

**Written Statements Submitted at the
Third Department Hearing on October 5, 2010**

Statements of Non-Testifying Witnesses

Empire Justice Center

League of Women Voters of New York

Legal Aid Society of Northeastern New York

The Legal Project, Albany, NY

School of Social Welfare, University at Albany, SUNY

Women's Bar Association of the State of New York

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Empire Justice Center



**Chief Judge's Hearings on
Expanding Access to Civil Legal Services**

**Presented by:
Anne Erickson, President & CEO**

October 2010

Introduction

The Empire Justice Center is both a legal services provider and a statewide support center for civil legal services. Our mission is quite simple and daunting: to make the law work for all New Yorkers, especially for those who need its protection and assistance most, those who are poor, disabled or otherwise disenfranchised. Our focus - through individual representation and direct legal assistance, through policy analysis and advocacy, and through training, support and technical assistance - is on strengthening and improving the systems upon which so many in our state rely for the most basic of necessities.

Our work focuses on fundamental areas of law impacting those in need: public assistance, including food stamps, cash assistance, child care and child support; consumer law, including foreclosure prevention, debt collection and credit protections; special education; disability benefits, including Supplemental Security Income (SSI) and Social Security Disability (SSD); health coverage, including Child Health Plus, Family Health Plus, Medicaid and Medicare Part-D for seniors; domestic violence; immigration and immigrant access to assistance; civil rights; employment; and public and subsidized housing.

The Empire Justice Center, established in 1973¹, plays a unique role in the legal services delivery system, providing support services to the legal services community, including training, legal updates and expert advice in almost 30 areas of law; offering a full range of legal assistance to our own clients and undertaking policy analysis and legislative advocacy.

A dynamic blend of services creates high end impact

This combination of roles allows us to use what we learn in our individual representation, or in providing assistance to attorneys in other programs across the state, to improve the law and better the lives of all low and moderate income households.

Our blended approach to supporting the statewide delivery system, meeting the needs of clients and improving the underlying legal structures within which our clients live allows us to:

- Discover unmet legal needs or emerging legal issues;
- Determine where or how the current law may fall short of meeting these needs;
- Devise appropriate corrective action or proposed solutions;
- Work to implement those solutions in the appropriate forum; and
- Monitor any resulting changes.

Our work in foreclosure prevention offers a good example of how our services inform and strengthen each other and lead to systemic changes.

Through our consumer law work in Rochester, our staff recognized an unmet need for direct representation for low wage families facing the loss of home ownership. We sought and

¹ Formerly the Greater Upstate Law Project which merged with the Public Interest Law Office of Rochester. The combined organization became the Empire Justice Center in June 2005.

obtained modest local funding about eight years ago to represent low income homeowners at risk of foreclosure. Through this work we began to see clients with exotic, non-traditional, subprime mortgages who were victims of fraudulent sales and mortgage origination practices. We began looking closer at the patterns and secured additional local funding to provide legal assistance to an increasing number of clients facing foreclosure. We began to develop expertise in the area of subprime mortgages and started alerting regulators and policymakers to the issue. Through our representation it became clear that existing laws and regulations were outdated and insufficient to protect home buyers and homeowners from toxic mortgage products that all too often were being fraudulently marketed in low income and minority communities.

We used this knowledge to begin modeling and advocating for stronger legal protections for borrowers and homeowners. We were able to secure one-time data from the reports by the Board of Governors of the Federal Reserve in January 2008 and produced a report on the growing foreclosure crisis, providing background on the issue along with detailed zip code level mapping analysis indicating where current loans were already in foreclosure or past due on payments.² Working with our colleagues in New York City and as a member of New Yorkers for Responsible Lending (NYRL), we presented our findings at a full day legislative briefing in early 2008. This research and the advocacy that followed led to the enactment of some of the strongest foreclosure protections in the country, along with an unprecedented investment of \$50 million in state funding for housing counseling and legal assistance over the last two years.

Today, Empire Justice is the lead agency providing representation in foreclosures in the Rochester area, we are part of a consortium providing representation in the Capital District and we are providing statewide training, support and technical assistance in this critical area so that legal services and pro bono attorneys across the state can better meet the needs of their clients in what is still a fairly new, daunting and rapidly increasing area of practice for many.

In 2009, Empire Justice staff achieved restructuring and refinancing of predatory loans for 37 families in the greater Rochester area, saving each of them tens of thousands of dollars - often between \$50,000 and \$100,000 - over the life of their loans, or more than \$1.9 million in the last year. We offered 18 foreclosure-related trainings to 725 participants throughout New York State, issuing those attorneys who attended 572 Continuing Legal Education (CLE) credits.

Keeping our ear to the ground

As a support center, Empire Justice stays in close contact with legal services staff attorneys and advocacy staff. We lead and staff several substantive law task forces and we monitor a number of peer-to-peer listservs where advocates can quickly and easily share information, provide for each other strategic assistance and raise concerns about emerging issues.

² *Curbing The Mortgage Meltdown: The Impact of Foreclosures on New York's Economy*, Ruhi Maker, Senior Staff Attorney, Empire Justice Center, March 2008.

A good example of how this support work informs and helps direct our policy work is a recent issue with frozen bank accounts. For years, legal services staff have periodically confronted the issue of clients having their bank accounts frozen by debt collectors. Often these accounts held funds that are exempt from collection, including social security benefits and Supplemental Security Income (SSI). If they find their way to legal services, an attorney or paralegal would notify the bank of the exempt funds and more often than not after several weeks and any number of phone calls they would be successful in unfreezing the accounts. In the meantime, clients were often charged hundreds of dollars in bounced check, insufficient funds, late payment and other fees by the bank, their landlords and other creditors.

In 2006 we began to see heavier than usual traffic on the public benefits listserv raising concerns about frozen bank accounts that held exempt funds, indicating a sharp, statewide increase in these frozen accounts, which was putting many elderly and disabled households at extreme financial risk and unable to access their limited monthly income.

While we provided advice and assistance to attorneys representing these individual clients and while the advocates were almost always successful in lifting the hold on individual accounts, this was clearly an issue needing a more systemic solution. Given the range of issues we work on, our public benefits and SSI attorneys were able to call on the expertise of our consumer law attorneys and their knowledge of the banking industry. As we reviewed the underlying issues, it became clear that the banks themselves had no clear path for refusing to freeze the accounts when directed to do so by the creditors. Again working with our consumer law colleagues at NYRL, we were able to secure changes in the underlying law to clarify that these funds are exempt. Given our relationship with the banking community, we were able to respond to their need for a clear way to respond to creditors and to clarify that only those funds not protected would be available for collection if appropriate procedures and due process were followed.

As a result of our work with the community in identifying an emerging legal issue, crafting a workable solution and securing implementation of the solution, the accounts of over 400,000 low income, elderly and disabled recipients of social security and other exempt funds now have clearer protections, banks have clear guidelines and legal services are no longer forced to spend time unfreezing inappropriately frozen accounts.

Support Services and Assistance to the Community

Empire Justice provides training, support and technical assistance to local and regional legal services providers in a host of poverty law areas. As a support center, we maintain a vibrant website that provides information and resources on changes in law, rule and regulation to keep the community well-informed about their clients' ever-changing rights and responsibilities. With assistance from the Western New York Law Center (the technology support center for legal services), we have created and continue to build other web-based resources, including a searchable database of summarized and redacted Fair Hearing decisions in public assistance and Medicaid, case law updates on issues relating to domestic violence, and a newly launched joint project with the Legal Aid Society (NYC), Self Help and the Western New York Law Center

that makes a vast array of health law policy documents and decisions readily available to incredibly busy advocates.

The Empire Justice website saw 2.9 million hits during 2009, an average of 9,643 per day; the web had 577,349 individual sessions with over 1,200 unique visitors per day.

Some 271,522 pages of materials were accessed during 35,518 visits to the On-Line Resource Center which had 3,122 registered Fair Hearing Bank users who had access to 2,842 searchable summaries and full decisions.

Working with WNLYC, we added an On Line/On Demand Training Center to the On-Line Resource Center. We launched this area with an initial library of 19 taped trainings and now have 49 sessions available on issues ranging from Representing Homeowners at Mandatory Settlement Conferences to the Effect of Holocaust Reparations of Medicaid, SSI and Other Benefits.

We have been an accredited provider of Mandatory Continuing Legal Education (MCLE) since May 1998 and we are now accredited to provide CLE through non-traditional formats, including web-based and archived trainings.

In 2009, Empire Justice staff convened 27 Task Force Meetings for 421 DAP, Domestic Violence and Public Benefits advocates; issued 950 CLE credits; offered 160 trainings to 7,039 participants in a variety of substantive areas; and webcast 25 trainings, which were viewed live by 338 participants across the country.

We publish two legal journals – our general *Legal Services Journal* and the more targeted *Disability Law News*. Each is published four times a year; the *Legal Services Journal* is emailed out to 5,909 registered users and the *Disability Law News* is emailed out to 5,624 registered users.

By maintaining centralized training, support and informational services we are able to help individual staff attorneys stay abreast of critical changes efficiently and effectively.

Legal Assistance: Class Representation and Individual Legal Assistance

Since 1996 when restrictions which barred class actions were imposed on organizations funded by the Legal Services Corporation (LSC), Empire Justice has been one of the few legal services organizations in the state with the ability and capacity to bring class actions which can end illegal practices that affect tens of thousands of eligible clients. These cases are often the most cost effective and appropriate course to take when confronting the systemic failure to honor or enforce the rights of those we serve.

For example, in *Doe v. Doar*, partnering with three other unrestricted programs³ because the case was too large for any one of us to handle, we successfully sued to end an illegal policy that cut the public assistance benefits of over 40,000 households with members who had disabilities and returned to the class members over \$100 Million in benefits to which they were legally entitled.

In five other cases, again along with co-counsel, we brought class actions challenging illegal delays in making eligibility decisions for public benefits. Clients with dire needs who were eligible for benefits were unable to get approved for cash assistance, Food Stamps and Medicaid within the time periods allowed by law because of understaffing, poor workflow management and a lack of management priority on compliance with the legal requirements. So far in two cases successful settlements have resulted in thousands of applications being decided more promptly and have created new systems to screen for and respond to emergency needs.

We successfully settled a class action against a housing authority which had overcharged its elderly and disabled tenants by illegally including in their rent calculation as income Medicare premiums paid on the tenants' behalf by Medicaid. Federal rules exclude this as income. The overcharges seemed small, around \$20 per month, but for those living on \$600 a month, \$20 is a meaningful and painful loss of income. By bringing a class action, we lowered the rent for over 200 tenants and forced the housing authority to return to the tenants the amounts it overcharged in the prior 3 years.

We also provide a range of individual representation. In Rochester we are one of the core legal services providers, with our staff handling cases that involve disability benefits, special education, civil rights, specialized legal assistance for those living with HIV/AIDS, and consumer law – including foreclosures and predatory lending.

In our other offices we have tried to complement and supplement the local delivery system. For instance in the Capital District we have a small project where we provide legal assistance to immigrant victims of domestic violence, with clients coming to us through referrals from the three local DV shelters.

We also provide targeted foreclosure legal assistance in the greater Albany area, but with new state funding in this area of law, the Legal Aid Society of Northeastern New York will expand its capacity, and we'll provide more training, support and technical assistance and less direct representation.

Our White Plains office, where we have three bilingual attorneys housed in two small offices on the Pace Law School Campus and in Mt. Vernon, provides legal assistance to immigrants, primarily immigrant victims of domestic violence, handling everything from VAWA self petitions to specialized U visas to naturalizations and work authorizations. We work closely with small

³ The National Center for Law and Economic Justice, the Legal Aid Society (NYC), and New York Lawyers for the Public Interest.

community-based organizations throughout the region, providing technical assistance and support to their staff and taking direct client referrals of immigrants in need of legal assistance.

Our Long Island office provides a combination of public benefits and immigrant representation. Thanks to funding from three community foundation grants and support from IOLA, we now have a three-person office on the campus of Touro Law School and we have just started out stationing our paralegal at one of the local Hispanic agencies – *Pronto* – for intake on a weekly basis.

In 2009, Empire Justice staff closed 1,005 cases impacting 4,754 people. This work resulted in over \$90 million in client benefits.

We struggle to maintain these services as the need continues to increase. Like every legal services program in the state we are turning away far too many people in need of assistance. It is not only heartbreaking for our staff, it also causes further disruption and increased emergency needs among our clients.

Impact of Loss of State Funding on Empire Justice Center

Like many legal services providers, we are driven more and more by targeted grants and contracts. Indeed, the only core operating funds we receive are from IOLA and the state general fund support for legal services. While we are constantly seeking new sources of funding, those funds are almost always restricted to a particular population or legal need. We then struggle to “fit” a desperate caller into a narrow funding stream rather than simply being able to meet the legal need they are confronting.

With core state funding at such risk each year and with IOLA funds down dramatically in this past year, Empire Justice was forced to take very significant and painful steps to keep our financial house in order. We began the year with:

- No salary increases
- No pension payment, and the
- Imposition of employee cost sharing for health coverage for the first time.

As the state budget continued to deteriorate, in order to avoid deeper cuts later in the year, in May we announced that

- All staff would be required to take 11 days of unpaid furlough between June 1 and September 30, basically forgoing a full pay period;
- Ten staff not funded by specific grants or contracts would have their time reduced on a more permanent basis;
- Members of the management team took temporary pay cuts in addition to the furloughs.

In 2010, compared to 2009, we are down the equivalent of almost six full time employees (5.73 FTEs). While these are not high paying jobs, they are decent jobs, now lost to upstate New York. Overall our payroll is down from \$3 million in 2009 to \$2.7 million in 2010. With the reduced payroll comes a reduction in payroll taxes we pay, again hitting New York's economy.

Conclusion

We deeply appreciate the light Chief Judge Jonathan Lippman is focusing on this issue. We urge the Task Force to consider a full and dynamic system of providing legal services including a full range of representation, training and support and the capacity to represent clients in all forums.

However, overarching the questions of system design is that of severely inadequate – and completely unpredictable – state funding. What is desperately needed in this state is the creation of a stable source of general support for civil legal services as called for by Chief Judge Jonathan Lippman.

We thank you for the opportunity to submit this testimony and we stand ready to help move this critical agenda forward in any way we can.

Two Snapshots: continuing needs and effectiveness of representation

A Continuing Challenge to Meet the Needs of Our Clients

Despite rapid expansion of services in the area of foreclosure prevention, there is still tremendous unmet need in just this one area of law. Staff attorneys across the state are working at full capacity and are still unable to meet the demand and are forced to triage those who are in the most immediate crisis.

The latest report from the New York State Banking Department on the number of 90 pre-foreclosure notices sent to owner-occupied 1-to-4 family residential properties finds that 57,256 such notices were mailed to borrowers in New York in the period February 13 through May 31, 2010.⁴ While not all households receiving these notices will go into foreclosure, the report noted that 14,146 of these homeowners were more than 120 days past due on their mortgages.

In trying to get a sense of who is at risk, the report found that close to 45% of those receiving the notices had mortgages of less than \$150,000 (21.4% of the mortgages were between \$50,000 and \$99,000) and close to 50% (47.3%) of the mortgages had been held for more than five years, indicating a long-term commitment to the home.

While no county has been spared this crisis, ten counties account for almost 70% (67.9%) of the pre-foreclosure notices.

Foreclosures and the Impact of NOT Providing Legal Assistance

Again, in just this one area of legal need, providing legal assistance to those at risk of foreclosure has a tremendous impact on the community. One foreclosed property on a single residential block can become an eyesore driving down property values and with them property taxes. Two or more properties in foreclosure can tip the block into blight.

According to the Center for Responsible Lending, New York will see an average decline in home values of \$12,339 as a result of foreclosures, with a potential overall decrease in home values statewide of over \$65 million.⁵ Clearly, by providing the intervention needed to not just forestall foreclosures, but to provide the intense legal assistance needed to restructure the underlying loan to ensure long-term affordability, we help guard against this massive loss in property values and the resulting property tax base.

⁴ *90-Day Pre Foreclosure Notice Filing Report*, New York State Banking Department, June 10, 2010.

⁵ *Soaring Spillover: Accelerating Foreclosures to Cost Neighbors*, Center for Responsible Lending, May 2008. See: <http://tinyurl.com/35kn5jm>

Effectiveness of Representation: The Disability Advocacy Program

The state's Disability Advocacy Program (DAP) offers a good example of how providing coordinated legal representation through a stable funding source with appropriate training and backup can make all the difference in the lives of clients, and can save the state and its localities from unnecessary financial burdens. DAP provides legal representation to those who have been denied or terminated from federal disability and SSI benefits. The state contracts with legal services programs to provide direct representation, and with Empire Justice Center to provide training, support and technical assistance and to handle monthly data collection and reporting on the program's case closings.

Many clients receive welfare benefits while they await a decision about their application. For each successful case, the Social Security Administration provides a retroactive award to the client for benefits they would have received, beginning from the time of initial application, and reimbursement to state and local governments for the benefits provided. Over the course of the past six years, the DAP program generated more than \$152 million in retroactive awards to clients and just under \$47 million in interim assistance paid to state and local governments. These retroactive funds are spent directly in the communities in which the clients live, paying rent, buying groceries, repaying loans and otherwise stimulating the local economies of the state.

Representation matters. In 2006, unrepresented claimants in social security cases had a success rate of less than 40% (39.3%). However, in reviewing data from the Social Security Administration (SSA), it is clear that having trained advocates acting as a community with centralized support services also makes a difference. New York's DAP providers consistently surpass national rates for favorable outcomes at Social Security hearings.

For example, in 2006 in New York, SSA denied approximately 57% of cases at initial application. Only about 20% of the denied cases go on to appeal, with a hearing before an Administrative Law Judge (ALJ). Compared to national win rates, claimants represented by New York's DAP advocates were more likely to obtain benefits on appeal. Out of 3,285 cases in which representation was provided in 2006, DAP providers prevailed in 2,578 cases, a 78.5% success rate. In 2007, DAP providers had an 83.5% success rate. By contrast, the success rate nationally in 2006 for cases with representation at an ALJ hearing was 63.1%. (National data beyond 2006 was not available).⁶

Again, in this one area, having fairly stable funding and a well coordinated delivery system with training, support and technical assistance can make a real difference in the lives of our clients and in the stability of our communities. Unfortunately, funding in this area is also at risk: left frozen for years and eroding to inflation, the program was cut in the past two state budgets.

⁶ See Report to the Legislature on the Disability Advocacy Program, 2006-2007, filed by the New York State Office of Temporary and Disability Assistance (OTDA), available at <http://www.otda.state.ny.us/main/reports/DAP-report.pdf>

League of Women Voters of New York



**THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES
SUBMISSION OF THE LEAGUE OF WOMEN VOTERS OF NEW YORK
October 5, 2010**

I am Nancy Grosselfinger, Co-President of the League of Women Voters of Hamilton County, a recently formed Member At Large unit.

The League of Women Voters is a nonpartisan grassroots political organization open to men and women. It encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. The League operates at the local, state and national levels in every state and has over 50 local leagues.

The League of Women Voters is grateful for the opportunity to raise its voice in response to Chief Judge Jonathan Lippman's charge to the Task Force to come up with permanent funding mechanisms to support affordable representation for the state's low income persons. The League of Women Voters of New York State, and local Leagues statewide, first championed Legal Services for the Indigent in 1975, when it adopted the position that,

The rights of the defendant should be protected at every stage of a criminal proceeding. At present, indigent defendants must be provided counsel at full public expense. The quality of defense provided for the indigent should be improved by better training and screening of attorneys. Funding for indigent defense should come from all levels of government.

In 1983 this position was broadened to include civil as well as criminal proceedings.

For several years the League actively examined how legal representation in Criminal and Family Courts matters was provided at public expense and found reform was greatly needed. Our current research indicates that even in rural upstate New York limited access to civil legal services is being felt. For example, in Hamilton County, a vast county of 1,800 square miles with less than 5,000 population, including the highest percentage of persons over 60 years of age in the state, indigent clients approaching the courts or coming to the attention of the Department of Social Services are referred to the Legal Aid Society of Northeastern New York. That agency serves 11 counties across the northern region of the state but they are only able to accommodate 20% of those approaching them for service because of lack of a consistent stream of funding to hire and retain quality attorneys. Hamilton County residents constitute only .04% of those served by Legal Aid of NE/NY.

The Warren-Hamilton Office for the Aging similarly retains a Glens Falls attorney, more than one hour's drive from Hamilton County's elderly, and contracts for \$13,000 of services in the areas of wills, powers of attorney and credit card cease and desist letters. The Hamilton County Department of Social Services sometimes asks one of the 10 local attorneys in the county, or attorneys in adjacent counties, to provide pro bono services on a case-by-case basis. Judge Feldstein also exercises the power of assignment with great care and attentiveness without compromising his impartiality.

For those still deemed in the workforce by reason of age, unemployment rates vacillate making Hamilton County either first or second highest in the state depending upon the season..

Poverty is deepening especially for dependent children, their parent(s) and the elderly as highlighted in the September/October 2010 Adirondack Life article, "The Other Side of Paradise" that notes "The long distances for basics like food or medical care can be especially daunting for older people who have fixed incomes or diminished physical abilities".

As a resolution to this well-documented, continuously worsening situation the notion of a “Civil Gideon”, recalling *Gideon v. Wainwright* (1963), is apt because, as in *Gideon* there are serious risks to the fundamental liberty and property interests of people who, without a competent lawyer, are not able to defend against these threats because of their situation. In cases of foreclosures, evictions, habitability, and building condemnation rural communities are already seeing increases in legal notices and further increases are anticipated.

As an immediate response appointment of a body similar to the Board of the Interest on Lawyers Accounts (IOLA), would provide a recognized, competent, experienced and fair-minded overseer of resource distribution. For the longer term we urge wider study of the ways in which funding for indigent legal services is handled, giving particular attention to practices in democratic countries worldwide. My own Ph.D. studies on the judiciary in the Dominican Republic introduced me to practices in Latin America. I was particularly taken with the situation in Costa Rica where the entire judicial budget is constitutionally guaranteed and is comprised of a specific percentage of the annual tax revenue intake, awarded to the Chief Justice as administrator of the courts, before the executive and legislative branches have access. This assures the courts will receive funding ahead of both the executive and legislative branches of government and will suffer the same proportional share of diminished or increased intake revenues. Such a formula could be extended to all levels of government to reflect acceptance of responsibility. For instance, at the county level, a protected percentage of county revenues would be forwarded to the new administrative body before the county legislature or executive would craft the county budget.

The League looks forward to providing further constructive input on this important issue for all New Yorkers.

Legal Aid Society of
Northeastern New York



Legal Aid
Society
of Northeastern
New York, Inc.

*Serving Northeastern New York with offices in
Albany, Amsterdam, Canton, Plattsburgh and Saratoga Springs*

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TESTIMONY OF
Legal Aid Society of Northeastern New York

To the

Task Force to Expand Access to Civil Legal Services
Third Department Hearing
October 5, 2010, 10 AM to 1 PM
NYS Court of Appeals, 20 Eagle Street, Albany, NY 12207



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Thank you for allowing the Legal Aid Society of Northeastern New York to submit testimony for the Chief Judge's Task Force on Access to Legal Services. We thank Chief Judge Jonathan Lippman and Presiding Justice Anthony V. Cardona for holding today's hearing and especially appreciate Chief Judge Lippmann's strong leadership in creating emergency funding to make up for the IOLA shortfall and for convening this important Task Force.

The Legal Aid Society of Northeastern New York is the primary provider of civil legal services throughout northeastern New York, a rural, urban and suburban service area ranging from the Catskills to Canada. The Legal Aid Society of Northeastern New York is also a provider of Protection and Advocacy services through the New York State Commission on Quality of Care and Advocacy for People with Disabilities. We are one of the most successful Disability Advocacy Project (DAP) providers in the State and have also provided life-changing legal services to victims of domestic violence, those who are homeless and those at risk of homelessness. We administer a special Children's Law Project designed to provide free legal services to low income children with disabilities. We also provide a substantial amount of training and community legal education, in person, in print and on the Internet. We are a member of the LawHelp Collaborative and provide information about our special projects at our website, www.lasnny.org.

In 2009, our program of information and referral, advice, brief service, full representation and community legal education (in print, in person and on the Internet) reached more than 44,000 individuals. We expect to equal or surpass that level of service when our 2010 case closures are complete. The Legal Aid Society of Northeastern New York has five offices in Albany, Saratoga Springs, Amsterdam, Canton and Plattsburgh. We currently employ a staff of 56, including seven management staff, 29 lawyers, nine paralegals and 11 secretarial, administrative and support staff. In 2009, we handled 11,418 cases, increasing the level of

service provided overall by 9%. In addition to preventing homelessness, gaining safety and stability for domestic violence victims, advising many elders, assisting low income children with disabilities, protecting and advocating for the mentally ill and developmentally disabled, we also generated substantial money benefits for our clients and community. This includes \$4,417,970 in retroactive governmental benefits and \$1,756,265 in taxpayer savings. As well, \$702,816 in publically funded shelter costs were avoided in Albany County alone. This represents a substantial Return on Investment (ROI) of more than \$6 for every one dollar received from our 2009 IOLA Fund grant.

It should be noted that the Legal Aid Society serves a mixed urban, rural and suburban service area. In our most urban areas, we serve communities of color that are disproportionately plagued by poverty. Data from the 2006-08 American Community Survey shows that 29.4% of all African Americans, 26.7% of all Hispanics and 28.1% of those of two or more races live in poverty in the Albany-Schenectady-Troy area. Only 8% of all whites in the same community live in poverty. With four of our five offices located in rural counties, our program must also respond to intense rural poverty. Access to a lawyer is an integral component of improving the quality of justice available to low income rural New Yorkers in the Town and Village Courts. An attorney can help ensure that the right to housing, fair debt collection and orders of protection are honored in these Courts. The Legal Aid Society struggles to meet the particular legal challenges faced by a variety of upstate communities.

The Legal Aid Society provides core legal services in basic areas. Certainly our resources cannot keep pace with demand so there are unmet legal needs in every area in which we practice: family, domestic violence, foreclosure, elder law, children's rights. In 2010, the Society lost substantial funding to support its Upstate New York Immigration Law Project, a partnership with the Legal Aid Society of Rochester. Until we received funds from the one-time IOLA bailout, low income immigrants had no legal services available to them in the Capital District. Similarly,

if you are not a victim of domestic violence, it is extremely difficult to obtain representation in a divorce matter. Two weeks ago, the Society received word of a new federal grant. Until that grant starts, even if you are a victim of domestic violence, there is little that we could do for you outside of representation in an order of protection or an inextricably entwined matter. Finally, with the recent closure of the Albany Law School's Unemployment Litigation Clinic, there are almost no resources to provide representation in denials of unemployment insurance benefits. These are certainly critical legal needs where the Legal Aid Society has few or no services available to assist.

1. The Impact of Present Economic Conditions on the Demand for Civil Legal Services.

The recession deeply affects our low income and needy neighbors and has increased the demand for civil legal representation dramatically. In 2009, the Legal Aid Society of Northeastern New York counted the number of clients we had to turn away at the door due to our limited resources. From mid-March to mid-May, Legal Aid staff counted the number of eligible clients for whom we could not accept intake due to limited resources. Based on this two month count, the Society estimates that it will turn away about 8,676 eligible clients with cases that we would normally accept. Similarly, of those we are able to see on intake, we estimate that about 3,676 cannot be fully served. By this I mean that they might receive advice or brief service only, even though they were seeking or actually needed to be represented in a court or administrative hearing. This is an unacceptable situation, only made worse by the continued recession. Given the recession, the Justice Gap – the gap between the demand for services and the resources that exist – continues to grow throughout northeastern New York.

In 2010, the Society estimates that the rate of turn-downs will remain the same except in the area of housing. Due to the receipt of short term federal stimulus funding, the Society is somewhat better able to keep up with the demand for eviction representation. Unfortunately,

during 2010 for long periods, our foreclosure intake has been very limited while we sought additional funding. Thus, currently due to lack of resources, we are unable to fully serve many Unemployment Insurance Benefits claimants and foreclosure defendants.

In the Legal Aid Society's case, the demand for our services more than doubled from the last full count in 2005. In 2009, outside of New York City, the LSC-funded providers turned away 55,332 people – an almost 30% increase in unmet need from 2005. Including all providers who were able to collect turn-away data, legal services organizations outside of New York City will turn away at least 81,672 people, more than all the LSC-funded programs combined turned away in 2005. In 2009, in New York City, Legal Services of New York City turned away an estimated minimum of 32,658 people and were unable to serve fully another 8,656 individuals. Increased demand occurred in the face of a sharp reduction in resources. The unhappy correlation is that as the economy worsens, more and more people become eligible for free civil legal services.

The recession has led to drastically increased intake in a few key areas. Our unemployment insurance benefits intakes have doubled, from 206 in 2008 to a projected 464 in 2010. Mortgage foreclosure intakes tripled from 143 in 2008 to 414 in 2009 and continues at a similar pace in 2010. Worsening unemployment and loss of homes due to foreclosure are the most obvious areas where the recession has increased the need for civil legal services but our resources are stagnant or even diminished.

A robust civil legal services system is more needed than ever during a recession – legal services help low income families stabilize their finances, often by connecting them with state and federal benefits such as food stamps, disability benefits and unemployment insurance. This allows local families to contribute to the local tax base.

For example, in 2009, the Legal Aid Society's Disability Advocacy Project (DAP) produced \$3,203,537 in retroactive Social Security Disability benefits for its clients. These dollars are used to buy groceries and clothing, pay rent or mortgage payments, buy cars, gas and insurance.

It is estimated that each of these dollars is transferred seven more times within our local community of northeastern New York. In addition, DAP representation reimbursed local counties for \$945,904 in interim public assistance originally paid to low income residents – as a result of Legal Aid’s advocacy, local counties are reimbursed through federal SSI payments. As budgets tighten, funding for legal services responds to both increased demands by clients and increased need for the cost savings legal services generate.

The Economic and social harm to northeastern New York when legal needs are unmet.

Society as a whole suffers when funding for civil legal services is inadequate. Clients who are turned away do not have their rights protected. Children are lost, housing is forfeited, domestic violence worsens. Individuals and communities lose the direct economic benefits lawyers produce. And the downstream costs to the community as a whole that result from children witnessing or being victims of violence in the home, or of continuous cycles of homelessness cannot be underestimated. Long term emotional challenges, interrupted education and lifelong instability are but a few. Adequate funding for civil legal services prevents these downstream costs to the community.

Reduced funding for civil legal services ultimately costs more than it saves. One specific example is the prevention of homelessness. Those who cannot get legal representation in an eviction proceeding are very likely to get evicted and become homeless. Homelessness, along with all of its associated expenses, can be very costly to the public. Last year in Albany County, the County saved an estimated \$702,816 in publically funded shelter costs due to LASNNY’s successful homelessness prevention work.

Perhaps the best illustration of the benefits low income people gain and the harm they might suffer if they cannot access legal services are our clients’ stories. Highlights of the powerful results obtained for our clients by Legal Aid staff and private attorney volunteers are attached as Appendix A.



**Legal Aid
Society**
of Northeastern
New York, Inc.

*Serving Northeastern New York with offices in
Albany, Amsterdam, Canton, Plattsburgh and Saratoga Springs*

Timothy P. Morrison
President

Lillian M. Moy
Executive Director

Peter D. Racette
Deputy Director

Wendy Wahlberg
Deputy Director

APPENDIX A
TO
TESTIMONY OF
Legal Aid Society of Northeastern New York



Main Office: 55 Colvin Avenue, Albany, New York 12206
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Legal Aid
Society
of Northeastern
New York, Inc.

Fighting for Fairness
Promoting Justice

June 2009

our mission

The Legal Aid Society of Northeastern New York provides effective, free civil legal services and education to and advocacy for people with low income or other barriers to accessing the legal system. We secure basic needs, protect and preserve legal rights, provide equal access to justice and seek fairness and dignity for our clients.

Serving the low-income and needy residents of Albany, Clinton, Columbia, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, St. Lawrence, Schoenectady, Schoharie, Warren and Washington Counties, and the St. Regis Reservation.

executive director

Lillian M. Moy

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Tom O'Connor

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A family commits to supporting LAS8

Legal Aid matters



Patricia Miller (center) with her son and LAS attorney Susan Griskonis.

Ready to Act Ready to Help

It may seem trivial: A family court petition that would require a mother to instruct her children to draw pictures for their father, not merely to send on to him any pictures they might draw for him on their own.

For Patricia Miller, it was anything but trivial. It was part of an ongoing pattern of harassment, a campaign of fear, being waged by her ex-husband from his prison cell. For years she had endured his stalking, abuse, rape, kidnapping of their children, threats. She feared she would be the victim of the even more violent crimes he committed against others when he disappeared. Even when he was in prison, he kept hauling her into court over custody issues.

When Patricia came to Legal Aid, she was afraid, but ready to act.

Legal Aid attorney Susan Griskonis was ready to help. "She knew every part of what was going on and what to do," says Patricia. "She actually

listened to me...I was scared of everything before I went to Susan. She made me feel like everything wasn't my fault."

Patricia first sought out Legal Aid for help getting a divorce. After shepherding the divorce through (he was fighting it), Susan spoke with the DA's office and secured an order of protection by compiling a package of evidence that included blood-soaked letters he had sent from prison. As his parole date approached, Susan advocated with the prison system to alert Patricia and her local law enforcement if he cut his GPS monitoring bracelet.

The flexibility to make a case like this a priority and do such advocacy is a key benefit of working under the domestic

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PAI News and Notes

May is here and the flowers are starting to blossom, just like the needs of the people we serve every day. Like our economy, we function based on supply and demand. Ironically, the economy is what seems to drive the demand of legal services for the needy. This requires us to supply excellent legal services to represent those facing foreclosure or financial dilemma, in need of unemployment benefits or too disabled to work.

The Legal Aid Society, with the help of the Albany County Bar Association and The Legal Project want to make sure that you, our dedicated volunteers, have the training needed to serve our clients with these pressing legal needs.

With the gracious support of the Honorable George Ceresia, the Third Judicial District Administrative Judge, we will be holding multiple trainings this year. The trainings started to take place in May. We had them in the areas of unemployment, family court and foreclosure. Trainings will continue as follows:

- June 23, 2009: "Representing Home owners at Mandatory Settlement Conferences" (Albany)

- June 2009: *Training on Wills, Health Care Proxies & Power of Attorneys* (Albany)

In the Fall, we are hoping to have trainings in the areas of Bankruptcy and Landlord Tenant Law.

- December 5, 2009: "Representing Victims of Domestic Violence in Family Court" (Albany)

As a valued member of the PAI Program, you may come to these trainings and earn CLE at no cost. We simply ask that you take a pro bono case or two in the area that you are trained in. Of course, there are mentors available to you for any questions that you may have, and, we are always here to assist you in any way we can! Please check out our website at www.lasnny.org for any updates. Or give Tiffani or me a call at any time.

Now more than ever we need and cherish your support. Remember, together we make a BIG difference!

Thankfully,

Kristie M. Cinelli, PAI Paralegal
518-589-6322, kcinelli@lasnny.org

Tiffani Thomas, PAI Paralegal
518-589-6344, tthomas@lasnny.org

Linda LaRue, PAI Paralegal
315-386-4586, llarue@lasnny.org

Ready

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violence grant at Legal Aid, says Susan. It proved important. Patricia's ex-husband did cut his bracelet, two weeks after release. The plan worked: Patricia was moved to safe housing immediately, and he was captured and returned to prison.

But it wasn't over. He filed new family court petitions, including the item about the drawings. Because this was an ongoing pattern, Susan went beyond preparing arguments to get the frivolous charges of the moment dismissed. Though family court testimony is usually restricted to the time frame of the alleged violation, she prepared to use any chance to educate the judge about the real context of the case. "It was important to get the evidence relating to abuse, stalking, and his threats of violence on the record," she explains. When an opening arose in court, she was ready with prepared questions and evidence to submit.

Although she and Susan had practiced, this was terrifying for Patricia, but in the end it was also empowering. "She testified about things over the course of years," says Susan. "Things he didn't know—times she lied and hid from him, sought safety. She was amazing."

"Susan gave me the confidence I needed to stand up to him," says Patricia. The judge ruled quickly and firmly in Patricia's favor, but more importantly, says Susan, "Now the court knows. At the end there was a sympathy for her that will be helpful in the future. And there will be a future."

Patricia is thinking about the future too. "Now instead of just being scared, I've been thinking of ways to protect ourselves," she says. "I know now there are people out there who are helping us, who understand."

Thanks to the following attorneys who have accepted cases

From January 1 through March 31, 2009:

Albany County:

Richard Abbott
Albany Law School
(25)
David Blabey
Guy Criscione (2)
Michael Figgsganter
Daniel Hurteau
Richard Kohn
Kathy McCullough
Day
Michael J. O'Connor
(3)
Thomas Welsh

Clinton:

Donald Biggs
Cheryl Maxwell (4)

Columbia:

John Connor

Greene:

Veronica Kosich

Montgomery:

Sherri Vertucci

Rensselaer:

Tony Arcodia &
Marc Ehrlich (1)

St. Lawrence:

Ramona Breen
Molly Clough
Jerry Leek
Peter Lekki
Charles Nash
Thomas Wheeler

Saratoga:

David Devall
James Doern
Ronald Kim
Emily Mueller

Schenectady:

Eleanor Decoursey
Peter McHugh
Schenectady County
Bar Association

Warren:

John Caffry

Pro Se Divorce Clinic

Richard Gardner (28)
Geri Pomerantz (4)

Albany & Rensselaer County Assigned Counsel Program

**** (R) = Rensselaer**

Michael Assaf
Chad Balzer (R)
Michael Biscone
Murray Carr
Susan Civic

Gloria Copland

Nicole Helmer
Melody Mackenzie
Maney, McConville
& Liccardi

Maynard, O'Connor,
Smith & Catalinatto

Philip C. Miller
Nestler & Gibson
Louis Jack Pozner
Florence Richardson (R)

Kathleen Robichaud
(R)

Justine Spada
Michael R. Traynor
Paul VanRyn
Bruce Wagner



Legal Aid
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New York, Inc.

Fighting for Fairness
Promoting Justice

September 2009

Legal Aid matters

our mission

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executive director

Lillian M. Moy

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Home Sweet Home—Assured



Kathleen Roberts at her home in Troy

Can a mortgage company foreclose on you even though you've made all your payments? It seems like a ludicrous question, but for Kathleen Roberts of Troy, it's all too real.

When Roberts's thirty-five-year marriage ended in divorce in 2002, she and her son, disabled daughter-in-law, and two grandchildren needed a place to live, fast. "I also wanted a place to call my own for the first time in my life," says Roberts.

She bought a house in a hurry and poured the modest amount of money she got from the sale of the house she'd shared with her ex-husband into making it livable. The mortgage payments ate up most of her monthly fixed income, but she called every month to find out the amount she owed, and paid it in full.

Until one day in October 2007, when Saxon Mortgage, which had purchased the right to service her loan when her first mortgage company went bank-

rupt, told her she was behind and owed them an additional \$1,000. They wouldn't accept her regular payments until this mysterious "back payment" was made, and when asked to explain

The mortgage payments ate up most of her monthly fixed income, but she ... paid it in full.

where it had come from, they never got back to her. Roberts sought out a housing counselor, who went over her receipts and confirmed that Roberts didn't owe Saxon anything. When Saxon served Roberts with foreclosure papers anyway in early 2008, she turned to the Legal Aid Society.

Her legal aid attorney, Glinnesa D. Gailliard, challenged Saxon to first prove that they owned Roberts' loan, a prerequisite to being able to foreclose on it. Since Roberts' loan had been

continues on page 7

NEW LAWS

Power of Attorney Law

New York has changed its Power of Attorney Law. Any power of attorney signed before September 1, 2009 valid at the time it was signed will still be good. However, a power of attorney created after September 1, 2009 must comply with the new law.

Changes in the new law include:

- the power of attorney must be signed by principal and agent before a notary public;
- the power of attorney contains specific information to the agent about what they can and cannot do and, by signing the power of attorney, the agent accepts their legal responsibilities.
- the principal can designate a "monitor" in the Power of Attorney and, if a monitor is designated, the agent must respond to a request from the monitor for a record of all transactions done on the principal's behalf.
- in order for the agent to make major gifts or transfer property in excess of \$500, the principal must make a "statutory major gifts rider" in the Power of Attorney. There must be two disinterested witnesses to the statutory major gifts rider.

Exempt Income Protections Strengthened

The New York State Exempt Income Protection Act (EIPA), passed in 2008, took effect on January 1, 2009. Currently, state and federal laws exempt certain income from debt collection so that creditors cannot seize income such as Social Security, disability benefits, pensions, public assistance, child support and veterans' benefits. While some protections already applied to those with exempt income, the EIPA amended the New York Civil Practice Law and Rules in order to strengthen the protections given. Essentially, the EIPA closed the loophole that permitted judgment creditors to restrain bank accounts containing exempt income.

Further, those who do not have exempt income receive certain protections under the EIPA.

Under the EIPA, when a bank account contains exempt funds which have been directly or electronically deposited within the last 45 days, the first \$2,500 is protected from restraint. For all other accounts, so for those who have accounts that do not contain exempt income, the first \$1,716 in the account is protected from restraint (this amount is equal to 8 weeks of pay at 30 hours per week at the minimum wage rate, which is currently \$7.15 per hour in New York state.)

Other substantial protections apply as well, and will certainly afford those with exempt income, as well as low-income workers with non-exempt income, greater protections and, accordingly, greater peace of mind. For more information and to read the law in its entirety, see <http://public.leginfo.state.ny.us> (search the year 2008 for either S6203 or A8527).

Protections for Renters in Foreclosed Properties.

On May 20, President Obama signed into law the "Protecting Tenants At Foreclosure Act of 2009" (S896, P.L. 111-22). The law applies to all residential foreclosures and protects only "bona fide tenants," not foreclosed upon homeowners or their families. An immediate successor in interest to the property is required to give all tenants at least 90 days notice to vacate. Tenants with a lease may stay until their lease expires. If there are less than 90 days remaining on a lease, or the new owner will occupy the property as a primary residence, the tenant gets 90 days notice to vacate. The contract between a public housing authority and prior owner continues for Section 8 tenants until the 90 day period or lease term expires. Less protective state laws are preempted. The law sunsets on Dec 31, 2013.

Home Sweet Home

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bundled into a Wall Street security owned by another company, with yet another company serving as trustee, Saxon couldn't prove ownership—and they didn't try. The foreclosure



Roberts (right) with her son, daughter-in-law and granddaughters.

was dismissed last November. Of course, says Gaillard, even if they could have showed they owned the loan, they had no basis for foreclosure. Ms. Roberts' counterclaim for wrongful foreclosure is still pending.

Thanks to the Legal Aid Society, Kathleen Roberts says "Although my journey is not over, I know that my house cannot be taken away tomorrow due to foreclosure. If it wasn't for the Legal Aid Society, I would not have my home today."

Legal Aid matters because...

people matter — regardless of their position, status or income."

—Mary Seeley, Executive Director, Equinox, Inc.



Legal Aid
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Promoting Justice

January 2010

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executive director

Lillian M. Moy

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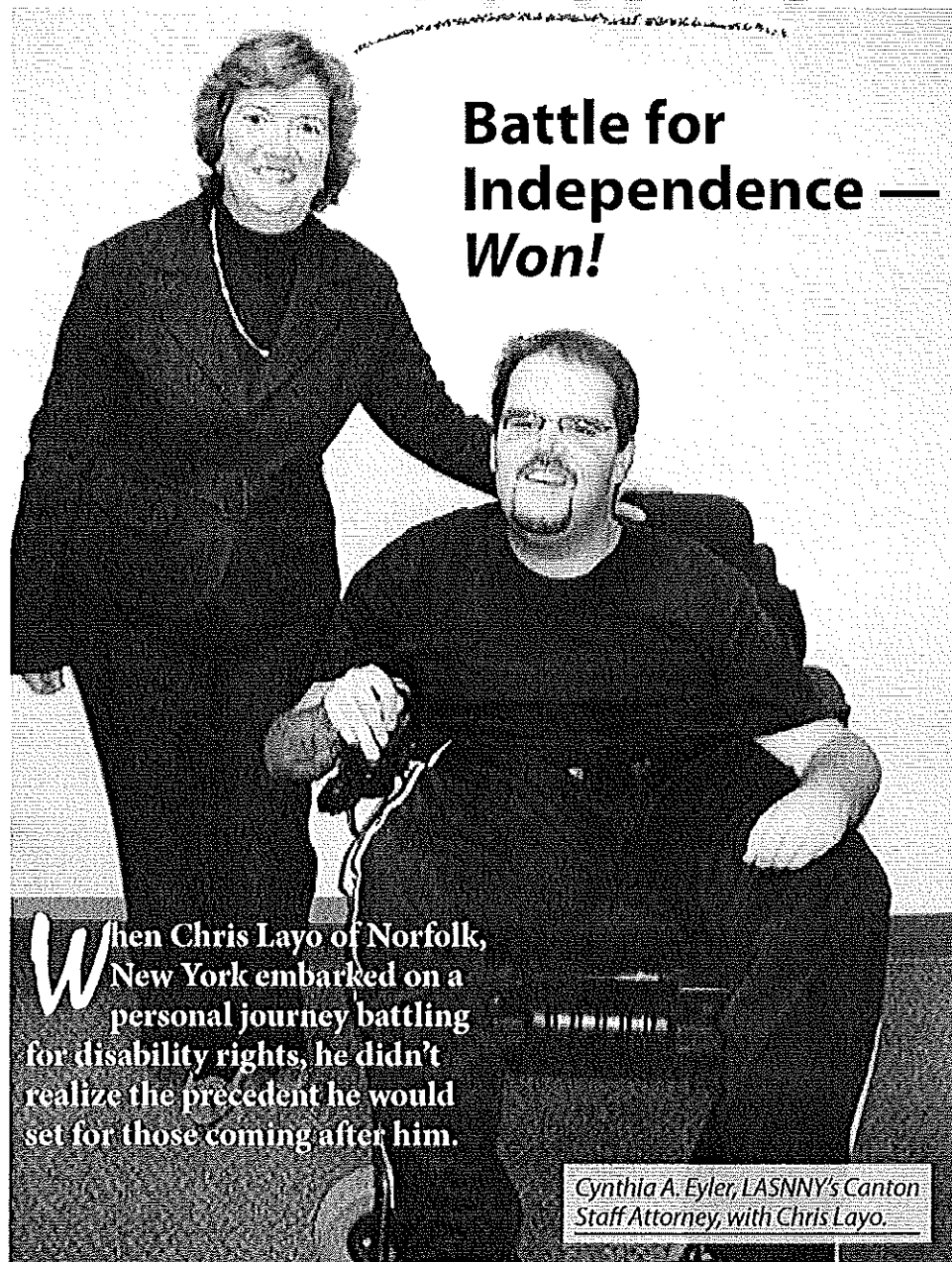
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Legal Aid *matters*

Battle for Independence — Won!



When Chris Layo of Norfolk, New York embarked on a personal journey battling for disability rights, he didn't realize the precedent he would set for those coming after him.

Cynthia A. Eyler, LASNNY's Canton
Staff Attorney, with Chris Layo.

Chris is an intelligent college student who lives with Duchene's Muscular Dystrophy and requires care 24 hours per day. He had been relatively independent though his empowered Consumer Directed Personal Assistance Program (CDPAP). He was able to hire his own aides, who provided him such services as personal care, nursing care and transportation. He was able

to shop for his own groceries, socialize and meet his entertainment needs, using the customized van that he owns, driven by an aide.

In early 2008, Chris was informed by the St. Lawrence County Department of Social Services that he could no longer be transported by the aides he hired through CDPAP. Chris says,

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Battle for Independence — *Won*

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"At first it was like my whole life was over." Living in a rural area, he had few options for transportation outside of his Medicaid provided transportation to medical appointments and the transportation provided by VESID to get him to and from his college classes at the State University of New York at Potsdam. Suddenly, his aides "...weren't allowed [to drive him anywhere] even though it was written in their contracts," he explains. Chris got some good advice from a college professor who said, "Don't take no for an answer." This professor "showed me how to fight your way through [self-advocacy]," Chris recalls.

Through some online research, Chris contacted Sim Goldman, Senior Attorney, Disability Advocates, Inc. in Albany, who recounts, "He had an issue that had been bubbling

up for some time...it cried out for relief." This is a man who "despite his Muscular Dystrophy is trying to live a full life." Further, Sim felt that there is "nothing in Federal law that prohibits [aides] from driving."

With this support, a legal team began to form. The Legal Aid Society of Northeastern New York (LASNNY) and Disability Advocates, Inc. are both part of the state Protection and Advocacy ("P&A") network, which receives federal funding to represent those with developmental disabilities. The P&A attorneys from both programs already knew each other, since they collaborate regularly at state-wide conferences and on bi-monthly conference calls. So when Chris needed local counsel, it was natural for Sim to reach out to the P&A attorney in LASNNY's Canton office, Cynthia A. Eyler. In addition, Chris was referred to LASNNY's Canton office by his local counselor, who also was familiar with LASNNY's Canton office. Cynthia says that there was no clear answer in law or regulation for the question Chris posed; only local policies forbade personal care aides to drive their employers, while on duty caring for them. The issue was ripe for interpretation at a New York State Fair Hearing. Cynthia maintained at the Fair Hearing that removing Chris's non-medical transportation violated the purpose of the CDPAP outlined in Social Services Law, the integration mandate of Title II of the Americans with Disabilities Act of 1990, and violated section 504 of the Rehabilitation Act. The administrative law judge did not rule in Chris's favor. Therefore, Cynthia filed an appeal in St. Lawrence County Supreme Court about a week before Christmas, 2008.

A few days later, the New York State Department of Health issued a General Information Systems message allowing Medicaid funding for Personal Care Assistants to transport their employers while

they are providing care. Chris got a call from Sim Goldman on Christmas Eve. Chris says, the message was, "if you need to get any Christmas presents, go and do it."

In October 2009, Chris, Cynthia, and Sim were honored for their success on this issue, along with attorneys from the New York State Department of Mental Hygiene and the New York State Department of Health, by the Consumer Directed Personal Assistance Association of New York State, at their Annual Conference in

"Don't take no for an answer... fight your way through self-advocacy"

Saratoga Springs. Chris was able to attend, with several of his personal care aides, who drove him nearly four hours each way to be there.

A year after Chris's case, he reflects that the struggle was "eye opening" and made him, "realize that the rights I had could be taken away at any moment." But, he also says that, "in a way, it makes me a stronger person...I want to try to make things better [for other people in his situation]. My uncle had the same condition. He only lived to 18 and he never had the chances I did. I wouldn't want to be in the situation that he was in." Now, Chris wants to fight for others. As a junior studying communications and creative writing, Chris aspires to become a public speaker after he graduates, so that he can tell his story and inspire others.



On January 7th, Amberlee Hammond, a Legal Aid client and domestic violence survivor, testifies before the NYS Senate Hearings on IOLA funding for Legal Services. Director Lillian Moy is seated to her left.

Trainings:

Representing LGBT Victims of Domestic Violence

Part I: January 21, 2010
Domestic Violence in the LGBT Community; Family Court Issues

Part II: February 18, 2010
Name Changes, Dissolution of LGBT Relationships, Public Benefits and Entitlements

3 CLE Credits each part
Appropriate for new and experienced attorneys

Representing Victims of Domestic Violence in Custody Proceedings

Wednesday, March 17, 2010
through Friday, March 19, 2010
Albany Law School

Earn 12 free CLE credits; training limited to 20 participants

See the LASNNY website for details: www.lasnny.org.

Legal Aid *matters*

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Three strikes and she's in...a new apartment

✓ Jessica Rodriguez (not her real name) is a hard-working single mother of four. Until recently, her life had been relatively stable, with the family getting by on Rodriguez's income from retail sales jobs.

However, the family's living conditions were deteriorating. The basement of her building was flooded with sewage, and a foul smell pervaded the family's three-bedroom apartment. Her kids were getting splinters and stubbed toes on crudely patched broken floorboards. Neither the stove nor the refrigerator worked properly, and debris piled up in the yard.

In May, Rodriguez's job selling magazine subscriptions ended and she turned to the Fulton County Department of Social Services (DSS) for assistance. Her application was denied—twice. Rodriguez stopped paying rent.

When Rodriguez received an eviction notice, she contacted attorney Robert Romaker in the Legal Aid Society's Amsterdam office. Romaker recalls that he was immediately drawn to the complexities of the case, which is actually "three cases in one." First, it cried out for help with the nonpayment

issue and negotiations with the landlord. Secondly, the DSS's denial of assistance was ripe for interpretation at a NYS Fair Hearing. Romaker maintains that the agency should have told Rodriguez that she could have applied for ongoing public assistance. And third, Rodriguez and her family needed to find a decent place to live.

The landlord case did not go well at first. When Rodriguez was summoned to court for nonpayment of May and June rent, the landlord refused to make the necessary repairs unless Rodriguez first paid her back rent—totaling \$1050. But even if Rodriguez were able to come up with that amount, how could she be assured that the repairs would be properly made?

Fortunately, Romaker discovered two technical points which weakened the eviction case: first, the landlord did not follow correct procedure for filing his petition; second, he did not properly serve the rent demand, which was tacked to Rodriguez's door instead of being served personally or sent via certified mail. Upon realizing that his eviction case was tanking, the landlord agreed to waive the two months' back

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Teach Globally, Think Locally

PROFILE: *board member*

Jondavid DeLong, the newest addition to LASNNY's board, has been around the block in the legal profession. He got his start in legal publishing, in editorial and business management positions. After graduating law school (SUNY Buffalo), he served as counsel for the St. Lawrence County Department of Social Services. Two years ago, DeLong made the transition to academia. Joining the faculty of SUNY Canton

teaching law is not just about presenting intellectual challenges but equipping students with the interpersonal skills they need to serve their clients

has allowed DeLong to shift from the intense pace of agency work to the steadier rhythms of teaching and scholarship.

DeLong feels privileged to be able to teach students who may not otherwise have been able to pursue a legal career. For nontraditional students juggling family and work, SUNY's degree in Legal Studies offers the opportunity to study online. Canton's program is unique in the SUNY

system in that it is the only legal studies program offering a four-year degree.

Under DeLong's leadership, the Canton program has grown exponentially. He recently helped set up a partnership with the American University in Bosnia-Herzegovina, a program that enrolls 225 students in a comparative law program. "The degree they get allows them to practice law in Bosnia or pursue law school in the United States," said DeLong. To him, teaching law is not just about presenting intellectual challenges but equipping students with the interpersonal skills they need to serve their clients. "In most areas of legal practice, you're dealing with people in very stressful and challenging situations," said DeLong. "When I went to law school, I thought about that stress in a very abstract way, but students need to address the issue of how they're going to deal with the stress. They need to be good listeners and fully understand how to become an effective advocate for their clients." The SUNY Canton program also offers the opportunity



to gain some of these skills through hands-on practical experiences in the form of an internship.

Busy with students on both sides of the Atlantic, DeLong

manages to carve out time in his schedule to take pro-bono cases and to assist the Legal Aid Society on the Executive Finance Committee. "I want to make sure Legal Aid is a viable resource, especially in the wake of all the funding problems that government agencies are facing. There's a huge unmet need, particularly in areas like housing and matrimonial law because of limited resources, and we need to assure that that legal services continues to work for those in need." I'm delighted to have a Board member who is both a pro bono volunteer and concerned about the big picture in delivery of legal services in rural New York. Jondavid is a real asset to the Board" said Lillian Moy, the Society's Director.

Three strikes

continued from page 1

rent, allowing Rodriguez two weeks to find a new place and move out. Rodriguez had to agree to forego her security deposit (one month's rent). But in the end, she came out \$525 ahead instead of \$525 behind.

In mid-June, Rodriguez found a clean, pleasant three-bedroom apartment in Gloversville. She needed to come up with \$575 for the first month's rent and the security deposit. In 2009, the Legal Aid Society received about \$700,000 in federal stimulus money to support its Homelessness



Robert Romaker,
LASNNY attorney

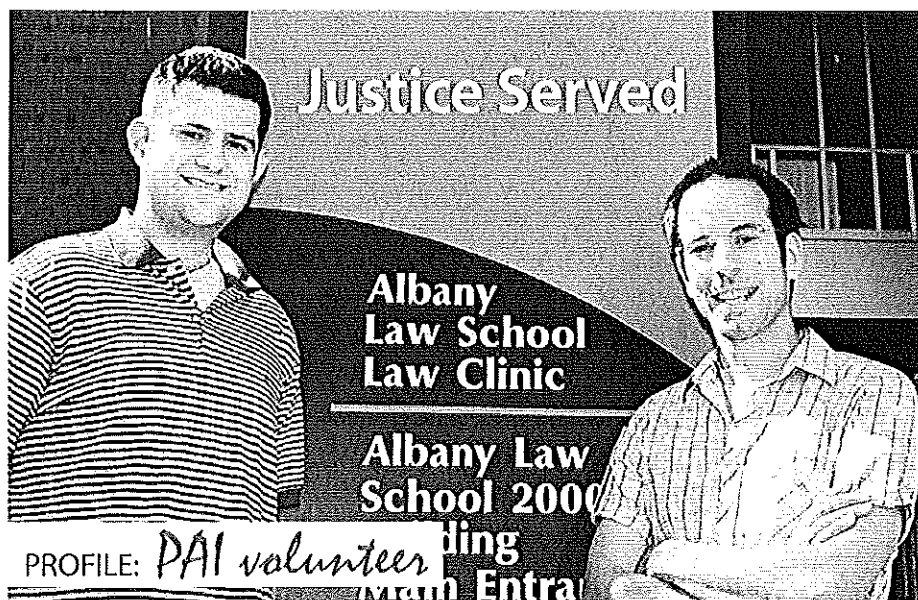
Prevention and Rapid Rehousing Program (HPRP). The project supports short-term or medium-term rental assistance, relocation, utility payments, and a range of activities to prevent homelessness and help homeless people find housing. "We were able to negotiate [with the new landlord] for a six-month lease," said

Romaker. "DSS helped with the first month's rent, and we paid the security." Beginning in August, the DSS and HPRP will continue to share the cost of Rodriguez's rent, so that she can apply more of her assistance money to food and other living expenses.

Meanwhile Romaker is still waiting for a decision from the Fair Hearing to

determine whether or not Rodriguez can retroactively collect the DSS benefits for which she was eligible. Although he expects the judge to rule in favor of DSS, he hopes that the agency will be more thorough in the information it provides to its clients about public assistance programs

As for Rodriguez, her days of scrambling for low-paid retail jobs are ending. She is currently enrolled in a bridge program at Fulton-Montgomery Community College, which will enable her to complete her GED and pursue cosmetology. She credits Romaker and the Legal Aid Society with helping navigate through the legal maze, accompanying her to court appearances, and ultimately helping her turn her life around. "Robert really had my back the whole time."



PROFILE: PAI volunteer **Paul Pavelock** **Benjie Louis**
(Main Entrance)

Paul Pavelock (left) helped Tolga Morawski (right) successfully resolve his unemployment claim.

Imagine a coworker unfairly charging you with misusing vacation time, with stealing and eventually with sexual harassment. You protest and, although you are cleared of each charge, the poisonous climate takes its toll. After two years of injustice, you resign.

Then you file for unemployment benefits and enter another maze when your claim is denied.

This was the situation for Tolga Morawski before he was referred to the Albany Law School Clinic and Justice Center by the Legal Aid Society.

Navigating the legal system was frustrating—he had researched case law, found corroboration with his former supervisor and represented himself at an unemployment hearing that lasted only ten minutes. He needed a lawyer for the final appeal; private attorneys did not want his case even though he risked a significant amount of money.

"I was unemployed; \$10,500 was on the line and I was pretty nervous. Employers try to drag it out, wear you out. But on principle I really wanted to win. My good name was at stake," he said.

So seven months after he filed for unemployment, Tolga met with Professor Benjie Louis, director of the Introduction to Litigation Clinic at Albany Law School. "I felt my

chances were dwindling. It's very infrequent that they take an appeal case, but Benjie chose to take this one. She's wonderful. And she's very pragmatic."

Paul Pavelock, then a law student enrolled in the Clinic, represented Tolga, filing a brief to the Unemployment Appeal Board.

"...it was such a harrowing experience. I definitely would have lost without them."

"Paul's letter and his presentation were really wonderful, said Tolga. "He was very thorough; Benjie kept an eye on everything. It resulted in an appeal."

The Appeal Board reopened the claim, allowed a witness to testify," said Benjie. "It was a great victory."

At the final appeal hearing, Tolga heard testimony from the individual responsible for the smear campaign against him. "He admitted under oath that I had been cleared of sexual harassment charges, yet he continued to tell people I was a rapist. I almost broke down in the courtroom. It's one thing to hear innuendo, something else to get this confirmed.

He admitted he was trying to get me fired."

"My former boss confirmed that I had tried at every stage. I'd gotten to the end of my rope."

This time the judge found in Tolga's favor. "It was really a great moment," he said.

"When benefits were finally released, I had been unemployed for 9–10 months, living with my mom, watching every penny," Tolga said.

"Representation in this case was important because he'd already gone through the process on his own," said Benjie. Paul helped him to get the case reopened. It's what we are trained to do. Having counsel at an administrative hearing is a great thing."

"Tolga was a very good advocate for himself," said Paul. "That was a key factor in winning his case."

"My role was to research the law and apply it," said Paul. "Employees are often awarded unemployment benefits if they resign due to health reasons. We convinced the judge that Tolga's stress was a medical condition, significant in his decision leave his employment." Paul also arranged for Tolga's supervisor to testify, a key factor in the judge's decision.

"Having Benjie and Paul was a game changer," said Tolga. "Looking back, it was such a harrowing experience. I definitely would have lost without them."

"It's a great, great thing that the clinic exists. I donated to Legal Aid Society for this reason. I want the next person to have this opportunity."



Albany Law's Prof. Benjie Louis

Now It's Her Turn

I remember my very first conversation with Angela Mackowski. Angela, who lives in rural Clinton County, contacted our Plattsburgh office to ask for assistance with a guardianship matter. Angela stated she was trying to obtain guardianship over her sister Kimmy, whom she cares for in her home. She explained that Kimmy was severely mentally disabled, in critical need of extensive dental work and in a lot of pain. However, when Angela tried to bring Kimmy to the dentist, she was told the dentist could not work on her sister's teeth unless Angela had guardianship over her. Angela contacted the Plattsburgh Legal Aid

shouldn't have to suffer while "waiting her turn."

office for help, and the staff there sent her file to the Albany office, to place with a private attorney. Eventually, I called Angela to follow up on the request. When asked why she hadn't contacted me before I called her, I was not expecting the response Angela gave. She felt that since she was getting something for free, she should just wait her turn. At that point I had two goals: one, find an attorney who would assist Angela and, two, prove to her that she deserves good legal help and her sister shouldn't have to suffer while "waiting her turn."

I found William E. Russell of Russell and McCormick in Keeseville,

Legal Aid matters

"...if the personal liberties enshrined in our Constitution are real and not rhetoric, *Legal Aid matters.*"

—James Barba

NY. Mr. Russell started out as a solo practitioner in Keeseville in 1973, sat on the Board of Directors for North Country Legal Services, is a recipient of the President's Pro Bono Award, and was a former Bar President for both Essex and Clinton Counties. In 1996, Michael D. McCormick partnered with him to form their current practice, located at 101 Clinton Street. Their growing practice now includes Bill Russell's son Andrew J. Russell. You can hear the pride in Bill's voice as he speaks of Andrew's accomplishments. Andrew graduated from Albany Law School May 16, 2008 and was sworn into practice January 22, 2009. Under his father's supervision, Andrew accepted the Mackowski case as his first pro bono case, and is working on securing guardianship of Kimmy for Angela. Andrew and Bill Russell can add helping Angela Mackowski and her sister Kimmy to their many accomplishments. Angela won't have to worry again about bringing her sister to the doctor for a check-up, only

PROFILE: PAI volunteer



Andrew Russell from Russell & McCormick. Heroes aren't found only in big cities.

to be turned away—and Kimmy can now get the care she deserves from her doctors. As Angela said, Kimmy is a person too.

Angela recently said the dentist agreed to do Kimmy's dental work since Angela is in the process of gaining guardianship. The dental work is completed and Kimmy is now out of pain. When I asked Angela and Mr. Russell what they thought about their pro bono experience, they both responded with the same answer—they wished more people could be helped.

—Tiffani Thomas, LAS Paralegal

Thanks to the following attorneys who have accepted cases

From August through December 2008:

Albany County:

Albany Law School (27)
Christopher Amato
Jerold Bartman (5)
David Blabey
Adam Breault
Daniel Centi
Vincent Chen
Guy Criscione (6)
Michael Figgsganter
Leigh Hoffman
Robert Knightly
Michael J. O'Connor (11)
Anne Reynolds-Copps
Jena Rotheim
Joy Samson-David
Jeffrey Sherrin
Richard Weiskopf

Clinton:

Keith Bruno
Heidi Dennis (2)
Cheryl Maxwell (4)
William Russell
Marc Schneider (2)

Columbia:

Jonathan Cohen
Carl Whitbeck
Franklin County:
Stephen Vanier

Greene:

Eugenia Brennan (2)
John Kinglsey

Montgomery:

Sherri Vertucci

Rensselaer:

Tony Arcodia &
Marc Ehrlich (2)
Robert William
Johnson, III (2)
Geri Pomerantz

St. Lawrence:

Alice Carrothers (2)
Michael Crowe
Richard Gardner (13)
Natasha Hill
Verner Ingram
Charles Nash
Cathleen O'Horo
Daniel Pease
Thomas Wheeler

Saratoga:

John Cromie
David Devall
Rodriguez & Doern
Robert Katzman
Laura Lin (2)
Emily Muller
Martin Pozefsky
Kevin Wheatley

Schenectady:

Peter Coffey
Peter McHugh (3)
Schenectady County
Bar Association (13)
Greg Schaaf
Laura Silva

Warren:

Lewis Roth
Michael Toomey

Knightly in Shining Armor

When Robert Knightly moved to Albany from New York City two and a half years ago seeking a quieter, small-city life, he figured that doing some pro bono work would be a good way to find his way around the local courts, and meet judges and other lawyers, while also helping out people in need. Knightly had spent 18 years working for Legal Aid in New York City as a criminal defense attorney, before which he had been a police officer for 20 years. In Albany he has set up a private criminal defense practice.

Knightly attended the "Java with Justice" training on debt collection law offered by LASNNY, funded by the Assemblyman Robert Reilly Salary Fund. LASNNY offers such trainings to attorneys, helping them learn about or get updated in a new area of law, asking that in return they take on a pro bono case.

They provide plenty of back-up if needed, as well. "The advantage of volunteering for organizations like Legal Aid" says Knightly, "is you have an invaluable resource, just a phone call away."

Knightly accepted the case of Diane Jones (not her real name), a chambermaid in a Capital District hotel. An ambulance company, working through a local collections law firm, was claiming that she had assumed the debts of her homeless, chronically alcoholic brother who had had to be taken to the hospital.

Knightly met with Jones over her lunch hour and learned that she

Task Force to Expand Civil Legal Services

Chief Judge Jonathan Lippmann has convened a Task Force to Expand Access to Civil Legal Services. LASNNY's Executive Director, Lillian M. Moy, serves on the Task Force. The Task Force will hold a public hearing at the Court of Appeals in Albany on October 5, 2010 from 10 am to 1 pm. Individuals wishing to testify should review the public notice posted on the LASNNY website at www.lasnny.org. The deadline for requesting an opportunity to present testimony is September 21, 2010.

PROFILE: PAI volunteer

hadn't seen her brother in years, and hadn't even been aware of the hospitalization. And yet, the letter from the collection agency claimed that she had "assumed his debts" and was threatening to garnishee her wages to recover them. It seems likely that they had gotten her name from a form somewhere where it had been entered as next of kin or emergency contact.

Unfortunately, Jones couldn't read, and the rest of her family were intimidated by letters from lawyers, so the initial summons and complaint, which included instructions to challenge the judgment, went unread and unresponded to.

...in the face of the threat of a lawsuit, they quickly promised to vacate the judgment and halt the garnishee order.

Unsurprisingly, when Knightly reached the law firm and challenged them to produce any written evidence that Jones had agreed to assume these debts, they couldn't do so. Instead, in the face of the threat of a lawsuit, they quickly promised to vacate the judgment and halt the garnishee order.

This kind of unsubstantiated debt complaint is not an uncommon occurrence, says Knightly, but "people pay because they don't know what to do. Thank goodness for Legal Aid." Lillian Moy, the Society's Director, notes that "This is a classic David and Goliath match up - I'm grateful for lawyers like Bob Knightly who level the playing field for low-income debtors."

"There's nobody except Legal Aid for the bulk of people," says Knightly. "It's not just the poor, it's the whole blue-collar working classes as well. Legal Aid is an invaluable resource, as is the Public Defender's office. Without Legal Aid and the Public Defender, far more ordinary people would be as bereft as Diane Jones was."

Funding:

The Legal Aid Society of Northeastern New York is funded by grants from the Legal Services Corporation, the Interest on Lawyer Account Fund of the State of New York, U.S. Department of Housing & Urban Development, New York State Legislature, NYS Office of Temporary & Disability Assistance, NYS Division of Criminal Justice Services, NYS Department of Health, NYS Commission on Quality of Care and Advocacy for Persons with Disabilities, Albany County Department for Aging, Fulton County Office for Aging, St. Lawrence County Office for the Aging, Washington County Office for the Aging, St. Regis Mohawk Tribe Office for the Aging, City of Saratoga Springs, City of Albany, Bank of America as trustee for the Frederick McDonald Trust, New York State Bar Foundation, United Way of the Greater Capital Region, Legal Aid Society of Rochester, Albany Law School, Nutrition Consortium of the State of New York, The Community Foundation for the Capital Region's Sara Huntington Catlin Memorial Fund, Assemblyman Robert Reilly Salary Fund, NYS Unified Court System, Office of Court Administration, NYS Division of Housing and Community Renewal, NYS Division of Banking, Barry Alan Gold Memorial Advised Fund, The Equinox, Warren County, City of Saratoga Springs, Schenectady County, Wait House, Albany County Department of Social Services, Opportunities, Schenectady Community Action Program, Corporation for AIDS Research, Education and Services, 's House, Catholic Charities of Saratoga, Warren and Washington Counties, Charities of Schoharie County, Albany County Rural Housing Alliance, Law Firms and private contributors through the Justice for All Campaign.

The Legal Project, Albany, NY



TESTIMONY OF

Lisa A. Frisch
Executive Director, The Legal Project, Albany, NY

On
The Extent and Nature of Unmet Need for Civil Legal Services
In New York State
Submitted to:

**Hon. Chief Judge Jonathan Lippman
and
The Task Force to Expand
Access to Civil Legal Services**

October 5, 2010
NYS Court of Appeals, Albany, NY

My name is Lisa A. Frisch and I am the Executive Director of the The Legal Project located in Albany, NY. The Legal Project was created 15 years ago by the Capital District Women's Bar Association as an independent non-profit with the mission to provide civil legal services to domestic violence victims and the working poor in this area, filling a gap of services not provided by other programs in the region. Last year, we served over 2,000 residents of the Capital Region through our team of five staff attorneys and over 200 pro bono attorneys, and eight non-attorney staff.

Our core program is one which provides free legal representation and consultations to victims of domestic violence in the Capital District. We provide representation in Family Court, divorces, and other civil legal matters. Because our program is not Legal Services Corporation funded and is designed to offer services to the "working poor", and recognizes that victims often have no access to family funds, it is unique in its ability to provide help to those who would not otherwise be eligible for assigned counsel or public legal services because they have incomes that appear too high "on paper". We recognize, and are able to respond to, the particular needs that victims have for effective, informed, and sensitive legal advice and representation. Without our services, these victims would likely go unrepresented, and having an attorney helps them immeasurably in finding safety and independence. We also provide services for those in need of legal help with bankruptcy, affordable housing, wills, foreclosure and general civil legal issues and referrals. In 2009, we created and implemented a unique, statewide program to serve military families impacted by domestic violence. The Legal Project strives to provide assistance for the underserved in our community and those who otherwise would have no other options for civil legal assistance, filling gaps and coordinating with other civil legal services to ensure the most effective response to the growing legal needs of our neighbors.

We are both a staff based and pro bono program, which allows us to leverage our resources to help meet greater demand. However, pro bono attorneys, though a wonderful resource, are not enough to fill the gaps in services that exist due to such incredibly limited resources. And our resources are indeed limited. Nothing is more painful than having to turn away someone in need, particularly a victim of abuse, because there is simply no ability to serve them. Although there will always be needs that our programs can't fulfill, there is a social responsibility that this state has to help provide the resources necessary for our programs to help the most people in need possible and to do it effectively and efficiently.

I know that even before today's hearing, this Task Force is well aware of the importance of our programs and the positive impact that civil legal assistance has on both individuals and the greater community. I do, however, want to point out some of the special issues for independent programs that have specialized services for underserved populations in terms of the current funding challenges, as well as the rising need for services for victims of domestic violence—which makes up our core program.

Special Needs of Non-LSC Funded Programs and Underserved Populations

The Legal Project is an example of a program that does not receive any federal Legal Services Corporation funding. We are an independent, non-profit program that gets our support largely from private donations, foundations, government funding from a variety of sources and IOLA funds. At the same time that our funding has been cut or is being threatened, the numbers of clients that we have served has increased significantly since 2008. We served 21% more clients in 2009 than the previous year, and the numbers of those in need are growing each day with the rising numbers of the working poor and the increase in poverty in our communities. Just nine months into 2010, we have already served more victims of domestic violence than in all of 2009, and the numbers keep rising.

Nowhere is that need more urgent than for victims of domestic violence seeking our services. This is a nationwide crisis. In the spring of 2009, the Mary Kay Ash Charitable Foundation released a study indicating that 75 percent of the nation's domestic violence shelters have reported an increase in women seeking help since September 2008. The report also found that 73 percent of these shelters attributed this rise to financial issues.

In New York State alone, the numbers of victims of domestic violence are staggering. Police handle nearly a half-million domestic calls every year, shelters house more than 16,000 people annually, and emergency hotlines handle another 300,000 calls. With the recent changes in law that now provide civil legal relief to essentially all victims of domestic violence, whether they are legally married or have a child in common, virtually all of these identified victims are eligible and are in potential need of civil legal assistance. The cost of not providing this assistance can be very high as we are seeing not only a rise in numbers of victims but a rise in the numbers of domestic homicides. According to a recent NYS Division of Criminal Justice Services (DCJS) report, there was a near 25 percent spike in the number of "intimate partner" homicides from 2007 to 2008 -- and the increase was 45 percent in counties outside New York City. We know that the legal needs of rural victims of abuse—and all those in rural communities needing *any* civil legal services—is particularly daunting, and finding services next to impossible as rural offices are being closed and outreach limited by the challenges of funding cuts. This rise in reported domestic violence also seriously impacts courts and legal services. According to a 2010 report by the NYS Division of Criminal Justice Services, New York State's courts issued a total of 262,327 orders of protection in 2009, a 21 percent increase from the prior year, and a 26 percent increase over 2007.

Our funding at The Legal Project to provide legal assistance to domestic violence victims is diminishing at the same time that people need help the most and this is the case for civil legal services programs across the state. Often, unless there is outside funding for our programs, such as federal Violence Against Women funds or other special foundation grants, many civil legal services programs are hard pressed to provide the necessarily specialized services to domestic violence victims. That money

is drying up, too. It seems unconscionable that in New York State, victims of abuse seeking orders of protection or custody of their children have essentially nowhere to turn in far too many communities, and that the ability to find safety and justice for them is dependent on whether they live in a county that receives hard to find federal grants that can disappear at any time. We must ensure that there is support for civil legal services to help these victims in every county across New York State and that state government takes responsibility for making that happen. For us at The Legal Project, the state funding that we receive and our IOLA grant are essential to fund our domestic violence services. If any of these funds are lost, so is our ability to help the victims so desperately in need.

The Other Costs of Lack of Consistent Funding

All in all, in every corner of New York State, the environment that our programs, our staff and our clients have had to live with has been more than challenging. We ask our attorneys, who want to dedicate their careers to public service and already are being paid less than their counterparts at private firms, to be prepared to lose their jobs at any juncture with little notice. Our clients do not know from day to day if we will be able to serve them due to the vagaries of our funding. The challenges of finding continued funding takes valuable time away from time that might be spent on programs. As program managers, we live in constant fear of losing good staff who are exhausted by the stress of living and working like this and dealing with the specter of potential layoffs and program cuts. And we all dread having to say to the family facing homelessness, the Dad going bankrupt, the single Mom who was denied unemployment, the abused woman who needs an order of protection—that we cannot help them. And not helping them ends up costing our State and society far more than what it would cost to support our programs, sometimes even costing lives.

Time for a Change...

I know that there is awareness of the problem. Now, however, there must be some solutions to finally, after all of these years, put an end to the piecemeal and inconsistent way our programs are funded. I know there is no easy answer, especially in this fiscal climate. But this is also an opportunity for all involved to come together and identify those solutions—both the short term of ensuring that state and IOLA funds are prioritized and distributed across the spectrum of civil legal services programs and the long term of ensuring a permanent funding stream.

We implore this Task Force and the Chief Judge to help determine a mechanism to ensure that our programs and the clients we serve are never left out in the cold. We will then have made a vast improvement that will positively impact the lives of the countless thousands of people in need of our help across New York State.

Conclusion

We are grateful to Chief Judge Lippman for all of the support that you have given civil legal services, and appreciate the strength of your partnerships with the Executive and Legislative branches to work together to change the nature of how our programs have been funded. The fact that the Office of Court Administration placed \$15 million in their budget to help with the inevitable IOLA shortfall this year is unprecedented and remarkable, and makes clear that the need for our programs to receive these funds, without delay, is recognized by all those in leadership. The fact that we are now at a point where longer term solutions for permanent state funding are being identified give us all hope for the future. On behalf of my Board, staff and most importantly, our clients, many thanks to the Task Force for holding this hearing and being our partners in finding creative and effective resolutions.

School of Social Welfare,
University at Albany, SUNY

Testimony for the Chief Judge's Hearings on Civil Legal Services

As Dean of the School of Social Welfare at the University at Albany, SUNY, I can attest to the importance and need for civil legal services. Social work as a profession addresses many of the civil issues which often require legal intervention. Issues include cases of domestic violence, special education, disability, immigration, child welfare, child custody and support, housing, employment, unemployment, TANF, SSI and related areas.

The effects of the economic downturn have been shown historically to create more poverty, joblessness, and underemployment. These impacts have direct relevance to the need for more civil legal services. The human consequences of rising and long term joblessness include increasing domestic violence, addictions, mental health and health issues (Mossakowski, 2009; McKee-Ryan, et al., 2005), disabilities, divorce, risks for out-of-home placements of children, poverty and evictions, and skidding of the middle class into the ranks of the poor and near poor (Briar, 1988). In addition, in economic downturns, there may be more a dramatic rationing of resources and benefits to address rising needs. This adds to the stress faced by disenfranchised and marginalized people whose lives may be irreversibly scarred by the economic downturn.

Rationing of resources follows. Such rationing further compels more civil legal aid to combat the impediments to services and entitlements. These requisite services, programs and benefits are necessary for financial, social and emotional survival. Given that there are increasing numbers of individuals and families thrown into poverty, especially now, it is imperative that more civil legal services be made available. Absent such increased investments in legal services, high need individuals and families may not have access to the services and programs to which they are entitled. Thus increased services and funding for civil legal aid is needed now more than ever.

Our profession of social work often serves as a gateway for clients in need of legal assistance, whether due to the denial of benefits or to the family stresses that may accompany joblessness, homelessness, and other of the adverse consequences of the current economic downturn. In fact, social workers, working closely with attorneys who serve the poor, are able to maximize social justice outcomes for those most in need and least likely to succeed without such support (Rand, 2006). Thus, outcome effectiveness in many cases served by social workers depends on civil legal aid.

At this time national attention is focused on racial disparities and disproportionalities. Civil legal services play a critical role in the prevention and remedies involving the denial of service to individuals and families of color. Absent such legal assistance, such individuals and families of color may face unnecessarily intrusive programs while being denied more preventive service and supports. The capacity of attorneys who serve the poor to advocate for and compel needed benefits, programs and services to such disenfranchised populations is hampered by the gap between the need and the availability of funds for attorneys who serve the poor through

programs funded by state and county government. Because of this, legal services comprise a continuous quality assurance and improvement function for human services, a prerequisite to addressing these racial disparities in a systematic way.

As a former state level commissioner of several human service programs (child welfare, juvenile justice, and parent and child health), I can attest to the importance of civil legal services. Because such services help those with benefits and rights violations, attorneys who serve the poor play a systematic change function for public service programs. In effect, advocacy for those whose rights are violated or whose access is impeded helps to ensure that programs work effectively. In my experience it has often been attorneys who serve the poor who help educate policy makers and practitioners and shape many reforms in the civil side of justice involving human service systems. Too often intended statutes and laws are impeded in the implementation process. This implementation process may be flawed and harm those intended to benefit. Thus civil legal services play a key systemic and policy change function. This is needed increasingly in hard economic times particularly as cutbacks in human services and shortcuts in service delivery compromise rights and benefits.

Given these times of a prolonged recession, legal services for the poor need to be seen as building social capital and resource based social networks while addressing service access and rights. Every client aided and helped to stabilize their situation through legal intervention, moving forward with requisite services and supports may be able to avoid some of the irreversible effects of severe economic downturns. Thus it is important to think of civil legal services as playing a key countercyclical role in helping individuals and families stabilize and even reverse their downward economic, emotional and social skidding. In my estimation, there is no more crucial time for an increased investment in civil legal services than in this time of economic crisis. Further, the multiplier effect in human terms and benefits is enormous given the return on investment in legal aid. I hope that such necessary and urgently needed increased funding for more civil legal aid will be made available for the good of the most vulnerable New Yorkers.

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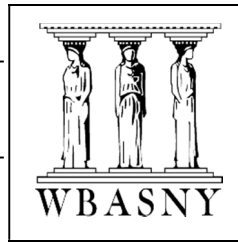
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Women's Bar Association of
the State of New York

Women's Bar

OF THE STATE



Association

OF NEW YORK

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EXECUTIVE DIRECTOR

Linda A. Chiaverini

October 1, 2010

Marcy Levy, Esq.
Counsel to the Task Force
Sullivan & Cromwell
125 Broad Street
New York, NY 10004-2498

Dear Ms. Levy:

Introduction

My name is Deborah Weisman-Estis and, as the President of the Women's Bar Association of the State of New York ("WBASNY"), I respectfully submit the following testimony.

As the largest statewide bar association dedicated to promoting the advancement of women in the legal profession and in general, our organization consists of over 3,800 members from eighteen chapters across New York State. We are dedicated, not only to promoting the advancement of the status of women in society and of women in the legal profession, but to the fair and equal administration of justice. Our members include individuals from all levels of state and federal benches, as well as prominent attorneys practicing in all areas of the law, educators and government leaders. Many of our members also work for organizations that receive funding from New York State for civil legal services. In fact, an informal telephone survey conducted last year by the The Legal Project, Inc. of the major civil legal services programs across New York State shows that over 70% of the attorneys working at these organizations are women. In addition, this same survey estimates that the majority of the clients they serve are women. As a result, the funding insecurities facing civil legal services providers and the effect on their clients are of tremendous concern to us.

Funding for civil legal services is an issue that has long-been, and currently remains, a legislative priority for WBASNY. We are all acutely aware that New York State is in a fiscal crisis. However, as you know, many New Yorkers are facing grave economic troubles of their own which require the assistance of legal counsel. Without such assistance, these citizens must many times seek other forms of costly help from New York State therefore making it fiscally irresponsible not to provide adequate funding for these services. It is on behalf of all New Yorkers that I ask this state to provide our citizens with permanent and adequate funding for civil legal services.

As you know, the IOLA fund was created out of crisis in 1983, and it has seen other downturns since its inception. The current crisis comes at a time that corresponds to a time of widespread economic hardship, when many more people are in need of basic civil legal services. IOLA is funded in a way that is subject to economic forces – interest on small and short-term monies in attorney escrow accounts, and interest rates. Right now, both are at an all-time low. Unfortunately, the need for services does not ebb and flow in the same pattern. In fact, news stories seem to indicate that it is quite the opposite. Quite simply, access to justice should not be affected by good or bad economic times.

I would like to thank Chief Judge Lippman for including \$15 million in the State Fiscal Year 2010-11 OCA budget to address the over 70% reduction in IOLA revenue this year. The inclusion of that funding was a tremendously useful first step to address the immediate crisis, but the crisis still remains. New York must create a permanent funding stream so attorneys and providers are no longer spending precious time and resources each year pleading for stable funding at each and every turn of the political budget negotiation process. We need a structure with balance, stability and financial reserves for this critical funding need.

Effect of Insufficient Funds

Because civil legal services funding is so important to our members, our mission, and the clients we serve, each year WBASNY makes this a propriety issue. Unstable funding creates tension and chaos when the organizations that receive these monies do not know whether any of it will be included in the current year's or next year's budget. It is tragic for the clients who are left unserved when specific units or entire offices close. For many victims, especially those in rural or under-resourced counties, there simply is nowhere else to go for assistance.

It is also just as unfortunate for the dedicated attorneys and staff of these organizations who do not know, year after year, whether they are going to continue to being employed. Lawyers and providers who are working in this field are doing so because they want to help those who are in need. However, not knowing whether you're going to have a job at the end of each year certainly takes its toll on these dedicated individuals. This situation can lead to significant job turnover as well-trained, talented, and effective attorneys feel no choice but to leave legal services jobs in search of other positions that provide greater financial stability. Turnover of this nature further drains resources from the organizations already straining to meet the growing, complex needs of the communities they serve. The impact of this year's funding cuts has already been felt as WBASNY members report the closing of legal services offices and dedicated substantive law units, staff taking unpaid furloughs and time reductions, salary and employee benefits cuts, loss of raises, transfers to other units, and attrition.

Having each party represented both helps the courts operate more efficiently and may result in fairer outcomes for litigants. Significant numbers of self-represented civil litigants creates considerable challenges for our courts. Many litigants struggle to understand the law, present critical and necessary evidence, call and examine key witnesses, follow statutory civil procedure, make proper objections, and proffer appropriate or effective arguments and defenses. As a result, courts and their staff are forced to take more time to explain court processes, rather than neutrally adjudicate matters. Where only one party is represented by counsel, these short-comings are increasingly magnified. This reality, combined with increasing numbers of pro se litigants, may negatively affect the administration of fair and equal justice and increase backlogs.

Civil legal services attorneys often help poor and vulnerable clients with legal needs that are not litigation-based, such as navigating and accessing public assistance resources (i.e. welfare, food stamps, subsidized child care and Medicaid), securing health care, obtaining immigration status, enforcing language access rights for those with limited English proficiency, securing appropriate special education, maintaining employment, securing subsidized housing assistance and avoiding eviction. These are cases in which basic human needs are at stake- shelter, sustenance, personal safety, health or child custody. The success of such legal advocacy efforts stabilizes families as well as communities and, often, serves to curtail more complex and devastating problems that may result in expensive emergency services or court system intervention.

A Focus on Domestic Violence

While WBASNY is concerned with many legal issues affecting women and children, we have long-prioritized domestic violence. Examining the issue of civil legal services funding in the domestic violence context is instructive. The effect of civil legal aid on the incidence of domestic violence has been the subject of several studies.¹ In 2003, researchers Amy Farmer and Jill Tiefenthaler found that the availability of legal services had a *significant* effect on lowering the national incidence of domestic violence and they further determined that continued expansion of the availability of civil legal services will likely continue to lower the incidence of intimate partner abuse in the future.² By preventing domestic violence, civil legal services organizations improve clients' lives, and those of their families, in critical ways. By assisting with obtaining orders of protection, divorce, and child custody, the attorneys help the victims and their children find safety from ongoing violence and quell chaos. In turn, this may reduce the need for abuse-related medical care, mental health services, and law enforcement intervention. Where they assist clients with securing child support, obtaining or maintaining housing and employment, we see increased self-sufficiency and reductions in incidences of eviction, homelessness, and welfare and unemployment benefits. By curtailing the cycle of violence and providing victims with safety and stability, the health, economic, and social benefits to individual families and society as a whole are immeasurable and will, surely, continue through to the next generation.

New York State Has a Responsibility to Support Civil Legal Services

WBASNY has long supported the creation of a state-level permanent funding source to supplement the IOLA Fund in order to better address the civil legal service needs of New Yorkers. We would be most willing to join in the development of a plan for a permanent funding stream for civil legal services which does not wax and wane with interest rates or changes in administrations, but is something on which these programs and the clients they serve, can depend on.

Conclusion

Thank you for this opportunity to share our comments. I also thank and commend all the leaders and the brave clients who have come before you with testimony throughout the hearing process. On behalf of the Women's Bar Association of this State, I look forward to your report and, hopefully, a resolution to this problem.

Very truly yours,

A handwritten signature in black ink that reads "Deborah Weisman-Estis". The signature is written in a cursive, flowing style.

Deborah Weisman-Estis
President, WBASNY

¹ See for example, Amy Farmer & Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, 21

CONTEMPORARY ECONOMIC POLICY 158, 164 (2003); Liz Elwart, Nina Emerson, Christina Enders, Dani Fumia & Kevin Murphy, *Increasing Access to Restraining Orders for Low-Income Victims of Domestic Violence: A Cost-Benefit Analysis of the Proposed Domestic Abuse Grant Program* (State Bar Association of Wisconsin December 2006) (available online at: <http://www.nlada.org/DMS/Documents/1176146724.92/WI%20appendix8.pdf>)

² Farmer & Tiefenthaler at 164.

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September 30, 2010

The Task Force to Expand Access to Civil Legal Services
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Dear Judge Lippman:

As you consider the state of civil legal services in New York, I would like to share my experience with you. I have been an advocate for victims of domestic violence for almost twenty years providing direct service and serving in an administrative capacity.

In my most recent professional role, I was the director of an economic empowerment program which primarily served victims of domestic violence. It became clear to me that a great deal of my client's economic stability depended on the outcome of a civil legal case and the vast majority did not have adequate and affordable representation.

During my work it has always been clear to me that a battered women's journey does not end when she leaves the abuser. In fact, in many ways, it has just begun. Yet it is at this point that many domestic violence agencies stop providing services and refer clients out to civil legal services or employment assistance programs. There are many services that victims of domestic violence need which domestic violence agencies do not provide. Domestic violence agencies are generally set up to help with shelter, support and safety, which of course, lay the foundation for a victim to continue on the path to freedom. But as she continues on her path, she will need support from other pieces of our community's safety net including civil legal services.

As someone who has always been driven to create positive social change, I came to understand that I could be doing more to help. So I applied to law school for admission in September 2010 and I am proud to say that I was accepted. But unfortunately, I decided against accepting admission because I came to understand that I might not have found a position in civil legal services after graduation.

I share my story with you to make two points. Civil legal services are desperately needed by victims of domestic violence and often provide an avenue to economic stability that most domestic violence agencies can not assist with. Additionally, the reduction in civil legal services not only reduces access for victims but also reduces the pool of individual willing to seek career in civil legal services.

Our society needs people who are willing to fight for justice and create a more equitable society for everyone. The current state of civil legal services does not provide enough opportunity for individuals to have that positive impact on society.

Respectfully submitted,

Shannon Wong