

SOUTH CAROLINA ACCESS TO JUSTICE COMMISSION
PUBLIC HEARING

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A P P E A R A N C E S

SOUTH CAROLINA SUPREME COURT:

CHIEF JUSTICE JEAN HOEFER TOAL

JUSTICE JOHN H. WALLER

JUSTICE COSTA M. PLEICONES

JUSTICE DONALD W. BEATTY

JUSTICE JOHN W. KITTREDGE

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1 (The proceeding commenced at 3:05 P.M.)

2 CHIEF JUSTICE TOAL: Ladies and gentlemen,
3 this special term of the South Carolina Supreme Court
4 is called to order for the purpose of conducting a
5 hearing on issues related to access to justice and the
6 Access To Justice Commission. This is the culmination
7 of public hearings that have taken place all over our
8 state, chaired by our Access To Justice Commission and
9 aimed at hearing from the citizens of South Carolina
10 about your issues related to access to our judicial
11 system.

12 Let me just take a moment to thank, first of all,
13 members of the Access To Justice Commission. And for
14 the benefit of our Court, I would like each member of
15 the Access To Justice Commission to stand for a moment
16 so we can see them. Members of the Commission, would
17 you please stand.

18 Thank you very much. You may be seated.

19 You will see that this is a marvelous assemblage
20 of members of the business community, lawyers with
21 special interests in access issues, some of the very
22 brightest and best of our judges from the circuit
23 bench. I see Judge Jefferson and Judge Baxley there.
24 From the federal bench particularly, Judge John Waites,
25 who has been such a help. And, of course, the

1 bankruptcy court has very specialized issues dealing
2 with access by the citizenry. Probate court is
3 represented here. And to all judges -- I think Judge
4 Rita Simmons perhaps is back there on behalf of the
5 magistrates. I appreciate very much the judicial
6 involvement, and the work, and the ongoing work of the
7 Commission. And, of course, to you commissioners, you
8 are really doing yeoman's work in hearings all across
9 the state and national meetings where South Carolina is
10 trying to make a difference in issues related to
11 access.

12 I can't let the hearing commence without some
13 individual thanks to Robin Wheeler, the executive
14 director of the Access To Justice Commission. We'll be
15 hearing from Robin as a witness at the conclusion.
16 Robin, a special thanks for all of your work.

17 And I don't think anything would have been
18 possible with this Commission without the enduring
19 intellectual work and wonderful personal qualities of
20 kindness and organization that are possessed by the
21 counsel to the Chief Justice, Stephanie Nye.
22 Stephanie, I want to publicly thank you. And I know I
23 speak for so many members of the Commission, as well as
24 some of the members of the public who have interacted
25 with Stephanie and know of her compassion and her deep

1 interest in this issue.

2 Now, I know the stories of some of the people I
3 will call upon today. And I have the speakers list
4 here. And we will begin that in a moment. Please, be
5 at ease. This Court is -- looks like a very formal
6 place. But I can assure you, we are South Carolinians
7 just like you. And we want to hear your story. Please
8 don't be nervous up here at that podium. I even have a
9 little catch of my throat, and I've been on this side
10 of the bench for over 20 years now. But I still have
11 my pulse racing when I come out here to this historic
12 courtroom and listen. You should be here. You belong
13 at that podium. You're giving us information that all
14 five of us very much want to hear. So, please, be at
15 ease as you come forward and speak to us today.

16 It's my honor now to call upon -- well, let me,
17 before I call the first witness, just for the benefit
18 of you, the general public, who may not know this
19 Court, let me introduce us briefly. To my immediate
20 right is the senior associate justice of our Court,
21 John H. Waller of Marion County. To my immediate left
22 is Justice Costa Pleicones of Richland County. To my
23 far right is Justice Don Beatty of Spartanburg. And to
24 my far left is our very newest member of the Court,
25 Justice John Kittredge of Greenville. I'm Jean Toal,

1 your chief justice. And on behalf of all of us, I
2 welcome you here.

3 I particularly appreciate the presence of the
4 leadership of the South Carolina Bar, executive
5 director, Bob Wells; former president of the Bar, Brad
6 Waring; and many others who care about this issue and
7 are trying to move us forward.

8 And with that, the first witness this afternoon,
9 the first speaker, is the Honorable William Kenneth
10 Ethan, probate judge of Florence County. Judge Eaton.

11 JUDGE EATON: Thank you. Madam Chief
12 Justice, Justices of the Court, may it please the
13 Court. I'm indeed privileged and honored to be here.
14 I'm not real sure how I became the first speaker.
15 Somebody said I was probably the oldest one here.

16 CHIEF JUSTICE TOAL: Some of us could take
17 some competition with you on that, Bill, so don't be
18 too sure.

19 JUDGE EATON: Age has some disadvantages or
20 advantages.

21 I just want to share with you a few minutes my
22 perspective as a probate judge. I've been probate
23 judge in Florence County now for going on a little over
24 eight and a half years. And from my observations, it
25 appears to me that there is a very, very definite need

1 for people to have more access to the court system than
2 is presently available to them. You know, we have, in
3 all of our opinions, I would think, would say that we
4 have one of the best legal systems in the world. I
5 don't think there's any doubt about that. But, you
6 know, if you don't have access to the system, just kind
7 of looking outside the window and looking into the
8 window, but you can't get into the store. And it's
9 really a very compelling and a very serious matter. I
10 think all the resources that we have available for
11 other things, that we don't have more resources to give
12 to the public access to the system of justice that we
13 have.

14 Now, there are a lot of things that are happening.
15 And I think lawyers sometimes get a bad rap. There are
16 a lot of pro bono services being rendered, the advocacy
17 group, Legal Services, I could go on and on. But in
18 spite of all those services, we are not meeting the
19 need.

20 Now, the need as I see it in the probate court
21 stems oftentimes in the guardianship proceeding. As
22 the people get older, more people are going to need
23 guardianships. And oftentimes these people, they don't
24 have any money. You may have to have a guardian
25 appointed to get that person moved from one place to

1 another place. Or it may be a medical necessity. But
2 these people, more often than not, simply don't have
3 money.

4 Now, in the area of conservatorships, I don't see
5 that as a real big problem because if they've got a
6 conservator, that implies that there must be some
7 resources available. So I don't see that, from my
8 perspective.

9 But the guardianship, yes. The estates, yes.

10 We have people who serve as personal
11 representatives, lay people more often than not. And
12 there may be matters of claims that need to be
13 disputed. There may be actions necessary for the
14 personal representative to get property into the
15 estate, to have to bring litigation. Now, as I
16 understand it, you can represent yourself. But a
17 personal representative, I have serious problems with a
18 personal representative attempting to handle legal
19 matters. Because that personal representative
20 represents all the people that an estate encompasses.
21 There may be creditors, may be heirs, may be devisees.
22 It goes on and on. So I think that person is in a
23 position that he or she would have to get the services
24 of an attorney.

25 Well, you may say, Well, there are assets in the

1 estate, they have money of their own. But oftentimes
2 the estate will consist of maybe just a piece of real
3 property. And that brings up another matter.

4 I know my time runs. I'll stop right now.

5 But we see particularly with heir property people
6 don't open an estate. They come in. And, as you know,
7 after ten years you can't administer an estate. And
8 you may have a number of heirs and only one piece of
9 property or maybe a little farm. And trying to get
10 that property into the proper names and get it such
11 that somebody can realize some benefit from it, you've
12 got to bring an action to determine the heirs. And
13 oftentimes these people, they've got property. Only
14 thing they've got is that little house and lot, or they
15 may have a little farm. So they don't have liquidity.
16 So what do you do? Where do they go? They're going to
17 have to go to some of these groups that we have in
18 existence. And that does present a problem because
19 we've got the partition of property after determining
20 heirs.

21 Now I'm going to share with you one final incident
22 that I think really highlights to me the necessity of
23 having access to justice. I had a lady come into my
24 office about a year ago. And she said she was a
25 common-law wife, that she lived with this man for some

1 ten to 20 years, and she was common-law. Well, some of
2 his children, not their children but his children,
3 raised the issue and said, Well, you've got to prove
4 that you're common-law. You don't have a court order.
5 You don't have a decree, so you've got to prove it. So
6 she came to see me. I said, Well. She said, Can I
7 represent myself? I said, Well, you can represent
8 yourself. I don't think that's advisable, but I can
9 give you the number to the lawyer referral, the Bar.
10 That's a great service. And gave her the number.

11 And she came back sometime later, and I don't
12 know what conversations ensued, but I said, Well, did
13 you get a lawyer? She said, No, sir, I didn't. I
14 didn't get a lawyer. I couldn't afford a lawyer. She
15 said, I talked to two lawyers. One wanted \$2,500
16 retainer the other one wanted \$2,000 retainer. The
17 only property that's in the estate is a house. Lived
18 in that house for ten years. I made the payments one
19 month, he made the payments the next month. Said,
20 Well, you've got to show that you were the common-law
21 wife. I said, There may be some way that you can claim
22 an equity of some type in the house.

23 But to make a long story short, she could
24 not. She came back later and said, Judge, I can't even
25 pay the grocery bill.

1 Now, I don't know where she went, who she
2 talked to. But that is what happened. She lost the
3 house. She lost the house. She couldn't prove that
4 she had an interest in the house. She wasn't married.

5 So, with that, my time has run out. Thank
6 you so much.

7 JUSTICE PLEICONES: Judge Eaton, may I ask
8 you a question?

9 JUDGE EATON: Yes, sir.

10 JUSTICE PLEICONES: These are austere
11 budgetary times, obviously. And our state is not a
12 state that is greatly resourced. But are there
13 measures that you can implement with your existing
14 staff without the expense -- significant expenditure of
15 additional funds that might aid in this, in this quest
16 to provide access to justice? Or is everything that
17 we're going to have to do going to require money?

18 JUDGE EATON: Well, I'm reluctant -- my
19 people -- and I tell my staff, you're not lawyers. You
20 cannot give legal advice. And we have to be very
21 careful. I, of course, as a judge can't give legal
22 advice. You can understand that. About the only thing
23 that I could do better, I think, if I had to, know who
24 to contact. If we had a central agency or some
25 individual entity or person and say, This is Judge

1 Eaton, I've got a problem. It's an estate problem.
2 This person has no resources. Who should I refer them
3 to? If there was some --

4 JUSTICE PLEICONES: Clearinghouse.

5 JUDGE EATON: Clearinghouse. It seems like
6 to me the agencies and different entities and people
7 are somewhat fragmented. You're here, yonder and
8 there. That's just my personal observation.

9 JUSTICE PLEICONES: Thank you.

10 CHIEF JUSTICE TOAL: Thank you, Judge
11 Eaton.

12 JUDGE EATON: Yes, ma'am.

13 CHIEF JUSTICE TOAL: We'll next hear from
14 Susan B. Berkowitz, South Carolina Appleseed Legal
15 Justice Center. Sue, welcome and thank you for
16 everything you do to make access possible in South
17 Carolina.

18 MS. BERKOWITZ: Thank you, Madam Justice and
19 members of the Court. I really appreciate the
20 opportunity speak to you here today about what I
21 perceive to be a really important and really historic
22 hearing.

23 As you said, I'm with South Carolina
24 Appleseed Legal Justice Center and I've had the
25 opportunity and the pleasure to work with talented

1 attorneys around the state, both Legal Services, my own
2 office, and pro bono volunteers, all working on
3 advocacy for the low-income community. And I'm so
4 grateful for the work of the Access To Justice
5 Commission and the issues that it's raised around the
6 state over these last few months. And it has been my
7 honor to participate on this very important Commission.
8 And the past hearings over the last few months have
9 really focused on South Carolinians' access to the
10 court system.

11 While I understand that this should be the
12 Commission's priority focus, I'd like to use my short
13 time today to talk to you, to address the problem about
14 another huge number of hearings where legal decisions
15 and legal policies are interpreted every day that
16 actually take place outside of the court system and
17 truly impact especially low-income people. Hundreds,
18 if not thousands, of individuals in our state seek
19 legal redress in rulings from -- each year from state
20 administrative hearings that oversee -- have oversight
21 and see many of the really critical programs in our
22 state. These state agencies make determinations on
23 really basic and important needs: Food assistance for
24 those who are going hungry, by ensuring that food
25 stamps are provided to those who, despite doing

1 everything they can with working and supporting their
2 families, cannot afford to feed them; economic support
3 through our temporary assistance to needy families
4 program; and through our unemployment insurance benefit
5 program, which I think is particularly overtasked
6 during these really difficult times. When people are
7 faced with requiring to pay taxes and they're facing
8 the administrative procedure of our Department of
9 Revenue, and, most importantly, which is most near and
10 dear to my heart is the need to access health care
11 through our state Medicaid program, these programs are
12 often a complicated mix of both federal and state laws
13 that are hard to navigate your way through. And I find
14 myself often getting phone calls from lawyers, helping
15 them to assist and understand how to work their way
16 through these programs. And it's not a program that
17 many lawyers often have the opportunity to develop that
18 expertise. And when you think about somebody who's
19 representing themselves pro se in front of a state
20 agency, it can sometimes feel like a complete disaster.

21 Let's think about how this process works. An
22 individual is hungry or needs health care. They apply
23 to the state agency. Or maybe they're fortunate enough
24 to already be receiving a benefit and they're on the
25 program for the agency. They may have been turned

1 down. Or, even worse, they've been on the program and
2 now they're terminated. They get a notice that comes
3 directly from the state agency, informing them that
4 they've either been turned down or that they're no
5 longer going to receive the benefit. They're then told
6 they have a right to a fair hearing and appeal to the
7 agency. The agency often decides the timeliness. And
8 sometimes it also determines whether or not the grounds
9 are valid to go forward with the appeal. All the
10 files, the documents, and the information are located
11 with this agency. And the hearing is often, more
12 likely than not, in front of a hearing officer that is
13 employed by the agency. And what's most important to
14 recognize is that probably 99 percent of the hearings
15 that we know this, fair hearings and administrative
16 hearings, are done by individuals pro se, often people
17 with little education, and terrified by how the system
18 has been treating them. And these agencies are making
19 critical policy and legal decisions about the
20 fundamental needs of people who are appearing in front
21 of them. It's whether an elderly person can receive
22 benefits so that they can stay in their home through
23 the community long-term care program, through Medicaid,
24 or the family will have enough to eat by receiving food
25 stamps, a foster parent who may have had an individual

1 placed with that individual for years, would be able to
2 keep that child with him or her that they cared for, or
3 if a child is going to be able to have health care and
4 be able to progress and become a vital citizen in our
5 state. The process allows for the agency to make
6 policy and legal decisions, even when sometimes it
7 could be that there's a conflict of interest when
8 they've got all the cards in their hands. And without
9 providing the beneficiary full disclosure of what those
10 conflicts may be, this can sometimes be a one-sided,
11 flawed process for someone who is trying to represent
12 themselves and doesn't understand how this process
13 works and what they truly need to do to represent
14 themselves.

15 And I recognize this is on top of all the pro
16 se litigants that are already coming to the court
17 directly, who don't have representation. But it's my
18 hope that as the Access To Justice Commission goes
19 forward, that we ask this Commission to not only look
20 at access to the court system, but we also want to
21 include the review of these administrative processes
22 and provide insight and transparency so that we can
23 see, What is the need? What is happening when people
24 appear before these agencies? How is the process
25 working? And what can we do to make this a better

1 process, to help people when they're moving forward for
2 these critical programs? And that's how we can
3 determine that we have justice for all, that the
4 administrative process, along with the court processes,
5 be considered, and we look at all of our justice as a
6 whole.

7 And I appreciate -- I know we have not raised
8 these issues prior in hearings. But I appreciate the
9 Court's opportunity to raise this critical issue,
10 especially someone who comes from the practice of
11 poverty law. And this is our regular practice, but we
12 realize that it's a huge gap in people's access to the
13 justice system.

14 Thank you.

15 JUSTICE BEATTY: Excuse me. Do you have any
16 specific recommendations for us in that regard?

17 MS. BERKOWITZ: Well, I think first what we
18 need to do is we need to do some studying of the system
19 itself and determine how each individual agency is
20 actually making their determinations on what hearings
21 are going forward, what hearings are not going forward.
22 We need to also determine what type of access people
23 have to the information and whether they're really
24 being informed in a way that they understand how to --
25 how they can participate. And then, look to see if

1 some of these programs are so complicated and so
2 critical that we need to determine whether we should be
3 providing representation for these individuals.

4 CHIEF JUSTICE TOAL: So as I understand what
5 you're saying, Ms. Berkowitz, is that you want the
6 Access To Justice Commission to also be a platform for
7 further exploration of other settings besides the court
8 setting in which there are access problems, and to do
9 some public exposure of the problem, so that
10 appropriate state entities can begin to look at them,
11 such as the agencies themselves, the administrative law
12 courts, et cetera.

13 MS. BERKOWITZ: Yes. That's exactly what I'm
14 asking for. Thank you.

15 CHIEF JUSTICE TOAL: Thank you very much.

16 I'd now like to call on Tami Lynn Carey.
17 Ms. Carey, we know you. And I think you probably know
18 that your very important testimony during our hearing
19 in Anderson was recorded and used by me in several
20 presentations I have made to the family court bench and
21 to the South Carolina bench, to show them your
22 articulation of access issues. So we're delighted to
23 have you here. You may go forward.

24 MS. CAREY: Thank you. I'm honored to be
25 here. Madam Chief Justice, if it please the Court.

1 I'd like to discuss the difficulty I had on a pro se
2 divorce in Anderson County. I had been married only
3 two short weeks when I realized I had made a mistake.
4 My first thought was, I could get an annulment. But I
5 discovered that I didn't have grounds for an annulment
6 and I was told that I would have no choice but to wait
7 a year and get a divorce. I called several attorneys
8 to get quotes. One of them couldn't even give me a
9 price for a divorce. He just said he would require a
10 thousand or fifteen hundred dollar retainer just to
11 take my case. I felt that that was pretty outrageous
12 for just an uncontested divorce, so I decided to file
13 pro se.

14 I thought that might be a pretty simple thing
15 to do. No children. No property to have to divide.
16 And so I obtained the paperwork and waited the required
17 year, and then went to the clerk's office in Anderson.
18 And I took my what is now ex-husband. I took my
19 husband with me. We're filing together.

20 And as soon as we arrived and attempted to
21 file, the clerk made it known that she didn't approve
22 of me filing pro se. It's really too lengthy to go
23 into everything she did say. She had made comments
24 that I need an attorney, she only accepted papers from
25 attorneys. She -- we had an action pro se that my

1 husband had signed. It was notarized that he didn't
2 wish to be served. He was standing there to present
3 that to her. She still refused to take it. She said
4 that we would have to have him served, that I had to
5 take the papers to the sheriff's office and leave them
6 there, they would mail something back to the clerk's
7 office when he had been served.

8 So we went to the sheriff's office and the
9 officer said that that was nonsense. He said, He's
10 standing right here, willing to be served. I'm going
11 to serve he him. He did. He filled out the affidavit
12 of service. He said, Now, you take this back to the
13 clerk and you tell her that the sheriff's office said
14 for you to bring it back.

15 So I did. And I got back. She wasn't too
16 happy about it, but she accepted it.

17 So the hearing was set for about three months
18 later. And I was already just a nervous wreck. And
19 then I walked in, and just the first thing the judge
20 said was, Well, since you're here without an attorney,
21 I assume you know what to do. Proceed.

22 That just shocked me and pretty much left me
23 speechless.

24 And I kind of stuttered and stammered and
25 attempted to question my witness. And then, after she

1 stepped down, he said, Call your next witness. I said,
2 I only brought the one. That's what I was told to
3 bring. He said, Well, I find you didn't prove your
4 case, case dismissed. I said, What else was there to
5 prove? You know, I've got the witness. We've been
6 separated a year. And he wouldn't answer me. The
7 court officer was just practically shoving us out of
8 the courtroom.

9 So then I contacted the South Carolina Bar,
10 to get advice, you know, to see maybe what I did that
11 was wrong, that I should have tried to prove other than
12 the year. I spoke with Angela McKiernan, who referred
13 my -- she passed my information on to Robin Wheeler.
14 And they contacted me and asked me to speak at that
15 hearing in Anderson.

16 So I arrived at the hearing, the public
17 hearing. And after hearing my story, there were
18 several people that offered to help. I had arrived
19 there feeling like the justice system had failed me.
20 But once I was there and had spoke, and so many people
21 offered to help, that it really restored my faith in
22 the justice system. Kirby Mitchell from South Carolina
23 Legal Services offered to take my case. And Judge
24 Robert Jenkins had forwarded a letter to the clerk of
25 court, telling them to waive the filing fees so that

1 didn't have to be paid again. And I just would like to
2 thank them for everything they did. I think the Access
3 To Justice is wonderful and is providing a much needed
4 service to the citizens. I'd just like to thank them
5 all. I was divorced July this past year, thanks to all
6 the efforts of those involved.

7 Chief JUSTICE TOAL: Thank you very much,
8 Ms. Carey, for sharing that experience with us. Thank
9 you for coming today.

10 Next, it's my pleasure to recognize the
11 Honorable John E. Waites, Chief Judge of the United
12 States Bankruptcy Court for the District of South
13 Carolina. Judge Waites.

14 JUDGE WAITES: Madam Chief Justice and
15 Justices of this Court, may it please the Court. I am
16 pleased to be here on behalf of the judges and the
17 clerk and staff of the United States Bankruptcy Court
18 and to speak to you from the perspective of the many
19 dedicated practitioners who dedicated their lives to
20 helping people in financial crisis. It's been an honor
21 to serve on the Commission of this Court.

22 And I've been asked today to discuss with you
23 some of the things that our court has done without the
24 additional cost and expense to improve access to
25 justice. The United States Bankruptcy Court, by

1 definition, is on the forefront of providing relief to
2 people in financial crisis. This crisis is not always
3 caused by credit abuse. It's often caused by
4 unexpected loss of job, illness, accident or divorce.
5 The bankruptcy court is often the court of last resort.

6 In October of 2005, Congress dramatically
7 changed the federal bankruptcy laws to make it much
8 more difficult for a person to file for bankruptcy
9 relief. It created a means test and a number of
10 procedural requirements, the failure of which to comply
11 with would cause the automatic dismissal of the case.
12 Unfortunately, Congress didn't provide alternative
13 means of relief for some honest parties. The new law
14 has had the effect of reducing case filings, but it's
15 made the law much more complex and it's increased the
16 cost of obtaining representation in bankruptcy cases.
17 Unusually, the format caused a number of people to not
18 be able to afford to file bankruptcy. Many people are
19 forced to represent themselves or just give up. It's
20 for this reason our court has had to look at providing
21 assistance to these parties.

22 Some of the things that we have done, we have
23 redesigned many of our local forms so they're easier to
24 understand. We have improved the information available
25 by handout and on our Web page for pro se parties. We

1 have included in that a basic bankruptcy law video that
2 can be made available on the Web page and also in DVD
3 form for parties to understand the law. It's available
4 for free. We are presently working with the bankruptcy
5 court in the Southern District of Florida to provide
6 this bankruptcy video and DVD in Spanish language. We
7 have appointed a pro se coordinator whose full-time job
8 is to assist parties who come to the court and seek to
9 represent themselves. We have sought volunteers from
10 our clerk's office to spend time working on these
11 materials and improve information for pro se parties.

12 As part of the requirement of the new federal
13 law, the parties receive credit counseling before they
14 file bankruptcy. We have coordinated with credit
15 counseling agencies to make those services more
16 available. We, in fact, have established a program
17 with the Family Service Center, a United Way agency, to
18 provide credit counseling two days a months on site
19 with the bankruptcy court, often before foreclosure
20 days.

21 After -- during the last year, we've also had
22 several meetings and conversations with the South
23 Carolina Legal Services and South Carolina Bar's pro
24 bono and bar referral programs to coordinate our
25 efforts. Our staff at the bankruptcy court has been

1 trained in what they require to qualify for this
2 service. And we can review their finances to determine
3 if they qualify and make a referral quickly to assist
4 those parties.

5 On some occasions, as in any court, we're required
6 to sanction parties. And one of the alternatives we
7 provide for parties who are sanctioned is that they can
8 pay those sanctions over to Legal Service's pro bono
9 instead of the general treasury of the court. And many
10 have elected to do that. During the last few years, I
11 would estimate more than \$75,000 has been paid over to
12 these agencies, including most recently a \$30,000
13 sanction paid to the South Carolina pro bono program.

14 To address cases that do not qualify for
15 legal services or pro bono our court has established a
16 panel of volunteer lawyers who agree to take cases and
17 assist debtors. These lawyers don't always get paid.
18 If they are paid, they're paid over time. It's
19 deferred. More parties would be encouraged to serve in
20 this capacity in our court if their service could be
21 recognized and credited under your Rule 608.

22 In connection with the South Carolina Bar, we
23 have also established a court-sponsored ask-a-lawyer
24 clinic program that we sponsor once a month. Parties
25 from all across the state can call in toll-free and

1 speak to a lawyer who specializes in bankruptcy law.
2 Those lawyers can be, because they're on telephone,
3 anywhere in the state. Then we can transfer the call
4 to them. This has been a help not only to debtors, but
5 also to individuals who operate small businesses, who
6 are often frustrated by bankruptcy processes but still
7 can't afford to hire counsel.

8 Finally, in a preventive measure I wanted to
9 mention a program we have that's called the care
10 program. It's a financial literacy program which we
11 offer to schools and community organizations. In this
12 program, one of us judges of the court and volunteer
13 attorneys or bankruptcy professionals go out across the
14 state and speak in schools and to other community
15 organizations. We talk about the dangers of credit and
16 consumer credit. We talk about credit cards, student
17 loans, credit reporting, and other matters that arise
18 often in our court. We have spoken to the meeting of
19 the state superintendent of schools and worked with the
20 South Carolina Department of Education because the
21 state has a mandatory financial literacy program in the
22 schools. It's unfunded, but they're making efforts to
23 establish it. We have coordinated this effort with the
24 young lawyers division, the consumer section of the
25 South Carolina Bar and the South Carolina Bankruptcy

1 Law Association and the South Carolina Department of
2 Consumer Affairs.

3 In this time of great financial stress on
4 many people, we expect that the federal bankruptcy laws
5 will change in the next year. We think there will be a
6 review of these laws by Congress. There will be more
7 bankruptcy cases filed. As a court, we seek in every
8 way to better serve the public and create as much
9 access to justice as possible.

10 CHIEF JUSTICE TOAL: John, I'll tell you,
11 this is a wonderful template for our courts to begin to
12 follow. Obviously, you have a specialized court. We
13 have a vast court system, composed of a lot of
14 different layers of court in the state court system.
15 But I just want to publicly thank you for serving on
16 our Commission. Because, frankly, a lot of inspiration
17 we are having for revising forms and trying to the
18 answer question Justice Pleicones posed, which is, Are
19 there organizational ways that we can change the system
20 so as to train people to assist in access? Y'all
21 really get it. And we appreciate it more than I can
22 tell you.

23 JUDGE WAITES: Thank you for the opportunity
24 to be here.

25 CHIEF JUSTICE TOAL: We'll next hear from

1 Lisa Potts, the South Carolina Center For Fathers and
2 Families.

3 MS. POTTS: Thank you.

4 CHIEF JUSTICE TOAL: Welcome, Lisa.

5 MS. POTTS: Thank you. Madam Chief Justice,
6 may it please the Court. My name is Lisa Potts. I'm
7 policy director for the Center For Fathers and
8 Families. We're very grateful to be here today to
9 discuss the critical issue that men we serve, who come
10 into our programs, face every day, that's the lack of
11 visitation rights with their children. The center
12 serves voluntary and involuntary court-ordered
13 participants. And last year we served close to 1,800
14 low-income fathers, as we do so annually. These men
15 come to the programs looking for comprehensive,
16 holistic services that range from employment services,
17 job readiness, assistance with paying their child
18 support more consistently. But unfortunately, more
19 often than not, well over 90 percent of them report to
20 us that they lack legal visitation rights for their
21 children.

22 During the course of the public commission
23 hearings, we asked several of the fathers who
24 participate in our programs to come and speak. And
25 many of them in many ways were very, very similar.

1 I'll just give you sort of an everyman characteristic.
2 Generally speaking, these are low-income fathers that
3 are working, but they make between six and seven
4 dollars an hour. They're what you might characterize
5 as the working poor. They were never married to the
6 mothers of their children, so they don't have divorce
7 decrees in which certain visitation rights are outlined
8 in. As I told you, as was said in the hearings, they
9 come to the system through this mechanism. When the
10 mothers of their children seek assistance, either
11 through temporary assistance, through needy families,
12 or seeking assistance from the food stamps or any kind
13 of Medicaid, that system requires that they name the
14 father of the child. And that's for the child support
15 enforcement. Child support enforcement will then
16 establish paternity and establish the child support
17 payment, as I'm sure you are aware. But one of the
18 things they are federally prohibited from doing is
19 doing anything regarding the issue of visitation
20 rights.

21 So these men -- let me just interrupt and say
22 that we serve 1,800 of them. But in fact, 40 percent,
23 close to 40 percent of South Carolina's children are
24 born out of wedlock. This is a prevalent issue. So
25 the people that we're fortunate enough to touch and

1 serve represent a very minute part of the problem. The
2 problem is actually overwhelming. Seventy-five percent
3 of African-American children are born out of wedlock in
4 our state. So we're talking about a whole lot of
5 parents who do not have a legal visitation right to
6 their children.

7 They come to the system through child support
8 enforcement, which could not deal with the issue of
9 visitation rights. And they then ask that question,
10 How do I get access to my children? And they're told
11 to go seek -- either call lawyer referral or go to
12 Legal Services. When they go to Legal Services, it's
13 another catch-22 because they're told because they work
14 and they pay their child support that they do not
15 qualify because their income guidelines exceed the
16 limits of Legal Services to be able to provide legal
17 help. But they don't have the discretionary income to
18 hire an attorney, to establish the visitation rights.

19 We had several fathers come and speak. And I
20 you can tell from you my personal experience in working
21 in the programs for six years as a legal advocate for
22 these fathers, it is a myth that these parents don't
23 want to parent their children. And, in fact, they love
24 their children as much as anybody who's present in the
25 courtroom today. But there are many barriers to the

1 vast majority of them to be able to have access to
2 their children. And it is a fact that it is has become
3 almost generationally accepted that a father's impact
4 in that family doesn't matter. So the custodial parent
5 doesn't often, as one might think, welcome that -- the
6 father being present and having that visitation right.

7 We had people testifying, we're doing -- with
8 DSS, they have a visitation pilot program in two
9 counties. One is in Richland and one is in Colleton
10 County. In both of those, DSS caseworkers reported
11 that their biggest problem in meeting visitation
12 agreements is that custodial parents did not want to
13 mediate an agreement, that they didn't feel like it was
14 necessary. And this is what we encounter on our end as
15 well.

16 Now, why does it matter? You know, why do we
17 care about this population? Why do we care about
18 whether they have access to their children? What we
19 know from a societal impact is that children who don't
20 have an involved active father in their life -- and
21 there is voluminous amounts of research on this
22 issue -- are three times more likely to experience
23 drugs. They have educational, health, emotional,
24 behavioral problems. They engage in criminal behavior
25 earlier and more often. And, in fact, if you walk in

1 any DJJ hearing, it is very self-evident, and those DJJ
2 attorneys will tell you, most of the clientele that
3 they see don't have a father in the courtroom, that
4 this is a single parent bringing them.

5 It's our belief in the Center for Fathers and
6 Families that that father's impact in that child's life
7 has a significant role to play. That father has a
8 significant role to play in that child's life. And
9 what's sad is that we encounter fathers every day who
10 want to fulfill that role. But they don't have the
11 legal access to do it.

12 In terms of cost, out of our federal budget
13 about \$100 billion is directed from our federal budget,
14 not even talking about our state budget, which
15 represents about 30 percent, to fatherless household.
16 This yearly cost of fatherlessness is outstanding.

17 And here's what we want the Court to do,
18 because I've heard you ask this question at the end of
19 several person's testimony. What we want is we want
20 easy-to-use, accessible forms, pro se, self-represented
21 litigant forms. Our primary concern is that dad who
22 works, pays his child support every month, and is a
23 decent, fine human being in every way, but has no right
24 to access his children through parenting time. We want
25 clerks -- and this is very much a problem. And as your

1 previous witness testified to, it is, in fact, true
2 that many of the clerks' offices do not understand that
3 people have a right to file as a pro se form and they
4 resist that effort. So we want clerks that are
5 educated that this is a right for someone with a filing
6 fee or a properly filled out motion to waive the filing
7 fee to file a pro se form. Then we'd like judges that
8 are educated and compassionate to that litigant who's
9 prepared. In the Center, they've got the forms
10 prepared. The issue is relatively simple. And to not
11 falsely put up barriers to that person being able to
12 accomplish the minimal task.

13 There are many ways to make this possible.
14 There are videos that can be done on courtroom
15 behavior. In fact, from the Center's perspective,
16 we've drafted what we believe already are some pretty
17 decent pro se visitation forms. But we want them
18 accessible. We want them in every clerk's office, on
19 kiosks, if that's possible. We want them on court
20 administration's Web site. We want to, so that people
21 who want to parent their children have the ability to
22 do so.

23 So since this is an esteemed body of fine
24 judges, I thought I'd leave you with a legal quote.
25 And this is from the -- not a president, it's a

1 district court in Michigan. But that judge recently
2 ruled that the right of a parent to care and nurture
3 their child is of such character that it cannot be
4 denied without violating those fundamental principles
5 of liberty and justice which thrive at the base of all
6 of our civil and political institutions and such raise
7 a fundamental right protected by this amendment first
8 and amendments 5, 9 and 14.

9 And I will tell you that there are thousands
10 of parents who do not have this right today. Thank
11 you.

12 CHIEF JUSTICE TOAL: Thank you very much,
13 Ms. Potts. You know, you raise such a troubling issue
14 about how do -- what kind of forum do we use? Because
15 the first contact many of the fathers you advocate for
16 have with the court system is when obtaining for food
17 stamp application have been made and paternity is being
18 established. And right now our system is such, very
19 heavily impacted by federal child support enforcement
20 requirements, that we can't marry up a child support
21 hearing with a hearing dealing with matters of custody
22 and visitation, even though part of the proceeding is
23 establishing paternity. And that is obviously
24 something that -- that everyone involved in this access
25 effort has taken a hard look at. We're going to need

1 y'all's help, too. Because how to change the
2 procedure, if we can do so, by any kind of court rule
3 and how to bless properly drawn forms that will be
4 really usable to move visitation and custody issues
5 into parallel with support hearings, that's something
6 that's going to take a really collaborative effort. So
7 I can't tell you how much I hear your voice. You know,
8 the fathers and families initiative is very important
9 to me personally. But we are going to need your help
10 as to how mechanically we can make this work.

11 MS. POTTS: I appreciate that, Your Honor.
12 And I thank you so much for the support you show now
13 and you've always shown. But the reality is that the
14 people you testified from, the workers who testified in
15 Colleton and Ridgeland, the workers who have drafted
16 pro se forms, is that on those issues where the dad's
17 paying, there's no other presenting issue, that the
18 procedure is relatively simple and that their
19 experience is that the vast majority of people can
20 accomplish that hearing on their own. And that's been
21 our experience as well when we've provided pro se forms
22 that are usable and we've given some basic instruction
23 about courtroom behavior. The fathers can go in there.
24 Now, when the issues become more complex, they
25 obviously cannot do it. But there are stepping stones.

1 And what I would encourage this Court to consider, and
2 the Commission, is let's take some stepping stones.
3 Let's not wait to solve the entire problem. Because
4 it's huge. But let's take some stepping stones.

5 Thank you.

6 JUSTICE BEATTY: One quick question.
7 The forms that you say you allow or you give some of
8 the pro se litigants for their use, you have these
9 already, I presume?

10 MS. POTTS: I do have them and the Commission
11 has them. We've -- we've been -- I'm an attorney, Your
12 Honor. And those forms have been drafted. In fact,
13 they've been drafted with fill-in-the-blank, almost
14 like paint-by-number. And the instructions are very
15 simple. It's a one-page petition. You do not have to
16 be a rocket scientist to complete it. But I respect
17 the fact that the Commission and the forms, they want
18 to make sure that -- I mean, in order to sanction and
19 approve, I respect the process of getting them
20 sanctioned and approved. And I do not expect in any
21 way for my form to be used. But I have offered it as
22 an example of something that is, in fact, usable.

23 CHIEF JUSTICE TOAL: As you know, Ms. Potts,
24 we have encouraged the development of a
25 self-represented litigant divorce package. In fact, I

1 can tell all here that the Court has approved those
2 forms today. I feel quite confident that visitation
3 and custody forms will be in the mix sooner rather than
4 later.

5 MS. POTTS: That's wonderful news. Thank
6 you.

7 CHIEF JUSTICE TOAL: The next speaker we'll
8 hear from is Mr. Tyrom Faullkner with the Lancaster
9 Fatherhood Initiative. Mr. Faullkner, I was so
10 impressed with the film I saw of your testimony before
11 and we're delighted to have with us today, sir.

12 MR. FAULLKNER: Thank you, Madam Chief
13 Justice. May it please the Court. I'm Tyrom Faullkner
14 of the Lancaster Fatherhood Initiative. And we work to
15 engage fathers in the lives of their children. What we
16 found out is that a lot of men, when they go to the
17 family court system, they automatically feel that they
18 have an intimidating situation when they go in the
19 court system. And what we try to do is work with these
20 men to where they will feel comfortable when they go in
21 the court system, so that we can help them access more
22 avenues for justice for themselves. We have a lot of
23 fathers that pay their child support and they can't get
24 visitation rights because they can't afford to obtain
25 an attorney. We have worked with South Carolina Legal

1 Services to try to help find new ways and solutions and
2 avenues to try to help these men to get the type of
3 services that they need so that they can visit their
4 children. But, as Ms. Potts touched on, a lot of times
5 in the court a lot of the men are already afraid when
6 they come in the court system. And once they get
7 there, that fear is only magnified by -- it seems like
8 you're already wrong when you walk in the court system.
9 So a lot of guys that want to try to get visitation,
10 they are afraid because maybe they're behind in the
11 child support or just got laid off. And when they're
12 at -- they don't know the proper procedure when they go
13 to court. They're going for one thing and they're
14 trying to present another thing. And then, when they
15 are just pro se, just close, because that's not the
16 proper procedure, they'll be kind of like they're lost,
17 you know? So what we have been trying to do and asking
18 the Court, develop some type of communication to where
19 we can address the low-income fathers and the
20 population that we serve to where they can kind of feel
21 comfortable when they come in, in a different setting,
22 such as today.

23 And I'd just like to tell you about one
24 father in particular that shared his testimony in
25 Lancaster. His name is Leroy. Leroy has a son and

1 he's been paying child support for about seven years.

2 Well, when Leroy and the mother of his child are
3 getting along okay, she will let him come see him, see
4 his son. But when the relationship wasn't going well,
5 she would not let him come see his son. Leroy has been
6 trying to get visitation. And he worked with South
7 Carolina Legal Services, but because of his job he
8 doesn't qualify. So now the mother of his son is
9 terminally ill and her health is failing quickly.

10 Through that process, she has -- her son has a sister.

11 And Leroy has been taking care of the son and the
12 sister and giving money to the mother. But now that
13 Leroy has decided to have another relationship, now all
14 of his visitation has been suspended because the mother
15 and the father can't see eye-to-eye. So now Leroy
16 is -- now he's working. He had planned to be here with
17 us today, but he couldn't because he just recently got
18 married three weeks ago and he's taking care of his
19 son. The mother's health has turned for a little worse
20 and now the grandparents allow Leroy to take the child.
21 But he does not have any rights because he was never
22 married and he don't have the funds to obtain an
23 attorney to be able to get the proper paperwork.

24 So on behalf of Leroy and so many other
25 fathers throughout South Carolina that need to be able

1 to have their voice heard in the court system, you
2 know, and to be able to voice their opinion, you know,
3 because they can't have representation. And most of
4 the guys that I deal with, they already feel like it's
5 a lost cause, you know? We try to encourage them every
6 day that it's not a lost cause, you know? And most of
7 our parents, they are great fathers to their children,
8 you know? But they just want to be able to be more
9 involved in their children's lives. And if we could
10 find some type of communication with the family court
11 systems to where it would not just stereotype all
12 fathers. Because all fathers are not deadbeat dads.
13 There are some fathers that just don't have the
14 revenue, just don't have the jobs, but they love their
15 children just as much as we do. And I'm here today
16 just to speak on behalf of all of our fathers and
17 families that we work with in Lancaster and all of the
18 state. And I would love for the Court to train some
19 more court officials in being a little bit more
20 father-friendly in the courtroom, you know. Because
21 it's -- it's an intimidating situation when you feel
22 like you've already lost the battle and you walk in
23 this arena to where you know that you're going to jail.
24 And we just want the Court to make sure that they can
25 give some consideration to the fathers that are trying,

1 that are working, but are maybe just not able to pay
2 the exact things that they have to pay, that they will
3 give them an opportunity to be in our programs and get
4 the help that they need.

5 So I would just like to thank this Court for
6 hearing the voices of the fathers and families.
7 Because it is a very important mission that we work on.
8 And it impacts my life as well as all of the men's and
9 the children's lives. And when we see the children
10 being able to benefit from the parents, both the mother
11 and the father, that's one of the most rewarding
12 feelings that we have ever received. You know, a male
13 role model in that child's life is very important. So
14 we're just here to advocate for that parent, for all
15 these parents, so that the children can benefit. And
16 if there's anything that this Court could do that could
17 help us in our efforts, we would greatly appreciate it.

18 JUSTICE BEATTY: Your major complaint is that the
19 family court is not receptive to your situation or to
20 the fathers that you deal with?

21 MR. FAULLKNER: Yes. A lot of times, it's
22 just that the men don't have the resources to pay for
23 visitation to obtain an attorney.

24 JUSTICE BEATTY: Now, what about these forms
25 that Ms. Potts spoke about earlier, do you make use of

1 those?

2 MR. FAULLKNER: Yes, we are trying to make
3 use of those. What we find, we're dealing with the
4 low-income population. A lot of the men getting those
5 forms and getting them back in court, by the time they
6 go through that court process once and they get
7 discouraged, they will have a hard time getting them
8 back in the loop, you know.

9 JUSTICE BEATTY: So you're suggesting that
10 the chief justice had a word with the family court
11 judges, is that what you're saying?

12 CHIEF JUSTICE TOAL: Don't be shy about
13 that.

14 MR. FAULLKNER: Well...

15 CHIEF JUSTICE TOAL: Don't be shy about
16 saying yes to that.

17 MR. FAULLKNER: Yes, Your Honor. Yes, Your
18 Honor.

19 CHIEF JUSTICE TOAL: We're being educated and
20 we're going to try in a gently persuasive way to
21 educate our brothers and sisters.

22 MR. FAULLKNER: We are very thankful for the
23 court system. And we've made a lot of good strides
24 building the relationships with family court. And we
25 have a wonderful clerk of court and family court in our

1 area. But we just have some, some fine-tuning that we
2 can get to get done a little bit better so the men and
3 the families can be better served.

4 CHIEF JUSTICE TOAL: Thank you, Mr. Faulkner.

5 MR. FAULLKNER: Thank you.

6 CHIEF JUSTICE TOAL: We'll next hear from
7 Denise K. Collins with Citizens Opposed To Domestic
8 Abuse. Ms. Collins.

9 MS. COLLINS: Yes, Madam Chief Justice, may
10 it please the Court. My name is Denise Collins and I
11 work at CODA. We're the domestic violence program that
12 serves the Lowcountry down in the Fourteenth Circuit.
13 We're like Sister Care that's up here.

14 When Robin first asked me to participate in
15 this hearing -- I participated in the hearing in
16 Colleton County and started creating a laundry list of
17 barriers to access to justice. Then I sort of broke
18 them down into a couple of categories because they fit
19 into groups.

20 I'm going to start with the category that's
21 pertinent to the clients because that's who we're here
22 to serve today, is the general public. One of the
23 things I hear so often is that folks just cannot meet
24 the eligibility requirements for Legal Services and
25 legal aid. Currently, it's at about 125 percent of the

1 poverty level. IOLTA gives the funding agency the
2 discretion to increase that to 200 percent, which is
3 really wonderful. But it's still not enough to get
4 everyone legal services who needs them. Because,
5 frankly, clients lack resources.

6 And they don't only lack resources in the
7 monetary sense of resources; they lack other resources,
8 too. When we're serving low-income people, those folks
9 don't have the leeway that some of us do to access the
10 court system or an attorney's office, if they had the
11 money. Because, frankly, the court system, we don't
12 have really flexible hours, not on evenings or really
13 early in the morning and certainly not on weekends.

14 The agency that I work at -- and I know that Legal
15 Services and legal aid throughout the state, they flex
16 their hours a little bit so they can meet their clients
17 in the evenings. But asking low-income people to take
18 a morning or even a whole day off work to be able to go
19 to court is really difficult, even if that's where they
20 were going to get the forms to go pro se. So those are
21 one of the things.

22 Of course, I live in a rural area. One of
23 the big issues is transportation, getting folks to --
24 getting folks to where they're going.

25 Another issue would be child care. It's

1 really difficult as an attorney to sit in your
2 office -- and in a nonprofit office, you don't have a
3 big office. And I've had the pleasure of sitting with
4 an interpreter, a mother who is the client, and her two
5 children in this little, like, eight-by-eight room, and
6 trying to have her fill out an application so that I
7 can then draft pleadings on her behalf. And it's
8 really hard for them.

9 So they lack those types of resources: money,
10 transportation, time that's convenient to them without
11 having to take off work. So justice generally becomes
12 an unaffordable luxury.

13 From the perspective of the attorney, I've
14 heard lots and lots of complaints from clients. One of
15 the things that folks complain about a lot is that
16 lawyers don't talk to them enough, they don't explain
17 things. And while this gentleman who went before me is
18 maybe asking the Chief Justice to talk to the family
19 court judges, maybe we could all ask the bar paid
20 attorneys to explain things to clients, why they need
21 these affidavits, why they need their participation.
22 Because I found that when I talked to my clients and
23 tell them why I need what they need, why I need what I
24 need and when I need it by, they buy in and they get it
25 and they participate.

1 I would say another barrier from the
2 perspective of the attorney, excuse me, is that clients
3 just don't know where to go. Not everyone knows where
4 or how to access the South Carolina Bar Association,
5 which does have forms on its Web site to use or how to
6 call. Not everybody has access to the Internet. And
7 also is a thing if you do have children and you're a
8 single parent, you may be taking, you know, taking your
9 kids to a public library to use a computer just very
10 often isn't an option. You may be asked to leave.

11 Also disability is one of the things I can
12 consider, it's not technically a disability, but
13 English as a second language. It's very difficult for
14 people. I've often served clients who have been served
15 papers. I get the summons and complaint for an
16 emergency hearing in family court. They have no idea
17 what these papers say. They have no idea that they
18 also have only five days to get to court, generally
19 five business days in family court for an emergency
20 hearing, not an emergency, temporary hearing. So
21 that's an issue.

22 And from the perspective of my boss, who's
23 the executive director, I would say her biggest
24 complaint is the endless source of funding, looking for
25 funding endlessly for a nonprofit through grants,

1 donations, and then fund-raising events. And then,
2 once you get those grants, then you have to comply and
3 the grants are different grant cycles also. They have
4 different forms they require and different reports.
5 And it's -- it's pretty much a tedious process on her
6 part.

7 So thank you very much.

8 CHIEF JUSTICE TOAL: Thank you very much,
9 Ms. Collins.

10 We'll next hear from Rita J. Roache, South
11 Carolina Legal Services.

12 MS. ROACHE: Good afternoon. Madam Chief
13 Justice, may it please the Court. From our perspective
14 at South Carolina Legal Services, clients do have a
15 hard time accessing justice. Unfortunately, we are not
16 able to assist everyone, as I think you've heard
17 several times already, that comes to us. And I just
18 want to share a few scenarios with you.

19 I'll tell you first that I was going to talk
20 about Ms. Carey's case, since it's been passed around
21 among all of us. And I could almost just stop there
22 with her story.

23 But imagine earning very little, which is
24 still over 125 percent of poverty level, and you have a
25 family of four. Your former spouse just got promoted

1 again, bought a bigger home, a new car, and he's still
2 paying you the \$300 that he's paid for years. But you
3 can't afford a lawyer. You go to Legal Services. You
4 take a clinic on how to get more child support, but you
5 get kicked out of court.

6 Or what about the gentleman who's a
7 hard-working longshoreman, who's earned a substantial
8 income and then his hand gets crushed in a pallet on
9 the dock? He's not able to work. His child support of
10 \$2,000 a month, it's still due, and he can't pay it.
11 His benefits have run out. He's applied for disability
12 and he's trying to get a reduction in child support.
13 But, again, he's unable to proceed.

14 Or what about the man who goes to retire and
15 at Social Security he finds out that for years he's
16 been known as George Harvey, when really the name on
17 the birth certificate that they tell him is his says
18 James McMichael? He can't get any Social Security at
19 that point because he wants his name changed or he has
20 to have his name changed.

21 Now, we do clinics in all those things at
22 South Carolina Legal Services. The divorce clinics,
23 the child support reduction and increase clinics, and
24 new clinics that we're developing now are for
25 visitation and name changes.

1 But in spite of this, it's still very
2 difficult for the self-represented litigant.

3 Ms. Carey's story is a reality. We have many clerks
4 that will not accept the forms. They pointblank tell
5 people. And I tell them, Take them back. They have
6 to. Tell them the Chief Justice said you have to.
7 Chief Justice, that doesn't work all the time.

8 CHIEF JUSTICE TOAL: I know. They don't
9 listen to me, either.

10 MS. ROACHE: And we've tried several times.
11 We have judges who aren't friendly as well.

12 Now, after the hearings in Charleston when I
13 complained about the court, I was told by the clerk of
14 court's office -- I was told that they have the forms
15 on computer, but not by paper. Well what about the
16 people who are not computer literate?

17 And today I had court. So just in an offhand
18 way I asked the clerk there, Y'all have forms here?
19 And she said Oh, no, we have no forms. I said, Well,
20 what about the computer? And she said to me, What
21 computer? I've been there when someone has asked --
22 someone had asked about it and no one could help them.
23 But they were not computer literate and they didn't
24 know what to do.

25 I'd ask the Court that we have some uniform

1 procedure about the forms and about providing them to
2 our self-represented litigants. Now, it has been my
3 pleasure to work with Stephanie Nye and Robin Wheeler
4 in developing the forms for self-represented litigants.
5 And I'm so excited to know that the pro se divorce
6 packet has been approved. We just have to ensure and
7 facilitate their use around the state and make certain
8 that people have access to justice.

9 In terms of the visitation, we'd like to
10 partner with DSS and find a way to provide visitation
11 representation. But, unfortunately, we haven't been
12 able to do that.

13 If being a self-represented litigant is not
14 acceptable, then it doesn't matter how many clinics we
15 do. So I beg your assistance in making
16 self-represented litigants have access to justice.

17 I could go on and on, but I see my time is
18 dwindling, so I'll just mention one other issue: The
19 cost of guardians ad litem in the family court. Many
20 people don't have access to justice because they can't
21 pay the guardian ad litem. Or they get put in jail
22 because they can't pay the guardian ad litem. And
23 that's a big barrier to justice.

24 Again, I thank you for the opportunity to
25 address this august body. As a legal aid lawyer we

1 appreciate there are special interests in access to
2 justice, Madam Chief Justice and the rest of the Court.
3 We're grateful to the Commission as well. And I thank
4 you so much.

5 CHIEF JUSTICE TOAL: Thank you.

6 JUSTICE BEATTY: May I ask you a question
7 before you leave?

8 MS. ROACHE: Yes, Justice Beatty.

9 JUSTICE BEATTY: What specifically is the
10 problem or the impediment with partnering with DSS to
11 alleviate some of these concerns that you have?

12 MS. ROACHE: Probably the bureaucracy. And
13 also the fact that Title 4-D of the Social Security
14 Act, as Justice Toal was mentioning, prevents them, so
15 to speak, from doing things of that nature. We're
16 exploring it, but really haven't been able to get
17 anywhere with them so far.

18 CHIEF JUSTICE TOAL: They take the position,
19 and I'm not saying they're wrong about this, Justice
20 Beatty, that child support hearings in aid of
21 collecting 4-D money, that is, the child support after
22 paternity is established, doesn't go to the custodial
23 mother; it goes to DSS because she's receiving
24 benefits, things of that nature. The position is taken
25 that those hearings cannot be also used as the vehicle

1 for paternal visitation or noncustodial parent
2 visitation and some of the others issues that are being
3 raised here. Inquiries are now being made and some
4 research is being done. I don't know what the right
5 answer is, who's correct about it. But I can't believe
6 in a South Carolina family court proceeding that the
7 jurisdiction of the court would be so limited. So I
8 can tell you, Ms. Roache, that what's been brought to
9 light by the hearings that have already taken place has
10 spurred some research and interest in this issue. And
11 it's very important for y'all to keep speaking about
12 this as we try to explore ways to keep the child
13 support hearings system going, because it is very
14 overloaded, and at the same time try to provide a
15 vehicle for dealing with the issues that you and
16 Mr. Faulkner and others are raising about visitation.

17 MS. ROACHE: Thank you very much. We
18 appreciate it.

19 CHIEF JUSTICE TOAL: We'll next hear from
20 Kirby Mitchell. Mr. Mitchell.

21 MR. MITCHELL: Madam Chief Justice, Justices
22 of the Court, may it please this Court. My name is
23 Kirby Mitchell. I'm managing attorney of the
24 Greenville office of South Carolina Legal Services.
25 Today I want to talk to you about or give you a little

1 specific information about some of the adversarial
2 litigation that we're doing in our office. My office
3 represents low-income South Carolinians in a wide
4 variety of civil cases in courtrooms all across the
5 upstate and, in fact, all over South Carolina. So far
6 in 2008, the attorneys and advocates in my office have
7 appeared, as of 11 o'clock this morning, I believe, 438
8 times so far this year in litigated, on-the-record,
9 contested cases involving low-income people, in a wide
10 variety of forums. But for these -- but for our 438
11 appearances so far this year by the attorneys in the
12 Greenville office, including the two this morning
13 before Judge Patterson in Greenville, I believe all of
14 these low-income people represented by our office in
15 these cases would have appeared self-represented and/or
16 would have gone into default or would not have appeared
17 at all. I believe not one of them could have or would
18 have been able to hire a private attorney and none of
19 the cases are ones where court-appointed counsel are
20 available under the law of South Carolina. And none of
21 them are cases where pro bono or other representing or
22 assistance are possible. I believe South Carolina
23 Legal Services today in Greenville and all over the
24 state is providing this service in adversarial
25 litigation that is not available anywhere else and not

1 being provided by anyone else at this time. Time does
2 not allow me today to go into much more specific detail
3 with some examples of these 438 cases where we have
4 appeared with poor people so far this year.

5 And aside from these 438 court appearances, I
6 want you know there's quite a bit of other casework,
7 filings and pleading that just haven't resulted in a
8 court appearance by an attorney yet. But I have put
9 together several specific examples and case studies and
10 information over the past few months. And I've
11 provided that information to Robin Wheeler, your
12 able Access To Justice Commission executive director.
13 She has several vignettes, case summaries of these 2008
14 real South Carolina Legal Services cases and real
15 clients. So I hope you'll have the opportunity to
16 consider some of that material. There are many, many
17 good results and victories there that we are very proud
18 of and that I feel do, in fact, contribute something
19 quite valuable beyond the specific help that was
20 provided to the low-income individual. I will admit to
21 you, I only sent Robin Wheeler the victories and the
22 good results. From time to time, in an adversarial
23 system, the results are adverse. But I hope you have
24 the opportunity to look through them.

25 One question I think your Commission might

1 have for someone like me is, based on my perspective at
2 legal aid, my experience, what is the number one
3 barrier that I see for poor people regarding access to
4 South Carolina justice system? I'm convinced the
5 number one barrier is the small number of licensed and
6 practicing South Carolina legal aid attorneys who
7 represent clients one by one, every day, in the courts
8 of this state. I believe our country's time-tested
9 adversarial justice system, which remains the most
10 copied and studied justice system in the world, only
11 works if both sides are represented. I honestly
12 believe the barrier is that simple. And not directly
13 addressing that simple truth head-on, despite
14 well-intentioned efforts and other ideas that can be
15 very valuable, I think that can have many negative
16 consequences for all of us, particularly in cases where
17 someone's house, someone's children, someone's job are
18 what's at stake.

19 We got a new attorney in the Greenville
20 office in February of this year, Chris Bonds. He
21 transferred from our Greenwood office actually, so this
22 wasn't a net gain for our statewide program, just an
23 internal transfer. But I just want to tell you the
24 effect of adding one new attorney. It's been
25 tremendous. It's been stimulating for me and the whole

1 office. It's given us an opportunity to take on
2 several new employment cases, an area that he's
3 interested in, and that we had been negating somewhat.
4 And it has relieved some other attorneys of tough
5 family court cases and other cases so they could focus
6 on more complex foreclosure bankruptcy litigation.
7 That's been wonderful for us.

8 This morning before I came here to talk to
9 you, I watched at 10:30 at the Greenville County
10 Circuit Court, I watched this young new attorney, Chris
11 Bonds, win a very good motion hearing for a low-income
12 client against an opposing party who was a high-volume,
13 out-of-state debt collection company. Chris's case was
14 on the docket right before mine, so when I concluded my
15 case as well, the two of us walked out of Judge
16 Patterson's courtroom very proud of what we'd done for
17 the two clients we just represented. As I walked out,
18 I saw -- I counted nine other folks that are
19 representing themselves, that were lining up to face
20 the same opposing party, the high-volume, out-of-state
21 collection company, summary judgment motions one after
22 the other. They were each going to do the best they
23 could by themselves. That just happened a few hours
24 ago. So I know you know it quite well. But that's
25 going on elsewhere around the state, probably as I'm

1 speaking to you right now.

2 So from my personal experience, both over the
3 last decade, in the 438 court appearances we've had
4 this year, one of which was Ms. Tami Carey, I'm proud
5 to say, and in my experience this morning, I honestly
6 think that even a small increase in the number of
7 licensed practicing South Carolina legal aid attorneys
8 would absolutely, fundamentally and directly address
9 the number one barrier for poor people struggling to
10 access the justice system in this state. We can make a
11 big difference. We do. We did this morning. And I
12 just thank you very much for the time and the
13 opportunity to speak to you today.

14 CHIEF JUSTICE TOAL: Thank you, Mr. Mitchell.
15 We'll next hear from Jada Charley, South Carolina Legal
16 Services.

17 MS. CHARLEY: Madam Chief Justice, may it
18 please the Court. I've been invited here today to
19 discuss barriers faced by the limited English
20 proficient community in South Carolina in accessing our
21 legal system. I am the limited English proficient
22 attorney for South Carolina Legal Services. We call it
23 LEP for short.

24 The first and perhaps most important barrier
25 is the lack of the qualified legal interpreters.

1 Although South Carolina recently implemented a
2 certification program for court interpreters, there
3 continue to be many instances when the interpreters
4 used in court proceedings have no knowledge of legal
5 terminology in English or in the second language. In
6 addition, many times bilingual people are used as
7 interpreters without regard to the fact that
8 interpretation requires a completely separate and
9 distinct skill set than being fluent in two languages.
10 Too often, the actions of the unqualified interpreter
11 negatively impact cases. And because most court
12 proceedings are transcribed by a court reporter in
13 English and no audio or video recording is made, it is
14 impossible to appeal a court decision where the limited
15 English proficient client was prejudiced by the
16 inaccurate interpretation of an unqualified
17 interpreter. The interpreter certification program is
18 a step in the right direction. But in order to
19 maintain the integrity of our judicial processes, I
20 believe that is necessary to have an audio or video
21 recording of judicial proceedings where an interpreter
22 is used so that if the client is prejudiced by a faulty
23 interpretation, the lawyer representing the client on
24 appeal will have a record on which he can rely in
25 making the case for her client.

1 Additionally, as was previously brought up by
2 the previous testimony, we need to have bilingual
3 renderings of important court notices and forms, such
4 as the standard summons that's attached to a complaint
5 and notices of hearings. I know in my office that I
6 already have bilingual summons which I send out with my
7 complaints. And I have a bilingual hearing notice,
8 which I send out to the opposing party, just as a
9 method of keeping myself honest in terms of assisting
10 the limited English population, even when they're not
11 my clients.

12 What can we do to reduce some of the costs
13 associated with these interpreters? Well, as
14 attorneys, we are asked to donate a certain number of
15 pro bono hours. I would suggest that interpreters
16 who are certified under our South Carolina process also
17 be asked to donate a certain number of interpreter
18 hours to either interpret in the Legal Services or
19 other nonprofit agency or to interpret in courts. And
20 that will reduce some of the costs associated with
21 hiring these interpreters.

22 The second and perhaps equally important
23 barrier with regards to interpreters in courtrooms is
24 the willingness of our judges and court staff to
25 develop a uniform procedure for requesting and

1 appointing interpreters. In some counties an
2 interpreter request is accepted via a fax letter to a
3 member of court staff. In other counties, a motion is
4 required. Still in other counties, no type of request
5 for an interpret is accepted, no matter what you say.
6 And in one county in particular, I was advised by court
7 staff that, and I quote, The other attorneys around
8 here just bring their own interpreter. This type of
9 process reflects badly on our judiciary and on our
10 commitment to assuring access to justice for all those
11 who become involved with our judicial system.

12 As an example of a situation where
13 interpreters are needed but not present is on rule to
14 show cause days in family court. On those days, I
15 believe that there should be an interpreter on call to
16 assist those who are limited English proficient. And
17 it's primarily Spanish speaking in South Carolina. And
18 they're asking to come in on these rules. Furthermore,
19 I would ask that if the person ruled in is a limited
20 English proficient person and no interpreter is
21 available, that those hearings be rescheduled for
22 another day when the interpreter is available.

23 Continuing on to the availability of free or
24 low-cost legal services to the limited English
25 proficient community, as South Carolina Legal Services

1 we only have two full-time employees devoted to LEP
2 casework outreach and community education, and I am one
3 of those employees. In addition, we have four other
4 staff members who divide their job duties and they have
5 varying amounts of fluency. At Legal Services,
6 generally speaking, we cannot assist with immigration
7 matters. However, questions about immigration are what
8 compromise the majority of my day. So if we could
9 develop some kind of group to address those concerns of
10 those populations, it would be a benefit, I think, to
11 the South Carolina judicial system and to our society
12 as a whole. Thank you.

13 CHIEF JUSTICE TOAL: Thank you very much,
14 Ms. Charley.

15 We'll next hear from Sheila Thomas, South
16 Carolina Legal Services.

17 MS. THOMAS: Madam Chief Justice, may it
18 please the Court. My name is Sheila Thomas. I'm the
19 managing attorney of the Orangeburg office of South
20 Carolina Legal Services. And my service area is
21 comprised of five counties: Orangeburg, Allendale,
22 Bamberg, Barnwell, and Calhoun counties.

23 I'm going to start off by telling you a
24 little bit of one of my fairly new clients who lives in
25 Allendale. Her name is Jacqueline. She's 41 years

1 old. She is a grandmother. And until very recently,
2 she had four daughters.

3 Jacqueline as a client was a little
4 discouraging to me in the beginning, but not really
5 atypical because I had difficulty contacting her. She
6 had no telephone. So the phone that I would contact
7 her, the phone number that I had, was her mother's
8 number. It would take on average about 24 hours for
9 her to get back with me and call me back.

10 She missed several appointments because she
11 didn't have transportation. I just resigned myself to
12 the fact that I would have to drive to her. Allendale
13 is about 49 miles away from Orangeburg. But that was
14 the only way we could provide services to her.

15 Jacqueline came to me to try to get custody
16 of a grandchild who, at the time she came to me, was
17 about two years old.

18 Jacqueline drives. She works as a
19 housekeeper on Hilton Head and she drives -- I'm sorry,
20 she takes a bus every morning at four a.m. She travels
21 about three and a half, four hours a day to get work,
22 to get home. And she works as a housekeeper at one of
23 the hotels in Hilton Head. She does not spend a lot of
24 time at home because of the nature of her job. She
25 makes about \$13,000 a year.

1 She came to me because in November of 2006,
2 her 17-year-old daughter Erica disappeared. She
3 didn't -- she had spoken to her daughter the week
4 before she disappeared and she didn't find out that her
5 daughter disappeared until about a week after she was
6 considered to have been missing by law enforcement,
7 when she ran into her daughter's child's father at
8 Wal-Mart with -- holding hands with another girl. And
9 she walked up to him, said, you know, where's Erica?
10 And he said, I don't know. And she said, What do you
11 mean you don't know? And he said, I don't know. She's
12 been missing for a couple of days. And we don't know
13 where she is. And he said "we" because he was
14 including his parents. He lived at home with his mom,
15 his dad, his younger brother. He was attending college
16 in Columbia.

17 She left her buggy in the Wal-Mart. She
18 left and went, got her mom. They went to law
19 enforcement and they reported Erica missing.

20 Between November of 2006 and April of 2008,
21 they didn't know what really had become of Erica, but
22 speculation and local news reports were that she had
23 some sort of altercation with the father of her child,
24 ironically in front of the courthouse in Allendale one
25 evening when she got off from work, and that was the

1 last time she was seen.

2 In April of 2008, the child's father was
3 arrested for murdering Erica. He's now awaiting trial
4 in Jasper County. Because even though the trial is
5 going to go forward in Allendale, my client has some
6 relatives who are jailers in Allendale. So to avoid
7 any conflicts, they placed him in Jasper County Jail.

8 The problem for my client was that she wasn't
9 allowed by the father or his parents to lay eyes on her
10 grandson for the entire duration of the time that her
11 daughter was missing. Her daughter, at the time she
12 went missing, was living with this young man and his
13 parents. He didn't call her and tell her that the girl
14 was missing. His parents didn't call her and tell her
15 that the girl was missing. Every time she went to
16 their house to see the child, which was only about two
17 miles away from where she lived, they refused to allow
18 her to see the child. They refused to allow her to
19 talk to him. She didn't know his condition. She
20 didn't know, even though, you know, on the outside,
21 these people appear to be very upstanding. You know,
22 nice home, you know, solid working people. Her concern
23 was that all that time this young man was living in the
24 house with her grandchild and, you know, he was
25 arrested for murdering her daughter.

1 I believe in May, the month after the man was
2 arrested, another young man was arrested as an
3 accessory, who apparently is giving information as to
4 what really happened to Eric's body. Because no body
5 was ever found. These two young men are scheduled to
6 go on trial. Initially, trial had been set for
7 sometime in September, but apparently there's been some
8 delay so the trial hasn't started.

9 We filed a custody case, had a temporary
10 hearing on August 25th. On that day, the family court
11 judge in Allendale ordered that custody be immediately
12 returned to -- or given my client. She didn't even
13 have a car to go pick him up. I had to go pick her up,
14 get a car seat from another daughter, go back and get
15 the child from the daycare. So this is a young lady
16 who -- she said she wanted to come before, she just
17 couldn't get off work and get to our office. She has
18 no phone, no transportation. These are barriers for
19 her. And because she lives in such a rural area, the
20 type of problems that she encounters is not really
21 uncommon for a lot of our clients who live in rural
22 areas. Orangeburg is probably the most densely
23 populated county.

24 JUSTICE PLEICONES: Ms. Thomas, may I
25 interrupt you? What would be a proposed solution to

1 your ability to service these clients? And typically
2 transportation being a problem, what would you propose?

3 MS. THOMAS: Well, currently, Your Honor, we
4 are already traveling to the service area. We are
5 working with partner agencies who sometimes provide
6 free space. It certainly would be beneficial if the
7 courthouses in the rural counties -- and I believe we
8 have 13 offices. There are approximately 37 counties
9 that have no Legal Services, no place to meet our
10 clients unless we arrange, you know, to meet them at
11 their homes or at Hardee's or whatever. So certainly
12 having access to a room, a vacant room in the
13 courthouse on sort of a standard, when times are
14 announced to the public, and they know that a Legal
15 Services attorney is going to be there, would be very
16 helpful.

17 JUSTICE PLEICONES: A consultation room?

18 MS. THOMAS: Certainly. Unfortunately, the
19 reality of our limited resources means that most of our
20 offices are located in large urban areas. It's just
21 not that cost effective for us to operate offices in
22 small rural counties. The overhead alone prohibits us
23 doing that. And so because of that, that's why our
24 offices are located where they are.

25 In our service area, our 2007 numbers

1 indicate that in my five counties we at least had
2 eligible for services 33,990 indigent people who would
3 have qualified for our services. We have two attorneys
4 that work in my service area. I've been trying for
5 about a year to hire a staff attorney to do some
6 domestic violence work in our service work. One of the
7 barriers to that, one of the challenges to that is the
8 fact that we do have great difficulty in recruiting
9 young attorneys to rural areas, particularly if they
10 have young families. If they have young children that
11 go to school, they want to make sure their children
12 have access to a good school system. They want some
13 social amenities they may have in a more metropolitan
14 area. I have a staff attorney who is from Orangeburg,
15 who is living in Lexington, and who reluctantly
16 returned to Orangeburg when gas prices went through the
17 roof. I live in Summerville. I drive 120 miles round
18 trip per day. But one of the things we're hearing from
19 the young people we've interviewed, when they -- if we
20 get to the point we want to extend employment to them,
21 they will tell us that the commute offsets -- the cost
22 of commuting offsets whatever benefit package and
23 salary that would can offer them. So it's been
24 difficult for us. We still have not filled that
25 position. As a consequence, we have only two attorneys

1 in my service area. We make tremendous use of our
2 contract attorneys, whenever possible make use of pro
3 bono attorneys to help catch the overflow. From time
4 to time we get some of our colleagues from other
5 counties to come and handle cases. We have overflow.
6 But for the most part, it's just me and my staff
7 attorney providing legal services to that many people
8 in that service area.

9 As I said, I do think it would be beneficial
10 if Legal Services had access to a room in the
11 courthouse to meet with clients, to have pro se
12 clinics. Because currently some of the larger offices
13 have pro se clinics almost on a weekly basis. But my
14 service area, just because of the number and the
15 demand, we have them only on a quarterly basis, maybe
16 six or eight times a year. We have them at our offices
17 in the evenings to accommodate clients who work. But
18 it certainly would be better for them if we could go to
19 their courthouse in that rural county, in that room
20 that's available to us, and have a clinic there, rather
21 than have them, depending on how far away they are and
22 where they work, if they're employed in Charleston,
23 take the day off or take half a day off to come and
24 attend our clinic.

25 CHIEF JUSTICE TOAL: Thank you very much,

1 Ms. Thomas.

2 MS. THOMAS: Thank you.

3 CHIEF JUSTICE TOAL: We'll next hear from
4 Mr. Thomas L. Bruce, South Carolina Legal Services.

5 MR. BRUCE: May it please the Court, Madam
6 Chief Justice. My name is Tom Bruce. I'm general
7 counsel at South Carolina Legal Services. I occupied
8 the role that Mr. Mitchell now has for 20 years, from
9 1979 to 1999, then I became the general counsel for the
10 organization at the same time as we became a statewide
11 law firm, and are now known as South Carolina Legal
12 Services.

13 I was asked at the conclusion of the Access
14 To Justice public hearing that was conducted in
15 Spartanburg to provide a recap of what had been said by
16 the different participants in the previous seven
17 hearings all around the state who were staff members of
18 South Carolina Legal Services. And I handled that by a
19 Power Point presentation, so as I was talking the
20 problems were rolling through the screen that was
21 visible to everyone in the room. And they were such
22 things as staff capacity, attorney recruitment,
23 funding, travel -- well, not travel, transportation,
24 lack of mass transit, language barriers, lack of
25 awareness of legal remedies, problems of the disabled.

1 And it's the same problems that you basically heard
2 this afternoon and that were visible to you as you
3 looked at your transcript and the materials that Robin
4 Wheeler provided to you. I did not want to read what
5 was being rolled on the screen as I was talking because
6 everyone there was reading it.

7 So I used those terms as a taking-off point
8 to answer a question that I believe was in the air.
9 And I was the one to answer it, because I was there,
10 but I think almost everyone at Legal Services could
11 have expressed it in almost the same terms. Were I a
12 private attorney outside of the Legal Services living
13 in South Carolina, I would want to know, given that you
14 have a \$9 million budget, given that you have 12
15 offices, given that you have 50 licensed attorneys as
16 part of your staff, why is this in itself not adequate
17 to meet these needs? So even though no one asked, I
18 tried to address that. And what I said was that given
19 the pace of legal problems coming to us and the new
20 in-takes that we get on a weekly basis, our
21 circumstance is not that much different from the
22 judicial system as a whole. It has courthouses in
23 every county. It has judges assigned to those
24 courthouses. The judicial system has court personnel.
25 If you are an outsider and you are looking into this,

1 you could easily reach the conclusion that the pace of
2 new problems coming into that courthouse is exactly
3 equal to the personnel and capacity that is there to
4 handle it. Our situation is identical to that. What
5 we have at Legal Services is comparable to if you took
6 an 8-by-12 rug and tried to put it down at
7 Williams-Brice Stadium. It can't be done. We have to
8 hold a case acceptance meeting in each office every
9 week to look at new in-takes. And there we try to
10 determine which ones of the many that are there have
11 the high merit and the susceptibility to solve them
12 through legal remedies that we can accept those case.
13 At the end of the meeting, we leave some cases that we
14 are forced to deny, even though those are eligible
15 clients that we would like to take.

16 I don't need to repeat what was already said
17 by some of the earlier speakers. But I just do not
18 want the record to be bare of that observation that I
19 made.

20 CHIEF JUSTICE TOAL: I think, Tom, one of the
21 most dramatic testimonies from some of the other
22 hearings, particularly in Colleton, was a recitation of
23 just that. One of your Legal Services attorneys spoke
24 very eloquently about an acceptance conference and
25 outlined the kinds of cases that were being looked at

1 and which ones had to be left on the cutting room
2 floor, so to speak. And it's tough. The ones that
3 could not be accepted are equally as acute cases of
4 need to the ones that were accepted.

5 MR. BRUCE: Yes, ma'am, that's correct.

6 CHIEF JUSTICE TOAL: I think that is not well
7 known in the broader legal community, that Legal
8 Services spends so much time screening to decide what
9 you can take of the enormous need that's out there.

10 MR. BRUCE: Well, confirming my observation
11 as an insider is the groundbreaking report of the Legal
12 Services Corporation documenting the justice gap. Also
13 several studies done by the American Bar Association,
14 independent of our organization, have determined that
15 with the available resources it is inevitable that a
16 gap will exist. And we are careful stewards and
17 managers of the funds that are entrusted to us, whether
18 it comes from the Legal Services Corporation or the
19 South Carolina Bar fund, whether it comes from state
20 filing fee money, from the several United Ways that
21 we've privileged to be associated with, and from our
22 grants that are probably too numerous to mention here.
23 We intend to be accountable for those funds and we
24 intend to be as careful as we possibly can to utilize
25 the services that we do have.

1 We -- as to -- I think I used one example
2 that I'll mention now, just in the briefest of form.
3 As far as transportation and lack of mass transit, that
4 sounds like something that's so simple, but it's so
5 complex. In our service areas, the further you live
6 from one of those 12 offices, it is predictable the
7 frequency that a client will be served is very low.
8 The client populations in places like Lee County,
9 Clarendon, Allendale, that's where the need is so
10 great. But we cannot put offices in those areas
11 because it's impossible to recruit people. The people
12 that come to work with us want to live in Greenville,
13 Columbia and Charleston. Now, the clients in those
14 areas, they're far enough away from the offices that
15 they are not going to necessarily be the ones who are
16 picked for the new client in-takes. That is a serious
17 consequence because it's in the areas that they live
18 that there are problems with enforcement of housing
19 codes, of debt collection, of public school issues. In
20 some of the areas where the offices have been located
21 for decades, there have been reforms and improvements
22 in those very areas. So where our real challenges are,
23 are the poverty pockets that exist around the state,
24 where our offices are not actually located. That is a
25 truth that goes beyond just the simple platitude lack

1 of transportation. So those problems, I submit to you,
2 are valid today, just as they were when we talked about
3 them in September.

4 I thank you for your attention.

5 JUSTICE KITTREDGE: Madam Chief Justice, may
6 I take a point of personal privilege? I know we're
7 behind, but I want to say this about Mr. Bruce. I've
8 known Mr. Bruce for many years. And during my years as
9 a family court judge in the early nineties, I've had
10 the privilege of having Mr. Bruce in court on many
11 occasions. And as I sit here listening to the
12 speakers, and especially you, Mr. Bruce, I wonder what
13 goes through your mind and your heart as you have given
14 decades to what we're about today, and the sense of
15 gratitude that you must appreciate, of all your years
16 of service, never thinking about others -- only
17 thinking about others and not yourself. I don't know
18 if I know a more selfless, caring, compassionate,
19 competent attorney than Tom Bruce. And in this age
20 where it's so fashionable to make lawyer jokes, you
21 epitomize everything that's good and decent about our
22 profession. And I commend you for what you've done,
23 and all these decades of no traction in this movement,
24 to reach out, to make our system accessible to all
25 citizens, regardless of their station in life. And

1 you've been at the forefront. And I hope you take some
2 pride in this moment because we're finally coming
3 around, doing what you stood for your whole career.

4 MR. BRUCE: Thank you, Judge Kittredge.

5 JUSTICE KITTREDGE: Thank you.

6 CHIEF JUSTICE TOAL: We'll next hear from
7 Jennie Stephens, Heirs' Property Preservation.
8 Ms. Stephens.

9 MS. STEPHENS: Madam Chief Justice, may it
10 please the Court. I am Jennie Stephens, executive
11 director of the Center for Heirs' Property
12 Preservation, which provides educational and legal
13 services to low-income heirs' property owners in the
14 lowcountry counties of Berkeley, Beaufort, Charleston,
15 Colleton, Dorchester County and Georgetown counties.
16 It's my privilege today to talk about individuals
17 who are in need of assistance to resolve their heirs'
18 property issues.

19 Let me provide two scenarios for you.
20 Imagine living in a home that is in much need of
21 repairs, but you don't have the money to make repairs
22 and you cannot access governmental or private funding.
23 Or imagine a sister suing her brother for her interest
24 in their family's marshfront property, which is --
25 which was acquired by the grandfather 30 years ago.

1 The brother ignores all legal notices because he does
2 not feel that his sister, who doesn't pay property
3 taxes nor does she live on the land, has a right to the
4 land. Well, what do these two scenarios have in common
5 with each other? They involve heirs' property,
6 property passed down without wills and which is owned
7 in common with other heirs of the deceased ancestor,
8 which make the land more vulnerable to dispossession.
9 The individuals involved in these scenarios lack both
10 the knowledge and the financial resources in which to
11 deal with the heirs' property matters.

12 In late 2007, in partnership with the South
13 Carolina Association Of Community Development
14 Corporation, we conducted a survey of community
15 development corporations. And we discovered that at
16 least 34 of the 46 counties have residents or have
17 landowners who own heirs' property; therefore, we know
18 that there is a statewide issue, even though we're
19 currently only working in six counties.

20 As you're aware, and as Judge Eaton stated
21 earlier, heirs' property issues are resolved through
22 legal intervention. At the Center, we're aware that
23 some heirs' property cases could cost upwards of
24 \$20,000, depending upon the number of heirs
25 associated -- excuse me, the number of heirs and

1 those -- and other associated costs to have their heirs
2 determined or their titles cleared. So most low-income
3 individuals cannot afford these costs; therefore,
4 they're in jeopardy of either losing their land or
5 living in substandard housing. And so I just wanted to
6 bring it to your attention that it's a statewide issue
7 and the only resolution would be, of course, to have
8 additional attorneys who could provide both the
9 educational and the legal service to these low-income
10 individuals.

11 Because it's not just about a family issue;
12 it is about a community issue. Because once the land
13 is lost, then the culture within communities change.
14 You see gated communities come up. People also who are
15 left behind are more likely to lose their land because
16 there is an increase in taxes when development comes.
17 And as we know, there is a lot of development happening
18 throughout the state of South Carolina. And so these
19 individuals are left at the mercy of people who can
20 access the legal services.

21 CHIEF JUSTICE TOAL: Ms. Stephens, one thing
22 I'm curious about, I can remember several years ago --
23 the heirs' property issue has been important to me ever
24 since my days as a law student in the very first legal
25 Services programs with interns. I worked a summer when

1 we first established the beginnings of Legal Services
2 in South Carolina. Heirs' property has always been a
3 very important issue for people of limited income. I
4 had understood more recently that there might be some
5 legislative initiatives. I know I met with several
6 members of the House and Senate Judiciary Committee two
7 years ago. Whatever became of all that?

8 MS. STEPHENS: From my knowledge, you're
9 talking about -- I must say, I'm not an attorney. I'll
10 give you a layperson's response. You're talking to the
11 first right of refusal, is that what you're talking
12 about, legislation?

13 CHIEF JUSTICE TOAL: Yes. Yes.

14 MS. STEPHENS: From what I understand from
15 the attorneys in my office, that they're actually -- it
16 may be challenged to some extent because developers are
17 actually being able to use it to benefit them, rather
18 than the heirs' property owners, which is what the
19 legislation was intended to do. So no one -- it
20 obviously hasn't come before your attention yet, so...

21 CHIEF JUSTICE TOAL: You're saying something
22 may be on the way up here?

23 MS. STEPHENS: Yeah. Well, just making you
24 aware that that is an issue. Because what we've heard
25 from a lot of the masters in equity judges, is they're

1 all dealing with it. And they're interpreting the law
2 in different perspectives.

3 CHIEF JUSTICE TOAL: Thank you very much, Ms.
4 Stephens.

5 MS. STEPHENS: Thank you.

6 CHIEF JUSTICE TOAL: We'll next hear from
7 Jeff Yungman, Crisis Ministries Homeless Justice
8 Project.

9 MR. YUNGMAN: Madam Chief Justice, may it
10 please the Court. For the past nine and a half years,
11 I've worked with the homeless in Charleston, first as a
12 social worker, now as an attorney. Homeless
13 individuals historically have had great difficulty
14 accessing mainstream legal services. They have unique
15 and complex social and legal problems that are often
16 not adequately addressed by traditional providers.

17 For example, Daniel Watson is a guest at
18 Crisis Ministries. He suffered from schizophrenia.
19 Mr. Watson was referred to the Crisis Ministries legal
20 clinic because he wanted to see his father. According
21 to Mr. Watson, his father was in a nursing home in
22 Summerville and he was told by the administration there
23 could he not see him because they had a restraining
24 order out on him. Mr. Watson's case was assigned to a
25 Nelson Mullins attorney and a law student from the

1 Charleston School of Law. The student researched and
2 found there was no restraining order. The attorney
3 contacted the nursing home. Shortly thereafter, I got
4 a call from the nursing home asking when Mr. Watson
5 wanted to visit his father? A month after the visit,
6 Mr. Watson's father died. It was the last time he was
7 able to see him alive. Now, Mr. Watson's case is not a
8 matter of great legal jurisprudence. However,
9 Mr. Watson had every right to see his father. Without
10 the assistance of the legal clinic, he would not have
11 had that one-time opportunity that he did.
12 Unfortunately, many other homeless individuals like Mr.
13 Watson do not have the same access to legal services as
14 others in the state.

15 While there are other legal programs in the
16 state serving clients, providing legal services to
17 homeless individuals presents a unique challenge. In
18 2006, recognizing this challenge existed, Crisis
19 Ministries, in partnership with the Charleston School
20 of Law and the Nelson Mullins law firm began a monthly
21 legal clinic.

22 In 2008, in August of this year, thanks to a
23 grant from the South Carolina Bar Foundation, that
24 legal clinic, along with the additional legal services,
25 became the Crisis Ministries Homeless Justice Project.

1 Since August, that project, which is located on site at
2 Crisis Ministries, had provided legal services to 176
3 clients, addressing 218 substantive legal issues. The
4 Crisis Ministries Justice Project is a holistic program
5 designed to help homeless persons by removing
6 obstacles, both legal and social, which prevent them
7 from becoming self-sufficient. Other programs around
8 the country that provide legal services to homeless
9 have recognized that addressing a homeless individual
10 or family's needs without addressing their social needs
11 will not help them overcome homelessness.

12 The Ministry is focused on several legal
13 issues, primarily disability claims and family law
14 issues. However, there is critical need to address
15 criminal legal issues faced by homeless persons as
16 well. Homeless persons are routinely issued citations
17 for such minor offenses as illegal lodging, jay
18 walking, and drinking in public. Caught up in their
19 daily struggle for food, clothing and shelter, a
20 homeless person typically has few resources to draw
21 upon in order to respond to the criminal justice
22 system. Consequently, misdemeanor citations and
23 infractions are often not dealt with, compounding the
24 problem.

25 We are asking that the Court consider the

1 principle mission of the homeless court program in
2 Charleston serve as a pilot project, with the goal of
3 establishing similar programs in other metropolitan
4 areas in South Carolina. The homeless court program is
5 an innovative and effective mechanism to remove legal
6 barriers to self-sufficiency for homeless people who
7 are taking positive steps to change their lives. It
8 provides homeless individuals who are living in a
9 shelter or participating in a treatment program their
10 first positive experience of the legal system.

11 CHIEF JUSTICE TOAL: It would essentially be
12 a diversional program, Jeff, if, for example, an
13 individual were facing a charge in the criminal justice
14 system, that was impacted by their homelessness, they
15 could be diverted if they were in a homeless center?

16 MR. YUNGMAN: If they were in a homeless
17 program and doing something to improve their life and
18 end their homelessness, this charge could be done away
19 with, using what they've done to improve them as time
20 served.

21 CHIEF JUSTICE TOAL: It's the same kind of
22 concept as diversion programs that go under the name
23 of, for example, drug courts, et cetera?

24 MR. YUNGMAN: It's similar to drug court and
25 mental health court, except drug court and mental

1 health court watches somebody progress over time and
2 sort of monitor their abilities to do what they need to
3 do. Homeless court would only work with them one time,
4 go to that hearing, see that they're doing what they
5 need to do, and then drop the charge.

6 CHIEF JUSTICE TOAL: It would be a safe
7 harbor, if you were participating in a homeless center?

8 MR. YUNGMAN: Yes, Your Honor.

9 CHIEF JUSTICE TOAL: I understand.

10 MR. YUNGMAN: Most homeless courts -- there
11 are 25 now operating in the United States. Most of
12 them operate without special funding. They realize the
13 cost savings since the court can clear a large number
14 of cases in a relatively short period of time. There
15 are currently no active homeless court programs in
16 South Carolina and no other on-site program in the
17 state providing legal services specifically for
18 homeless individuals. We believe the Crisis Ministries
19 Homeless Justice Project is proof that the need exists
20 for program like ours. We believe our program can
21 serve as model for the rest of the state and look
22 forward to assisting in any effort to make these
23 programs, as well as the homeless court program, a
24 reality.

25 Thank you very much for the opportunity to speak

1 for the homeless.

2 CHIEF JUSTICE TOAL: Thank you very much.
3 We'll hear now from Scottie O'Neal, Disability
4 Solutions.

5 MS. WHEELER: Madam Chief Justice, I
6 apologize but Mr. O'Neal has contacted us and he is
7 unable to attend today.

8 CHIEF JUSTICE TOAL: Understood. All right.
9 Accept our regrets and convey that to Mr. O'Neal.

10 We'll now hear from Sherry Williams.

11 MS. WILLIAMS: Good afternoon, Madam Chief
12 Justice, may it please the Court. I am here. I am
13 here as a private citizen. I am deaf. My name is
14 Sherry Williams. I am totally deaf. I could talk;
15 however, people often make the assumption that because
16 I have good speech that I can lip read and understand
17 everything very clear that has been spoken to me. It
18 doesn't work that way. The best lip readers in the
19 world catch about 40 percent of what's being said on
20 the lips. Can you imagine watching TV every day with
21 no sound? The only thing you see is the mouth moving,
22 the lips moving. You end up missing everything that's
23 been said. Well, it's the same thing with me and other
24 deaf people as well. We rely on interpreters, which
25 are here today to help us inform with what's being

1 said.

2 My husband and I have adopted two deaf boys
3 from South Carolina Foster Care System. We adopted one
4 boy in 2000 and another second child in 2006. Both
5 times I went to several family court hearings.
6 Spartanburg and Cherokee counties were the two places,
7 Gaffney to be specific. Sometimes there are
8 interpreters provided in Spartanburg County and
9 sometimes not. In Cherokee County, they were clueless.
10 None were provided. At the DSS office, Cherokee County
11 paid for the interpreter. The court interpreter was
12 there. Their rationale was they wanted to make sure
13 that the interpreter was present during the time I
14 needed to testify as a foster mother. It was not DSS's
15 responsibility to provide an interpreter, but
16 unfortunately Cherokee County as well as other rural
17 counties were not good in providing interpreters when
18 needed. The DSS had a difficult time looking and
19 providing an interpreter for me.

20 I have a second boy that I've adopted. And
21 at that time of the year an interpreter was not
22 available. And with the guardian ad litem, my husband
23 was hearing. And because an interpreter was not
24 provided, he had to interpret for us. Now, imagine if
25 my husband was deaf. We would have been very

1 frustrated.

2 I would like to see better access for deaf
3 individuals in the South Carolina court system. It
4 really starts at the front door. When I come in the
5 door or a person comes in the door to the courthouse,
6 you realize you don't know where to go. You end up
7 going to the information desk and you ask this person
8 where you need to go. And, of course, they start
9 speaking. And, of course, the moving of the mouth, you
10 don't understand what they're saying. So it's a
11 guessing game, where, you know, a deaf person needs to
12 go, which courtroom, what time. And whenever they call
13 me or, you know, for instance for a deaf person, you
14 don't know when that's being done, and especially if
15 they haven't provided a interpreter for me that I have
16 previously requested. If the interpreter is not
17 present, even though they've been informed ahead of
18 time, who do I speak to? The judge isn't always
19 willing to postpone the hearing or the trial because an
20 interpreter wasn't present for the deaf witness or the
21 deaf claimant or the deaf defendant. I've heard of
22 deaf people being put into prison and having no
23 understanding of why they're even there. We need to
24 see more consistency in the court system all over the
25 state, not only educating the courthouse clerks but

1 also educating the judicial legal system and police
2 officers. Sometimes, you know, they're willing to
3 provide interpreters in courtroom proceedings. But the
4 interpreter, you know, discusses what's being said.
5 But, you know, there is no interpretation of what's
6 happening at the table. It's important that we
7 provide -- that it is being provided qualified
8 interpreters, not using your deaf aunt.

9 To summarize, many of the courts in South Carolina
10 are not accessible for deaf citizens. And I would like
11 to recommend that the state court administration hire a
12 person to work on improving the court accessibility in
13 our state. It could be a contract person for a year or
14 two. There are 46 counties in South Carolina. This
15 person could travel to each county and work with them
16 on improving accessibility. Some steps in improving
17 accessibility could include providing training, which
18 is key to teaching personnel on using an interpreter,
19 helping them to develop a list of qualified
20 interpreters to cover their county, and setting up a
21 consistent payment program that would ensure that the
22 interpreters are paid for their services. All of
23 these -- all of this would help to improve
24 accessibility to deaf citizens in the state of South
25 Carolina.

1 Thank you for giving me your time and
2 opportunity to speak to you today.

3 JUSTICE PLEICONES: Thank you.

4 CHIEF JUSTICE TOAL: Thank you. Thank you
5 very much, Ms. Williams.

6 MS. WILLIAMS: You're welcome.

7 CHIEF JUSTICE TOAL: We will next hear from
8 Pete Cantrell, Protection and Advocacy For People With
9 Disabilities.

10 MR. CANTRELL: Thank you, Madam Chief
11 Justice, may it please the Court. I'm an attorney for
12 Protection and Advocacy For People With Disabilities.
13 We're a nonprofit corporation that provides advocacy
14 services to people with disabilities in South Carolina.

15 Let me just say I'm sorry that Mr. O'Neal
16 could not be here today. He would have talked about
17 other kinds of access issues that affect people who use
18 wheelchairs, architectural accessibility, and that is
19 an important issue.

20 The issue I am going to talk about is to
21 follow up on Ms. Williams, effective communication for
22 people who are deaf in the courts. South Carolina has
23 long heard about problems from people who are deaf,
24 about their experiences when they go to court. As a
25 result of those contacts, we decided to prepare a

1 report. And we were fortunate enough to have a master
2 social work intern in our office who is fluent in sign
3 language. She interviewed a number of people who are
4 deaf about their experiences when they went to court.
5 And we prepared a report including those stories. I
6 provided a copy to the Chief Justice earlier this year
7 and to the Access To Justice Commission at the
8 Spartanburg hearing.

9 I'd like to give you a couple examples from
10 those stories that I'm particularly familiar with.
11 First one involves a gentleman who was brought in on a
12 bench warrant for nonsupport. He's deaf. He also has
13 a developmental disability and a mental illness. He's
14 brought into court in chains. His hands are cuffed and
15 the cuffs are affixed to the chain around his waist.
16 Now, this gentleman speaks American Sign Language. He
17 speaks with his hands, just like Ms. Williams did. He
18 was unable to speak in court that day. With him were
19 his service coordinator from the Disabilities and
20 Special Needs Board and a gentleman from the Department
21 of Mental Health Deaf Services. They made it plain to
22 the judge that he couldn't speak and they asked that
23 his hands be released so he could speak. The judge
24 consulted with the security personnel in the courtroom
25 and declined to release this gentleman's hands. He

1 went through the entire hearing unable to speak on his
2 own behalf.

3 The second story involved a young lady who is
4 deaf, who was called for jury service. She filled out
5 the paperwork that was sent to her and indicated on
6 hers she's deaf, she would need a sign language
7 interpreter in order to participate and communicate as
8 a member of the jury pool. She arrived, took her time
9 off work, went to court on the appointed day. Got
10 there, there was no sign language interpreter. She
11 wrote notes back and forth with a member of the clerk's
12 office and they agreed she would come back at a future
13 term of court. She again took her time off work, came
14 back to the future term of court. Again, there was no
15 sign language interpreter.

16 At that point, she contacted Protection and
17 Advocacy and we were able to work out an agreement for
18 her to serve as a member of the jury pool at a future
19 term of court, which she has done since then. But this
20 young lady had to take off twice from work and go up
21 there and not be able to serve.

22 These problems occur, despite the fact that
23 both state and federal law make it clear that the
24 courts have an obligation to provide sign language
25 interpreters to ensure effective communication with

1 people who are deaf when they appear in court.

2 I ask the Court and urge the Court to take a
3 proactive approach to this problem and see if we can
4 develop some solutions to it.

5 After the hearing in Spartanburg, Ms. Wheeler
6 contacted me and some other people. And we had a good
7 meeting with her and Stephanie Nye to discuss this
8 issue and potential solutions to it. I hope that that
9 was the beginning of a process and not the end of it.
10 We really haven't heard much more since then, until the
11 invitation to come today. The South Carolina
12 Association of the Deaf is made up of people who are
13 deaf. They were represented in that meeting. They
14 have a lot to offer in terms of suggesting solutions.
15 The School For Deaf and Blind has a long history of
16 working with people who are deaf. They have outreach
17 services offices around the state. They provide
18 interpreter services. In fact, they're providing the
19 interpreter services today. They could be part of
20 helping to develop a solution. The Department of
21 Mental Health has a nationally recognized deaf services
22 program. They also have to, as part of their work,
23 accompany people to court. So they're very familiar
24 with people who are deaf, how they communicate and the
25 problems they encounter in court. And, finally,

1 Protection and Advocacy, we've got a history of dealing
2 with this problem and we offer our services to try and
3 help resolve them. Thank you.

4 JUSTICE PLEICONES: Mr. Cantrell and
5 Ms. Williams, I guess I'm particularly sensitive to
6 this issue. And I don't want to get us into a whole
7 different area. But I have a brother-in-law who's now
8 retired, 30-year administrator at Gallaudet in
9 Washington D.C. And the experience that he has had
10 indicated that -- you mentioned the man who was
11 mentally ill or had a mental illness. There are -- so
12 many deaf are erroneously and wrongly diagnosed with
13 mental illness simply because of an inability to
14 communicate. Do you find this to be a problem in your
15 advocacy role for deaf people?

16 MR. CANTRELL: I'll answer your question,
17 Your Honor. I'll say one thing before that, before I
18 answer. The head of the Department of Mental Health
19 Deaf Services is sitting right in the courtroom here
20 today. So I do know that the program here is
21 nationally recognized. It's a very -- every -- our
22 interactions with them have been very positive.

23 JUSTICE PLEICONES: This was just a question
24 I had. And, again, it's not really germane to the
25 topic we're talking about here, but it was something

1 I'd like to have answered at a later time.

2 MR. CANTRELL: Thank you.

3 CHIEF JUSTICE TOAL: Mr. Cantrell, before you
4 take your seat, one observation from me. I know that
5 P&A also works on general courthouse accessibility
6 issues, particularly dealing with architectural
7 barriers to accessibility. I know that Mr. O'Neal
8 would be able to speak to that. I wonder if anything
9 is being done now by the advocacy community to assess
10 the courthouses of South Carolina, to determine where
11 we are with ADA compliance with courthouses? That is
12 obviously not something that I can control because
13 courthouses, of course, are funded county wide. There
14 are some states where the courthouses themselves are
15 under the aegis of the state judicial department.
16 That's not the case in South Carolina. But, of course,
17 I try persuasion many times with administrative orders
18 and memorandum that I need to know. And that is one
19 thing that the advocacy community could help with, is
20 to assess the architectural barriers in courthouses in
21 South Carolina. So I simply throw that out there as a
22 thought.

23 MR. CANTRELL: Thank you, Your Honor. We're
24 not doing anything on that right now. I would say it
25 would be a challenge for P&A to take that on right now.

1 I don't know how much the Court knows about our funding
2 situation.

3 CHIEF JUSTICE TOAL: Oh, listen, all of us
4 have that barrier. Try an 18 percent cut.

5 JUSTICE PLEICONES: We're having a bake sale
6 next week.

7 CHIEF JUSTICE TOAL: But what I'm saying is,
8 P&A often brings an issue to the forefront and
9 convinces a group to participate in assessing a need.
10 And this first front end of our access to justice
11 effort is all about identifying needs. And seems to me
12 this might be one where you can get the assistance of
13 the disabled community. I mean people like Scottie
14 O'Neal, and there will be plenty of others, could take
15 on a courthouse and give you an assessment. And that
16 would be very helpful if it were brought to my
17 attention.

18 MR. CANTRELL: Thank you, Your Honor. We
19 will certainly consider that.

20 CHIEF JUSTICE TOAL: All right. We'll next
21 here from Brad Waring, Nexsen Pruet.

22 MR. WARING: Madam Chief Justice and members
23 of the Supreme Court, it's always a pleasure to be
24 before you.

25 And before I start with my remarks, any help

1 that the Friends of the Courthouse of Charleston can
2 give to the advocacy community, we certainly offer our
3 assistance. We've been down that road in the old
4 historic courthouse and there certainly is a need
5 statewide for that.

6 CHIEF JUSTICE TOAL: Charleston is -- what
7 y'all did when the new courthouse was completed and
8 when you renovated the historic courthouse to deal with
9 issues of accessibility is really pretty much a model.
10 And it doesn't solve every problem, but it solves a lot
11 of problems. Of course, we had the wonderful
12 Ms. McBride spurred everybody's thinking in that
13 regard.

14 MR. WARING: Certainly did. We're happy to
15 help in any way we can.

16 I'm here to address y'all on Rule 608 and the
17 impediments that it provides to the poorest among our
18 citizenry. You have, Chief -- Madam Chief Justice, I
19 know you have heard the Bar on this issue and no doubt
20 the rest of the justices have, too. This is not -- and
21 I'm not here today to talk about the constitutional
22 infirmities of Rule 608 exceptions as to how they
23 affect the barriers to our poorest citizens.

24 I would like to start off with a number of
25 statistics that I'm not sure that everyone is aware of.

1 I counted on one occasion, with the help of some Bar
2 staff, and I believe I came to the point -- I looked
3 through my notes, but I'm almost positive this is
4 right. There are over 63 statutes, legislative
5 mandates, which provide for appointed lawyers in a
6 variety of different cases. The problem with most
7 mandates, of course, is that the state has made these
8 mandates, but then has not funded them. I've heard
9 from all of the private agencies here. What we did to
10 try to solve the problem of largely criminal
11 appointments and family court appointments, civil
12 appointments, PTRs was in 2000 was to come up with Rule
13 608, which provides a mechanism to appoint lawyers not
14 otherwise exempt to handle either opt for a criminal
15 list or opt for a civil list primarily consisting of
16 family court matters, termination of parental rights
17 matters, child abuse cases and/or opt for the criminal
18 list. Just to give you a couple of statistics, we
19 presently have about 800 -- excuse me, 8,800 active
20 members of the South Carolina Bar. Of that number, by
21 rule, one-third are exempt, which leaves us about 6,300
22 available lawyers. And of that amount, 1,200 have
23 opted for the criminal list. So it leaves us with
24 about 4,100, thereabouts, lawyers to take these civil
25 cases.

1 Let me just tell you that many of these
2 cases, the vast majority of them -- and I know I don't
3 have to tell Justice Kittredge of this, or anyone else
4 who's served on the family court, on the bench, these
5 can be very, very serious matters, child abuse cases.
6 Some of the cases will curl your hair. Parents --
7 termination of parental rights cases, which I've often
8 heard referred to as the death penalty for a parent.
9 Very sophisticated, very difficult cases.

10 Yet, Rule 608 feeds all out of the same
11 spoon. And as a result, what we have done, we have
12 created -- and this is the law of unintended
13 consequences, what I refer to as the deer in the
14 headlights syndrome. I can't tell you the number of
15 times I've gone down on a child abuse case and watched
16 one of my brother lawyers from the Charleston or
17 Berkeley Bar, usually a tax lawyer, a real estate
18 lawyer, or someone like that, who has just been
19 appointed to a very serious child abuse situation. We
20 are sending lawyers into the courthouse with little or
21 no experience in trial work. We're asking tax lawyers,
22 real estate lawyers, estate planning lawyers, and
23 corporate lawyers to handle probably what in most of
24 these indigent families would be probably the most
25 difficult trial or case that they will ever face.

1 Highly charged, highly emotional litigation. Yet we're
2 sending lawyers down who are ill-equipped or in many
3 cases just not competent to handle cases of that type.
4 So the rule has that unintended consequence that we are
5 not serving the public well, number one.
6 Number two, the judicial system is becoming
7 inefficient. I'm sure you all, having sat as judges,
8 get frustrated with lawyers who belabor a point where
9 belaboring is probably not in the best interest of the
10 client. Or they've taken a point too far. Or they've
11 not abandoned a particular position which they should.
12 Or they've argued the wrong points. Or they've argued
13 the wrong law. It makes the system quite inefficient
14 when we spend a lot of time where lawyers are
15 overcautious because they're nervous about a
16 malpractice claim or they may be nervous about they are
17 going to subject their clients to some severe penalty,
18 loss of a child or similar thing. So it has created a
19 vast inefficiency there. And it just simply does not
20 serve our indigent population as well it could be, so
21 it's a competency and a quality standpoint.

22 The second effect, and this is one that isn't
23 in my printed remarks from the Charleston session, and
24 this one is really one that is not intuitive, but, in
25 effect, what has happened -- and, Madam Chief Justice,

1 you know I've been before the Senate Judiciary
2 Committee. I've been before the House, pleading for
3 funds for the indigent under both the criminal and the
4 civil side for three years now. The best we did was on
5 the civil side, we managed to get a one-time \$2.5
6 million proviso. We hoped that would go to a recurring
7 funding for the civil list. It did not happen,
8 unfortunately. We're about out of money again. We
9 have lawyers funding expert fees, travel, all sorts of
10 expenses out of their own pocket, much less not being
11 paid.

12 But what has happened is the effect of Rule
13 608 has been to literally -- the legislature has
14 literally stolen the pro bono ability of the Bar to act
15 for all these other agencies that we used to act with
16 and for because the vast majority of 608 appointees
17 look at their 608 service as pro bono service. It is
18 not. It is conscripted service. If a lawyer is
19 ordered to handle a DSS matter, for example, what do
20 you think would happen if they refused to do so? Yes,
21 they may be able to petition the court and claim
22 incompetency. But what's the remedy? It would fall --
23 that particular appointment, even if they could make
24 such a case, would fall on somebody already
25 overburdened, especially in our smaller counties. I

1 cannot tell you what a crisis this is.

2 We have a lawyer in Dillon who is prepared to
3 and has signed affidavit that she had at one time over
4 40 -- 40 appointed cases going on at one time. The
5 problem is, that many of these cases involve minor
6 children, almost all of them. And they don't end.
7 Because the child -- you're not going to have that case
8 end until the child reaches majority. So what we have
9 is a real crisis in the rural counties. And you're
10 asking lawyers or counties that have lawyers with three
11 and six and five people to handle these cases over and
12 over and over again. Now, granted, there is a one per
13 month rule or 12 per year rule. But they don't go
14 away. So you have no cases closing and a volume of
15 cases coming. So what's happened is that those lawyers
16 treat their 608 service as pro bono work and don't have
17 time to take cases for Judge Waites or they don't have
18 time to take cases from Legal Aid, and they don't have
19 time to take cases from these other agencies.

20 South Carolina Bar used to have two full-time
21 staffers handling pro bono matters pre-2000. We're
22 down to one staffer. And we don't have one -- Bob
23 could give you the statistics, but I dare say that our
24 pro bono program has literally dried up. So, again,
25 the law of unintended consequences.

1 Justice Pleicones, you asked somebody
2 earlier, What is your solution? Well, the solution
3 obviously is in full funding by the legislature for
4 their own mandates. Rule 608 was meant as a temporary
5 and interim measure to offset and relieve some of the
6 large burden as our state grew that was falling on too
7 few lawyers. But it has had these two unattended
8 consequences that are severely, severely providing
9 barriers to our poorest, to provide -- to be provided
10 with quality representation.

11 So what is it? We look at this as a core
12 function of government. We're talking here about
13 access to justice. And if we can't fulfill the promise
14 of the Constitution by providing everyone with an equal
15 representation in our court system, well, then, we have
16 failed. Certainly, the legislature has failed.

17 So we would ask the Commission that the best
18 thing they could do is join with us to try to make the
19 case for reasonable funding for these court
20 appointments and let's alleviate this problem. A
21 couple of our solutions -- and I know it's getting
22 late. I will sit. We have moved, thanks to the help
23 of the Chief Justice and others, to push the Commission
24 on indigent defense to go to a contract system, which
25 would allow, for example, a young lawyer who wants to

1 concentrate in the family court arena to take, say, ten
2 cases at a rate -- presently the cap is \$2,000, with
3 very little reimbursement for expenses, if any money is
4 available. But to take cases. You can envision a
5 system where a lawyer, say, two or three years out,
6 that wants to specialize in the family court practice
7 would say, Hey, listen, I'll take ten cases at \$2,000
8 apiece. That's pretty good for a young practitioner.
9 That keeps the lights on. And they choose to go down
10 that road. So we have made some strides to try to
11 change the system.

12 We were successful in getting into a proviso
13 the ability to enter into contracts. That proviso will
14 have to, as you all well know, reupped every year. It
15 will expire on its own terms unless we go back to the
16 legislature and try to do that. We'd like to see that
17 permanent.

18 But the main thing is the OID does a great
19 job of using what limited funds they have to great
20 effect. And if we could get some permanent and
21 recurring funding in there to do that, I think we could
22 go to a contract system that would alleviate the two
23 problems I've mentioned and substantially lift some of
24 these barriers that we have for our poorest to access
25 justice.

1 CHIEF JUSTICE TOAL: Thank you, Mr. Waring.

2 MR. WARING: Thank you.

3 CHIEF JUSTICE TOAL: Final speaker today is
4 Robin Wheeler, the Executive Director of the South
5 Carolina Access To Justice Committee.

6 MS. WHEELER: Madam Chief Justice, Justices
7 of the Court, may it please the Court. The South
8 Carolina Access To Justice Commission thanks the Court
9 for the opportunity to share the legal barriers facing
10 South Carolinians living in or close to poverty.

11 This past spring, the South Carolina
12 Commission, Access To Justice Commission held seven
13 regional hearings throughout the state. During those
14 hearings, members of the bench, bar, service providers
15 and general public stepped forward and publicly told
16 their stories, some of which have been retold here
17 today. In some instances, commissioners heard about
18 civil indignation. In other instances, private
19 attorneys spoke with earnest passion about the
20 injustices they observed. Legal Services attorneys
21 relayed the anguish they face on a weekly basis when
22 trying to parse out the cases when there simply weren't
23 the resources, either staff or financial, to handle
24 volume of requests.

25 Although I would like to present solutions to

1 these barriers, I can offer only information about
2 mitigation efforts that we have taken against the
3 barriers. From these hearings, the Commission
4 identified four focus areas: Education about access
5 issues to the bench, bar and public; increasing
6 resources for self-represented litigants; working with
7 the bar and the law schools to expand pro bono; and
8 enhancing staff programs through collaboration and
9 coordination among the programs. After much
10 deliberation, the Commission has reduced the work into
11 three committees: Self-represented litigants, pro
12 bono, and staff programs with education of the bench,
13 bar, service providers and the general public remaining
14 a major component of each effort.

15 Madam Chief Justice, one of the very first
16 Commission meetings in September 2007, you charged the
17 Commission with action. We responded. Early on, the
18 Commission recognized that self-represented litigants
19 was a growing trend, both nationally and in South
20 Carolina. With research and additional training, the
21 Commission developed a bench guide and trained new
22 magistrates about working with self-represented
23 litigants. We are continuing to refine the bench guide
24 for use in all South Carolina courts.

25 We traveled to judicial and clerk of court

1 conferences to ensure fair and appropriate response to
2 self-represented litigants. As a result of our
3 roundtable at the clerk of court conference, we
4 implemented a clerk of court work group to address
5 barriers when working with self-represented litigants.
6 The clerks identified internal barriers, including not
7 wanting to step over the line from legal information
8 into legal advice. Once this barrier was identified,
9 the Commission reviewed information from other states
10 and sought counsel from a South Carolina ethics expert,
11 Associate Dean Robert M. Wilcox of the USC School of
12 Law. The clerks work group has completed signage
13 explaining what they can and cannot do, and have
14 completed ethics training at one of these meetings.
15 Additionally, at future clerk conferences, the
16 Commission will ensure that this process continues to
17 be heard.

18 Resulting from our involvement at the family
19 court judicial conference, the Commission submitted a
20 divorce packet we've spoken about here earlier today,
21 with forms and instructions. We submitted that the
22 family court forms advisory committee for comments and
23 suggestions. Then the Commission, in conjunction with
24 court administration, with assistance from South
25 Carolina Legal Services and other agencies, including

1 the South Carolina Bar, diligently reviewed the forms
2 and instructions for accuracy while also trying to
3 convey the information in plain English. The committee
4 has submitted the packet to this Court for review and
5 comment, and we're pleased that you've taken the action
6 you have.

7 National resources instruct courts to use
8 plain English when developing and/or revising court
9 forms. Plain English is easier for most people to read
10 and its proponents state that appropriate reading level
11 should range from fifth to seventh grade. At this
12 level, most people will be able to understand exactly
13 what is required of them at each step. Estimates
14 indicate that poorly designed forms can waste up to 28
15 percent of staff time. Plain language forms are easier
16 to translate and as a result cost less to translate.
17 They are less likely to be improperly translated.
18 Plain language forms have the propensity to increase
19 client satisfaction. When litigants understand what is
20 required in order to enforce a judgment, they will be
21 happier with the legal system as a whole, with or
22 without representation. Another bonus is increased
23 court efficiency.

24 While the Commission is working to increase
25 public satisfaction dealing with self-represented

1 litigants, we've also been reviewing pro bono
2 participation in South Carolina. We've formed a
3 committee whose purpose is to increase pro bono
4 participation at many levels by encouraging the South
5 Carolina bar pro bono program, encouraging local bar
6 participation, encouraging law firm commitments,
7 corporate participation, law student participation, and
8 paraprofessional involvement as well.

9 Last spring, after volunteering to provide
10 free court reporter service at our regional hearing,
11 Ms. Mary Ann Ridenour, our very court reporter today,
12 contacted the Commission and asked how court reporters
13 could help. She was so struck by the information at
14 the hearing that she wanted to do her part as well.
15 The Commission responded by sending a speaker to the
16 South Carolina Court Reporters Association statewide
17 conference to discuss pro bono practices for court
18 reporters. We had models from two states. The South
19 Carolina Court Reporters Association is working toward
20 this goal and added a Web page devoted to access to
21 justice.

22 In addition to these efforts, the Commission
23 has been collaborating for funding initiatives to
24 provide funding for indigent South Carolinians. At its
25 last meeting, the Commission staff established a

1 committee to staff programs around the state to
2 increase efficiency, collaboration and coordination of
3 services.

4 The Commission has begun its important
5 mission to educate the bench, bar and the public about
6 access to justice and changes necessary to make access
7 a reality. With the Court's formation of our
8 Commission, South Carolina joins 26 states and Puerto
9 Rico in an nationwide movement for an access to justice
10 exchange of ideas and information that is so critical
11 to the judicial process. And we respectfully request
12 your support as we bring access to all South
13 Carolinians. Thank you.

14 CHIEF JUSTICE TOAL: Thank you very much,
15 Robin. This has been an amazing afternoon. And I
16 never thought in my lifetime I'd see what I've seen in
17 the effort that's been expended around South Carolina
18 in these seven regional hearings and the hearing today.
19 Robin, you can take your seat, if you'd like.

20 I know that we have a little reception
21 afterwards. And I want -- Stephanie, is it in the
22 portrait gallery?

23 MS. WHEELER: She's actually left already.

24 CHIEF JUSTICE TOAL: Very good. So we invite
25 all in attendance to have a refreshment with us in the

1 portrait gallery.

2 Before I close the hearing, the last groups I
3 wish to recognize -- everyone has their program from
4 the access meeting today. I particularly want to
5 recognize the law students that have stayed with this
6 project from the very beginning. Amelia Waring is a
7 three-year, has been interning with Stephanie Nye, my
8 general counsel. And, Amelia, thank you again so much
9 for making Access To Justice such a success. I'd also
10 like to recognize Alexandra Hegji. Is Alexandra here?
11 Alexandra is a 2L. And they are both at the University
12 of South Carolina law school. And I want to thank them
13 publicly for helping make this program today and all of
14 our public hearings such a resounding success.

15 Thanks to the American Sign Language
16 interpretation, Spanish language interpretation, our
17 court reporter, Mary Ann Ridenour, and to our film crew
18 from the South Carolina Bar. You are great
19 professionals always, all of them. This hearing is
20 adjourned.

21 (The proceeding concluded at 5:28 P.M.)
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23
24
25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF DORCHESTER:

I, MARY ANN RIDENOUR, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing proceeding; and that the transcript is a true record of the testimony given by the witnesses to the best of my ability.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 1st day of December, 2008, in the Town of Summerville, County of Dorchester, State of South Carolina.

Mary Ann Ridenour, RPR and
Notary Public
My commission expires:
April 12, 2011