

**Written Statements Submitted at the
Second Department Hearing on September 20, 2011**

Statements of Testifying Witnesses

David Boies (Managing Partner, Boies, Schiller & Flexner LLP)

Kathleen DeNezzo (Client of Nassau/Suffolk Law Services Committee, Inc., accompanied by
Denise Snow)

Hon. Janet DiFiore (Westchester County District Attorney)

Tara Grisby (Client of Legal Aid Society of Rockland County, Inc., accompanied by Alexander
Bursztein)

Rev. Adrienne Flipse Hausch, Esq. (Partner, Carway & Flipse)

Esther Jimenez (Client of Staten Island Legal Services, accompanied by Nancy Goldhill)

John Lindstrom (Court Attorney-Referee, Supreme Court, Orange County)

Hon. Janet C. Malone (Acting Supreme Court Justice and Family Court Judge, Westchester
County)

Faith Piatt (Executive Director, Orange County Rural Development Advisory Corporation)

Boris Raishevich (Client of Legal Services of the Hudson Valley, accompanied by Ndukwe
Agwu)

Alina Saez, mother of Justin Rosario (Client of Legal Services of the Hudson Valley,
accompanied by Gina DeCrescenzo)

William M. Savino (Managing Partner, Rivkin Radler LLP; Member of the Board, Long Island
Association)

Hon. Anthony A. Scarpino, Jr. (Westchester County Surrogate, Acting Supreme Court Justice,
and Supervising Judge for Fiduciary Matters, Ninth Judicial District; Co-Chair, Ninth
Judicial District Pro Bono Action Committee)

Barbara J. Strauss (Immediate Past President, Orange County Bar Association)

Terri Torchio (Director of Economic Independence, Department of Social Services, Orange
County, on behalf of Commissioner David Jolly)

Alavita Williams (Client of Legal Aid Society, accompanied by Sumani Lanka)

Hon. Lori Currier Woods (Acting Supreme Court Justice and Family Court Judge, Orange
County)

David Boies

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

Chief Judge's Hearings - Second Department

September 20, 2011

Testimony Summary Presented by: David Boies

The American justice system is in crisis. Our courts and other components of our justice system are egregiously underfunded. There is a sense in which this is not new; the amount of resources devoted to the justice system, never a large percentage, has been declining for at least two decades. However, the confluence of the results of this long term decline in financing, and the pressure that has come from recent events which have both increased the demands on our justice system and further reduced the resources available, has resulted in a crisis that we can not continue to ignore.

The problem in New York is not as severe as it is in some other parts of the country where civil jury trials have been suspended, judges have lost their health insurance, and litigants must supply their own paper to get a copy of court orders. We are making real progress in New York, and we are grateful for your leadership in making that happen. However, problems remain and those problems will get worse not better unless we make a sustained commitment to provide the basic financial support that a functioning justice system requires.

The court system is understaffed and, despite some recent progress, under paid. We have been fortunate in our ability to recruit and retain high quality judges and court personnel who have been prepared to make significant financial sacrifice in order to serve. However, there is a limit to the extent of financial sacrifice that we can expect to demand while at the same time preserving that quality. In addition, we must continue to

provide the personnel and technological support that our courts require to handle the quantity and complexity of the cases which demand their attention - and to do so without the delays that both frustrate justice, and in the final analysis, increase its cost. In the long run, increased personnel and advanced technology can make our courts more efficient and less costly, and the size of the investment required is relatively modest compared to other state expenditures. New York is becoming a leader in the application of technology to the justice system, and it is important to New York and to the nation that that leadership continue.

We must also provide the funding that is necessary to avoid user fees and litigant costs that price our most vulnerable citizens out of a realistic opportunity to have their causes heard - and to support agencies and services that make counsel available to people who cannot afford it. Unrepresented litigants in civil legal matters burden the courts with substantial requirements and costs. They require more time from judicial personnel and the courts themselves both because cases reach the courts when litigants are unrepresented which would not result in litigation if counsel were available and because when cases do reach the courts unrepresented litigants require time, assistance, explanations, and supervision that represented litigants do not.

There is in fact, I believe, an important link between an efficient and defective justice system for all litigants and the provision of legal services for litigants who cannot themselves afford counsel, particularly in certain essential areas such as family matters (including domestic violence and issues relating to children), housing (including evictions and foreclosures and homelessness), and access to healthcare and education. The absence of assistance of counsel in these vital areas burdens not only the justice

system but society at large which must bear the burden of the consequences of the practical inability of millions of citizens to have access to our justice system to secure their rights.

There is much to be done, but it is well within our means even in difficult economic times. We must never forget that the courts are not merely another government agency, but a co-equal branch of government - and the branch upon which we all depend for the just application of the rule of law, upon which all of our other rights and benefits is in turn dependent.

AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES
AUGUST 8-9, 2011

RESOLUTION

RESOLVED, That the American Bar Association urges state, territorial, and local bar associations to document the impact of funding cutbacks to the justice systems in their jurisdictions, to publicize the effects of those cutbacks, and to create coalitions to address and respond to the ramifications of funding shortages to their justice systems.

FURTHER RESOLVED, That the ABA urges state, territorial, and local governments to recognize their constitutional responsibilities to fund their justice systems adequately, provide that funding as a governmental priority, and develop principles that would provide for stable and predictable levels of funding of those justice systems.

FURTHER RESOLVED, That the ABA urges federal, state, territorial, and local courts to identify and engage in best practices to insure the protection of the citizens within their jurisdictions, efficient use of court resources, and financial accountability.

FURTHER RESOLVED, That the ABA urges state, territorial and local courts and bar associations to develop sustainable strategies to communicate the value of adequately funding the justice system utilizing advisory groups, enhanced civic and public education, and direct engagement with public officials at all levels.

REPORT

CRISIS IN THE COURTS: DEFINING THE PROBLEM

Introduction

The courts of our country are in crisis. The failure of state and local legislatures to provide adequate funding is effectively -- at times quite literally -- closing the doors of our justice system. At the same time, Congress has reduced its support for both the federal courts and other programs that directly and indirectly support our justice system at the state, county and municipal levels.

As a result, over the last few years, the courts of virtually every state have been forced into debilitating combinations of hiring freezes, pay cuts, judicial furloughs, staff layoffs, early retirements, increased filing fees, and outright closures. These reductions in court staff and related resources come at the very time when the demand for the judicial resolution of economic claims has increased dramatically. Our courts, already short-staffed, have thus been forced to lay off judges, clerks and other personnel just as they are being inundated with hundreds of thousands of new foreclosures, personal and small business bankruptcies, credit card and other collection matters, domestic fractures, and the many other lawsuits resulting from the Recession. The courts must then deal with these increased caseloads, often facing the additional problems created when litigants proceed *pro se*, which occurs all the more frequently in hard economic times.

Sadly, the courts are easy prey for Draconian budget cuts, because they lack the power to tax to support themselves and hence are at the mercy of legislative and executive branch political priorities. At its most extreme, this had led to constitutional crises where, as in New York last year, judges were forced to sue legislative and executive branch officials in an attempt to obtain even the most basic level of support.

Yet the “savings” to a state or local government from drastic cuts in funding the justice system are typically insignificant when viewed in terms of a government’s overall fiscal woes. The proportion of state and local budgets represented by even a fully-funded court system is quite small -- in the range of 1 to 2%. And since judicial budgets consist almost entirely of personnel costs, the courts do not have the ability simply to postpone expensive items to a more robust economic time; and thus reductions in court funding directly and immediately curtail meaningful access to the justice system.

When that happens, the costs to society are great. The undue delay or outright denial of effective judicial action results not only in further harm to those who need prompt and fair resolution of their disputes, but also, in many instances, to more overcrowded prisons, threats to public safety, and harm to those, such as broken families, in the greatest need of legal support.

In cold hard cash the results can also be staggering. For example, it was recently estimated that the quantifiable costs from court-related delays in foreclosure cases in

Florida alone was nearly \$10 billion.¹ And ultimately, when our courts -- the focal point of our legal system -- cannot provide justice, such problems breed contempt for the law itself.

I. The Extent of Our Underfunded Justice System

Unlike other elements of state government which fared relatively well in the better economic times from the mid-1990's to 2007, the nation's courts and related services were being curtailed in many respects even before the current Recession. And the ABA has long been concerned by that situation.

In 2003 its Standing Committee on Judicial Independence issued a report which documented the growing disparity between the courts and agencies that serve other state functions, such as education and healthcare, which had been the beneficiaries of a "burst of increased spending in the 90's." The committee report warned that it was "no longer the case" that the "courts' status as a co-equal branch of government" would serve as an effective "buffer" from even deeper budget cuts.²

A year later, in August 2004, the House of Delegates focused on the increasingly common legislative practice of reducing judicial funding at the same time, they demanded more and more of the courts in terms of both traditional adjudication and new, related social services. The House voiced concern over the budget processes of many states which made it difficult, if not impossible, for judges and court administrators to use financial resources in the most effective manner.³ The report accompanying the House resolution echoed the findings of a prior report of the ABA's Commission on the 21st Century Judiciary (2003), that, without enhanced funding, the judiciary's capacity to preserve itself would be threatened.⁴

Over the next few years, a few states responded to these concerns with some modest improvements in court funding procedures. But, with the onset of the current Recession in 2008 -- and the significant loss of tax revenues that soon followed -- the courts once again became the target of budget cuts more severe than those imposed on other entities.

Over the last three years, the courts of most states have been forced to make do with 10 to 15% less funding than they had in 2007. And because the budgets of the judiciary and related support systems (juvenile counselors, drug diversion programs, probation officers) are typically 90% personnel expenses -- as opposed to other agencies tending our highways, parks, hospitals or libraries which devote a far greater percentage of their budgets to capital projects or equipment, where expenditures can be deferred without immediately impacting a reasonable level of services -- these cuts to court budgets have had a direct and debilitating impact on available court days and all of the related functions that require people to work on burgeoning caseloads on an immediate basis.

¹ Washington Economic Group, The Economic Impacts of Delays in Civil Trials in Florida's State Courts Due to Underfunding (2009) at 1.

² Zemans, Court Funding (August 2003) at 10.

³ ABA, House of Delegates Resolution and Report (August 9, 2004).

⁴ Id. at 6.

State judicial officers have attempted to cope with these cuts in various ways -- all of which have a direct and negative effect on the pace and quality of adjudications. Over the last two years,

- Twenty-six states have delayed filling judicial vacancies; thirty-one, judicial support positions; and thirty-four, vacancies in clerks' offices.
- Thirty-one states have either frozen or reduced the salaries of judges or staff.
- Sixteen have furloughed clerical staff, with commensurate reductions in pay; and nine have extended those furloughs to judges as well.
- Fourteen states have simply laid off staff entirely.
- Some twenty-two state court systems have attempted to offset some of these budget cuts by increasing filing fees and/or fines.
- Last, but hardly least, fourteen state court systems have been forced to curtail the hours and even entire days they are open.⁵

The Task Force has heard many accounts of the extent and results of such chronic underfunding. To cite but one state's experience, the courts in Georgia have seen their funding shrink 25% over the last two years, such that their budget (which must also pay for prosecutors) now constitutes a mere 0.89% of the state's overall budget. As a result, criminal cases now routinely take more than a year to resolve -- with the innocent and guilty alike crowding local jails (thereby adding to that expense of other branches of the government). Those delays in turn cause an even greater reduction in court time for civil cases -- with at least one Georgia judicial circuit closing its doors entirely to all civil cases -- divorce, child custody, business and personal injury cases that simply are not heard.⁶

Georgia, of course, is not unique. To one degree or another, the court administrators of every state have stories ranging from the most tragic circumstances of the failure of courts to protect the most vulnerable in our society simply because there is neither the court time nor staff to hear their cases, to the absurd situation of an Ohio municipal court, which recently announced it can no longer accept new cases of any type simply because it has run out of paper.⁷ Such is the state of our nation's justice system today.

II. The Adverse Impact on Public Safety

There can be little doubt that the adverse impact of budget cuts on the courts' ability to resolve cases in a reasonably prompt manner degrades their traditional roles in maintaining societal order and public safety. Most obviously, many states have experienced delays in the

⁵ National Center for State Courts, Budget Impacts (December 2010).

⁶ Transcript at 42-46, *Crisis in Court Funding: First Hearing before the ABA Task Force on Preservation of the Justice System*, Atlanta, Ga. (Feb. 9, 2011) [hereinafter Atlanta Hearing] (Testimony of Georgia Supreme Court Chief Justice Carol Hunstein).

⁷ Transcript at 81, Atlanta Hearing, (Testimony of Manny Medrano, reporter/anchor, KTLA News and KNBC News, Los Angeles, CA).

resolution of criminal dockets to the point where judges and prosecutors are faced with the dilemma of warehousing untried defendants in local jails (at additional expense to other government agencies) or releasing potentially violent offenders simply because further pre-trial detention is either constitutionally impermissible or practically impossible. Such delays are rapidly becoming the rule. In Minnesota, for example, almost a third of all criminal cases now take more than a year to clear.⁸ In Alabama, recent layoffs of judicial staff have led to an indefinite delay in a high-profile capital murder case, prompting the state's Chief Justice to observe that "Something has to get done. We can't have a civilized society without the court system."⁹

In Georgia another capital case was delayed repeatedly -- with the defendant jailed for five years -- because the state could not pay for anyone to represent him.¹⁰ On the other hand, in Washington state a suspect in a violent case was released as a result of speedy trial concerns only to rape a woman and then kill a pedestrian in the ensuing high-speed chase.¹¹

Although these cases present more notable examples, the more "routine" effects of cutbacks in the courts' ability to serve public safety are no less troubling. Throughout the country, the added cost in time and money to local police departments in traveling longer distances or spending more time waiting to testify at trials that have been transferred or delayed because of insufficient court time is clear.¹² For lack of funds, DNA data on arrested offenders is not being entered into databases in Nevada for future use.¹³ Inadequate funding of mental health and substance abuse programs -- and the judicial officers who must make the critical decisions on which offenders could benefit from medical treatment rather than the polar alternatives of prison or outright release -- is likewise endangering public safety and increasing the costs of an overwhelmed prison system.¹⁴

The adverse impact of reductions in judicial time on public safety is not limited to delays in criminal proceedings, which are at least given some priority in most states. They extend to sensitive civil matters as well. A delay in providing protective orders in domestic relations cases, for example, can lead to tragic results.

Last, but not least, budget cuts are now commonly making our courthouses themselves unsafe.¹⁵ Bailiffs, marshals, and other security staff have been laid off--and their broken screening equipment left unreplaced--to the point where some courthouses and many courtrooms no longer have the level of security their dockets deserve.¹⁶

⁸ National Center for State Courts, Budget Survey (October 2010) at 11.

⁹ Associated Press, "Courthouse Lay-Offs Delay U.S. Murder Trial Over Australian Honeymoon Death" (April 13, 2011).

¹⁰ Transcript at 46, Atlanta Hearing (Testimony of Georgia Supreme Court Chief Justice Carol Hunstein).

¹¹ Transcript at 80, Atlanta Hearing (Testimony of Manny Medrano).

¹² Transcript at 26, Atlanta Hearing (Testimony of Roy Weinstein,).

¹³ Transcript at 82, Atlanta Hearing (Testimony of Manny Medrano).

¹⁴ Report of Boston Bar Association Task Force on the FY 2011 Judiciary Budget (March 2010) at 5, 7.

¹⁵ Boston Bar Association Task Force on the FY 2011 Budget at 5.

¹⁶ Transcript at 67. *Crisis in Court Funding: Second Hearing before the ABA Task Force on Preservation of the Justice System*, Concord, N.H. (May 26, 2011) [hereinafter New Hampshire Hearing] (Testimony of Maine Supreme Court Chief Justice Leigh Saufley, and Massachusetts Trial Court Chief Justice for Administration and

III. The Adverse Impact on the Economy

As serious as the adverse impact of insufficient funding of the justice system can be in terms of public safety, the negative effect on the economy is no less devastating -- and far more widespread. Over the past few years, a number of economists have made detailed calculations of the costs -- both direct and indirect -- of court budget deficits, all with the same conclusion: Those costs to local economies far exceed the supposed "savings."

For example, one group of economic consultants was recently asked to calculate the true costs of state funding cut-backs that had resulted in annual deficits in the budget for the Los Angeles Superior Court projected to range between \$80 million in 2009 to \$140 million in 2012.¹⁷ The authors found that the resulting reductions in court time, increasing delays in adjudicating cases, and other related expenses would total many times the projected "savings" to the state.

Because the Los Angeles Superior Court -- with over 600 courtrooms and 5400 employees -- is the largest trial court system in the nation, this analysis merits some additional comment. But it is not unique. The problems of delay and attendant economic costs are being seen throughout the nation, wherever courts are so underfunded they are forced to reduce hours, close courtrooms, or otherwise delay trials and hearings solely to ration scarce resources.

In the Los Angeles study, the authors first described the most direct effects of the funding cuts, noting first that, as the projected deficits rose the court staff itself would be cut by nearly 500 in the first year to 1800 (about 1/3 of the pre-Recession level) by the fourth year studied -- all with a resulting loss in courtroom operating days starting at 5% but soon plunging by more than 35% from the 2001 baseline level.¹⁸

The predictable result, of course, was a commensurate delay in deciding cases, increasing the average disposition time of a little less than 2 years in the base year of 2009 to an anticipated 4-1/4 years by 2012.¹⁹ The report then carefully documented the costs of these additional delays to all of the key participants in the judicial system:

-- The immediate loss of almost \$1.1 billion from the combined salaries of the laid-off court workers and the multiplier effect those direct losses would have on other workers in the local economy.

-- As much as \$13 billion more resulting from the losses to members of the legal services industry who would be unable to secure court time to litigate their cases.

-- As much as \$15 billion more from the losses in other economic activity that results when litigants, who are delayed in resolving civil cases, cannot invest or otherwise employ their resources as they can, and will, do once those disputes are resolved.

Management Robert Mulligan).

¹⁷ Weinstein and Porter, Economic Impact on the County of Los Angeles and the State of California of Funding Cutbacks Affecting the Los Angeles Superior Court (December 2009) at 2.

¹⁸ Id. at 6-7.

¹⁹ Id. at 8.

This last type of damage from underfunding our justice system cannot be overlooked and, of course, is especially problematic in difficult economic times. For it is precisely at those times that the economy is most in need of prompt judicial resolution of such matters as foreclosures, business reorganizations, bankruptcies, related credit problems, and other business disputes that have resulted from the downturn.

Perhaps nowhere is this more apparent than in the area of residential foreclosures. The combination of the dramatic increase in mortgages requiring judicial adjustment or termination at the same time the courts are being forced to curtail staff and courtroom hours, has led to “robo-signing” abuses by some lenders (which can hardly be monitored by judges who have less than a minute per file) as well as undue delay or outright denial of that essential reorganization of the real estate markets. It has been estimated that in 2009 in Florida -- where the courts constitute less than 1% of the state’s budget²⁰ -- the backlog of mortgage foreclosure cases alone cost that state’s firms and residents \$9.9 billion billion in additional legal fees, interest lost by financial institutions, and reductions in property values (over and above the “normal” declines from the general property market) as houses and offices remained vacant and not properly maintained as a result of the delay in the foreclosure process itself.²¹ Such losses can then have a ripple effect as they can deprive small family businesses of ancillary income to make ends meet for their other unrelated businesses -- resulting in other business bankruptcies.²²

Nor is this type of economic loss limited to states such as California and Florida that have perhaps been hardest hit by the Recession. In 2010 the Iowa courts reported that, in part because the judicial budget of that state also is 90% composed of personnel costs, an “across-the-board” reduction in state funding had resulted in the judicial branch suffering 49% of the lay-offs of the entire state government, even though it accounted for only 4% of that workforce.²³

Finally, in an ironic twist, the reduction in state expenditures for properly functioning courts even harms the state treasury itself. Many of the economic costs noted above -- directly lost salaries and indirectly lost business opportunities -- result in corresponding tax losses estimated to be as much or more than the “savings” they were intended to create. For example, the report on the Los Angeles Superior Court estimated that, over the four years the state hopes to save \$480 million through the deep reductions in the court’s budget, the resulting economic losses will include more than \$1.6 billion Billion in lost state and local taxes.²⁴

IV. The Adverse Impact on Those Who Need the Protection of the Courts

Given their historic role as the protectors of the least advantaged in our nation, the courts have rightly been called “Society’s Emergency Room.” And never is that title so warranted as in times of economic distress. The same Recession that has lead legislatures to reduce access to our justice system has obviously increased the number of people who need it.

²⁰ “Chief Justice Charles Canady Argues Against Cuts to Courts,” Sunshine State News (January 26, 2011).

²¹ Washington Economic Group, The Economic Impacts of Delays in Florida’s State Courts Due to Underfunding (February 2009) at 10.

²² See New Hampshire Hearing (Testimony of Maine Supreme Court Chief Justice Leigh Saufley).

²³ Iowa Judicial Branch, The Impact of Budget Costs on Justice (January 2010) at 13.

²⁴ Weinstein and Porter at 1.

Family relationships ruined by unemployment or foreclosure often need judicial mediation. Yet when family and probate courts are forced to restrict hours or close entirely, the processes of child or elderly custody, legal separation or divorce, and child support orders are delayed or frustrated all together.²⁵

The rights of minorities also likewise suffer when the courts cannot promptly address actions filed to enforce state anti-discrimination laws.

All of this litigation burden on the courts is then compounded when those needing judicial protection are also denied access to free legal services and hence must proceed (if at all) on a pro se basis -- thereby requiring even more time of judges and their staffs who must then provide the additional guidance an appointed attorney would otherwise satisfy. And, of course, that is precisely what has happened. During the Recession, legal aid agencies across the country have seen their budgets slashed, both as a direct result of reduced state expenditures and the historically low rates now paid on Interest on Lawyers' Trust Accounts (IOLTA) -- a primary source of many legal aid budgets.²⁶

On the national level, funding for the Legal Services Corporation has likewise been cut significantly over the last few years, as a matter of both budget imperatives and partisan disputes. Most recently, the LSC Budget for FY2011 was reduced an additional 3.8% half way through that budget cycle (thus requiring cuts twice that large for the remainder of the year), even as the number of Americans eligible for civil legal aid was pushed by the Recession to an all-time high of 57 Million.²⁷

One "new" group adversely affected by such reductions is veterans returning from Iraq and Afghanistan -- and the families they had left behind -- trying to deal with the almost unprecedented situation of overseas deployments in the midst of a Recession. Yet, just when the courts and legal aid offices should be gearing up to deal with the needs of these veterans -- and all of the others who must have access to free legal advice from advocates and court officers alike -- they are being told there are no funds for even the standard level of such services.²⁸ Indeed, it is estimated that 8 of every 9 people needing legal services are now being denied.²⁹ Such unassisted litigants are then left alone to deal with the delays of our justice system -- or, as is too often the case, simply to abandon the process entirely.

V. The Adverse Impact on Our Very System of Government

Ultimately, the continuing failure to address the underfunding of our judicial system threatens the fundamental nature of our tri-partite system of government. If, as John Marshall observed, the "power to tax is the power to destroy," it seems just as clear that the repeated refusal of the legislative and executive branches to provide adequate funds for a state's justice system becomes a "power to destroy" the courts as a separate and co-equal branch.

²⁵ Boston Bar Association Report at 5, 7.

²⁶ Communication from Legal Services Corporation (May 15, 2011).

²⁷ Legal Services Corporation Press Release (April 12, 2011).

²⁸ Boston Bar Association Report at 8.

²⁹ New Hampshire Hearing (Testimony of New York State Chief Judge Jonathan Lippman).

Last year, that issue was directly addressed by the New York Court of Appeals in an action filed on behalf of the state's 1300 judges, seeking their first cost-of-living increase in more than a decade. In *Maron v. Silver*,³⁰ the court confronted a situation that is increasingly true around the country, where judicial salaries had been held hostage to partisan disputes to the point where the court concluded the very separation of powers was imperiled.

The court explained that the 1300 judges had not received any pay increase in 11 years in which inflation had eroded their salaries in real terms by about 30%, while their dockets had increased, coincidentally enough, also by about 30%, but in the opposite direction, to a “staggering” 3500 cases for each judge. The court noted that for each of the prior five years the governor and legislative leaders had publicly announced that the situation called for an immediate salary increase; and yet each year the measures to do so had been defeated as they became embroiled in disputes over unrelated legislation.

Whether from the corrosive effects of inflation so long left unaddressed -- or actual pay-cuts and excessive budget reductions -- the effect is the same: If we do not resolve to fund a justice system which is both independent and effective, we will have neither.

CRISIS IN THE COURTS: PROPOSALS AND OPTIONS

As set forth above, the Task Force has received testimony and research that leaves no doubt that the courts in the United States are underfunded. The overall stability of the justice system is in jeopardy.

The suggested responses and solutions fall into three categories. First, we must establish a predictable and adequate funding system. Second, we must create a more efficient and effective system of delivering justice. Third, we must establish a means of communicating the importance of the justice system to the public and political decision makers. In developing proposals in these categories, our Task Force is drawing on previous ABA commissions, including the 2004 Commission on State Court Funding. We also draw on the research of the National Center for State Courts (“NCSC”), Conference of Chief Justices (“CCJ”), Conference of State Court Administrations (“COSCA”), the successful programs in many of our states and the testimony presented to the Task Force.

There is no question that the realities of 2011 require a look at varied approaches to ensure that courts can perform their constitutional duties while, at the same time, allowing the courts to be more efficient. Those are the goals of these proposals.

I. Achieving Financial Predictability and Adequacy

The preservation of the justice system requires the presence of adequate resources to support that system. This statement begs the question of how much funding is “adequate”? And who defines what is “adequate”? And, how do we define “justice system”?

³⁰ 14 N.Y.3d 230, 925 N.E.2d 800 (2010).

For our purposes, the justice system includes courts and the budgetary expenditures that include providing basic access to the courts. In other words, the current crisis requires advocates to fight for funding that is sufficient to support overall access to the system. This crisis puts courts in a triage mode and funding for some things is more critical in the short term. This crisis does not make issues such as funding of sufficiently compensated judges unimportant. Those issues are important and should be addressed. However, first we have to keep the courthouse doors open. There must be advocacy for adequate personnel to allow access. For example, the cuts in legal services and in public defenders offices have an impact on "rationing justice". Fewer lawyers representing the poor results in more *pro se* parties and more delays in the justice system for everyone. Because of the reality of overall funding shortages, many of the reforms mentioned below deal with improving budget systems, efficiency and communications. That does not mean that supporting actual full funding is any less important.

Financing the justice system is a challenge for several reasons. While delivering justice is understood as fundamental to our society, the average citizen may not perceive or appreciate the tangible products of the system. Yet, undeniably, citizens are better off when the justice system swiftly and correctly handles criminals who endanger public safety. Citizens are better off when the rules of commerce are stable and enforced. In other words, when the justice system is working best, it may not be extremely visible, but it is extremely valuable.

The reforms identified below are efforts to use scarce taxpayer resources efficiently, effectively and accountably:

1. Provide for flexible management of funding within the judicial branch.

Flexible management of funds within the judicial branch allows the courts to allocate funds within the judiciary's budget. Having the ability to allocate funds within its own budget gives the judiciary the capacity and flexibility to confront unforeseen circumstances and maximize efficiency. The courts should also be able to carry over funds from one fiscal year to the next.³¹ The goal of this reform is to allow the courts to do the most they can with available resources. For example, courts have used retired judges and reassigned judges among jurisdictions to address case overloads such as occurred when some jurisdictions had numerous foreclosure proceedings.

2. Establish court system appropriations and budget bills with fewer line items and fewer legislative restrictions on expenditures.

This proposal is consistent with proposal No. 1 and facilitates its execution. Line items in appropriations can unnecessarily restrict how courts may use money given to them by the legislature and can often lead to inefficiencies, waste, and budgetary shortfalls. Additionally, having fewer line items allows courts to avoid being micro-managed by the legislative and executive branches. One example is Utah, where the judicial budget contains only four line items.³² A contrasting example is Massachusetts, which has several hundred line items. Reduction of line items requires the legislature to

³¹ AM. BAR ASS'N STANDING COMM. ON JUDICIAL INDEPENDENCE, REPORT TO THE HOUSE OF DELEGATES, Aug. 2004, at 9.

³² *Id.* at 8.

have greater faith in the courts stewardship of funds and accountability. Formulas described below can help provide that basis for legislative understanding and support.

3. Develop a judicial workload funding formula that fosters fair and predictable funding.

The purpose of establishing a specific formula is to assess needs in a rational way and to provide more predictability and stability.³³ One example is the California State Appropriations Limit which is a formula, applied to the state’s judicial budget that looks at cost-of-living changes, changes in the population and workloads. Another example is the Minnesota Judicial Workload Assessment which provides a formula for determining the number of judges required to handle a given judicial workload.³⁴ Formulas may also use a combination with per judge costs or assessments of costs associated with different types of cases.

4. In furtherance of predictable and supportable funding budget processes must show measureable outcomes, prove fiscal accountability and deal with long term goals of the court system. NCSC has developed “principles of judicial administration.”³⁵ that may guide these reforms.

This proposal goes beyond proposal No. 3, above, in that this proposal involves consideration of overall process changes, specifically transparent and measurable outcomes and long term sustainable reform. A court’s annual budget proposal should be developed to further the long-term goals (three to five years) articulated in a state-wide judicial strategic plan.³⁶ Those long-term goals should have measurable outcomes, such as improving case flow management to reduce case disposition times, the associated pretrial detention and litigation costs. With measurable outcomes, the court system can evaluate the benefit of funding different programs and make intelligent allocation decisions to get the most out of limited resources.³⁷ This type of system further enhances the ability to obtain sustained legislative support.

5. Establish limits for cutbacks by legislatures or executive branches by recognizing the inherent powers of the judiciary as a separate branch of government.

This proposal seeks to ensure that there are no untoward cutbacks **during** a budget year.

³³ NAT’L CTR. FOR STATE COURTS, PUERTO RICO SUPERIOR COURT JUDICIAL WORKLOAD ASSESSMENT MODEL, FINAL REPORT, EXECUTIVE SUMMARY; *see also* Atlanta Hearing (Testimony of Bert Brandenburg, Executive Director, Justice at Stake, on development of a “Justice Index” to help courts measure and communicate ability to deliver).

³⁴ Minnesota Judicial Workload Assessment 2002, submitted by the National Center for State Courts, at 12 Exhibit 4.

³⁵ Principles for Judicial Administration: Governance, Case Administration, Essential Functions and Funding, National Center for State Courts, July 2010 Draft Report, *available at* <http://www.ncsc.org/conferences-and-events/4th-symposium>.

³⁶ *Id.*

³⁷ NAT’L ASS’N FOR COURT MGMT, AMERICAN UNIVERSITY, BJA CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT, *Financing The Third Branch in Lean Times: Placing the Present Fiscal Crisis in Perspective*, Mar. 2010 Final Draft, at pages 8–9; *see also* Transcript at 197, Atlanta Hearing (Testimony of Ron Overholt, Chief Deputy Director of the Administrative Office of the Courts of California, describing the California State Appropriations Limit Formula).

In certain states, there are constitutional or statutory limits on the ability of other branches to reduce or cut court funding during a fiscal year. The executive should not have authority to reduce funding in the judiciary unilaterally without justification. An unfettered power to cut intrudes upon that constitutionally protected inherent power of the judiciary as an independent branch of government. Courts have successfully used this reasoning to limit the ability of the Executive Branch or legislative branch unilaterally to reduce judicial budgets.³⁸ As an independent branch of government, the judiciary should have power to allocate and utilize its resources within the judicial branch in a way that makes the most sense to the administration of justice.³⁹

6. Establish unified funding for courts at the state level.

For the last half-century of court reform, there has been a drive to shift funding responsibility from local governments to state governments. This process is seen as a way to strengthen the ability of state courts to perform their core functions and can help ensure the uniformity of justice throughout a state. Unified funding remains a key recommendation of the American Bar Association Standards on Court Organization. Under a unified state funding model, a central statewide court administrative office is responsible for the allocation and distribution of court resources at the local level.⁴⁰ Many systems in the United States are a mix of state and local funding.

7. Identify, pay for, or eliminate unfunded mandates on the justice system.

Legislatures and Congress have required the courts to perform certain tasks without providing the attendant funding. Courts should seek funding processes that prohibit or limit mandates that do not provide funding.⁴¹

8. Eliminate functions that are no longer necessary, have less priority, or can no longer be afforded as part of the budget of the courts.

This type of action has been taken in Utah, Vermont and Michigan. The result of identifying and eliminating unnecessary functions is to make resources available to fund those functions that do take priority.⁴² The issue, of course, is defining “unnecessary” functions. The ability of courts to show that they can streamline and participate in budget cuts enhances their legislative credibility.

³⁸ *Chiles v. Children*, 589 So. 2d 260 (1991); *see also* W. VA. CONST. art. VI, § 51(b)(3), (5) (stating that when the budget is certified to the governor by the state auditor, the legislature cannot reduce line items related to judiciary); Felix F. Stumpf, *Inherent Powers of the Courts: Sword and Shield of the Judiciary*, 2004 ABA Report 107 (Reno, NV: National Judicial College, 2008).

³⁹ REPORT OF THE BOSTON BAR ASSOCIATION TASK FORCE OF THE FY 2010 JUDICIARY BUDGET at 8.

⁴⁰ AM. BAR ASS'N, STANDARDS RELATING TO COURT ORGANIZATION, §1.50 at 106 (1990 ed.); *see also* Robert Tobin, *Creating the Judicial Branch: The Unfinished Reform*, National Center for State Courts (1999 & 2004); NAT'L ASS'N FOR COURT MGMT., at 6.

⁴¹ *See generally* TEXAS ASS'N OF COUNTIES, STATE MANDATES: UNFUNDED AND UNDER-FUNDED, available at <http://www.county.org/resources/assets/UFM.pdf> (last visited May 5, 2011) (describing some of the problems with unfunded government mandates and listing several examples of the negative impact of unfunded mandates, including delay of the judicial process).

⁴² NAT'L CTR. FOR STATE COURTS, FUTURE TRENDS IN STATE COURTS 2010, REENGINEERING LESSONS FROM THE FIELD 39, available at <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=1625> (last visited May 5, 2011).

II. Increasing Efficiency and Reducing Waste

In difficult economic times, each element of government, including the judiciary, must examine its use of resources. Tradition is not a justification for waste. Efficiency bolsters arguments for adequate funding.⁴³

The definition of efficiency is elusive. Just spending less may be considered efficient by some. Therefore, cutting the number of court rooms or simply increasing the caseload of a judge could be classified as more “efficient” because expenses are reduced or “production” is increased. However, that kind of analysis discounts the effects and other costs of cutbacks such as delays and denial of basic access to justice. In fact, as shown above, such cuts can result in greater costs and more harm in the long run and a fundamental denial of due process. Consequently, in defining and achieving a more efficient justice system, the mission of the system cannot be sacrificed for false economies.

A consistent theme in court reform over the last two decades calls for improved organization, process and reengineering. Several terms have been used consistently to describe these types of reforms. The review of “business processes” is used to describe assessment of functional reforms that perform tasks in more efficient and less expensive ways. “Reengineering” has included reorganizing, streamlining and enhancing the use of technology. Enhanced use of technology has taken many forms, and examples are enumerated in this report. Implementing technological reforms requires a cost-benefit analysis to assure that the change augments the mission of the courts and is in fact more efficient and cost effective. Also, principles for evaluating reforms are identified.

There are specific best practices, reforms and cost efficient methods developed by NCSC, COSCA , CCJ and individual state courts. The Task Force has many examples, studies and resources available. As in some other industries, the major cost of the courts is personnel. To the extent that less expensive technology can, in some cases, replace personnel, such technology can be a source of reducing future costs. Additionally, effective use of personnel can save resources. Improved efficiency is not limited to improved technology. Improved management and business processes can be not only less expensive but also more effective for citizens encountering the justice system.

Further, there are alternative methods of delivering justice. For example, alternative dispute resolution has been promoted by some states and court systems to help resolve conflicts without resort to trials in court.

The following is a list of some options to make the justice system more efficient:

1. **Enhanced use of technology to improve the efficiency of the judicial system.**

The use of technology within the judicial system has the double benefit of reducing costs while increasing efficiencies. A simple example, implemented in Iowa, is online payment of speeding tickets. However, many more advanced options are available. For

⁴³ New Hampshire Hearing (statement of U.S. District Court Judge Norma L. Shapiro, E.D. Penn.).

example web-based case management systems, such as MassCourts⁴⁴ in Massachusetts and E-Filing in Florida, enable fast data collection and information sharing to track case progress and timeliness. The Boston Bar Association credits the web-based MassCourts with increasing the timely disposition of cases from 74.1 percent in 2006 to 89.8 percent in 2008.⁴⁵ Also, some courts in Utah have replaced court reporters taking a stenographic record with digital audio recording.⁴⁶ Courts have found increased efficiency with electronic filing, electronic document management systems, electronic payments of courts fees and costs, digital records for both transcripts and files, use of interactive television technology and fully integrated case management systems.⁴⁷

2. Use business process management principles to evaluate efficiency.

The term “business process” refers to a group of related activities by which a court or any other organization uses its resources to provide defined results in support of its mission, goals and objectives.⁴⁸ By use, we mean nothing more than applying the same sort of synergistic model, employed in the corporate world, of efficiently using resources to maximize profit, to the judicial world. Individual courts that have implemented good business process management programs include Orange County, California; Sacramento, California; Maricopa County, Arizona; and Hennepin County, Minnesota.

3. Establish principles for “reengineering” the judicial process.

By principles we mean goals, such as reducing the cost and complexity of the judicial process, maintaining and improving access to justice, and improving case predictability. Some example states include Vermont (restructuring the administrative bifurcation between state and counties; eliminated redundant jurisdictions between types of judges), New Hampshire (consolidating courts), Minnesota (centralizing functions formerly done at a local level, such as accounts payable), Oregon (simplifying civil rules for less complex cases) and Utah (reorganizing the Human Resource system to make it more professional and expand services for case management and *pro se* litigants).⁴⁹

Reengineering also involves evaluating the current judicial functioning through such metrics as CourTools and using the “real time” budget performance information to tailor annual budget submissions.⁵⁰ In that way, funds can be reallocated to areas of need. Reengineering examples include re-designing antiquated court governance models to function more as an integrated quasi-business administrative entity. Another example of

⁴⁴ <http://www.mass.gov/courts/press/pr112003.html>

⁴⁵ REPORT OF THE BOSTON BAR ASSOCIATION TASK FORCE OF THE FY 2010 JUDICIARY BUDGET at 3, available at <http://www.bostonbar.org/prs/reports/fy2> See Report of the Boston Bar Association Task Force of the FY 2010 Judiciary Budget at 3, available at http://www.bostonbar.org/prs/reports/fy2010_judbudget020509.pdf

⁴⁶ STATE COURTS AND THE BUDGET CRISES: RETHINKING COURT SERVICES, THE COUNCIL OF STATE GOVERNMENT, THE BOOK OF THE STATES 2010, at 292, available at <http://knowledgecenter.csg.org/drupal/content/state-courts-and-budget-crisis-rethinking-court-services> (last visited May 5, 2011)

⁴⁷ NAT’L CTR. FOR STATE COURTS at 39; see also National Center for State Courts 2009 Strategic Plan, at page 10.

⁴⁸ Eight National Court Technology Conference, Using Business Process Reengineering Strategies for Courts, Kansas City, Missouri, 2003.

⁴⁹ Transcript at 55, Atlanta Hearing.

⁵⁰ Conference of State Court Administrators Budget Survey, National Center for State Courts, June 2009.

reengineering is a plan to consolidate some judicial and administrative functions. That is, centralize state-wide administrative management of staffing, payroll, records, etc. (to streamline administration) but keep local selection of judges and case law development (to maintain legal continuity and integrity).⁵¹

4. Use alternative, more efficient and less expensive means of resolving conflicts and delivering justice.

Develop performance measures for evaluating the efficacy of specialized problem solving courts, such as family court, children's court,⁵² alternative dispute resolution, drug court, etc.⁵²

a. Consider the use of specialty courts such as drug court, business court⁵³ and family court.

These specialty courts have been successful in several jurisdictions, such as Florida with the use of drug courts and New Hampshire with the use of business courts. The goal is to provide greater access, judges with specific expertise, and the ability to handle disputes in less time and with better designed outcomes.

b. Foster alternative dispute resolution (ADR).

ADR has been successful in enhancing access to conflict resolution. There are various means to encourage ADR, such as court ordered mediation. Certain conflicts are not handled best by ADR, including those with vastly unequal parties, those involving fundamental social and constitutional conflicts and serious criminal matters.⁵⁴ However, overall ADR is a important option. One example of combining alternative dispute resolution and new technology is online dispute resolution of small claims in Michigan.⁵⁵

c. Community resources – Family Centers.

Courts can make good use of community resources for little or no charge. For example, courts can use students as volunteers or as for-credit (at no cost to the court system) externs through local colleges and universities, and courts can also look to community volunteers.⁵⁶

5. Reexamine court jurisdictions and consider consolidation or elimination of certain Courts.

⁵¹ National Center for State Courts, Future Trends in State Courts 2010, Reengineering Lessons from the Field, Hall and Suskin, *available at* <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=1625> (last visited May 5, 2011). See also CourTools trial court performance measures developed by the NCSC to help identify and evaluate the efficiency of trial court functions. *See, e.g.*, National Center for State Courts 2009 Strategic Plan, at 22.

⁵² NAT'L CTR. FOR STATE COURTS 2009 STRATEGIC PLAN, at page 17.

⁵³ New Hampshire Hearing (statement of Richard Samuels, Chair of the New Hampshire Business and Industry Association).

⁵⁴ RISKIN ET AL., DISPUTE RESOLUTION AND LAWYERS 22–35 (4th ed. 2005).

⁵⁵ Transcript at 152, Atlanta Hearing (Testimony of Janet Welch, Executive Director of the State Bar of Michigan).

⁵⁶ NAT'L ASS'N FOR COURT MGMT at 10.

Can some courts be merged into others? Can smaller jurisdictions be combined with other smaller jurisdictions?⁵⁷ Consolidation can produce increases in both savings and efficiency.⁵⁸

III. Communicating and Advocating a Stable and Effective Justice System

The most universally endorsed reforms involve improved communication about the role and value of the courts. Virtually all witnesses in the Task Force hearings mention the importance of improved communications. Most other government expenditures have more constituencies and more political support. It is the responsibility of the legal profession to facilitate communication and advocacy for the justice system. The efforts to improve communication and advocacy take several general forms and have been implemented in numerous specific ways:

- Communicating with legislators and legislative leadership
- Creating coalitions of opinion and civic leaders to communicate with legislators
- Communicating to the general public and public schools as well as establishing grassroots support

A consistent problem with maintaining a reasonable level of support for the justice system is the lack of understanding of the system by the public and lawmakers. The issues of communication and advocacy of the system must recognize the inherent and ethical limitations on judges' involvement in the political process and the responsibility of the bar to act as advocates for the system. The Task Force believes a systematic approach to better public understanding of the functions of the system is essential to achieving the goals of adequate funding and efficiency:

1. Include legislators directly in communication, familiarization and education programs.

Any budgetary allocation begins with the legislatures. By working together and making legislators aware of the problems and needs of the state court systems, state court leaders can better advocate for change. Communication can come in the form of highly developed educational programs, but a great deal can also be done by continuing and sustained conversations and continuing relationships. For example, legislators in Oregon have spent a day with judges to become more familiar with the actual processes and the functions of the courts.⁵⁹ Legislators have been invited to observe a day in the Family Courts of Massachusetts.

2. Develop coalitions that include business groups and general counsels of corporations to help educate and influence legislators.

⁵⁷ See NAT'L CTR. FOR STATE COURTS at 39.

⁵⁸ New Hampshire Hearing (statement of New Hampshire Supreme Court Chief Justice Linda Dalianis on combining Probate, Family and District Courts in New Hampshire).

⁵⁹ Transcript at 36, 50, and 60, Atlanta Hearing (Testimony of Texas Supreme Court Chief Justice Wallace B. Jefferson, Georgia Supreme Court Chief Justice Carol Hunstein, and Oregon Supreme Court Chief Justice Paul J. De Muniz).

Judicial leaders and bar association leaders should work with civic and citizen groups to establish communication about the importance of the justice system.⁶⁰ The voices and efforts of the business community through the Missouri Law Institute had a positive effect in communicating needs to their legislators. Effective efforts to influence legislators and decision makers require broader community involvement from outside the legal profession.

3. Enhance education on the role of the courts for the public and in schools.

Civic education can take the form of judges participating in community activities and focusing on providing greater public understanding of the role of the judiciary.⁶¹ One example of public education is holding court in different locations available to the public. Minnesota and Maine have even held court in high schools.⁶² In New Hampshire, fourth graders go to “law school” and must explain the courts and constitution to their parents as part of their work. Long term support of the justice system requires public understanding and support. The American Bar Association, through its Least Understood Branch Project, sends judges and non-judge members into the community and the schools to educate on the role of judges and courts in our every day lives.

4. Establish a communications plan that explains that certain judicial cuts result in more cost to the taxpayer in the long run.

One problem in the communications gap between the legislature and judiciary (and public at-large) is a failure to express how severely a cut in the judicial budget affects court functions and how those depressed functions affect tax payers.⁶³ The fact that a delay of access or denial of access can result in greater harm to individuals and greater cost to the public is easily provable. As NAACP General Counsel Kim Keenan stated, an uninformed public “ would rather spend the money on having the firemen go and put out the fire than spend the money on some court personnel to resolve it amicably.”⁶⁴

5. Use national media to deliver the message through compelling and specific stories on the impact of justice system cuts.

Publicizing dramatic impacts will enhance general awareness and facilitate the creation of coalitions and advocacy groups. As shown above, the Task Force heard many examples of how the budget crisis in the court system has caused dramatic harm to citizens.⁶⁵

⁶⁰ Transcript at 6 and 15, Atlanta Hearing (Testimony of Wayne Withers, General Counsel (ret.), Emerson Electric, on creation of the Missouri Law Institute). *See also* National Center for State Courts, 2009 Strategic Plan, at 12 (describing plan to build a constituency for the state courts by partnering with leaders of state courts, state bars, and the corporate community).

⁶¹ National Center for State Courts 2009 Strategic Plan, at 8.

⁶² Black Letter Recommendations of the ABA Commission on State Court Funding, Aug. 2004. *See also*, New Hampshire Hearing, (Testimony of Maine Supreme Court Chief Justice Leigh Saufley).

⁶³ Transcript at 167, 176, Atlanta Hearing (Testimony of NAACP General Counsel Kim Keenan).

⁶⁴ *Id.*

⁶⁵ Transcript at 87, Atlanta Hearing (Testimony of Manny Medrano, reporter/anchor, KTLA News and KNBC News, Los Angeles, California, and Hon. Dennis W. Archer, former ABA president, suggesting the ABA use its resources to facilitate coverage on national media such as CNN, MSNBC, or Fox News).

6. Advocates for judicial funding should consider utilizing polling, paid media, and grassroots advocacy.

The Georgia Bar Association conducted polling and paid for ads demonstrating the negative effects of court budget cuts. Georgia Bar President Lester Tate III described the successful efforts of the Georgia Bar in persuading the Georgia legislature.⁶⁶ The Boston Bar Association developed a grassroots email system of getting members to communicate with legislators.⁶⁷ These examples show that successful advocacy methods used by other groups can work for the justice system as well.

Conclusion

When there is a general sense of order and justice, the court systems are taken for granted. When they begin to fail, faith in the entire system of government deteriorates. Strong, effective, and independent justice systems are a core element of our democracy. Even the most eloquent constitution is worthless with no one to enforce it. The court crisis affects more than the justice system. It compromises citizen's faith in our government. Responding to this profound threat deserves a strong sustained response from the American Bar Association.

⁶⁶ Transcript at 122, Atlanta Hearing (Testimony of Lester Tate III, President, State Bar of Georgia).

⁶⁷ New Hampshire Hearing (Testimony of Don Federico, President, Boston Bar Association).

GENERAL INFORMATION FORM

Submitting Entity: Task Force on Preservation of the Justice System (“Task Force”)

Submitted By: Jon Mills, Task Force Reporter and co-drafter
 Peter T. Grossi, Task Force Member and co-drafter
 Carol E. Dinkins, Task Force Member and HOD Facilitator

1. Summary of Resolution(s).

This Resolution addresses one of the most significant issues impacting our justice system today, namely the underfunding of our courts. This Resolution urges state, local, and territorial bar associations to document the impact of cutbacks to judicial system funding in their jurisdictions, to publicize the effects of shortages, and to create coalitions to respond to and address the funding shortages. It urges state, local, and territorial governments to recognize the constitutional responsibility and the priority to fund the justice system adequately and to develop principles that provide for stable, rational, predictable, and efficient means and levels of funding. It urges courts to identify and engage in best practices to insure protection of citizens and efficient, accountable use of resources. Finally, the Resolution urges state, local, and territorial bar associations and the courts in the states and territories to develop sustainable strategies to communicate the value of adequately funding the justice system utilizing advisory groups, enhanced civic and public education, and direct engagement with public officials at all levels.

2. Approval by Submitting Entity.

The Resolution and Report were approved on July 11, 2011.

3. Has this or a similar resolution been submitted to the House or Board previously?

On August 9, 2004, the House of Delegates approved a resolution on state court funding.

4. What existing Association policies are relevant to this resolution and how would they be affected by its adoption?

A resolution on court funding, approved by the House of Delegates, on August 9, 2004 is relevant to this resolution. The previous resolution and report focused on the threat, stemming from inadequate funding, to the state courts and the judiciary. The current submission of the Task Force offers solutions to the crisis and would enhance the previous resolution. Unlike the 2004 resolution, this resolution also refers to the federal courts.

5. What urgency exists which requires action at this meeting of the House?

As the Honorable John Broderick (former New Hampshire Chief Justice and current Dean of the University of New Hampshire Law School) has said on many occasions, our courts are dying, and we must save them NOW. The courts are closing their doors, and the jury trial is an endangered species. The courts have reached out to the ABA pleading for its assistance. The Task Force has labored this year to define the crisis in the courts and to unearth and compile practical solutions to it. While there is still work to do, the Task Force feels it must release this current “First Aid” kit to the courts before it is too late.

6. Status of Legislation. (If applicable.)7. Cost to the Association. (Both direct and indirect costs.)

N/A

8. Disclosure of Interest. (If applicable.)

N/A

9. Referrals.

The resolution and report have not yet been circulated. Per advice received by the Task Force from the Policy office, the Task Force will wait to hear from Rules and Calendar before it circulates widely within and outside the ABA. Thereafter, there will be wide distribution, including to the Standing Committee on Judicial Independence; the Judicial Division; the Standing Committee on Federal Judicial Improvements; the Criminal Justice Section, and other relevant ABA entities.

10. Contact Person. (Prior to the meeting.)

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11. Contact Person. (Who will present the report to the House.)

*Please note that David Boies and Theodore B. Olson, the Task Force co-chairs, plan to present the report to the House of Delegates. Lady Booth Olson, Jon Mills, Peter Grossi, Elaine Jones, and Bill Weisenberg are also potential presenters. However, the chairs have appointed Carol E. Dinkins as the on site contact person/HOD facilitator.

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EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges state, local, and territorial bar associations to document the impact of cutbacks to judicial system funding in their jurisdictions, to publicize the effects of shortages, and to create coalitions to respond to and address the funding shortages.

It urges state, territorial, and local governments to recognize the constitutional responsibility and the priority to fund the justice system adequately and to develop principles that provide for stable, rational, predictable, and efficient means and levels of funding. It urges courts to identify and engage in best practices to insure protection of citizens and efficient, accountable use of resources. Finally, the Resolution urges state, local, and territorial bar associations and the courts in the states and territories to develop sustainable strategies to communicate the value of adequately funding the justice system utilizing advisory groups, enhanced civic and public education, and direct engagement with public officials at all levels.

2. Summary of the Issue that the Resolution Addresses

This Resolution addresses one of the most significant issues impacting our justice system today, namely the underfunding of our courts.

3. Please Explain How the Proposed Policy Position will Address the Issue

The proposed policy position will provide states with guidance on a variety of options to utilize in order to survive the existing court funding crisis.

4. Summary of Minority Views

N/A

Kathleen DeNezzo

Client of Nassau/Suffolk Law Services Committee, Inc.,
accompanied by Denise Snow



Nassau/Suffolk Law Services Committee, Inc.

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Douglas J. Good
Chairman

Jeffrey A. Seigel
Executive Director

TESTIMONY BEFORE THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES

September 20, 2011

**Second Department
Public Hearing
Westchester County Courthouse
111 Dr. Martin Luther King, Jr. Boulevard
White Plains, New York 10601-2509**

**Testimony By: Ms. Kathleen DeNezzo
Client-Nassau Suffolk Law Services**

My name is Kathleen DeNezzo. I am 51 years old, and a lifelong resident of Long Island. I was born in Huntington Hospital and was raised in East Northport. I was married, and I have three sons. I had to leave my husband because of abuse, and raised my sons as a single Mom. My husband did not support my children consistently, and as a result I spent a considerable amount of time in the court system. Most of the time I represented myself. My husband was incarcerated several times for non payment of child support. Life has not been easy for me. I worked as an aide in nursing homes taking care of the elderly, and I sometimes had to work two jobs to keep a roof over our heads and food on the table. I never, ever asked anyone for help. However, in November 2007 I was diagnosed with breast cancer. I had a bilateral mastectomy in January 2008. Soon after that surgery aggressive chemotherapy followed. While in treatment I experienced grand mal seizures. Now, not only did I have to deal with providing my family with the basic necessities of life, I had to deal with the anguish and pain of a catastrophic illness.

To survive I had to apply for Social Security and I did receive it. I also received benefits for my sons until they graduated from high school. Financially, things were very tight. I was barely making ends meet and stressed out from recovering from my illness and trying to take care of my family. Then the unspeakable happened. I was informed that Social Services wanted to take \$186 per month out of my Social Security check for medical insurance. That was in addition to the \$110 they took out already. That would leave me with \$763 per month to live on. The cost of living is high on Long Island. How could I live on \$763 and support my family? I felt this was very unfair as I had never asked anyone for help even though I have had a hard life, and I certainly did not ask for



breast cancer! Social Services told me if I did not pay them \$186 they would cancel my health insurance. I borrowed the money and paid it, and then requested a fair hearing.

At the Fair hearing a representative from Social Services and an Administrative Law Judge were present at the proceedings. The representative asked the Judge if we could step out of the room so she could explain things to me. She told me I made too much money so the health insurance money would be deducted out of my benefits. She told me I should be able to live off of \$763. I explained my story to her and she told me I could move to Albany or somewhere cheaper. I could not believe her. I am a lifelong resident of Long Island, and I should move to live!. We returned to the courtroom. The Judge could see I was very upset, and he told me not to worry. He told me he would direct me to people that could help me. For the record the representative from Social Services told her story, and then I told mine. Finally, the Judge said "OK, I have heard enough". He ended the proceeding, and told me I needed to set up a trust. He then walked me out to the waiting room and introduced me to a woman. She told me she was from Nassau Suffolk Law Services. She said she could not help me directly, but she would make a phone call for to an attorney who could help me. She told me to call Denise Snow. Denise Snow is an attorney in the PLAN project at Nassau Suffolk Law Services that provides legal services to victims of breast cancer. She made an appointment for me the very next day. Ms. Snow explained the facts and the law to me. She set up a Supplemental Needs Trust so that I could receive the medical benefits I needed to, and have money leftover to live on. What a relief! Ms. Snow was caring, knowledgeable, and thorough. In our interview she discovered that that my husband had filed divorce proceedings against me fifteen years ago. I hired an attorney but the proceedings were never completed and I never received a final judgment of divorce. My ex-husband never stayed in one place long enough for me to track him. Ms. Snow believes she can help me obtain a divorce. This is something I could never had done myself.

As I said before I had to represent myself many times in court. I could never get satisfactory legal services from other organizations. So I thought I was better off representing myself. However, I was wrong. I did not know the laws regarding Medicare, Medicaid, Social Security and I certainly did not know about Supplemental Needs Trust. I had no idea when I was stricken with cancer that would have to deal with legal issues. I thought I would be dealing with doctors and nurses, not lawyers. Thank goodness Nassau Suffolk Law Services has the PLAN project and other projects like it.

I feel like a ton of bricks has been lifted off of my shoulders. Now I can focus on healing and helping my sons advance themselves in life. I was a single Mom and alone for all these years. However, I don't feel that way anymore. Now I know about Nassau Suffolk Law Services and I know I can turn to them for help.

For further information, please contact Jeffrey A. Seigel, Executive Director, Nassau/Suffolk Law Services Committee, Inc., (516) 292-8100, ext. 3147.

Hon. Janet DiFiore

Westchester County District Attorney

Honorable Janet DiFiore
West Chester County District Attorney

Biography

District Attorney Janet DiFiore has dedicated her career to public service as both a former judge and a prosecutor. She is currently serving her second term as Westchester County District Attorney. Prior to her election as District Attorney in 2005, she served as a County Court Judge and Supreme Court Justice for seven years, and as an Assistant District Attorney in Westchester County for ten years. This year, District Attorney DiFiore serves as President of the District Attorneys Association of the State of New York, the organization of New York's District Attorneys that promotes effective law enforcement and public safety in our state.

District Attorney DiFiore has been a leader in New York's efforts to promote the fair administration of justice. She is Co-Chair of the New York State Justice Task Force, a permanent committee created by the Chief Judge of the State of New York to examine wrongful convictions and recommend appropriate reforms. She has served as a member of the Commission on the Future of Criminal Indigent Defense Services, as Coordinator of the 9th Judicial District's Access to Justice Initiatives, and in several additional criminal justice advisory positions.

Chief Judge Lippman, Justice Prudenti, Judge Pfau and President Doyle -- thank you for allowing me the opportunity to be heard at this morning's hearing.

Our Constitution guarantees the right to counsel for defendants who stand before the bar charged with a crime. We cherish this right. And because the right to counsel in criminal cases is so important, we organize our courts and our legal system to provide such counsel even though it can be very difficult and expensive to do so. Yet in civil litigation, where the stakes for civil litigants are frequently just as high as they are for criminal defendants, we do not have similar protections.

While I appear here today as Westchester County District Attorney, I am mindful of my days as a judge when I presided in the Family Court. There, litigants often attempt to navigate the legal system without counsel, and the stakes for those litigants is often of equal or greater importance to them than their liberty interest – as such matters often involve the custody of a child or the need for protection for them or their children from an abusive spouse. Those fortunate enough to have counsel are better positioned to more effectively communicate their need for judicial intervention and are more likely to obtain the needed relief – whatever it is: the emergency order of protection or the custody order determining who should have the responsibility for decisions effecting the health, safety and welfare of their children. Unfortunately, the well-being of these litigants and their families often bear a direct relationship to the legal assistance and services they have access to.

As the Westchester County District Attorney, I am committed to enhancing the safety of these same families who find themselves simultaneously victims in the criminal

justice system and litigants in the civil legal system. Nowhere is this more common than in the area of domestic violence.

In Westchester County this year alone we will prosecute over 3,000 domestic violence cases -- 3,000 cases translates into hundreds of families in crisis, with victims who frequently need civil legal assistance to address the host of necessary issues beyond their criminal justice needs: child support and custody orders, divorces and the resulting re-organization of family structure, and immigration relief. These are victims whose lives are in transition often as a direct result of crimes that have been committed against them. Research shows that 25% of homeless women are homeless because of domestic violence. Successful prosecution of these important cases often depends upon helping these victims gain their economic independence. Without civil legal assistance and other services, victims frequently find themselves trapped in relationships with their abusive partners.

In our continuing effort to address this issue, last year my office collaborated with the Office for Women to open the Family Justice Center, which is located adjacent to the Westchester County District Attorney's domestic violence bureau. Since that time 685 clients have been served at the Center. While the Family Justice Center has successfully met the counseling and emergency needs of nearly every client who has been processed for service – it frequently has not been able to meet the needs of those clients and their families for legal services. Of the Family Justice Center clients who needed civil legal assistance, 58% did not receive the legal services their circumstances suggested they needed.

The need for legal services outstrips the resources that are available to provide those services. This predicament can mean that while a victim becomes empowered to envision a new life, -- safe and free of abuse, -- the legal ties that keep them ensnared in the abusive relationship may remain firmly in place.

Immigrant domestic violence victims, -- and other crime victims, -- face an additional obstacle in reporting crime: the fear of deportation. An abuser or criminal defendant will often instill fear in the victim that by reporting a crime or cooperating in a criminal prosecution, immigration authorities will become alerted and seek to deport them -- whether or not they are legally residing in the country. The Westchester County District Attorney's Office works closely with immigration attorneys at My Sister's Place and the Empire Justice Center to assist victims in understanding their rights and, where appropriate, obtaining visas -- but these resources are insufficient to address the entire need.

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

While domestic violence is an area where criminal law, family law and civil law frequently intersect, there are other equally important ways in which our partnerships with civil legal providers can enhance the quality of life for the community we serve. These partnerships arise in many contexts.

For instance, seniors, -- our fastest growing population here in Westchester County -- represent another group of vulnerable victims who benefit from the partnerships that can be forged between prosecutors and civil legal service providers.

We know that older individuals victimized by crime frequently live in isolation and with diminished financial resources. In New York the poverty rate for seniors is higher than the national rate. Similar to victims of domestic violence, elderly victims of crime often find themselves embroiled in civil legal tangles arising from the crimes that have been committed against them. Elderly victims of economic fraud, identity theft or physical abuse need help to restore their financial stability and standing, -- and they often cannot do that without civil legal assistance. These victims have a wide range of needs: they may need to change a power of attorney designation or health care proxy, fend off bankruptcy or foreclosure proceedings, file for bankruptcy or require skilled advocacy with adult preventive services to find a safe and appropriate living arrangement.

Here in Westchester County, the elder abuse unit of the District Attorney's Office consults regularly with elder law attorneys at Hudson Valley Legal Services and the Pace Women's Justice Center in order to meet the many and varied civil legal service needs of our elderly victims. On the flip side, the attorneys at these agencies often identify crimes and refer cases to my office for criminal prosecution. -- This is the type of collaboration we find to be critical to resolving the issues confronting many of our senior victims, -- the issues that all-too-often prevent an older victim from enjoying a safe and secure quality of life in their later years.

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

additional resources made available to provide these necessary civil legal services to our senior victims. --

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

For the last four years, I have worked as Chair of the Westchester County Reentry Task Force to see that individuals returning home to Westchester County after serving state prison sentences are positioned to achieve a successful reintegration back into our communities. This is not only a matter of doing what is right but is also a matter of public safety -- because facilitating successful reentry is one of the most effective means of reducing recidivism thereby making our county a safer place to live.

The reentrants with whom we work face many significant obstacles, including access to housing and employment. The Reentry Task Force is a partnership of government and not for profit agencies designed to assist these men and women by linking them to needed services. Many times, these reentrants need civil legal services. An individual who faces barriers in securing appropriate housing or employment often needs a civil lawyer to advocate for him or her to overcome discriminatory practices that can impede their successful reentry back into the community. As a prosecutor, I consider it part of our collective public safety mission to reduce recidivism by ensuring that these men and women have the tools necessary to rebuild their lives and live within and abide by the law.

While these public/private partnerships have been effective in reducing recidivism and enhancing public safety, they lack the necessary resources to accomplish the mission. It is tragic that we are creating all of these effective means to enhance public safety and the quality of life of our citizens, and then we find ourselves short of the resources necessary to turn these effective models into broader practices.

With the smart investment of the appropriate resources we can achieve significant improvements in the quality of life for the victims of domestic violence, including children, for our seniors and for overall community safety. –

In closing, I want to thank you and tell you how much I appreciate and admire each of you for your efforts in investigating, ascertaining and solving the problem of unmet needs for civil legal services here in New York State. The partnership to be forged by and between the courts and the legal community to formulate a smart, effective, adequately funded plan to meet these needs will benefit and ultimately enhance the safety and welfare of all of us.

Thank you also for this opportunity to address you. Please do not hesitate to call upon me at anytime if you think there is any way in which I can be of assistance to you as you continue your work.

Thank you.

Tara Grisby

Client of Legal Aid Society of Rockland County, Inc.,
accompanied by Alexander Bursztein

Tara Grisby

Summary of Case

Ms. Grisby, her husband and 6 children (ranging in age from 3 to 21) reside in a public housing development at 53 Gesner Drive, Spring Valley, New York 10977.

Ms. Grisby's oldest son, Daniel (not his real name) was arrested for a drug related offense. As the result, the housing authority gave the Grisby family a notice terminating the tenancy of the entire household. As this was Daniel's first offense, his criminal case was referred to the Rockland County Drug Court. Upon completion of a rigorous 18-month drug treatment program, Mr. Grisby's felony conviction will be vacated. The misdemeanor conviction that will remain on his record will have a far less negative impact upon Mr. Grisby's ability to lead a productive life in the future.

Ms. Grisby retained the Legal Aid Society of Rockland County to represent her family in the eviction proceeding commenced by the housing authority. Her attorney negotiated an agreement allowing not only the family to remain in the apartment but also permitting her son to continue residing with the family as long as he continues to comply with the terms of treatment mandated by the Drug Court. Thus, not only was subsidized housing preserved for a family of 8 but a young man who would not have had a realistic chance of completing drug treatment if he were rendered homeless is getting a chance to get his life in order.

Testimony of Tara Grisby

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

I am the mother of six children. My oldest is 21, my youngest is 4. My husband, my children and I live in a public housing complex in Spring Valley, New York.

I am 37 years-old. I grew up in Spring Valley. For as long as I can remember, drugs have been a terrible problem in our community. I have seen lives destroyed by drugs, witnessed mature adults and young children overcome by addiction. I have seen parents go to jail, their children placed in foster care and never having a chance to lead a normal life and succeed. I have seen young children placed in facilities for juvenile delinquents because of drug use; very few of them were able to resume normal lives once they were released.

I tried really hard to raise my children right. I always warned them about the dangers of drugs and supervised them as closely as I could when they were growing up.

I was absolutely devastated when my oldest son was arrested for a drug offense earlier this year. As naive as it sounds, I never expected this to happen in my family. My son was never in trouble. He graduated from high school, he was working. His arrest was a shock.

What made matters even worse is that shortly after his arrest, we were served with a notice terminating our tenancy. There are eight people in my family. We can't afford to live in private housing in Rockland County - rents for three- bedroom apartments in Spring Valley exceed \$1500. I knew that if we were evicted, we would never find another place to live in the county. Public housing is where I have lived for a long time, it is where my children grew up. Spring Valley is the community I know, it is the community where my family and friends live, it is where my children go to school. I desperately wanted to stay.

This was my son's first arrest. Because of that and I think also because he was truly sorry and desperate for a chance to get his life together, his lawyer in the criminal case succeeded in having his case transferred to the Rockland County Drug Treatment Court. That court required my son to participate in an 18-month long intensive drug treatment program.

So far, everything is going great. My son has complied with all the requirements of the court. He is working two jobs and contributing to our household. He is eager to prove himself and happy to be able to stay with his family.

But even though my son was and is doing very well, the threat of eviction of our whole family was hanging over our head. When I received eviction papers, I contacted

the Legal Aid Society of Rockland County. I was represented by the Legal Aid Society's Deputy Director Mary Ellen Natale.

Ms. Natale told me that she would in all likelihood be able to negotiate an agreement that would allow the rest of the family to stay in the apartment upon the condition that my son move out. She and I agreed, however, that it was essential that we make an effort to enable my son to remain at home. I felt that he would never be able to find a place to live in Rockland County on his own (and remaining in the county is one of the conditions of the Drug Court). I also felt that in his time of need, my son needed his family if he were to succeed.

In court, Ms. Natale was able to negotiate an agreement that allows my son to stay with us as long as he complies with the requirements of the Drug Court. It is hard for me to describe how happy I was when I found out that my son would not be required to move.

As I said before, everything is going well for my son. I hope and pray that he continues to make progress and that ultimately he will be able to put this problem behind him and lead a happy and productive life.

Three times a week, my son goes to AA meetings. He knows that the danger of addiction will always be with him. I know that too. But thanks in no small part to the efforts of the Legal Aid Society, he is doing great, our family is together and we are able to live in a place that is affordable for our family.

Rev. Adrienne Flipse Hausch, Esq.

Partner, Carway & Flipse

Adrienne Flipse Hausch

Adrienne Flipse Hausch is a member of the law firm of Carway and Flipse, a general practice law firm in Mineola, New York. Ms. Hausch concentrates primarily in the areas of matrimonial and family law, criminal defense and general litigation.

Ms. Hausch is a graduate of St. John's University School of Law where she earned a Juris Doctor in 1976. Her undergraduate degree is from Hofstra University. Ms. Hausch also received a Masters of Divinity degree from New Brunswick Theological Seminary in 1995 and was ordained that year as Minister of Word and Sacrament and installed as Pastor for Congregational Care at the Community Church of Douglaston, a position she still holds.

Ms. Hausch served as a legislative counsel in Albany in both the Senate and the Assembly before entering private practice. She was a candidate for the State Assembly in 1980 when she was narrowly defeated by a 3 term incumbent.

Ms. Hausch taught at the college level for more than 15 years at such colleges as New York Institute of Technology, St. John's University and C.W. Post.

She has been a member of the Nassau County Bar Association since she was a student member and has serviced on the Associations Board of Directors, as Editor of its "Nassau Lawyer" monthly newspaper and was instrumental in the formation of the Pro Bono Committee, serving as the first chair of that committee. She has been recognized as "Pro Bono Attorney of the Year" by the NCBA in 1985, 2000 and 2011 and by the NYS Bar Association in 1998.

Ms. Hausch has been a member of The Committees on Character and Fitness of the Appellate Division, Second Department since March 2000. She is a member of the panels which provide legal services to children, indigent litigants in both civil and criminal cases and has served as a legal guardian to numerous individuals as a member of the Part 36 panel in Nassau, Suffolk and Queens Counties.

Ms. Hausch resides in Garden City with her husband, Roger H. Hausch, also an attorney.

Testimony of Adrienne Flipse Hausch

Good morning Chief Judge Lippman and members of the Task Force. My name is Adrienne Flipse Hausch. I am an attorney as well as a minister ordained in the Reformed Church in America. I am currently a partner in a small Long Island law firm and serve as Minister for Congregational Care of the Community Church of Douglaston. The Church services congregants who live as far west as Bayside, and as far south as Bellerose, Floral Park and Elmont (on both sides of the border between Nassau and Queens as well as the northern tier of Nassau – including Manhasset and Great Neck. The population is economically and culturally diverse.

I am also a member of various panels which provide *pro bono* civil legal services supported by the staff at Nassau-Suffolk Legal Services. I was the first chair of the *Pro Bono* Committee of the Nassau County Bar Association. We worked with the civil legal services office to insure representation for poor people primarily in the areas of landlord-tenant and matrimonial law. Over the course of that first year we started to build a *pro bono* panel, we developed screening processes specific to *pro bono* representation, as well as forms for almost everything we would need to proceed with a *pro bono* case, including retainer agreements. Some years later, with the assistance of an attorney, a Supreme Court Justice, the matrimonial clerk's staff and two law students we eliminated a three plus year backlog in less than one year. This was a good model of the cooperative work that can be done when resources are flush and community members are engaged. But it could not have been workable or efficient without the direct service and support of civil legal services.

Most of my own parish knows that I am an attorney. But I am often approached by total strangers who are not so much in need of prayer as they are in need of an attorney. Because I AM an attorney, I know what services are available and how to refer them. As a pastor, this is something I should know. I believe that clergy are a natural conduit for connecting legal services and those who are in need of those services.

I was approached by a young woman who advised she needed "pastoral counseling." She was married and had three young children. Although trained as a secretary she had been out of the job market for a number of years raising her children and was totally dependent on her husband. For more than a year her husband had kept her on a short leash: he purchased food for the family and gave her no cash at all. He put a minimal amount of gas in the tank of the car for "emergencies" and monitored her mileage and questioned her on where she had been. Recently a "wrong answer" to where she had been resulted in a physical beating. On that occasion the 8 year old witnessed the attack. With no place to go, she asked if I could meet with her sometime during the day during the week when her husband was working. Since she lived within walking distance of the church, he would not know she had come. After a relatively brief interview I referred her to the Coalition against Domestic Violence and the Nassau/Suffolk Legal Services Volunteer Lawyers Program. Those programs referred her to the proper Queens domestic violence programs.

In my “other life” I have also found an effective and willing network of knowledgeable educated individuals who can serve as a backup and referral system. Most clergy are trained in counseling and “social services.” And it is likely that the clergy would know more counselors, doctors—and even lawyers—than any of the lawyers in their neighborhoods. In addition, there is a coercive factor in obtaining volunteers if you are clergy that does not exist among you civilians. These individuals can form the backbone of a volunteer network that can enhance and enrich the services offered by civil legal services office that provides support, knowledge and expertise in all areas of legal need.

We are here because many legal service agencies are stretched, but were we to pursue programs that could efficiently pull in more volunteer lawyers and members of the community, I believe, as the techies say, there is still “band width” in the legal profession and in many of the related fields upon which we can rely. Clergy opine that God never gives you more to handle than you can manage. As a minister, I believe in the simple principle of “do unto others as you would have them do unto you.” As an attorney, I know the value of legal counsel both to the individual litigant and to the proper functioning of the legal system. And as a member of the community, I believe it would be fiscally sound to engage all skilled members of society to insure representation of the most vulnerable.

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

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

My church also houses a counseling center, another “safe place” to supply information and another resource available for the distribution of information. Many church based counseling centers offer services on a sliding scale. Almost all take a holistic approach and try to connect patients to necessary services. I receive calls regularly from our counselors seeking referrals for lawyers, accountants, rental agents and even spiritual advisors.

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

Conclusion

I believe that basic and “bridging the gap” CLE programs should be made available to clergy and other professionals working in religious institutions and not for profits.

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

I believe community based organizations should be encouraged to work with local clergy and attorney organizations to promote their programs and gain trust, respect and visibility in the community.

I believe incentives for *pro bono* work should be increased.

But mostly, I believe my congregants who are in need of legal services, who are poor, are best served by a robust community involvement alongside a well-funded civil legal service program with dedicated attorneys working to ensure that rights of the most vulnerable among us are protected on a day-to-day basis. For this there is no substitute.

I thank you for your kind attention.

Esther Jimenez

Client of Staten Island Legal Services, accompanied by
Nancy Goldhill

Testimony of Esther Jimenez
Client of Staten Island Legal Services
Task Force Hearing on Civil Legal Services September 20, 2011

Thank you for giving me the opportunity to talk to you about the help I got from Staten Island Legal Services during a very hard time in my life. My name is Esther Jimenez and I live in Staten Island. I have three children: 2 daughters who are 9 and 6 years old and a 3 yr old son. In 2009, I left my husband after eight years of abuse.

My husband was very abusive. Many times he punched me, choked me, forced me to have sex against my will, and threatened to kill me. A lot of this happened when my children were there. Many times he also threatened that he was going to get the best attorney in the country and take my children away. Thank god I was able to get a great attorney and I did not lose my children.

Luckily our pastor suggested that we separate, so that made it easier. At first, I let him see the children almost every day because I wanted them to have a relationship with their father. But that changed after a few weeks when my husband came to see the children and attacked me. We got into an argument and he slammed me against the wall. I was holding my son, who was only one and a half, and my son fell to the ground. I couldn't even pick him up because my husband had pinned me against the wall. My daughter, who was 4, tried to pull my husband off of me, but he pushed her out of the way and threw her against the wall too. When he started to leave, my daughter tried to stop him and he pushed her down. My oldest daughter watched the whole thing and was terrified. After my husband left, I called 911. But when the police came, they didn't do anything because I don't speak English and I couldn't communicate with them.

I found my way to Staten Island Legal Services and they gave me the help I needed. Manar Waheed, my lawyer, explained my rights to me and told me about the different choices I had. Then Manar represented me in family court so that I could get an order of protection and custody of my children. She also told me that I had the right to file a police report even though I only speak Spanish and explained how to do it so that I would have some proof to bring to court.

Manar and Claire, a social worker in her office, helped me prepare for trial so that I could tell my story even though I was afraid of speaking in front of my husband and talking about the awful things he did to me. The trial was emotional and difficult, but in the end the judge gave me a three year order of protection that includes my children. I felt like the judge really listened to me and understood what I went through and that felt good. After that, my husband agreed to give me custody of my children. The judge is still deciding how often my husband should see the children, but right now he is not allowed to see them at all.

I would not have been able to do all this without a lawyer. Staten Island Legal Services helped me escape a long and very abusive relationship. They supported me through a difficult time in my life and helped protect me and my children. Without them, I would never have known that I had the right to go to court to get an order of protection and custody. And I would have been afraid to go by myself. I know that many other women are in situations like mine and have no idea what their options are or where to go for help. When they don't speak English the problem is even worse. Manar helped me move forward with my life by advocating for me to get what I needed. On top of everything else, Claire, the social worker, helped me get my children into therapy to deal with the abuse that they witnessed.

Without Legal Services' help, I don't know what I would have done. I know that they cannot help everyone and I was lucky that were able to help me. If they aren't able to keep doing what they do, I am afraid that people in situations like mine won't be able to get help the way I did. I want you to know how important their services are, especially on Staten Island where there are so few services to help people who can't afford to hire their own lawyers.

John Lindstrom

Court Attorney-Referee, Supreme Court, Orange County

**Testimony of John R. Lindstrom, Esq.
Court Attorney Referee – Settlement Conference Part NYS
Supreme Court – Orange County
For the Chief Judge’s Hearings on
Civil Legal Services
Presented before
Hon. Jonathan Lippman, Chief Judge of the State of New York
Hon. Ann Pfau, Chief Administrative Judge
Hon. A. Gail Prudenti, Presiding Justice, Second Department
Vincent E. Doyle , III President New York State Bar Association**

**September 20, 2011
Westchester County Courthouse
White Plains, New York**

Good morning. My name is John Lindstrom. I presently serve as the Court Attorney Referee in the Mortgage Foreclosure Settlement Conference Part in the Orange County Supreme Court. I have served in that position since January 2010. I am pleased and honored to offer testimony about the need for adequate legal representation in mortgage foreclosure matters. Thank you for this opportunity to speak today.

The statistics for Mortgage Foreclosure Settlement Conference Part are annexed. As you can see, between January of 2010 and August 2011, I have conducted 9141 settlement conferences (around 450 a month).¹ Out of 9141 conferences, 1945 were attended by a defendant represented by counsel. The defendants in the remaining 7196 conferences were unrepresented. You can also see that 518 settlements have been reached during that time period. While some of these settlements were short sales or discontinuances without prejudice, the vast majority of the settlements have been loan modifications or repayment programs that resulted in people keeping their homes. I believe that these settlements were the direct result of the mandated Mortgage Foreclosure Settlement Conference. I also believe that if more of the people who appear before me were represented by competent counsel, the number of settlements would be higher.

With only 21 % of borrowers who appear before me being represented by counsel, the need for more representation for distressed homeowners is clear and makes the foreclosure pilot projects put into place by the Chief Judge in Orange and Queens counties especially important and relevant.

¹Most cases have multiple conferences.

The program guarantees representation for all homeowners in residential foreclosure conferences in Orange County. It is an ambitious; one that would not be possible without the strong support of members of the private bar and without the leadership of Legal Services for the Hudson Valley. The Foreclosure Project brings legal services, bar associations, and the court together to meet the mission of providing representation to homeowners.

I first refer any borrower who needs legal representation to the project's housing counseling partner, Orange County Rural Development Advisory Corporation, know to us as RDAC.. RDAC is a HUD approved Housing Counseling Agency. RDAC is a fantastic organization and I am constantly encouraging borrowers to go to RDAC. The pilot project's success is tied to agencies such as RDAC, because they can do so much of the work that attorneys would otherwise have to do. RDAC screens the borrower for the viability of saving their home through a possible loan modification with their lender. If they find the borrower to be a candidate for a modification, the case is sent to Legal Services to handle the Settlement Conference representation. The case is then either handled by legal services or assigned to the many attorney volunteers from the Women's Bar Association of Orange & Sullivan Counties, and the Orange County Bar Association. Volunteer attorneys have attended a training conducted by the Empire Justice Center and receive guidance from the legal services Foreclosure Project Attorney. Any collateral legal issues related to the foreclosure, for example, such as filing a Chapter 13 bankruptcy to make the homeowner more solvent for a loan modification, or motion practice to challenge the behavior of the lender, is assigned to Legal Services Foreclosure Project Staff Attorney. If RDAC finds that the home is not savable through the foreclosure process, they offer the client all the alternatives available such as short sale or a deed

in lieu of foreclosure – and guide them through the entire process. Ideally, no one is left on their own.

The Foreclosure Project provides representation to homeowners who would otherwise have great difficulty navigating the process – And – by starting to mentor and train volunteer attorneys to represent homeowners in settlement conferences – further moving towards the aspirational goal of providing as many Orange County homeowners with an attorney in their settlement conference.

The bank is always represented by counsel. As much as I try to make it an even playing field for homeowners who come before me with no attorney, knowing I can get one for them makes my job easier and the process smoother. In my position I have learned that these conferences play an essential role in helping to prevent the loss of people's homes. What was not apparent from the outset is how complex and labor intensive the conferences are. Because judges, hearing officers and court attorney referees make every effort to reach mutually agreeable resolutions, it is not uncommon for a single foreclosure case to require six to eight settlement conference appearances before it can be resolved. Many conferences, especially those involving the unrepresented take even longer. The long life span of these cases in the conference part, coupled with the incredible increase in foreclosure filings in Orange County over the past two years, has resulted in an unprecedented shift in the civil caseload of the court. For example, the total number of mortgage foreclosure settlement conferences conducted in Orange County in all of 2009 was 775. In September of 2010 alone, I conducted 750 conferences.

Dealing with a pro se litigant is difficult in the best of circumstances. I encounter pro se litigants in the worst of circumstances. They come to the conferences from all walks of life from janitors to Madison Avenue Advertising Executives. All have been through some sort of personal catastrophe that resulted in them falling behind on their mortgage payments. Stories of extended periods of unemployment, business failures, medical expenses due to lack of health insurance, divorce, the death or disability of a spouse or family member, are all too common. While I am no psychiatrist, a number of the people who appear before me seem to be suffering from depression. They cannot do the simplest of things needed to be done to save their house. They cannot follow simple instructions to gather documents needed by the bank to make a determination that would allow them to keep their home. Others who appear before me are angry and frustrated with their bank's inability to hold onto documents, to respond to their inquiries, and to provide accurate information. Most of the unrepresented who appear before me have never been to court as the subject of an action (other than traffic court). Those that have been to Supreme Court before, have never done so without a lawyer. They ask if they need a lawyer in the settlement conference, but then tell me they can't afford a lawyer anyway. So they proceed unrepresented.

The turnout for first time conferences in my conference part is low. At least 25% of the cases eligible for a settlement conference have a just a single conference as a result of non-appearance by the defendant. The non-appearance of the defendant is noted and the foreclosure action is allowed to proceed. Other than those that have already left their home, I can only speculate as to why people don't show up for a conference. I believe that some don't show up out of fear or embarrassment. I believe this because of what the borrowers who do appear for a

first conference say to me. They are afraid of what is going to happen next. Will they have to leave their homes? When? They are embarrassed that they have failed to keep their commitment to pay the bank. They have been unable to modify in the past and don't see any hope for retaining their home. Who knows how many of those people who did not appear for conferences, would have come to the conference if they knew they would have an attorney available to them?

Before I started conducting settlement conferences, I received training here in White Plains. We learned about mortgage modification programs, short sales and deed in lieu of foreclosure and how to conduct the settlement conference. I then started conferencing cases. I found that the bank attorneys were well versed in the applicable law and federal guidelines. I found that the on the defense side, the few lawyers appearing for defendants were not so aware and found themselves relying on the bank attorneys for information on legal issues. Except for the attorneys from Legal Services of Hudson Valley. They knew about the applicable law and were not shy about sharing what they knew with me and the bank attorneys. They became a valuable resource in my continuing education in this area of the law. In the spring of 2010, it seemed like the United States Treasury Department was modifying the Making Homes Affordable guidelines every Friday. The bank attorneys kept me abreast of the changes they felt favored their clients, and Legal Services of Hudson Valley attorneys were keeping me up to date on changes favoring borrowers.

Does having a lawyer make a difference in the foreclosure conference process?

Absolutely.

Much of what I do on a day-to-day basis is help people get through the “paper chase” of the mortgage modification process, i.e. getting a packet of current financial documents and bank forms from point A (the borrower) to point B (the bank) without loss of part or all of the entire packet. Borrowers and (sadly) banks lose documents and don’t keep copies of documents. It is a lawyers natural reaction to a document to make sure there is a copy kept. Borrowers don’t have scanners, copiers, fax machines, and smart phones. Lawyers do.² When I have a lawyer representing a borrower on a file, I know that there is a complete copy of all documents in the lawyers file or computer that can be given directly to the bank when the bank claims it never received the document. That is an incredible advantage to the represented borrower over the unrepresented borrower.

A modification application should be decided within four months of the first settlement conference. That almost never happens. Even with a lawyer, a decision on a modification will usually be had in 6 months. I have unrepresented borrowers who have been with me for 18 months.

I know the applicable law and what a borrowers rights are as they go through the process. While I do advocate for borrowers and try to be sure that every borrower is given every opportunity and advantage, there are times that I cannot do so. I have a busy court room and a heavy calendar. I try to keep my calendar moving so as to get people in and out. When a borrower has an attorney knowledgeable in this area, I am more efficient and can get more work done. As I discussed above, some borrowers, for whatever reason, are in need of extra help. An

²Staples charges \$1.50 a page for fax services. I encourage people to use housing counseling agencies if for no other reason than they get free fax and copy services.

attorney can do something I cannot do. An attorney can take a borrower aside, away from the spotlight of the conference to help them understand what needs to be done and why.

Early on in my tenure, I had a case where the bank advised that due to “investor restrictions” in the Pooling and Service Agreement, the loan was not eligible for the federal government program, HAMP. I had never heard of such restrictions. The borrower had an LSHV attorney who asked for a copy of the “investor restrictions”. The bank refused on multiple grounds. At the borrower’s attorneys insistence, I directed that the bank produce the restrictions. Before the next conference, I received in the mail the entire 450 page Pooling and Service Agreement with a cover letter that did not identify the specific pages containing the relied upon restriction. I had no time to read the entire agreement, but the LSHV attorney took it upon herself to review the entire agreement and located the “restriction” which we were able to then discuss at the ensuing conference. It turned out that the restriction did prohibit certain types of modification of the loan, but did permit modification as provided for under the HAMP program. The borrower ultimately was given a HAMP modification and got to keep his house. Had it not been for the attorney’s persistence, that happy ending would not have occurred.

In a similar case, the restrictions actually did preclude a modification. The borrower’s attorney (also a LSHV attorney), requested that the bank ask the investor to waive the restrictions. The bank declined. At the next conference, the borrower’s attorney asked for my help and I directed that the bank ask the investor to waive the restrictions. To my surprise, the investor agreed to waive the restrictions and the borrower ultimately got a modification. Another happy ending that never would have occurred without an attorney’s assistance.

Recently, I had an attorney obtain new reviews of denials of modifications for several clients because he discovered that the bank was using an incorrect market value for the homes in question. The home value and other input numbers used by the bank are available to a homeowner denied a modification and I routinely direct that banks provide borrowers with a statement of the input numbers used in evaluating a loan modification. It is up to the borrower to review these numbers and raise any objection. In this instance, the borrowers' lawyer may well keep his clients in their homes. These cases are still pending before me.

People need the advise of a lawyer even when things go right. Most of the people who appear before me want to save their homes. Often, they are offered modifications that provides payments that are higher than they can truly afford. They ask me what they should do. I can only tell them that it is their decision and they should consider all their circumstances before accepting or rejecting a settlement proposal. They need the advise of a lawyer who can help them through these type of decisions.

The advise of an attorney is necessary at the outset of the foreclosure as well, and not just for legal purposes. Once a bank puts a case in foreclosure, the bank will not accept payments from the borrower. As a result, the borrower has an increase in available funds every month. What the borrower does with those funds can determine whether he/she will get a modification in the coming months. Some pay off all other debt thinking that will make them look better to the bank. Those people can miss out if they are only eligible for a modification that requires a significant down payment. If a bankruptcy filing is necessary to save the house, they will have paid off debt that could have been eliminated by the bankruptcy court. A few minutes with a lawyer discussing a strategy toward other debt early on could save a home.

I have participated in two fairly well attended training seminars for attorneys in Orange County offered in the hope that attorneys would offer their services pro bono to borrowers at conferences. I have spoken to the head of the Orange County Bar Association and advised him that I will provide every accommodation I can to attorneys representing borrowers pro bono in my part. While I am hopeful that pro bono representation will start to increase, to date, I am not aware of any pro bono representation in cases before me. But the project is still in its early stages and I am hopeful that the partnership between the Court, Legal Services of the Hudson Valley, the private bar and RDAC, will be a great starting point and will provide much needed relief for the families and communities of Orange County.

**ORANGE
SPECIAL FORECLOSURE CONFERENCE STAT SHEET
YEAR 2010**

	# Of Confs. Held	OFDPN	# Of No Shows	# Of Settlement	Adj	Not Fit Criteria	Rep by Counsel	Pro se
January*								
February*	129	4			125			
March	604	138	266	49	416	48	50	172
April	469	145	207	17	306	14	88	158
May	493	129	173	44	320	16	101	206
June	640	192	234	38	405	28	116	268
July	465	124	179	24	317	7	109	191
August	509	123	141	31	351	11	115	263
September	750	186	248	39	525	32	154	343
October	667	159	199	32	500	26	145	349
November	524	100	134	25	398	23	103	285
December	468	68	107	27	373	17	121	243
TOTAL- 2010	5718	1368	1888	326	4036	222	1102	2478

Total Foreclosure Filings for 2010= 1789

* January & February stats are limited as we did not capture this info completely during this time frame.

Hon. Janet C. Malone

Acting Supreme Court Justice and Family Court Judge,
Westchester County

HON. JANET C. MALONE
WESTCHESTER COUNTY FAMILY COURT JUDGE

Janet C. Malone was elected to the Westchester County Family Court in 2007 and in 2011, she was appointed Acting Justice of the Supreme Court by the Chief Administrative Judge for the State of New York. Judge Malone presides over cases involving juvenile delinquency, persons in need of supervision, domestic violence, child custody and visitation, neglect and abuse, and aspects of paternity and support.

In 2011, Judge Malone was appointed Lead Judge for Westchester County Child Welfare Court Improvement Project and was charged to assist family court to implement system reform efforts designed to improve outcomes for children and families in the child welfare system.

Judge Malone has served on the Westchester County Family Court, Yonkers, since 2003 when she was first appointed a Support Magistrate and designated as the Magistrate to the Integrated Domestic Violence Part in the Yonkers City Court where she handled support cases involving domestic violence.

Judge Malone graduated from the City University of New York Law School in 1989 and started her legal career the same year as a New York County Assistant District Attorney under Robert M. Morgenthau. She was assigned to the trial division where she prosecuted major felonies, including sex crimes, domestic violence cases and homicides; supervised felony and misdemeanor assistant district attorneys and argued appeals in the Appellate Division for the First Judicial Department. In 1997, Judge Malone accepted a position as an associate in a midtown litigation firm. The following year she opened her own law practice where she represented clients in criminal, matrimonial and family matters.

Judge Malone is admitted to the United States Supreme Court, the United States District Court for the Southern and Eastern Districts of New York and the Second Judicial Department of the State of New York.

Judge Malone serves on the International Child Abduction Committee of the National Association of Women Judges, the Family Law Committee and the Committee on Children and the Law of the New York State Bar Association and the Committee on Families, Children and the Courts of the Westchester Women's Bar Association.

She is an Officer and Director of the Westchester Black Bar Association and serves on the Advisory Boards of the Mercy College Legal Studies Program and the Lois Bronz Children's Center. She is a member of the New York State Family Court Judges Association, Westchester County Bar Association and New Rochelle Bar Association where she served on the Board of Directors from 2006 to 2008. She is also a member of All Island Association, Sister to Sister International, Yonkers Truancy Reduction Strategy Group and she is a Mentor in Judge Judy's Her Honor Mentoring Program. Locally, she serves on the African-American Writers and Readers Literary Tea Committee of the Westchester Library System.

Judge Malone is the recipient of numerous awards, including the Community Service Award of the Bethany African Methodist Church, the Finer Womanhood Award of Zeta Phi Beta Sorority, Inc., and the Business and Professional Award of the F. Willa Davis Women's Club of New Rochelle. She was also honored by the Westchester Black Women's Political Caucus as a Cheerleader for Social Change.

Born in Barbados, West Indies, Judge Malone resides in Westchester with her husband, George and their dog, Jaz and with family nearby. She is a member of Greater Centennial A.M.E. Zion Church in Mount Vernon.

The Family Court is dear to the heart of Judge Malone. She sees the Family Court, and specifically her courtroom, as the place where she meets children and families in an intimate way and often when they are at their most vulnerable. Judge Malone believes Family Court is Law in the Service of Human Needs, the motto of her law school.

**TESTIMONY OF THE HON. JANET C. MALONE
ACTING SUPREME COURT JUSTICE
WESTCHESTER COUNTY FAMILY COURT**

**To
CHIEF JUDGE'S HEARING ON CIVIL LEGAL SERVICES**

**PRESENTED BEFORE
HON. JONATHAN LIPPMAN, CHIEF JUDGE OF THE STATE OF NEW YORK
HON. ANN PFAU, CHIEF ADMINISTRATIVE JUDGE
HON. A. GAIL PRUDENTI, PRESIDING JUSTICE, SECOND DEPARTMENT
SEYMOUR W. JAMES, JR., PRESIDENT ELECT,
NEW YORK STATE BAR ASSOCIATION**

**SEPTEMBER 20, 2011
APPELLATE DIVISION, SECOND DEPARTMENT
WHITE PLAINS, NEW YORK**

TESTIMONY OF THE HON. JANET C. MALONE, A.J.S.C., J.F.C.

CHIEF JUDGE'S HEARING ON CIVIL LEGAL SERVICES
SECOND DEPARTMENT
SEPTEMBER 20, 2011

Good Morning, my name is Janet C. Malone. I am a Westchester County Family Court Judge with an Acting Justice of the Supreme Court designation.

Chief Judge, thank you for the invitation to speak at this hearing about the burgeoning issue of funding for Civil Legal Services.

I have practiced in the State and local Courts of New York and the United States District Courts for the Southern and Eastern Districts of New York, as an Assistant District Attorney, as a Private Practitioner and as Assigned Counsel in the First and Second Departments. I have seen the need for quality legal representation for the disenfranchised, who typically have a negative view of the legal system and who feel that they have no say in the legal process that will impact their life.

I remember, as a young prosecutor, being in a court room when a criminal defendant told the judge in a loud baritone voice that he wanted his appointed lawyer fired and that he wished to represent himself. The judge patiently asked the defendant his highest level of education and whether he was familiar with court room etiquette, trial procedures and the rules of evidence he would have to know. Most importantly, he asked the defendant if he understood that if he did not prevail in the case, his liberty would be at stake.

I was convinced that this young man should keep his attorney; after all, I was fresh out of law school, the Rules Against Perpetuities still causing me nightmares, and my knees still shaking after being the first assistant district attorney in the class of 1989 to have a trial under her belt. I wanted to scream to him that it is not as easy as they make it look on TV; your assigned attorney might not be Perry Mason but he is better than having a fool for a client. But when the young man said that he couldn't do worse than his attorney going up against a system that was already against him, I realized he was angrier at the system than at his attorney. The judge denied the defendant's application to relieve his attorney.

TESTIMONY OF THE HON. JANET C. MALONE, A.J.S.C., J.F.C.

The defendant in my story would have a jury to decide his fate, but what does a judge do when she is the jury, charged with being an impartial arbiter for both parties, as well as custodian of the court record, the mover of cases and the adherer to time constraints?

Since 2003, I have been assigned¹ first, as a Support Magistrate to hear and determine issues of financial support and to establish paternity, and, now as a judge. I preside over cases involving juvenile delinquency, persons in need of supervision, domestic violence, child custody and visitation, neglect and abuse, and aspects of paternity and support. My court serves the City of Yonkers, the largest city in Westchester County and the fourth largest city in New York State after New York City (all five boroughs), Buffalo and Rochester.² I am told that Yonkers Family Court has the largest caseload outside of New York City Family Court.

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

Regardless of the parties' socioeconomic status, I meet them when they are vulnerable, angry, sad, frustrated and confused. We would not want our doctor³ or even our judge exhibiting or performing under this type of emotional stress, so why

¹ Yonkers Family Court Jurisdiction covers the City of Yonkers and the Villages of Tuckahoe, Bronxville, Hastings-on-Hudson and Dobbs Ferry.

² New York City (Bronx, Kings New York, Queens and Richmond) = 8,175,133; Buffalo = 261,310; Rochester = 210,565 and Yonkers = 195,976. Reported by Wikipedia at http://en.wikipedia.org/wiki/List_of_cities_in_New_York. Page last modified on 5 June 2011 at 19:45.

³ The American Medical Association Code of Medical Ethics Opinion 8.19 cautions that physicians generally should not treat themselves or members of their immediate families. Professional objectivity may be compromised . . . the physician's personal feelings may unduly influence his or her professional medical judgment, thereby interfering with the care being delivered. Physicians may fail to probe sensitive areas when taking the medical history or may fail to perform intimate parts of the physical examination.

TESTIMONY OF THE HON. JANET C. MALONE, A.J.S.C., J.F.C.

should we expect untrained parties in Family Court to represent themselves under these times of emotional stress.

Yet *pro se*⁴ parties who appear in the Family Court are expected to step back and view their emotional, volatile and even life-altering circumstances through an objective lens while having the mirror of rules, procedures and evidentiary rulings reflect back at them.

In these harsh economic times, funding for civil legal services is needed more than ever. Child support, domestic violence, loss of homes through foreclosure, all leading to displaced children, are at an all-time high, college and retirement funds have disappeared and families are living off their credit cards to make ends meet.

A typical U.S. family got poorer during the past ten (10) years. This weak economy has driven the median household income down, hitting the poor, the young and minorities the hardest in 2010.⁵ The Census Bureau said just last week, on September 13, 2011, that the Median household income fell 2.3% to \$49,445 last year and has dropped 7% since 2000 after adjusting for inflation. Also, the number of people living in poverty hit 2.6 million or 15.1% of the national population, the highest level since 1993.⁶

This report makes the need for the funding of civil legal services even more urgent. The number of child support petition filings has increased as has domestic violence reporting, which unfortunately, seem to go hand in hand with a downturn in the economy.

Although parties are advised that they have the right to be represented by counsel of their own choosing, the right to have an adjournment to confer with counsel, and the right to have counsel assigned by the court in any case where a party is financially

⁴ For one's own behalf; in person. Appearing for oneself, as in the case of one who does not retain a lawyer and appears for himself in court. Black's Law Dictionary, Sixth Edition.

⁵ USA Today (Bob Andres, AP), <http://www.usatoday.com/news/nation/story/2011-09-13/census-household-income/50383882/1>.

⁶ *Id.*

TESTIMONY OF THE HON. JANET C. MALONE, A.J.S.C., J.F.C.

unable to obtain the same.⁷ There appears to be a misconception by some in the legal and non-legal communities that if your gross income is over \$35,000.00, you don't qualify for the assignment of counsel. I have yet to find in writing where it says that \$35,000.00 in earned income, especially in Westchester, disqualifies a party who requests the assignment of counsel.

A survey of nearly 1,200 state trial judges around the country indicates that another result of the weak economy is an increase in the number of litigants representing themselves in foreclosures, domestic relations, consumer issues and landlord-tenant housing matters; judges say that litigants are doing a poor job even as they burden courts already hurt by cutbacks.⁸

More than half the judges surveyed had seen case filings increase in 2009 even though fewer people are represented by counsel. Because of a loss of funding for Civil Legal Services, this affects not only the poor but the middle class as well. The poverty income guideline for a single person in 2011 as reported by the United States Department of Health and Human Services, is just \$10,890.00.⁹ These are the folks who desperately need civil legal services. We must figure out a way to fund that organization so as to provide competent representation to those in need.

Unfortunately, self-representation results in worse outcomes for litigants, according to a majority of those judges, with the greatest problems being failure to present necessary evidence procedural errors, ineffective witness examination and failure to object to evidence. Seventy-eight percent of those judges said that the increase in self-representation is also slowing the court docket.¹⁰ Clearly, we must fund legal services sufficiently provide access to justice to all parties who enter the courts seeking justice.

⁷ See, Family Court Act §262.

⁸ http://www.abajournal.com/news/articles/judges_say_litigants_increasingly_going_pro_se . Article Judges Say Litigants Are Increasingly Going Pro Se - at Their Own Peril. Based on survey conducted by e-mail to members of the ABA Judicial Division's National Conference of State Trial Judges.

⁹ Child Support Standards Chart prepared by New York State Office of Temporary And Disability Assistance Division of Child Support Enforcement, Released April 1, 2011, see also, http://www.familiesusa.org/resources/tools_for_advocates/guides/federal_poverty_guidelines.html.
<http://www.humanarc.com/Resources/FederalPovertyGuidelines/Default.html>.

¹⁰ http://www.abajournal.com/news/articles/judges_say_litigants_increasingly_going_pro_se .

TESTIMONY OF THE HON. JANET C. MALONE, A.J.S.C., J.F.C.

Recently, I had a case where the respondent father had traveled to New York to respond to an application by petitioner mother for an Order from the Court exercising temporary emergency jurisdiction over the parties' child. The petitioner mother was represented by counsel and the respondent father was unrepresented. I advised the respondent of his right to counsel and his right to request the assignment of counsel if he could not afford to pay for an attorney. The respondent, who had a stutter, rejected the offer, confident that he could prove his case alone.

As the respondent flipped through a pile of papers, I asked him if he had a pen. No, he replied. Do you have a pad of paper? No, he replied. Do you have the Order to Show Cause that brought you before the court? He could not find it in the papers now spread out before him on the table. I then explained the Unified Child Custody Jurisdiction Enforcement Act (UCCJEA) and the powers of the Court if the petitioner mother prevailed.

Should I have let the unrepresented father go up against the mother's attorney on his own? Would I get all of the information I needed from the father who came to court without a pen or pad and whose stutter became more pronounced as he became anxious? Would I have learned about the Temporary Order already issued in the child's home state? I needed answers quickly in this emergency situation I squeezed onto my already tight calendar. I assigned an attorney off the court floor for the limited purpose of representing the respondent father on the Order to Show Cause. It was the right decision.

A judge must act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.¹¹ However, when one or both parties are unrepresented, a trial judge in a non-jury part should not have to walk a tightrope balanced on a thin rope of objectivity and justice, while teetering above a net of advocacy, delays, congested calendars, etc.

A judge should be able to preside over a matter, without having to take part in it. When parties come before the Court, they want an objective Court, a Court that will listen, will be compassionate and fair, and will meaningfully deliberate on their issues to a fair resolution where, even if they do not walk away with everything they wanted, they know they had their day in court in front of an impartial judge and with a strong legal advocate at their side.

¹¹ 22 NYCRR §100.2 (A).

TESTIMONY OF THE HON. JANET C. MALONE, A.J.S.C., J.F.C.

Thank you for this opportunity.

Faith Piatt

Executive Director, Orange County Rural Development
Advisory Corporation

Testimony of Faith Piatt
Executive Director
Orange County Rural Development Advisory Corporation

Good morning, my name is Faith Piatt, and I presently serve as Executive Director for the Orange County Rural Development Advisory Corporation (“RDAC”). Orange County RDAC is a non-profit housing counseling and development agency that boasts nearly three decades-worth of service to Orange County residents. RDAC administers various state and federal housing grant programs and offers a suite of counseling services. Our mission is to encourage vital, healthy and stable communities by providing and preserving a broad array of attainable and sustainable housing opportunities for people within a wide income range. RDAC also promotes and supports related community issues as they influence shelter, quality of life, economic opportunity and diversity.

Today, I am here to talk about our vital foreclosure partnership with Legal Services of the Hudson Valley, the courts and the private bar. For the past two months, all of the partners in the foreclosure collaboration have worked together to ensure that homeowners facing foreclosure have assistance and representation. Legal Services and RDAC have been helping Orange County homeowners in foreclosure trouble since the housing crisis began, and doing an exemplary job keeping families in their homes. Now – working in conjunction with each other – and with the Orange County Supreme Court – we can reach more Orange County families in a more efficient way. Since the project

began on July 1– the court has referred 19 homeowners to RDAC. My organization also receives the list of foreclosures filed from LSHV via the Orange County Supreme Court Clerk, and evaluates the sustainability of the home, and the eligibility for a loan modification. If a loan modification is possible, we assist the client with all the paperwork along the way and communicate with the lender. If any problems arise with the lender, or the client is in the settlement conference part, we notify LSHV that we need one of their attorneys – or a volunteer attorney from the private bar – to represent the client in the settlement conference.

Since August 1, 2011 RDAC and LSHV are now up to 10 households being served – and many more on the way.

Our partnership with Legal Services of the Hudson Valley and the private bar has provided us with a vital resource to offer our clients. We have helped homeowners in Orange County for years – and we are very good at it. But now we have access to legal help to carry the ball further – and together – we are making a difference. Thank you Judge Lippmann for focusing on our community of Orange County and for the opportunity to collaborate in the foreclosure pilot project.

Boris Raishevich

Client of Legal Services of the Hudson Valley, accompanied by
Ndukwe Agwu

Testimony for Boris Raishevich

I am a homeowner in Orange County, New York. I have lived in my home for 25 years. I am currently defending a foreclosure action in the Orange County court, and I am convinced that if I were not represented by Legal Services of the Hudson Valley I would have lost my home long ago.

About four years ago I lost my job in a packaging plant where I was a manager. Since then my wife and I have taken whatever jobs we can to support our family, and I am also self-employed as a farmer. When my income disappeared I requested a forbearance from the bank, but they never answered me.

I began to get calls from the bank about my mortgage payments before they served me with the foreclosure papers. They still call me now. They tell me to sell my house. They never tell me how to save my house, or that they will modify my mortgage.

The attorneys from Legal Services have been with me in court on many occasions. They have pressured the bank to offer me a modification. They give me confidence that the court system can actually work to help me save my home.

When I came to court with an attorney I still do not believe the bank's attorneys took me seriously, until my attorneys submitted a motion. Then the bank could see that it was not going to be a simple matter to say I had to leave.

I am an immigrant and I have three children. My oldest has graduated college and has a PhD. My second is in college, and my youngest still lives at home. This house has been their only home.

During the last two years I have had to be in court at least 10 times for this foreclosure. The bank's attorneys always say that I am not qualified for a modification of my mortgage. But somehow, my attorneys always convince the Hearing Officer that I should be given a chance to pay my mortgage, and we continue to try to get them to give me a modification agreement.

I am convinced that if I did not have an attorney to represent me I would have been foreclosed long ago, and my house sold. I now at least have hope that I can get an opportunity to save my home.

Alina Saez,
mother of Justin Rosario

Client of Legal Services of the Hudson Valley, accompanied by
Gina DeCrescenzo

Testimony of Alina Saez

**For the Chief Judge's Hearings on
Civil Legal Services**

Presented before

**Hon. Jonathan Lippman, Chief Judge of the State of New York
Hon. Ann Pfau, Chief Administrative Judge
Hon. A. Gail Prudenti, Presiding Justice, Second Department
Vincent E. Doyle, III, President New York State Bar Association**

**September 20, 2011
Westchester County Courthouse
White Plains, NY 10601**

Testimony of Alina Saez, mother of Justin Rosario

Good morning. My name is Alina Saez. I am a single mother of a 16 year old child who has special needs. His name is Justin and he is here with me today.

Justin has been diagnosed with severe developmental disabilities and has been classified by the Ossining School District as Intellectually Disabled and Emotionally Disabled. Justin and I moved into Ossining in April of 2010. From April 2010 through November 2010 – only a 6 month period according to a school calendar - Justin was suspended or otherwise disciplined approximately 20 times! On November 16, 2010, Justin was suspended because he threw a pencil across the classroom. The pencil did not hit anyone nor was it Justin's intention to hit anyone - he was just having a very bad day.

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

I signed the stipulation. I did not know my options or my rights at that time. I knew my son threw the pencil. I thought I was doing the right thing. This resulted in Justin being suspended for approximately 80 days. I tried everything I could to get the District to find Justin an

appropriate placement. I knew it wasn't right that Justin was not receiving an education - that he was not receiving the counseling that he needed – that he was not receiving any of the services or supports that are designated on his Individualized Education Program – his IEP. But the District refused to listen to me. After 80 days of agony, the District *finally* found Justin a placement- in a 24 hour residential facility for extremely emotionally disturbed children... in another county! The most restrictive setting for Justin. That is what led me to Legal Services of the Hudson Valley. I knew Justin would never survive, let alone progress, in this setting. I was put in touch with Gina DeCrescenzo and she immediately reviewed my paperwork and decided to file a complaint on our behalf. This complaint explained all of the District's failures to provide Justin an appropriate education since he arrived in Ossining and asked for relief that we hoped would put Justin back on track.

Ms. DeCrescenzo filed a due process complaint against the District. She negotiated with them and attended several meetings with the District for approximately 2 months. The District held firm to their position that Justin needed a 24 hour residential setting regardless of what I believed and refused to conduct an updated psychological evaluation to better understand the root of Justin's problems. They also refused to offer any more than 60 hrs of compensatory educational services and 4 hours of compensatory counseling to make up for the time that my son had lost.

My attorney did not waiver from her position - instead she held her ground and moved forward to say that this was not ok. We proceeded to the due process hearing. On the eve of the 1st day of the hearing, the District's attorney called Ms. DeCrescenzo and gave in to ALL of our requests. To name a few, Justin was placed in a therapeutic private day program, the District agreed to

provide 20 hours of 1:1 counseling as compensatory counseling, the District agreed to provide 180 hours of 1:1 tutoring with a special education teacher as compensatory educational services to be used whenever I want and without an expiration date, and the District agreed to pay for a neuropsychological evaluation by an independent provider of my choosing.

At this time, my son Justin is attending a school that he loves and one that is meeting his needs. This all because of legal services' help and efforts. I don't know where Justin or I would be at this moment if not for them. Legal Services made every stride in helping us through this difficult challenge because as I said previously the Ossining School District was not providing my son with any help or alternatives rather than to just get rid of him and whatever happens happens. Instead my attorney fought long and hard for our rights and services. I would like to take this time to sincerely thank you Gina DeCrescenzo because without you I know they would have never given Justin what he needed and deserved. Gina DeCrescenzo came into our lives and turned it all around. Amazing is all I have to say and I feel that if every person knew and or needed Legal Services they would have the same outcome as we had: SUCCESS!

Thanks Gina DeCrescenzo & Legal Services of the Hudson Valley. We appreciate you!

William M. Savino

Managing Partner, Rivkin Radler LLP

Member of the Board, Long Island Association



Attorney Profile

William M. Savino

Partner

William M. Savino serves as Rivkin Radler's Managing Partner and is Chair of the firm's Executive Committee.

Mr. Savino's practice concentrates on commercial and insurance coverage litigation and related counseling. He has litigated before trial and appellate courts throughout the United States. He has represented certain insurers in the *September 11 World Trade Center Liability Coverage Litigation*; the *BPA-Plastic Products Coverage Litigation* and *Shell Oil Company v. Aetna Casualty and Surety Company*. He has served as counsel for insurers in the defense of class actions involving interest charges and numerous insurance coverage claims and suits ranging from intellectual property liabilities and business torts to national environmental, antitrust and fiduciary claims.

An active speaker across the United States, Mr. Savino has recently presented workshops on medical monitoring "no injury" suits, privacy, terrorism-related liabilities and the relationship between primary and excess insurers.

Mr. Savino serves as a member of the Board of Directors of Fireman's Fund Indemnity Corporation, Chair of the Audit Committee. He is Immediate Past Chairman of the Board of Directors of Long Island's United Way; a member of the Boards of Directors of the Long Island Association and the Nassau County Bar Association, where he served as President. He also served as Mayor of the Village of Old Brookville, NY and President of the Villanova University Alumni Association.

Mr. Savino has been appointed by the Governor to the New York State Judicial Screening Committee to sit on the Nassau County Judicial Panel. He is also a member of the State of New York Tenth Judicial District's Independent Judicial Election Qualification Commission and the Unified Court System's Statewide Commercial Division Discussion Group. He has been listed as one of the 100 Most Influential Long Islanders by the Long Island Business News, and is among the Top 50 Most Influential Long Islanders by the Long Island Press.

Mr. Savino is a recipient of the Fordham University School of Law Long Island Distinguished Alumni Award. On Oct. 8, 2010, Mr. Savino received the Firefighters Leadership Award by the Nassau County Firefighters Museum.



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BAR AFFILIATIONS

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President 2003-2004
New York State Bar Association
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**TESTIMONY BEFORE THE TASK FORCE
TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK**

TUESDAY, SEPTEMBER 20, 2011

WILLIAM M. SAVINO, ESQ.

MANAGING PARTNER
RIVKIN RADLER LLP

Chief Judge Lippman and distinguished panelists, thank you for this opportunity to provide testimony on the acutely important topic of access to civil legal services - - access to justice - - in New York

My name is William Savino. I am the Managing Partner of Rivkin Radler LLP, Long Island's largest law firm. I have served as President of the Nassau County Bar Association. I am the immediate past chairman of the Board of Directors of the United Way of Long Island. I am a founding member of the Long Island Insurance Community that has raised in excess of \$3 million - - funds that have been spent on behalf of those in need across Long Island. I have also served as a member of the Board of Directors of the Long Island Association, Long Island's largest business association.

Before proceeding further, I would like to thank you, Chief Judge Lippman and the Office of Court Administration for focusing attention on the vital need to assure access to justice and the associated funding of civil legal services.

Long Island is a critically important economic component for New York State. Its 2010 gross metropolitan product, a measure of its output of goods and services exceeded \$120 billion, as set forth in the Long Island Association's soon-to-be-released, "Annual Business Fact Book 2011." Excluding New York City, Long Island accounts for two-thirds of the combined output of New York's metropolitan areas.

According to the US Census, there are 1,339,532 residents in Nassau County and 1,493,350 residents in Suffolk County. It is without question one of the most desirable as well as most expensive places in the United States to live.

As the Business Fact Book notes, Long Island is fortunate to have a highly educated and talented workforce. This is matched by a strong array of small businesses that have shown great agility in the face of a recessionary economy. Long Island's small businesses have shown a great entrepreneurial "know how" especially under these unpredictable and rapidly changing business conditions.

The Long Island business community, as mentioned, largely comprises small businesses. According to the Long Island Association's, "Annual Business Fact Book 2011":

- "Almost two-thirds of all Long Island business establishments (nearly 61,000) employed 1-to-4 persons in 2009. Almost 90% of them employed fewer than 20 persons."
- Of the 96,440 businesses located in Nassau or Suffolk Counties, 93,126 have fewer than 100 employees.
- An estimated 109,100 Nassau-Suffolk residents were unemployed in 2010. This official unemployment figure excludes "discouraged" workers who are no longer actively seeking work and those working part-time involuntarily. The unemployment rate on Long Island exceeded 7% in June 2011. The New York State Department of Labor has reported that Long Island had lost 13,000 jobs from August 2010 to August 2011.
- In early August 2011, Newsday reported that more than 43,000 Long Islanders have exhausted their extended unemployment benefits in the past 17 months, increasing pressure on the strained economy and social services agencies, already facing reduced budgets.
- On Long Island from 2008 until December 31, 2011, foreclosure filings, as noted in the records of the Long Island United Way, were made against 36 of every 1,000 homes.
- As reported by the Empire Justice Center (with data current as of September 1, 2010), Suffolk County leads New York State with the most loans in foreclosure, and a similar number of loans at imminent risk of foreclosure.
- Foreclosure filings are up 319% in Nassau County, 274% in Suffolk County with estimates between 44% and 70% of New Yorkers facing foreclosure unrepresented by counsel.
- Nassau/Suffolk Law Services reports that in 2009, the Cities of Long Beach and Glen Cove and the District Courts in Nassau County and Suffolk County handled a total of 18,057 eviction cases. I would like to quote from a report prepared by Nassau/Suffolk Law Services

We know from our staff's frequent presence at Landlord-Tenant calendar calls that the vast majority of these were residential evictions, each of which involved a family facing the loss of its home and the frightening prospect of homelessness. This does not even include the cases from the Town Justice Courts in eastern Suffolk, which handle all of the evictions for the five easternmost towns. At 10,194 cases, Suffolk County had more eviction cases than any locality in the state outside New York City, exceeding Buffalo by more than 2,300 cases. Nassau County was a close third behind Buffalo, with 7,398 eviction cases. The courts make short shrift of unrepresented tenants, pushing through in a morning

calendars which may contain over a hundred cases, and determining the fate of a family in a few short minutes. All of Law Services projects combined provided legal assistance in 2,551 landlord-tenant matters last year, and provided legal representation in court on 1,475 of them (in some instances representing the same household in multiple consecutive cases brought against them by their landlord.) We successfully prevented eviction for 580 households (comprised of 1,679 persons) which, when you consider the cost of placing individuals and especially families in emergency shelter, as described above, is not only a benefit of vital importance to the households themselves, but a cost-effective means of reducing a burden on the public fisc. We also accomplished a significant delay of eviction in 960 cases, involving 2,994 persons. These delays, particularly when coupled with a reality check from the attorney early in the process to motivate the client, will often provide enough time for the tenant to secure alternate housing before an actual eviction and homelessness occur.

In the past decade, Nassau added 1,100 households and Suffolk added more than 30,000. There was a notable increase in single-parent households, particularly female headed households with children under 18. Non-family households, generally composed of individuals living alone, also increased -- many of them seniors living alone. These non-family households had significantly lower incomes than family households.

Long Island's United Way has long sponsored a program, "Project Warmth." Project Warmth assures delivery of energy to supply heat to those who cannot otherwise afford this basic human need. There has been a remarkable surge in the number of families in need of the services of Project Warmth matched, I might add, by an equally remarkable surge in the number of public utility "shut offs" to family residences in these pressing economic times.

When coupled with local government cuts in social services and even tighter allocation budgets among Long Island's many not-for-profits, one thing is clear: the "safety net" for the growing numbers of those among us who are less fortunate, is shrinking.

Inevitably, these "Long Island dynamics" will surely convert to an increased need for civil legal services by those adversely impacted. So, allow me to add yet another voice to those who have preceded me in exclaiming that access to justice, especially under the dynamics recounted in my testimony, is central to the vitality of Long Island's economic health. If Long Island is to fully exploit its first rate competitive advantages, yes, it must hold taxes down, provide affordable housing for its resident workforce, and ever improve its education and transportation systems. But, Long Island must also be assured that sufficient funding is available to provide its less fortunate residents with access to civil legal services. To do so is consonant with the goal of a thriving Long Island economy.

- For example, the Federal Reserve Bank of Boston recently reported on “Foreclosure’s Price-Depressing Spillover Effects on Local Properties” concluding the spillover effects vary in form: lowering nearby property values, reducing the local property tax base, increasing blight and crime, and disrupting basic social ties. These problems on Long Island, I am convinced, could be better managed and reduced by providing the appropriate legal assistance at a much earlier point and throughout the legal entanglements that so often result.
- The spillover will have negative financial implications for the small businesses on Long Island that rely on a stable workforce; stable property values and a tax base that cannot afford any further increases.
- As noted in its March 2011 report; “The Mortgage Meltdown II,” the Empire Justice Center noted that housing counseling saves homes; that homeowners are 1.7 times more likely to save their homes with the assistance of a housing counselor. The report further remarked that (i) housing counselors and legal assistance providers work closely together in every county in the state; (ii) homeowners are less vulnerable to financial scams when they have access to local resources; (iii) courts depend on referring homeowners to service providers; and (iv) those homeowners with legal counsel promote efficiencies in the judicial process, raise appropriate defenses to protect homeowners against lenders who broke the law and help re-negotiate loan terms.
- And, in sum, the challenges facing Long Island’s less fortunate make evident those key findings articulated in the Task Force’s November 2010 report.

The need for access to civil legal services, to state the obvious, grows as our economic conditions have worsened, bringing to mind a brief passage from one Dr. Suess, who so often, in so few words, made such powerful statements about the human condition. Dr. Suess once said: “Unless someone like you cares a whole awful lot, nothing is going to get better. It’s not.”

For more than a decade, my partners and associates have served as pro bono counsel for Nassau/Suffolk Law Services’ Landlord/Tenant Dispute Panel. From this experience, we can tell you, first-hand, the dramatic difference counsel can make in expediting the judicial process and protecting the indigent in housing disputes. Often these representations have resulted in peaceful settlements benefiting both litigants as well as minimizing the court’s time. It is a win-win for all concerned.

Allow me a moment of American pride. We, as fortunate citizens of this great nation, promptly rise, remove our hats, and clasp our hands over our hearts with pride, reverence and commitment in the presence of the American flag to recite our Pledge of Allegiance;

**"I pledge allegiance to the flag of the United States of America,
and to the republic for which it stands, one nation under God,
indivisible, with liberty and *justice* for all."**

Now, especially now, in these times, we pause and urge that without "access" we will have left "justice" as a mere word, not a tangible, valuable community benefit that functions in harmony with a thriving Long Island economy. Thank you.

Hon. Anthony A. Scarpino, Jr.

Westchester County Surrogate, Acting Supreme Court Justice,
and Supervising Judge for Fiduciary Matters, Ninth
Judicial District

Co-Chair, Ninth Judicial District Pro Bono Action Committee

HON. ANTHONY A. SCARPINO, JR.
WESTCHESTER COUNTY SURROGATE

Born and raised in Mount Vernon, Judge Scarpino attended Mount Vernon High School and graduated with High Honors from the University of Connecticut. He received his Juris Doctor Degree from Syracuse University College of Law where he was selected the Dean's Outstanding Student, was President of the Law Student Senate, and was elected to Who's Who among students in American Universities and Colleges.

After law school, Judge Scarpino served as an Assistant Corporation Counsel for the City of Mount Vernon. He left local government in 1977 to become a Special Agent with the Federal Bureau of Investigation (FBI). During his tenure with the FBI, he worked on numerous civil rights violations, bank robbery, kidnapping, extortion cases and foreign counter intelligence matters.

After a brief stay with Banker's Trust Company as an Assistant Vice President, in 1984 Judge Scarpino was appointed Associate City Court Judge of Mount Vernon by the late Mayor Thomas E. Sharpe. In 1985, he was elected City Judge. In 1986, he became Senior City Judge, presiding over one of the busiest courts in the County. In November 1988, Judge Scarpino was elected Westchester County Court Judge. At thirty-seven, he was the youngest County Court Judge in Westchester's history.

In July 1989, he was appointed Acting Supreme Court Justice and was assigned to expand the Special Narcotics Part in the Westchester County Courthouse. In July 1991, he was reassigned and presided over the most serious criminal cases occurring in Westchester County. In 1993, he was elected to the New York State Supreme Court for the Ninth Judicial District. He was assigned to Rockland County and Westchester County handling Civil Parts. In February 1998, he was assigned to the Special Matrimonial Part. In November 2000, Justice Scarpino was elected Westchester County Surrogate. In addition to his responsibilities as Surrogate, in April of 2005, Judge Scarpino was appointed Co-Chair of the Ninth Judicial District Pro Bono Action Committee. He continues in that capacity to this date. In addition, in June of 2006, Judge Scarpino was appointed Supervising Judge of the Matrimonial Part of Westchester County. He served in that capacity until his appointment in January of 2010 as Supervising Justice for Fiduciary Matters and Article 81 proceedings in the Ninth Judicial District.

In 2006, he was recognized by *Lawdragon* Magazine as one of the top 500 judges in the United States, and the Westchester County Bar Association for his contributions to the legal community. In 2007, he received the "Justice For All Award" from the Westchester Women's Bar Association for his work in the Pro Bono area. In 2009, he received the Columbian Lawyers Association Distinguished Service Award. In 2010, he was re-elected Surrogate of Westchester County with the endorsement of all political parties.

Judge Scarpino is an adjunct professor at Pace Law School, teaching Surrogate's Practice; Iona College, teaching Criminal Law, Procedure, and Evidence to graduate students in the Criminal Justice Department and Westchester Community College, teaching Health Care and Medical Malpractice Law. He is a member of the Pace Law School Board of Visitors, the Westchester County Task Force on Bias and Hate Crimes and was the Ninth Judicial District's Coordinator for the Simon Wiesenthal Center's Task Force Against Hate.

MEMORANDUM

TO: HON. JONATHAN LIPPMAN
Chief Judge of the State of New York

HON. ANN PFAU
Chief Administrative Judge

HON. A. GAIL PRUDENTI
Presiding Justice

HON. SEYMOUR W. JAMES, JR.
New York State Bar Association President-Elect

FROM: HON. ANTHONY A. SCARPINO, JR.
Westchester County Surrogate

DATE: September 9, 2011

RE: **Testimony Summary for September 20, 2011 Hearings**

My testimony will discuss the importance of adequate funding to support the providing of counsel to the needy. This testimony is based upon my 28 years of experience and observations as a trial judge in City, County, Supreme and Surrogate's Courts as well as my responsibilities as co-chair of the Ninth Judicial District's Pro Bono Action Committee since 2005.

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New York State Bar Association President-Elect

FROM: HON. ANTHONY A. SCARPINO, JR. 
Westchester County Surrogate
AJSC, Supervising Judge for Fiduciary Matters, 9th JD

DATE: September 13, 2011

RE: **The Chief Judge's Hearings on Civil Legal Services - 9/20/11**

Judges Lippman, Pfau, Prudenti and Mr. James, thank you for the opportunity to appear before this panel to discuss the importance of adequate funding for civil legal service for the needy.

I have had the privilege of serving the people of New York as a judge in various trial courts for the past 28 years. In each and every court, I have witnessed the difficulties and inequities faced by pro se litigants who cannot afford legal representation. Over the years, I have also witnessed an increase in the number of such pro se litigants. The consequences of the increase in such unrepresented litigants are numerous. I would say that these effects fall into two categories: first are those on the pro se litigants themselves; second are the effects on the Court system and all litigants, even those not involved in litigation with a pro se litigant.

Obviously, the most immediate effect on pro se litigants is their ability to prove or to defend their respective case. As this esteemed panel is well aware, case law requires Courts to hold pro se litigants to the same standards of conduct and procedure to which attorneys are held. However, few, if any, pro se litigants are capable of meeting this standard, and Judges and Court personnel are legally and ethically forbidden from providing litigants with legal advice. As a result, more often than not, pro se litigants with a meritorious case simply lack the ability to prove their

case. Either they do not know what they have to prove and/or how to prove it. And, the Courts are powerless to help them do so.

I could recite countless instances in which a pro se litigant's inability to afford counsel resulted in an injustice which I was powerless to prevent. For example, during my tenure as a City Court Judge in Mount Vernon handling landlord/tenant matters, most unrepresented tenants did not know how to prove a case involving a landlord's breach of the warranty of habitability. If not for the assistance which the Legal Services of the Hudson Valley provided to some of these needy tenants, unscrupulous landlords would have been able to charge rent without providing basic services bargained for by their tenants, with catastrophic consequences to the tenants. Unfortunately, Legal Services of the Hudson Valley is simply unable to meet the overwhelming need for legal counsel in these matters. Later, as a Supreme Court Justice (as both an IAS Justice in the Westchester Matrimonial Part and as a Supervising Justice of the Matrimonial Part), and, of course, as Surrogate for the past 11 years, I have regularly presided over litigations involving unrepresented litigants who cannot afford counsel. Unfortunately, some of these situations provided the same potential for inequitable results.

Another potential consequence of litigants being forced to represent themselves is how their experience affects their perceptions of the Court system and justice. Many pro se litigants do not understand the legal and ethical limitations placed upon the Courts. Sincerely believing that they have suffered some legal wrong, they not only come to the Court seeking justice, but believe that the Court's role is to help them achieve their vision of justice. When the Court cannot help them in the way they believe it should, and they ultimately lose the case, some walk away convinced that "justice" is a concept reserved for those who can afford an attorney, or that a particular judge is ignorant, biased or corrupt.

Matters involving pro se litigants also affect the Court system overall, and therefore, all litigants appearing in the Court. Having handled thousands of pro se matters, I can confidently state that a "routine" pro se matter does not exist. Rather, matters involving pro se litigants regularly place disproportionate demands on the time of Court system personnel. Based on my personal experience, I estimate that litigation involving an unrepresented litigant generally takes 3-to-4 times longer than does a comparable matter in which the litigants are represented by counsel. Ultimately, this adversely affects the Courts' ability to administer justice efficiently to all litigants, not only pro se litigants. This is particularly true, and even more so, when a matter involving a pro se litigant goes to trial. In the future, this will only be magnified by the judicial system's ever-increasing caseload and by staff reductions due to budgetary constraints.

With those factors in mind, members of the Ninth Judicial District Pro Bono Committee, of which I am the Co-Chair, have spent an enormous amount of time and energy to recruit private attorneys to assist financially eligible unrepresented litigants. Since 2005, we have personally recruited approximately 500 Westchester attorneys to volunteer their time through the Legal Services of the Hudson Valley to assist the such litigants in Landlord/Tenant, Matrimonial, Domestic Violence,

Foreclosure, Family Court, Consumer, Elder Law and other matters. Originally restricted to Westchester County, similar committees have been formed to cover the other four counties in the Ninth Judicial District, resulting in the successful recruitment of an additional 400 attorneys to serve the neediest members of those counties. At present, the Pro Bono attorney list for the district is nearly 900 attorneys.

Unfortunately, the efforts and energies of all the members of these committees, which include judges, bar association representatives, legal service providers and private practitioners, are about to be for naught due to the recent reductions in funding to the Legal Services of the Hudson Valley. It and other similar provider organizations are the critical link between the committees' recruitment efforts and those who need representation. Those organizations are the match-maker that complete the circle. Without them, the efforts bear no fruit.

Specifically, I would like to highlight two programs initiated by the Pro Bono Committee to demonstrate the substantial loss that has occurred by the recent elimination of the Pro Bono coordinator of the Legal Services of the Hudson Valley due to budget cuts.

Project "FAIR PLAN" (Family Attorneys in Rockland Providing Assistance Now) was envisioned as a partnership between the Court system, Legal Services of the Hudson Valley and local attorneys in Rockland who are experienced, volunteer, family law attorneys. These attorneys were to be trained specifically to give advice and counsel to pro se litigants in the context of limited scope representation. The project was housed in the Family Court in Rockland County and overseen by the Legal Services of the Hudson Valley pro bono staff. FAIR PLAN recruited volunteer attorneys through offering a free Continuing Legal Education program as well as the ability to earn further CLE credits for their pro bono work on the project. During the pilot stage of the project, we successfully recruited approximately 35 volunteer attorneys, and a Legal Services coordinator staffed a help desk once a week so that any eligible unrepresented litigant could utilize the program. Not only did otherwise unrepresented litigants receive legal counsel, this collaboration significantly reduced their requests of assistance from the Court staff members. This latter aspect was particularly significant because the Court staff members were unable to give the time and attention needed to meet the volume of litigants seeking assistance.

Unfortunately, due to the recent budget crisis, the project lost funding for the position of pro bono coordinator, and the pilot program was discontinued. The local service provider, Legal Services of the Hudson Valley, has only one pro bono staff member, and she is simply unable to coordinate and supervise such a program in addition to her other duties for the agency. Encouraged by the original success of the Project FAIR PLAN, Committee members in Dutchess County intended to implement a similar project in Dutchess County Family Court, but the lack of a staff person to coordinate such a project resulted in an indefinite hold on its inauguration.

Similarly, budget constraints led to the cancellation of Project APARTMENT SAVE, a pilot program aimed at providing counsel to unrepresented litigants in

landlord/tenant proceedings in Westchester County. The local city and town Judges supported the project, and in the City of Mount Vernon, the Judges participated in a free continuing legal education program to ensure that the volunteer attorneys were properly trained. Again, the project was terminated due to the lack of supervisory and administrative resources resulting from the loss of the Local Action Committee's pro bono coordinator.

On a positive note, one continued success remains – the Matrimonial Assigned Counsel Program, a collaboration between the Ninth Judicial District's Administrative Judge's office, local legal services agencies (both Legal Services of the Hudson Valley and the Legal Aid Society of Rockland County), and the local matrimonial bar. In Westchester, Orange and Rockland Counties, the local legal services organizations screen unrepresented litigants in matrimonial actions to determine whether they are "income eligible" pursuant to the federal poverty guidelines, and, if so, assist them in preparing pro se applications to the Administrative Judge for assignment of counsel. If found eligible, the Administrative Judge will assign an attorney to represent the litigant on a pro bono basis. The attorneys are then eligible to receive CLE credits through the legal services agency for the time spent working on the case. This program is hugely successful and serves approximately 250 people per year who would not otherwise be able to procure legal counsel. This program is vital to the operation of the already overburdened matrimonial part in that it relieves the Court of the difficulties inherent in dealing with pro se litigants.

The administrative costs of establishing and maintaining successful pro bono programs are not insignificant, and in the present economic climate, it is understandable that funding must be trimmed. However, the costs of these programs are minimal when seen in the context of the return they provide. Litigants who cannot afford counsel deserve the same justice as those who can, and sometimes these programs provide the only means to ensure that these litigants are properly represented. The partnerships and programs that have grown from the work of the pro bono local action committees during the past six years have been an invaluable tool in assuring that justice for all is a meaningful concept in the Ninth Judicial district and elsewhere. The loss of funding of one administrative position has put the committee in a position where it is impossible to continue its work on a scale that is needed to meet the ever-growing demand.

Obviously, I do not mean to imply that every pro se litigant has a meritorious case, which they would be able to prove if only they were represented by counsel. That, however, does not minimize the benefit of those who cannot afford to retain counsel having access to competent, independent legal advice. In fact, sometimes the people who would benefit most are those without a meritorious case. That is, an attorney representing their interests should be able to explain why they would be unsuccessful if they pursued a matter through litigation, thereby avoiding an unpleasant experience for the litigant. Likewise, the early intervention of counsel, sometimes a simple letter, could prevent other disputes from making it into the courthouse. However, once they are in the Court system, pro se litigants generally do not have a positive experience. Nor does the Court or the other litigants.

It seems to be a popular mantra in the world of politics that we have to return to our founding father's thoughts. A Benjamin Franklin quote seems appropriate to sum up and conclude my thoughts concerning the benefits of providing needy pro se litigants with access to independent legal advice... "An ounce of prevention is worth a pound of cure."

Barbara J. Strauss

Immediate Past President, Orange County Bar Association

Barbara J. Strauss, Esq.

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In 1980, Barbara Strauss began her career as a lawyer in the New York offices of the United States Department of Health & Human Services. In 1982, she took a position with the Orange County District Attorney's Office, serving as a Senior Assistant District Attorney for eight years. As the Senior Assistant District Attorney, she was in charge of the prosecution of child sex abuse cases and supervised the appellate litigation. In 1990 she left the District Attorney's Office and established her own law firm. Barbara Strauss has maintained a private practice for over 20 years dedicated to advocating for men, and women coping with divorce, family law disputes or criminal charges. She represents clients in Orange, Sullivan, and Ulster Counties. Barbara Strauss is also a court appointed lawyer for children representing children's interests in divorce, custody and child abuse matters. For over five years she has co-taught the Parents Apart teaching parents in the midst of custody disputes about the impact of litigation on children.

Ms. Strauss is an active member of numerous legal organizations and has taught continuing legal education classes to lawyers, and has been an attorney/teacher at the Intensive Trial Advocacy Program at Yeshiva University's Cardozo School of Law. She is also an active and contributing member of the Goshen community. She is the Immediate Past-President of the Orange County Bar Association (2010-2011) and is a former president of the Women's Bar Association of Orange and Sullivan Counties. She is also a member of the House of Delegates of the New York State Bar Association. She is also a Member of the Grievance Committee for the 9th and 10th Judicial Districts, and a founding member of the Orange County Collaborative Practice Group.

Her *pro bono* and community activities include, "A Friend's House" Runaway and Homeless Youth Shelter Advisory Committee; Board Member, YWCA of Orange County; Orange County Safe Homes; Orange County Dispute Resolution Center; Leadership Orange, Goshen Central School District; Former Member, Board of Directors, Goshen Chamber of Commerce and the Mental Health Association of Orange County; Volunteer Mediator, Orange County Dispute Resolution Center, Parents Apart Program.

Among her awards, Ms. Strauss, has been honored with the Pro Bono Award for Outstanding Contribution, Orange County Bar Association, 1994; received the Special Recognition Award for Pro Bono Activities, Field of Family Law, American Bar Association, 1994 and was presented Women of Achievement of Orange County Award, by the Sarah Wells Girl Scout Council and the YWCA of Orange County, 2004. She received her J.D. degree from New York University Law School and graduated with a BA in psychology, *cum laude*, from Wesleyan University.

**Testimony of Barbara J. Strauss
Law Office of Barbara J. Strauss
Goshen, New York (Orange County)
Immediate Past President of the Orange County Bar Association**

Hearings to Expand Access to Civil Legal Services in New York

Presented before:

**Hon. Jonathan Lippman, Chief Judge of the State of New York
Hon. A. Gail Prudenti, Presiding Justice of the Second Department
Hon. Ann Pfau, Chief Administrative Judge
Seymour W. James, Jr., President Elect of the New York State Bar
Association**

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

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

In Orange County, as in other suburban/rural counties, the economic downturn has increased the challenges faced by legal service providers. But one issue has had a

particularly profound and troubling impact on Orange County, the foreclosure crisis. Our proximity to jobs in the metropolitan area has created enormous housing development in the last few decades. But much of that seemingly affordable housing has been financed by the kind of loans that borrowers ultimately could not handle when the economy turned and they had increasing difficulty meeting their payments. As a result, foreclosure filings have soared in the county, a crisis that persists. And many, if not most of the homeowners facing foreclosure, cannot afford the legal representation that is important in protecting their rights against lenders, who always have lawyers, in court proceedings many ordinary citizens find difficult to understand.

I was president of the Orange County Bar Association in February 2010 when heard that Judge Lippman named Orange County as one of two counties in a pilot project to offer representation in settlement conferences for homeowners facing foreclosure. I thought, "That's great, let me see what we can do to help." Judge Lippman had recently given an address to the Orange County Bar Association—I gave him a call and told him how excited we were and asked how we could best contribute, so we were actively involved right from the get-go. We spread the word to attorneys through our e-mail network, stayed in close communication with legal services providers working on behalf of low-income persons in our community, and immediately had a group of lawyers signed up to attend the training programs necessary to be *pro bono* contributors to the pilot project.

The Orange County Bar Association was particularly eager to support the project because our entire community has been hit so hard by the foreclosure crisis. While protecting our neighbors from the terrifying prospect of losing their homes drives our

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

Here's one example of the ripple effect caused by the rise in foreclosures from my own practice: in a large number of the divorce proceedings I handle, the parties owe more money on their mortgage than their home is currently worth. In those situations, the couple is forced to make a series of complex calculations—if they can sell, will the bank accept a short sale; should one of them stay in the home, should they wait a few years and hope that the market recovers, or do they have no choice but to let the mortgage go into default and lose the home. Dividing marital assets in a mutually acceptable way is always difficult, but it has become even more challenging in the current economic environment.

With alarming frequency, parties facing foreclosure hit a point where they utterly give up—they stop attempting to pay their bills, stop trying to preserve their credit ratings, stop opening the threatening-looking envelopes that arrive in the mail, and simply abandon their homes. Dedicated attorneys can help these men and women to

realize that they have other, better choices. Even slowing the foreclosure process by a few months can make a tremendous difference in the lives of those affected, providing them with an opportunity to accumulate some savings before they seek alternate housing. Others may have the opportunity to modify their loan at a lower interest rate or a longer term. By showing those facing foreclosure that they have more options than they supposed, families are kept in their homes, communities are preserved and our local economy is protected. Without representation, foreclosures cause even greater harm than the sad consequences of loss of a real estate investment. Credit is ruined; it becomes difficult to find alternative housing because of lack of credit, neighborhoods falter, businesses serving the neighborhoods lose money and the funding of local schools decreases. It is genuinely scary.

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

Thank you for this opportunity and for your extraordinary efforts to provide much needed legal services for people facing the frightening prospect of homelessness.

Terri Torchio

Director of Economic Independence, Department of Social
Services, Orange County (on behalf of Commissioner
David Jolly)

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

Testimony Summary

Orange County Department of Social Services

Presented by: David Jolly, Commissioner

Chief Judge of the State of New York, Hon. Jonathan Lippman, Presiding Justice A. Gail Prudenti, Chief Administrative Judge Ann Pfau and New York State Bar Association President Elect Seymour W. James, Jr. Thank you for providing us with this opportunity to address your panel today on civil legal services in New York. Let us start by applauding your efforts to strengthen the health and well being of New York residents by addressing the need for civil legal services across the State.

We deeply appreciate and applaud your commitment to ensuring that the most vulnerable people among the growing Orange County population receive the quality services they require and deserve. We especially appreciate and applaud your commitment to a local exploration combined with solutions at the state level for these very significant issues. We know that, through your leadership, effective change can be accomplished. We are committed to work with you to create and implement the solutions that will ensure the continued opportunity for people to achieve greater economic security resulting in lives that are healthy, satisfying, and productive.

We understand the complexities and importance of ensuring that the New York State meets the needs of the most vulnerable residents while protecting the fiscal integrity of the State and its collective tax payers. With this understanding, we need to identify a balance between cost and access to ensure that our most vulnerable residents continue to have access to vital services, including civil legal services. In many cases, access to civil legal services for our working poor families can be the most important service they receive.

While the need for access to civil legal services is essential in many areas for our most vulnerable consumers, today we would like to focus on two essential services: housing and domestic violence.

Housing:

Far too many of our working poor / under employed families have very limited access to social welfare service as they remain just above the threshold for direct assistance. In these circumstances, access to legal service becomes essential as they may experience difficulties with housing, day care, employment and / or disability assistance which requires a high level of technical expertise in order to access assistance.

Access to civil legal service in the area of housing has become the most important issue facing our most vulnerable residents. As the economic recession has continued, the rental market where far too many of our consumers live is becoming increasingly complex to navigate and access to affordable units is at an all time low. As new home sales have slumped and foreclosures have risen, more and more families living on the economic edge have found themselves in the rental market. As new residents have moved into the rental market and / or choosing to wait longer to purchase a new home, market rates for the County have outpaced wage increases by record margins.

While logic may dictate that during a recession, prices decrease the opposite is true in the rental housing market. The basic economic principals of supply and demand conspire to place new pressures on the County low income population. As supply dwindles and demand increases the corresponding market rates for the County continue to grow. In years past, being late on a rent payment might not result in much attention from the landlord, as the supply of rental units far outpaced the demand. During these times, landlords are patient with families as they struggle to figure out which bills to pay first with their limited resources.

As the supply has begun to dwindle, our most vulnerable residents can no longer prioritize the repair of a car over the payment of rent, during difficult months as eviction proceedings are much more likely to begin soon rather than later. In these cases, access to the expertise and legal assistance offered by agencies such as the Hudson Valley Legal Services become important. Many of our consumers have limited knowledge of their rights in the market place and can be easily taken advantage of. In most cases, our families facing eviction in Orange County are hard working families, living at the brink of financial disaster, where making decisions such as how to pay their rent are topics at the dinner table each and every night of the week.

In the area of housing assistance, access to legal services is essential and in Orange County as we struggle with limited resource, housing assistance must be a priority over other forms of assistance.

For our homeless population, access to a safe, healthy rental unit can be almost impossible to achieve. In many of these cases, simple economic principals are at work again creating a situation where our homeless population remains at great risk. In Orange County, we have a unique and creative way to serve our homeless families, with legal services an essential part of the work we do each and every day for our homeless consumers. We have moved to develop a more progressive system for the following reasons: 45% of our homeless population has mental health and / or substance abuse issues, 26% are homeless as a result of an eviction, 18% have a chronic illness and with the changes in rental market lengths of stay have increased over the past few years. For our homeless, access to legal services is the link in the chain that will allow each homeless family and / or individual to find permanency as soon as possible.

For our homeless, legal services should include: eviction prevention, lease protections and tenant awareness. We have found that eviction proceedings can result in significant changes in the rental market, as high quality eviction services tend to have a ripple effect in the community. When access to eviction proceedings is vibrant, the landlords in the area have a greater willingness to work collaboratively with a tenant at-risk of eviction.

We have also found that tenant awareness workshops when run in conjunction with landlords and civil legal providers can have a major impact on the behaviors of both tenants and landlords. Sometimes a simple understanding of the rules, both for tenants and landlords helps to alleviate future problems in the marketplace as tenants and landlords gain a better understanding of each other. In Orange County, Hudson Valley Legal Services has been instrumental in assisting the DSS with implementing tenant awareness workshops across the County, which is a testament to the impact that civil legal services can have within a community.

Eviction prevention, tenant awareness and leaseholder protections are the most important of the civil legal services available in Orange County at present, but access to each of these services is very limited at this time. The investment in civil legal services from the State of New York has been almost non-existent in recent years. In previous years, the State used excess TANF Funds to support eviction prevention services, but as Federal funds have been redirected, access to legal services across the County has grown increasingly limited. Investment is needed today in eviction prevention and homeless prevention services that include both a social and legal component. Efforts to prevent eviction from a social perspective only fall short, as do efforts to prevent eviction from a legal perspective only.

The combination of service is the key, we need to work together to encourage change in the individual or family, while protecting their legal rights. County governments currently make the investment in the social change; we need a greater investment in partnerships on the civil legal services from the State of New York.

Domestic Violence:

Victims of domestic violence face significant challenges as they begin to make the courageous decision to leave an abusive relationship. While safety, social and child welfare services are available, access to legal service remains a critical challenge for most victims.

Safety depends on access to legal services to secure an order of protection, advice and legal expertise that can outline a path through the legal maze into independence and safety.

Additionally, victims of domestic violence often find themselves in need of assistance across systems. They access public assistance, mental health and/or substance abuse treatment, housing crisis's including eviction and foreclosure. Civil legal services assist struggling families and individuals to stabilize by securing access to benefits and programs that help them stay safe, healthy, and sheltered in the midst of crisis. Civil legal services provide cost-saving services to New York State. These preventative services save money in the long run by avoiding the long term costs of hunger, homeless and emergency shelter stays, provision of foster care and chronic health problems associated with exposure to abuse and economic instability.

Thousands of individuals affected by domestic violence and their families rely on civil legal services each year. While research is clear that poverty and the current economic crisis does not cause domestic violence, we do recognize that economic hardship can exacerbate an already unhealthy situation and that those experiencing both domestic violence and poverty are therefore facing significant crisis on two fronts. More importantly, women when they leave an abusive relationship face significant economic hurdles. Access to bank accounts may be limited and credit cards may be terminated if the account was shared. The first few weeks of departure access to a myriad of services is essential to the future success of the family and in many cases, the key can be access to civil legal services to begin process of protecting shared assets. This complex situation reduces access to vital services and increases the number of barriers faced in finding safety. Orange County believes that civil legal services are one of these vital services necessary for victims of domestic violence. This belief is supported by a \$150,000 legal services funding stream that while significant, does not meet the needs of all of our victims.

Our legal service program provide a variety of services relied by victims and service providers across the County. The program helps victims who are abused obtain orders of

protection and secure child support orders, modifications and most importantly matrimonial support. The majority of victims who reach out for assistance to local domestic violence programs include a request for legal services on their list of needs. Victims find it difficult to access legal services for a variety of reasons and lack of resources is the reason most cited. Asking a mother of 3 to pay a \$3,500 retainer on a salary of \$30,000 is often impossible and leaves vulnerable victims arriving at court with no legal representation. They find themselves very quickly overwhelmed by the legal system and lack of quality representation may increase the danger for victims and their children. Moreover, without an attorney victims may find themselves coerced and/or intimidated into making decisions that may not be in their best interest. Recently a victim on domestic violence who was placed on our waiting list for services explained her desperation to find an attorney to help her with her custody case. She had no money for an attorney because even though she was working a full time job and still qualified for civil legal services, access due to a statewide lack of funds creates a prioritization of scarce resources. She tried to work through the legal system on her own but found herself trying to navigate child support, orders of protection and a custody petition with very little support. As the legal proceedings proceeded on, access to resource become increasingly difficult until she finally gave up, dropping the order of protection, settling on child support and agreeing to an arrangement on visitation that was not safe for her, or her family members.

In this case and in many others, the County cannot do it alone; we need assistance and support from the State to develop a comprehensive system of legal protections for victims of domestic violence, who have gained the courage to leave. Without such a robust system, too many of the victims we serve are victimized again as they struggle through the court process.

Civil legal services must be adequately funded by the New York State. The state must make a strong commitment to those most vulnerable, including those affected by domestic violence and their children, to ensure them quality, accessible and affordable legal

representation. Doing so can increase the safety for victims of domestic violence and their children and refusing to do so will most certainly cost the state more in the long run.

Alavita Williams

Client of Legal Aid Society, accompanied by Sumani Lanka

Alavita Williams

Summary of Client Facts

Ms. Williams is a retired New York City Corrections Officer. She came to The Legal Aid Society in 2009 after she had refinanced her mortgage twice, first with Defendant A and less than a year later with Defendant B. Both mortgages were arranged by a group of brokers and a "hard money" lender, and both were adjustable rate mortgages with unaffordable interest rates and grossly unfavorable terms. One of the Defendants dissuaded Williams from retaining her own counsel at the closing by stating that he would take care of everything and that there would be an attorney present at the closing to represent her. In fact, the attorney was working closely with the hard money lender.

At the first closing, through misrepresentations and omissions, the Defendants tricked Ms. Williams into transferring title to her home to a Limited Liability Corporation in the property address' name and she became the sole managing member of this Corporation. Ms. Williams was then deceived into taking out, in the name of the LLC, an approximately 7-year adjustable rate mortgage of \$250,800, starting with an interest-only rate of 15% and a balloon payment of \$250,800 due at the end of the 7-year loan term. This mortgage stripped \$6,900 of equity from Williams' home. Furthermore, unbeknownst to Ms. Williams, the first lender escrowed \$37,620 of equity from the home, paying itself monthly interest-only payments of \$3,135 from the escrow account until April 2007. That lender was not registered to do business in New York State.

Less than one year after the first mortgage refinance, the Defendants conspired to induce Ms. Williams into refinancing her home again, paying off the first lender and losing additional equity. At the closing, Ms. Williams signed the loan documents without a clear understanding as to the amount and the terms of the loan. Without her knowledge, Ms. Williams had executed a document transferring title back to her from the sham LLC and signed two different sets of loan documents to cover the Defendants' trail. As a result of this refinance transaction, Ms. Williams ended up with an adjustable rate mortgage at a higher loan amount of \$282,750 with a initial interest rate of 10.5%, and she paid excessive fees and costs and received a mere \$850.64 at the closing.

Working together with pro bono counsel from Fitzpatrick, Cella, Harper & Scinto, The Legal Aid Society filed suit against these Defendants in federal district court, alleging violations of the federal Truth in Lending Act (TILA) as well as fraud and various violations of New York State law. The district court denied the Defendants' motions to dismiss and then discovery of the Defendants operations proceeded.

As a result of the Society's representation of Ms. Williams, in April 2011 Ms. Williams and the current holder of the mortgage entered into a Settlement Agreement and Loan Modification. Through this agreement, Ms. Williams' principal balance was reduced and she now has a 30 year fixed interest rate of 3%, and affordable monthly payments of \$1,432.05. Ms. Williams also settled damages claims against the individual brokers and the second lender. Litigation is still proceeding against the first lender and the attorney who purported to represent her interests at the first closing.

Introduction by Sumani Lanka

Good morning Chief Judge Lippman and members of the Hearing Panel, and thank you for this opportunity to appear here today. My name is Sumani Lanka, and I am a staff attorney with the Foreclosure Prevention Unit at The Legal Aid Society, Queens Neighborhood Office. I am here today with my client, Alavita Williams, who currently resides in Queens Village, New York with her 14-year-old daughter. According to recent statistics on the foreclosure crisis, Queens County, particularly southeastern Queens where Ms. Williams resides, is one of the neighborhoods in New York City hardest hit by foreclosure filings and their effects on homeowners, tenants and the surrounding community. Many homeowners continue to remain unrepresented in Court, resulting in vast numbers of unresolved foreclosure cases, uncertainty in the neighborhood and declining property values. In fact, throughout all the boroughs of New York City, foreclosures continue to be a pervasive problem which homeowners are ill-equipped to face without legal advocacy or assistance. In our last survey of applicants for Society services in 2010, the demand for legal assistance with foreclosures had increased by 800 percent.

In addition, within these foreclosure cases there is a enormous need for legal representation in other related civil litigation areas, including consumer law, bankruptcy, family law and housing law. Unfortunately, The Legal Aid Society is only able to assist a small fraction of New Yorkers seeking our assistance in civil legal matters, only 1 out of every 9 eligible New Yorkers who seek our services.

Ms. Williams came to The Legal Aid Society as a victim of a predatory lending scheme perpetrated by questionable lenders, attorneys and real estate brokers who set about stripping over \$85,000 equity out of her home by refinancing her home twice and charging excessive fees and closing costs. As a result of these refinances, Ms. Williams became burdened with unaffordable mortgages, leading to default and inevitable foreclosure. Predatory lending practices have come under increasing scrutiny and criticism by both federal and State regulators. The Legal Aid Society is currently representing Ms. Williams in an affirmative action filed in federal court in the Eastern District of New York against a hard-money lender that specifically targets vulnerable homeowners and induces them into entering highly unaffordable mortgages that violate consumer protection laws. Due to our representation over the course of two years and hundreds of attorney hours, Ms. Williams was able to obtain an affordable loan modification, recoup some of the equity lost by settling with the brokers and the second refinance lender, and save her home from inevitable foreclosure. Ms. Williams will now tell her story.

Testimony of Alavita Williams Task Force Hearing on Civil Legal Services

Good Morning. My name is Alavita Williams, and I am currently a client of The Legal Aid Society. I would like to share with you my story and describe how the advocacy and work of The Legal Aid Society helped me save my home from foreclosure. I hope that my story will demonstrate the need for continued and increased funding for The Legal Aid Society and other

civil legal services programs. These programs are vital for New Yorkers who cannot otherwise afford legal representation or assistance but desperately need access to such services.

I currently reside in Queens Village, New York with my 14-year-old daughter. We have lived in our home for over ten years. Over the years, I have spent considerable money maintaining and repairing this house. I am a retired member of the Corrections Officers' Benevolent Association (COBA) union and I worked for the NYC Corrections Department. If my daughter and I were to lose this home, it would be extremely difficult for us to find another place to live, particularly with a foreclosure on my credit report.

After purchasing my home in March 2001, I ended up falling behind on my mortgage payments due to extensive repairs that needed to be done on the home. I tried many different ways to get current on my mortgage, including applying for a loan modification and looking for refinancing options. In April 2006, a mortgage broker contacted me about refinancing my home with what I later learned was a "hard-money lender", an individual who looks for people who need immediate help and tries to loan them money at very high interest rates. But at the time, through assurances from the broker, I believed that I was refinancing my home with a 30-year mortgage at an affordable interest rate. I was told that I didn't need my own attorney at the closing, because an attorney would be there to represent my interests. However, at the closing in May 2006, I met an attorney for the first time and I was instructed to sign many loan documents that were not clearly explained to me. Without knowing it, I had transferred the deed to my home to a sham LLC created in the property address' name, of which I was the sole managing member, and I ended up with two mortgages under the LLC's name. One mortgage was an approximate seven-year interest-only adjustable rate mortgage of \$250,800, with an interest rate starting at 15% and a balloon payment of \$250,800 due at the end of seven years. I later learned through The Legal Aid Society that such a mortgage violated many consumer protection laws and that the lender transferred the deed to the LLC in order to evade these laws. The second was a junior mortgage of \$6,160.10 to be paid off in one year at a 15% annual interest rate. Also unbeknownst to me, the lender took \$37,620 of equity from my home and put it into escrow to pay itself monthly mortgage interest-only payments of \$3,135 for almost a year.

Less than a year later, in March 2007, the same mortgage broker contacted me again and arranged a second refinance of my loan with another lender, although I didn't understand why I had to refinance my loan again. At the closing, I was instructed again to sign many loan documents without any explanation, which included a deed transfer from the sham LLC back to my name. Because the transaction happened so quickly, I was unaware that I was taking out a 30-year adjustable rate mortgage of \$282,750, starting at a high interest rate of 10.5%, with monthly mortgage payments of \$2,896. Because the loan was unaffordable from the outset, I ended up falling behind soon thereafter in August 2007 after depleting my savings in making the first three monthly mortgage payments. Furthermore, as a result of the May 2006 and March 2007 refinance transactions, over \$85,000 of equity was taken from my home.

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

The Legal Aid Society agreed to represent me in an affirmative litigation case against the fraudulent parties in the Eastern District of New York, in hopes that they would be able to save my home and protect the rights of other homeowners in similar circumstances. As a result of Legal Aid's direct representation, I was able to reduce the principal amount due on the loan and modify the mortgage by reducing the monthly mortgage payments by more than \$1,400 per month.

I am so grateful that The Legal Aid Society agreed to represent me in this case, because, otherwise, I have no doubt that my daughter and I would be without a home. I consider myself very lucky, because I now have an affordable monthly mortgage payment and no fear of foreclosure. However, I know that there are still many New Yorkers out there who also need this type of advocacy and assistance. I cannot stress enough the importance of funding the Legal Aid Society and other civil legal services programs, because they are an extremely significant resource for New Yorkers who otherwise lack the ability to obtain representation or gain legal assistance in a variety of civil litigation issues. I am here in support of continued and increased funding for civil legal services in New York.

Thank you.

Hon. Lori Currier Woods

Acting Supreme Court Justice and Family Court Judge,
Westchester County

**HONORABLE LORI CURRIER WOODS
FAMILY COURT JUDGE
ORANGE COUNTY, NEW YORK**

Judge Lori Currier Woods is a Family Court Judge in Orange County in the Ninth Judicial District of New York. She was elected in 2006 and has also served as an Acting Supreme Court Justice since 2008.

Prior to becoming a Family Court Judge, Judge Currier Woods worked as a private attorney in Los Angeles, California and also served in the District Attorney's Offices in Orange County, California and Orange County, New York. Judge Currier Woods worked in private practice in New York and later served as an Attorney for the Child at the Children's Rights Society, Inc. in Goshen, New York. She has served as both Councilperson to the Town of Monroe, New York and as an attorney/consultant/trainer for the Children's Rights Society.

Judge Currier Woods is the Chair of the Orange County Pro Bono Local Action Committee. Her professional associations in which she is a member include the New York State Bar Association, Orange County Bar Association, Women's Bar Association of Orange & Sullivan Counties, Law Guardian Advisory Board Committee, Orange County System of Care Coordinating Council, and the Judicial Wellness Assistance Committee for the Ninth Judicial District. Judge Currier Woods is the Lead Judge for the Orange County division of the Child Welfare Court Improvement Project in New York State. She will also be participating in the Ninth Judicial District Task Force.

Judge Currier Woods has been involved in many civic activities which include the Leadership Orange Program, the Youth Bureau Committee of Juvenile Justice, Orange County Court Child Care Center Committee, Building Leadership Committee for the Monroe-Woodbury Schools, Commissioner of the Monroe Joint Parks & Recreation Commission, Junior League of Orange County, People for People Fund,, Monroe-Woodbury Swim Club Board Member, Monroe-Woodbury School District Steering Committee, Monroe-Woodbury School District Wide Reorganization Committee, and the Governor appointed Eastern Citizen Review Panel. She is currently a member of the YMCA Board of Directors in Middletown, New York.

Judge Currier Woods received her Bachelor of Science Degree from the State University of New York at Oneonta in 1979 and her Juris Doctorate from Southwestern University School of Law.

SUMMARY
WRITTEN STATEMENT JUDGE LORI CURRIER WOODS, F.C.J.
TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK
SEPTEMBER 20, 2011

As a Family Court Judge, most, if not all of the litigants who appear before me are frightened, frustrated, angry and confused. It is clear that many of them are overwhelmed by the complexities of the legal system, and while some of these litigants are able to retain private counsel to represent them in court and to guide them through the legal process, the vast majority are indigent and low income individuals who cannot afford to do so.

Unrepresented litigants face many challenges and present many challenges to the Court. Most, if not all of the unrepresented litigants who appear in Family Court do not understand the legal process, which can result in prolonged court appearances and trials. Unrepresented litigants who seek orders of protection may fail to properly allege a cause of action, which can result in their request for an order of protection being denied or an order of protection being dismissed at trial. In the area of support, litigants are not provided with a right to counsel, which can be detrimental to these individual's lives and can often time result in orders of support that are not based on fully accurate information because the unrepresented litigant is unprepared.

Each day on the bench I am reminded of how important Civil Legal Services are. Simply put, I cannot imagine how the Family Court would function with it.

Due to the downfall in the economy, the large majority of poor and low-income New Yorkers do not have access to an attorney for their civil matters, making pro bono services all the more necessary. In the 9th Judicial District legal services programs struggle to meet the overwhelming legal needs of the poor. Although there have been great strides in providing CLE's and in increasing the number of attorneys volunteering to provide pro bono services,

studies have demonstrated that an estimated 80% to 85% of low-income New Yorkers' civil legal needs go unmet.

In the 9th Judicial District, pro bono services have been coordinated through Legal Services of the Hudson Valley. Until 2011, Pro Bono NY was able to provide funding for a pro bono coordinator to work with Legal Services of the Hudson Valley. Unfortunately, funding cuts in 2011 required the elimination of that position. Without a pro bono coordinator Legal Services of the Hudson Valley is severely limited in the number of people that it can help.

In light of the state of our economy, the need for legal services is greater than ever, and Civil Legal Services is critical in helping to provide access to legal representation.

**WRITTEN STATEMENT OF JUDGE LORI CURRIER WOODS, F.C.J.
TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK
SEPTEMBER 20, 2011**

Thank you for providing me with this opportunity to speak on the importance of Civil Legal Services in New York State. I am very honored to take part in today's public hearing.

As a Family Court Judge, hundreds, if not thousands, of litigants appear before me each year in cases involving struggles in their family lives. These matters include but are not limited to custody and visitation, parental rights and responsibilities, abuse and neglect, persons in need of supervision, juvenile delinquency, domestic violence, orders of protection and child support.

The goal of the Family Court is to provide a system of justice that is responsive to the needs of the families that appear before us. The Family Court provides a forum which ensures justice for the families and children involved in these proceedings and strives to promote a timely resolution of these cases in order to address the needs of the individuals that we see each day.

Most if not all of the litigants who appear before me are frightened, frustrated, angry and confused. It is clear that many of them are overwhelmed by the complexities of the legal system, and while some of these litigants are able to retain private counsel to represent them in court and to guide them through the legal process, the vast majority are indigent and low income individuals who cannot afford to retain private counsel.

The Orange County Family Court is more fortunate than many other courts in that we have the Legal Aid Society, the Children's Rights Society and the 18-b panel where we are able to appoint counsel to qualified individuals. My position from the Family Court bench provides

me with a bird's eye view of the complications that arise when unrepresented litigants come into Court and allows me to see on a daily basis the importance and necessity of Civil Legal Services.

Unrepresented litigants face many challenges and present many challenges to the Court as well. By way of example, service of process, a basic principal that attorneys comprehend, can become quite a challenge for unrepresented litigants. I have seen first hand how confusing and complex the concept of service of process appears to unrepresented litigants, as they simply do not know and understand what constitutes sufficient service, and the matter only worsens if they cannot locate the other individual. In many instances as much as ten to fifteen minutes of a court appearance can be spent trying to explain the service of process procedures to unrepresented litigants. This in and of itself can present challenges to Judges who are striving to adhere to the time constraints imposed by the current economic crisis.

Most if not all of the unrepresented litigants who appear in Family Court simply do not understand the legal process and in particular, do not understand the rules of evidence. As a result, trials that proceed with one or more unrepresented litigants are often time prolonged, as these individuals struggle with something as simple as entering a photograph into evidence. Unrepresented litigants, with the assistance of the internet, often times cite to statutes and/or case law that is inapplicable to the case at hand or is no longer good law. More often than not they do not know how to go about eliciting appropriate testimony and quickly become frustrated and upset when certain information that they feel is critical to their case cannot be admitted into evidence or heard by the Court.

Unrepresented litigants may also face more challenges when seeking an order of protection. Many of these individuals do not understand the relevant statutes and therefore do not properly allege a cause of action, which can result in their request for an order of protection being denied or an order of protection being dismissed at trial. Such denials or dismissals can have detrimental effects in the lives of the individuals who appear before the court and their families.

In the area of support, low income and indigent litigants are not provided with a right to counsel, which can be detrimental to these individual's lives and can often time result in orders of support that are not based on fully accurate information because the unrepresented litigant, not fully comprehending what is required of him/her, comes to court unprepared.

Just recently an unrepresented low income litigant had two cases in the Family Court on the same day. He appeared before me for the first case and then left. Apparently, he did not understand that he needed to appear before the Support Magistrate downstairs for the second case. His failure to appear resulted in a default support order that he contends he cannot afford to pay being entered against him. I am certain that this result could have been avoided if he had the benefit of legal representation. And while he has the right to make a motion to vacate the default order, it is unlikely that he will be able to do so without the assistance of counsel.

Each day on the bench I am reminded of how important Civil Legal Services are and how necessary they are to create a level playing field and to help the lives of the families that appear before me. Simply put, I cannot imagine how the Family Court would function without Civil Legal Services.

In addition to my service on the bench, I am also privileged to serve as the Chair of the Orange County Pro Bono Local Action Committee. The primary goal of the committee is to increase the extent to which pro bono legal services are an integral part of every attorney's regular practice.

In New York State, the complexity of the law and its court structure makes the assistance of an attorney critical for the just resolution of legal matters. Unfortunately, due to the downfall in the economy, the large majority of poor and low-income New Yorkers do not have access to an attorney for their civil matters, making pro bono services all the more necessary. In the 9th Judicial District legal services programs struggle to meet the overwhelming legal needs of the poor. Although there have been great strides in providing CLE's and in increasing the number of attorneys volunteering to provide pro bono services, studies have demonstrated that an estimated 80% to 85% of low-income New Yorkers' civil legal needs go unmet.

In 2002 the Deputy Chief Administrative Judge for Justice Initiatives hosted four pro bono convocations throughout the state to bring together all of the stakeholders, including judges, court administrators, attorneys in private practice, public interest lawyers, government attorneys, law school professors and members of the bar to develop a concrete plan for increasing pro bono participation. The convocations produced thoughtful debate and discussion about what is feasible for increasing pro bono services in New York State and led to two groundbreaking recommendations: (1) implementation of a statewide pro bono program, comprised of local pro bono action committees that would assess and devise strategies to meet local unmet legal needs; and (2) development of pilot projects statewide assigning pro bono attorneys on discrete/select issues as a way to increase pro bono service.

Pro Bono NY was created out of those convocations and is a statewide committee structure sponsored by the court system and broadly representative of the legal community. It was developed in order to foster and support voluntary pro bono service. Pro Bono NY, which commenced organizational activity in 2005 stemmed directly from the convocation's recommendations.

The local pro bono action committees are dedicated to increasing voluntary free legal services for low income New Yorkers. The primary goal of these committees is to increase the extent to which pro bono legal services are an integral part of every attorney's regular practice. Essential to the expansion of organized pro bono programs is the provision of adequate managerial and coordinating services. Such services include case and client intake procedures, maintaining lists of attorneys willing to accept pro bono case referrals, matching clients and appropriate volunteers and making case assignments, participating in publicity, recruitment and CLE training programs, mentoring volunteer attorneys handling pending matters and assisting with attorney recognition activities. These services help attorneys to commit to increased levels of pro bono activity by providing needed support, maintaining focus on specific unmet needs in each area and generally increasing efficiency and effectiveness.

In the 9th Judicial District, these services have been coordinated through Legal Services of the Hudson Valley, which is working hard to recruit volunteers and has been very active in planning new pro bono projects addressing specific needs as well as generally increasing the level of pro bono work on a wide variety of matters. By 2010 the Committee had recruited more than three hundred volunteer attorneys and sixteen law firms and more than one hundred cases involving a broad range of legal issues were placed with these volunteers.

Until 2011, Pro Bono NY was able to provide funding for a pro bono coordinator to work with Legal Services of the Hudson Valley. Unfortunately, funding cuts in 2011 required the elimination of that position. The pro bono coordinator screens cases, determines whether individuals financially qualify for services, matches clients with attorneys and provides legal support to the attorneys. Without a pro bono coordinator Legal Services of the Hudson Valley is severely limited in the number of people that it can help. And despite the strides that have been made, more work needs to be done in order to provide legal services to indigent and low income individuals.

In light of the state of our economy, the need for legal services is greater than ever. Without access to legal assistance, hundreds of thousands of low income and indigent litigants must deal with life altering legal issues on their own. Civil Legal Services is critical in helping to provide access to legal representation and equal access to justice.

Thank you.