

**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)

# **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”)<sup>1</sup> 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.<sup>2</sup>

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

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<sup>1</sup> The research arm of the U.S. Department of Justice.

<sup>2</sup> 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.<sup>3</sup>

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.

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<sup>3</sup> *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 <sup>1</sup>	15,538	100,995	38,844
66.44 percent of expected annual incidents will likely occur in low-income households. <sup>2</sup> 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 <b>incidents avoidable</b> <sup>3</sup>	<b>6,194</b>	<b>40,262</b>	<b>15,485</b>
Avoidable cost estimates (incidents avoidable × per-incident costs):	(\$ amounts in thousands)		
Direct – Medical costs <sup>4</sup>	\$6,047.9	\$41,575.7	\$ -
Direct – Mental healthcare <sup>5</sup>	2,971.5	16,068.1	6,829.4
Indirect <sup>6</sup>	1,280.4	4,962.8	5,198.3
<b>Total</b>	<b>\$10,299.8</b>	<b>\$62,606.5</b>	<b>\$12,027.7</b>
<b>Cumulative total annual avoidable costs</b>	<b><u>\$84,934.1</u></b>		

<sup>1</sup> Based on NVAWS, Incidents in the Past Twelve Months applied to the NY selected population.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> See Table 2A

<sup>5</sup> See Table 2B

<sup>6</sup> 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.<sup>4</sup> This was of particular interest as it represents an analysis of issues similar to what is currently before this

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<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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<sup>7</sup> (“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.<sup>8</sup>

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<sup>5</sup> Bureau of Labor Statistics. National Crime Victimization Survey. Violence Against Women: Estimates from the Redesigned Survey (“NCVS”).

<sup>6</sup> Wisconsin Study. Page 47.

<sup>7</sup> 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.

<sup>8</sup> 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.<sup>9</sup> 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

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<sup>9</sup> 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.<sup>10</sup>

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%.<sup>11</sup>

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.<sup>12</sup>

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

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *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.

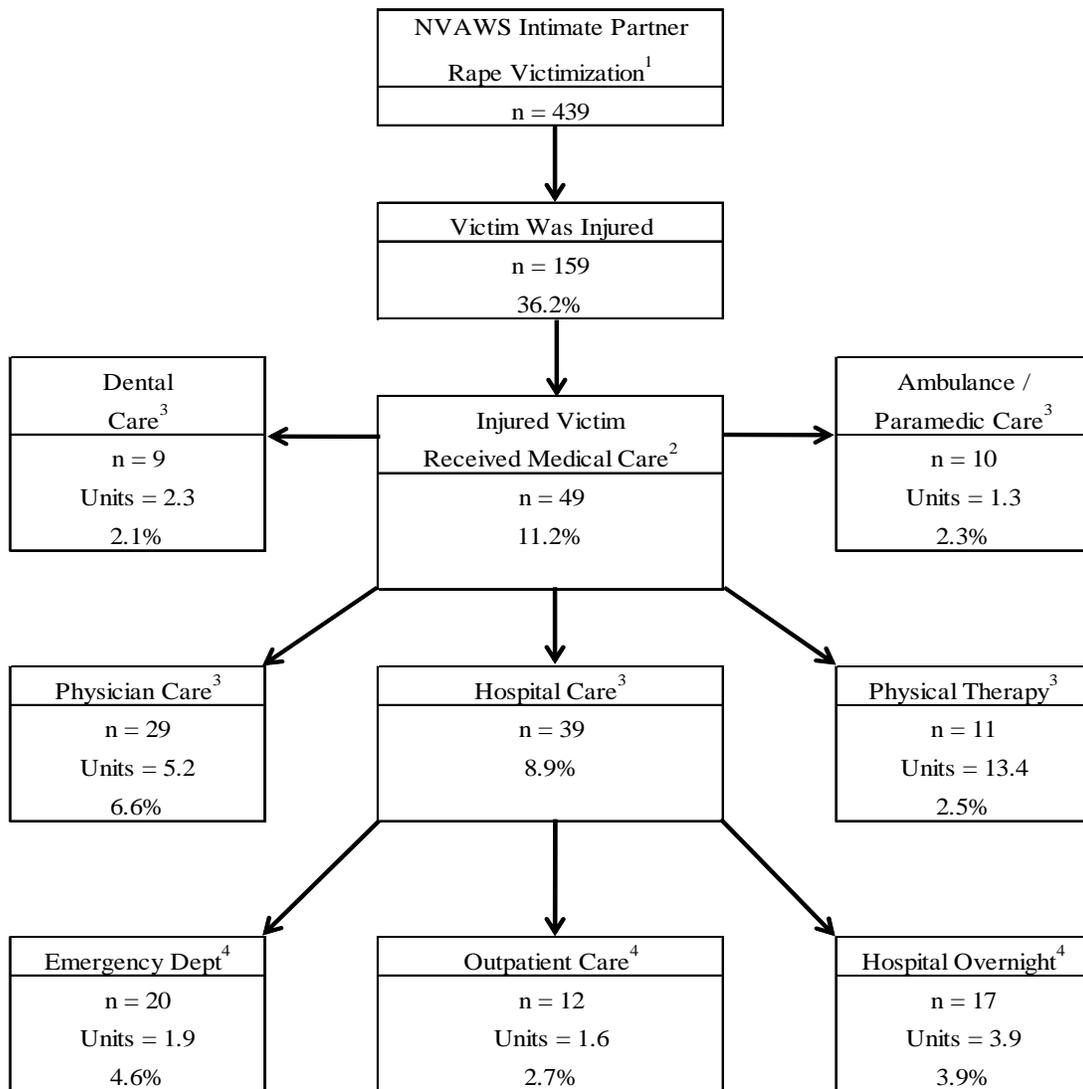
## V. DIRECT COSTS<sup>13</sup>

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.

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<sup>13</sup> 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**



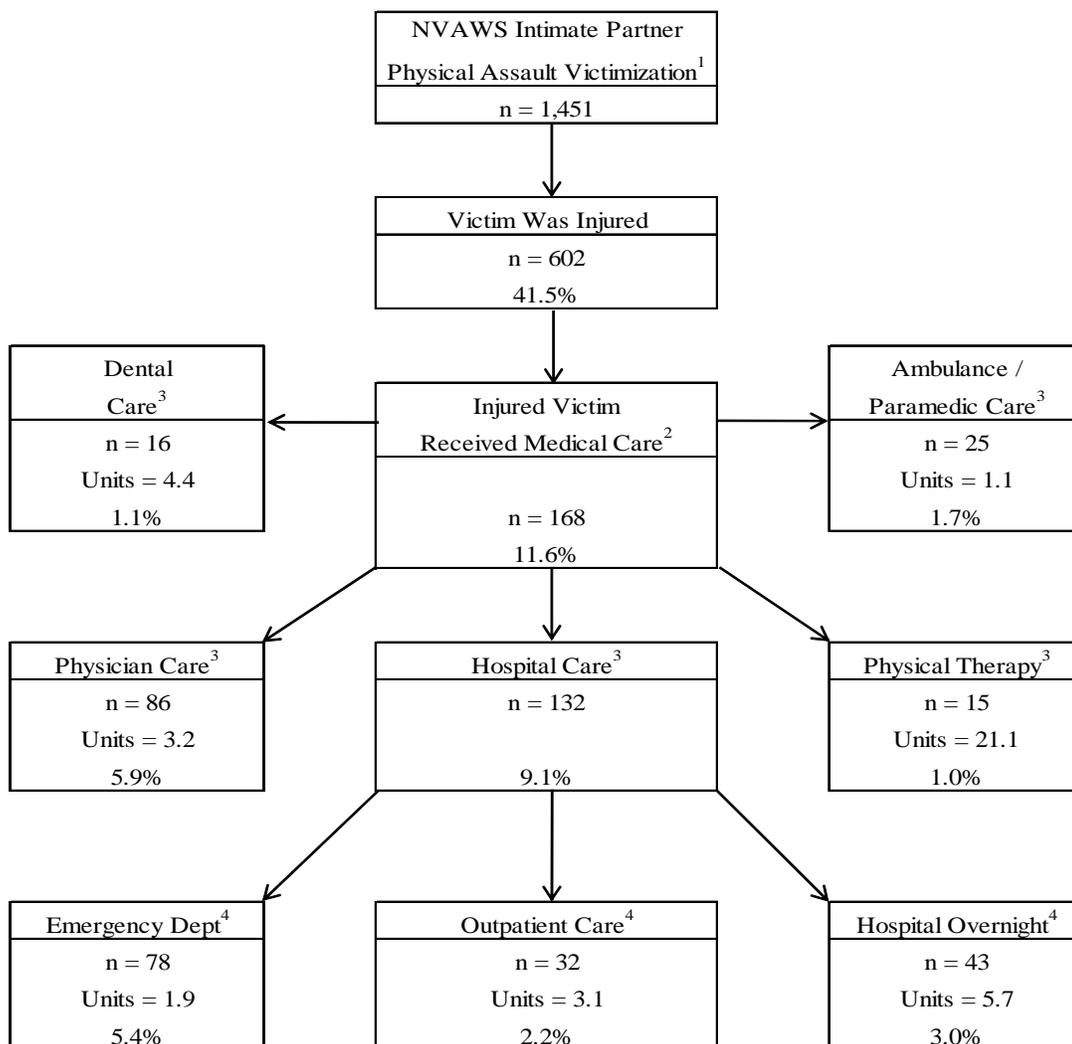
**Sources:**

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*

	<b>RAPE</b>			
	<u>Units</u>		<u>Costs</u>	
	Incidents Receiving Care	Total Units	Unit Cost Per Service	Total Adjusted Cost
Estimated avoidable incidents	<b>6,194</b>			
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
<b>Estimated Medical Costs for Rape Victims</b>				<b>\$ 6,047,894</b>

	<b>PHYSICAL ASSAULT</b>			
	<u>Units</u>		<u>Costs</u>	
	Incidents Receiving Care	Total Units	Unit Cost Per Service	Total Adjusted Cost
Estimated avoidable incidents	<b>40,262</b>			
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
<b>Avoided Medical Costs for Physical Assault Victims</b>				<b>\$ 41,575,721</b>

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%
<b>Total</b>	<b>\$2,971,514</b>	<b>\$16,068,053</b>	<b>\$6,829,400</b>
<b>Cumulative total</b>		<b>\$25,868,968</b>	

## 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).<sup>14</sup> 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*

<b>Calculating Average Income per Day</b>			
Annual minimum wage income	\$	15,080.00	
Total paid days per year		260	
Average income per day (2010)	<u>\$</u>	<u>58.00</u>	
	<u>Rape</u>	<u>Physical Assault</u>	<u>Stalking</u>
Assumed Avoided Assaults	6,194	40,262	15,485
<b>PAID WORK</b>			
% 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	<u>10,787</u>	<u>50,730</u>	<u>55,210</u>
<b>Total value of time lost from paid work</b>	<u>\$ 625,646</u>	<u>\$ 2,942,340</u>	<u>\$ 3,202,180</u>
<b>HOUSEHOLD SERVICES</b>			
% 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	<u>11,289</u>	<u>34,835</u>	<u>34,416</u>
<b>Total value of time lost from household services</b>	<u>\$ 654,762</u>	<u>\$ 2,020,430</u>	<u>\$ 1,996,128</u>
<b>Total Indirect Costs</b>	<u>\$ 1,280,408</u>	<u>\$ 4,962,770</u>	<u>\$ 5,198,308</u>

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.

<sup>14</sup> 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.<sup>15</sup> 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

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<sup>15</sup> 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**

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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.



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 unrepresented 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, through 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



**Craig L. Reicher**  
Vice Chairman

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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](http://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<sup>1</sup>. 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<sup>2</sup> [*Please see attached CBRE Manhattan Market Snapshots published this month*]. Prospects for a strong economic

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<sup>1</sup> [http://data.bls.gov/pdq/SurveyOutputServlet;jsessionid=6F633DD0232E3D56613CC83E64857A19.tc\\_instance5](http://data.bls.gov/pdq/SurveyOutputServlet;jsessionid=6F633DD0232E3D56613CC83E64857A19.tc_instance5)

<sup>2</sup> 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.<sup>3</sup>

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

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<sup>3</sup> The State of the City's Economy and Finances 2010

**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.

This Snapshot reflects market activity through August 31, 2011. Unless otherwise agreed to in writing by CB Richard Ellis, this information may not be re-distributed in whole or in part to any third party.

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**CBRE****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.

For more information regarding MarketView, please contact:  
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### 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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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.

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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

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#### 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

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 kurt.lindsey@cbre.com

**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.

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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 Shorestein Properties and Mark Karasick for \$920 million (\$398 per sq. ft.).

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# **Samuel W. Seymour**

President, New York City Bar Association

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

**NEW YORK  
CITY BAR**

**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")<sup>1</sup>, 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.<sup>2</sup> 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

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<sup>1</sup> <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>

<sup>2</sup> *Id.* at p. 16.

throughout New York State are unrepresented.<sup>3</sup> 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.<sup>4</sup> 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

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<sup>3</sup> *Id.* at 16 – 17.

<sup>4</sup> *Id.* at pp. 37 – 38.

Annual Report<sup>5</sup>, 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.<sup>6</sup> 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.

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<sup>5</sup> <http://www.iola.org/Annual%20Report%202010%20Draft%206%20FINAL.pdf>

<sup>6</sup> *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.



**NEW YORK  
CITY BAR**

**COMMITTEE ON PRO BONO  
AND LEGAL SERVICES**

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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.<sup>1</sup>

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.

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<sup>1</sup> 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.<sup>2</sup>

## 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:

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<sup>2</sup> 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 net 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

\_\_\_\_\_,  
Plaintiff,

**STATEMENT OF  
NET WORTH**

(DRL §236)

-against-

\_\_\_\_\_,  
Defendant.

\*\*\*\*\*

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:

	<u>NAME</u>	<u>AGE</u>	<u>RELATIONSHIP</u>
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:

<u>Description of Property</u>	<u>To Whom Transferred</u>	<u>Date of Transfer</u>	<u>Value</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

**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.)

<u>Living Expenses:</u>	<u>Children</u>	<u>Self</u>	<u>Monthly Amount</u>
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):

**\*YOU 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



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# Testimony at the Chief Judge's Hearing on Civil Legal Services

Geeta Singh, Ph.D.

October 18, 2011

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## **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	
<b>A. Number of cases for which eviction was avoided or delayed or foreclosure was averted:</b>		18,983	
<b>B. Estimated number of people for whom eviction was avoided or delayed:</b>		50,352	
<b>C. Percentage of the above for which homelessness was avoided:</b>		40.2%	
<b>D. Number of cases in which households avoided homelessness:</b>		7,851	
<b>E. Average cost to taxpayers per homeless household:</b>		\$12,822	
<b>F. Estimated savings for taxpayers:</b>		\$116,100,000	
<b>G. Estimated total number of people who avoided homelessness:</b>		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 Remediabile 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

ECONOMIC AND FINANCIAL CONSULTING AND EXPERT TESTIMONY

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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.