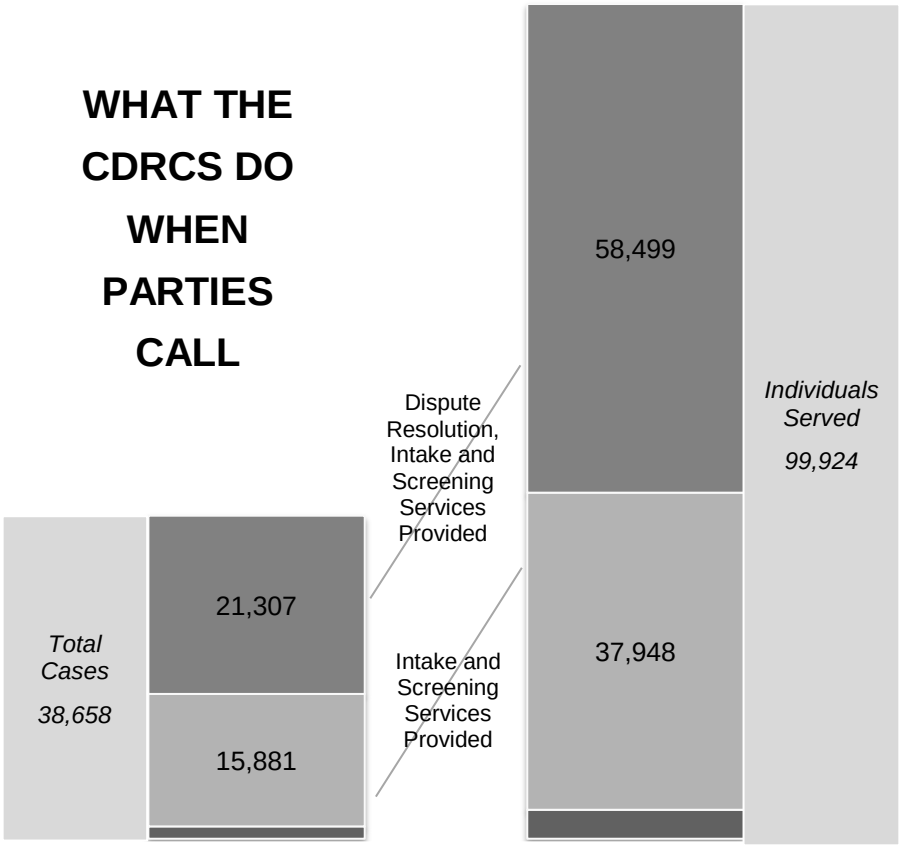


Table 1: Dispositions and Number of Individuals Served (FY 2009-2010)

Final Disposition	Total Cases	Number of Individuals Served
Dispute Resolution, Intake, and Screening Services Provided		
Decision Rendered	438	1,280
DR Services Initiated - Issues Unamenable	359	1,059
Full Agreement	15,063	41,155
No Agreement	4,927	13,179
Partial Agreement	520	1,826
	21,307	**58,499**
Intake and Screening Services Provided		
Both Declined	430	1,079
Both failed to show	508	1,368
Initiating Party or Parties Declined	1,404	3,225
Initiating Party or Parties Failed to show	345	921
Initiating Party or Parties Withdrew	2,457	5,626
Other	2,132	5,024
Outreach Attempted-No Contact	2,725	6,081
Resolved outside of program intervention	1,042	2,635
Responding Party or Parties Declined	1,930	4,992
Responding Party or Parties failed to show	1,066	2,434
Responding Party or Parties Withdrew	148	391
Unable to contact Initiating Party or Parties	674	1,640
Unable to contact Responding Party or Parties	1,020	2,532
	15,881	**37,948**
Screened Innappropriate		
Screened Innappropriate	1,470	3,477
	1,470	**3,477**
FY 2009 - 2010 Total:	**38,658**	**99,924**

Graph for Table 2: Referral Sources (FY 2009-2010)

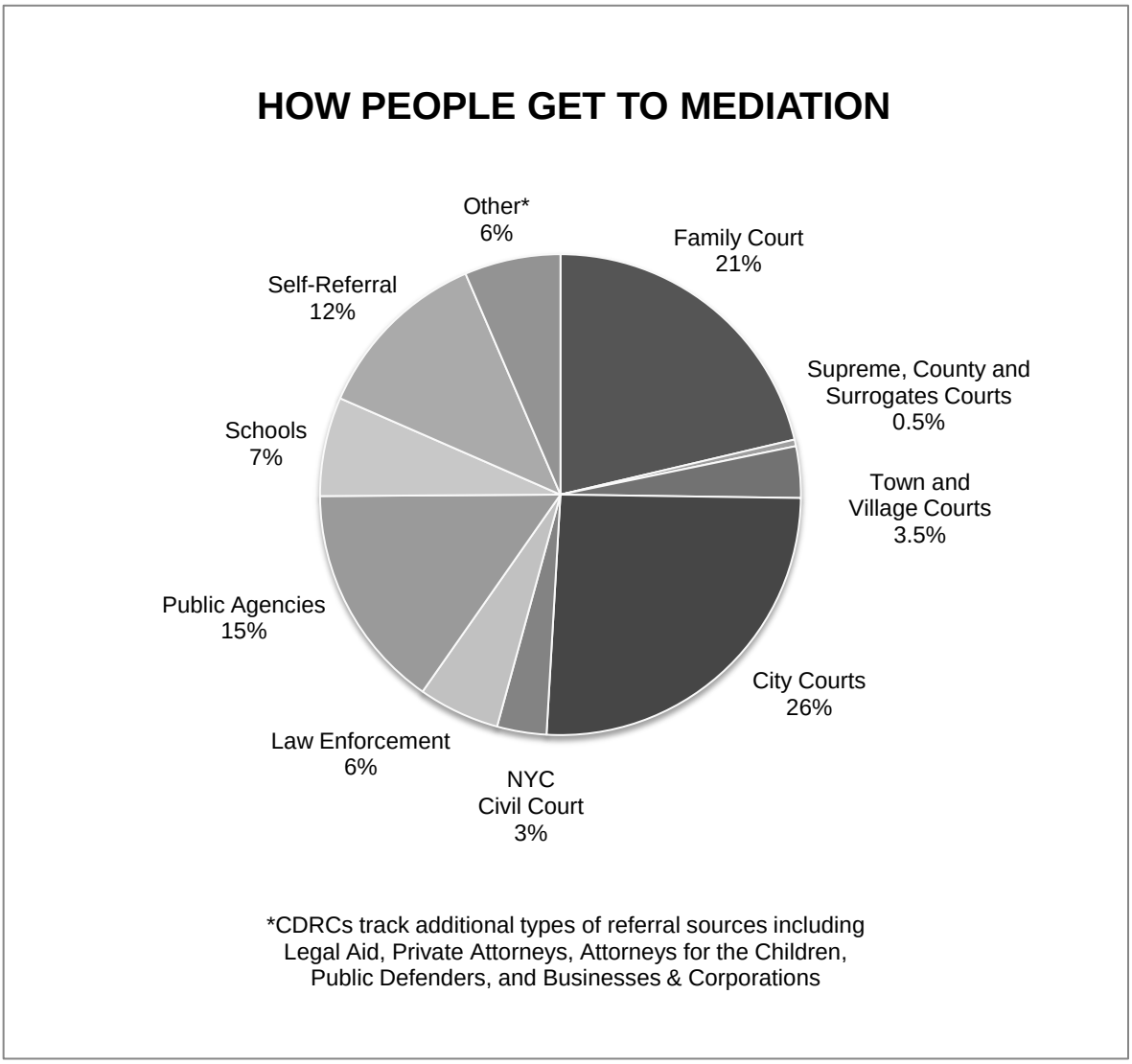


Table 2: Referral Sources (FY 2009-2010)

Referral Source	Total Cases	Percetage of Total
City Courts		
City Court	9,935	25.7%
	9,935	**25.7%**
Family Court		
Family Court Intake	87	0.2%
Family Court Judge	8,155	21.1%
Family Court Magistrate	1	0.0%
	8,243	**21.3%**
Law Enforcement		
Attorney General	30	0.1%
District Attorney	293	0.8%
Police	1,603	4.1%
Probation	124	0.3%
Sheriff	56	0.1%
State Police	9	0.0%
	2,115	**5.5%**
NYC Civil Court		
NYC Civil Ct - 2 Attorneys	1	0.0%
NYC Civil Ct - Housing	133	0.3%
NYC Civil Ct - Pro Se	1,003	2.6%
NYC Civil Ct - Small Claims	148	0.4%
	1,285	**3.3%**
Other		
Business/Corporation	29	0.1%
Law Guardian	2	0.0%
Legal Aid	169	0.4%
Other	1,594	4.1%
Private Agency	545	1.4%
Public Defender	19	0.0%
Religious Referral	8	0.0%
Others	131	0.3%
	2,497	**6.5%**
Public Agencies		
Adult Protective Services	568	1.5%
Dept. of Social Services	275	0.7%
NYS Division of Housing	316	0.8%
Public Agency	4,710	12.2%
	5,869	**15.2%**
Schools		
School	2,573	6.7%
	2,573	**6.7%**
Self-Referral		
Media	162	0.4%
Prior Client (returning with new matter)	58	0.2%
Referred by Previous Client	563	1.5%
Walk-In	2,473	6.4%
Word of Mouth	1,376	3.6%
	4,632	**12.0%**

Table 2: Referral Sources (FY 2009-2010)

Referral Source	Total Cases	Percetage of Total
Supreme, Surrogates, and County Courts		
County Court	40	0.1%
Criminal Court	7	0.0%
Supreme Court	124	0.3%
	171	**0.4%**
Town and Village Courts		
Town & Village Courts	1,338	3.5%
	1,338	**3.5%**
FY 2009 - 2010 Total	**38,658**	

Table 3: Referral Sources (FY 2006-2010)

Referral Source	2006 - 2007	2007 - 2008	2008 - 2009	2009 - 2010
City Court	8,123	8,446	9,377	9,935
Family Court	8,430	9,379	8,661	8,243
Law Enforcement	3,407	3,466	2,785	2,115
NYC Civil Court	810	1,349	1,747	1,285
Other	2,610	2,590	2,276	2,497
Public Agencies	5,081	5,121	5,223	5,869
Schools	2,414	2,543	2,964	2,573
Self - Referral	3,827	3,764	4,587	4,632
Supreme, Surrogates, and County Courts	176	175	159	171
Town and Village Courts	1,217	1,216	1,135	1,338
Total	**36,095**	**38,049**	**38,914**	**38,658**

Graph for Table 4: Case Types and Individuals Served (FY 2009-2010)

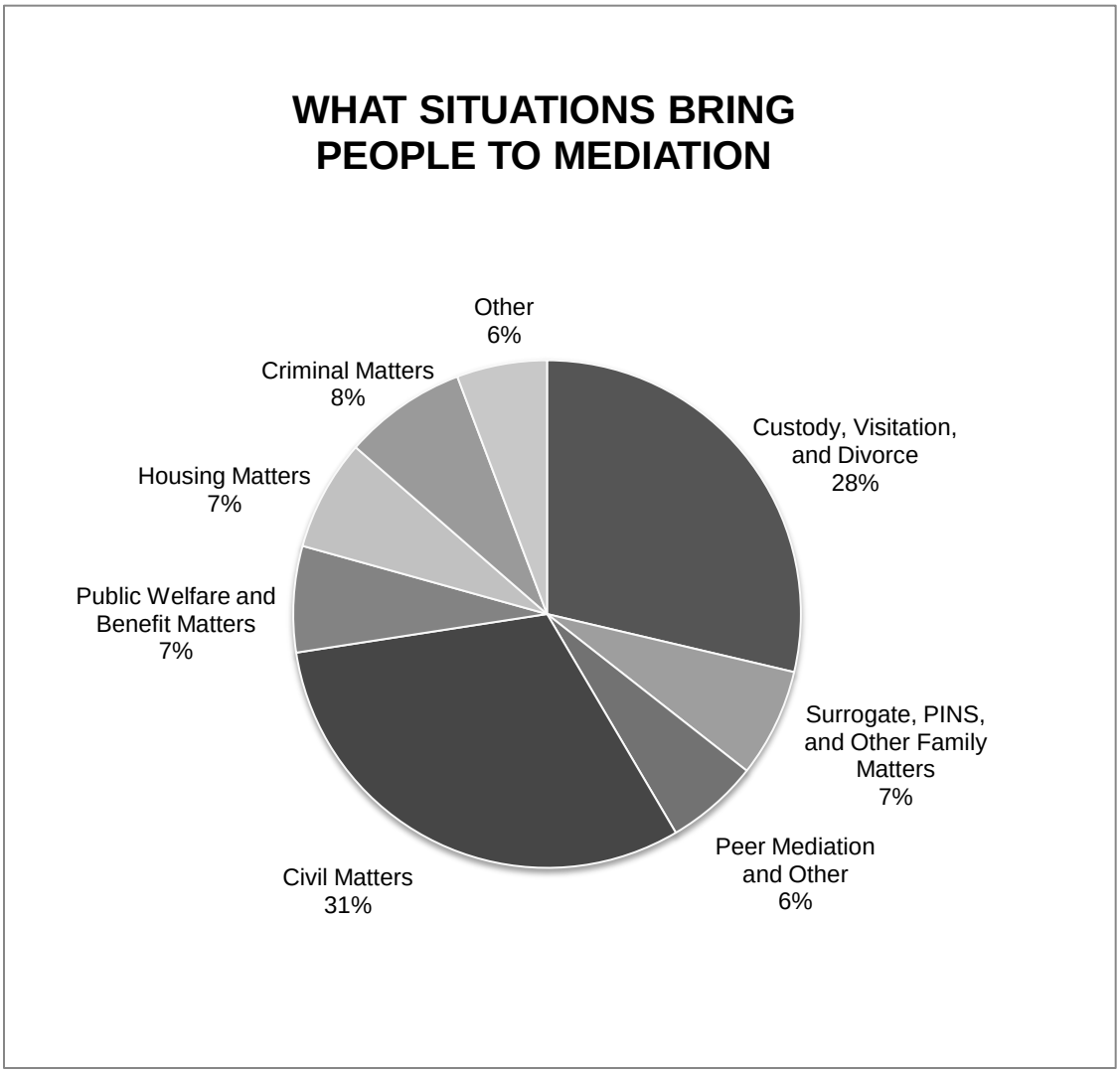


Table 4: Case Types and Individuals Served (FY 2009-2010)

Case Type	Total Cases	Percetage of Total	Individuals Served
Civil Matters			
Agricultural - Credit	329	0.9%	702
Civil - Large Claim	1,148	3.0%	2,449
Civil -Small Claims	10,257	26.5%	23,238
Lemon Law	264	0.7%	633
	11,998	**31.0%**	**27,022**
Criminal Matters			
Felony	19	0.0%	46
Misdemeanor/Violation	3,012	7.8%	6,599
	3,031	**7.8%**	**6,645**
Custody Visitation Divorce			
Agricultural - Non Credit	55	0.1%	152
Matrimonial	806	2.1%	1,920
Parenting Issues	10,225	26.4%	32,574
	11,086	**28.7%**	**34,646**
Housing Matters			
Civil - Housing	2,678	6.9%	5,676
Civil - Mobile Home	59	0.2%	133
	2,737	**7.1%**	**5,809**
Other			
Other	2,223	5.8%	5,331
	2,223	**5.8%**	**5,331**
Other Family			
Juvenile Delinquency	488	1.3%	1,584
Permanency	530	1.4%	3,661
PINS / Pre-Pins	1,391	3.6%	3,534
	2,409	**6.2%**	**8,779**
Public Welfare and Benefit Issues			
Administrative Hearing	425	1.1%	1,354
DSS Conciliation	2,177	5.6%	4,367
Early Intervention	6	0.0%	23
Vesid	6	0.0%	17
	2,614	**6.8%**	**5,761**
Surrogate Matters			
Guardianship	237	0.6%	506
Probate/Estate	27	0.1%	80
	264	**0.7%**	**586**
Youth			
Peer Mediation	1,081	2.8%	2,499
Youth	1,215	3.1%	2,846
	2,296	**5.9%**	**5,345**
FY 2009 - 2010 Total:	**38,658**		**99,924**

Graph for Table 5: Party Relationships (FY 2009-2010)

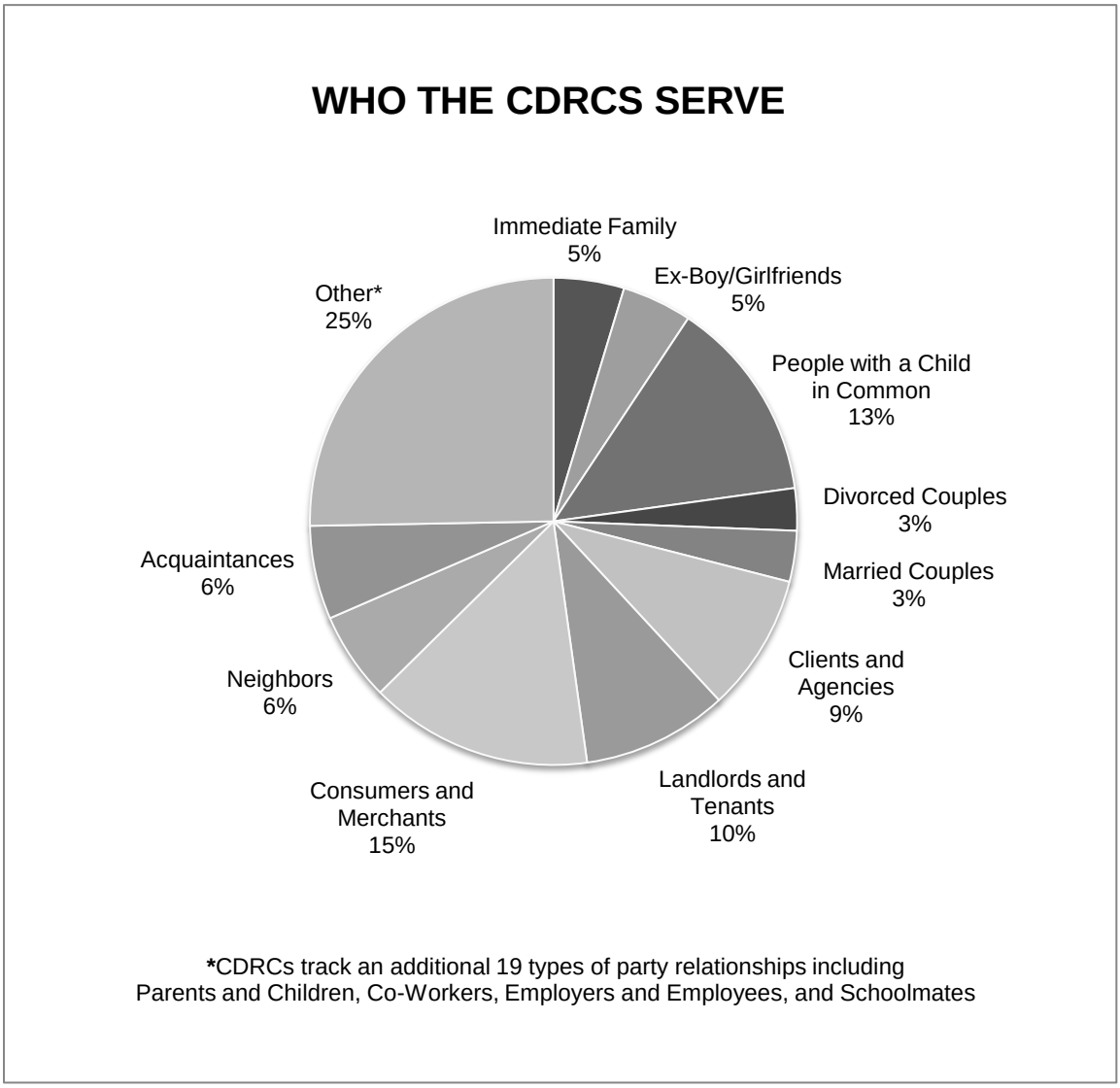


Table 5: Party Relationships (FY 2009-2010)

Relationship	Total	Percentage of Total
Acquaintances		
Acquaintances	**2,402**	**6.2%**
Clients and Agencies		
Client/Agency	**3,527**	**9.1%**
Consumers and Merchants		
Consumer/Merchant	**5,727**	**14.8%**
Divorced Couples		
Divorced	**1,085**	**2.8%**
Ex-Boy/Girlfriends		
Ex-boy/girlfriend	**1,794**	**4.6%**
Immediate Family		
Immediate Family	**1,811**	**4.7%**
Landlords and Tenants		
Landlord/Tenant	**3,740**	**9.7%**
Married Couples		
Married	**1,305**	**3.4%**
Neighbors		
Neighbors	**2,275**	**5.9%**
People with a Child in Common		
Child in Common	**5,214**	**13.5%**
Others		
Boy/Girlfriend	**266**	**0.7%**
Caregiver/Caseworker	**32**	**0.1%**
Child/Agency	**342**	**0.9%**
Co-Workers	**182**	**0.5%**
Domestic Partners	**36**	**0.1%**
Employer/Employee	**350**	**0.9%**
Extended Family	**543**	**1.4%**
Friend	**601**	**1.6%**
Individual/Corporation	**811**	**2.1%**
Lover-in-common	**34**	**0.1%**
Member of Group	**66**	**0.2%**
Other	**2,881**	**7.5%**
Parent/Child	**1,133**	**2.9%**
Parent/Foster Parent	**25**	**0.1%**
Room/Housemates	**226**	**0.6%**
School/Parent	**175**	**0.5%**
Schoolmates	**861**	**2.2%**
Separated	**701**	**1.8%**
Strangers	**513**	**1.3%**

FY 2009 - 2010 Total: 38,658

Table 6: Demographic Characteristics of Parties Served (FY 2009-2010)

	Characteristic	Number of Parties	Percent of Total Reported Responses *
AGE	Under 17	2,992	9.0%
	17 - 20	1,905	5.7%
	21 - 29	7,280	21.8%
	30 - 39	8,079	24.2%
	40 - 49	6,627	19.8%
	50 - 59	4,056	12.1%
	60 - 69	1,706	5.1%
	Over 70	747	2.2%
	Undetermined / No Response	49,410	
	Total	**82,802**	

Note: 59.70% of parties were not asked to report or declined to report their age.

RACE	American Indian	228	0.6%
	Asian	597	1.6%
	Black	7,354	19.5%
	Hispanic	5,042	13.4%
	Other	841	2.2%
	White	23,580	62.6%
	Undetermined / No Response	45,160	
	Total	**82,802**	

Note: 54.50% of parties were not asked to report or declined to report their race.

SEX	Female	30,854	52.3%
	Male	28,152	47.7%
	Undetermined / No Response	23,796	
	Total	**82,802**	

Note: 28.70% of parties were not asked to report or declined to report their sex.

Table 6: Demographic Characteristics of Parties Served (FY 2009-2010)

	Characteristic	Number of Parties	Percent of Total Reported Responses *
EMPLOYMENT STATUS	Disability	1,287	3.6%
	Employed	21,998	61.9%
	Family Member Employed	382	1.1%
	Public Assistance	1,960	5.5%
	Social Security / Retired	1,500	4.2%
	Student	4,285	12.1%
	Unemployed	4,129	11.6%
	Undetermined / No Response	47,261	
	Total	**82,802**	

Note: 57.10% of parties were not asked to report or declined to report their employment status.

INCOME	Less than $9,000	5,896	34.2%
	$9,000 to $16,000	2,756	16.0%
	$16,001 to $25,000	3,744	21.7%
	$25,001 to $35,000	3,032	17.6%
	Greater than $35,000	1,817	10.5%
	Undetermined / No Response	65,557	
	Total	**82,802**	

Note: 79.20% of parties were not asked to report or declined to report their income.

YEARS OF EDUCATION	1 to 8	1,014	4.7%
	9 to 11	3,683	17.1%
	12	9,539	44.4%
	13 to 15	3,332	15.5%
	16	2,673	12.4%
	17 or more	1,238	5.8%
	Undetermined / No Response	61,323	
	Total	**82,802**	

Note: 74.10% of parties were not asked to report or declined to report their years of education.

** Percent of Total Reported Responses does not include parties who were not asked to report or declined to report their demographic characteristics.*

Table 7: Referrals to Other Services (FY 2009-2010)

Services Referred to	Total	Percentage of Total
Adult Protective Services	49	0.9%
Attorney General	1	0.0%
Business/Corporation	2	0.0%
City Court	621	11.2%
County Court	4	0.1%
Criminal Court	0	0.0%
Dept. of Social Services	3	0.1%
District Attorney	74	1.3%
Family Court Intake	31	0.6%
Family Court Judge	1,734	31.4%
Family Court Magistrate	0	0.0%
Law Guardian	2	0.0%
Legal Aid	18	0.3%
Media	32	0.6%
NYC Civil Ct - 2 Attorneys	1	0.0%
NYC Civil Ct - Housing	99	1.8%
NYC Civil Ct - Pro Se	966	17.5%
NYC Civil Ct - Small Claims	134	2.4%
NYS Division of Housing	29	0.5%
Other	292	5.3%
Police	155	2.8%
Private Agency	65	1.2%
Private Attorney	44	0.8%
Probation	4	0.1%
Public Agency	395	7.1%
Public Defender	5	0.1%
Religious Referral	0	0.0%
School	520	9.4%
Sheriff	3	0.1%
State Police	1	0.0%
Supreme Court	93	1.7%
Town & Village Courts	153	2.8%

FY 2009 - 2010 Total: 5,530

Table 8: Case Dispositions by County (FY 2009-2010)

County	DR Services Provided: Resolved	DR Services Provided: Not Resolved	Dispute Resolution Rate	Outreach Attempted, No Contact	Matter Screened Inappropriate	Party(ies) Declined / Withdrew	Party(ies) Failed to Show	Unable to Contact Party(ies)	Other	Total
Albany	267	118	69 %	80	9	33	60	2	21	590
Allegany	5	1	83 %	0	0	5	0	0	0	11
Bronx	488	184	72 %	22	43	1,263	157	9	45	2,211
Broome	648	120	84 %	100	38	285	192	67	47	1,497
Cattaraugus	10	5	66 %	2	3	13	0	1	1	35
Cayuga	18	7	72 %	1	2	7	1	5	0	41
Chautauqua	353	129	73 %	3	40	171	18	35	0	749
Chemung	260	18	93 %	7	20	63	7	61	2	438
Chenango	136	34	80 %	43	28	75	3	37	22	378
Clinton	173	61	73 %	0	5	42	195	1	0	477
Columbia	90	18	83 %	59	12	30	5	14	24	252
Cortland	64	12	84 %	1	11	25	7	10	0	130
Delaware	67	15	81 %	73	19	50	3	13	2	242
Dutchess	343	169	66 %	257	21	210	21	36	11	1,068
Erie	498	117	80 %	74	7	192	67	5	55	1,015
Essex	52	5	91 %	1	3	6	14	3	8	92
Franklin	339	51	86 %	9	0	9	64	1	0	473
Fulton	154	50	75 %	1	24	71	3	6	0	309
Genesee	107	25	81 %	38	6	30	7	0	0	213
Greene	271	11	96 %	28	21	19	4	2	22	378
Hamilton	4	1	80 %	1	0	3	0	3	0	12
Herkimer	405	14	96 %	27	52	47	6	10	123	684
Jefferson	294	29	91 %	1	0	76	22	5	0	427
Kings	824	354	69 %	83	259	594	279	191	387	2,971
Lewis	22	3	88 %	2	0	16	0	2	1	46
Livingston	237	24	90 %	2	16	64	11	30	0	384
Madison	18	1	94 %	4	17	19	0	1	0	60
Monroe	473	130	78 %	151	7	219	66	11	85	1,142
Montgomery	47	23	67 %	5	11	36	4	7	52	185
Nassau	1,824	1,155	61 %	2	2	92	235	17	96	3,423
New York	918	407	69 %	14	114	361	56	137	104	2,111
Niagara	207	46	81 %	18	69	142	18	58	0	558

Table 8: Case Dispositions by County (FY 2009-2010)

County	DR Services Provided: Resolved	DR Services Provided: Not Resolved	Dispute Resolution Rate	Outreach Attempted, No Contact	Matter Screened Inappropriate	Party(ies) Declined / Withdrew	Party(ies) Failed to Show	Unable to Contact Party(ies)	Other	Total
Oneida	210	50	80 %	32	17	26	12	7	13	367
Onondaga	253	89	73 %	7	0	150	29	70	2	600
Ontario	256	61	80 %	43	21	100	28	30	3	542
Orange	345	128	72 %	31	3	100	31	53	150	841
Orleans	1	1	50 %	0	1	2	0	0	0	5
Oswego	164	23	87 %	0	6	96	16	26	9	340
Otsego	60	13	82 %	7	1	25	2	3	1	112
Putnam	60	31	65 %	2	4	43	5	16	5	166
Queens	412	141	74 %	11	151	149	87	5	508	1,464
Rensselaer	95	16	85 %	0	20	37	4	11	4	187
Richmond	756	137	84 %	895	191	328	26	239	101	2,673
Rockland	68	57	54 %	3	3	21	1	6	0	159
Saratoga	115	63	64 %	381	2	52	10	23	0	646
Schenectady	301	111	73 %	12	23	56	4	6	19	532
Schoharie	16	2	88 %	0	1	5	1	1	0	26
Schuyler	84	11	88 %	1	1	23	4	13	0	137
Seneca	51	18	73 %	4	0	12	1	0	1	87
St. Lawrence	791	45	94 %	5	5	45	25	22	7	945
Steuben	618	86	87 %	71	31	230	57	51	128	1,272
Suffolk	805	507	61 %	1	4	85	1	16	9	1,428
Sullivan	103	31	76 %	1	21	24	2	15	1	198
Tioga	89	6	93 %	0	1	50	2	0	4	152
Tompkins	133	51	72 %	5	11	73	7	62	0	342
Ulster	161	68	70 %	3	16	100	6	75	0	429
Warren	109	37	74 %	78	6	18	1	2	1	252
Washington	72	2	97 %	1	1	5	0	0	0	81
Wayne	102	33	75 %	4	5	38	20	4	3	209
Westchester	1,107	110	90 %	14	51	193	8	155	53	1,691
Wyoming	22	0	100 %	0	1	2	0	0	0	25
Yates	88	21	80 %	4	13	13	4	3	2	148
Total	**17,063**	**5,286**	**76.3 %**	**2,725**	**1,470**	**6,369**	**1,919**	**1,694**	**2,132**	**38,658**

Table 9: Workload Summary by County (FY 2009-2010)

County	Total Cases	Mediations	Arbitrations	Concilliations	Family Group Conference	Settlement Conference	Multi-party Facilitation	Intake and Case Management	Other	Persons Served	Average Days to Disposition
Albany	590	450	5	0	3	0	1	131	0	1,748	41.8
Allegany	11	8	0	0	0	0	0	3	0	26	19.5
Bronx	2,211	2,067	4	77	0	0	0	61	2	5,021	40.9
Broome	1,497	804	2	24	2	1	0	659	5	3,355	32.6
Cattaraugus	35	3	0	0	0	16	0	15	1	122	7.0
Cayuga	41	38	0	3	0	0	0	0	0	120	34.8
Chautauqua	749	197	1	8	0	261	0	281	1	2,371	7.4
Chemung	438	110	4	161	0	0	0	163	0	1,957	23.2
Chenango	378	60	0	38	0	0	14	266	0	1,168	17.9
Clinton	477	467	7	0	0	0	0	3	0	1,018	4.0
Columbia	252	145	0	3	0	6	0	73	25	581	33.7
Cortland	130	78	0	1	0	0	0	51	0	473	19.6
Delaware	242	70	1	5	0	0	0	166	0	850	42.0
Dutchess	1,068	387	6	0	0	0	120	541	14	2,782	62.8
Erie	1,015	687	19	15	0	6	28	255	5	3,508	26.2
Essex	92	69	0	7	0	0	0	15	1	218	14.2
Franklin	473	437	5	8	0	0	0	23	0	947	1.0
Fulton	309	181	2	0	0	0	0	126	0	672	7.0
Genesee	213	74	0	6	2	26	7	98	0	844	14.5
Greene	378	81	1	0	0	206	0	62	28	850	48.6
Hamilton	12	5	0	0	0	0	0	7	0	25	7.2
Herkimer	684	126	51	154	0	0	0	353	0	2,077	9.6
Jefferson	427	236	4	91	0	0	0	96	0	1,066	16.0
Kings	2,971	1,223	10	31	0	0	0	1,653	54	7,622	35.1
Lewis	46	10	1	11	6	0	0	18	0	131	48.4
Livingston	384	257	2	26	0	0	0	97	2	1,316	28.8
Madison	60	38	0	5	0	0	0	17	0	152	7.8
Monroe	1,142	608	17	57	2	0	0	452	6	2,995	26.1
Montgomery	185	80	1	0	0	0	0	55	49	441	23.1
Nassau	3,423	3,328	28	2	0	0	0	20	45	7,674	5.7
New York	2,111	1,300	33	98	0	0	12	667	1	4,440	26.0
Niagara	558	164	1	1	0	21	65	306	0	1,881	22.0

Table 9: Workload Summary by County (FY 2009-2010)

County	Total Cases	Mediations	Arbitrations	Concilliations	Family Group Conference	Settlement Conference	Multi-party Facilitation	Intake and Case Management	Other	Persons Served	Average Days to Disposition
Oneida	367	193	74	10	0	0	1	89	0	1,356	44.2
Onondaga	600	323	18	9	0	0	0	250	0	1,891	24.1
Ontario	542	319	5	0	1	0	0	217	0	1,594	24.2
Orange	841	441	1	6	0	1	0	392	0	1,815	54.0
Orleans	5	2	0	0	0	0	0	3	0	28	64.8
Oswego	340	180	1	0	0	0	0	159	0	1,290	33.7
Otsego	112	1	0	8	1	0	5	97	0	360	24.1
Putnam	166	142	0	0	0	0	1	23	0	368	48.6
Queens	1,464	1,133	5	5	0	0	0	314	7	3,634	26.7
Rensselaer	187	118	1	0	1	0	0	67	0	630	87.2
Richmond	2,673	707	14	132	2	0	0	1,817	1	5,827	23.8
Rockland	159	143	15	0	0	0	0	0	1	375	21.7
Saratoga	646	143	4	13	0	0	0	486	0	1,404	32.1
Schenectady	532	436	2	0	0	0	1	86	7	1,229	11.4
Schoharie	26	16	0	0	0	0	0	10	0	77	42.2
Schuyler	137	51	0	45	0	0	0	41	0	580	24.9
Seneca	87	81	2	3	0	0	0	0	1	286	28.7
St. Lawrence	945	849	3	13	4	3	4	68	1	2,054	9.1
Steuben	1,272	516	1	177	0	1	0	486	91	3,752	42.5
Suffolk	1,428	1,189	21	7	0	0	94	116	1	4,164	6.1
Sullivan	198	113	0	15	0	0	0	70	0	411	26.7
Tioga	152	45	0	8	41	0	0	58	0	584	22.7
Tompkins	342	135	0	49	0	0	0	158	0	1,128	30.7
Ulster	429	202	2	6	0	0	3	215	1	964	22.5
Warren	252	129	0	12	0	0	0	111	0	443	39.0
Washington	81	7	0	64	0	0	0	10	0	174	9.4
Wayne	209	180	0	0	0	0	0	28	1	520	15.7
Westchester	1,691	702	12	300	2	0	0	568	107	3,889	22.5
Wyoming	25	20	0	0	1	0	0	4	0	128	20.4
Yates	148	101	1	0	0	0	0	46	0	518	33.4
Total	**38,658**	**22,405**	**387**	**1,714**	**68**	**548**	**356**	**12,722**	**458**	**99,924**	**26.1**

Table 10: Referral Sources by County (FY 2009-2010)

County	City Courts	Family Court	Law Enforcement	NYC Civil Court	Other	Public Agencies	Schools	Self-Referral	Supreme, Surrogates, and County Court	Town and Village Courts	Total Cases
Albany	74	432	13	0	7	50	1	13	0	0	590
Allegany	0	1	0	0	3	4	0	3	0	0	11
Bronx	44	392	575	24	721	359	29	67	0	0	2,211
Broome	282	68	6	0	119	870	0	142	0	10	1,497
Cattaraugus	1	19	0	0	3	3	0	8	0	1	35
Cayuga	1	25	0	0	1	1	1	10	0	2	41
Chautauqua	116	491	5	0	33	31	4	69	0	0	749
Chemung	5	145	6	0	29	112	6	134	1	0	438
Chenango	13	313	2	4	17	5	2	22	0	0	378
Clinton	372	3	0	0	3	26	0	36	0	37	477
Columbia	93	97	8	0	11	12	0	25	1	5	252
Cortland	0	53	1	0	9	8	1	58	0	0	130
Delaware	0	231	0	0	7	3	0	0	1	0	242
Dutchess	644	129	4	0	46	183	3	59	0	0	1,068
Erie	152	499	52	0	42	98	3	35	1	133	1,015
Essex	0	2	0	0	12	7	0	1	0	70	92
Franklin	1	9	0	0	0	5	0	42	0	416	473
Fulton	43	253	0	0	2	2	0	9	0	0	309
Genesee	46	97	2	0	14	7	9	36	1	1	213
Greene	2	122	0	0	18	204	0	28	0	4	378
Hamilton	1	0	1	0	4	4	0	2	0	0	12
Herkimer	0	38	4	0	37	215	2	386	0	2	684
Jefferson	5	64	28	0	23	192	38	68	9	0	427
Kings	36	425	630	490	227	390	370	375	27	1	2,971
Lewis	0	16	2	0	2	12	1	11	2	0	46
Livingston	0	107	9	0	28	40	6	179	0	15	384
Madison	1	2	1	0	12	9	1	33	1	0	60
Monroe	183	396	99	0	34	16	162	212	29	11	1,142
Montgomery	47	58	0	0	22	55	0	2	0	1	185
Nassau	2,168	5	60	0	13	1,138	12	24	1	2	3,423
New York	79	298	49	765	220	109	75	515	1	0	2,111
Niagara	22	153	3	0	3	331	0	39	3	4	558
Oneida	137	90	1	0	33	20	4	77	2	3	367

Table 10: Referral Sources by County (FY 2009-2010)

County	City Courts	Family Court	Law Enforcement	NYC Civil Court	Other	Public Agencies	Schools	Self-Referral	Supreme, Surrogates, and County Court	Town and Village Courts	Total Cases
Onondaga	28	400	7	0	17	138	5	5	0	0	600
Ontario	148	249	13	0	14	8	5	83	6	16	542
Orange	139	87	5	0	25	397	11	135	1	41	841
Orleans	0	0	1	0	2	0	0	2	0	0	5
Oswego	5	234	1	0	49	14	1	36	0	0	340
Otsego	0	75	0	0	12	4	2	14	0	5	112
Putnam	42	26	0	0	38	6	2	30	0	22	166
Queens	10	267	277	1	93	22	209	581	0	4	1,464
Rensselaer	7	140	1	0	13	18	0	7	1	0	187
Richmond	1,782	47	111	1	42	71	509	38	72	0	2,673
Rockland	91	11	6	0	4	19	1	13	0	14	159
Saratoga	438	16	4	0	8	75	3	18	2	82	646
Schenectady	182	10	2	0	27	14	258	37	0	2	532
Schoharie	0	13	2	0	0	4	0	3	0	4	26
Schuyler	0	87	0	0	3	25	4	18	0	0	137
Seneca	2	75	0	0	1	1	0	8	0	0	87
St. Lawrence	577	62	7	0	41	51	11	139	0	57	945
Steuben	166	524	16	0	38	192	12	215	1	108	1,272
Suffolk	1,108	0	25	0	128	39	4	95	2	27	1,428
Sullivan	3	92	23	0	5	26	2	45	0	2	198
Tioga	0	41	0	0	15	43	0	21	0	32	152
Tompkins	34	124	6	0	32	26	12	106	1	1	342
Ulster	15	105	2	0	25	18	10	99	0	155	429
Warren	81	132	0	0	0	31	2	1	0	5	252
Washington	0	0	1	0	3	74	0	1	0	2	81
Wayne	0	156	2	0	7	3	2	6	0	33	209
Westchester	507	135	42	0	94	19	776	115	0	3	1,691
Wyoming	1	18	0	0	2	1	0	2	1	0	25
Yates	1	84	0	0	4	9	2	39	4	5	148
Total	**9,935**	**8,243**	**2,115**	**1,285**	**2,497**	**5,869**	**2,573**	**4,632**	**171**	**1,338**	**38,658**

Note: Please see Table 2 for more more information about specific referral sources.

Table 11: Family Case Dispositions by Judicial District and County (FY 2009-2010)

		DR Services Provided: Resolved	DR Services Provided: Not Resolved	Outreach Attempted, No Contact	Matter Screened Inappropriate	Part(ies) Declined / Withdrew	Part(ies) Failed to Show	Unable to Contact Part(ies)	Other	Total
Third Judicial District	Albany	203	94	79	8	25	60	1	17	487
	Columbia	43	6	33	6	11	4	6	20	129
	Greene	54	7	27	16	12	4	1	20	141
	Rensselaer	85	13	0	16	32	4	11	3	164
	Schoharie	13	0	0	1	0	1	1	0	16
	Sullivan	82	18	0	6	13	2	3	1	125
	Ulster	61	19	3	14	54	4	47	0	202
	Total	**541**	**157**	**142**	**67**	**147**	**79**	**70**	**61**	**1,264**
Fourth Judicial District	Clinton	38	3	0	3	10	2	0	0	56
	Essex	8	2	0	1	1	0	0	3	15
	Franklin	14	2	0	0	0	4	0	0	20
	Fulton	132	37	0	24	59	3	4	0	259
	Montgomery	21	7	3	9	23	4	4	51	122
	Saratoga	39	13	7	2	19	10	7	0	97
	Schenectady	19	10	4	7	6	1	1	9	57
	St. Lawrence	87	6	0	1	9	2	1	1	107
	Warren	52	9	78	6	15	1	1	1	163
	Washington	7	1	1	1	4	0	0	0	14
	Total	**417**	**90**	**93**	**54**	**146**	**27**	**18**	**65**	**910**
Fifth Judicial District	Herkimer	190	9	24	10	12	3	3	118	369
	Jefferson	109	6	0	0	55	1	4	0	175
	Lewis	18	0	1	0	12	0	1	1	33
	Oneida	108	19	25	14	17	4	2	9	198
	Onondaga	217	84	6	0	129	27	52	0	515
	Oswego	163	23	0	6	84	15	23	9	323
	Total	**805**	**141**	**56**	**30**	**309**	**50**	**85**	**137**	**1,613**
Sixth Judicial District	Broome	71	8	0	30	147	14	21	9	300
	Chemung	252	14	5	20	51	6	54	2	404
	Chenango	126	23	42	28	64	1	26	20	330
	Cortland	62	9	1	10	21	7	6	0	116
	Delaware	67	13	73	18	46	3	13	1	234
	Madison	10	0	3	9	10	0	1	0	33
	Otsego	51	9	6	1	19	2	2	0	90
	Schuyler	83	11	1	1	20	4	13	0	133
	Tioga	83	6	0	1	13	2	0	3	108
	Tompkins	101	28	3	8	39	7	45	0	231
	Total	**906**	**121**	**134**	**126**	**430**	**46**	**181**	**35**	**1,979**

Please note that this report includes the following case types: Agricultural Non-Credit, Juvenile Delinquency, Matrimonial, Parenting Issues, Permanency, and PINS/Pre-PINS.

Table 11: Family Case Dispositions by Judicial District and County (FY 2009-2010)

		DR Services Provided: Resolved	DR Services Provided: Not Resolved	Outreach Attempted, No Contact	Matter Screened Inappropriate	Part(ies) Declined / Withdrew	Part(ies) Failed to Show	Unable to Contact Part(ies)	Other	Total
Seventh Judicial District	Cayuga	16	7	1	2	3	1	0	0	30
	Livingston	185	22	2	13	31	9	14	0	276
	Monroe	332	107	64	7	158	52	11	10	741
	Ontario	207	43	6	14	39	26	15	3	353
	Seneca	50	16	1	0	12	1	0	1	81
	Steuben	416	68	31	31	127	50	10	80	813
	Wayne	85	30	0	3	30	14	0	3	165
	Yates	86	17	3	13	10	4	2	2	137
	Total	**1,377**	**310**	**108**	**83**	**410**	**157**	**52**	**99**	**2,596**
Eighth Judicial District	Allegany	2	1	0	0	3	0	0	0	6
	Cattaraugus	10	4	0	3	4	0	0	0	21
	Chautauqua	259	78	2	40	144	15	23	0	561
	Erie	330	88	4	3	54	45	2	27	553
	Genesee	81	19	6	2	23	7	0	0	138
	Niagara	191	34	18	67	140	18	55	0	523
	Orleans	0	1	0	0	0	0	0	0	1
	Wyoming	22	0	0	1	1	0	0	0	24
	Total	**895**	**225**	**30**	**116**	**369**	**85**	**80**	**27**	**1,827**
Ninth Judicial District	Dutchess	165	32	13	11	93	19	5	7	345
	Orange	133	30	3	1	46	7	37	89	346
	Putnam	21	7	1	3	30	1	16	4	83
	Rockland	6	5	3	1	7	0	1	0	23
	Westchester	71	18	0	23	55	4	25	5	201
	Total	**396**	**92**	**20**	**39**	**231**	**31**	**84**	**105**	**998**
Tenth Judicial District (Nassau)	Nassau	0	0	0	1	1	1	1	0	4
	Total	**0**	**0**	**0**	**1**	**1**	**1**	**1**	**0**	**4**
Tenth Judicial District (Suffolk)	Suffolk	14	8	1	3	11	1	2	0	40
	Total	**14**	**8**	**1**	**3**	**11**	**1**	**2**	**0**	**40**
New York City	Bronx	254	80	22	40	201	79	8	12	696
	Kings	177	78	41	113	106	36	81	29	661
	New York	147	72	4	40	56	12	22	38	391
	Queens	143	53	10	57	43	27	4	19	356
	Richmond	15	5	3	14	12	10	4	97	160
	Total	**736**	**288**	**80**	**264**	**418**	**164**	**119**	**195**	**2,264**
Total		**6,087**	**1,432**	**664**	**783**	**2,472**	**641**	**692**	**724**	**13,495**

Please note that this report includes the following case types: Agricultural Non-Credit, Juvenile Delinquency, Matrimonial, Parenting Issues, Permanency, and PINS/Pre-PINS.

Table 12: Civil Case Dispositions by Judicial District and County (FY 2009-2010)

		DR Services Provided: Resolved	DR Services Provided: Not Resolved	Outreach Attempted, No Contact	Matter Screened Inappropriate	Part(ies) Declined / Withdrew	Part(ies) Failed to Show	Unable to Contact Part(ies)	Other	Total
Third Judicial District	Albany	58	23	0	0	5	0	0	0	86
	Columbia	41	11	26	3	18	1	4	4	108
	Greene	4	2	0	2	6	0	0	1	15
	Rensselaer	6	2	0	3	1	0	0	1	13
	Schoharie	1	1	0	0	2	0	0	0	4
	Sullivan	9	9	0	14	7	0	9	0	48
	Ulster	90	44	0	1	33	0	19	0	187
	Total	**209**	**92**	**26**	**23**	**72**	**1**	**32**	**6**	**461**
Fourth Judicial District	Clinton	133	57	0	0	30	193	1	0	414
	Essex	43	3	0	1	4	14	3	4	72
	Franklin	321	47	9	0	9	60	1	0	447
	Fulton	22	13	1	0	11	0	0	0	47
	Hamilton	3	1	1	0	2	0	1	0	8
	Montgomery	25	15	1	1	10	0	1	0	53
	Saratoga	72	48	374	0	31	0	16	0	541
	Schenectady	79	76	5	7	19	2	0	5	193
	St. Lawrence	683	34	5	1	30	23	19	6	801
	Warren	55	28	0	0	3	0	1	0	87
	Washington	0	0	0	0	1	0	0	0	1
	Total	**1,436**	**322**	**396**	**10**	**150**	**292**	**43**	**15**	**2,664**
Fifth Judicial District	Herkimer	209	3	2	28	27	2	4	4	279
	Jefferson	21	2	1	0	19	0	1	0	44
	Lewis	2	1	1	0	3	0	0	0	7
	Oneida	67	31	1	0	4	1	2	2	108
	Onondaga	29	3	0	0	15	0	13	2	62
	Oswego	0	0	0	0	9	1	2	0	12
	Total	**328**	**40**	**5**	**28**	**77**	**4**	**22**	**8**	**512**
Sixth Judicial District	Broome	36	12	99	5	120	3	43	12	330
	Chemung	7	1	1	0	8	0	3	0	20
	Chenango	4	8	0	0	6	2	10	1	31
	Cortland	2	3	0	1	4	0	4	0	14
	Delaware	0	0	0	1	4	0	0	1	6
	Madison	2	0	0	6	6	0	0	0	14
	Otsego	6	2	1	0	3	0	1	1	14
	Schuyler	0	0	0	0	2	0	0	0	2
	Tioga	6	0	0	0	36	0	0	1	43
	Tompkins	16	18	1	2	20	0	12	0	69
	Total	**79**	**44**	**102**	**15**	**209**	**5**	**73**	**16**	**543**

Please note that this report includes the following case types: Agricultural Credit, Civil-Housing, Civil-Large Claims, Civil-Mobile Home, Civil-Small Claims, and Lemon Law.

Table 12: Civil Case Dispositions by Judicial District and County (FY 2009-2010)

		DR Services Provided: Resolved	DR Services Provided: Not Resolved	Outreach Attempted, No Contact	Matter Screened Inappropriate	Part(ies) Declined / Withdrew	Part(ies) Failed to Show	Unable to Contact Part(ies)	Other	Total
Seventh Judicial District	Cayuga	2	0	0	0	0	0	2	0	4
	Livingston	27	2	0	3	22	2	14	0	70
	Monroe	16	1	1	0	1	0	0	2	21
	Ontario	37	18	30	7	54	1	14	0	161
	Seneca	1	1	1	0	0	0	0	0	3
	Steuben	132	15	37	0	96	5	39	36	360
	Wayne	2	0	0	0	0	0	0	0	2
	Yates	0	2	1	0	1	0	0	0	4
	Total	**217**	**39**	**70**	**10**	**174**	**8**	**69**	**38**	**625**
Eighth Judicial District	Allegany	1	0	0	0	2	0	0	0	3
	Cattaraugus	0	1	0	0	6	0	1	0	8
	Chautauqua	88	50	1	0	21	2	12	0	174
	Erie	79	15	46	0	83	2	3	8	236
	Genesee	17	4	31	4	5	0	0	0	61
	Niagara	15	11	0	0	2	0	0	0	28
	Orleans	0	0	0	1	1	0	0	0	2
	Wyoming	0	0	0	0	1	0	0	0	1
	Total	**200**	**81**	**78**	**5**	**121**	**4**	**16**	**8**	**513**
Ninth Judicial District	Dutchess	164	129	238	9	83	1	29	2	655
	Orange	110	78	1	0	5	4	1	4	203
	Putnam	35	18	1	1	11	3	0	1	70
	Rockland	54	48	0	0	6	1	2	0	111
	Westchester	408	52	11	5	60	1	114	3	654
	Total	**771**	**325**	**251**	**15**	**165**	**10**	**146**	**10**	**1,693**
Tenth Judicial District (Nassau)	Nassau	1,186	1,043	1	1	2	0	0	13	2,246
	Total	**1,186**	**1,043**	**1**	**1**	**2**	**0**	**0**	**13**	**2,246**
Tenth Judicial District (Suffolk)	Suffolk	673	488	0	1	6	0	0	6	1,174
	Total	**673**	**488**	**0**	**1**	**6**	**0**	**0**	**6**	**1,174**
New York City	Bronx	9	2	0	0	12	0	0	1	24
	Kings	260	177	3	86	191	78	45	127	967
	New York	603	319	4	19	180	28	80	41	1,274
	Queens	66	30	0	0	32	15	0	54	197
	Richmond	235	90	889	162	246	12	207	1	1,842
	Total	**1,173**	**618**	**896**	**267**	**661**	**133**	**332**	**224**	**4,304**
Total		**6,272**	**3,092**	**1,825**	**375**	**1,637**	**457**	**733**	**344**	**14,735**

Please note that this report includes the following case types: Agricultural Credit, Civil-Housing, Civil-Large Claims, Civil-Mobile Home, Civil-Small Claims, and Lemon Law.

Table 13: Criminal Case Dispositions by Judicial District and County (FY 2009-2010)

		DR Services Provided: Resolved	DR Services Provided: Not Resolved	Outreach Attempted, No Contact	Matter Screened Inappropriate	Part(ies) Declined / Withdrew	Part(ies) Failed to Show	Unable to Contact Part(ies)	Other	Total
Third Judicial District	Albany	1	0	0	0	0	0	0	0	1
	Greene	1	1	0	1	0	0	0	0	3
	Rensselaer	1	0	0	1	2	0	0	0	4
	Ulster	0	0	0	0	1	0	0	0	1
	Total	**3**	**1**	**0**	**2**	**3**	**0**	**0**	**0**	**9**
Fourth Judicial District	Clinton	1	1	0	0	0	0	0	0	2
	Essex	0	0	0	1	0	0	0	0	1
	Franklin	2	0	0	0	0	0	0	0	2
	Hamilton	0	0	0	0	1	0	1	0	2
	Montgomery	0	0	0	0	0	0	2	0	2
	Schenectady	1	2	1	0	2	0	0	1	7
	St. Lawrence	3	4	0	3	2	0	0	0	12
	Total	**7**	**7**	**1**	**4**	**5**	**0**	**3**	**1**	**28**
Fifth Judicial District	Herkimer	0	0	0	1	0	0	0	0	1
	Jefferson	0	1	0	0	0	0	0	0	1
	Oneida	25	0	1	1	0	3	0	1	31
	Onondaga	0	1	0	0	2	1	3	0	7
	Total	**25**	**2**	**1**	**2**	**2**	**4**	**3**	**1**	**40**
Sixth Judicial District	Broome	0	0	0	0	1	0	0	0	1
	Chemung	1	2	1	0	3	1	4	0	12
	Chenango	1	1	0	0	0	0	0	0	2
	Schuyler	1	0	0	0	1	0	0	0	2
	Tompkins	15	5	0	0	13	0	5	0	38
	Total	**18**	**8**	**1**	**0**	**18**	**1**	**9**	**0**	**55**
Seventh Judicial District	Cayuga	0	0	0	0	0	0	1	0	1
	Livingston	10	0	0	0	4	0	0	0	14
	Monroe	94	18	86	0	47	13	0	72	330
	Ontario	10	0	4	0	4	1	1	0	20
	Seneca	0	0	1	0	0	0	0	0	1
	Steuben	4	0	0	0	2	1	1	0	8
	Wayne	15	1	4	2	7	5	3	0	37
	Yates	1	1	0	0	2	0	0	0	4
	Total	**134**	**20**	**95**	**2**	**66**	**20**	**6**	**72**	**415**

Please note that this report includes the following case types: Felony and Misdemeanor/Violation.

Table 13: Criminal Case Dispositions by Judicial District and County (FY 2009-2010)

		DR Services Provided: Resolved	DR Services Provided: Not Resolved	Outreach Attempted, No Contact	Matter Screened Inappropriate	Part(ies) Declined / Withdrew	Part(ies) Failed to Show	Unable to Contact Part(ies)	Other	Total
Eighth Judicial District	Allegany	1	0	0	0	0	0	0	0	1
	Cattaraugus	0	0	2	0	3	0	0	0	5
	Erie	81	14	23	4	51	20	0	19	212
	Genesee	1	2	0	0	0	0	0	0	3
	Niagara	1	1	0	1	0	0	0	0	3
	Orleans	0	0	0	0	1	0	0	0	1
	Total	**84**	**17**	**25**	**5**	**55**	**20**	**0**	**19**	**225**
Ninth Judicial District	Dutchess	0	1	0	0	0	0	0	0	1
	Orange	1	0	0	0	0	1	0	1	3
	Rockland	5	2	0	1	1	0	1	0	10
	Westchester	0	0	0	0	0	0	1	0	1
	Total	**6**	**3**	**0**	**1**	**1**	**1**	**2**	**1**	**15**
Tenth Judicial District (Nassau)	Nassau	2	0	0	0	1	0	1	0	4
	Total	**2**	**0**	**0**	**0**	**1**	**0**	**1**	**0**	**4**
Tenth Judicial District (Suffolk)	Suffolk	2	0	0	0	1	0	1	0	4
	Total	**2**	**0**	**0**	**0**	**1**	**0**	**1**	**0**	**4**
New York City	Bronx	98	51	0	0	476	46	1	14	686
	Kings	118	48	0	33	180	141	32	96	648
	New York	16	0	1	19	12	4	3	1	56
	Queens	145	44	0	94	64	42	1	350	740
	Richmond	23	4	2	8	49	0	19	1	106
	Total	**400**	**147**	**3**	**154**	**781**	**233**	**56**	**462**	**2,236**
Total		**681**	**205**	**126**	**170**	**933**	**279**	**81**	**556**	**3,031**

Please note that this report includes the following case types: Felony and Misdemeanor/Violation.

Table 14: Case Dispositions by Case Type (FY 2009-2010)

	DR Services Provided: Resolved	DR Services Provided: Not Resolved	Dispute Resolution Rate	Outreach Attempted, No Contact	Matter Screened Inappropriate	Party(ies) Declined / Withdrew	Party(ies) Failed to Show	Unable to Contact Party(ies)	Other	Total
Civil Matters										
Agricultural - Credit	268	21	92 %	2	0	13	14	9	2	329
Civil - Large Claim	610	372	62 %	6	17	98	16	14	15	1,148
Civil -Small Claims	3,946	2,496	61 %	1,784	206	1,007	259	465	94	10,257
Lemon Law	232	2	99 %	0	2	10	1	0	17	264
Total	**5,056**	**2,891**	**63%**	**1,792**	**225**	**1,128**	**290**	**488**	**128**	**11,998**
Criminal Matters										
Felony	2	0	100%	0	9	4	1	3	0	19
Misdemeanor/Violation	679	205	76 %	126	161	929	278	78	556	3,012
Total	**681**	**205**	**76%**	**126**	**170**	**933**	**279**	**81**	**556**	**3,031**
Custody Visitation Divorce										
Agricultural - Non Credit	32	5	86 %	0	1	13	1	3	0	55
Matrimonial	203	45	81 %	22	100	268	17	33	118	806
Parenting Issues	4,614	1,196	79 %	526	635	1,750	456	586	462	10,225
Total	**4,849**	**1,246**	**79%**	**548**	**736**	**2,031**	**474**	**622**	**580**	**11,086**
Housing Matters										
Civil - Housing	1,195	193	86 %	30	149	492	165	239	215	2,678
Civil - Mobile Home	21	8	72 %	3	1	17	2	6	1	59
Total	**1,216**	**201**	**85%**	**33**	**150**	**509**	**167**	**245**	**216**	**2,737**
Other										
Other	606	138	81 %	33	96	985	69	146	150	2,223
Total	**606**	**138**	**81%**	**33**	**96**	**985**	**69**	**146**	**150**	**2,223**
Other Family										
Juvenile Delinquency	257	26	90 %	20	20	62	42	30	31	488
Permanency	348	96	78 %	3	10	43	17	3	10	530
PINS / Pre-Pins	633	64	90 %	93	17	336	108	37	103	1,391
Total	**1,238**	**186**	**86%**	**116**	**47**	**441**	**167**	**70**	**144**	**2,409**
Public Welfare and Benefit Issues										
Administrative Hearing	255	34	88 %	3	2	108	2	2	19	425
DSS Conciliation	1,372	222	86 %	0	3	44	429	1	106	2,177
Early Intervention	1	0	100%	0	1	2	0	0	2	6
Vesid	2	0	100%	0	0	3	0	0	1	6
Total	**1,630**	**256**	**86%**	**3**	**6**	**157**	**431**	**3**	**128**	**2,614**

Table 14: Case Dispositions by Case Type (FY 2009-2010)

		DR Services Provided: Resolved	DR Services Provided: Not Resolved	Dispute Resolution Rate	Outreach Attempted, No Contact	Matter Screened Inappropriate	Party(ies) Declined / Withdrew	Party(ies) Failed to Show	Unable to Contact Party(ies)	Other	Total
Surrogate Matters											
	Guardianship	221	4	98 %	0	2	5	1	3	1	237
	Probate/Estate	6	4	60 %	0	1	14	0	1	1	27
	Total	**227**	**8**	**96%**	**0**	**3**	**19**	**1**	**4**	**2**	**264**
Youth											
	Peer Mediation	833	58	93 %	4	22	85	3	6	70	1,081
	Youth	727	97	88 %	70	15	81	38	29	158	1,215
	Total	**1,560**	**155**	**90%**	**74**	**37**	**166**	**41**	**35**	**228**	**2,296**
		17,063	**5,286**	**76%**	**2,725**	**1,470**	**6,369**	**1,919**	**1,694**	**2,132**	**38,658**

Table 15: Case Dispositions by Case Nature (FY 2009-2010)

Case Nature	DR Services Provided: Resolved	DR Services Provided: Not Resolved	Dispute Resolution Rate	Outreach Attempted, No Contact	Matter Screened Inappropriate	Party(ies) Declined / Withdrew	Party(ies) Failed to Show	Unable to Contact Party(ies)	Other	Total
Adoption Planning	32	20	61 %	1	2	0	0	0	0	55
Aggravated Assault	11	0	100 %	1	6	5	1	3	6	33
Aggravated Harassment	30	10	75 %	19	10	54	16	7	13	159
Agricultural	0	0	0 %	0	2	0	0	1	1	4
Agricultural Services	163	6	96 %	0	0	3	3	6	1	182
Animal Complaint	1	0	100 %	0	0	3	0	1	0	5
Assault	142	21	87 %	11	17	74	34	14	25	338
Bank Loan	6	1	85 %	0	0	1	0	1	0	9
Behavior Issues	399	64	86 %	53	18	213	67	33	91	938
Breach of Contract	3,537	2,162	62 %	1,196	37	692	218	284	54	8,180
Burglary	18	1	94 %	1	1	4	4	1	1	31
Caregiver Issues	10	4	71 %	2	3	4	1	2	4	30
Compliance with Service Plan	49	7	87 %	0	0	7	0	0	1	64
Concurrent Planning	53	18	74 %	0	4	8	5	1	0	89
Criminal Misapplication of Property	8	1	88 %	3	0	9	3	0	3	27
Criminal Mischief	119	7	94 %	36	2	15	8	0	12	199
Criminal Possession of Stolen Property	12	0	100 %	1	0	14	0	8	1	36
Criminal Trespass	10	1	90 %	2	3	7	2	0	0	25
Custody Modification	1,456	394	78 %	164	211	552	159	172	128	3,236
Custody-Original	1,927	383	83 %	213	246	637	161	214	127	3,908
Divorce (Multi Issues)	123	17	87 %	18	56	188	10	20	110	542
Early Intervention Program	21	5	80 %	1	0	19	0	0	2	48
Ejectment	5	3	62 %	0	2	4	0	2	0	16
Equipment Dispute	1	0	100 %	0	0	0	0	0	0	1
Estate Admin (w/o will)	3	1	75 %	0	0	5	0	0	0	9
Estate Admin Small (Small Estate <$20,000)	1	0	100 %	0	0	1	0	0	0	2
Estate Probate (with will)	1	1	50 %	1	0	5	0	0	0	8
Eviction	99	9	91 %	2	17	54	24	7	10	222
Farm Management	3	1	75 %	0	0	4	0	0	0	8
Fee Dispute	7	3	70 %	1	0	13	0	2	4	30
Formulation Service Plan	63	9	87 %	1	1	7	3	1	5	90
Fraud/Bad Checks	16	4	80 %	0	2	19	7	3	4	55

Table 15: Case Dispositions by Case Nature (FY 2009-2010)

Case Nature	DR Services Provided: Resolved	DR Services Provided: Not Resolved	Dispute Resolution Rate	Outreach Attempted, No Contact	Matter Screened Inappropriate	Party(ies) Declined / Withdrew	Party(ies) Failed to Show	Unable to Contact Party(ies)	Other	Total
Guardianship (17-A, Developmentally Disabled)	212	0	100 %	0	0	1	0	0	0	213
Guardianship (Person and/or Property)	0	0	0 %	0	0	3	0	0	0	3
Guardianship (Person Only)	1	0	100 %	0	0	0	0	0	0	1
Guardianship-Child	4	3	57 %	0	0	2	0	1	0	10
Habitability	4	2	66 %	2	0	7	1	0	0	16
Harrassment	367	132	73 %	35	45	668	214	49	417	1,927
Holdover on Rental Property	40	24	62 %	0	3	7	2	0	7	83
Housing Discrimination	7	1	87 %	0	0	5	1	3	2	19
Housing Dispute	458	40	91 %	0	33	67	7	89	26	720
Implementation of Service Plan	22	3	88 %	0	0	12	1	2	2	42
Independent Living Planning	10	1	90 %	0	0	3	0	0	0	14
Interpersonal Dispute	2,219	381	85 %	116	134	710	120	171	321	4,172
Labor Issues	4	1	80 %	0	3	5	0	1	3	17
Lease Dispute	63	9	87 %	1	9	27	6	24	8	147
Leased Vehicle	38	0	100 %	0	0	0	0	0	1	39
Lemon Law	116	0	100 %	0	1	4	0	0	12	133
Machinery	7	2	77 %	0	0	0	1	0	0	10
Menacing	16	0	100 %	0	3	12	2	2	0	35
Modification of Service Plan	80	8	90 %	0	0	19	1	0	4	112
Motor home	2	0	100 %	0	0	0	0	0	0	2
Motorcycle	0	0	0 %	0	0	1	0	0	0	1
Motorized Wheelchair	2	0	100 %	0	0	0	0	0	0	2
New Vehicle	106	2	98 %	0	1	6	0	0	2	117
Noise	174	32	84 %	5	42	271	56	84	117	781
Non-payment of Rent	256	52	83 %	7	14	54	52	10	6	451
Occupancy	41	3	93 %	1	3	39	5	7	9	108
Other	1,282	359	78 %	126	151	714	289	107	307	3,335
Personal/Real Property	506	410	55 %	346	164	231	25	105	25	1,812
Persons In Need of Supervision (PINS)	216	22	90 %	64	4	131	46	10	25	518
Petty Larceny	67	11	85 %	8	5	33	8	10	4	146
Property Division	30	5	85 %	1	2	25	1	4	0	68
Public Accommodations	1	0	100 %	0	0	0	0	0	1	2

Table 15: Case Dispositions by Case Nature (FY 2009-2010)

Case Nature	DR Services Provided: Resolved	DR Services Provided: Not Resolved	Dispute Resolution Rate	Outreach Attempted, No Contact	Matter Screened Inappropriate	Party(ies) Declined / Withdrew	Party(ies) Failed to Show	Unable to Contact Party(ies)	Other	Total
Reckless Endangerment	1	0	100 %	0	0	3	0	0	0	4
Retaliation Dispute	1	1	50 %	0	0	0	0	1	0	3
Right to Sell	1	0	100 %	0	1	0	0	0	0	2
Rules & Regulation Dispute	774	127	85 %	19	7	32	197	7	25	1,188
Security Deposit	135	69	66 %	116	6	66	7	24	4	427
Sexual Harassment	1	0	100 %	0	1	0	0	0	0	2
Special Education Mediation Prog.	119	17	87 %	1	1	59	0	1	13	211
Supplier	11	3	78 %	0	0	1	4	1	0	20
Support-Modification	70	10	87 %	1	10	24	2	17	52	186
Support-Original	33	8	80 %	2	6	18	2	7	2	78
Theft of Services	0	0	0 %	0	1	0	0	0	0	1
Third-Party Loan	2	1	66 %	0	0	1	0	0	0	4
Truancy	143	6	95 %	17	14	14	23	20	7	244
Used Vehicle	38	0	100 %	0	0	3	1	0	4	46
Vandalism	12	3	80 %	1	0	4	3	1	0	24
VESID	1	1	50 %	0	0	2	0	0	0	4
Violation of Town/City Ordinance	14	4	77 %	3	3	11	1	2	27	65
Visitation-Modification	804	301	72 %	102	112	356	85	98	57	1,915
Visitation-Original	216	75	74 %	24	48	95	30	53	37	578
Workplace Discrimination	10	4	71 %	0	3	2	0	0	2	21
Total	**17,063**	**5,286**	**76 %**	**2,725**	**1,470**	**6,369**	**1,919**	**1,694**	**2,132**	**38,658**

Table 16: Case Dispositions by Referral Source (FY 2009-2010)

Referral Source	DR Services Provided: Resolved	DR Services Provided: Not Resolved	Dispute Resolution Rate	Outreach Attempted, No Contact	Matter Screened Inappropriate	Party(ies) Declined / Withdrew	Party(ies) Failed to Show	Unable to Contact Party(ies)	Other	Total
Adult Protective Services	264	43	85 %	17	16	151	34	13	30	568
Attorney General	22	1	95 %	0	0	7	0	0	0	30
Business/Corporation	9	1	90 %	5	1	8	2	2	1	29
City Court	4,039	2,372	63 %	1,706	195	825	258	445	95	9,935
County Court	17	1	94 %	2	1	16	0	2	1	40
Criminal Court	7	0	100 %	0	0	0	0	0	0	7
Dept. of Social Services	224	17	92 %	2	1	8	21	1	1	275
District Attorney	69	26	72 %	8	8	107	19	50	6	293
Family Court Intake	52	3	94 %	1	0	28	1	1	1	87
Family Court Judge	3,783	1,130	76 %	468	451	1,311	423	362	227	8,155
Family Court Magistrate	1	0	100 %	0	0	0	0	0	0	1
Law Guardian	2	0	100 %	0	0	0	0	0	0	2
Legal Aid	61	9	87 %	5	13	50	8	17	6	169
Media	47	12	79 %	5	12	64	4	14	4	162
NYC Civil Ct - 2 Attorneys	0	1	0 %	0	0	0	0	0	0	1
NYC Civil Ct - Housing	76	32	70 %	1	1	16	1	1	5	133
NYC Civil Ct - Pro Se	526	381	57 %	1	11	63	11	2	8	1,003
NYC Civil Ct - Small Claims	59	64	47 %	1	1	15	3	4	1	148
NYS Division of Housing	210	17	92 %	2	5	43	10	20	9	316
Other	460	98	82 %	28	44	764	55	60	85	1,594
Police	307	103	74 %	20	28	672	187	46	240	1,603
Prior Client (returning with ne	28	2	93 %	0	4	14	4	3	3	58
Private Agency	277	37	88 %	8	30	122	17	33	21	545
Private Attorney	59	7	89 %	4	12	35	1	11	2	131
Probation	71	7	91 %	8	2	16	14	1	5	124
Public Agency	2,442	326	88 %	75	172	542	547	150	456	4,710
Public Defender	8	2	80 %	0	2	6	0	0	1	19
Referred by Previous Client	290	42	87 %	19	25	94	18	47	28	563
Religious Referral	5	0	100 %	0	0	2	0	1	0	8
School	1,716	150	91 %	100	124	189	30	25	239	2,573
Sheriff	18	10	64 %	5	5	11	0	7	0	56
State Police	2	0	100 %	0	0	4	0	2	1	9
Supreme Court	15	6	71 %	2	25	8	0	0	68	124
Town & Village Courts	687	150	82 %	106	9	209	108	43	26	1,338
Walk-In	682	146	82 %	73	158	570	112	213	519	2,473
Word of Mouth	528	90	85 %	53	114	399	31	118	43	1,376
Total	**17,063**	**5,286**	**76 %**	**2,725**	**1,470**	**6,369**	**1,919**	**1,694**	**2,132**	**38,658**

Table 17: Case Dispositions by Relationship (FY 2009-2010)

Relationship	DR Services Provided: Resolved	DR Services Provided: Not Resolved	Dispute Resolution Rate	Outreach Attempted, No Contact	Matter Screened Inappropriate	Party(ies) Declined / Withdrew	Party(ies) Failed to Show	Unable to Contact Party(ies)	Other	Total
Acquaintances	1,002	197	83 %	320	70	376	92	94	251	2,402
Boy/Girlfriend	136	25	84 %	9	26	37	8	10	15	266
Caregiver/Caseworker	12	6	66 %	0	2	5	3	1	3	32
Child in Common	2,128	696	75 %	440	334	830	293	236	257	5,214
Child/Agency	212	15	93 %	5	4	18	27	0	61	342
Client/Agency	2,228	389	85 %	75	27	186	442	33	147	3,527
Consumer/Merchant	2,791	1,427	66 %	614	15	445	203	168	64	5,727
Co-Workers	88	17	83 %	5	2	30	7	8	25	182
Divorced	484	159	75 %	16	61	199	24	54	88	1,085
Domestic Partners	11	4	73 %	0	4	8	2	4	3	36
Employer/Employee	111	71	60 %	41	14	66	9	22	16	350
Ex-boy/girlfriend	817	254	76 %	24	125	322	70	158	24	1,794
Extended Family	245	49	83 %	24	26	117	21	35	26	543
Friend	319	70	82 %	16	8	107	24	27	30	601
Immediate Family	810	126	86 %	114	69	432	102	81	77	1,811
Individual/Corporation	428	219	66 %	57	11	54	5	23	14	811
Landlord/Tenant	1,541	641	70 %	232	83	612	164	237	230	3,740
Lover-in-common	10	2	83 %	1	4	11	3	0	3	34
Married	565	87	86 %	34	120	314	42	64	79	1,305
Member of Group	31	4	88 %	2	3	13	2	6	5	66
Neighbors	510	169	75 %	51	94	810	155	147	339	2,275
Other	787	307	71 %	492	124	802	64	123	182	2,881
Parent/Child	476	81	85 %	75	31	239	83	83	65	1,133
Parent/Foster Parent	14	3	82 %	0	3	5	0	0	0	25
Room/Housemates	50	26	65 %	4	8	65	31	14	28	226
School/Parent	103	13	88 %	4	1	41	2	3	8	175
Schoolmates	624	42	93 %	2	85	43	6	8	51	861
Separated	352	72	83 %	14	57	127	18	37	24	701
Strangers	178	115	60 %	54	59	55	17	18	17	513
Total	**17,063**	**5,286**	**76 %**	**2,725**	**1,470**	**6,369**	**1,919**	**1,694**	**2,132**	**38,658**

Graph for Table 16: Unified Court System Revenue to CDRCs (FY 2009-2010)

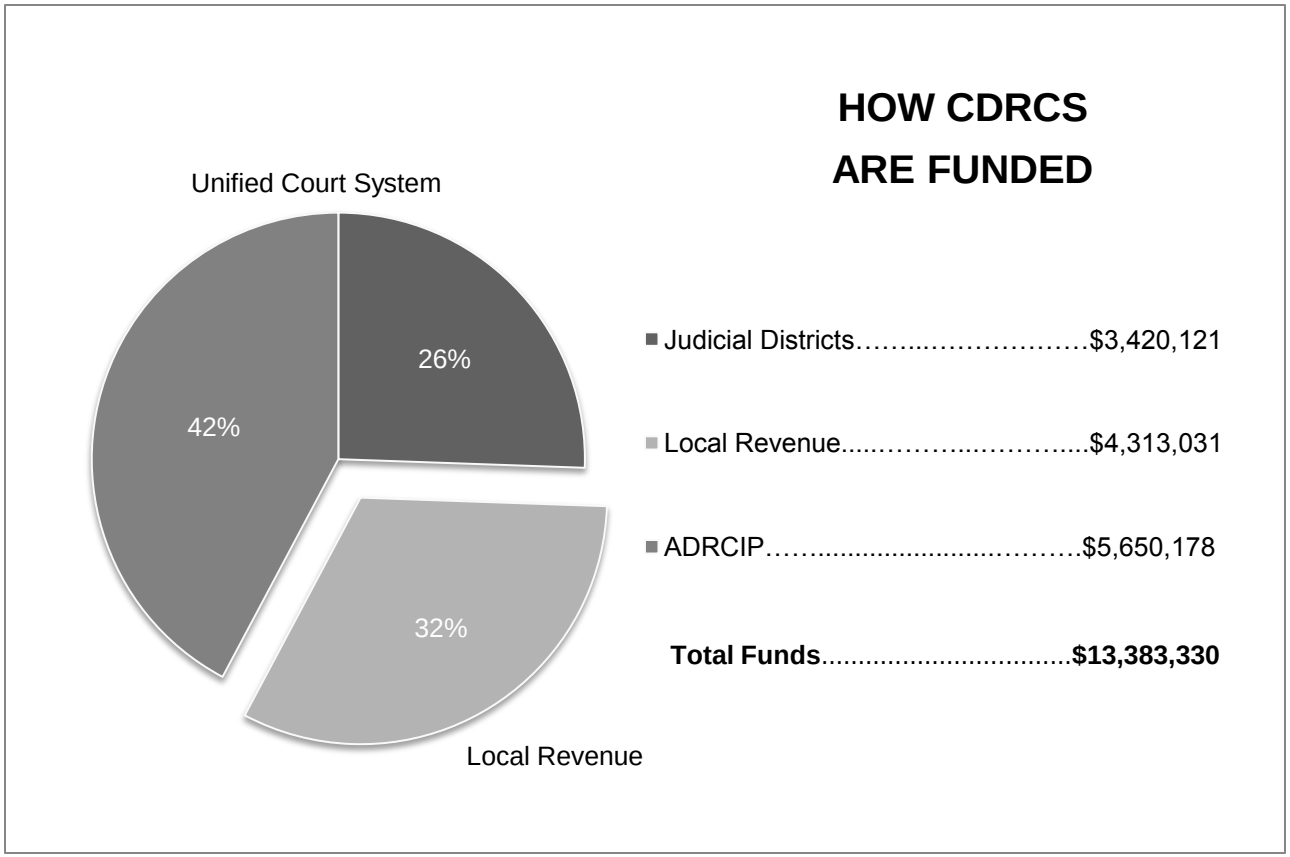


Table 18: Unified Court System Revenue to CDRCs (FY 2009-2010)

	County	Agency	ADRCIP Funds	Local Judicial District Funds	Total Funding
Third Judicial District	Albany	Mediation Matters	$107,424	$87,990	$195,414
	Rensselaer	Mediation Matters	$46,069	$51,104	$97,173
	Columbia	Common Ground Dispute Resolution, Inc.	$61,962	$23,089	$85,051
	Greene	Common Ground Dispute Resolution, Inc.	$45,871	$25,896	$71,767
	Schoharie	Catholic Charities of Fulton & Montgomery Counties	$23,035	$0	$23,035
	Sullivan	Dispute Resolution Center, Inc.	$27,642	$32,036	$59,678
	Ulster	Dispute Resolution Center, Inc.	$87,532	$57,391	$144,923
	Total		**$399,535**	**$277,506**	**$677,041**
Fourth Judicial District	Clinton	Rural Law Center of New York, Inc.	$39,702	$32,991	$72,693
	Essex	Rural Law Center of New York, Inc.	$25,610	$17,600	$43,210
	Franklin	Rural Law Center of New York, Inc.	$52,436	$13,425	$65,861
	Hamilton	Rural Law Center of New York, Inc.	$25,610	$0	$25,610
	St. Lawrence	Rural Law Center of New York, Inc.	$62,728	$20,967	$83,695
	Saratoga	Mediation Matters	$93,003	$31,499	$124,502
	Warren	Mediation Matters	$23,035	$47,765	$70,800
	Washington	Mediation Matters	$23,035	$31,837	$54,872
	Fulton	Catholic Charities of Fulton & Montgomery Counties	$43,613	$30,510	$74,123
	Montgomery	Catholic Charities of Fulton & Montgomery Counties	$43,611	$15,630	$59,241
	Schenectady	The Center for Community Justice	$74,666	$81,697	$156,363
	Total		**$507,049**	**$323,921**	**$830,970**
Fifth Judicial District	Herkimer	Catholic Charities of Herkimer County	$64,598	$51,600	$116,198
	Jefferson	Resolution Center of Jefferson and Lewis Counties, Inc.	$65,853	$36,825	$102,678
	Lewis	Resolution Center of Jefferson and Lewis Counties, Inc.	$23,035	$9,225	$32,260
	Oneida	The Peacemaker Program, Inc.	$102,280	$66,700	$168,980
	Onondaga	New Justice Conflict Resolution Services, Inc.	$208,459	$73,350	$281,809
	Oswego	New Justice Conflict Resolution Services, Inc.	$54,520	$36,700	$91,220
	Total		**$518,745**	**$274,400**	**$793,145**
Sixth Judicial District	Cortland	New Justice Conflict Resolution Services, Inc.	$23,035	$79,031	$102,066
	Madison	New Justice Conflict Resolution Services, Inc.	$34,692	$35,261	$69,953
	Broome	ACCORD, A Center for Dispute Resolution, Inc.	$134,103	$102,724	$236,827
	Tioga	ACCORD, A Center for Dispute Resolution, Inc.	$32,249	$47,677	$79,926
	Chemung	Community Dispute Resolution Center, Inc.	$79,470	$140,517	$219,987
	Schuyler	Community Dispute Resolution Center, Inc.	$23,035	$35,242	$58,277
	Tompkins	Community Dispute Resolution Center, Inc.	$122,248	$98,892	$221,140
	Chenango	Catholic Charities of Delaware & Otsego Counties	$48,395	$91,766	$140,161
	Delaware	Catholic Charities of Delaware & Otsego Counties	$48,373	$91,766	$140,139
	Otsego	Catholic Charities of Delaware & Otsego Counties	$69,520	$122,826	$192,346
	Total		**$615,120**	**$845,702**	**$1,460,822**

Table 18: Unified Court System Revenue to CDRCs (FY 2009-2010)

	County	Agency	ADRCIP Funds	Local Judicial District Funds	Total Funding
Seventh Judicial District	Cayuga	Center for Dispute Settlement, Inc.	$46,069	$11,255	$57,324
	Livingston	Center for Dispute Settlement, Inc.	$32,249	$47,133	$79,382
	Monroe	Center for Dispute Settlement, Inc.	$331,075	$291,181	$622,256
	Ontario	Center for Dispute Settlement, Inc.	$66,456	$36,732	$103,188
	Seneca	Center for Dispute Settlement, Inc.	$23,035	$18,916	$41,951
	Steuben	Center for Dispute Settlement, Inc.	$70,451	$33,924	$104,375
	Wayne	Center for Dispute Settlement, Inc.	$55,810	$25,606	$81,416
	Yates	Center for Dispute Settlement, Inc.	$23,035	$43,455	$66,490
	Total		**$648,180**	**$508,202**	**$1,156,382**
Eighth Judicial District	Erie	Catholic Charities of Buffalo	$101,745	$41,518	$143,263
	Allegany	Child and Family Services	$27,066	$0	$27,066
	Cattaraugus	Child and Family Services	$36,856	$0	$36,856
	Chautauqua	Child and Family Services	$46,069	$33,776	$79,845
	Erie	Child and Family Services	$358,219	$60,767	$418,986
	Genesee	Child and Family Services	$26,490	$24,510	$51,000
	Niagara	Child and Family Services	$72,559	$45,020	$117,579
	Orleans	Child and Family Services	$26,490	$0	$26,490
	Wyoming	Child and Family Services	$26,490	$0	$26,490
	Total		**$721,984**	**$205,591**	**$927,575**
Ninth Judicial District	Orange	Dispute Resolution Center, Inc.	$115,174	$113,622	$228,796
	Putnam	Dispute Resolution Center, Inc.	$30,255	$39,713	$69,968
	Dutchess	Mediation Center of Dutchess County, Inc.	$103,026	$66,575	$169,601
	Westchester	CLUSTER Community Services	$188,998	$105,967	$294,965
	Rockland	CLUSTER Community Services	$76,692	$0	$76,692
	Total		**$514,145**	**$325,877**	**$840,022**
Tenth Judicial District (Nassau)	Nassau	Education & Assistance Corporation, Inc.	$221,591	$0	$221,591
	Total		**$221,591**	**$0**	**$221,591**
Tenth Judicial District (Suffolk)	Suffolk	Education & Assistance Corporation, Inc.	$187,269	$0	$187,269
	Total		**$187,269**	**$0**	**$187,269**
New York City	Bronx	Institute for Mediation and Conflict Resolution, Inc.	$282,794	$0	$282,794
	Kings	Safe Horizon	$349,420	$0	$349,420
	New York	Safe Horizon	$172,762	$0	$172,762
	New York	Washington Heights - Inwood Coalition, Inc.	$71,723	$0	$71,723
	Queens	Community Mediation Services, Inc.	$253,420	$0	$253,420
	Richmond	New York Center for Interpersonal Development	$186,442	$0	$186,442
	Citywide	Community Mediation Services, Inc.	$0	$658,922	$658,922
	Total		**$1,316,560**	**$658,922**	**$1,975,482**
	Grand Total		**$5,650,178**	**$3,420,121**	**$9,070,299**

In addition to funds listed above, approximately $190,000 was available to providers in selected counties for permanency mediation services.

Appendix D

Appendix D

JURISDICTION	INFLOW	OUTFLOW	PENDING	DEMAND FOR TRIAL DE NOVO NUMBER	DEMAND FOR TRIAL DE NOVO PERCENT
THIRD DISTRICT					
#ALBANY	0	0	0	0	0.0%
#RENSSELAER	0	0	0	0	0.0%
#ULSTER	0	5	0	0	0.0%
FOURTH DISTRICT					
#SCHENECTADY	11	6	7	0	0.0%
FIFTH DISTRICT					
ONEIDA	3	3	0	0	0.0%
#ONONDAGA	44	48	4	0	0.0%
SIXTH DISTRICT					
#BROOME	0	0	0	0	0.0%
#CHEMUNG	0	0	0	0	0.0%
#SCHUYLER	0	0	0	0	0.0%
#TOMPKINS	0	0	0	0	0.0%
SEVENTH DISTRICT					
#CAYUGA	0	0	0	0	0.0%
#LIVINGSTON	0	0	0	0	0.0%
#MONROE	2,707	2,775	82	211	7.6%
#ONTARIO	9	5	4	0	0.0%
#SENECA	0	0	0	0	0.0%
#STEUBEN	2	0	2	0	0.0%
#WAYNE	4	4	1	0	0.0%
#YATES	1	1	0	0	0.0%
EIGHTH DISTRICT					
ERIE	513	347	493	0	0.0%
NIAGARA	20	28	1	0	0.0%
NINTH DISTRICT					
#DUTCHESS	39	39	10	0	0.0%
#ORANGE	16	6	35	0	0.0%
#PUTNAM	0	0	0	0	0.0%
#ROCKLAND	2	0	5	0	0.0%
#WESTCHESTER	19	19	36	0	0.0%
TENTH DISTRICT					
#NASSAU	6,688	3,050	6,050	720	23.6%
#SUFFOLK	13,699	14,862	7,367	887	5.9%
NEW YORK CITY					
#BRONX	0	0	0	0	0.0%
#KINGS	0	0	0	0	0.0%
#NEW YORK	0	0	0	0	0.0%
#QUEENS	0	0	0	0	0.0%
NEW YORK CITY	0	0	0	0	0.0%
UPSTATE NEW YORK	23,777	21,198	14,097	1,818	8.5%
NEW YORK STATE	23,777	21,198	14,097	1,818	8.5%

- SIGN-OFF NOT COMPLETED.

DATE RUN: 07/26/2011
TIME RUN: 21:00:04

ANALYSIS OF THE OUTFLOW FROM THE ARBITRATION PROGRAM

REPORT NAME: C1DARBT

TERMS JANUARY 04, 2010 - JANUARY 02, 2011

JURISDICTION	HEARINGS COMPLETED BY SINGLE ARBITRATOR NON-JHO	HEARINGS COMPLETED BY SINGLE ARBITRATOR JHO	HEARINGS COMPLETED BY PANEL	TOTAL	BEFORE HEARING SETTLEMENTS AND REMANDS	TOTAL OUTFLOW	NUMBER OF JHO-DAYS
THIRD DISTRICT							
#ALBANY	0	0	0	0	0	0	0
#RENSSELAER	0	0	0	0	0	0	0
#ULSTER	0	0	0	0	5	5	0
FOURTH DISTRICT							
#SCHENECTADY	3	0	0	3	3	6	0
FIFTH DISTRICT							
ONEIDA	1	0	0	1	2	3	0
#ONONDAGA	39	0	0	39	9	48	0
SIXTH DISTRICT							
#BROOME	0	0	0	0	0	0	0
#CHEMUNG	0	0	0	0	0	0	0
#SCHUYLER	0	0	0	0	0	0	0
#TOMPKINS	0	0	0	0	0	0	0
SEVENTH DISTRICT							
#CAYUGA	0	0	0	0	0	0	0
#LIVINGSTON	0	0	0	0	0	0	0
#MONROE	1,556	1,089	0	2,645	130	2,775	60
#ONTARIO	4	0	0	4	1	5	0
#SENECA	0	0	0	0	0	0	0
#STEUBEN	0	0	0	0	0	0	0
#WAYNE	3	0	0	3	1	4	0
#YATES	0	0	0	0	1	1	0
EIGHTH DISTRICT							
ERIE	0	337	0	337	10	347	67
NIAGARA	17	0	0	17	11	28	0
NINTH DISTRICT							
#DUTCHESS	38	0	0	38	1	39	0
#ORANGE	5	0	0	5	1	6	0
#PUTNAM	0	0	0	0	0	0	0
#ROCKLAND	0	0	0	0	0	0	0
#WESTCHESTER	12	0	0	12	7	19	0
TENTH DISTRICT							
#NASSAU	2,122	0	0	2,122	928	3,050	0
#SUFFOLK	6,624	2,304	0	8,928	5,934	14,862	405
NEW YORK CITY							
#BRONX	0	0	0	0	0	0	0
#KINGS	0	0	0	0	0	0	0
#NEW YORK	0	0	0	0	0	0	0
#QUEENS	0	0	0	0	0	0	0
NEW YORK CITY	0	0	0	0	0	0	0
UPSTATE NEW YORK	10,424	3,730	0	14,154	7,044	21,198	532
NEW YORK STATE	10,424	3,730	0	14,154	7,044	21,198	532

- SIGN-OFF NOT COMPLETED.

Appendix E

Rules

Part & Title:

01 Standards & Admin. Policies - General

02 [Reserved]

03 Hours of Court

04 Reports of Pending Matters

05 Personal Assistants

06 Repealed

07 Law Guardians

08 Appointment of Relatives of Judges

09 Filing & Pub. of Rules and Regs.

10 [Reserved]

11 [Repealed]

12 Attendance of Inmates at Judicial Hearings

13 [Repealed]

14 [Reserved]

15 [Reserved]

16 Court Appearances By Frmr. Appellate Judges & Justices

17 Judicial Ed. & Training

18 [Repealed]

19 Judicial Annual Leave — Trial

20 Nonpublic Facilities

21 [Reserved]

Rules of the Chief Judge

PART 28. Alternative Method Of Dispute Resolution By Arbitration

Commercial reuse of the Rules as they appear on this web site is prohibited. The official version of the Rules published in the NYCRR is available on Westlaw.

28.0 [Repealed]
28.1 Definitions
28.2 Mandatory submission of actions to arbitration
28.3 Arbitration commissioner
28.4 Selection of panels of arbitrators
28.5 Assignment of actions to panel
28.6 Scheduling of arbitration hearings
28.7 Defaults
28.8 Conduct of hearings
28.9 Costs of hearings; stenographic record
28.10 Compensation of arbitrators
28.11 Award
28.12 Trial de novo
28.13 Motion to vacate award
28.14 General power of court
28.15 Training courses
28.16 Judicial hearing officers

Section 28.0 [Repealed]

Historical Note
Sec. filed Dec. 7, 1979; repealed, filed Feb. 2, 1982 eff. Jan. 1, 1982.

Section 28.1 Definitions.

(a) The words "Panel of Arbitrators" or "Panel" in this Part shall mean: (1) a group of three attorneys chosen to serve as arbitrators by the arbitration commissioner pursuant to section 28.4 of this Part; or (2) a single attorney assigned by the arbitration commissioner, as the Chief Administrator of the Courts, (hereinafter denominated the Chief Administrator), shall designate from time to time in a particular county or court; or (3) a single arbitrator in the event the parties, by stipulation, provide for arbitration before a single arbitrator in those cases where a panel of three arbitrators otherwise is required.

(b) The term "Chairperson" shall mean the attorney so designated by the arbitration commissioner pursuant to section 28.4 of this Part, or the single arbitrator assigned by the arbitration commissioner.

Historical Note
Sec. filed Sept. 14, 1970; amds. filed: Nov. 18, 1971; Nov. 7, 1979; repealed, new filed Dec. 7, 1979; amds. filed: Feb. 2, 1982; April 4, 1986 eff. March 25, 1986. Amended (b).

COURTS
LITIGANTS
ATTORNEYS
JURORS
JUDGES
CAREERS
SEARCH

22
[Reserved]

23
Grievance Procedure

24
Time and Leave

25
Career Services

26
Filing of Statements Purs. to Jud. Law § 35-a

27
[Repealed]

28
Alt. Method of Dispute Resolution by Arbitrator

29
Electronic Recording & AV Coverage in Court & Proceedings

30
Mechanical Recording Of Proceedings In Justice Courts

31
[Reserved]

32
Videotaping of Examinations of Witnesses in Criminal Cases

33
Temp. Assign. of Justices & Judges.

34
Guidelines for NY State Court Facilities.

35
Child Witnesses

36
Appointments. by the Court

37
Costs & Sanctions

38
Retention and Disposition of Records of the Courts

39
Smoking Policy

40
Financial Disclosure

41
Integrated Domestic Violence Parts Of Supreme Court

42
Criminal Division of Supreme Court in Bronx County

Section 28.2 Mandatory submission of actions to arbitration.

(a) The Chief Administrator may establish in any trial court in any county the arbitration program authorized by this Part.

(b) In each county where an arbitration program is established by order of the Chief Administrator, all civil actions for a sum of money only, except those commenced in small claims parts and not subsequently transferred to a regular part of court, that are noticed for trial or commenced in the Supreme Court, County Court, the Civil Court of the City of New York, a District Court or a City Court, on or after the effective date of the order where recovery sought for each cause of action is $6,000 or less, or $10,000 or less in the Civil Court of the City of New York, or such other sum as may be authorized by law, exclusive of costs and interest, shall be heard and decided by a panel of arbitrators. The Chief Administrator may also, at any time, upon the establishment of the program in any particular court or county or thereafter, provide for the submission to arbitration of actions, seeking recovery of such sums, that are pending for trial in those courts on the effective date of the order.

(c) In addition, upon stipulation filed with the clerk of the court where the action was commenced or, if the case was transferred, the clerk of the court to which it has been transferred, any civil action for a sum of money only, pending or thereafter commenced in such courts, including actions removed to a court of limited jurisdiction from the Supreme Court pursuant to CPLR 325(d), regardless of the amount in controversy, shall be arbitrated, and in any such action the arbitration award shall not be limited to the amounts provided in subdivision (b) of this section, or to the monetary jurisdiction of the court. Any stipulation pursuant to this section may set forth agreed facts, defenses waived or similar terms, and to that extent shall replace the pleadings.

(d) In any action subject to arbitration under these rules or submitted to arbitration by stipulation, the arbitration panel shall have jurisdiction of any counter-claim or cross-claim for a sum of money only that has been interposed, without regard to amount.

(e) All actions subject to arbitration shall be placed on a separate calendar known as the arbitration calendar, in the order of filing of the note of issue, notice of trial or stipulation of submission, except that where a defendant is in default, the plaintiff may seek a default judgment pursuant to the provisions of CPLR 3215.

(f) The appropriate administrative judge, with the approval of the Deputy Chief Administrator, may direct a pretrial calendar hearing by the court of actions pending on the arbitration calendar. If an action is not settled or dismissed, or judgment by default is not directed upon the hearing, it

43
Superior Courts for Drug Treatment

44
Court Appointed Special Advocates Programs

45
Integrated Youth Court in Westchester County

46
Superior Court Sex Offense Parts

80
Administrative Delegation Number 1

81
Administrative Delegation Number 2

shall be processed thereafter in accordance with the provisions of this Part.

Historical Note
Sec. filed Sept. 14, 1970; amds. filed: May 17, 1971; Nov. 18, 1971; Feb. 29, 1972; June 22, 1973; Nov. 7, 1979; repealed, new filed Dec. 7, 1979; amds. filed: Feb. 2, 1982; June 19, 1990 eff. May 22, 1990. Amended (b)-(c).

Section 28.3 Arbitration commissioner.

(a) The Chief Administrator shall designate, in each county where arbitration is established pursuant to this Part, an arbitration commissioner. The compensation, if any, payable to a commissioner, other than a full-time public official or employee who shall receive no compensation as such commissioner, shall be determined by the Chief Administrator within the appropriation made available for that purpose.

(b) The commissioner shall maintain complete and current records of all cases subject to arbitration under this Part and a current list of attorneys consenting to act as arbitrators.

Historical Note
Sec. filed Sept. 14, 1970; amds. filed: May 17, 1971; Feb. 29, 1972; Nov. 7, 1979; repealed, new filed Dec. 7, 1979; amd. filed Feb. 2, 1982 eff. Jan. 1, 1982.

Section 28.4 Selection of panels of arbitrators.

(a) The members of each panel of arbitrators shall be appointed by the commissioner from the list established by the Chief Administrator of the Courts of attorneys-at-law admitted to practice in the State of New York. The Chief Administrator may establish procedures to evaluate the qualifications of applicants for placement on the list. No attorney shall be appointed unless he or she shall have filed with the commissioner a consent to act and an oath or affirmation equitably and justly to try all actions coming before him or her. An attorney may be removed from the list in the discretion of the commissioner upon approval of the Chief Administrator.

(b) Names of attorneys shall be drawn at random from the list. Where a three- arbitrator panel is utilized, the first name drawn for each three-arbitrator panel shall be the chairperson thereof. The chairperson of each panel shall have been admitted to practice in New York State as an attorney for at least five years; and the second and third members must be admitted to practice but not for any specified period of time, unless the Chief Administrator shall, by order, otherwise determine. Not more than one member or employee of a partnership or firm shall be appointed to any panel.

(c) No attorney who has served as an arbitrator shall be eligible to serve again until all other attorneys on the

current list have had an opportunity to serve.

(d) An arbitrator who is related by blood, marriage or professional ties to a party or his counsel shall be disqualified for cause. An arbitrator may disqualify himself upon his own application, or by application of a party made within five days of the receipt of the notice of the hearing as provided by section 28.6 of this Part. Should a party object to the arbitrator's refusal to disqualify himself or herself for cause, the party may apply to the arbitration commissioner for a ruling. The commissioner's ruling shall be binding on all parties. If an arbitrator is disqualified, the commissioner shall select another arbitrator in the manner authorized by this section.

Historical Note
Sec. filed Sept. 14, 1970; amds. filed: May 17, 1971; Nov. 18, 1971; June 22, 1973; repealed, new filed Dec. 7, 1979; amds. filed: Feb. 2, 1982; April 4, 1986 eff. March 25, 1986. Amended (a).

Section 28.5 Assignment of actions to panel.

(a) The commissioner shall assign to each panel at least the first three, but no more than six, actions pending on the arbitration calendar.

(b) If an action is settled or discontinued before the hearing, the attorney for the plaintiff shall immediately notify the chairperson and the commissioner. If the plaintiff is not represented by an attorney, the chairperson, upon receiving notice of such settlement or discontinuance, shall immediately notify the commissioner. The commissioner, upon receiving such notice, shall assign the next available action to the panel.

Historical Note
Sec. filed Sept. 14, 1970; amds. filed: May 17, 1971; Nov. 18, 1971; repealed, new filed Dec. 7, 1979; amd. filed Feb. 2, 1982 eff. jan. 1, 1982.

Section 28.6 Scheduling of arbitration hearings.

(a) The hearing shall be held in a place provided by the court, by the commissioner, by the chairperson of the panel or, at the request of the chairperson, by a member of the panel. Unless otherwise agreed by the panel, parties and counsel, such place shall be within the county.

(b) The chairperson shall fix a hearing date and time, not less than 15 nor more than 30 days after the case is assigned, and shall give written notice to the members of the panel and the parties or their counsel at least 10 days before the date set. The commissioner may, on good cause shown, extend for a reasonable period the time within which the hearing shall be commenced. Such date and time shall not be a Saturday, Sunday, legal holiday or during evening hours except by agreement of the panel, parties and

counsel. Adjournments may be granted at the discretion of the chairperson only upon good cause shown.

(c) If the chairperson is unable to schedule a hearing within 30 days after the case is assigned, or within such further period as the commissioner may set, he shall notify the commissioner in writing of the reasons for such inability. The commissioner shall mark the action "continued" and place it on the arbitration calendar, and shall assign another action to the panel.

(d) Any action which is continued twice, after assignment to two panels, shall be referred by the commissioner to the court where the action was commenced or, if the action was transferred, to the court to which it was transferred, for a hearing on the cause of the inability to hold an arbitration hearing. The court, upon such hearing, may order a dismissal, or authorize the entry of judgment by default pursuant to CPLR 3215, or refer the action to the commissioner for assignment to another panel.

Historical Note
Sec. filed Sept. 14, 1970; amds. filed: May 17, 1971; Nov. 7, 1979; repealed, new filed Dec. 7, 1979; amds. filed: Feb. 2, 1982; April 4, 1986 eff. March 25, 1986. Amended (b).

Section 28.7 Defaults.

(a) Where a party fails to appear at the hearing, the panel shall nonetheless proceed with the hearing and shall make an award and decision, as may be just and proper under the facts and circumstances of the action, which may be entered as a judgment forthwith pursuant to section 28.11(b) of this Part. The judgment, if any, the default and the award may be vacated and the action may be restored to the arbitration calendar only upon order of the court where the action was commenced or, if the action was transferred, the court to which it was transferred, upon good cause shown. Such order of restoration shall be upon condition that the moving party pay into the court an amount equal to the total fees payable by the administrative office for the courts to the panel.

(b) Should all parties fail to appear at the hearing, the panel must file a report and award dismissing the action. The action may be restored to the arbitration calendar only upon order of the court where the action was commenced or, if the action was transferred, the court to which it was transferred, upon good cause shown. Such order or restoration may provide for the payment by any party into the court of such part of the panel fees payable by the administrative office for the courts to the panel as the court may determine to be just and proper.

Historical Note
Sec. filed Sept. 14, 1970; renum. 28.8., new filed May 17, 1971; amd. filed June 22, 1973; repealed, new filed Dec. 7, 1979; amd. filed Feb. 2, 1982 eff. Jan. 1, 1982.

Section 28.8 Conduct of hearings.

(a) The panel shall conduct the hearing with due regard to the law and established rules of evidence, which shall be liberally construed to promote justice. In personal injury cases, medical proof may be established by the submission into evidence of medical reports of attending or examining physicians upon stipulation of all parties.

(b) The panel shall have the general powers of a court, including but not limited to:

(1) subpoenaing witnesses to appear;

(2) subpoenaing books, papers, documents and other items of evidence;

(3) administering oaths or affirmations;

(4) determining the admissibility of evidence and the form in which it is to be offered; and

(5) deciding questions of law and facts in the actions submitted to them.

Historical Note
Sec. filed Sept. 14, 1970; renum. 28.9, new added by renum. 28.7, filed May 17, 1971; repealed, new filed Dec. 7, 1979 eff. Jan. 2, 1980.

Section 28.9 Costs of hearings; stenographic record.

(a) Witness fees shall be the same as in the court in which the action was commenced or, if the action was transferred, the court to which the action was transferred and the costs shall be borne by the same parties as in court.

(b) The panel shall not be required to cause a stenographic record to be made, but if any party, at least five days before the hearing, requests such record be kept and deposits $50 or such additional sum as the panel may fix to secure payment therefor, the panel shall provide a stenographer. Any surplus deposited shall be returned to the party depositing it. The cost of the stenographer shall not be a taxable disbursement.

Historical Note
Sec. filed Sept. 14, 1970; renum. 28.10,new added by renum. 28.8, filed May 17, 1971; repealed, new filed Dec. 7, 1979; amd. filed Feb. 2, 1982 eff. Jan. 1, 1982.

Section 28.10 Compensation of arbitrators.

(a) The Chief Administrator shall provide for the

compensation, including expenses, payable to each arbitrator to the extent of money available to the administrative office for the courts for this purpose. Claims for such compensation shall be made to the commissioner after entry of the award on forms prescribed by the Chief Administrator, except that a claim for compensation of the chairperson of a panel also may be made where the action is settled or withdrawn after a panel hearing date has been scheduled but before the hearing is commenced, and a claim for compensation of an arbitrator other than a chairperson may be made where the action is settled or withdrawn within three days of the date scheduled for the hearing. The commissioner shall forward all claims approved by him to the Chief Administrator. Any arbitrator may apply to the commissioner for reimbursement of extraordinary expenses necessarily incurred by him in the same manner as provided for application for ordinary compensation.

Historical Note
Sec. filed Sept. 14, 1970; renum. 28.11, new added by renum. 28.9, filed May 17, 1971; amd. filed Nov. 7, 1979; repealed, new filed Dec. 7, 1979; amd. filed Feb. 2; 1982 eff. Jan. 1, 1982.

Section 28.11 Award.

(a) The award shall be signed by the panel of arbitrators or at least a majority of them. The chairperson shall file a report and the award with the commissioner within 20 days after the hearing, and mail or deliver copies thereof to the parties or their counsel. The commissioner shall mark his files accordingly, file the original with the clerk of the court where the action was commenced or, if the action was transferred, the court to which it was transferred, and notify the parties of such filing.

(b) Unless a demand is made for a trial de novo, or the award vacated, the award shall be final and judgment shall be entered thereon by the clerk of the court where the action was commenced or, if the action was transferred, the clerk of the court to which it was transferred, with costs and disbursements taxed in accordance with the Civil Practice Law and Rules, the Uniform City Court Act, the New York City Civil Court Act, or the Uniform District Court Act, as the case may be.

Historical Note
Sec. filed Sept. 14, 1970; renum. 28.12, new added by renum. 28.10, filed May 17, 1971; amd. filed June 22, 1973 repealed, new filed Dec. 7, 1979; amd. filed Feb. 2, 1982 eff. Jan. 1, 1982.

Section 28.12 Trial de novo.

(a) Demand may be made by any party not in default for a trial de novo in the court where the action was commenced or, if the action was transferred, the court to which it was transferred, with or without a jury. Any party who is not in default, within 30 days after service upon such party of the

notice of filing of the award with the appropriate court clerk, or if service is by mail, within 35 days of such service, may file with the clerk of the court where the award was filed and serve upon all adverse parties a demand for a trial de novo.

(b) If the demandant either serves or files a timely demand for a trial de novo but neglects through mistake or excusable neglect to do one of those two acts within the time limited, the court where the action was commenced or, if the action was transferred, the court to which it was transferred, may grant an extension of time for curing the omission.

(c) The demandant shall also, concurrently with the filing of the demand, pay to the court clerk where the award was filed the amount of the fees payable to the panel by the administrative office for the courts pursuant to section 28.10 of this Part. Where a judicial hearing officer has heard and determined the arbitration, the amount payable shall be the same as would have been payable to a single arbitrator or a panel of three arbitrators, as the case may be, if such judicial hearing officer had not been assigned. Such sum shall not be recoverable by the demandant upon a trial de novo or in any other proceeding.

(d) The arbitrators shall not be called as witnesses nor shall the report or award of the arbitrators be admitted in evidence at the trial de novo .

(e) If the judgment upon the trial de novo is not more favorable than the arbitration award in the amount of damages awarded or the type of relief granted to the demandant, the demandant shall not recover interest or statutory costs and disbursements from the time of the award, but shall pay such statutory costs and disbursements to the other party or parties from the time of the filing of the demand for the trial de novo.

(f) If a judicial hearing officer has heard and determined an arbitration, the trial de novo may not be presided over by a judicial hearing officer, except upon consent of the parties.

Historical Note
Sec. filed Sept. 14, 1970; renum. 28.13, new added by renum. 28.11, filed May 17, 1971; amds. filed: June 22, 1973; Nov. 7, 1979; repealed, new filed Dec. 7, 1979; amds. filed: Feb. 2, 1982; May 2, 1985; May 12, 1992 eff. April 30, 1992. Amended (c); added (f).

Section 28.13 Motion to vacate award.

(a) Any party, except one who has demanded a trial de novo , within 30 days after the award is filed, may serve upon all other parties who have appeared and file with the appropriate court clerk a motion to vacate the award on only the grounds that the rights of the moving party were prejudiced because:

(1) there was corruption, fraud or misconduct in procuring the award;

(2) the panel making the award exceeded its power or so imperfectly executed it that a final and definite award was not made; or

(3) there was a substantial failure to follow the procedures established by or pursuant to these rules;

unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection.

(b) Copies of the motion papers shall be served upon the commissioner within two days after filing. If the motion to vacate is granted, the case shall be returned to the top of the arbitration calendar and submitted to a new panel.

Historical Note
Sec. filed Sept. 14, 1970; renum. 28.14, new added by renum. 28.12, filed May 17, 1971; amd. filed June 22, 1973; repealed, new filed Dec. 7, 1979; amd. filed Feb. 2, 1982 eff. Jan. 1, 1982.

Section 28.14 General power of court.

The court where the action was commenced or, if the action was transferred, the court to which it was transferred, shall hear and determine all collateral motions relating to arbitration proceedings.

Historical Note
Sec. filed Sept. 14, 1970; renum. 28.15, new added by renum. 28.13, filed May 17, 1971; amd. filed June 22, 1973; repealed, new filed Dec. 7, 1979 eff. Jan. 2, 1980.

Section 28.15 Training courses.

The Chief Administrator of the Courts may provide for such orientation courses, training courses and continuing education courses for attorneys applying to be arbitrators and for arbitrators as the Chief Administrator may deem necessary and desirable.

Historical Note
Sec. added by renum. 28.14, filed May 17, 1971; amds. filed: Feb. 29, 1972; June 22, 1973; Nov. 7, 1979; repealed, filed Dec. 7, 1979; new filed April 4, 1986 eff. March 25, 1986.

Section 28.16 Judicial hearing officers.

(a) An arbitration under this Part may be heard and determined by a judicial hearing officer instead of a panel of arbitrators, without regard for whether the arbitration otherwise would be triable before a single arbitrator or a panel of three arbitrators. The judicial hearing officer shall be assigned by the commissioner, with the approval of the

appropriate administrative judge, to hear and determine such proceedings as shall be assigned by the commissioner. When a judicial hearing officer presides over an arbitration, the procedures followed shall be as set forth in the provisions of the Part.

(b) Judicial hearing officers serving as arbitrators pursuant to this Part shall receive compensation as provided in section 122.8 of the Rules of the Chief Administrator. A location in which a hearing of the arbitration is held shall be deemed a "facility designated for court appearances" within the meaning of that section.

Historical Note
Sec. filed May 12, 1992 eff. April 30, 1992.

Web page updated: March 11, 2009 - www.NYCOURTS.gov

Appendix F

CIVIL COURT OF THE CITY OF NEW YORK

DIRECTIVES AND PROCEDURES
Subject: Mandatory Consumer Credit Mediation in New York County

Class: DRP-177
Category: GP-10
Eff. Date: March 12, 2007

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BACKGROUND

A large portion of the filings in the Civil Part are consumer credit transactions. Many of these actions are for less than $10,000. Once calendared these disputes often settle.

Currently, in New York County, these cases are being scheduled for a pre-arbitration conference date over eight months away. In order to facilitate the efficient processing of these actions, we are creating a mandatory Mediation Part in New York County, which will replace the pre-arbitration conference, for those consumer credit transactions where the answer suggests that money is owed and a settlement is sought.

DIRECTIVE

Upon the filing of an Answer in Person in a consumer credit case for less than $10,000, where the defenses suggest money is owed and a settlement is sought, the Clerk is directed to place the action on the mandatory Mediation Calendar within 15 days.

The cases will be assigned to Part 3-M. Cases will be scheduled for Fridays, and the calendar will be set for 10:00 A.M. Dates may be added depending on case volume.

The Mediation Part is a mandatory appearance part. Failure to appear by the plaintiff may lead to dismissal, and failure to appear by the defendant may allow the entry of a judgment on default. When the parties appear, an experienced mediator will assist them in reaching a mutually satisfactory resolution to their dispute.

An attorney that appears without a client must be familiar with the facts of the case, and must be able to contact that client during the course of the mediation.

If the parties reach an agreement during mediation, the written stipulation of settlement shall be reviewed and allocuted by the presiding Civil Court Judge in the PA Part. Unresolved cases will proceed in the usual course to the Arbitration Calendar for a hearing within 15 days, unless (1) the parties agree to continue their mediation on an adjourned date; or (2) there are outstanding discovery matters. If there are outstanding discovery matters, the Civil Court Judge presiding over the Mediation Part shall ensure that such matters are resolved before sending the case to the Arbitration Calendar. Unresolved cases that originate in Part 3-M but are not yet ready for arbitration shall be placed on the Part 11-M calendar until discovery is complete.

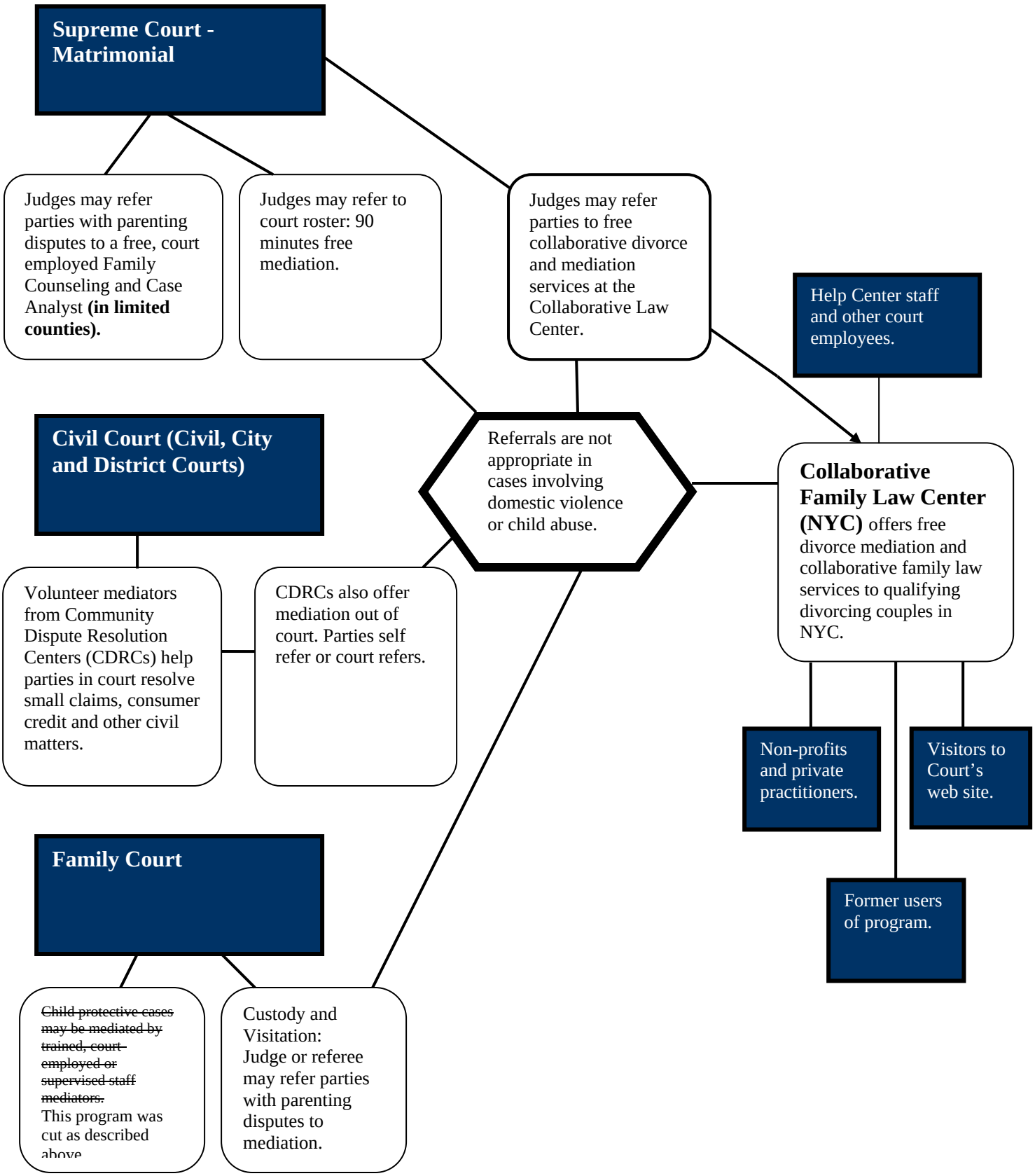
Date 2/21/07

Fern A Fisher
Administrative Judge

Appendix G

ACCESS TO LOW-COST MEDIATION THROUGH THE COURTS

HOW DO CASES GET TO MEDIATION?*



APPENDIX 20:

Report of the Task Force's Working Group on Strategic Partnerships

NOVEMBER 2011

Contents

REPORT OF THE WORKING GROUP ON STRATEGIC PARTNERSHIPS

The Use of Collaborative Partnerships

Legal services providers often partner or collaborate with other community-based organizations to help meet the full range of their clients' needs. These partnerships range from fully integrated jointly funded projects that weave legal assistance directly into the delivery of other human services to more loosely designed efforts that extend targeted legal services to a particular legal need. For example, based on this most recent summary, New York legal services programs are now engaged in some level of medical-legal partnerships, some of which bring legal assistance directly into the medical setting of the partnering agency addressing a range of legal needs from evictions to guardianships and other more limited partnerships which may provide on-site legal assistance related only to health-related issues.

Other partnerships include collaborations between local services and housing councils in joint efforts to address the foreclosure crisis – New York and those that bring legal services and domestic violence programs together to meet the needs of domestic violence victims and their families.

In order to gauge the range of partnerships currently operating in New York State, the Chief Judge's Task Force to Expand Access to Legal Services conducted a survey of legal services providers. Attached as Exhibit A.

Findings

Partnerships are Focused on the Essentials of Life and Critical Legal Needs

Of the responding legal services providers, almost 74% (73.7%) were engaged in some level of partnership to meeting the legal needs of victims of domestic violence. In the area of housing, 68.9% had partnerships with community-organizations dealing with landlord-tenant issues and just over 67% were engaged in a partnership with community-based organizations working on housing counseling and foreclosure prevention efforts.

Sixty percent of the respondents had partnerships with health care providers; 64.4% were in partnership with immigrant rights groups and just fewer than 60% (57.8%) were in partnership with local educational institutions. Only a minority, 20%, had on-going partnerships with their local child care providers.

Through these projects, legal services organizations are able to extend their reach and expand access to their services.

The existing health care collaborations reach every county in the state, albeit to varying degrees and clearly not all services can be provided on-site. Likewise, the partnerships with domestic violence partners reach every county. In the area of homelessness and eviction prevention, these partnerships reach all but 12 counties and foreclosure prevention partnerships now reach families in all but nine counties.

A Range of Services Provided

Through these partnerships, legal services organizations provide a range of assistance from brief advice or a referral to another agency to full representation at administrative hearings and in court. Some partnerships may provide legal assistance limited to the issues directly related to the partnership while others may provide legal assistance across a range of substantive law areas.

The survey results show that partnerships with domestic violence programs and those with homelessness prevention programs offer the richest array of legal assistance to their clients. Legal assistance addressing a wide range of legal needs is provided within 76% of the DV-Legal Services partnerships while 72.4% of the eviction prevention partnerships offer a full range of legal assistance. Within these partnerships, the programs strive to address any civil legal need the client maybe confronting. For example, a homelessness prevention program may indentify the lack of health coverage as adding to the financial stress on the family with medical needs draining their ability to pay their housing costs. The legal services program would provide assistance in securing medical coverage or challenge an inappropriate denial of coverage thereby helping to stabilize the family's financial situation.

Housing and domestic violence partnerships also provide a deep range of legal assistance within the areas targeted by the partnerships. In 68% of the collaborations reported on, clients have access to a full spectrum of legal assistance to address all legal needs related to eviction prevention or domestic violence, and 65% of the housing collaborations provide a full range of legal assistance related to eviction prevention.

In addition to full legal representation, most of the domestic violence collaborations offer information and referral services (75%), simple advice or "brief services" (71.4%) as well as legal seminars (70%) and legal educational programs (65.8%) to help clients and community groups understand the legal issues involved in domestic violence.

One of the effective innovations of these partnerships is the capacity to provide clients with not just the legal assistance they need, but to connect them with other services that can help increase their overall stability, reducing the need for additional or repeat interventions.

By partnering with other human services organizations, legal services providers are able to leverage the resources made available to their clients. The survey results indicate that almost 90% (87.9%) of the partnerships with domestic violence partners include access to support groups; 73% include case management services; and almost 70% include direct assistance with other needs such as shelter and rent assistance.

Within the eviction prevention partnerships, 73% also provide assistance with other needs; 60% provide case management services and 43% provide financial counseling and legal education opportunities.

Services are Provided in the Community, Where the Need Is

The focus of most of these legal-non-legal partnerships is to provide needed legal services more efficiently and effectively by integrating legal assistance with other human services.

Many of the partnerships offered services either on-site at the community-based organization or on-site at the legal services office.

Seventy-six (76.3%) percent of those responding that had domestic violence partnerships provided legal assistance through a referral to the legal services offices while 50% offered services on-site at the domestic violence program. Seventy-one percent of the housing counseling/foreclosure prevention programs provided legal assistance within the legal services offices while 40% offered services on-site at their partners' site. Sixty-eight percent of the homelessness and eviction prevention partnerships offered services at the legal services offices while 43.3% offered services at their partners' site.

Of those surveyed, the programs with medical-legal projects half (50%) offer services on site at the medical partners' location. Just under 58% provided services through their legal services offices.

When providing services on-site at their partner's site, 88.9% of those with domestic violence partnerships provide services on-site daily; 29% provide services weekly and 25% offer services monthly. Thirty-five percent of those with medical-legal partnerships that offer services on-site at their health partner's site provide on-site legal assistance weekly; 37.5% provide services monthly and 22% provide on-site legal assistance daily.

Partnerships Use a Mix of Staffing Models

The various partnerships used a mix of staffing patterns, using social workers, case managers and paralegal staff in addition to attorneys. With 72% of the domestic violence partnerships reporting using attorneys, 69% also deployed social workers; 62% used paralegal staff and 50% used case managers to help meet the full range of client needs.

Sixty-seven percent of the homelessness/eviction prevention programs reported using case managers, 65% also used attorney staffing. Sixty percent reported using paralegal staff and 46% used social workers.

The use of social workers was reported as more prevenant than the use of attorneys in both the medical-legal partnerships (54% v 51%).

Case managers were reported most likely to be used in homelessness/eviction prevention partnerships (67%) and less so within medical-legal partnerships (33%) and least likely in child care collaborations (8%).

Clearly, as legal services partnerships, attorney staff were used throughout all of the reported programs and were most likely to be deployed in domestic violence (72%), housing/foreclosure prevention (70%) and homelessness/eviction prevention (65%) partnerships.

Types of Partnerships Vary

The majority of partnerships reported on were part of a formal collaboration. The domestic violence partnerships were most likely (76.5%) to be part of a formal arrangement between the legal services and DV partners. Of the homelessness/eviction prevention programs reported on, 71% were part of a formal arrangement as were 75% of the immigrant rights partnerships and 67% of the medical-legal partnerships.

The partnerships rely on a mix of funding sources, including government grants and contracts, private funding and funding through the collaborative partners.

Outcomes: More Effective Delivery of Needed Services and Reduced Burden on the Courts

By integrating legal assistance with other human services, these partnerships and collaborations are able to offer clients a more comprehensive range of services, improve local interactions between legal services and other human services organizations, strengthen the overall community response to a given issue, resolve legal issues earlier in the process and reduce the burden on the courts by handling legal issues in a more preventive fashion.

Indeed, 70% of those with domestic violence partnerships and 73% of those with housing counseling/foreclosure prevention partnerships indicated a reduced burden on the courts as

one of the key benefits of their collaborations. Seventy-eight percent of those with domestic violence partnerships indicated an overall improvement in the community response to the issues as did 70% of those with housing counseling/foreclosure prevention partnerships and 68% of those with homelessness/eviction prevention programs.

Seventy-one percent of those with domestic violence partnerships reported earlier resolution of legal issues as a benefit of the collaboration as did 68% of those with housing counseling/foreclosure prevention programs and 66% of those with eviction prevention partnerships.

Recommendations

Collaborative partnerships should continue to be encouraged and facilitated. Legal services programs should continue to build on successful models and explore additional models where local services indicate a need.

EXHIBIT A

Survey on Strategic Partnerships with Non-Legal Entities that Provide Services to Clients

1. Please enter your name.

	Response Count
	47
answered question	47
skipped question	0

2. Please enter your program's name.

	Response Count
	47
answered question	47
skipped question	0

3. Does your program have current partnerships or collaborations with any of the following? Check all that apply.

	Response Percent	Response Count
Health Care Providers (for example community health centers, hospitals)	60.0%	27
Child Care Providers	20.0%	9
Domestic Violence Services Providers	**73.3%**	**33**
Educational Institutions and Programs	57.8%	26
Housing Programs or Housing Counseling Agencies (homeownership and/or foreclosure prevention efforts)	66.7%	30
Homelessness Programs (Landlord-Tenant; eviction prevention efforts)	68.9%	31
Immigrants' Rights Groups	64.4%	29
	Other (please specify)	26
	answered question	**45**
	skipped question	**2**

4. Which counties are served by this collaboration?

	Health Care Providers	Child Care Providers	Domestic Violence Services Providers	Educational Institutions and Programs	Housing Programs or Housing Counseling Agencies	Homelessness Programs	Immigrants' Rights Groups	Other	Response Count
Albany County	22.2% (2)	11.1% (1)	55.6% (5)	44.4% (4)	55.6% (5)	33.3% (3)	**66.7% (6)**	11.1% (1)	9
Allegany County	33.3% (2)	0.0% (0)	16.7% (1)	16.7% (1)	0.0% (0)	16.7% (1)	**50.0% (3)**	**50.0% (3)**	6
Bronx County	66.7% (8)	16.7% (2)	66.7% (8)	58.3% (7)	41.7% (5)	41.7% (5)	**83.3% (10)**	25.0% (3)	12
Broome County	16.7% (1)	0.0% (0)	**50.0% (3)**	33.3% (2)	0.0% (0)	0.0% (0)	**50.0% (3)**	16.7% (1)	6
Cattaraugus County	28.6% (2)	0.0% (0)	28.6% (2)	14.3% (1)	14.3% (1)	14.3% (1)	**42.9% (3)**	**42.9% (3)**	7
Cayuga County	25.0% (2)	0.0% (0)	**50.0% (4)**	12.5% (1)	12.5% (1)	12.5% (1)	25.0% (2)	25.0% (2)	8
Chautauqua County	37.5% (3)	0.0% (0)	25.0% (2)	12.5% (1)	37.5% (3)	12.5% (1)	37.5% (3)	**50.0% (4)**	8
Chemung County	33.3% (2)	0.0% (0)	33.3% (2)	0.0% (0)	16.7% (1)	16.7% (1)	33.3% (2)	**50.0% (3)**	6
Chenango County	14.3% (1)	0.0% (0)	**28.6% (2)**	0.0% (0)	**28.6% (2)**	14.3% (1)	**28.6% (2)**	**28.6% (2)**	7
Clinton County	16.7% (1)	0.0% (0)	**33.3% (2)**	16.7% (1)	**33.3% (2)**	**33.3% (2)**	**33.3% (2)**	**33.3% (2)**	6
Columbia County	16.7% (1)	0.0% (0)	**50.0% (3)**	16.7% (1)	33.3% (2)	16.7% (1)	**50.0% (3)**	16.7% (1)	6
Cortland County	14.3% (1)	0.0% (0)	**42.9% (3)**	14.3% (1)	0.0% (0)	14.3% (1)	**42.9% (3)**	14.3% (1)	7
Delaware County	14.3% (1)	0.0% (0)	**42.9% (3)**	14.3% (1)	14.3% (1)	0.0% (0)	28.6% (2)	28.6% (2)	7
Dutchess County	**33.3% (1)**	**33.3% (1)**	**33.3% (1)**	0.0% (0)	0.0% (0)	0.0% (0)	**33.3% (1)**	**33.3% (1)**	3
Erie County	57.1% (4)	0.0% (0)	57.1% (4)	42.9% (3)	42.9% (3)	42.9% (3)	28.6% (2)	**71.4% (5)**	7

Essex County	16.7% (1)	0.0% (0)	16.7% (1)	16.7% (1)	**33.3% (2)**	**33.3% (2)**	**33.3% (2)**	**33.3% (2)**	6
Franklin County	16.7% (1)	0.0% (0)	**33.3% (2)**	16.7% (1)	16.7% (1)	**33.3% (2)**	**33.3% (2)**	**33.3% (2)**	6
Fulton County	**28.6% (2)**	0.0% (0)	**28.6% (2)**	14.3% (1)	14.3% (1)	14.3% (1)	**28.6% (2)**	14.3% (1)	7
Genesee County	42.9% (3)	0.0% (0)	42.9% (3)	28.6% (2)	28.6% (2)	28.6% (2)	**57.1% (4)**	42.9% (3)	7
Greene County	16.7% (1)	0.0% (0)	33.3% (2)	16.7% (1)	33.3% (2)	16.7% (1)	**50.0% (3)**	16.7% (1)	6
Hamilton County	20.0% (1)	0.0% (0)	20.0% (1)	0.0% (0)	20.0% (1)	**40.0% (2)**	20.0% (1)	**40.0% (2)**	5
Herkimer County	16.7% (1)	0.0% (0)	**50.0% (3)**	16.7% (1)	33.3% (2)	16.7% (1)	33.3% (2)	16.7% (1)	6
Jefferson County	14.3% (1)	0.0% (0)	**42.9% (3)**	0.0% (0)	14.3% (1)	14.3% (1)	28.6% (2)	28.6% (2)	7
Kings County	50.0% (9)	22.2% (4)	72.2% (13)	61.1% (11)	61.1% (11)	50.0% (9)	**88.9% (16)**	33.3% (6)	18
Lewis County	14.3% (1)	0.0% (0)	**42.9% (3)**	0.0% (0)	14.3% (1)	0.0% (0)	28.6% (2)	28.6% (2)	7
Livingston County	50.0% (3)	0.0% (0)	**66.7% (4)**	33.3% (2)	33.3% (2)	16.7% (1)	50.0% (3)	33.3% (2)	6
Madison County	20.0% (1)	0.0% (0)	**60.0% (3)**	40.0% (2)	20.0% (1)	0.0% (0)	20.0% (1)	20.0% (1)	5
Monroe County	**50.0% (3)**	16.7% (1)	**50.0% (3)**	16.7% (1)	**50.0% (3)**	33.3% (2)	**50.0% (3)**	**50.0% (3)**	6
Montgomery County	16.7% (1)	0.0% (0)	33.3% (2)	33.3% (2)	16.7% (1)	16.7% (1)	**50.0% (3)**	16.7% (1)	6
Nassau County	**83.3% (5)**	50.0% (3)	66.7% (4)	50.0% (3)	50.0% (3)	33.3% (2)	66.7% (4)	16.7% (1)	6
New York County	64.7% (11)	29.4% (5)	70.6% (12)	64.7% (11)	52.9% (9)	52.9% (9)	**82.4% (14)**	35.3% (6)	17
Niagara County	**37.5% (3)**	0.0% (0)	25.0% (2)	12.5% (1)	**37.5% (3)**	25.0% (2)	**37.5% (3)**	25.0% (2)	8
Oneida County	14.3% (1)	0.0% (0)	**42.9% (3)**	28.6% (2)	28.6% (2)	28.6% (2)	**42.9% (3)**	28.6% (2)	7
Onondaga County	25.0% (2)	12.5% (1)	25.0% (2)	25.0% (2)	25.0% (2)	**37.5% (3)**	**37.5% (3)**	**37.5% (3)**	8

Ontario County	50.0% (3)	16.7% (1)	**66.7% (4)**	33.3% (2)	50.0% (3)	33.3% (2)	50.0% (3)	50.0% (3)	6
Orange County	25.0% (1)	0.0% (0)	25.0% (1)	25.0% (1)	0.0% (0)	0.0% (0)	**50.0% (2)**	25.0% (1)	4
Orleans County	42.9% (3)	0.0% (0)	42.9% (3)	28.6% (2)	28.6% (2)	28.6% (2)	**57.1% (4)**	42.9% (3)	7
Oswego County	25.0% (2)	0.0% (0)	**50.0% (4)**	12.5% (1)	12.5% (1)	12.5% (1)	37.5% (3)	25.0% (2)	8
Otsego County	14.3% (1)	0.0% (0)	**42.9% (3)**	0.0% (0)	14.3% (1)	14.3% (1)	28.6% (2)	28.6% (2)	7
Putnam County	**50.0% (1)**	0.0% (0)	**50.0% (1)**	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	**50.0% (1)**	2
Queens County	53.3% (8)	13.3% (2)	66.7% (10)	53.3% (8)	53.3% (8)	40.0% (6)	**86.7% (13)**	26.7% (4)	15
Rensselaer County	12.5% (1)	0.0% (0)	37.5% (3)	25.0% (2)	37.5% (3)	12.5% (1)	**50.0% (4)**	25.0% (2)	8
Richmond County	54.5% (6)	18.2% (2)	72.7% (8)	54.5% (6)	63.6% (7)	54.5% (6)	**90.9% (10)**	36.4% (4)	11
Rockland County	**66.7% (2)**	33.3% (1)	**66.7% (2)**	33.3% (1)	33.3% (1)	0.0% (0)	**66.7% (2)**	33.3% (1)	3
Saint Lawrence County	16.7% (1)	0.0% (0)	**33.3% (2)**	16.7% (1)	**33.3% (2)**	**33.3% (2)**	**33.3% (2)**	**33.3% (2)**	6
Saratoga County	14.3% (1)	0.0% (0)	28.6% (2)	28.6% (2)	28.6% (2)	14.3% (1)	**57.1% (4)**	28.6% (2)	7
Schenectady County	12.5% (1)	0.0% (0)	**50.0% (4)**	25.0% (2)	37.5% (3)	12.5% (1)	**50.0% (4)**	25.0% (2)	8
Schoharie County	16.7% (1)	0.0% (0)	**33.3% (2)**	16.7% (1)	16.7% (1)	16.7% (1)	**33.3% (2)**	16.7% (1)	6
Schuyler County	**40.0% (2)**	0.0% (0)	**40.0% (2)**	0.0% (0)	20.0% (1)	20.0% (1)	**40.0% (2)**	**40.0% (2)**	5
Seneca County	**50.0% (3)**	16.7% (1)	**50.0% (3)**	33.3% (2)	16.7% (1)	16.7% (1)	**50.0% (3)**	**50.0% (3)**	6
Steuben County	42.9% (3)	0.0% (0)	42.9% (3)	14.3% (1)	14.3% (1)	14.3% (1)	42.9% (3)	**57.1% (4)**	7
Suffolk County	**71.4% (5)**	42.9% (3)	**71.4% (5)**	57.1% (4)	28.6% (2)	28.6% (2)	**71.4% (5)**	14.3% (1)	7
Sullivan County	**50.0% (1)**	0.0% (0)	**50.0% (1)**	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	**50.0% (1)**	2

Tioga County	16.7% (1)	0.0% (0)	16.7% (1)	0.0% (0)	16.7% (1)	0.0% (0)	33.3% (2)	**66.7% (4)**	6
Tompkins County	33.3% (2)	0.0% (0)	33.3% (2)	33.3% (2)	16.7% (1)	16.7% (1)	**50.0% (3)**	**50.0% (3)**	6
Ulster County	25.0% (1)	0.0% (0)	25.0% (1)	0.0% (0)	0.0% (0)	0.0% (0)	25.0% (1)	**50.0% (2)**	4
Warren County	16.7% (1)	0.0% (0)	**33.3% (2)**	0.0% (0)	16.7% (1)	16.7% (1)	**33.3% (2)**	**33.3% (2)**	6
Washington County	16.7% (1)	0.0% (0)	**33.3% (2)**	0.0% (0)	16.7% (1)	16.7% (1)	**33.3% (2)**	**33.3% (2)**	6
Wayne County	50.0% (3)	0.0% (0)	**66.7% (4)**	33.3% (2)	50.0% (3)	33.3% (2)	**66.7% (4)**	50.0% (3)	6
Westchester County	40.0% (2)	20.0% (1)	**80.0% (4)**	20.0% (1)	0.0% (0)	0.0% (0)	**80.0% (4)**	20.0% (1)	5
Wyoming County	42.9% (3)	0.0% (0)	28.6% (2)	28.6% (2)	14.3% (1)	14.3% (1)	**57.1% (4)**	28.6% (2)	7
Yates County	50.0% (3)	0.0% (0)	50.0% (3)	33.3% (2)	16.7% (1)	16.7% (1)	**66.7% (4)**	50.0% (3)	6
								answered question	**45**
								skipped question	**2**

5. Please note if you serve less than county wide (for example, a specific town or city).

	Response Count
	4
answered question	**4**
skipped question	**43**

6. Please indicate what kind of services your organization provides under these collaborations. Check all that apply.

	Health Care Providers	Child Care Providers	Domestic Violence Services Providers	Educational Institutions and Programs	Housing Programs or Housing Counseling Agencies	Homelessness Programs	Immigrants' Rights Groups	Other	Response Count
Information or Referral	59.1% (26)	20.5% (9)	**75.0% (33)**	54.5% (24)	68.2% (30)	68.2% (30)	61.4% (27)	38.6% (17)	44
Advice or Brief Service	57.1% (24)	21.4% (9)	**71.4% (30)**	54.8% (23)	**71.4% (30)**	69.0% (29)	57.1% (24)	40.5% (17)	42
Limited Representation	54.3% (19)	20.0% (7)	60.0% (21)	54.3% (19)	68.6% (24)	**74.3% (26)**	42.9% (15)	34.3% (12)	35
Full Representation within the substantive law areas related directly to your partners' work (for example, to health coverage and access in a health collaborative and not assistance with other issues that the client might be confronting such as the need for child care or assistance with income supports)	48.6% (18)	16.2% (6)	**67.6% (25)**	40.5% (15)	64.9% (24)	62.2% (23)	54.1% (20)	27.0% (10)	37
Full Representation addressing a wide range of legal issues that the client may be confronting	54.5% (18)	21.2% (7)	**75.8% (25)**	54.5% (18)	60.6% (20)	72.7% (24)	54.5% (18)	36.4% (12)	33
Case Management	30.8% (4)	0.0% (0)	53.8% (7)	38.5% (5)	46.2% (6)	**76.9% (10)**	46.2% (6)	30.8% (4)	13
Community Legal Education Seminars for clients or community groups	52.6% (20)	15.8% (6)	**65.8% (25)**	50.0% (19)	52.6% (20)	55.3% (21)	60.5% (23)	39.5% (15)	38
Legal Seminars for your parters' staff (i.e., education or health staff)	48.6% (18)	16.2% (6)	**70.3% (26)**	37.8% (14)	51.4% (19)	48.6% (18)	64.9% (24)	40.5% (15)	37

	Other (please specify)	10
	answered question	**44**
	skipped question	**3**

7. In these collaborations, does your program offer legal assistance... Check all that apply.

	Health Care Providers	Child Care Providers	Domestic Violence Services Providers	Educational Institutions and Programs	Housing Programs or Housing Counseling Agencies	Homelessness Programs	Immigrants' Rights Groups	Other	Response Count
At your partners' site	**50.0% (15)**	13.3% (4)	**50.0% (15)**	33.3% (10)	40.0% (12)	43.3% (13)	**50.0% (15)**	40.0% (12)	30
Clients referred to your office(s)	57.9% (22)	23.7% (9)	**76.3% (29)**	57.9% (22)	71.1% (27)	68.4% (26)	60.5% (23)	39.5% (15)	38

	Other (please specify)	11
	answered question	**41**
	skipped question	**6**

8. What types of services do your service partners provide? Check all that apply.

	Health Care Providers	Child Care Providers	Domestic Violence Services Providers	Educational Institutions and Programs	Housing Programs or Housing Counseling Agencies	Homelessness Programs	Immigrants' Rights Groups	Other	Response Count
Case management	37.8% (14)	8.1% (3)	**73.0% (27)**	27.0% (10)	43.2% (16)	59.5% (22)	37.8% (14)	27.0% (10)	37
Support groups	36.4% (12)	9.1% (3)	**87.9% (29)**	24.2% (8)	27.3% (9)	36.4% (12)	24.2% (8)	24.2% (8)	33
Direct assistance with other needs, such as on site shelter, rent subsidies, etc.	29.7% (11)	2.7% (1)	70.3% (26)	16.2% (6)	48.6% (18)	**73.0% (27)**	35.1% (13)	24.3% (9)	37
Financial counseling	6.7% (2)	10.0% (3)	50.0% (15)	26.7% (8)	**66.7% (20)**	43.3% (13)	13.3% (4)	33.3% (10)	30
Community legal education or other community-based training programs	21.9% (7)	12.5% (4)	**53.1% (17)**	37.5% (12)	50.0% (16)	43.8% (14)	50.0% (16)	40.6% (13)	32
								Other (please specify)	12
								answered question	**42**
								skipped question	**5**

9. If your program provides services at your collaborating partner's site, please indicate the frequency of legal staffing.

	Health Care Providers	Child Care Providers	Domestic Violence Services Providers	Educational Institutions and Programs	Housing Programs or Housing Counseling Agencies	Homelessness Programs	Immigrants' Rights Groups	Other	Response Count
Daily	22.2% (2)	0.0% (0)	**88.9% (8)**	11.1% (1)	22.2% (2)	44.4% (4)	11.1% (1)	0.0% (0)	9
Weekly	**35.3% (6)**	5.9% (1)	29.4% (5)	29.4% (5)	29.4% (5)	23.5% (4)	**35.3% (6)**	11.8% (2)	17
Monthly	37.5% (6)	0.0% (0)	25.0% (4)	12.5% (2)	43.8% (7)	31.3% (5)	**50.0% (8)**	37.5% (6)	16
								Other (please specify)	14
								answered question	**29**
								skipped question	**18**

10. What are the positive outcomes or benefits from these collaborations? Check all that apply.

	Health Care Providers	Child Care Providers	Domestic Violence Services Providers	Educational Institutions and Programs	Housing Programs or Housing Counseling Agencies	Homelessness Programs	Immigrants' Rights Groups	Other	Response Count
Comprehensive client services	53.8% (21)	15.4% (6)	**79.5% (31)**	48.7% (19)	74.4% (29)	66.7% (26)	59.0% (23)	41.0% (16)	39
Improved lawyer/client advocate collaborations	45.0% (18)	15.0% (6)	**72.5% (29)**	45.0% (18)	70.0% (28)	65.0% (26)	57.5% (23)	35.0% (14)	40
Improved community response to the issues in focus (for example, reduced homelessness, better community response to domestic violence issues)	48.6% (18)	13.5% (5)	**78.4% (29)**	37.8% (14)	70.3% (26)	67.6% (25)	62.2% (23)	24.3% (9)	37
Early resolution of potential legal issues	53.7% (22)	12.2% (5)	**70.7% (29)**	48.8% (20)	68.3% (28)	65.9% (27)	56.1% (23)	36.6% (15)	41
Reduced burden on the courts	40.5% (15)	13.5% (5)	70.3% (26)	43.2% (16)	**73.0% (27)**	59.5% (22)	56.8% (21)	32.4% (12)	37
								Other (please specify)	7
								answered question	**43**
								skipped question	**4**

11. Please identify the type(s) of staff that work for your organization on these collaborative projects. Check all that apply.

	Health Care Providers	Child Care Providers	Domestic Violence Services Providers	Educational Institutions and Programs	Housing Programs or Housing Counseling Agencies	Homelessness Programs	Immigrants' Rights Groups	Other	Response Count
Attorneys	51.2% (22)	16.3% (7)	**72.1% (31)**	48.8% (21)	69.8% (30)	65.1% (28)	60.5% (26)	34.9% (15)	43
Paralegals	40.5% (17)	16.7% (7)	**61.9% (26)**	40.5% (17)	57.1% (24)	59.5% (25)	47.6% (20)	33.3% (14)	42
Social Workers	53.8% (7)	15.4% (2)	**69.2% (9)**	23.1% (3)	38.5% (5)	46.2% (6)	38.5% (5)	7.7% (1)	13
Case Managers	33.3% (4)	8.3% (1)	50.0% (6)	41.7% (5)	50.0% (6)	**66.7% (8)**	41.7% (5)	8.3% (1)	12
								Other (please specify)	9
								answered question	**44**
								skipped question	**3**

12. Are these partnerships or collaborations formal or part of a formal coalition or task force?

	Yes	No	Response Count
Health Care Providers	**66.7% (18)**	37.0% (10)	27
Child Care Providers	**55.6% (5)**	44.4% (4)	9
Domestic Violence Services Providers	**76.5% (26)**	23.5% (8)	34
Educational Institutions and Programs	**63.0% (17)**	37.0% (10)	27
Housing Programs or Housing Counseling Agencies	**63.6% (21)**	39.4% (13)	33
Homelessness Programs	**71.0% (22)**	32.3% (10)	31
Immigrants' Rights Groups	**75.0% (21)**	28.6% (8)	28
		Other (please specify)	12
		answered question	**45**
		skipped question	**2**

13. If the partnerships or collaborations are formal, which best describes your collaborative work arrangement? Check all that apply.

	Health Care Providers	Child Care Providers	Domestic Violence Services Providers	Educational Institutions and Programs	Housing Programs or Housing Counseling Agencies	Homelessness Programs	Immigrants' Rights Groups	Response Count
Written service agreements	35.7% (10)	3.6% (1)	**67.9% (19)**	28.6% (8)	53.6% (15)	50.0% (14)	39.3% (11)	28
Written protocols on client referrals	42.3% (11)	7.7% (2)	**76.9% (20)**	30.8% (8)	57.7% (15)	38.5% (10)	34.6% (9)	26
Formal tracking of outcomes/impact	32.1% (9)	10.7% (3)	**67.9% (19)**	28.6% (8)	57.1% (16)	60.7% (17)	35.7% (10)	28
Shared funding	24.0% (6)	0.0% (0)	**64.0% (16)**	24.0% (6)	**64.0% (16)**	48.0% (12)	24.0% (6)	25
							Other (please specify)	10
							answered question	**37**
							skipped question	**10**

14. How is the partnership or collaboration primarily staffed?

	Health Care Providers	Child Care Providers	Domestic Violence Services Providers	Educational Institutions and Programs	Housing Programs or Housing Counseling Agencies	Homelessness Programs	Immigrants' Rights Groups	Response Count
By legal services attorneys	41.2% (14)	5.9% (2)	**67.6% (23)**	44.1% (15)	64.7% (22)	64.7% (22)	61.8% (21)	34
By legal services paralegals or other non-lawyer staff	34.8% (8)	0.0% (0)	**56.5% (13)**	39.1% (9)	52.2% (12)	**56.5% (13)**	34.8% (8)	23
By the non-legal services partner agency	52.0% (13)	16.0% (4)	64.0% (16)	48.0% (12)	**68.0% (17)**	52.0% (13)	52.0% (13)	25
							Other (please specify)	13
							answered question	**38**
							skipped question	**9**

15. How are your partnerships and collaborations funded?

	Response Percent	Response Count
Health Care Providers	53.8%	21
Child Care Providers	7.7%	3
Domestic Violence Services Providers	**69.2%**	**27**
Educational Institutions and Programs	43.6%	17
Housing Programs or Housing Counseling Agencies	66.7%	26
Homelessness Programs	56.4%	22
Immigrants' Rights Groups	51.3%	20
Other	33.3%	13
	answered question	**39**
	skipped question	**8**

16. If this partnership or collaboration has discrete funding, does the funding come from: Check all that apply.

	Health Care Providers	Child Care Providers	Domestic Violence Services Providers	Educational Institutions and Programs	Housing Programs or Housing Counseling Agencies	Homelessness Programs	Immigrants' Rights Groups	Response Count
Private funders	45.8% (11)	8.3% (2)	**58.3% (14)**	41.7% (10)	45.8% (11)	41.7% (10)	41.7% (10)	24
Government funders	36.7% (11)	10.0% (3)	66.7% (20)	26.7% (8)	**73.3% (22)**	60.0% (18)	46.7% (14)	30
Collaborative partner funds it	37.5% (3)	0.0% (0)	25.0% (2)	**50.0% (4)**	25.0% (2)	12.5% (1)	12.5% (1)	8
Fee for service (the Partner pays a fee for our legal services)	20.0% (1)	0.0% (0)	40.0% (2)	40.0% (2)	0.0% (0)	20.0% (1)	**60.0% (3)**	5
							Other (please specify)	8
							answered question	**34**
							skipped question	**13**

17. How long has your program/organization received such funding?

	Response Percent	Response Count
Health Care Providers	45.5%	15
Child Care Providers	9.1%	3
Domestic Violence Services Providers	**66.7%**	**22**
Educational Institutions and Programs	36.4%	12
Housing Programs or Housing Counseling Agencies	63.6%	21
Homelessness Programs	57.6%	19
Immigrants' Rights Groups	48.5%	16
Other	39.4%	13
	answered question	**33**
	skipped question	**14**

18. What data do you have that shows legal interventions are more efficient as a result of the collaborations? Check all that apply.

	Health Care Providers	Child Care Providers	Domestic Violence Services Providers	Educational Institutions and Programs	Housing Programs or Housing Counseling Agencies	Homelessness Programs	Immigrants' Rights Groups	Response Count
Numbers served	42.9% (15)	8.6% (3)	65.7% (23)	45.7% (16)	**74.3% (26)**	65.7% (23)	48.6% (17)	35
Maintained housing	20.8% (5)	0.0% (0)	29.2% (7)	8.3% (2)	83.3% (20)	**91.7% (22)**	12.5% (3)	24
Avoided foreclosure/modified mortgage	13.0% (3)	0.0% (0)	4.3% (1)	4.3% (1)	**100.0% (23)**	21.7% (5)	4.3% (1)	23
Improved educational outcomes	21.4% (3)	0.0% (0)	14.3% (2)	**92.9% (13)**	7.1% (1)	7.1% (1)	14.3% (2)	14
Secured orders of protection	4.8% (1)	0.0% (0)	**100.0% (21)**	9.5% (2)	4.8% (1)	9.5% (2)	14.3% (3)	21
Secured or maintained health coverage	**71.4% (10)**	14.3% (2)	50.0% (7)	21.4% (3)	21.4% (3)	35.7% (5)	21.4% (3)	14
Secured or maintained income supports	34.6% (9)	11.5% (3)	**65.4% (17)**	23.1% (6)	38.5% (10)	53.8% (14)	38.5% (10)	26
Increased client stability	34.8% (8)	8.7% (2)	**73.9% (17)**	43.5% (10)	69.6% (16)	69.6% (16)	52.2% (12)	23
							Other (please specify)	12
							answered question	**36**
							skipped question	**11**

19. Would you be willing to participate in follow up discussions about your collaborations in more detail? If so, please provide your contact information.

	Response Percent	Response Count
Phone:	96.9%	31
Email:	**100.0%**	**32**
answered question		**32**
skipped question		**15**

APPENDIX 21:

Findings of the Providers' Survey

2011 Service Survey for ProvidersRev

Q1. Name of Program

Answer Options	Response Count
	55
answered question	55
skipped question	0

Q2. During 2011 to date, my programt turned away _____ eligible applicants than when we last counted thoseturned away in 2009

Answer Options	Response Percent	Response Count
More	57.10%	24
The same	35.70%	15
Fewer	7.10%	3
	answered question	42
	skipped question	13

Q3. During 2011 to date, my program was unable to serve fully _____ eligible applicants than when we last counted those who we were unable to serve fully in 2009.

Answer Options	Response Percent	Response Count
More	54.80%	23
The same	35.70%	15
Fewer	9.50%	4
	answered question	42
	skipped question	13

Q4. In 2011 to date, my program received more requests for assistance in (check all that apply) than in the same time frame in 2009.

Answer Options	Response Percent	Response Count
Mortgage foreclosures	66.70%	22
Evictions	69.70%	23
Unemployment insurance benefits	63.60%	21
Other income maintenance	57.60%	19
Domestic violence	45.50%	15
Health care	30.30%	10
Education	36.40%	12
Comments		21
	answered question	33
	skipped question	22

Q5. In the last year, have you reduced staff?

Answer Options	Response Percent	Response Count
Yes	47.20%	17
No	52.80%	19
	answered question	36
	skipped question	19

Q6. In the last year have you eliminated positions?

Answer Options	Response Percent	Response Count
Yes	58.30%	21
No	41.70%	15
	answered question	36
	skipped question	19

Q7. In the last year, have you let positions go unfilled?

Answer Options	Response Percent	Response Count
Yes	66.70%	24
No	33.30%	12
	answered question	36
	skipped question	19

Q8. In the last year, have you had to reduce hours of operation?

Answer Options	Response Percent	Response Count
Yes	11.10%	4
No	88.90%	32
	answered question	36
	skipped question	19

Q9. In the last year, have you closed local offices?

Answer Options	Response Percent	Response Count
Yes	11.10%	4
No	88.90%	32
	answered question	36
	skipped question	19

Q10. In the last year, have you imposed a salary freeze?

Answer Options	Response Percent	Response Count
Yes	27.80%	10
No	72.20%	26
	answered question	36
	skipped question	19

Q11. In the last year, have you imposed furloughs on staff?

Answer Options	Response Percent	Response Count
Yes	5.60%	2
No	94.40%	34
	answered question	36
	skipped question	19

Q12. In the last year, have you increased the employee cost for health coverage or reduced health care coverage.

Answer Options	Response Percent	Response Count
Yes	50%	18
No	50%	18
	answered question	36
	skipped question	19

Q13. In the last year, have you reduced or eliminated TSA or pension payments?

Answer Options	Response Percent	Response Count
Yes	11.10%	4
No	88.90%	32
	answered question	36
	skipped question	19

Q14. Name and Title of Person Completing Survey

Answer Options	Response Count
	36
answered question	36
skipped question	19