

1
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SUPREME COURT OF THE STATE OF NEW YORK

- FOURTH DEPARTMENT -

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THE CHIEF JUDGE'S HEARINGS

ON CIVIL LEGAL SERVICES

* * * * * X

Ceremonial Courtroom
Old County Hall
92 Franklin Street
Buffalo, New York
October 6, 2011

B E F O R E:

HONORABLE JONATHAN LIPPMAN,
CHIEF JUDGE

HONORABLE ANN PFAU,
CHIEF ADMINISTRATIVE JUDGE

HONORABLE HENRY J. SCUDDER,
PRESIDING JUSTICE OF THE FOURTH DEPARTMENT

PAUL MICHAEL HASSETT, ESQ.
PAST-PRESIDENT OF THE NEW YORK STATE BAR ASSOC.

THE CHIEF JUDGE'S HEARING ON CIVIL LEGAL SERVICES

THE FOURTH DEPARTMENT, OCTOBER 6, 2011

I N D E X**CLIENT PANEL**

	<u>PAGE</u>
BERNARD DENT CLIENT OF WESTERN NEW YORK LAW CENTER	10
MICHELLE KILIAN CLIENT OF NEIGHBORHOOD LEGAL SERVICES, INC.	17
GABRIELLE THREET (BY ROBERT ELARDO) CLIENT OF ERIE COUNTY BAR ASSOCIATION VOLUNTEER LAWYERS PROJECT	23
JACK HAGEN CLIENT OF LEGAL SERVICES FOR THE ELDERLY, DISABLED OR DISADVANTAGED OF WESTERN NEW YORK	30

COLLABORATIONS AND SHARED COSTS PANEL

	<u>PAGE</u>
ARTHUR A. RUSS, JR. PRESIDENT, BAR ASSOCIATION OF ERIE COUNTY; OF COUNSEL, PHILLIPS LYTTLE LLP	38
JUSTIN L. VIGDOR CHAIR, TELESKA CENTER CAPITAL CAMPAIGN; PAST PRESIDENT, NYS BAR ASSOCIATION and MONROE COUNTY BAR ASSOCIATION; SENIOR COUNSEL, BOYLAN CODE LLP	49
BRYAN D. HETHERINGTON PRESIDENT, MONROE COUNTY BAR ASSOCIATION	58
STEPHEN L. JOHNSON MEMBER, BOND, SCHOENECK & KING, PLLC	71

THE CHIEF JUDGE'S HEARING ON CIVIL LEGAL SERVICES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

LAW SCHOOL DEAN

PAGE

MAKAU W. MUTUA 74
DEAN and SUNY DISTINGUISHED PROFESSOR,
UNIVERSITY at BUFFALO LAW SCHOOL

JUDGES' PANEL

PAGE

HON. PAULA L. FEROLETO 89
ADMINISTRATIVE JUDGE, EIGHTH JUDICIAL DISTRICT;
CO-CHAIR, EIGHTH JUDICIAL DISTRICT
PRO BONO COMMITTEE

HON. DEBORAH H. KARALUNAS 99
SUPREME COURT, ONONDAGA COUNTY

HON. E. JEANNETTE OGDEN 107
BUFFALO CITY COURT;
ACTING JUDGE, COUNTY AND FAMILY COURTS

THE CHIEF JUDGE'S HEARING ON CIVIL LEGAL SERVICES

(Proceedings commenced at 11:06 A.M.)

1
2 JUDGE LIPPMAN: Good morning. Pleasure to see
3 all of you at this fourth hearing on civil legal services
4 in New York this year. You know, these hearings are the
5 second year that we are trying to figure out the gap in
6 civil legal service representation for the court. The
7 genesis of the hearings is really because we in the
8 judiciary and the legal profession understand that it is
9 our constitutional mission to foster equal justice for all
10 in the state, that it is the professional obligation of
11 the bar to do so, and essentially if not us, who is going
12 to do this? The judiciary and the profession feel that
13 this is, again, essential in terms of the civil justice
14 system, that the poor, that the working poor have
15 representation in matters affecting the necessities of
16 life, the roof over someone's head, freedom from domestic
17 violence, their livelihood, consumer debt cases,
18 entitlements that subsistence -- entitlement that people
19 are supposed to have, all of these things require a
20 lawyer, and in our courthouses and in our courtrooms, if
21 we can't foster equal justice, a level playing field, then
22 we might as well close those courthouse doors.

23 This is particularly important in the difficult
24 economic times that we are facing in New York and around
25 the country. As you know, the recent poverty statistics

THE CHIEF JUDGE'S HEARING ON CIVIL LEGAL SERVICES

1 tell us that 15 percent of our citizens in New York State
2 are under the poverty level, living under the poverty
3 level. More in many parts of the state. And this is
4 certainly a moral and an ethical imperative to provide
5 representation, to stop people from falling off the cliff.
6 Every civilized society is really judged by how it treats
7 its most vulnerable citizens, and providing legal
8 representation in matters affecting, again, the very
9 essence of life is fundamental to the well-being of a
10 society.

11 And we have had, in the early hearings,
12 testimony from business groups, landlords, hospitals,
13 banks, saying that not only is it the right thing to do,
14 but that their own bottom line are served by having people
15 represented in those foreclosure proceedings that you see
16 today: the banks don't want the properties back, they
17 want to work things out, and I think that's systematic of
18 all of our major institutions, would rather have people
19 represented and have, again, a level playing field, and be
20 able to help people and at the same time help our basic
21 institutions in this state.

22 These hearings have been put together by the
23 Task Force to Expand Civil Legal Services. The chair of
24 that Task Force is Helaine Barnett who is the former chair
25 of the Legal Services Corporations. And Helaine, would

THE CHIEF JUDGE'S HEARING ON CIVIL LEGAL SERVICES

1 you just stand up for one second? And Helaine, thank you,
2 Helaine. Helaine and the Task Force have done a
3 spectacular job in putting into these hearings independent
4 research around this whole issue of providing civil legal
5 services for the poor and figuring out, again, the gap.

6 We have determined in last year's report that,
7 at best, we're meeting 20 percent of the civil legal
8 service needs in New York. We're talking about
9 eligibility for people at 200 percent of poverty level,
10 that's for a family of four, approximately \$44,700 a year.
11 Our goal is to provide a permanent, dependable, systemic
12 way of funding civil legal services. Last year we were
13 able to obtain \$27 and a half million for civil legal
14 services. Coming out of these hearings, and the judiciary
15 budget, there is a legislative resolution that asked to
16 hold these hearings and to submit to the Legislature our
17 recommendations.

18 You'll see that at today's hearings, you'll hear
19 from clients whose lives have been salvaged by having
20 representation; you'll hear about collaboration and a
21 shared costs in terms of providing civil legal service
22 representation; you'll hear from the dean and SUNY
23 distinguished professor at University at Buffalo law
24 school, Makau Mutua; and you'll hear from a judge's panel
25 that will tell you the problems that the judges have when

THE CHIEF JUDGE'S HEARING ON CIVIL LEGAL SERVICES

1 there is an uneven playing field and when people are
2 unrepresented and come into their courtroom.

3 We've learned from these hearings that in many
4 parts of the state, for every person accepted for civil
5 legal services, eight or nine people are turned away.
6 We've learned that 98 percent of people in eviction cases
7 are unrepresented, 95 percent of litigants in child
8 support matters are unrepresented, and until recently,
9 two-thirds of homeowners in foreclosure proceedings were
10 unrepresented.

11 Seventy percent of civil matters in New York
12 involve family law, consumer credit, landlord-tenant and
13 foreclosure cases, again, the essentials of life, and the
14 bottom line is, again, that civil legal services is a good
15 investment for New York. For every dollar spent on civil
16 legal services, five dollars come back to the state in
17 terms of decreased costs of Social Services,
18 incarceration, homelessness, and increased dollars that
19 come into New York from federal funding entitlements.

20 I think that the situation around the country is
21 such that the Federal Legal Service Corporation is under
22 seize, the IOLA funds which typically came from
23 interest-bearing accounts that lawyers maintain or escrow
24 accounts is way down, from \$32 million to now about
25 \$6 and a half million. And these hearings are basically

THE CHIEF JUDGE'S HEARING ON CIVIL LEGAL SERVICES

1 conducted under the premise that you all should
2 understand, make no mistake about it, nothing is more
3 important to the judiciary and the profession than to meet
4 our constitutional mission, our ethical obligation, to
5 foster equal justice. So that's the spirit of these
6 hearings.

7 Don't be taken aback, on the people who are
8 testifying, if we interrupt you, maybe ask you some
9 questions. We have your written statements so it's not
10 necessary to read your statement, we want you to tell us,
11 you know, why you're here and what you have to say. I
12 will ask you some not-too-intimidating questions, but this
13 panel that you have here is an intimidating one.

14 On my right is Judge Scudder who is the
15 Presiding Justice of the Appellate Division-Fourth
16 Department. Judge Scudder is withering in his
17 cross-examination so be very careful when Judge Scudder
18 asks a question.

19 To my left is Judge Ann Pfau who is the Chief
20 Administrative Judge of the State Court System, and she
21 may not look like she's tough but you wait until she asks
22 you questions.

23 And then really the most difficult one among us
24 is at the end, Paul Michael Hasset, who is the prior
25 head -- president of the State Bar Association in New York

THE CHIEF JUDGE'S HEARING ON CIVIL LEGAL SERVICES

1 and who has a long history of being involved in the
2 affairs of certainly the western part of our state.

3 And together we represent the judicial -- the
4 leadership of the judiciary and the profession in this
5 state and we think important, at the very least
6 symbolically, that this kind of a panel, including myself
7 as the Chief Judge of the state, preside over these
8 hearings.

9 There is a red light that can go on if you
10 overstate your time, and take it with a grain of salt, no
11 one's coming in to arrest you if you go over the time.
12 But we're going to keep a relatively tight schedule, and
13 if the Chief Judge will stop talking, maybe we'll be able
14 to do that.

15 So we're going to start with our witness list,
16 and I ask Karen and Bernard Dent, clients of the Western
17 New York Law Center, accompanied by Joseph Kelemen;
18 Michelle Kilian, client of Neighborhood Legal Services,
19 accompanied by William J. Hawkes; Gabrielle Threet, client
20 of the Erie County Bar Association Volunteer Lawyers
21 Project, accompanied by Robert M. Elardo; and Jack Hagen,
22 a client of Legal Services for the Elderly, Disabled or
23 Disadvantaged of Western New York, I think, accompanied by
24 William F. Berry. Would you all come up, please? Okay.
25 So take your time.

MR. BERNARD DENT

1 All right. Mr. Russ, you're going to start us
2 off? Oh, I'm sorry, Mr. Dent. Karen or Bernard Dent.

3 MR. BERNARD DENT: Good morning. I'm Bernard.
4 My wife isn't here today.

5 JUDGE LIPPMAN: You're going to carry it alone.

6 MR. DENT: I'm sorry?

7 JUDGE LIPPMAN: You're going to carry it alone.

8 MR. DENT: Yes, I think I can handle it.

9 JUDGE LIPPMAN: Okay, go for it. You're up.

10 MR. DENT: My name is Bernard Dent, I live in
11 Cheektowaga, I was born and raised in Buffalo, New York, I
12 have three children, and an elderly mother that also stays
13 with us.

14 Around 2009, I spent -- I just want to back up.
15 I spent most of my career in the banking industry. My
16 last position in that field was regional manager/
17 vice-president of the bank. Unfortunately I got laid off,
18 and since then it's been an ongoing struggle. Did have
19 some temporary work as a manager in the census when that
20 was here, and off and on I've been working temporary jobs
21 and trying to find something substantial.

22 In the meantime, my mortgage fell behind. It
23 was two months behind when I sent a payment to the
24 mortgage company. They sent it back to me. They said we
25 want everything or we're going to put your house in

MR. BERNARD DENT

1 foreclosure. I spent some time trying to borrow the
2 money, they gave me a short deadline, four days to get it,
3 I was unable to get it at that time so they put my --
4 foreclosure proceedings began. So when they contact -- I
5 contacted them, they wanted all the past due payments plus
6 \$5,000 in legal fees. Trying to negotiate with them, I
7 was definitely in -- not in a position of power. They
8 wanted the entire amount, even though no legal proceedings
9 had begun.

10 So I tried to negotiate with them, they said
11 they would get back to me. Sent me a modification
12 paperwork. I sent it in, a couple weeks went by, I called
13 them and I asked them did they receive it. They said,
14 yeah, we're working on it, we'll get back to you.

15 A couple weeks passed, I called them again, they
16 said they lost my paperwork and I had to send it in again.

17 So at this, fees are still accumulating on my
18 account, they would not accept any monthly payments, so
19 they re-sent the modification paperwork to me again, we
20 filled it out, sent it in again. This time I waited a
21 week and I called them, they said they hadn't received it.
22 Even though I had someone's -- had someone sign for it,
23 they said they didn't have it, and I had to send the
24 paperwork again.

25 So they sent the modification paperwork out a

MR. BERNARD DENT

1 third time, I sent it back in, waited a week, I called
2 them, they said they're working on it. I continuously
3 followed up with them. Somehow my paperwork got lost
4 again. So it was very frustrating at this point --

5 JUDGE LIPPMAN: You think this is a frustration
6 that a lay person rather than a lawyer often feels when
7 they're dealing with essentially a legal problem with a
8 big institution?

9 MR. DENT: Absolutely. I felt you need an
10 attorney with expertise to deal with them and I thought,
11 you know, reasonably intelligent person, educated person,
12 I worked in the banking industry for many years, I felt --

13 JUDGE LIPPMAN: This is who you're dealing with.

14 MR. DENT: And I'm dealing with the bank, I
15 thought that I would be able to negotiate a reasonable
16 settlement, but that didn't happen.

17 So at a certain point now, it was -- because
18 they wouldn't take any payments while this is going on, so
19 at this point my house was about five months past due.

20 JUDGE LIPPMAN: Right.

21 MR. DENT: Right.

22 JUDGE LIPPMAN: You know you're in trouble but
23 you can't go out and get it.

24 MR. DENT: So I'm on the Internet, I'm
25 searching. Like I said, my mom is elderly, my dad is -- I

MR. BERNARD DENT

1 don't have anyone to borrow money from and I had exhausted
2 our savings with a daughter in college and two young
3 children, you know, I had exhausted our savings trying to
4 keep them in school and trying to keep the house afloat so
5 I really had no one. So finally, I was searching on
6 Internet and I came across the Western New York Law Center
7 and I decided to give them a call.

8 Oh, excuse me, let me back up a bit. One last
9 time I called the bank and I said is there anything you
10 can do, can we negotiate, you know, different fees,
11 something to bring me current. They said, well, we'll get
12 back to you. Three days later they sent me paperwork, and
13 instead of my mortgage payment being \$900 a month, they
14 said give us \$4,000 for all the legal -- they reduced the
15 legal fees at that point, give us \$4,000, plus all the
16 back payments, and your new payment's going to be around
17 \$1,800 a month. And I said, well, right now this is the
18 situation, I've having trouble paying the \$900 a month,
19 there's no way I -- I can sign this agreement with you but
20 there's no way I can realistically maintain it. They said
21 that's all we're going to do for you, take it or leave it.
22 So I said, unfortunately, I can't sign this in good faith
23 because I'm not going to be able to pay this.

24 So that's when I contacted the Western New York
25 Law Center and I spoke to an attorney named Amy and she

MR. BERNARD DENT

1 worked on our behalf with the mortgage company. They --
2 she was able to reduce the legal fees by about 800 or
3 \$900, she also got them to eliminate the \$4,000 immediate
4 down payment that they wanted, she also got them to
5 readjust my interest rate, instead of having a variable
6 rate, the Western New York Law Center got me a fixed rate,
7 and I was able to resume my payments. And even though I'm
8 still struggling to find a position -- a permanent
9 position as far as employment, I'm able to maintain the
10 mortgage with my unemployment. They were invaluable. I
11 don't think --

12 JUDGE LIPPMAN: Basically the world changed for
13 you once you had legal service representation.

14 MR. DENT: Absolutely.

15 JUDGE PFAU: And did the banks start treating
16 you differently?

17 MR. DENT: Yes. It was unwavering, their -- how
18 rude and abrupt they were when I was trying to negotiate.
19 And I thought to myself, I've been in the banking industry
20 for 15 years, I know the banks don't want my house.

21 JUDGE LIPPMAN: But that's the point, they don't
22 want your house, they really don't.

23 MR. DENT: But they were acting as if they did.

24 JUDGE LIPPMAN: Because you needed a lawyer to
25 talk their language.

MR. BERNARD DENT

1 MR. DENT: To speak on my behalf. And once they
2 spoke on my behalf, everything changed. When the bank
3 would call me, the mortgage company would call me, they
4 had a different attitude.

5 JUDGE LIPPMAN: And let me ask another question,
6 you know, and I don't mean this in a way to embarrass you,
7 but people think when we're talking about civil legal
8 services for the poor in the state, that we're talking
9 about -- only about people who are walking the streets
10 without a home or whatever it is and have no way to put a
11 dollar in their pocket, they're living in shelters. We're
12 talking about regular people who have regular jobs and in
13 this difficult economy are having a problem right now, put
14 yourself in that category, not an uneducated person who,
15 you know, has held a job for a long time and yet you find
16 yourself in this predicament, just like me and you and
17 everybody in this room, we're not just talking about, gee,
18 the outcasts of society, you know.

19 MR. DENT: No. Your Honor, absolutely right. I
20 never would have imagined a few years ago --

21 JUDGE LIPPMAN: That you would be in that --

22 MR. DENT: -- that I would be in this position,
23 but I am. And if you pretty much have anyone unemployed
24 long enough, they're going to feel the crunch. And at a
25 certain point, because it's been off and on since 2009, I

MR. BERNARD DENT

1 maintained it as long as I could but we're talking about
2 regular people.

3 JUDGE LIPPMAN: Let me ask you one more
4 question. Is there anything more important to you than
5 this house and the roof over your head?

6 MR. DENT: No, absolutely, it's the most
7 important thing that I had. I felt not only it was my
8 frustration very high, you know, I was worried about
9 what's going to happen to my children, what's going to
10 happen to my elderly mother, she can't take care of
11 herself and, you know, as a man, we're supposed to take
12 care of our family and I didn't feel like I could do that.
13 So, you know, they were -- the Western New York Law Center
14 was a Godsend for me.

15 JUDGE PFAU: If you didn't have them, do you
16 think you would have your house today?

17 MR. DENT: No. The only other option would have
18 been maybe bankruptcy, I don't know, but other than that,
19 no, if I did not have them, I would not have my house
20 today.

21 JUDGE LIPPMAN: But, again, and not to gild the
22 lily or beat a dead horse, but you take a person who has a
23 responsible job, who thinks they know how to deal with the
24 basic things that one deals with in life, and yet when
25 you're dealing with the legal problem, you really need a

MR. BERNARD DENT

1 person trained.

2 MR. DENT: Yes, you need an attorney,
3 absolutely, Your Honor, you need an attorney. They didn't
4 want to talk to me, even though some of the things I knew
5 they were telling me was untrue because I worked in the
6 bank, I'm in no position to say, hey, that isn't true.
7 They want what they want. And until I got an attorney to
8 represent me, that's when everything changed.

9 JUDGE LIPPMAN: Okay. Thanks so much,
10 appreciate it.

11 Michelle Kilian. You're on, Michelle.

12 MS. MICHELLE KILIAN: My name is Michelle
13 Kilian. I am 29 years old and I'm the mother of a
14 beautiful two-and-a-half-year-old daughter named Eva.

15 In April of 2010, while my now ex-husband was
16 away for the weekend for military training, I packed up my
17 belongings, myself and my one-year-old daughter Eva and
18 sought refuge at the Haven House --

19 JUDGE LIPPMAN: Michelle, put that mike a little
20 closer.

21 MS. KILIAN: -- at the Haven House, a domestic
22 violence homeless shelter, because I was a victim of
23 domestic violence. I had no money, no safety plan, and I
24 was in a panic and worried about the life I would be able
25 to provide for my daughter now that I left my abuser. All

MS. MICHELLE KILIAN

1 I took from my marital home were my material possessions,
2 my child, and my damaged self-esteem.

3 Once at the shelter, they instructed me to apply
4 for public assistance and food stamps. I went and
5 applied. After 30 days I received my public assistance
6 grant of \$90 a month for me and my daughter. I also
7 received \$45 a month in food stamps for the both of us.

8 My stay at the shelter was challenging and scary
9 and I was always concerned about our personal safety. I
10 wanted to get out and try to make a go of it on my own,
11 and after being at the shelter for two-and-a-half months,
12 I finally found permanent housing in Cheektowaga.

13 I vigorously continued my job search because I
14 did not want to be reliant on the public assistance
15 system. I had never been on public assistance before, and
16 although I was grateful for the assistance when I needed
17 it, I really wanted to get off public assistance and work.
18 After months of searching, the temporary agency finally
19 found me a place at Neighborhood Legal Services.

20 My income from employment quickly affected my
21 public assistance grant and my case was closed due to
22 excess income in about two months after I started working.
23 Although it felt like a success to get out of shelter and
24 off public assistance, once off public assistance, I faced
25 many economic challenges that made it difficult to make a

MS. MICHELLE KILIAN

1 successful transition from welfare to work. That's what I
2 would like to talk to you about today.

3 Without the assistance of Neighborhood Legal
4 Services, it is likely that I would have been unable to
5 maintain my housing, utilities and day care, and thus my
6 employment, and would have then been forced back on to
7 public assistance. I truly feel that God has placed me in
8 this position at NLS for a reason. Because if I weren't
9 at NLS, I would never have gotten the legal advice that I
10 needed to get off and stay off public assistance.

11 I was in a tenuous financial position once my
12 rent came off voucher. I fell behind on my rent. I did
13 not know that DSS helped with rent arrears. NLS informed
14 me that DSS has a legal obligation to help prevent the
15 eviction. NLS represented me in court and was able to
16 stop the eviction. NLS was able to help me get the rent
17 arrears from DSS and the eviction was avoided. I was able
18 to stay in my home.

19 My next financial crisis occurred when I fell
20 behind on my utilities. Although I was working, the gas
21 bills in Buffalo in the winter are really high and I could
22 not afford to pay the entire bill each month. I fell
23 behind on my utilities and received a shutoff notice from
24 the gas and electric company. I did not know that DSS
25 could help with utility arrears and shutoffs. NLS advised

MS. MICHELLE KILIAN

1 me about the availability of HEAP and emergency HEAP. I
2 applied for both of these benefits and was found eligible.
3 The shutoff was ultimately avoided and I was able to stay
4 in my apartment with my daughter.

5 I was barely staying afloat financially and my
6 child's father was not helping us financially at all. He
7 never paid any child support. Previously, I had been
8 advised by a private attorney that I was not eligible for
9 child support from my ex-husband because I was a public
10 assistance recipient at the time of the divorce. NLS
11 advised me that that was not correct and the family law
12 attorney from NLS advised me of my legal rights to obtain
13 child support. She helped me fill out the necessary
14 paperwork in order to get the support that I needed. I
15 was granted the support award and I'm now getting money
16 from my child's father.

17 My third economic crisis occurred when I
18 received a notice threatening to discontinue my child care
19 benefits because I was no longer receiving public
20 assistance. DSS sent me the notice stating that because I
21 was no longer participating in a DSS work program, I was
22 no longer eligible for child care benefits. I was not
23 participating in DSS work program because I was employed
24 at the time. I told my worker that I was employed and I
25 provided documentation regarding my employment.

MS. MICHELLE KILIAN

1 Nonetheless, DSS tried to discontinue my child care
2 benefits. NLS informed me that this was an illegal
3 discontinuance. They contacted DSS on my behalf,
4 advocated that the discontinuance be withdrawn, and as a
5 result, I continued to receive my child care without
6 interruption so that I could maintain my employment.

7 Recently, I received another notice from DSS
8 threatening to discontinue my child care benefits again,
9 this time due to excess income from employment. Without a
10 subsidy from DSS, my child care costs would have been
11 prohibitive and would have forced me to quit my job at NLS
12 in order to care for my child. The day care center would
13 have charged me \$800 a month. My net pay every two weeks
14 is \$699. After paying for child care, I would only have
15 about \$564 to pay for the cost of living, rent, food,
16 diapers and utilities. I could not have paid day care and
17 worked. I would have had to make a choice. NLS advocated
18 on my behalf. They contacted DSS and told that the
19 discontinuance was illegal and they had not evaluated me
20 for transitional child care. DSS withdrew their notice
21 and issued a new one, agreeing to provide me with the
22 transitional child care benefits that I am legally
23 entitled to. Although I pay a parent share of \$318 each
24 month, I am able to keep my job.

25 JUDGE LIPPMAN: Michelle, let me ask you a

MS. MICHELLE KILIAN

1 question. The basic idea that you're telling us is you're
2 a domestic violence victim but what comes along with that
3 is a lot of other legal problems, it's not so simple as
4 saying the victim is taken out of that daily threat to,
5 you know, violence and life is then going to be perfect.
6 Life has all kinds of tentacles and complications. And
7 for someone like you, was there any place that you could
8 have turned on any of these issues? No, you don't have a
9 lawyer, what would you have done?

10 MS. KILIAN: Without NLS, I don't really know
11 where I would be right now.

12 JUDGE LIPPMAN: Or where your child would be.

13 MS. KILIAN: With my -- right. I -- I can't
14 fathom the thought of it because I didn't know where to
15 turn. I was fighting with Social Services at every turn
16 and I'm smart and I was fighting with them, I handed in my
17 paperwork on time, and --

18 JUDGE LIPPMAN: And you had told them you wanted
19 to work, you wanted to be a contributing member of
20 society.

21 MS. KILIAN: Yes.

22 JUDGE LIPPMAN: But you have all these legal
23 problems and that you don't have the ability to deal with
24 them.

25 MS. KILIAN: Yes.

MS. MICHELLE KILIAN

1 JUDGE LIPPMAN: Is that the long and the short
2 of it?

3 MS. KILIAN: Um-hum.

4 JUDGE LIPPMAN: And, you know, so I hear the
5 bottom line is, your life would be very, very different
6 today without civil legal services to help you.

7 MS. KILIAN: Yes, I would be on public
8 assistance still and not be able to work because I have no
9 family here, I'm just by myself. So --

10 JUDGE LIPPMAN: Instead of having a job where
11 you're a contributing member of society.

12 MS. KILIAN: Yes. And even if I was on public
13 assistance, I still wouldn't be able to make it because
14 you don't -- you can't really survive on it.

15 JUDGE LIPPMAN: I know. Thank you, Michelle.

16 MS. KILIAN: Thank you.

17 JUDGE LIPPMAN: That was really instructive, I
18 think, in terms of how civil legal services can change
19 someone's life in so many different ways.

20 Gabrielle Threet.

21 MR. ROBERT ELARDO: Your Honor, Gabrielle Threet
22 is not able to be here this morning. I'm Bob Elardo, the
23 managing attorney from the Erie County Bar Association
24 Volunteer Lawyers Project, and with your kind permission,
25 I can quickly summarize what she would have said.

MR. ROBERT ELARDO (ON BEHALF OF GABRIELLE THREEET)

1 JUDGE LIPPMAN: Why don't you summarize what her
2 issues were and how legal services helped.

3 MR. ELARDO: Okay. She came to us for a problem
4 with unemployment insurance benefits. She had worked for
5 three years in a clerical job at Erie Community College
6 and --

7 JUDGE LIPPMAN: Let me stop you for one second.
8 But that's a common problem, right, with civil legal
9 services, that people are entitled to certain things but
10 yet can't access it, they don't know how to do it.

11 MR. ELARDO: Absolutely.

12 JUDGE LIPPMAN: They don't know how to interface
13 with the institutions that --

14 MR. ELARDO: Yes.

15 JUDGE LIPPMAN: -- determine their fate.

16 MR. ELARDO: And I think this is a perfect
17 example, this case. As you'll see from the facts of what
18 happened, she was told originally that her position was
19 eliminated, and she was laid off, but then when she
20 applied for unemployment, her employer said that she was
21 actually discharged for misconduct for falsifying time
22 records.

23 And what happened is that she had gone out for
24 surgery, she had had surgery at Roswell Park Cancer
25 Institute and was out of work for a couple of weeks.

MR. ROBERT ELARDO (ON BEHALF OF GABRIELLE THREET)

1 The -- and during those weeks, she did, on her handwritten
2 time sheets, put down hours that she had worked. Seems
3 like a slam dunk for the employer. A misconduct in these
4 cases, as you probably know, is doing something that you
5 knew or should have known could get you fired.

6 JUDGE LIPPMAN: Right.

7 MR. ELARDO: I mean, that's basically the
8 standard. And the employer had an experienced attorney
9 representing them at the hearing, seems like she should
10 lose. She shouldn't have done that.

11 We got a young pro bono lawyer to represent her
12 in the hearing and that lawyer really put a lot of time
13 into this. He was able to establish -- he subpoenaed
14 records from the employer, responded to their subpoenas,
15 and represented her at the hearing and was able to
16 establish that, first of all, the employer allowed flex
17 time, although it was very unclear as to how that was
18 supposed to work.

19 JUDGE LIPPMAN: Right.

20 MR. ELARDO: The time sheets didn't have any
21 place to mark that it was flex time. Her supervisor
22 who -- he actually got the supervisor in there to testify
23 to these things, the supervisor had actually told her to
24 write the time sheets out that way and he had allowed her
25 to work extra hours before she went out on surgery and

MR. ROBERT ELARDO (ON BEHALF OF GABRIELLE THREET)

1 extra hours after she came back to make up for those
2 hours, and he testified that that's his understanding of
3 what flex time meant there and that's how he had been
4 doing it for a couple of years.

5 And so the ALJ on the case found that what the
6 employer said about her time sheets was absolutely true,
7 but the additional facts that the pro bono lawyer was able
8 to bring out --

9 JUDGE LIPPMAN: And explain.

10 MR. ELARDO: -- and explain meant -- made the
11 entire difference and he awarded her benefits, and I think
12 rightfully so.

13 And what Miss Threet wanted to tell you is that
14 without that lawyer, she would have been in a terrible
15 spot. You know, because she had the lawyer and she
16 continued her benefits, she did not lose her home, her and
17 her young child stayed in her home, they didn't have the
18 gas, electric or water shut off like this lady was talking
19 about. The shutoff notices, you know, can be very
20 threatening to a family, especially here in Buffalo in the
21 winter. She was able to keep her job -- I mean -- I mean
22 her car, wasn't repossessed, and she was basically able to
23 stay afloat while she continued to look for work. And
24 now, even before finishing receiving all of the benefits
25 that she was entitled to, she's found work, and

MR. ROBERT ELARDO (ON BEHALF OF GABRIELLE THREET)

1 better-paying work. She's actually an ideal candidate for
2 explaining what we're trying to do in legal services, to
3 keep families afloat and productive in society. She
4 actually now has not only found a job, she's actually
5 found two jobs and they're better jobs than she had
6 before.

7 JUDGE LIPPMAN: Literally her life was
8 dramatically altered for the better --

9 MR. ELARDO: Absolutely, Your Honor.

10 JUDGE LIPPMAN: -- by the simple act of a
11 relatively small investment -- at least we think so -- in
12 civil legal services, to have a lawyer who could represent
13 her with what we're calling the necessities of life, the
14 very basics. You know, she wouldn't have been able to
15 have those necessities, and then you become a burden on
16 society and with all the attendant costs that go with
17 that.

18 MR. ELARDO: Right. She would have been showing
19 up at the Department of Social Services, requesting public
20 benefits and food stamps and she might have ended up in a
21 homeless shelter, it goes on and on.

22 JUDGE PFAU: And she was represented by a
23 volunteer lawyer --

24 MR. ELARDO: Yes.

25 JUDGE PFAU: -- who took on her whole case. Not

MR. ROBERT ELARDO (ON BEHALF OF GABRIELLE THREET)

1 just a lawyer but really stayed with her for the whole
2 case, which is wonderful, shows the partnership that has
3 to happen between civil legal services and the bar which
4 is really so special up here, I think up in Upstate New
5 York.

6 MR. ELARDO: Yes, I totally agree. You know,
7 every year we have about 400 lawyers in this community
8 handle about a thousand cases pro bono for our clients,
9 and it really makes a difference to supplement what the
10 staff lawyers are doing.

11 JUSTICE SCUDDER: Is that growing all the time
12 or not, as far as the number of lawyers that will
13 participate in pro bono?

14 MR. ELARDO: In the last few years it's stayed
15 pretty level for us, and we are trying to work on ways to
16 increase it all the time.

17 JUSTICE SCUDDER: I was going to ask that. Have
18 you come upon ways that -- that have worked to increase
19 it?

20 MR. ELARDO: Well, the best way for us is to do
21 trainings, to entice the lawyers in, and to have a staff
22 member, who is a lawyer, who is out there talking to the
23 lawyers in the law firms about the opportunities for pro
24 bono, the -- what they can get out of it, not only in
25 terms of training but, you know, just in terms of human

MR. ROBERT ELARDO (ON BEHALF OF GABRIELLE THREET)

1 satisfaction for having helped someone. And I -- you
2 know, the lawyers are very responsive in this community to
3 hearing that, and more and more we're working, and we have
4 been for many years, to change the culture in the bar.
5 It's not a quick fix, it's a long-term commitment to
6 change the culture.

7 JUDGE LIPPMAN: I think what he's trying to
8 explain is clearly the civil legal service providers have
9 to carry a great weight of this and, you know, the bulk of
10 the representation, but even with all of the efforts that
11 we've all made, you know, there just isn't enough money
12 certainly in this economy to cover the whole need and that
13 there needs to be this component of pro bono
14 representation, volunteer representation by the bar that
15 fits in to this -- this puzzle, really, of how to provide
16 civil legal services for the poor. So the bottom line is
17 we need a permanent, dependable, consistent public
18 funding, and then we need this volunteerism by the bar to
19 sort of complete the package, and at best, even with
20 the -- you know, the funding that we've gotten and all of
21 the efforts, we're meeting, at best, 20 percent of the
22 needs of civil legal services of the poor in this state
23 and that's why we need to hear these stories and
24 understand what exactly this is for.

25 So thank you so much, and you've been very

MR. ROBERT ELARDO (ON BEHALF OF GABRIELLE THREET)

1 helpful.

2 MR. HASSETT: I'm sorry. As you know, Bob, I
3 had the privilege to serve on the pro bono committee which
4 was part of ProBonoNY and the funding for that program
5 died; along with it, the services of the coordinator which
6 the program paid for. Was that -- I assume that was very
7 helpful to you and the other counties in the Eighth
8 District in providing pro bono volunteers.

9 MR. ELARDO: Absolutely. The coordinator was an
10 employee of our program, because we're the biggest pro
11 bono program in the district, but she worked to help the
12 programs in the entire district to recruit, train and
13 support lawyers, and was really initially concentrated
14 mostly in the rural areas that needed the most help and
15 was making a huge difference there.

16 JUDGE LIPPMAN: We've had this in other
17 locations, where the coordinators have gone with the
18 decrease in funding and it just makes it that much more
19 difficult to get done what needs to be done.

20 Okay. Thanks so much.

21 Jack Hagen.

22 MR. JACK HAGEN: Thanks. Thanks, Your Honor.

23 JUDGE LIPPMAN: Thank you.

24 MR. HAGEN: I would like to thank you
25 personally, all of you, for that statement you made in the

MR. JACK HAGEN

1 beginning. I didn't realize the size of the numbers, the
2 20 percent number of people who are represented but really
3 the 80 percent who aren't. It's pretty stunning. I would
4 say that I was lucky to find representation.

5 I was diagnosed with leukemia in 1999 and I had
6 two transplants at Roswell Park. I was covered by my
7 employer's health insurance for several months -- or
8 actually I think 29 months after I was diagnosed and left
9 the company, but my health insurance ran out and I had to
10 find either a private health insurance or -- or none.

11 My main problem after both transplants was the
12 cost of my drugs, the cost of the drugs to protect me from
13 various issues, primarily what's called Graft versus Host
14 disease in which the -- anyone who has a transplant -- I
15 had a blood transplant, I had leukemia -- faces the
16 possibility that almost anything, because of your weakened
17 immune system, can attack your body. And most people who
18 die as a result of transplants, whether they are blood
19 transplants or what we think of normally as transplants,
20 livers or kidneys, that sort of thing, die of Graft versus
21 Host disease. The drugs are incredibly expensive.

22 Initially after -- after the transplants, my
23 monthly bills were in the range of \$6,000. Those
24 diminished over time but not actually much, not that much,
25 let's say. I had -- after my second transplant, I was

MR. JACK HAGEN

1 helped by the assistant attorney general who was located
2 at Roswell Park to get Medicaid qualification in order to
3 pay for -- or assist me in paying for my drugs. After
4 about four or five years, five years of being helped by
5 Medicaid in Niagara Falls where was my permanent
6 residence, my permanent legal residence, they decided -- I
7 had moved in with my mother during my convalescence, she
8 helped me with a lot of things, things like she drove me
9 to Roswell every day essentially immediately after each of
10 my transplants in order to obtain follow-up treatment, and
11 many other things that -- she cooked dinner for me. You
12 know, it's a tremendous number of things that you need
13 that you're unable to deal with.

14 Once DSS in Niagara Falls realized that I was
15 actually not physically living in Niagara Falls -- my
16 mother lives in Tonawanda -- they decided that I don't
17 qualify for Medicaid in Niagara Falls, that I should be in
18 Erie County. Well, except the problem was that my legal
19 residence was in Niagara Falls.

20 JUDGE LIPPMAN: That's right.

21 MR. HAGEN: And I happened to be talking to my
22 lawyer -- my mother and I went to have our wills done --
23 and he mentioned he -- Tom Keefe is his name -- turned out
24 to be the president of Legal Services for the Elderly and
25 Disabled, and he suggested that I talk with Legal Services

MR. JACK HAGEN

1 for the Elderly and Disabled and see if they could help me
2 in dealing with DSS which wanted to discontinue my
3 Medicaid.

4 I talked to them, I met Bill Berry, and we filed
5 an appeal with the DSS, went to a hearing, fair hearing
6 it's called, and they couldn't prove in any way that I
7 didn't live -- or my permanent residence was actually in
8 Niagara Falls and that I fully intended to move back there
9 once I was able to recover. So we won that case and my
10 Medicaid was continued.

11 Several more years went by during which Medicare
12 Part D was enacted, January of 2006, and that helped me
13 tremendously in paying for the drugs and also reduced
14 vastly the amount of money that Medicaid in Niagara Falls
15 had to pay. So I thought this -- I'm in pretty good
16 shape.

17 About -- in 2010, DSS in Niagara Falls changed
18 everybody, and decided once again that since I did not
19 live in Niagara Falls, I was unqualified for their
20 Medicaid. I went back to Bill and we said -- I said, let
21 me just change my residence to Erie County. Erie County,
22 it turns out, where actually I thought this would be a
23 simple piece of paperwork but it wasn't because Erie
24 County does things differently than Niagara County does,
25 which I was totally unaware of, and I was actually told

MR. JACK HAGEN

1 that they do things differently than the rest of the state
2 does. I'm not -- I don't have the facts on that but it
3 was interesting. But they didn't want to accept me either
4 and Bill got into negotiation with my representative
5 there, significant negotiations that I -- I may -- also
6 take one step back.

7 In the five years, in the last five years or so,
8 I've been having recurring issues with my skin on my head,
9 (Mr. Hagen removes hat) and for whatever that's worth.
10 It's very debilitating for me. It also requires drugs
11 that are, again, pretty significant in addition to the
12 ones that I still have, even though I'm in remission from
13 the leukemia.

14 We worked -- we didn't work it out, Bill worked
15 it out. Legal Services for the Elderly supported me in
16 this situation and got me reaffirmed and approved for
17 Medicaid in Erie County. Had it not been for that, the
18 drugs that I have to take now, I'm still in the
19 classification, even with Part D, of having to pay several
20 thousand dollars a month for drugs, with part -- or with
21 Medicaid support, I get -- I get ex -- what's called extra
22 help for Medicare Part D which reduces the copays that I
23 have to pay. In addition, I don't have to pay the
24 so-called doughnut hole money which is about \$3,000.
25 Without that money, I would be in a position -- or without

MR. JACK HAGEN

1 that aid, even though they don't pay much money, Medicaid,
2 but their support of me allows me to get the extra help
3 which reduces my --

4 JUDGE LIPPMAN: But the bottom line, though, is
5 really, in a different sense dealing with a medical
6 condition, the same thing as everybody else's story.

7 MR. HAGEN: It is.

8 JUDGE LIPPMAN: What would you have done, these
9 are benefits that you're entitled to but you just could
10 not figure out or deal with the bureaucracy that
11 determines, again, your fate. Is there any other --
12 anything other than civil legal service assistance that
13 could have helped you through this, this literally
14 life-threatening crisis?

15 MR. HAGEN: Not to my knowledge. I -- as I say,
16 I was very lucky that my -- my lawyer happened to be, at
17 the time, the president of this organization. And I had
18 no idea that it existed and/or -- I mean, I --

19 JUDGE LIPPMAN: Jack, let me ask you one thing.
20 So when you take a case like yours, we're not talking
21 about someone who tripped on the street and wants to bring
22 a lawsuit. We're talking about someone who is confronted
23 with a life-threatening situation, with no way out,
24 without -- because it's really a legal problem, it's being
25 able to access the benefits that you're entitled to and as

MR. JACK HAGEN

1 a lay person, as a non-lawyer, you just don't know how to
2 do it.

3 MR. HAGEN: Yes, exactly.

4 JUDGE LIPPMAN: Very few of us in this room know
5 how to do it without a trained person who understands that
6 they're dealing with someone's very survival, and that
7 without the assistance, there's no life.

8 MR. HAGEN: My choice would have been to not
9 take the drugs that have kept me alive for the last ten
10 years, and it's really as simple as that, I couldn't have
11 afforded them.

12 JUDGE LIPPMAN: It's a very graphic description
13 of what this is all about. Each of you in your own story,
14 really, has defined what this is all about when we talk
15 about civil legal services that will affect the
16 necessities of life. Not, gee, maybe I want to bring a
17 lawsuit about something. But about being able to live and
18 be -- you know, have a meaningful role in our society and
19 in our local community.

20 So I thank all of you for your --

21 JUDGE PFAU: If I could just add, it's
22 interesting, generally we think of civil legal services in
23 the context of representing you in court, and we've had
24 this whole panel this morning with all of the different
25 life situations and none of them have been court cases.

MR. JACK HAGEN

1 They've all been accessing the things that you either have
2 a right to or negotiating with a bank, but none of them
3 fall within what one would think stereotypically of what
4 civil legal services are for but they've totally changed
5 your lives. So it's been a very interesting panel. Thank
6 you.

7 JUDGE LIPPMAN: Thank you all, appreciate it
8 greatly.

9 MR. BERRY: Thank you.

10 MR. ELARDO: Judges all, thank you very much for
11 being here.

12 JUDGE LIPPMAN: Thank you for the good work that
13 you're doing.

14 The next panel is Collaboration and Shared Costs
15 Panel, and I would ask Arthur Russ, Jr., president for the
16 Bar Association of Erie County; and of counsel to Phillips
17 Lytle LLC;

18 Justin L. Vigdor, the chair of the Telesca
19 Center Capital Campaign; the past president of New York
20 State Bar Association and Monroe County Bar Association;
21 and senior counsel, Boylan Code LLP;

22 Bryan Hetherington, president of Monroe County
23 Bar Association;

24 And Stephen Johnson, member of Bond, Schoeneck &
25 King, PLLC.

MR. ARTHUR RUSS

1 So Arthur Russ, do you want to get started?

2 MR. ARTHUR RUSS: I would like to say good
3 afternoon.

4 JUDGE LIPPMAN: Good afternoon. And thank you
5 so much for coming here and for representing the Erie
6 County Bar.

7 MR. RUSS: Thank you for the invitation.

8 I am counsel at Phillips Lytle, and current
9 president of the Bar Association of Erie County. We have
10 3,800 members -- over 3,800 members here in Erie County.
11 I am also a former board member of the Erie County Bar
12 Association Volunteer Lawyers Project and a current member
13 of the New York State Bar Association House of Delegates.

14 I want to thank Judge Lippman and the Task Force
15 for conducting these hearings and raising the awareness of
16 the overwhelming need for civil legal services for
17 low-income people.

18 With such overwhelming need, collaborations and
19 cost sharing efforts are essential for making every dollar
20 go further. This is especially true here in Buffalo where
21 there's such a high level of poverty. Buffalo, the second
22 largest city in the state and the third poorest large city
23 in the nation, with 30 percent of its population running
24 below the poverty level, 38 percent of Buffalo children
25 under the age of 18 are living below the poverty line here

MR. ARTHUR RUSS

1 in Buffalo.

2 Here in Buffalo we have five legal services and
3 pro bono programs serving the eight counties at the
4 western end of the state, including the Cities of Buffalo,
5 Niagara Falls, Lockport, Jamestown, Albion and Dunkirk.
6 The area is both urban and rural. Erie County is the
7 largest county in the region, with a population of over
8 900,000. It's 91 percent rural -- I'm sorry, 91 percent
9 urban and 9 percent rural.

10 I want to tell you about some of the terrific
11 collaborations occurring here in the Buffalo area.

12 Some of the best collaborations have included
13 the courts as a partner, like the Volunteer Lawyers
14 Project and Neighborhood Legal Services, representing
15 low-income tenants facing eviction, and the Eighth
16 Judicial District Pro Bono Committee which works to
17 recruit, train and support pro bono attorneys. It's my
18 understanding that Judge Feroletto, administrative judge
19 for our district, will be describing those efforts so I
20 will concentrate on other efforts.

21 JUDGE LIPPMAN: Yes, she will.

22 MR. RUSS: The five local programs are:

23 Legal Services for the Elderly, Disabled and
24 Disadvantaged, this was incorporated in 1978 to provide
25 free legal services to seniors, disabled and low-income

MR. ARTHUR RUSS

1 people in the six-county area and the Seneca Nation of
2 Indians reservation. They also provide guardian services
3 to an additional 67 elderly and disabled individuals, and
4 are trustees for another 300 disabled persons utilizing
5 the Western New York Coalition Pooled Trust. Their goal
6 is to use the legal system to help their clients live
7 independently and with dignity. Their current priority
8 areas are health care, housing, veterans' support, income
9 maintenance, grandparent's advocacy and elder abuse.

10 The Erie County Bar Association Volunteer
11 Lawyers Project has a dual mission: To provide quality
12 free civil legal services for low-income people and
13 similar not-for-profit groups; and also to effectively
14 involve volunteers in the delivery of those services. VLP
15 recruits, trains and coordinates the efforts of pro bono
16 attorneys, its staff attorneys and volunteers to provide
17 representation in a wide array of civil legal services
18 cases. All of the VLP services are available in Erie
19 County, while an increasing array of its services are now
20 available to clients throughout the entire Eighth Judicial
21 District.

22 Further, the Western New York Law Center is a
23 nonprofit legal organization established in 1996 that
24 provides legal and technology assistance for the benefit
25 of low-moderate income clients and legal assistance

MR. ARTHUR RUSS

1 organizations. The Law Center engages in fair lending
2 advocacy and direct representation of homeowners facing
3 foreclosure and has initiated class actions on behalf of
4 public assistance recipients in Western New York whose
5 benefits are illegally being delayed or denied.

6 Fourthly, Neighborhood Legal Services provides
7 legal services to the poor and disabled in the five-county
8 region of Erie, Niagara, Wyoming, Genesee and Orleans.
9 Services are provided in the areas of family law,
10 including custody matters, domestic violence, divorce, and
11 legal assistance to victims of HIV or cancer; housing law,
12 including landlord-tenant, public housing, and housing
13 discrimination; public benefits advocacy for people cut
14 off or denied government benefits, including public
15 assistance, food stamps, Medicaid, Social Security
16 Disability and SSI. Neighborhood Legal Services also
17 provides community education and training to over 3,000
18 clients, attorneys and community advocates each year.

19 Finally, the Legal Aid Bureau of Buffalo was
20 founded 100 years ago and provides free legal services,
21 representation for children and criminal defense work for
22 low-income people. Their civil unit handles family law,
23 housing and unemployment cases.

24 These five programs work together to keep people
25 out of homeless shelters by providing an eviction defense

MR. ARTHUR RUSS

1 and mortgage and tax foreclosure defense. They keep
2 people off the welfare rolls by helping people with SSI
3 benefits, unemployment insurance claims and child support
4 cases. They keep kids out of expensive -- the expensive
5 foster care system by handling adoptions, representing
6 grandparents and other relatives that step in to seek
7 custody when families becomes dysfunctional, and parents,
8 for setting up standby guardianships so when they become
9 incapacitated or die, the standby guardian seamlessly
10 becomes the guardian. They help people with fresh starts
11 financially and emotionally by providing assistance with
12 bankruptcies and divorces, including victims of domestic
13 violence.

14 These programs cumulatively served more than
15 11,000 low income and elderly clients last year. These
16 efforts saved taxpayers an estimated \$7 and a half million
17 in tax dollars by keeping people out of homeless shelters
18 through representation in evictions, mortgage foreclosure
19 and tax foreclosure, and by getting people off the welfare
20 rolls by winning SSI benefits and unemployment benefits.

21 In addition to taxpayer savings, our five local
22 programs resulted in an estimated at least \$9 million
23 coming into the pockets of low-income people by winning
24 these SSI benefits, unemployment insurance benefits, and
25 child support cases. I cannot overemphasize the

MR. ARTHUR RUSS

1 importance of bringing that money into our local
2 struggling economy. Putting extra money into the hands of
3 low-income people immediately stimulates a wide variety of
4 sectors of the local economy. Low-income people cannot
5 afford the luxury of saving. Studies suggest that such
6 lower income and credit-constrained recipients increase
7 their spending substantially more than the typical
8 recipient.

9 One reason that the local programs are able to
10 serve so many clients is that four years ago, all five
11 programs co-located in one building here in downtown
12 Buffalo. Three of the organizations share common space,
13 including a library, a student/volunteer clinic room, two
14 conference rooms, a reception area and a lunch room.

15 They also share a telephone system, and all of
16 the organizations share various types of technology. The
17 shared telephone system is administered in-house,
18 long-distance billing is allocated between the
19 organizations sharing the system. At that time each of
20 the three programs was in need of an updated telephone
21 system. The system they bought collectively is at the
22 same level as they would have each needed individually.
23 So the phone system alone, they collectively saved over
24 \$45,000.

25 They have taken their collaboration, though, to

MR. ARTHUR RUSS

1 another level. As the three organizations are now also on
2 a shared phone bill which saves \$5,000 a year, share
3 Internet bandwidth, saves another \$1,200 a year. The
4 shared phone system not only saves costs, but is
5 convenient in connecting misdirected calls to other
6 agencies.

7 By working together, they were able to raise
8 special funding to buy all the shared equipment and
9 furniture. This special funding allowed them to pay for
10 the build-on costs of the new shared space which amounted
11 essentially prepaying over \$120,000 in rent and thus
12 reducing their rent over the life of the ten-year shared
13 lease. All these cash savings allow the programs to put
14 more dollars into hiring more staff to represent more
15 clients in need. All of the organizations are exploring
16 other cost-savings ventures, such as joint purchase of
17 supplies, insurance and audit services.

18 In addition to the cash savings, there are other
19 several benefits that flow from this arrangement. Because
20 all of the organizations are housed in the same building,
21 clients have been provided a one-stop option. The
22 organizations maintain and share referral lists by
23 organization and by case type. Clients who walk in asking
24 for assistance are quickly directed to the next correct
25 organization so that they don't have to go from

MR. ARTHUR RUSS

1 organization to organization seeking its services.

2 The five programs' lawyers and paralegals all
3 being in one building facilitates the advocates from
4 different programs working together on issues and cases.
5 Rather than having to spend time going across town to
6 meet, they can simply go down the hall or up the elevator
7 to work together.

8 In addition, VLP has a wonderful collaboration
9 within our local bar association. Each year about 400
10 lawyers handle about 1,000 pro bono cases through
11 Volunteer Lawyers Project. The collaboration with these
12 pro bono lawyers complements the efforts of the staff
13 lawyers to provide more and better service for their
14 clients.

15 However, even with all these superlative efforts
16 and collaborations, the need remains overwhelming.
17 Statistics gathered over a sample two-month period
18 indicate that 40,000 low-income clients in the Buffalo
19 area per year are being turned away and facing their
20 important legal civil problems without the help of a
21 lawyer. It's a black eye on the principles of justice
22 that we hold so dear, that people in need are being denied
23 access to justice concerning basic human needs such as
24 housing, public benefits and family matters.

25 In conclusion, I want to close by thanking the

MR. ARTHUR RUSS

1 Chief Judge and the Task Force for your exemplary efforts
2 and results. In these difficult economic times, the state
3 must be more vigilant, more active and more aggressive in
4 making sure that people in need do not fall prey to the
5 denial of life-sustaining benefits, loss of their home, or
6 further injustice. I think you just heard examples of
7 that in the testimony preceding. Your leadership is
8 expanding our investment in civil legal services, ensuring
9 greater access to justice.

10 Access to justice, funding for legal services,
11 is not a special interest. Providing legal assistance to
12 the poor and the elderly is a fundamental public interest.

13 Thank you.

14 JUDGE LIPPMAN: Thank you for your very
15 interesting testimony.

16 You know, this model that you have here and
17 we've seen in Rochester in the Telesca Center, there's
18 obviously one that makes so much sense in terms of pooling
19 resources and being able to work together to meet the
20 need. With all of the efforts that you've made, it seems
21 what's consistent here in the western part of the state,
22 and particularly here in the Buffalo area, is that we
23 still are meeting only a relatively small swath of what we
24 need to do, is that a fair estimate? With everything that
25 you've done, with all of the collaborations, we still need

MR. ARTHUR RUSS

1 more dollars in the end to make this work?

2 MR. RUSS: When we're turning away 40,000
3 potential clients and poor individuals, you certainly do.

4 I would also like to say that under my term, my
5 one-year term as Bar Association president, one of the
6 things that I'm trying to do is to show both the bar and
7 the public, to the extent that I can, of how lawyers in
8 our community are giving back, that it's not the big
9 accident cases that everyone reads about. We're trying to
10 show the people that dedicate their lives to giving back.
11 And as Vince Doyle said at his inauguration, "Lawyers,
12 that's what we do for a living, we give back". Well, we
13 also have to give back to the well if we're going to take
14 from the well.

15 JUDGE LIPPMAN: There's no question, and lawyers
16 do, and I think we've demonstrated at these hearings that
17 the pro bono efforts are an absolutely vital, necessary
18 complement to the providers; that, you know, it goes
19 together, that there's no question about it.

20 One final question for you, that one of the
21 points we've been heard at these hearings and that we've
22 made in last year's Task Force report is that an
23 investment in civil legal services is a wise investment,
24 that the bottom line, aside from the judiciary and, in
25 fact, profession's obligation to foster equal justice,

MR. ARTHUR RUSS

1 aside from the ethical and moral imperative that we have
2 to help those who can't help themselves, that the bottom
3 line is that society, local and state government, gain
4 money by investing in civil legal services rather than its
5 just money, you know, put out there into the -- into
6 the -- a worthy cause but it has no return. You agree
7 from your -- I gather from your testimony, from your
8 experience, that that's the case, that it's an investment
9 that brings far more than we give to it?

10 MR. RUSS: There's no question about that. It's
11 a very efficient investment because what we're doing is
12 those dollars get leveraged so that we're not using tax
13 dollars or the welfare dollars to take care of these
14 people, where they want to take care of themselves, and
15 we're giving them the ability to do that and it's a very,
16 very, efficient use of taxpayer funds.

17 JUDGE LIPPMAN: Thank you so much for your
18 testimony.

19 MR. RUSS: Thank you.

20 JUDGE LIPPMAN: And now I'm going to ask someone
21 who has such a rich history in this area and who has
22 contributed so much to this -- to his community and to
23 this state, in particular in regard to this issue with
24 regard to access to justice and equal justice for all, so
25 Justin Vigdor, it's an honor for you to come and testify

MR. JUSTIN VIGDOR

1 in front of us today.

2 MR. JUSTIN VIGDOR: Chief Judge, it is really my
3 honor to appear before you and Presiding Judge Scudder,
4 Judge Pfau, Past President Paul Hasset. And thank you so
5 much for your kind words.

6 I have had many years the pleasure and
7 stimulation and gratification of being involved in pro
8 bono activities of the bar. I was chair of the IOLA fund
9 from the time of its creation for five years, I co-chaired
10 with Judge Vincent Marrero Judge Wachtler's special
11 committee to study mandatory pro bono, I chaired a special
12 task force of the state bar, all of which I think have
13 made real contributions to the provision of legal -- civil
14 legal services for the poor. But as you've observed in
15 your remarks, truly, only a dent has been made in the
16 overwhelming need. We have all known that a very small
17 percentage of the need has been served.

18 My task today is evidently to talk about the
19 origin of the Telesca Center in Rochester, New York and
20 I'm very, very happy to do that.

21 Bryan Hetherington, who is here at the table, I
22 gather will also speak about the operations of the Telesca
23 Center, and chances are we will, to some extent, overlap
24 and I hope we'll be forgiven for that.

25 JUDGE LIPPMAN: You will be, I guarantee it.

MR. JUSTIN VIGDOR

1 MR. VIGDOR: The Telesca Center is the
2 realization of a vision that Monroe County bar leaders and
3 legal service providers in Monroe County have had for
4 several decades. Monroe County -- if I may be permitted
5 to boast a bit -- statistically had, and I think may
6 perhaps still, has the largest percentage of volunteer
7 lawyers serving the needs of the poor. But we knew that
8 efficiency was lacking for a variety of reasons. One of
9 the most vocal proponents of bringing all of the providers
10 together was Hanna Cohn, whom some of you may remember
11 her, she was the founder and original head of the
12 Volunteer Legal Services Program in Monroe County which
13 has several hundred lawyers acting for the poor, and is
14 now headed by Sheila Gaddis who is a member of your Task
15 Force.

16 JUDGE LIPPMAN: Yes.

17 MR. VIGDOR: For years the providers in Monroe
18 County were scattered around the city in really quite
19 shabby quarters because that was all that they could
20 afford. Very old buildings, many times lacking -- well,
21 I've been told by some of them that they did not have
22 enough heat in the winter and that there were rodents in
23 some of the facilities. They did not present the very
24 attractive site for poor people to come to. And the poor
25 people coming to them were faced with the problem of going

MR. JUSTIN VIGDOR

1 around town by shuttle, by buses, and finding when they
2 got somewhere, that they were in the wrong agency.
3 Because of the variety of funding sources, each agency was
4 limited to providing only certain types of legal services.
5 So unfortunately, someone might come to one and find that
6 they have to get on a bus and go to another. And this was
7 a dreadful situation.

8 When I was president of the county bar in 1977,
9 we thought we might be able to get at it by creating a
10 telephone intake system, and we established that, but it
11 really did not prove to be very effective. People were
12 encouraged to call a central number and told where to go,
13 that didn't work very well and eventually discontinued.
14 Our providers were very eager to cooperate and they met
15 annually to discuss their programs and to address problems
16 and see how they could solve them collectively, but that
17 did not work very well.

18 In 2005, the Monroe County Bar Association,
19 which is a very old bar association, goes back to 1896,
20 moved to a ten-story building right at the four corners in
21 the center of downtown Rochester, which was quite
22 functional, and nearly vacant. It had only a bank on the
23 first floor and a tenant on one other floor, so that
24 basically about eight floors were vacant. The thought was
25 that the bar and the bar foundation and the providers

MR. JUSTIN VIGDOR

1 could all move into that building if they could negotiate
2 leases with the owner. Now this gave them a great deal of
3 leverage because of the vacancy in the building. And they
4 were able to negotiate very attractive 15-year leases with
5 the owner of the building which contained two very
6 important provisions: One, the owner of the building
7 would front the renovation costs and the build-out of
8 about \$500,000, \$550,000; and secondly, would give us the
9 right to name the building.

10 Fortunately and serendipitously, the leases of
11 all of the providers were about to expire or had expired,
12 or they were there on month-to-month basis in their old
13 quarters, and we were able to take advantage of that
14 bargaining position, negotiate those leases, and arrange
15 to move into the building.

16 The providers and the bar, bar headed by Mary
17 Corbitt Lowenguth, who most of you know and who was a
18 dynamic person, met and decided to see, could the money be
19 raised to repay the owner the \$550,000, and \$200,000 in
20 move-in costs, relocation costs. The agreement was that
21 if we could repay the \$550,000, we would lock in a \$10 per
22 square foot rental for 15 years, which is really quite a
23 remarkable sort of rental anywhere these days.

24 They decided that a -- a feasibility should be
25 investigated, conducting a capital campaign to raise that

MR. JUSTIN VIGDOR

1 money, and I was asked -- I was honored by being asked to
2 chair a campaign for that fund. I had chaired a similar
3 campaign for not-for-profit agencies in the collaborative
4 co-location scheme a number of years ago and I was glad to
5 do it.

6 We formed a campaign cabinet, we began planning
7 to create what we hoped would be a unique national model
8 for delivery of legal services. We started by drafting a
9 very formal partnership agreement among the providers, the
10 Bar Association and the Foundation, in which each agreed
11 to suspend their own fundraising for the period of the
12 campaign, to contribute solicitors to the campaign, to
13 share their existing donor bases, to provide whatever
14 assistance in personnel would be needed during the course
15 of the campaign, and we had all of the board and all six
16 of the entities approve and sign a partnership agreement.

17 We had an allocation formula in the agreement so
18 that the first 550- would go to reimbursement of the owner
19 of the building, the next would go to the moving and
20 relocation costs of the agencies, and then we provided
21 \$200,000 for campaign costs, and the balance would be
22 going to the Foundation. The Foundation, being a
23 501(c)(3) entity, and was used as a conduit for the funds
24 so that contributors would have a tax deduction.

25 That being done, we thought we needed to give

MR. JUSTIN VIGDOR

1 the building a compelling identity. And we asked our
2 senior federal district court judge, who I'm sure all of
3 you know, Michael Telesca, for permission to name the
4 building in his honor. His life's work has epitomized
5 equal justice. He is, I think, admired and respected by
6 all of the practitioners in Monroe County and in Western
7 New York. Finally, he agreed to allow us do that, we
8 renamed the building the Telesca Center For Justice.

9 We engaged a consultant to do the feasibility
10 study which confirmed that we could be successful in the
11 campaign. We proceeded to design a campaign structure and
12 named chairs and committees to solicit the various
13 categories of potential donors, that in large law firms,
14 medium-size law firms, small law firms and individual
15 practitioners, corporations, banks, title companies, the
16 boards of each of the parties, local foundations,
17 well-known philanthropists, and friends of Judge Telesca.

18 And with the enormous dedication of the staffs
19 and executives of the providers and of the Bar
20 Association, we proceeded with the remaining groundwork.
21 We designed a campaign solicitation which contained a
22 statement of the case, pledge forms, news releases,
23 frequently asked questions, history of the agencies, and
24 other material. We held training meetings of solicitors,
25 and we moved forward to raise the funds.

MR. JUSTIN VIGDOR

1 Within a year or so, a year or two, from among
2 the members of the cabinet, the law firms behind those
3 members of the cabinet, their boards, and friends of Judge
4 Telesca, we received pledges of approximately \$600,000.
5 I'm happy to say that 400,000 of that 600,000 was from the
6 legal community, because we felt the legal community had a
7 stake and an interest, before we went to corporation and
8 banks and others. By -- in January of 2007, we went
9 public, so to speak, and we launched a public phase of the
10 campaign. We raised the goal to 1.2 million. By the end
11 of 2009, we had raised \$1.8 million. I'm delighted to say
12 that we had support from corporations, from banks, from
13 local foundations, from individual philanthropists, from
14 friends of Judge Telesca, the New York IOLA fund gave us
15 \$200,000, the New York State Bar Foundation gave us
16 \$25,000. We had enthusiastic support from the Mayor of
17 Rochester, the County Executive of Monroe County, the
18 Rochester Business Alliance, and the Rochester Downtown
19 Development Council. They were very pleased about the
20 fact that we converted a virtually vacant building --

21 JUDGE LIPPMAN: Right.

22 MR. VIGDOR: -- into an income-producing busy
23 center with over 100 lawyers and paralegals in a part of
24 town that they were worried about that was loosing
25 tenancies.

MR. JUSTIN VIGDOR

1 The Telesca Center has exceeded all
2 expectations. Providers have up-to-date facilities,
3 numerous efficiencies have been realized, Bryan will talk
4 more about it. It's also a centralization. There is a
5 Center for Education in the building which can seat up to
6 125 people, it's used for CLE, for community forums for
7 training purposes. Each agency, importantly, has access
8 to the donor banks that resulted from this campaign, and
9 now an annual ongoing planned giving program is now
10 contemplated.

11 I'm pleased to report that we received the
12 American Bar Association's Harrison Tweed Award in
13 recognition of extraordinary achievement to develop or
14 significantly expand access to legal services for
15 low-income and indigent people. We have been visited by
16 other bar associations who seek to replicate the Telesca
17 Center and we have seen happen what we had hoped would
18 happen.

19 Lastly, let me report that the fund raising has
20 continued. We've received several hundred thousand
21 dollars in state grants which have been obtained for
22 technology within the building and for renovation of the
23 building's lobby which was not part of the original plan.
24 The total committed to date is approaching \$2.4 million.

25 We are very grateful to you, Judge Lippman and

MR. JUSTIN VIGDOR

1 the Task Force, for focusing the spotlight so intensely on
2 the need for expansion of civil legal services, and we
3 pledge in Monroe County to continue to work with you in
4 this endeavor.

5 JUDGE LIPPMAN: Well, thank you so much. And
6 the Bar Association and the providers in Monroe should be
7 very, very proud, I think, of Telesca which I've seen in
8 action, it's quite a place.

9 Let me just ask you, do you think it's a certain
10 size community, type of community that this kind of
11 approach works? We see that here in Erie, they've
12 replicated to a significant degree the same kind of
13 approach that you have in Telesca. What makes it work and
14 how transferable is it or replicable around the state?

15 MR. VIGDOR: Well, I certainly am not an expert
16 on that, Judge, but my guess is, that if you have a very
17 committed bar, it can be done in most communities. Maybe
18 the level and the scale would vary, but I think if you
19 have --

20 JUDGE LIPPMAN: Yes, clearly.

21 MR. VIGDOR: But I think you have a real
22 organized bar that is truly committed, I think the smaller
23 cities in the state can do something very much like it.

24 JUDGE LIPPMAN: And it doesn't have to be every
25 provider.

MR. JUSTIN VIGDOR

1 MR. VIGDOR: No.

2 JUDGE LIPPMAN: It can still be a center of
3 gravity that's going to work in terms of sharing services
4 and costs, you know, and everything else.

5 So, again, I salute the Monroe bar and your
6 efforts with Telesca, and particularly, again, thank you
7 for all of your efforts in this area. We've just begun,
8 you know, we're just getting warmed up so you've got a lot
9 more to do. Okay? We've got a deal, right.

10 MR. VIGDOR: Yes, indeed.

11 JUDGE LIPPMAN: Okay.

12 The next speaker is also from Monroe County, is
13 Bryan Hetherington, and you're on.

14 MR. BRYAN HETHERINGTON: Thank you.

15 JUDGE LIPPMAN: We'll forgive him for talking,
16 I'm not sure so be careful.

17 MR. HETHERINGTON: Really. He can be my truth
18 squad, Judge.

19 JUDGE LIPPMAN: Go ahead, I'm only kidding.

20 MR. HETHERINGTON: Chief Judge Lippman,
21 Presiding Justice Scudder, Justice Pfau and President
22 Hassett, it's an honor to appear before you as president
23 of the Monroe County Bar Association to talk about the
24 fruits of the effort that --

25 JUDGE LIPPMAN: Right.

MR. BRYAN HETHERINGTON

1 MR. HETHERINGTON: -- Justin has described to
2 you, because that effort bore good fruit and we've --

3 JUDGE LIPPMAN: And I might say, not to
4 interrupt you, but just to be there and see it is
5 graphically all one needs to see the fruit its borne.

6 MR. HETHERINGTON: Absolutely. And we've really
7 had four kinds of outcomes from it that -- that have made
8 things better for clients and the lawyers who are trying
9 to do pro bono services.

10 First, the co-location allows us to provide
11 better services to individuals who are seeking help, and
12 better quality services to people who are receiving help.
13 It has saved an immense amount of money for the providers
14 which then allows us to invest those savings into
15 additional staff and additional services.

16 We have structured this to promote pro bono
17 participation, make pro bono recruitment and training and
18 service easier for members of the bar, and this has
19 allowed the legal services providers to obtain additional
20 funding because of the co-location that they would not
21 have individually been eligible to receive, thereby
22 providing additional services.

23 JUDGE LIPPMAN: So you kind of piggyback on each
24 other, right?

25 MR. HETHERINGTON: Absolutely. Because

MR. BRYAN HETHERINGTON

1 collectively, we can do more than any of the providers
2 could do individually.

3 JUDGE LIPPMAN: Particularly with the bar as the
4 centerpiece already there at the heart of this.

5 MR. HETHERINGTON: Absolutely. And Justin so
6 ably led this effort and brought everybody together.

7 JUDGE LIPPMAN: But you know what, but every
8 community doesn't have a Justin Vigdor, I think that's --
9 that's what we need to replicate and get some people who
10 can put these things together.

11 MR. HETHERINGTON: No community has a Justin
12 Vigdor of Rochester.

13 JUDGE LIPPMAN: I stand amended, go ahead.

14 MR. HETHERINGTON: But every community has a
15 lawyer of stature who other lawyers --

16 JUDGE LIPPMAN: I agree with you.

17 MR. HETHERINGTON: -- listen to --

18 JUDGE LIPPMAN: I agree with you.

19 MR. HETHERINGTON: -- and who can serve as the
20 honest broker who brings everybody together in this kind
21 of cause.

22 JUDGE LIPPMAN: That's exactly right.

23 MR. HETHERINGTON: He or she will have a
24 different name.

25 The four legal services providers who are now

MR. BRYAN HETHERINGTON

1 co-located each provide services to low-income people in
2 different areas of the law and have long done that. And
3 as Justin explained before co-location, clients needed to
4 go to different places, they needed to call different
5 phone numbers, they would spend long times telling their
6 problem to the wrong receptionist who would then send them
7 to tell their problem to the right receptionist and they
8 would spend more time doing that. Now all of the
9 telephone systems are connected. Indeed, the
10 receptionists sit in the same area and your call is
11 randomly answered by one of the receptionists --

12 JUDGE LIPPMAN: It's quite striking, it really
13 is.

14 MR. HETHERINGTON: -- by one of the
15 receptionists and if you call the wrong number, what you
16 are told is: I'm sorry, the Legal Aid Society of
17 Rochester does not do that; however, one of the partners
18 here in the Telesca Center does, would you like to be
19 connected to the person who talks to their new clients?
20 And if the answer is yes, which it is 99 percent of the
21 time, then it's a direct connection. It's not, here, you
22 know, call another thing, call between 3 and 5 on Tuesdays
23 and be the third caller at, you know, this number to get
24 some services.

25 And there were savings in that. Before we all

MR. BRYAN HETHERINGTON

1 had receptionists, every single one of the providers had a
2 receptionist and one had two. Now two and a half
3 receptionists can handle the calls for the entire building
4 which is a substantial savings.

5 In addition, the clients receive better
6 services, better quality services, because -- because each
7 of the providers was specialized, when problems occurred
8 outside of the specialty that the provider provided
9 representation in, there were glitches in the need to talk
10 to people who you didn't know and the difficulties of
11 that. Now that everybody is co-located, it is, as the
12 former head of the executive director of the IOLA fund
13 said, you are like a large law firm with many departments.

14 JUDGE LIPPMAN: Do you have people wandering in
15 off the street just saying this is a place we know we can
16 get help, they have no idea what the different groups do?

17 MR. HETHERINGTON: Absolutely. And Mary
18 Lowenguth, our executive director at the bar tells this
19 compelling story of walking into the lobby of the Telesca
20 Center one day and there's a mom and she's got one kid in
21 a stroller, one kid in her hand, and a five- or
22 six-year-old kind of running around, and she was looking
23 for legal services, and Mary said, well, I'll take you up
24 to the reception area for all of the legal service
25 providers in the community, I'm sure they're going to be

MR. BRYAN HETHERINGTON

1 able to help. And the mom said, oh, I am so grateful, I
2 was afraid that maybe nobody would be able to help me and
3 I would have to take my kids across town to someplace else
4 to get help. And that's, you know, what we are trying to,
5 through the co-location, avoid.

6 One conversation with one person, the savings
7 then come back. And because people are working in their
8 areas of expertise and working together, like you heard
9 earlier in the testimony from the client, somebody who has
10 an eviction problem that is being caused by a Social
11 Services problem, an incorrect withholding of Social
12 Services benefits. Back in the old day, the Legal Aid
13 Society, who would represent the people in the evictions,
14 would need to connect with somebody from Monroe County
15 Legal Assistance Center who represents people --

16 JUDGE LIPPMAN: And we found that most of these
17 people have multiple problems, I mean, that's clear.

18 MR. HETHERINGTON: Absolutely. And this allows
19 us to put together teams of lawyers and paralegals across
20 the organizations to provide seamless high quality
21 services to the clients.

22 Because of the below market rents and because of
23 the shared space and because of the economies that you
24 heard about in Art's testimony, joint purchasing and those
25 kind of things --

MR. BRYAN HETHERINGTON

1 JUDGE PFAU: Has it also had a spill-over effect
2 on the bar because you're collated with the bar
3 association so that it's had an impact on the pro bono
4 response from the bar?

5 MR. HETHERINGTON: Absolutely, Judge Pfau. And
6 what we have done is to put the pro bono office, Volunteer
7 Legal Services, which is really one of the finest pro bono
8 programs in the nation, we put them right next to the
9 Rubin Education Center where we hold our continuing legal
10 education events, and we did that mindfully, deliberately,
11 and we did it so that it would be easier for their
12 recruiters to walk next door and if they needed, you know,
13 more lawyers to do wills for people with HIV disease, they
14 could come next door to a T & E section meeting and say,
15 hey, we need folks, would somebody sign up, and it's a
16 visual reminder, every time you come in to CLE, if you
17 haven't taken a case recently, you have to walk right by
18 the office, the guilt hits you.

19 JUDGE PFAU: A little guilt isn't so bad.

20 MR. HETHERINGTON: Guilt is very good, guilt is
21 good for us. And you can go on in and -- and they will
22 sign you up right then and there on your lunch hour while
23 you're getting your next CLE with your next case
24 assignment. So it has promoted that. It has made it
25 easier because in our community, much of the training for

MR. BRYAN HETHERINGTON

1 the attorneys who are doing the pro bono representation is
2 actually done by attorneys who are employed by the other
3 providers who are expert in those areas of law, it has
4 made it easier for that support.

5 JUDGE LIPPMAN: And training is so important to
6 this effort.

7 MR. HETHERINGTON: Absolutely. Because we don't
8 want to give low-income people who are being represented
9 by pro bono lawyers lesser services. Those lawyers need
10 to be trained to give them high quality service.

11 JUDGE LIPPMAN: You can have a well-meaning and
12 generous member of the bar who has no idea how to do this
13 particular kind of work, whatever is necessary.

14 MR. HETHERINGTON: And the foreclosure
15 prevention work is an excellent example of that.

16 JUDGE LIPPMAN: Yes, it is, exactly.

17 MR. HETHERINGTON: Judge, we, you know, have
18 traveled all throughout the state providing training to
19 attorneys, and I remember one of the attorneys employed by
20 Empire Justice Center going to a bar-sponsored training at
21 the beginning of the foreclosure crisis and raising her
22 hand at the end of the training and said, excuse me, but
23 nobody's talked about any defenses to foreclosures in this
24 training, and being told by the trainer, oh, there are no
25 defenses to foreclosure, that's why we haven't talked

MR. BRYAN HETHERINGTON

1 about it. Well, there were and there's -- and training is
2 now being provided to volunteer lawyers and staff lawyers
3 throughout the state.

4 And then the final way that this has benefitted
5 all of us in the Telesca Center is that it has allowed the
6 organizations in the Telesca Center to be eligible for
7 funding that they would not have been able to receive
8 otherwise. Many of the funding sources are for
9 representation of categories of clients: Veterans, people
10 with HIV disease --

11 JUDGE LIPPMAN: Right.

12 MR. HETHERINGTON: -- people who are homeless,
13 and they want to provide a full range of legal services.
14 Well, none of the providers did that --

15 JUDGE LIPPMAN: Themselves.

16 MR. HETHERINGTON: -- in and of themselves so
17 the alternative was to ask lawyers to do cases in areas
18 where they weren't an expert and it would take them longer
19 and they would do them worse, or to work collaboratively,
20 and by being in the Telesca Center, we can now give people
21 the highest quality of representation most effectively,
22 and there are at least six funding applications that had
23 been approved for services, for collaborative services
24 that probably would not have been able to be done if the
25 co-location hadn't occurred. So this is all great.

MR. BRYAN HETHERINGTON

1 And, you know, our community has done a fabulous
2 job and our lawyers raise over \$235,000 a year for the
3 legal service providers, they have contributed generously
4 to the campaign, the providers have worked with the bar to
5 get out all the efficiencies that we can possibly get out,
6 and yet, as in Erie, every day if you were to go and sit
7 in that waiting room, you would hear that there are people
8 who cannot be served.

9 JUDGE LIPPMAN: And again, I assume you would
10 agree that the bottom line of all of this is that it's
11 wonderful to have a generous bar, it's wonderful to have
12 all the pro bono work that our members do around the
13 state, but that we need a permanent system of funding
14 civil legal services out of the public fisc in order to
15 make this, to even begin to address this problem, and then
16 we can combine with the pro bono efforts and the
17 generosity, the private bar and all of that.

18 MR. HETHERINGTON: Absolutely. And I think it's
19 also really important to recognize that there needs to be
20 funding for the infrastructure of the pro bono system.

21 JUDGE LIPPMAN: Yes, clearly.

22 MR. HETHERINGTON: So even when you talk
23 about -- about, you know, those folks who say, well, the
24 solution here is in expanding pro bono, we all ought to
25 work to expand pro bono and we have over 1,500 lawyers in

MR. BRYAN HETHERINGTON

1 our community who are on the VLSP panel, and that's an
2 extraordinary number, the highest, you know, per capita --

3 JUDGE LIPPMAN: You've done good work.

4 MR. HETHERINGTON: But we need people who can
5 screen those clients, determine which ones -- cases have
6 merit.

7 JUDGE LIPPMAN: Yes.

8 MR. HETHERINGTON: Because you don't want to
9 assign cases without merit to pro bono lawyers, that gets
10 them into a place where they don't feel good and don't
11 want to come back and volunteer again. We need people to
12 supervise them and support them and be experts to them and
13 train them and make sure that the cases actually get done,
14 because that's important, too, so we need resources even
15 on the pro bono side, as well as on the staff side, to
16 make this work as a Telesca.

17 JUDGE LIPPMAN: Judge Scudder.

18 JUSTICE SCUDDER: One of the things I was
19 talking to Sheila Gaddis before was, as you know, I'm from
20 Bath, New York, Steuben County, and I'm sure there is a
21 lot of attorneys that would do pro bono work but exactly
22 what you're talking about, we don't have, in Steuben
23 County, there is no structure for them to go and give
24 their services to people that really need it, and I
25 have -- unfortunately, I believe that's got to be a

MR. BRYAN HETHERINGTON

1 function of money, you have to have the money to put those
2 people in place so that the lawyers can help out. And I
3 look at it like in Monroe and Erie, you're so lucky that
4 you have the numbers to be able to structure and to fund
5 that in order to do that, and I just think that looking at
6 the outlying counties, they ought -- there ought to be a
7 way to help them as well.

8 MR. HETHERINGTON: I absolutely agree with you,
9 Presiding Justice. And I think the trick here is you have
10 three things: You have recruitment, you have matching,
11 and then you have support. And the system, if we want our
12 attorneys to step up to and be successful in their pro
13 bono obligations, we have to deal with all three of those
14 and those have to be funded activities. You know better
15 than I do that we cannot ask our rural bar associations to
16 take on that as an additional voluntary activity. They
17 are small, they have no resources, they have no paid
18 staff. These are activities that our court system, our
19 justice system, has to fund that in order to achieve that
20 access to justice --

21 JUDGE LIPPMAN: I think --

22 MR. HETHERINGTON: -- that I talked about.

23 JUDGE LIPPMAN: I think this whole idea, too, I
24 think Judge Scudder is commenting on, there has to be a
25 hub of -- that's able to weal out services even, you know,

MR. BRYAN HETHERINGTON

1 beyond the geographic areas, certainly in conjunction with
2 the areas, you know, around, you know, a particular
3 community, a particular city.

4 MR. HETHERINGTON: And we have to address the
5 fact that some of the types of cases are ones that are --
6 just don't work for pro bono lawyers. The Social Services
7 cases --

8 JUDGE LIPPMAN: Absolutely without question.

9 MR. HETHERINGTON: -- as the Second Circuit has
10 observed, that the law is more Byzantine than the tax
11 code, so asking generalist practitioners, whether in Bath
12 or Rochester, to make that deep dive into, you know,
13 statutes that are 602-823(b)(4)ii --

14 JUDGE LIPPMAN: Of course what we've also
15 learned, and you're entirely right, that you need
16 providers in certain types of cases. In the more rural
17 areas in the state, the wide geography, you know, the
18 large areas result in people have to travel -- lawyers
19 have to travel great distances, or the client, to get
20 serviced, and it's very difficult, and in some areas of
21 the state civil legal providers are few and far between
22 and how you get it from the hubs, again --

23 MR. HETHERINGTON: That's right.

24 JUDGE LIPPMAN: -- where you maybe have the
25 people and the resources and how you get it out to the

MR. STEPHEN JOHNSON

1 most rural areas of the state is very, very difficult, and
2 some of our providers in the most rural areas are really
3 having a terrible time. In fact, they have so little
4 money that the attorneys who work for some of our rural
5 providers qualify as the working poor, you know, and
6 barely above poverty level.

7 But thank you and I thank the Monroe County bar,
8 I thank the Erie County bar for all of your wonderful
9 efforts and for this whole concept of sharing resources
10 among the providers.

11 And now I ask Stephen Johnson from Bond,
12 Schoeneck & King.

13 MR. STEPHEN JOHNSON: Good afternoon. I would
14 like to report on our efforts in Syracuse, New York and
15 the One Roof Committee that we have. At the request of
16 Judge Lowe, a couple of years ago, I agreed to serve as
17 counsel to this committee that's become --

18 JUDGE LIPPMAN: Who's sitting right there, I
19 note.

20 MR. JOHNSON: Yes, he is. He actually called me
21 in 1990 on a matter and he keeps calling me in Syracuse, I
22 have a lot of fun working for him.

23 So the members of our committee are the
24 president of the Bar Association, the coordinator for the
25 Onondaga Bar Association's Volunteer Projects, a

MR. STEPHEN JOHNSON

1 representative of the Syracuse University College of Law's
2 clinical programs, a representative of the Federal Court
3 Bar Association for the Northern District of New York, and
4 the executive directors for the legal services providers
5 in Central New York: The Hiscock Legal Aid Society, Legal
6 Services of Central New York, and Legal Aid Society of
7 Mid-New York.

8 Now, two of these offices are now located in one
9 building and the others are scattered. And for years, I
10 think Judge Lowe and others had wanted these entities to
11 be in one building. And we did visit Justin Vigdor and
12 his son about a year ago and received the report that you
13 received today, very impressive, and that gave us impetus
14 to keep going. Each of the boards of directors has passed
15 a resolution endorsing this concept, we've received advice
16 on how to put the space together and have it shared. We
17 aren't as fortunate, however, on the expiration of the
18 leases. The leases expire in 2014, we're hoping to do it
19 in 2015 but we have one going on.

20 JUDGE LIPPMAN: So logistical issues to
21 really get them --

22 MR. JOHNSON: It is. And we are still working
23 on a request for proposal, we certainly could go to the
24 landlord of that one building and get a proposal. We do
25 think we can put a proposal together, we think we can get

MR. STEPHEN JOHNSON

1 the proposal out, I think we'll get responses, but then we
2 come to the Justin Vigdor factor, how do we put the money
3 together to cover moving expenses and build-out costs.

4 JUDGE LIPPMAN: Not so simple.

5 MR. JOHNSON: So even though we've been at it
6 for a while, we're at the beginning and we're going to
7 continue forward.

8 JUDGE LIPPMAN: But you buy into this concept
9 that --

10 MR. JOHNSON: We absolutely do.

11 JUDGE LIPPMAN: -- that the goal of providing
12 civil legal representation for the poor would be so
13 enhanced if you're able to share costs, resources, and be
14 in just for convenience purposes.

15 MR. JOHNSON: Absolutely.

16 JUDGE LIPPMAN: Yes. So I think that the --
17 this part of the state, the Fourth Department, Judge
18 Scudder's bailiwick, are certainly -- all seem to be of a
19 like mind in terms of how to get this job done and, again,
20 Erie, Monroe and Onondaga certainly are at the forefront
21 of this new, I guess, piece of this, which is we're so
22 much stronger when we collaborate and do things together
23 on every level, not just the courts, but also what you're
24 doing for the -- what you can put back into the clientele
25 that we're serving.

DEAN MAKAU MUTUA

1 So I'm greatly appreciative to all of you, all
2 of your efforts, and thank you for being here and you're
3 all terrific and I say that with total sincerity. Thank
4 you so much.

5 And now I'm going to ask Dean Mutua to come up
6 and testify.

7 Dean, it's a delight to have you with us today
8 and so pleased that you've come here to testify at the
9 hearing.

10 DEAN MAKAU MUTUA: Thank you very much, Judge.
11 Am I alone here, am I going to face the four judges by my
12 lonesome?

13 JUDGE LIPPMAN: You're it, and Judge Scudder is
14 very difficult so be careful, Dean.

15 DEAN MUTUA: Well, thank you very much, sir, for
16 calling these hearings. I think that all of us, you know,
17 law schools, the bar, the bench, the state, have a
18 responsibility to provide legal services to our neediest
19 citizens. In my view, no democracy can succeed and
20 flourish without a functional legal services
21 infrastructure that is well supported and well funded,
22 because not all citizens can afford to pay for legal
23 services out of their pockets.

24 But I just wanted to say that we, all of us,
25 have different roles to play in this process. And I just

DEAN MAKAU MUTUA

1 want to focus my attention today on law schools, and in
2 particular on what UB Law is doing in this area.

3 But before I do so, let me just say that lawyers
4 start their journey in the profession in law school.
5 That's where they get their values, that's where they get
6 their training, and that's where they're taught how to
7 think and act like lawyers. So in a sense, as law
8 schools, we have a unique obligation as the people who sit
9 at the front line of the pipeline in the legal profession
10 to imbue in our students particular values of empathy --

11 JUDGE LIPPMAN: Do you think the generation -- I
12 know this is a generalization -- but the law school
13 population of today gets it? That they have an obligation
14 beyond earning money?

15 DEAN MUTUA: Well, I think that there's always a
16 risk of looking back in one's generation and blaming the
17 current or the future generations for not getting it,
18 certainly that's what parents do with their children. But
19 I do think there is something to be said of a certain
20 sense of loosening of social obligations in society today
21 that I think makes our citizens today, both young and not
22 so young, feel less indebted to their fellow human beings.

23 I also think that with the emergence of all
24 these technologies that really, you know, they alienate,
25 they are called social networkings, you know,

DEAN MAKAU MUTUA

1 infrastructures, but they also alienate people from one
2 another and I think that we have to work hard to make sure
3 our students do not fall prey to those influences.

4 But I think, you know, as law schools, we have
5 an obligation to impart certain values to our students,
6 and I think the most important one, in my view, is to
7 teach our students that both also in our lived examples as
8 professors, as deans, as educators, to teach them that,
9 you know, the law lives at the intersection of power and
10 powerlessness and that the law should be just but it
11 cannot exist in a vacuum. It must do justice. And that
12 it must do justice I think for the least of our citizens,
13 otherwise our system would lose its credibility as a
14 democracy. And so even as we try to keep the scales of
15 justice even, I think we have to teach our students that
16 they must have a social conscience, and that they have
17 obligation to society to serve the least among us.

18 JUDGE LIPPMAN: Dean, do you think that the --
19 the great debt that many law students have when they come
20 out of law school makes it difficult to get them to focus
21 on, as you say, their social obligation that they have to
22 those less fortunate? Does the economics of going to law
23 school today work against having our -- the new lawyer
24 come out and either work in the public sector, helping the
25 poor, or meet their pro bono obligations as lawyers?

DEAN MAKAU MUTUA

1 DEAN MUTUA: Well, I think, you know,
2 unfortunately, of course I don't tell you anything new
3 when I say that the cost of education, legal education,
4 law schools has gone through the roof, it's very, very
5 high. Now admittedly in a law school like mine, we are
6 still well priced for our students and we're very happy
7 about that.

8 JUDGE LIPPMAN: Yes.

9 DEAN MUTUA: But even then, people still feel
10 that burden is too high to carry. I know that in some
11 other law schools, the costs are very prohibitive, and so
12 when a person graduates from law school, they carry
13 enormous burden, sometimes in excess of \$200,000 in debt.
14 And so there's a compulsion, I think, for people to feel
15 that they've got to go to the highest paid jobs to pay
16 back, you know, these debts.

17 JUDGE LIPPMAN: You think you get more people
18 going to -- wanting to get into UB because the cost isn't
19 so staggering --

20 DEAN MUTUA: We certainly have --

21 JUDGE LIPPMAN: -- in this economy?

22 DEAN MUTUA: Yes, that is happening, you know,
23 but I think students tend to choose law schools not purely
24 for the cost, but for where they think are the best, you
25 know, legal education to place them in good position to

DEAN MAKAU MUTUA

1 get a good job, to make a living. You know, I think that
2 is what is happening.

3 But just to go back to your earlier question, I
4 think what students do after law school really depends
5 pretty much on the kind of legal education they get and
6 the kind of values that get imparted to them.

7 I will just, you know, let you know that I went
8 to Harvard Law School myself and I do remember, you know,
9 you will expect a lot of students there to go to high
10 paying corporate jobs but actually a lot of us went into
11 public interests after law school, and that was because of
12 what we're taught by people like Gary Bellow, who was a
13 professor there and who headed up the clinics at Harvard,
14 and so, you know, I think there is a great deal of that
15 that is happening because of what law schools do.

16 I just wanted to say that at UB Law, we believe
17 that we have an obligation to produce a lawyer who has or
18 feels they owe a duty to society, to the public good, to
19 serve the public in whatever capacity they are functioning
20 as a lawyer, whether as a judge or, you know, a
21 prosecutor, a private lawyer in a law firm, one can find a
22 way to provide legal services to our citizens in a pro
23 bono capacity, as a member of the bar or otherwise. And
24 we try to incubate these values and through our various
25 legal skills and the clinical programs at UB Law.

DEAN MAKAU MUTUA

1 And, you know, with your permission, I would
2 like to just, you know, mention some of those. You know,
3 but before I do so, let me just, you know, say a few
4 things about why I think what you are doing is so
5 important in these hearings.

6 I want to state very clearly for you, Judge, and
7 for the fellow judges and the audience, that I think there
8 is a dire need for both political and financial support
9 for programs and initiatives in this state that enhance
10 the ability of New Yorkers to access our courts. I think
11 that need is clear, it's demonstrated and it's urgent.
12 Many of our citizens cannot afford to pay for legal
13 services. The consequences, at least for them and for
14 their inability to pay for legal services, are dire.
15 Sometimes, you know, the consequences could mean the
16 difference between life and death. And as I said earlier,
17 the ability of our democracy to function effectively to
18 give meaning to the lives of our citizens depends on their
19 ability to vindicate their rights. But those rights
20 cannot be vindicated unless ordinary people, you know,
21 ordinary moms and dads and others have access to legal
22 services. And, you know, that's why I believe that
23 raising awareness on all these obligations that we have on
24 ourselves, because I consider law schools, the bar, the
25 bench, to be very fortunate, we have a singular obligation

DEAN MAKAU MUTUA

1 to our fellow citizens.

2 Let me just say what we are doing on our part at
3 UB Law to help with this process. We have, like most law
4 schools, a clinical legal education program, and our
5 clinical legal education program is one of the most robust
6 in the state, if not the country. It allows our students
7 to study law while providing needed free legal services to
8 individuals and organizations throughout this community.

9 I know that, Judge, you'll be very interested in
10 the notion of outcomes for legal education, you know, how
11 law schools train lawyers and how prepared they are to
12 become lawyers. We believe that experiential learning
13 environments in law schools are extremely important to
14 produce lawyers who are able to function effectively once
15 they graduate, and our clinical legal education program is
16 designed to do that. But a great benefit of these clinics
17 is that they can provide live client assistance to our
18 citizens and so our clinics are organized to utilize the
19 need in our community to teach our students to provide
20 those services. And I will just outline a number of the
21 clinics so that you have a sense of what we do.

22 The Women, Children & Social Justice Clinic
23 places students in supervised community placements and
24 projects, and these include placements in government
25 agencies, legal service agencies, law enforcement

DEAN MAKAU MUTUA

1 agencies, social service agencies and community outreach
2 programs throughout Western New York.

3 In addition, we have the Domestic Violence Task
4 Force that has traditionally assisted with onsite legal
5 assistance program at Haven House here in this community,
6 and the Haven House is the largest local shelter for
7 female victims of domestic violence and their children.
8 We are very deeply involved with Haven House.

9 The William and Mary Foster Elder Law Clinic
10 provides services through a working agreement with Legal
11 Services for the Elderly, Disabled or Disadvantaged of
12 Western New York. The clinic handles individual cases of
13 clients who walk in. At clinics, student attorneys are
14 responsible for all aspects of such cases, of course under
15 the supervision of a professor who is an attorney. They
16 participate in client counseling, informal advocacy in the
17 negotiation to settle problems.

18 And then we have one of our most successful, I
19 think, clinics which has received national recognition and
20 the support of many law firms and lawyers in this
21 community, and that's the Affordable Housing Clinic which
22 I think is well known to some of you, and that clinic
23 works with local organizations to create, you know, needed
24 housing for the elderly, for the disabled, and for the
25 homeless. I think at last count we had built homes or

DEAN MAKAU MUTUA

1 participated in building homes to the tune of \$200 million
2 over the past 15 years for this community.

3 We have a Community Economic Development Clinic
4 which assists community development corporations and other
5 non-profits with legal transactions, with particular
6 emphasis on child care policy and helping low-income
7 families build assets, because we believe that unless one,
8 you know, can earn a livelihood, you know, their ability
9 to vindicate and protect themselves in the legal system
10 will be compromised.

11 And then, of course, we have Environmental
12 Policy Clinic. The environment is a big thing these days
13 and we will not be left behind. This clinic focuses on
14 environmental policy issues that have direct impact on
15 this community. It deals with hazardous waste problems
16 and solid waste landfills formerly used by defense sites
17 or defense contractors, and which are under the
18 jurisdiction of the New York State Department of
19 Environmental Conservation Region 9 which is comprised of
20 Niagara, Erie, Wyoming, Chautauqua, Cattaraugus and
21 Allegany Counties.

22 And then Mediation Clinic -- and I'm coming to a
23 close -- Mediation Clinic which works on cases referred to
24 by local courts or other mediation agencies, and students
25 in my school help resolve disputes in a context of this

DEAN MAKAU MUTUA

1 clinic in family law, small claims and other small
2 questions.

3 Our students also serve many organizations and
4 individuals seeking justice through our externship
5 program, as well as our judicial clerkship program.
6 Placements that we have made through our externship
7 programs in the recent past include the Empire Justice
8 Center in Rochester, the Legal Aid of Buffalo, the Monroe
9 County Public Defender, the New York State attorney
10 General's Office, and the US Attorney's Offices.

11 But we also have, you know, a community-based,
12 law school-based fund raising effort called the Buffalo
13 Public Interests Law Program in which we leverage
14 resources from professors, from staff, and from members of
15 the bar mostly through an auction that we hold every year.
16 I think many lawyers in this community have come there to
17 bid for items and to raise money to be able to support
18 fellowships and grants for students. And every year we
19 have supported at least 25 students through that
20 particular effort.

21 Finally, you know, the law school does emphasize
22 pro bono opportunities in a number of ways. We publicize
23 pro bono opportunities through e-mail, through postings,
24 information tables in the law school lobby and, for
25 example, we have something we call the Law Student and

DEAN MAKAU MUTUA

1 Action Projects which is an Equal Justice Works program
2 that, you know, holds frequent information sessions at the
3 lobby of our law school to educate students about
4 opportunities in pro bono work. We also publicize the
5 Volunteer Lawyers Project which is a program of Erie
6 County Bar Association with postings for assistance who
7 are able to take on some of our students.

8 And, of course, we work with Neighborhood Legal
9 Services which is an important provider for legal
10 assistance in our community.

11 My belief as dean is that, you know, our
12 clinical efforts are modest but they do make an important
13 contribution. But I think our efforts alone are like a
14 drop in the ocean because I think the needs that we face
15 in this community are just vast and they're huge, and
16 that's why I don't think that any one of us is able to
17 tackle this issue by themselves. I think it's very
18 important that our Legislature in particular funds the
19 programs that provide civil legal services.

20 I think -- obviously I appreciate the fact that
21 we live in difficult times, the economy has been severely
22 damaged but, you know, I think that it is at moments like
23 these when we can measure the soul of a country, and in my
24 view, the soul of a country is measured not by how the
25 country treats its most powerful citizens but how it

DEAN MAKAU MUTUA

1 treats its most vulnerable citizens, and I think the
2 people who are served by pro bono and other Legal Aid
3 services are most vulnerable citizens and the moments like
4 these in particular, we owe them a special obligation, so
5 I thank you.

6 JUDGE LIPPMAN: Thank you, Dean. And I
7 congratulate the law school on having so many -- and you
8 personally, on putting together so many programs that I
9 think, as you say, teach law students to the values that
10 they have should and the understanding of what you just
11 said, that every society is basically, in the end, judged
12 by how it treats its most vulnerable citizens.

13 In terms of the clinical programs that the
14 bar -- that the law schools put together, do you think
15 their ultimate value, and maybe it's both obviously, is
16 the actual work that they do while they're students, or
17 the fact that doing that work, then sort of they carry
18 that with them when they go out to their communities and
19 into the bar? And what's the real value of the clinical
20 program?

21 DEAN MUTUA: So I -- clearly our mission is to
22 educate great lawyers, to produce prominent lawyers. And
23 I think, Judge, you've had our graduates appear before you
24 and I would like to think that you can testify to their,
25 you know, great skills.

DEAN MAKAU MUTUA

1 JUDGE LIPPMAN: I can, yes.

2 DEAN MUTUA: Yes, thank you. I think that, you
3 know, as a law school, what we try to teach students is to
4 think, you know, like lawyers, in a very complex way, to
5 apply obviously, you know, the law to the facts, to
6 segregate issues from non-issues, you know, but to do so
7 in a context.

8 JUDGE LIPPMAN: Yes.

9 DEAN MUTUA: Because you see, Judge, the law
10 doesn't exist in a vacuum, it can never exist in a vacuum,
11 and that's why, in my own view, I think when you expose
12 students to a real live situation where they can see a
13 client, you know, who maybe is a battered spouse, maybe
14 it's a person who has lost a home, you know, maybe it's a
15 person who has been abused by authorities, whatever the
16 case is, where you put them in that situation, I've often
17 found that it is transformational, it transforms, it -- it
18 reminds them why they came to law school. You didn't come
19 to law school to go make a lot of money, I like to tell my
20 students that, and I tell them that openly, you came to
21 law school to learn how to be a good citizen, to support
22 our democracy.

23 JUDGE LIPPMAN: So you can't necessarily, and I
24 guess this is what I was driving at, in your terms, to
25 teach the law students to have a soul, or more directly,

DEAN MAKAU MUTUA

1 to have a commitment to equal justice, you can't
2 necessarily learn that in a lecture room.

3 DEAN MUTUA: No. No. And I think it's actually
4 a huge mistake to think that we can do that solely in a
5 classroom room. You know, we send students as far away as
6 London and Cape Town and Sao Paulo to work with pro bono
7 lawyers in other countries, it's not just in this country,
8 because we believe that is really the nexus between --
9 it's like a higher moment, you get there and you see
10 what's going on with real live people and it never leaves
11 you, whether you become a judge --

12 JUDGE LIPPMAN: Exactly.

13 DEAN MUTUA: -- whether you become a prosecutor,
14 it just never leaves you. So I think that, you know, I
15 know that you've been a part of discussions about, you
16 know, pushing law schools to create a more --

17 JUDGE LIPPMAN: Exactly.

18 DEAN MUTUA: -- how shall I put it,
19 outcome-based, you know, legal education program in place
20 in which students are taught, you know, actual skills, and
21 I think there is no better place to teach them those
22 skills than in clinics.

23 But also in addition to that, I just want to say
24 that as they learn that experience and they get
25 transformed by that experience, they also do some good,

DEAN MAKAU MUTUA

1 because they're affecting a real life in that process.

2 JUDGE LIPPMAN: They do some good and it stays
3 with them.

4 DEAN MUTUA: They do some good and it stays with
5 them.

6 JUDGE LIPPMAN: So thank you, Dean. We really
7 appreciate you coming in, and again, appreciate your work
8 in the law schools and recognizing this tie-in between
9 this academia and this pursuit of equal justice that I
10 think we're all involved in that's so central to what the
11 law school is about, what the profession is about, and
12 what the judiciary is all about.

13 DEAN MUTUA: Thank you, Judges, and thank you
14 Chief Judge. We are at your service and whenever you need
15 us, we shall do what's necessary.

16 JUDGE LIPPMAN: Thank you so much. Greatly
17 appreciate it.

18 DEAN MUTUA: Thank you so much.

19 JUDGE LIPPMAN: Pleasure to have you.

20 DEAN MUTUA: Thank you.

21 JUDGE LIPPMAN: Our last panel for the day is
22 the judges' panel.

23 I'd mention before I do that that the other
24 members of the Task Force who are here today, Bob
25 Convissar is here, and Steve Banks is here, all the way

HON. PAULA FEROLETO

1 from New York City, and Sheila Gaddis is here, and
2 C. Bruce Lawrence is here, all on the Task Force, along
3 with the Chairperson Helaine Barnett and all doing a
4 spectacular job, and I know that firsthand what a great
5 job this Task Force does.

6 And I also know firsthand what a great job our
7 judiciary here does and we have the privilege of having
8 Paula Feroletto, who is the administrative judge of the
9 Eighth Judicial District, and the co-chair of the Eighth
10 Judicial District Pro Bono Committee; Honorable Deborah
11 Karalunas from the Supreme Court, Onondaga County; and the
12 Honorable Jeannette Ogden, E. Jeannette Ogden from the
13 Buffalo City Court, an acting judge in the County and
14 Family Courts, to come up and tell us about how being a
15 judge intersects with this obligation that we have to
16 foster equal justice in our state and our courtrooms.

17 Okay. And Judge Feroletto, we're delighted to
18 have you here, and you want to start off the proceedings,
19 at least for the judges' panel?

20 JUDGE PAULA FEROLETO: Absolutely. Thank you
21 very much. And thank you and the Task Force for
22 conducting these hearings and elevating the court's -- the
23 level of the court's role in ensuring access to justice
24 and raising awareness of the overwhelming need for the
25 civil legal services for low-income people.

HON. PAULA FEROLETO

1 JUDGE LIPPMAN: Let me ask you in a general way,
2 just like you do on the bench before the lawyer can get a
3 word out of their mouth, you know, we ask them a question.
4 You think judges here in this judicial district are
5 conscious each and every day that what they're doing in
6 the courtroom is all about equal justice? That that being
7 our constitutional mission, that sometimes I think we all
8 as judges have a tendency to get so lost in a particular
9 legal issue or, you know, whatever is the order of the day
10 that we're carrying out, do we, all of us, and I ask you
11 as the administrative judge who is speaking for the
12 judiciary here in this room, do we get that if in our
13 courtrooms there isn't a level playing field, that there
14 isn't a commitment to equal justice above all other
15 things, that we're not doing our job?

16 JUDGE FEROLETO: Oh, absolutely. And I think
17 all of the judges here are very aware of how to deal with
18 pro se litigants when they come in because it happens very
19 frequently. Just in our Erie Supreme Court I know that we
20 had over 2,000 unrepresented litigants last year, I asked
21 my clerk for a census, and that's the Supreme Court.
22 Obviously in our city courts and rural courts the numbers
23 are much higher than that.

24 So as I go through, I think the judges realize
25 when pro se people come in, they're aware of how much

HON. PAULA FEROLETO

1 longer the proceedings take, making sure that the witness
2 is able to get the testimony out and --

3 JUDGE LIPPMAN: And that makes your job hard,
4 right?

5 JUDGE FEROLETO: It makes it much harder from a
6 judge's perspective. In terms of even trying to negotiate
7 a case, if you were in the Supreme Court where you have a
8 pro se litigant and an attorney, you want to make sure
9 that everything is on the record instead of being able to
10 have the attorneys in and speaking.

11 JUDGE LIPPMAN: But what's the judge's role?
12 The judge is supposed to be a neutral. What do you do in
13 a situation where you -- one side has an attorney, the
14 other side doesn't, you're the neutral in these
15 proceedings, you're not supposed to be the lawyer for the,
16 you know, person who doesn't have one. How do you deal
17 with that? What's the impact on the justice system on
18 equal justice when the judge is kind of caught in this
19 dilemma?

20 JUDGE FEROLETO: It makes the proceeding go much
21 slower. Many times you will grant an adjournment for them
22 to try and get an attorney, or politely suggest that they
23 should do some research or checking or come back or
24 consult with someone before they come back again, or
25 instead of trying to ask themselves questions when they're

HON. PAULA FEROLETO

1 testifying, it's so much easier to have someone else in an
2 attorney there representing them.

3 In this district we are lucky to have the
4 cooperation of many local legal services and pro bono
5 programs. For more than 15 years here in Erie County, the
6 Volunteer Lawyers Project and Neighborhood Legal Services
7 have worked cooperatively with Buffalo City Court to
8 operate the Attorney of the Morning Program.

9 JUDGE LIPPMAN: Which I saw this morning,
10 there's such a great program that really so obviously
11 works on a very basic level, you know.

12 JUDGE FEROLETO: Absolutely. We -- both you and
13 Judge Pfau were over there this morning and it was a
14 typical morning, the attorney from Buffalo Municipal
15 Housing Authority was there, he had started the morning
16 with 120 cases, by the time Judge Pfau and I were there at
17 10:30, because there were attorneys there, he said he only
18 works with attorneys and he makes sure there's going to be
19 an attorney there when he's there with his cases, they
20 were down to 40 cases. One hundred twenty pro se people
21 in front of a judge would not have been done in an hour
22 and a half.

23 JUDGE PFAU: Judge Feroleto, you cover not just
24 urban Buffalo but a lot of very, very rural counties. How
25 does this work in a rural county where you must have -- I

HON. PAULA FEROLETO

1 would guess, but you would know better than I do -- the
2 same increasing number of unrepresented litigants,
3 probably one judge and not the same kind of network of pro
4 bono services available?

5 JUDGE FEROLETO: Unfortunately we don't have the
6 same network available in all our counties. We were
7 fortunate some time ago to have a pro bono coordinator who
8 was helping us with our outreach to our more rural
9 communities. When she was working with us, we were able
10 to do outreach to Chautauqua County and we managed there
11 to get a pro se divorce clinic going as well as coordinate
12 services with Southern Tier Legal Services. But it was
13 the help of a person who'd coordinate the attorneys there
14 who knew there was a need.

15 In fact, I sat on the bench there for two years
16 and I had been a practicing attorney here in Buffalo
17 before I was assigned to Mayville and was very familiar
18 with the Volunteer Lawyers Project since I was the
19 coordinator for our pro bono services in my law firm with
20 Mr. Hassett at Brown & Kelly, and I got there and I had a
21 consumer credit transaction and I said this person needs
22 an attorney, is there a Volunteer Lawyers Project here, I
23 need to assign somebody, and they said, no, there is no
24 such program there. So I immediately realized the need
25 for a program and for attorneys to assist.

HON. PAULA FEROLETO

1 We attempted to get a group of attorneys
2 together that we could then call on where you felt that
3 there was a need for an attorney to try and ask them to
4 represent them but it's so much easier if you have a
5 concerted effort, for example, with the Volunteer Lawyers
6 Project, they can give ethics credits as well for service
7 which makes it very attractive to the attorneys.

8 So it is as you mentioned, Judge, much harder in
9 the rural communities because they're so far apart. While
10 you have people willing to serve, they don't know how to
11 go about it.

12 I can give you an example, though, in Chautauqua
13 County through the efforts of the pro bono coordinator and
14 what we did with the judges and offering free LEs -- free
15 CLEs, someone else mentioned you want someone to know what
16 they're doing, so we did CLE on basic handling
17 matrimonial, we did a CLE on landlord-tenant matters so
18 that these attorneys could get educated on how to do it
19 and then they agree to take a case. And we got 33
20 attorneys from Chautauqua County, after a letter writing
21 campaign, who all agreed to take cases and it worked out
22 very well there.

23 I would point out in Allegany County, we're also
24 making some strides, and that is very rural, very close to
25 where Judge Scudder's from. With Judge Parker and our new

HON. PAULA FEROLETO

1 court building down there, there's going to be space where
2 we're going to dedicate a room to a Volunteer Lawyer
3 Project where the attorneys will have set hours and
4 litigants will be able to come in and work with the
5 attorney in terms of completing paperwork for either
6 Family Court or Supreme Court matters where they need to
7 consult with an attorney, it makes it so much easier for
8 the courts where the paperwork is actually done correctly
9 when it comes in, it saves a lot of time.

10 JUDGE PFAU: And it saves a lot of time for the
11 judge --

12 JUDGE FEROLETO: Absolutely.

13 JUDGE PFAU: -- who even though it's rural, has
14 a very big calendar.

15 JUDGE FEROLETO: Because then the judge doesn't
16 spend the time going through the papers and having them
17 sent back.

18 So I guess in short what I would say is, yes, we
19 do have a need in our -- oh, I wanted to mention, too, our
20 in rem proceedings that we also did here in Buffalo last
21 week and that was also another project coordinated with
22 all of the volunteer legal service providers here. In one
23 week we were able to work out orders on almost 1,500
24 cases, and that meant during that one-week time frame
25 before Buffalo did its tax foreclosure sale, 1,500 people

HON. PAULA FEROLETO

1 came into the courts in a one-week period of time, dealt
2 with attorneys for the City and they all had access to a
3 volunteer lawyer, either through Neighborhood Legal
4 Services or the Volunteer Lawyers Project, got orders
5 taking their property off the in rem list and we were able
6 to save their homes from tax foreclosure. It was an
7 amazing effort with no overtime.

8 JUDGE PFAU: Thank you.

9 JUDGE FEROLETO: So I think I really just want
10 to thank you all so much for highlighting the need for pro
11 bono legal services, and while we are truly blessed here
12 in Buffalo and Western New York area with so many
13 attorneys who will volunteer and are willing to take the
14 time, it is so very helpful to have a core group of legal
15 service providers who can help channel and funnel that
16 energy so it gets in the places where it needs legal
17 services.

18 JUDGE LIPPMAN: Well, thank you, Judge Feroleto,
19 for your leadership in this area. I think what's clear is
20 that in the western part of the state, there really is a
21 partnership among the providers, the bar, the judiciary,
22 that and academia -- the dean was here -- where I think
23 that, you know, I was asking before, do we get it, and I
24 asked the different players do they get it, I think pretty
25 much everyone up here gets it. I think the issue is that

HON. PAULA FEROLETO

1 we need, as a foundation, for all of these collaborative
2 efforts, not only in the state courts, in the federal
3 courts and with our friend Judge Lowe here who, you know,
4 who has done such good works, we need a core of funding
5 for the providers that provides the -- the center of which
6 all these other things can spin around, that needs to be a
7 publicly-funded endeavor that recognizes that -- that that
8 funding is repaid, you know, so many times over because of
9 the consequences of not funding civil legal services.

10 So thank you for your central role in this kind
11 of team and partnership that we have here.

12 And I now ask Judge Karalunas --

13 MR. HASSETT: Can I just say --

14 JUDGE LIPPMAN: Sure.

15 MR. HASSETT: -- my former partner here,
16 Judge Feroletto, I think in all honesty that she was the
17 instigator of the pro bono program at Brown & Kelly when
18 she was our partner and it's continued to today largely
19 because of what she started.

20 You mentioned the pro bono coordinator, and I
21 mentioned earlier in a different context, but what that
22 coordinator was able to do in Chautauqua County points out
23 the difference between Monroe, Onondaga, Erie and the
24 infrastructure that we already have in place here and what
25 doesn't exist in the rural areas where the pro bono effort

HON. PAULA FEROLETO

1 is probably -- the attorneys are willing to do it but it
2 takes somebody to start it, and that program that you were
3 part of in Chautauqua County is an example of the
4 necessity, not just in the urban areas of New York State,
5 but particularly in the rural areas, to have some source
6 of continuing reliable funding for services for the poor
7 in the civil area, so thank you.

8 JUDGE FEROLETO: Thank you. And I should also
9 bring up, and we were talking about public defenders as
10 well at arraignments, it's a shame that we don't, even in
11 many of my city courts in this district, not have public
12 defenders available at the time of arraignments.

13 JUDGE LIPPMAN: Yeah, and I think that, you
14 know, it's so important, and as you know, we've been
15 talking about that, particularly this last Law Day, and
16 making sure that there is representation at arraignment,
17 and I think it ties together the criminal issues, you
18 know, as the clarion call of Gideon versus Wainwright,
19 that people have criminal representation as a
20 constitutional right, and even with that we sometimes fail
21 in our mission and the execution of that right. But I
22 think sometimes, and this was pointed out at some of the
23 other hearings, that on the criminal side, where we say
24 that loss of liberty, one's loss of liberty is so severe a
25 consequence that you have a constitutional right to

HON. DEBORAH KARALUNAS

1 representation, the issues that we're talking about are
2 the necessities of life: the roof over one's head,
3 freedom from physical violence, your livelihood, your
4 family's subsistence benefits, the consequences can be
5 even as great or greater than the loss of liberty in the
6 civil area and that's why I think we all make this effort
7 to raise the public's consciousness of the consequences of
8 not having representation in the civil matters that
9 sometimes deal with just life itself, just as the loss of
10 liberty on the criminal side.

11 So anyway, Judge Karalunas, you're up.

12 JUDGE DEBORAH KARALUNAS: Thank you.

13 Good afternoon, Chief Judge Lippman, Chief
14 Administrative Judge Pfau, Justice Scudder, and
15 Mr. Hassett. Thank you for inviting me to give testimony
16 today on the topic of access to civil justice.

17 As you may know, for 20 years I practiced law
18 with Bond, Schoeneck & King and George Lowe, large upstate
19 law firm. During that time, primarily through clinics
20 organized by the Onondaga County Bar Association and the
21 Central New York Women's Bar Association, I devoted many
22 hours representing the poor in civil legal matters. For
23 the most part, those were the good years. Families were
24 more stable, unemployment was low, foreclosure actions
25 were sparse, and the economy was stronger.

HON. DEBORAH KARALUNAS

1 I also am very active in an urban Syracuse
2 church whose mission is to serve and assist members of our
3 community who live in poverty, are undereducated, and face
4 unique physical or mental health challenges. I believe in
5 the goodness of people and the strength and power of
6 community. I believe in helping people help themselves.

7 In 2002 I was elected Supreme Court justice in
8 the Fifth Judicial District. For my first two years on
9 the bench I was assigned to the matrimonial part. In that
10 part I dealt with issues of divorce, child custody, and
11 equitable distribution.

12 JUDGE LIPPMAN: Let me ask you to stop for a
13 second, Judge. You know, in Family Court we know that we
14 have certain areas where people are entitled, at least
15 under New York statutory law, to representation. In a
16 matrimonial proceeding for divorce which is, you know, in
17 the Supreme Court, is there any such right to
18 representation?

19 JUDGE KARALUNAS: Well, certainly there are the
20 law guardians who are representing the children in those
21 cases.

22 JUDGE LIPPMAN: But what about the person who
23 comes in and is seeking a divorce?

24 JUDGE KARALUNAS: In the Fifth Judicial
25 District, to my knowledge, we didn't have people who were,

HON. DEBORAH KARALUNAS

1 through one of the agencies, provided with legal services.

2 With that said, I would say in less than five
3 percent of the matrimonial actions that I presided over,
4 contested matrimonial actions where the individual's, one
5 of the party's unrepresented.

6 JUDGE LIPPMAN: And they got representation from
7 a provider when they didn't have money?

8 JUDGE KARALUNAS: In the matrimonial context, in
9 the absence of a custody dispute, no.

10 JUDGE LIPPMAN: No.

11 JUDGE KARALUNAS: They were unrepresented.

12 JUDGE LIPPMAN: Um-hum.

13 JUDGE KARALUNAS: In the uncontested divorce
14 proceedings, the number was significantly -- significantly
15 greater.

16 JUDGE LIPPMAN: Right.

17 JUDGE KARALUNAS: In January 2005, I was
18 assigned to the general civil part. I continue in that
19 part, although I now also serve as the commercial division
20 judge for Onondaga County. My cases include business
21 disputes, a variety of tort claims, and foreclosure and
22 consumer debt actions. Generally, the parties who appear
23 before me are represented by counsel.

24 JUDGE LIPPMAN: Would you say that's typical in
25 the higher courts, you know, at least within our court

HON. DEBORAH KARALUNAS

1 structure, that there are more people represented than,
2 let's say, in the City Court and the Family Court?

3 JUDGE KARALUNAS: My experience has only been in
4 the Supreme Court. I would certainly surmise, and based
5 on conversations with other judges in the Family Courts
6 and City Courts, agree with that, Judge Lippman, that in
7 the Supreme Court we are less likely to see people who are
8 unrepresented. The exceptions or the cases where we see
9 people who are unrepresented are generally people seeking
10 ex parte applications for name change -- changes,
11 petitioners seeking early access to structured settlements
12 awards, defendants in foreclosure and consumer debt
13 actions.

14 In the latter categories, the pro se litigants
15 generally do not dispute the validity of the underlying
16 loans or debts, they simply are unable to make the
17 required payments.

18 New York's current economic condition is poor.
19 Indeed, the budget of the Executive and Judicial branches
20 of government and many governmental and nonprofit
21 organizations have been slashed. Nonetheless, the
22 Legislature has imposed many unfunded mandates on the
23 court, and increasingly, we are being used to resolve
24 pressing social issues. The judiciary is asked to do more
25 with less, so too are the three organizations in Central

HON. DEBORAH KARALUNAS

1 New York that represent the poor in civil legal matters.

2 These organizations, the Hiscock Legal Aid
3 Society, the Legal Aid Society of Mid-New York, and Legal
4 Services of Central New York, are staffed with quality
5 lawyers who provide quality legal services. Those
6 organizations and the Volunteer Lawyers Project which we
7 have run by our Onondaga County Bar Association, similar
8 to what's in Erie County, work tirelessly to ensure
9 justice for the people that they serve. Traditionally,
10 these organizations were funded by federal, state, county,
11 local governments, various grants, the United Way, IOLA,
12 and private contributions. More recently, however, some
13 of those funding sources have been cut or slashed. For
14 example, I understand that in the last year, the state
15 pulled most, if not all, of the funding for the Hiscock
16 Legal Aid Society.

17 JUDGE LIPPMAN: And IOLA has gone from 32
18 million to 6 and a half million dollars, and the Legal
19 Services Corporation in Washington is having its trouble,
20 constantly under seize.

21 JUDGE KARALUNAS: Yes. While I support access
22 to legal services in civil matters involving the
23 essentials or necessities of life, I have concerns about
24 increasing the role of the courts in funding and
25 administering programs to meet that challenge. The

HON. DEBORAH KARALUNAS

1 judiciary is a separate and coequal branch of government.
2 Generally the role of judiciary has been to protect
3 private interests and the role of the Legislature is to
4 safeguard broad public interests. In other words, the
5 judiciary's empowered to determine the rights and
6 obligations of parties in discrete cases and controversies
7 and the Legislature is empowered to make policy decisions
8 and to allocate limited public dollars consistent with
9 those policy decisions. By taking on responsibility to
10 fund and administer civil legal services, the judiciary
11 assumes the policy-making role of the Legislative branch
12 and the managerial role of the Executive branch.
13 Moreover, when the judiciary pays for a lawyer to
14 represent one of the two sides in our dispute, I believe
15 our role as a neutral arbitrator is severely compromised.

16 With that said, as I understand, the Task Force
17 has asked for us to think outside the box and to come up
18 with ideas to ensure that we meet the legal needs of the
19 poor in matters concerning the necessities of life. The
20 Legislative branch and Executive branch can and should do
21 more. Recognizing that many matters can be kept out of
22 court if civil legal assistance is provided before a legal
23 problem escalates in a court case, among the various
24 options available to the Legislature and the Executive
25 branch are: Establishing Know Your Rights community legal

HON. DEBORAH KARALUNAS

1 education programs; establishing programs and other means
2 to provide preventative legal assistance; mandating some
3 form of pre-action ADR; authorizing fee shifting in
4 various actions; and providing a reliable, dedicated
5 source of funding, independent of the judiciary, targeting
6 legal assistance for matters concerning the necessities of
7 life.

8 I believe the judiciary also can and should do
9 more to ensure access to justice in civil cases, and among
10 the options that I can come up with are: Simplifying
11 forms and procedures and rules in the Family Court,
12 landlord-tenant and foreclosure cases; dedicating staff to
13 assist pro se litigants in understanding and completing
14 those forms and procedures; waiving or reducing attorney
15 registration fees for attorneys who devote, for example,
16 60 or more hours bi-annually to pro bono service in areas
17 involving the necessities of life; mandating that all
18 practicing attorneys provide a fixed number of pro bono
19 hours of service in areas involving the necessities of
20 life; working with lo -- with local bar associations and
21 law schools -- we have Syracuse Law School here and that
22 does a lot with clinic work, and I heard the dean speak
23 with all the wonderful work that the Buffalo Law School is
24 also doing -- but working with those bar associations in
25 the law schools and Legal Aid organizations to train pro

HON. DEBORAH KARALUNAS

1 bono lawyers; expanding the program that allows retired
2 lawyers to practice law; and allowing judges and their law
3 clerks to engage in pro bono work outside of the court.

4 In these hard economic times, we have unemployed
5 and underemployed lawyers who would, with adequate
6 training, address and meet the needs of the litigants in
7 areas involving the necessities of life. While the burden
8 of addressing these needs should not fall solely on the
9 soldiers -- shoulders of the legal profession, a
10 profession that consistently has stepped up to and beyond
11 the plate, I have focused my comments today here on what I
12 know best, the strength, integrity and compassion of the
13 many men and women who serve as lawyers and justices in
14 our great state.

15 I thank you for the opportunity to speak today.

16 JUDGE LIPPMAN: Thank you, Judge. Appreciate
17 it.

18 And the cleanup hitter here, or the last witness
19 for the day, is going to be Judge Ogden who is a City
20 Court judge, an acting judge of the County and Family
21 Court. And I note, because, Judge Ogden, that you have
22 such importance in this system, that Judge Pigott has
23 made -- our colleague on the Court of Appeals, has made
24 sure that he's here to hear your testimony because he told
25 me earlier today that he expected great things from your

HON. E. JEANNETTE OGDEN

1 testimony. We don't want to put pressure on you,
2 Judge Pigott, we just, you know, think a lot of
3 Judge Ogden.

4 So, Judge Ogden, with Judge Pigott listening and
5 the rest of the audience, and the only one keeping them
6 between lunch is you, so with that, with that intro,
7 you're on.

8 JUDGE E. JEANNETTE OGDEN: Let me first say
9 thank you for allowing me to participate in this process,
10 because it is very important to me and very near and dear
11 to my heart. Because I sit on the City Court, which is a
12 high volume court that handles both criminal and civil
13 matters, and in the City Court the civil matters that we
14 handle often involve the landlord-tenant proceedings which
15 you may have observed and we certainly are blessed to have
16 the Lawyer of the Morning Program, but I would also like
17 to draw your attention to the fact that sometimes the
18 landlords are senior citizens, living on a fixed income,
19 they are not eligible for the assistance of the Lawyer of
20 the Morning, and they really need the rents that they are
21 receiving, and sometimes the tenants may have created
22 these situations that result in Housing Court problems and
23 things of that nature, and for those individuals, there is
24 no legal representation.

25 And the purpose of the judge is to ensure

HON. E. JEANNETTE OGDEN

1 justice and fairness to everyone that comes into the
2 courtroom. So when one party does not have access to an
3 attorney, they don't have access to justice, not really.

4 JUDGE PFAU: And what does that do to your role
5 as a judge when you have so many cases coming in front of
6 you, your time is limited, and then you see just what
7 you're talking about happening in front of you.

8 JUDGE OGDEN: That compromises my position as a
9 judge because I am required to be a neutral arbiter of the
10 law, and it's very, very difficult, and I have to be very
11 mindful of the ethical ramifications that can result if I
12 lean one way or the other. And certainly I can make
13 suggestions, I can make recommendations, but at the end of
14 the law, my job can be compromised and the whole concept
15 of justice can be compromised as well.

16 JUDGE PFAU: And also the perception of what
17 you're doing, even if not the reality, right?

18 JUDGE OGDEN: That's correct, it creates a
19 perception, an appearance of impropriety. That's just in
20 the landlord-tenant area.

21 Then we also have the same dilemma when we're
22 dealing with debtor-creditor situations because so many
23 people are unable to pay their credit card bills, and that
24 doesn't even address the rent-to-own people who are
25 regulars in the City Court as well as people who are

HON. E. JEANNETTE OGDEN

1 already paying twice as much for items that they are
2 renting and they cannot afford attorneys either, same
3 problem arises.

4 Then in the City Court we have the issue of the
5 small claims matters where most of the litigants are also
6 unrepresented, or one party may be unrepresented.
7 Fortunately, here in Buffalo in Erie County, the bar, if a
8 lawyers is present for another matter, they can count on
9 the judge calling on them to see if they will be willing
10 to lend some pro bono assistance in the courtroom, and
11 often if it's a minor matter, they will, they certainly --
12 and we wouldn't ask them to take on more serious matters.

13 That's just a part of the City Court problem
14 when you don't have free and equal civil legal services.

15 Also, City Court judges issue civil contempt
16 orders when persons are not in compliance with information
17 subpoenas relating to the debtor-creditor actions, and as
18 a result, we actually take away the liberty of someone.
19 So it is very, very important, in addition to depriving
20 them of their, perhaps, a place to live.

21 JUDGE LIPPMAN: Judge, would you agree that
22 we're talking about the Supreme Court versus some of the
23 other courts and the type of litigation, but you see, when
24 you sit in City Court, you really see every day this issue
25 upfront and center, right?

HON. E. JEANNETTE OGDEN

1 JUDGE OGDEN: Yes.

2 JUDGE LIPPMAN: Of lack of representation and in
3 so many different kinds of cases --

4 JUDGE OGDEN: That is correct.

5 JUDGE LIPPMAN: -- that are critical --

6 JUDGE OGDEN: Yes.

7 JUDGE LIPPMAN: -- to the individual person and
8 society.

9 JUDGE OGDEN: Yes, I do. I agree
10 wholeheartedly. And so I would echo what everyone else
11 said because we certainly see that.

12 Now in the Family Court context, being mindful
13 of the time, in the Family Court context, I was assigned,
14 to a large extent, to handle custody and visitation
15 disputes. In our Erie County area there are many
16 grandparents who are coming in to court petitioning the
17 court to seek custody or visitation of their
18 grandchildren. There is a distinction in the eligibility
19 requirements for an individual seeking visitation and
20 seeking custody. So a grandparent who is seeking custody
21 can avail themselves of the free civil legal services that
22 are offered by our Grandparent Advocacy Program as well as
23 an Assigned Counsel Program; however, if that same person
24 is asking for guardianship, or visitation, they are
25 ineligible for the same services. Many times the need to

HON. E. JEANNETTE OGDEN

1 come in and petition for custody arises as a result of an
2 inability of a parent to care for that child, maybe
3 because the parent is on drugs or has gotten into some
4 kind of trouble, it's often a temporary arrangement.
5 Often the grandparent is low income or lives in subsidized
6 housing and they can't take custody of the child because
7 to do so would jeopardize other social benefits that they
8 may be receiving. So in that slight instance, that is an
9 injustice that I see often. Because of the request, the
10 nature of the request, and sometimes maybe someone may
11 suggest to them that you should go seek custody, but it's
12 not like a parent's shoes. When you seek custody of
13 someone, there are a lot of other ramifications to the
14 child, to the system as a whole.

15 In the end, if we had those civil legal services
16 available to low and moderate income people, the system
17 may not have to pay to support that same child in other
18 arenas that would cost twice as much and I think some
19 consideration should be given to that, and that's just in
20 one area, as I think it would be a cost-saving measure in
21 many other areas.

22 And if you take the instances that you observed
23 in the Supreme Court and you triple them in the city urban
24 centers, that's what you will see in the City and the
25 Family Court. So it creates, overall, an adverse impact

HON. E. JEANNETTE OGDEN

1 to the court because it compromises our ability to do our
2 job and be a fair and detached and neutral arbiter.

3 JUDGE LIPPMAN: You can't be the judge and the
4 lawyer for somebody at the same time.

5 JUDGE OGDEN: That's correct. You affect the
6 perception of justice because people on the outside come
7 in and they want to see the judge being in the middle,
8 they don't want to see the judge leaning, because if
9 you're leaning in this instance, how will they know that
10 you won't lean in every other instance? The judge can
11 never be the lawyer, that's why there is a difference.

12 And I think that it is so important that people
13 realize that every individual that steps into a court in
14 New York State has an individual fundamental right to
15 fairness, and you achieve that when you allow equal access
16 to an attorney, because that's the first step in equal
17 access to justice.

18 Thank you very much.

19 JUDGE LIPPMAN: Well, thank you, Judge Ogden. I
20 think that eloquently, you know, sums up what this is all
21 about.

22 And I thank our judicial panel, and really,
23 we've had a very interesting day. I think the clients
24 that we had to start out really graphically, you know,
25 demonstrated that we're talking about issues affecting the

JUDGE LIPPMAN

1 necessities of life, and each of those clients', really,
2 lives were salvaged by having the civil legal services
3 representation; I thought that the testimony from the
4 collaborations here in the western part of the state, in
5 Monroe and Erie and coming soon in Onondaga, sharing
6 services, sharing costs is certainly a wave of the future
7 in terms of how providers are going to meet the challenges
8 of the day; I think the dean was quite eloquent in terms
9 of what he called teaching students to have soul and to
10 understand that they have an obligation to equal justice;
11 and I think each of you on the judges' panel certainly
12 demonstrated that -- that commitment.

13 I think the bottom line, and this is the fourth
14 of our series of legal civil service hearings this year,
15 certainly what's clear is that funding civil legal
16 services is a good investment. As we indicated, for every
17 dollar that is spent, the public spends on civil legal
18 services, at least five dollars are returned to the state
19 in reduced Social Services, homelessness, incarceration,
20 and additional federal funds that comes to the state. So
21 on so many levels it's a good investment from the bottom
22 line perspective, and obviously as we've talked about so
23 much today, each and every society, and certainly every
24 civilized society, certainly is judged in very significant
25 degree to how it treats its most vulnerable citizens, and

JUDGE LIPPMAN

1 for us in the judiciary and the legal profession,
2 obviously we feel a particular commitment and obligation
3 to meet our mission of -- and our responsibility to foster
4 equal justice is really what we're all about, it's our
5 very reason for being.

6 So I'm very happy to be here in Albany with this
7 last hearing of this --

8 JUDGE FEROLETO: Buffalo.

9 THE COURT: -- series of hearings, we will be --
10 the Task Force and Helaine Barnett, and some of your
11 members are here today, will be completing their report in
12 the coming month or so, a little bit longer, and then we
13 go forward again with I think what is a -- certainly a
14 noble endeavor of the judiciary and the bar to -- in
15 this -- in pursuit of justice, in pursuit of equal
16 justice.

17 I want to thank Judge Feroleto for her
18 hospitality in having us here in this beautiful setting,
19 and being here, ordered a perfect day of weather, I know
20 that Judge Pigott had something to do with that, Paula, to
21 have the beautiful weather today. And we thank you all
22 and very much appreciate you coming. Thank you so much.

23 (Proceedings concluded at 1:55 P.M.)

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REPORTER'S CERTIFICATION

I hereby certify that the foregoing is a true and accurate transcript of the stenographic minutes taken in the matter of The Chief Judge's Hearing on Civil Legal Services.

BARBARA F. CULTRARA, CSR, CMR, CRR,
Official Supreme Court Reporter.

October 7, 2011
Buffalo, New York