

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

Statements of Testifying Witnesses

Patricia Bentley (Board of Directors, NYSUT)

Denise Berkley (Statewide Secretary, Civil Service Employees Association)

Michael G. Breslin (Albany County Executive)

Hon. Michael C. Conway (Nassau Town Court, Nassau Village Court)

Earl Eichelberger (Director, Catholic Charities)

Hon. Helena Heath-Roland (Albany City Court)

Kathleen B. Hogan (District Attorney of Warren County)

Denis M. Hughes (President, New York State AFL-CIO)

Anne E. Knapp and Ronald (Client of Empire Justice Center)

Christopher Layo (Client of Legal Aid Society of Northeastern New York)

Steven T. Longo (Executive Director, Albany Housing Authority)

Paul J. Lupia (Executive Director, Legal Aid Society of Mid-New York)

Dorthea Medina (Client of The Legal Project)

Jeanne Noordsy (DVCCCC/DELTA Coordinator, Domestic Violence Project of
Warren & Washington Counties)

Hon. Judith F. O'Shea (Chemung County Supreme Court)

Susan L. Patnode (Executive Director, Rural Law Center)

Hon. Mark L. Powers (Schenectady Family Court)

Lauren E. Raffe (Client of Legal Aid Society of Northeastern New York)

Patricia Bentley

NYSUT Board of Directors

Patricia Wescott Bentley
Board of Directors
New York State United Teachers (NYSUT)

Testimony
before the
Task Force
To Expand Access to Civil Legal Services
Third Department Hearing
October 5, 2010 10:00 AM
NYS Court of Appeals,
20 Eagle Street, Albany, NY 12207

Chief Justice Lippman, members of the panel and members of the public who are testifying today, thank you for the invitation to speak to you about NYSUT's support for access to legal services throughout the state. I live in the North Country, and so I am particularly interested in access to justice in upstate rural areas. I am honored by the opportunity. I am Patty Bentley, and I serve on the Board of Directors of the New York State United Teachers Union as representative for United University Professions, the statewide union representing 34,000 academic and professional members working for the State-operated campuses of the State University of New York. I have just completed at six-year term on the National Council of the American Association of University Professions. In Judge Lippman's important 2010 Law Day remarks describing his vision for the future of access to legal services and justice he said, "that an unprecedented coalition of judges, legal services providers, law college and bar groups will work together" to secure permanent funding for Civil Legal Services. I am hopeful and confident that under his leadership, New York will realize that vision. But, we have much to do.

So I thank you for allowing me to add labor's voice to the coalition seeking funding to increase Access to Justice. I want to assure you that NYSUT, the New York United Teachers organization takes its Mission very seriously. Among the principles of our mission statement is the tenet that we work to "improve the professional, economic and personal lives of our members and their families, to strengthen the institutions in which they work, and to further the cause of social justice through the trade union movement."

I mentioned my work at the state level in Unions. My statewide Union work is very important to me, but like all union members, I live and work in a community that I care deeply about. I have been a Librarian at SUNY Plattsburgh since 1977. I own a home in Plattsburgh. I am a Rotarian. I am an elected member of the Plattsburgh City School Board, and I am the Vice President of the Rural Law Center's Board of Directors. Currently, I am running for a seat on the Plattsburgh City Council. I take civic responsibility and involvement very seriously.

NYSUT has over 600,000 members in every community across the state. Our union represents teachers, college faculty and professionals, school bus drivers, custodians, secretaries, cafeteria workers, teacher assistants, nurses, healthcare technicians and most recently, life guards! Like me, our members have deep roots in our local communities. Through our work in education and healthcare, we are on the front lines of service to the children and families where we live. We are an integral part of New York's social and educational fabric. We see, everyday, what happens to families in economic crisis. We see what happens when our members lose employment, but we also see, as public servants, what happens to all those in our communities who are in financial and legal crises. We are aware that in this economic climate, families in our communities constantly face issues like homelessness, domestic violence, predatory lending, foreclosures, and denial to or ignorance of access to public benefits.

Naturally, the labor movement cares about jobs and employment. We also care about what happens when someone loses his or her job and cannot find another.

I am privileged. My union membership entitles me to reduced rate legal services. I need only show my union card, and I will have access to an attorney, who can represent me, advise me, and fight for my rights. Having a right to legal counsel is the foundation of social justice. Even if I did not have this union benefit, I could afford to hire an attorney, if I needed to have one. This is not the case for most low income New Yorkers. Their only defense against homelessness, foreclosure, or illegal debt collection is a legal services attorney. When a victim of domestic violence can only be truly legally free from her batterer through a divorce, it is a legal services attorney who stands by her in the divorce process. With the funding shortfall for legal services in New York, many of these families in crisis have no one to turn to for help. Where is the foundation for social justice for these people? What is the safety net for these children, women and men?

And there are other serious crises that demand an attorney. As people lose their jobs, and their former employers deny them the right to unemployment insurance, it is a legal services attorney who will fight for them to gain that benefit. In fact, it is primarily legal services attorneys who are trained in the complexities of accessing all public benefits. In my own sector, higher education, we see exponential increases in the number of qualified and interested members in part-time, contingent employment who are not only not re-employed with little notice, but often are determined to be “ineligible for unemployment due to laws passed in the 1930’s meant to keep full-time teachers from collecting unemployment during the summer months.

Yes, I am a union member who is engaged in her community. I have seen what happens to families who are homeless, or who live in a crisis environment. Let me give you an example. As a Plattsburgh city school board member, we strive to have schools and programs that meet every child's needs and capacity. We take pride in our schools and their success so I was troubled that one of our schools was identified as "in need of improvement" when I thought we were doing well. A major factor identified in this finding was the number of "transient" students who I assumed (and I am ashamed at my own stereotyping) were children of the migrant and seasonal workers who help bring in our abundant crops of apples and other produce. Not so. The transients in our schools are those from families, usually at poverty level and perhaps on public assistance who live in area campgrounds or parts of the Adirondacks during warmer weather and who move to Plattsburgh only when the weather becomes too cold to continue camping. Children in these families are routinely pulled from one school to another on a seasonal basis, as often as four to five times in an academic year. If the students need special services, which we strive to provide during the summer as well, that number may rise again. My school district and those around us have sometimes cobbled together transportation and informal arrangements to get a student stable education services but transportation, local boundaries, state funding and education law makes that difficult. All of us in education know that if a child comes to school, and there are problems at home, that child is not ready to learn. Whether there is violence in the home, or bank accounts seized or vital benefits denied, children in those families are under incredible stress. Legal Services may appear to be expensive. However, I know that when a family is in a stable home, fewer local and state dollars are spent to sustain the family. In a stable

home, children can and will get the intervention and education they need to prosper, to gain skills and esteem and to have opportunities for success. We can do no better than to invest in the real future of our state, our children and their families. By assuring Access to Justice to all New Yorkers and especially those in rural New York where populations, distance and demographics mitigate against access, we signal our commitment to social justice by supporting state and federal rights.

Again, I thank you.

Denise Berkley

Secretary of the Civil Service Employees
Association (CSEA)

CSEA Statewide Secretary Denise Berkley

Denise Berkley's historic election to the office of Statewide Secretary for CSEA serves as a vivid example of a union member who learned that to make a difference, you must get involved.



Berkley

Berkley's union activism began at the Brooklyn Developmental Center (BDC) where she started working some 35 years ago as a Mental Health Therapy Aide (MHTA).

"I didn't know anything about the union, didn't see any union officers and if I had a problem I would settle it myself," Berkley said. Eventually, she realized there was more strength in numbers.

A feisty can-do attitude eventually led to a union position as a Building Representative. Two years later, she would run for president of the local and win.

"You really have to have love for the membership," said Berkley.

The love was reciprocated by CSEA members when she took office as CSEA Statewide Secretary on March 1, 2008.

A longtime union activist, including stints on the statewide constitution and bylaws and region education committees, Berkley was also a leader in the local struggle against apartheid in South Africa and was involved in community work since her youth.

Berkley remains just as committed today to the ongoing struggle for social, racial and economic justice for workers and communities.

Indeed, Berkley would like to make sure CSEA maintains high visibility in communities through New York. "Historically, labor and the community ran parallel," said Berkley. "Issues that affected labor also affected the community. We need to do more together around issues like child care, housing, and education. Everything is related."

Berkley is also keen on developing union leadership. "We need that for the future of the union movement," she said.

Berkley defined good leaders as "good listeners, who have compassion and are not are not afraid to speak up."

Berkley is married to Richard, her husband of 32 years and she has a twin brother, Dennis, who is shop steward for the U.S. Postal Service in California. She also has a younger brother, John, and older brother, Walter.

A longtime member of St. Paul Community Baptist Church, she is a Sapphire Delegate at the church.

A constant cheerleader for all things CSEA, Berkley is adamant about making sure the union gets respect and plans to work on increasing CSEA's visibility.

"I want folks to hear 'CSEA' and say, 'Yeah! That's my union!'"

TESTIMONY OF
Denise Berkley
Statewide Secretary of the Civil Service Employees Association
Local 1000 AFSCME – AFL/CIO

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

My name is Denise Berkley and I serve as Statewide Secretary of the Civil Services Employees Association (CSEA), New York's leading union. As a Union representing working men and women, and a Union with a strong commitment to community, CSEA is pleased to offer its support for increased access to legal services in New York State.

CSEA represents 295,000 New York State local, municipal, county, state and private sector employees. As a labor union, we hold these values as our working principles: honesty, inclusiveness, full participation respect, diversity, open communication, accountability and fiscal responsibility.

We share these principles with the Office of Court Administration and the legal community. Only when these principles are observed can all New Yorkers have equal access to the justice system.

While CSEA provides access to free representation in most labor and employment related disputes and, as a benefit to its members, also provides access to a discounted legal services plan, many of our

members would find hiring any private attorney to be a prohibitive cost. Many are eligible for free civil legal services. For example, a family of four with annual gross income of \$44,100 could well be eligible for free civil legal services. The average salary of a CSEA member is below \$40,000 a year.

CSEA is well aware of the many situations in which there are not enough civil legal services lawyers to provide much needed representation. Civil legal services providers are unable to meet the significant need for civil legal services with respect to domestic violence and family law, foreclosure and threatened homelessness, senior citizens needing representation to try to maintain an independent life and children with disabilities in need of special education services.

We are aware that CSEA members throughout the state have benefited from the limited legal services programs that exist now. Indeed, later this morning, the Court will hear from Dorothy Medina, a CSEA member who has been represented by The Legal Project in Albany, New York. A victim of domestic violence, Ms. Medina's story

symbolizes the importance of providing skilled legal representation to public employees in need of an empathetic and expert domestic violence lawyer.

Likewise, CSEA member Margaret Christian of Keeseville, New York was assisted by the Legal Aid Society of Northeastern New York with a public assistance budgeting issue. She called Legal Aid because her water and electricity were about to be disconnected and she had no food for her three children because of a delay in her autistic's son's SSI payment.

Ms. Christian works as a teacher's aide and does not get a paycheck in the summer months but is ineligible for food stamps because of the way her annual income is viewed. Legal Aid was able to get Ms. Christian an expedited retroactive payment within two days with which she was able to avoid the utility shut-off, buy food for the rest of the summer, catch up on her delinquent car payments and even purchase school supplies and some school clothes.

Likewise, Legal Aid has also represented Peggy Garrow (formerly Peggy Durgan), a school bus driver in a small town in upstate New York. Legal Aid was able to assist Ms. Garrow in obtaining a much needed and long awaited divorce. *Insert other client stories.*

These CSEA members are just some examples of the kinds of lower income workers throughout New York State who need access to these services. It is easy to see the individual harm that would have been suffered by Ms. Medina, Ms. Christian or Ms. Garrow if they had not been able to access legal services. Safety, stability, food, utilities, school clothes – these are the kinds of benefits legal services lawyers obtain for their clients.

The converse is true that where low income workers, such as many of our members, cannot access civil legal services due to resource limitations, both the individual and their local community suffer. These harms can and do include being injured or stalked by a batterer, being concerned about a disabled child unable to access needed educational

services; being caught in the maze that the public assistance system presents.

These harms are distracting and burdensome to any worker. The effect of absenteeism and lack of safety on the job cannot be underestimated. When our members have difficulty performing their jobs, all New Yorkers who count on their services suffer. As well, the stability of our members and their families cannot be discounted.

Public funding for civil legal services is totally consistent with the CSEA Mission of addressing worker needs. We stand for building worker solidarity by working with other unions on issues of common concern and by supporting the struggles of CSEA workers as well as other workers.

Indeed, several of the civil legal services providers in New York, including the Workers' Rights Law Center and MFY Legal Services advocate for workers' rights just as CSEA does. Many legal services providers also provide direct representation in unemployment insurance benefits appeals, of paramount importance during this recession.

CSEA also shares with many civil legal services providers a commitment to quality, affordable health care for all. Legal services lawyers and paralegals assist their clients in obtaining all the health care benefits for which they are eligible. Senior legal services are provided by a number of civil legal services providers throughout the state, and this resonates with CSEA's commitment to its retirees and to caring for the State's aging population in general.

Many legal services providers also serve as nursing home ombudsmen and provide protection and advocacy services for the developmentally disabled and the mentally ill. CSEA members provide direct care to both nursing home and developmentally disabled citizens throughout New York State and share the commitment to quality care being provided to all patients.

The CSEA Mission also resonates with legal services providers' commitment to make certain that language is not a barrier to lower income citizens getting access to programs and services. Because we, as a Union, also believe that CSEA can make a difference in our

community, we strongly support adequate funding for civil legal services in New York.

During the recent State budget crisis, CSEA recommended that cost saving measures be adopted by the State. Tough choices have to be made regarding priorities for State funds. Because the provision of civil legal services actually results in savings to New York State, it would be fiscally irresponsible not to support sufficient funding for access to civil legal services.

The basic necessities of life, shelter, sustenance, personal safety, health and child custody, must continue to be a priority in our democratic society. It is a disgrace that New York does not lead the northeast in providing state funding for civil legal services. We can and must do better. As a Union of almost 300,000 New York employees, we urge the Court to do all it can do to ensure adequate funding for civil legal services.

Thank you for this opportunity to speak to these points.

Michael Breslin
Albany County Executive



MICHAEL G. BRESLIN
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MICHAEL D. PERRIN
DEPUTY COUNTY EXECUTIVE

Third Department Hearing
October 5, 2010
Court of Appeals

Michael G. Breslin
Albany County Executive

Hearing Testimony Background and Summary

Michael Breslin has served as the Albany County Executive for 15 years. Mr. Breslin will speak to the importance of investing in civil legal services for local communities. He will share information from Albany County Department of Social Services regarding the cost effectiveness of legal services in Albany County with respect to homelessness prevention and disability advocacy representation.

His testimony will also demonstrate how civil legal services are a stabilizing force for local communities by helping families navigate difficult times and keeping them connected to the benefits and services they need. He will speak to the importance of generating income that stays within Albany County and the number of people employed by civil legal services in Albany County.



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MICHAEL D. PERRIN
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TESTIMONY OF

Michael G. Breslin
Albany County Executive

ON

Civil Legal Services in New York State

At the

Third Department Hearing

October 5, 2010

Good afternoon. I am Albany County Executive Michael Breslin. I am appearing in support of the need to continue the various civil legal services for the indigent.

I would like to begin by thanking Chief Judge Jonathan Lippman and the members of the hearing panel, Presiding Justice Anthony Carodona, Chief Administrative Judge Ann Pfau and New York State Bar Past President Kathryn Madigan. Thank you for conducting these hearings. There, of course, continues to be a crying need for indigent civil legal services.

We are fortunate and proud to have a number of exemplary civil legal services providers in Albany County:

- Legal Aid Society of Northeastern New York (LASNYY)
- The Legal Project of the Capital District Women's Bar Association
- Empire Justice Center
- Disability Advocates
- New York State Court-Appointed Special Advocates (CASA).

Nearly 100 people, including over 50 lawyers, are employed by these agencies, to provide life-changing legal services for low income residents of the Capital Region. These agencies are the conduit for the contribution of pro bono legal services by attorneys throughout the community. They provide civil legal services to low income individuals facing homelessness, eviction, mortgage foreclosure, domestic violence, older age and/or disability. They are advocates in Family Court for children involved in child welfare proceedings and provide community legal clinics where pro bono attorneys are available for individual consultations. They also provide training for attorneys to effectively represent domestic violence victims.

These critical services not only assist individuals through crisis, but they are also cost-effective.

Homeless Prevention

LASNYY is a key partner with the Albany County Department of Social Services to prevent evictions or forestall them to allow individuals to find alternate housing. This intervention not only prevents individuals from becoming homeless, but also saves significant taxpayer dollars by avoiding stays in publicly funded homeless shelters. For example, in 2009 the LASNYY prevented or forestalled evictions for 70 families and 27 individuals in Albany County, saving an estimated \$702,816 in publically funded shelter costs.

The current economic recession has created a dramatic increase in the need for civil legal services that are directly related to loss of employment and/or prolonged inability to secure gainful employment. More and more individuals in our community are at risk of losing their housing and becoming homeless. With increasing numbers of residents coming into the public benefits system for the first time due to the recession, legal services providers are able to help these newly eligible individuals figure out if they have been improperly denied services and efficiently address the problems they encounter.

There are considerable unmet needs that exist for legal services related to threatened evictions in Albany County.

- During 2008, 5,986 eviction petitions were filed in the Cities of Albany, Cohoes and Watervliet. Only 3-4% of the tenants involved were reported as being

represented by attorneys, while the majority of landlords were represented by attorneys (Albany-55%, Cohoes-71%, Watervliet-70%).

- During 2009, evictions were the primary cause for 262 families and single individuals to be placed in emergency shelters. The approximate cost to the Albany County Department of Social Services for these emergency shelter placements was \$1,613,886.

Social Security Disability Advocacy

LASNNY is also helps to maximize federal Social Security benefits through various programs, such as Disability Advocacy Program (DAP), HIV/AIDS funding and the Albany County SOAR Program (SSI/SSDI Outreach, Access and Recovery), an initiative that is designed to provide more intensive support up front with the initial application process.

For example:

- In Albany County, in 2009, LASNNY won 38 disability cases, generating \$419,544 in retroactive benefits for their clients. These benefits go directly to the client and are spent in the community to meet the needs of the disabled person.
- At a minimum, in 2009 a total of \$113,809 in interim assistance was secured for 26 individuals, which come directly back to Albany County to reimburse for temporary assistance provided for individuals during the period pending their receipt of SSI/SSDI benefits.

The unmet need for Social Security Disability advocacy and legal representation is significant. Nationally, only 37% of SSI/SSDI applicants are approved on initial application. While it is not known how many potentially eligible persons reside in Albany County, the following are indicative of the numbers of individuals who receive assistance through the Albany County Department of Social Services who are potentially eligible for SSI/SSDI:

- 118 adults currently in receipt of Temporary Assistance benefits are work-exempt due to being long term disabled;
- 250-300 persons annually are identified through the Medicaid disability review process, some portion of whom are potentially SSI-eligible
- Through an informal survey of providers of emergency and transitional shelter, it was reported that during the first quarter of 2009, approximately 212 persons, or 20% of homeless individuals and family heads of household in shelter, had a disabling condition, but were not in receipt of SSI/SSDI benefits

For many of the same reasons they are cost-effective, civil legal services are also a stabilizing force for our communities, helping families navigate difficult times, keeping them connected to the benefits and services they need. Civil legal services providers are community collaborators --- whether it is the local domestic violence coalition or the Albany County Coalition for the Homeless, legal services providers are leaders and active members in community coalitions to address the problems of domestic violence and homelessness.

Finally, for civil legal services to be successful, there must be a permanent source of stable funding for civil legal services. These services should be funded in a manner that provides sufficient dollars, flexibility and autonomy to allow providers to address emerging, local needs. The majority of revenues provided through State and federal sources are provided through

specific programs. As a result, agencies lack the flexibility to respond to emerging local needs that will negatively impact clientele without intervention. For example, if a major employer shuts-down or enacts significant lay-offs, the ability to rapidly intervene with legal services to assist impacted households to access needed benefits is critical as well as to retain permanent housing by preventing evictions and mortgage foreclosures. These actions significantly prevent households from entering into longer-term dependency or even homelessness.

Thank you for this opportunity to speak today.

Hon. Michael C. Conway

Nassau Town Court, Nassau Village Court

Hon. Michael C. Conway- Testimony- 10/5/2010

Panel- Judge Lippman
Justice Cardona
Justice Pfau
Ms. Madigan

My name is Michael Conway and I am the Village Justice in the Village of Nassau in Rensselaer County (a position I have had the privilege of holding for the past 8 years). I have also recently been appointed Town Justice in the Town of Nassau. I very much appreciate the opportunity to appear before this panel and to testify on this very important issue.

It is also my understanding that I will be the only Town & Village Justice in the State of New York to be testifying before you- in any of the Judicial Departments- and this is a great honor.

In addition to my experience as a Town and Village Justice, I have appeared, as an attorney, before many Town & Village Justices in this district and have had the opportunity to interact with many Town and Village Justices at our training sessions and various other Magistrate Association events. I like to think that as I appear before you, as the sole representative of the many Town and Village Court Justices in this State- that I stand upon the shoulders of some very qualified individuals, lawyers and non-lawyers, who care a great deal about the integrity of the courts where they sit.

During my tenure as a Justice, I have also had the privilege of sitting as an acting Justice in the City Courts in the Cities of Albany, Rensselaer, Troy and Hudson- as well as several other Towns in the Third District. As many of you know, the Third District stretches from Sullivan County on the Pennsylvania border to Rensselaer and Columbia Counties on the Vermont and Massachusetts borders- and within the seven counties in this district there are 129 Town and Village Courts- many of which are in very rural areas where access to legal representation can be quite limited.

As I indicated, I am from the Village of Nassau. The 2000 census indicates that the Village of Nassau (which is approximately one square mile in size & has one traffic light) has a population of about 1,200 people- and the Town has a population of about 5,000 people. In 2000 it was estimated that approximately 8% of these communities were below the poverty line- but it is anticipated that the 2010 census will demonstrate that that percentage will increase due to the recent economic downturn.

Based upon my experience, the Town and Village Justices in this State do not often encounter the same types of "high volume" issues like the Judges in the metropolitan areas of this state-

But that does not mean that the issues that we encounter in civil matters are any less important to the litigants-

And that does not mean that the impact of the absence of legal representation to indigent litigants is any less costly to our system- namely our ability, as Town and Village Justices, to ensure equal justice to the litigants.

Town and Village Justices in this District- and throughout this State- tend to have a great deal of pride in the Courts that they administer and they want unrepresented litigants to leave the system feeling as though they had a full and fair opportunity to be heard- in a timely manner- and that their concerns were given as much due consideration as those of their opposition- even if the other side was represented by counsel.

Every litigant matters to the Town and Village Justice- and we want every litigant to have a full and fair opportunity to explain their side.

But all too often we see, particularly in landlord/tenant matters, a disparity between the unrepresented, underprivileged (and sometimes uneducated- or even illiterate) tenants and the experienced, sophisticated landlord who has counsel available to assist them.

As we know, the RPAPL has some hyper-technical aspects- that even lawyers and judges (and appellate courts) wrestle with- and without representation the uneducated litigant is at an obvious disadvantage when attempting to demonstrate shortcomings- or demonstrate a potential basis for dismissal- which are some of the basic principles involved in defending a civil matter.

And with the perception of intimidation that comes with attempting to defend an eviction proceeding brought by the landlord and their lawyer- many unsophisticated, unrepresented litigants choose to avoid Court altogether- and take a default- when they otherwise may have been able to defeat the case- or perhaps expose weaknesses in the landlord's case to the point that they could have perhaps secured a more advantageous settlement.

Like many rural jurisdictions, in the Village of Nassau we have several low-income apartment buildings that cater to tenants who lack resources- and who have been hit hard by the current economic climate.

It is fairly common for us to see those tenants come into court in eviction matters and to leave, not just potentially with a result that could have been better for them if they were properly represented- but also- even if the result does not appear to have been affected by their lack of representation- feeling frustrated and bewildered by the system because they did not fully understand what was taking place around them.

As the panel is aware, the Town or Village Court is often the first contact or gatekeeper of our legal system- and with so many people having initial contact at this level (and perhaps the only contact that they may ever have with the legal system)- it is perhaps most important to maintain a sense of fairness- in considering the long-term perceptions of the integrity of the legal system.

A few years ago, in the Village of Nassau, I had a clerk start working with me- and much is said about the Judges role- but I want to talk for a minute about the role of the clerk- who is usually the first contact person in the court- this particular clerk had come to us after 20 years of working in the banking industry- more particularly in customer service in the banking industry.

When she started it was common for her to call me up and discuss how a tenant had come in because they were named as a respondent in an eviction matter and that she wanted to tell them that they could cross-claim- or that there were habitability issues that should be raised- or to focus on a viable legal defenses as opposed to coming into court and discussing otherwise irrelevant matters. And, of course, I would say "you can't do that" she would ask "why" and I would say that we can not give out legal advice--- and she would say that "that is not fair- because the other side had a lawyer and their papers are neatly prepared and say all of the right things- and that we ought to be able to even the playing field".

I would of course remind her that we have to remain impartial- that we can not compromise our neutrality- regardless of how that potentially impacts the results- again- even if the result of the litigation perhaps would not have been different if they had received representation.

Now, as you might anticipate, in these situations I would suggest to my clerk that we can advise the unrepresented litigant that they could hire an attorney--- and she would say that they "can not afford it"--- and then I would say then give them the usual materials.

As you most likely know- we are able to provide limited assistance in the form of these materials- but these materials, while quite informative, are no substitute for representation by an attorney who has gone to three years of law school and passed a bar exam- regardless of the attorney's skill level or experience.

As an attorney I frequently litigate medical malpractice matters. In so doing, I often spend a good deal of time "studying up" on the medicine- be that the diagnosis at issue or the procedure at issue- to the point that I am comfortable discussing that issue with the defendant physician in a deposition or at trial. But obtaining a basic level of knowledge about a medical procedure does not in any qualify me to perform a medical procedure upon a patient- or upon myself- but we are sending unrepresented litigants, who are often uneducated or even illiterate- into a complicated system- to represent themselves- with only a very basic understanding of the substantive and procedural law.

We can never ensure that every litigant- especially every losing litigant- will walk out of a Town or Village Courtroom feeling as though the issue was decided appropriately by the Court- there are often winners and losers in litigation- and the loser usually feels as though they received the short end of the stick- and we can not prevent a losing litigant from perhaps "blaming" the Court.

But we can endeavor to ensure that everyone is appropriately represented- and that everyone is given a fair opportunity to understand the legal issues that are present- with the assistance of counsel ---and that they do in fact have an opportunity to apply the facts at issue to the law, appropriately present evidence, appropriately call into question contrary evidence - and wind up with the timely adjudication of the legal dispute.

Eleanor Roosevelt said that "Justice can not be for one side- but must be for both". In a sense that seems overly obvious or self- evident--- But we are not upholding basic, fundamental principles like this when, in this modern society, civil litigants are left to wander through our Town and Village courts without representation and leave frustrated and bewildered by the experience because they never understood what was taking place or never had a fair opportunity to explain their side--- with the assistance of counsel.

Questions

Earl Eichelberger

Director for Catholic Charities

Earl Eichelberger, Director for Catholic Charities. NYS Catholic Conference, 465 State Street, Albany, NY 12203. (518) 434-6195. eichelberger@nyscatholic.org.

Mr. Eichelberger will testify regarding the need for legal counsel for the indigent in civil litigation matters and Catholic Charities observations regarding the need for such services.

Brief Bio: Earl Eichelberger has served in his current position at the NYS Catholic Conference for more than eight years. He works with the Catholic Charities Directors from the eight Roman Catholic Dioceses in New York State and advocates on their behalf with state government. He is a Social Worker by training and previously worked as Legislative Associate for NYC Council Speaker Peter Vallone, as a Member of the NYS Parole Board and as District Supervisor for the NYS Division for Youth.

**TESTIMONY OF THE NEW YORK STATE
CATHOLIC CONFERENCE**

**REGARDING RIGHT TO COUNSEL
IN CIVIL LITIGATION MATTERS**

**PRESENTED TO
TASK FORCE TO EXPAND ACCESS
TO CIVIL LEGAL SERVICES IN NEW YORK**

**BY
EARL EICHELBERGER
DIRECTOR FOR CATHOLIC CHARITIES**

**ALBANY, NEW YORK
OCTOBER 5, 2010**

Introduction

Good day! My name is Earl Eichelberger and I serve as the Director for Catholic Charities at the New York State Catholic Conference and Executive Secretary to the New York State Council of Catholic Charities Directors. The New York State Catholic Conference represents the Roman Catholic Bishops of the eight dioceses of New York State in matters of public policy. In the human services arena, the expertise, experience and advice of the Council of Catholic Charities Directors guides the Conference. The Catholic Church is the largest not-for-profit provider of education, health care and human services in the state. Catholic Charities programs exist in all eight dioceses to provide services to people in need. Our Catholic tradition compels us to be active participants in the civic life of our community, to fashion a more just world that upholds the dignity of every individual and to serve those in need. The needs of the poor and vulnerable must not be ignored. A key measure of any society is how the most vulnerable members are cared for; those with the greatest need require the greatest response.

Background

In 1917, recognizing the significant role of the Catholic Church's charitable efforts to serve the poor in our State, the New York State Legislature passed a Special Act formally incorporating Catholic Charities agencies in each of the eight Dioceses in New York State. In 2008 Catholic Charities in New York State provided total services valued at more than \$1.5 billion. We provided approximately 1.7 million services to more than 1 million persons of all faiths and all age categories. We provide services in each of the state's 62 counties, and have a long-term commitment to both inner-city and rural communities. Catholic Charities employs nearly 21,000 people, and utilizes the services of more than 17,000 volunteers. Clearly Catholic Charities' presence in New York State is extensive and important.

As the charitable human services arm of the Catholic Church, Catholic Charities works closely with the 1,500 parishes (with some 7.3 million parishioners) located in every community throughout the state. Parish communities are important resources in the delivery of emergency and community-building services. New Yorkers in need regularly come to Catholic parishes with requests for assistance when they feel they have no place else to turn, and the parishes are serving as the true safety net for these individuals and families.

Legal Representation for the Poor

The Catholic Conference for several years has lent its support to reform of the New York State public defender system and the establishment of an Independent Public Defense Commission to develop and oversee a statewide public defender system. Since 1965, each county in New York State and the City of New York have been required to provide public defender representation at local expense. This system has resulted in underfunded public defense, excessive caseloads and inadequate representation of the accused. In 2006, then-Chief Judge Judith Kaye appointed the Commission on the Future of Indigent Defense Services. This Commission conducted a comprehensive study of New York's public defense system, and recommended the establishment of a statewide, state-funded public defense system to be administered by an Independent Public Defense Commission. The proposed system would establish and enforce uniform standards statewide. The Legislature this year took the first steps toward reform in this area. The ensuring of adequate legal representation for indigent criminal defendants is necessary in actualizing our commitment to "justice for all."

Current state law provides a right to court-appointed counsel in only limited civil litigation matters, i.e. certain family or surrogate court cases dealing with child protective or custody cases. However, many indigent New Yorkers face other civil cases where the stakes are high. And unlike criminal defense representation, there is no Constitutional guarantee to a lawyer in civil litigation, which leaves many poor and low-income New Yorkers without needed legal representation in these cases.

Catholic Charities agencies in a few locations provide assistance with eviction and foreclosure avoidance. Much of that assistance is in the form of counseling and education. Often, though, the needs of a client exceed what we are able to offer. There are also occasions when an individual needs assistance regarding a disability determination or in dealing with situations involving domestic violence. Greater access to civil legal services can truly make a difference in what relevant information gets presented to the court, and therefore what determination the court reaches. The court system can be intimidating to a poor person seeking relief and a just outcome. The assistance of a trained lawyer can be extremely helpful in navigating a complex system and arriving at a fair result.

The outcome we should all desire in the resolution of any court case is that which is just. In order to accomplish this goal, we need a fairly level playing field. Representation for indigent persons in civil cases helps to ensure that one side is not at an unfair disadvantage.

Across the state Catholic Charities agencies works with other organizations to meet the needs of the poor and vulnerable. For example, in the Finger Lakes Region Catholic Charities of Steuben has worked closely with the Bath office of Legal Assistance of Western New York, Inc. to help meet the needs of low-income individuals and families in rural Steuben County. LawNY refers clients to Catholic Charities for the food pantry help and other emergency assistance, and Catholic Charities refers clients to LawNY for help with legal problems related to domestic violence, housing, and access to public benefits. For the past 8 years, Catholic Charities Steuben and LawNY have been partners, together with the Department of Social Services, in a project to reduce homelessness in Steuben County. Catholic Charities Steuben serves as the lead agency for this Homelessness Intervention/Supplemental Homelessness Intervention project, which is funded by the New York State Office of Temporary and Disability Assistance. As part of this project, Catholic Charities provides case management, support and other services that low-income clients need to obtain and maintain permanent housing. LawNY provides legal assistance and advocacy services to assist low-income individuals and families in defending against eviction or foreclosure. This combination of legal assistance and supportive case management services has proven to be very effective in helping low-income individuals and families avoid homelessness and work towards maintaining long-term housing stability. Unfortunately, in the most recent state budget, funding for this project was slashed, and it will result in a 58% reduction in resources for this critical project. This is just one example of the need that exists and attempts to address it that need to be bolstered.

Conclusion

We commend Chief Judge Jonathan Lippman and this Task Force for the commitment to work toward ensuring equal justice for all by expanding access to affordable legal representation for low-income New Yorkers in civil cases. It is our hope that the comprehensive approach that is being sought will be achieved in a timely manner. These are difficult economic times and it would be easy to say we can't afford to tackle this problem now. The axiom "justice delayed is justice denied" clearly applies. The basic human needs that are to be addressed in civil cases need the attention you are giving them. We at Catholic Charities have seen the problem statewide, and hope that in some small way we can contribute to the solution. We stand ready to work with you in achieving your laudable goals.

Thank you for this opportunity to share our thoughts.

Hon. Helena Heath-Roland

Albany City Court

Biography: Judge Helena Heath-Roland

Judge Helena Heath-Roland was appointed Albany City Court Judge on April 22, 2005 to fill a vacancy on that Court and became the first female of African descent to serve in this position in the City of Albany's 319 year history. She was then elected on November 8, 2005 to a full term of office. Judge Heath-Roland is primarily assigned to the Civil and Traffic Parts of City Court where she presides over trials and proceedings, including small claims and landlord/tenant cases. She also handles arraignments and other criminal matters in the Criminal Part of City Court.

Judge Heath-Roland graduated from New York University School of Law in 1987 where she was awarded the prestigious Root-Tilden-Snow Scholarship based upon her academic excellence and her commitment to public service. During law school, she pursued her interest in becoming a public service attorney by working for the Legal Aid Society, Juvenile Rights Division, and volunteering to assist at risk youth secure summer employment.

Judge Heath-Roland has 22 years of public service legal experience. Before getting on the bench, she served as a Court Attorney at the New York Court of Appeals, the highest level court in the State, an Assistant Attorney General in the litigation bureau of the New York State Department of Law, an Assistant Counsel to the New York State Department of Economic Development, and a Senior Counsel for the New York State Assembly Speaker.

Judge Heath-Roland is currently the Co-Chair of the Diversity and Gender Fairness Committee of the Capital District Women's Bar Association and Co-Chair of the Youth and Law Committee of the Capital District Black and Hispanic Bar Association. She has coordinated programs for the past eleven years with Albany Law School to expose female and minority law students to a variety of career paths, share keys to becoming a successful lawyer, and explore how female and minority attorneys can overcome gender and racial barriers in the legal profession.

Judge Heath-Roland serves as Chair of the Advisory Committee for the Albany County Family Court Children's Center to ensure that children are cared for in a safe and nurturing environment while their families take care of court business. She is also a mentor to young students participating in the Albany NAACP's Rosa Parks Literacy Education Academy reading and writing program.

Judge Heath-Roland is married to Albany native Baryon Roland. Their son Christopher is a 2009 graduate of the University of Pennsylvania, Wharton School of Business.

September 29, 2010

SUMMARY OF TESTIMONY OF HON. HELENA HEATH-ROLAND
TO BE PRESENTED AT OCTOBER 5, 2010 HEARING ON
ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK STATE

I. Perspectives of an Albany City Court Judge:

- **Type of cases where lack of representation is most severe**
 - Landlord/tenant proceedings; Small Claims actions; Civil actions for credit card debt
- **Statistics on percentages of attorney representation**
 - Specific to Landlord/Tenant cases primarily
- **Impact of no attorney representation on Court proceedings/trials, Clerk's office staff work, litigants**
 - Increased time spent on calendar calls, trials/proceedings, and staff assistance with filing of papers
 - Increased problems with pro se litigants' formulation of legally cognizable claims, ability to advocate effectively orally, defaults for failures to appear, and with settling of cases

II. Proposed steps to address problems associated with lack of attorney representation:

- **Training of Judges and Clerk's Office staff on how to effectively communicate with pro se litigants**
 - Using layman terms, providing clear directions and assistance without giving legal advice, increasing sensitivity to the challenges pro se litigants face
- **Providing concise and effective written handbook instructions on court processes and proceedings**
- **Increasing the number of legal services and non profit advocates for poor and under represented litigants**

TESTIMONY OF
Hon. Helena Heath-Roland
Judge, Albany City Court

To the

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

Good Morning. My name is Helena Heath-Roland and I have served as a Judge in Albany City Court since 2005. I want to thank Chief Judge Lippman, Chief Administrative Judge Pfau, Deputy Chief Administrative Judge Fisher, and Presiding Justice Cardona for the opportunity to present testimony to this Task Force.

I applaud the Chief Judge for his leadership in identifying and trying to meet the substantial need for increased funding for civil legal services in New York State.

Albany City Court is an extremely busy court. In the Civil and Traffic Parts, where I primarily preside, a substantial number of litigants come before the Court without legal representation. I see many low income litigants in various types of proceedings, particularly in residential housing eviction matters. The other types of cases where litigants are usually pro se are credit card debt and small claims matters.

The focus of my testimony today will be on how the lack of attorney representation in Landlord/Tenant summary proceedings impacts litigants and the Court. The petitioners in these proceedings are primarily the Albany Housing Authority and private landlords. To give you a flavor of the case volume we handle, in 2009, 4454 summary proceedings were filed in City Court involving non-Albany Housing Authority matters. That number represents a slight increase in such filings from the prior three years.

Albany City Court does a combined Civil Part calendar for small claims and Landlord/Tenant cases every morning Monday through Friday. Within the hour and a half allotted for those calendared matters, there is often upwards of 25 summary proceedings coming in for first appearances. Those daily calendared proceedings are commenced primarily by private landlords. There is attorney representation for private landlords in approximately 50% of these cases. Through counsel, the Albany Housing Authority commences hundreds of summary

proceedings each year, which are separately calendared once each month for court appearances and once each month for trials.

The number of unrepresented tenants, usually low income, is particularly acute in eviction cases. In looking at data for year 2008 and for this last quarter in 2010, approximately 5% of tenants in non-Albany Housing Authority summary proceedings were represented in these matters. For the Albany Housing Authority cases during the same time period, it was even less; approximately 1 to 2 % of the tenants had lawyers, who are attorneys primarily from the Legal Aid Society of Northeastern New York.

The decisions that the Court makes most often during first appearances in these proceedings involve whether an eviction is warranted, and if so, how much time to move will the tenant be allowed, or whether there is a basis to approve a negotiated settlement agreement usually involving payment of rent by specified time periods. The involvement of attorneys positively impacts the outcomes of these proceedings and leads to better results. When an unrepresented low income tenant is facing eviction from an Albany Housing Authority residence, for example, that person usually stands to lose their one chance of retaining affordable housing in the City of Albany. Legal advocacy is obviously very significant in housing cases.

My Court generally schedules four trials each day for summary proceedings or small claims cases. Eviction cases coming in on first appearances are slowed down when there is no legal representation of the parties or if only one attorney is present. Specifically, the lack of representation impacts the litigants and the Court processes in the following manner:

- the increased amount of time the Judge spends explaining the court process and giving direction to an unrepresented litigant often extends the morning calendar, which in turn delays

the beginning of the 10:30 AM trial that is regularly scheduled to begin after the 9 AM calendar call;

- warrants of eviction on default are issued frequently due to a tenant's failure to appear in court. There may be emergency medical or family reasons why a tenant did not show up to Court, but an unrepresented litigant does not have the benefit of an attorney to make a good cause showing for the tenant's absence;

- Defaults by unrepresented tenants lead to an increased number of Order to Show Cause applications submitted to the Court. Clerk's Office staff and the Court Attorneys at my Court spend a great deal of time assisting pro se litigants in the filing of these applications and other court documentation. In response to the high volume of such applications, my Court Attorney developed an Order to Show Cause application form for use by pro se litigants;

- Without the benefit of counsel, some cases that are ripe for settlement do not get resolved because the litigants do not fully appreciate the pros and cons of settling the case, nor do they fully understand the weaknesses and strengths of their cases in assessing whether to take a case to trial; and

- When a summary proceeding goes to trial or hearing, pro se tenants often have difficulty fashioning legally cognizable defenses, presenting evidence, and effectively arguing their case.

As a judge presiding over summary proceedings where a person's housing is on the line, I am faced with the challenge of not overstepping the line of providing legal assistance to a litigant, but at the same time finding it necessary to be probing and ask more questions in the absence of counsel so I can ascertain relevant and necessary facts to reach my determination.

Finally, I note that my Court has the great benefit of having non-lawyer advocates who assist tenants in the settlement process and other stages of proceedings. Too often, however, these advocates are put in a position of being asked to give legal advice due to the overwhelming lack of legal representation for those tenants. Having these advocates working side by side with lawyers would be ideal.

Competent legal representation for all litigants enables judges to more efficiently handle busy court calendars and administer justice fairly and decisively. I hope that the work of this Task Force will result in greater resources and legal representation for civil litigants in New York State.

If I can provide you with any additional information and assistance, please do not hesitate to contact me. Thank you.

Kate Hogan

District Attorney of Warren County

Immediate Past President and Chairperson of the Board of Directors
of the District Attorneys' Association of the State of New York.

Kate Hogan is the Warren County District Attorney. After graduating from Washington and Lee University Law School, she began her legal career as an Assistant District Attorney in Brooklyn, where she specialized in trial work and prosecuted murders, rapes and serious felony cases. Kate left Brooklyn to return to home and entered into private practice but soon returned to prosecution though, taking a position with the New York Prosecutors Training Institute. There, she worked on death penalty cases and helped train prosecutors statewide.

In 2000, she accepted a position as an Assistant District Attorney in Warren County. In 2001, Kate was elected Warren County District Attorney, becoming the first woman to hold that position. She currently is serving her third term. As District Attorney, Kate has tried a number of high profile cases, created a child advocacy center that was completely grant funded and helped implement the Warren County Treatment Court.

Kate just completed serving as the President of the District Attorneys Association. In that capacity, she successfully advocated for the passage of Leandra's Law, Jack Shea's Law and the implementation of a strangulation statute. She currently serves as Chairman of the Board of Directors of the District Attorneys Association and is continuing to advocate for new legislation to permit more comprehensive prosecution of child abuse.

Kate currently serves on Chief Judge Lippman's Justice Task Force and has served on Chief Judge Kaye's Commission on the Jury. She serves on the Children's Justice Task Force. She also served on the New York State Arson Board. In April 2007, the United States Attorney's Office for the Northern District of New York awarded her their Spirit of Justice Award for her work on behalf of victims of crime.

TESTIMONY OF
Kathleen B. Hogan
Warren County District Attorney

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

My name is Kate Hogan, and I am the District Attorney for Warren County. I have served in that capacity since 2001. I also am the immediate Past President and Chair of the Board of Directors of the District Attorneys Association of New York State. I am privileged to offer testimony in support of this Task Force's efforts to provide more stable and increased state funding to increase access to civil legal services in New York.

As Past President of the District Attorneys Association of New York State, I have become familiar with domestic violence community coordination efforts not only in Warren County but throughout the state. As a public servant I must also carry out my responsibilities in a fiscally responsible manner. Having recognized the variety of challenges facing crime victims, it is critical that we work together with other community organizations to provide assistance. In Warren County, our Domestic Violence Community Coordination Council (DVCCC) is a highly respected and very effective rural domestic violence coalition. Led by the Domestic Violence Program of Catholic Charities of Saratoga, Warren and Washington Counties, the DVCCC has flourished for many years. The Legal Aid Society of Northeastern New York (LASNNY) has been an invaluable partner in our community coordination efforts.

The participation of Legal Aid Society staff attorneys in the activities of the DVCCC has been essential to Warren County's most effective community coordination efforts. LASNNY attorneys work closely with Catholic Charities, members of my staff and local law enforcement to ensure that Warren County responds effectively and smoothly to a victim of domestic violence. Efforts to coordinate the civil and criminal remedies with the lay support system available to victims and survivors has made us particularly effective in serving the needs of the victims and has been cost effective as well.

For example, the Legal Aid Society recently assisted a woman in family court get sole legal and physical custody and an order of protection after her boyfriend bit her ear and abused her. DVCCC also assisted her with getting services from the Legal Aid Society and helped her go to court. Similarly, Legal Aid recently assisted another victim in getting an order of protection against her abusive boyfriend who also faced criminal charges of unlawful imprisonment.

I know that the participation of legal services attorneys in local domestic violence coalitions throughout the state is equally important in rural, suburban and urban areas alike. On behalf of myself and district attorneys throughout the state, I applaud your efforts to ensure adequate funding for civil legal services. When domestic violence victims cannot receive representation by a skilled and empathetic public interest or legal services lawyer, and when local community coalitions are deprived of their invaluable participation, the whole community suffers.

As a District Attorney, I am also concerned that the lack of adequate counsel in civil matters hampers the efficiency of the entire court system. I am very familiar with the delays and confusion dealing with a pro se litigant. Courtroom efficiency is enhanced and accurate results are more likely when both sides of a matter have counsel.

In our system people accused of and convicted of crimes are provided with counsel, food and shelter. This is understandable, because their freedom is at stake. It is ironic, however, that our justice system ensures that many criminals receive free counsel while a woman and her child who have been battered by their intimate partner, a family at risk of losing their home due to foreclosure or unwarranted eviction, or a disabled worker who can no longer work, have no

similar guarantee of competent counsel. The average law abiding citizen is not provided with access to counsel when the very basic necessities of food, shelter, education, and health care are at stake. This disparity must be remedied so that those of us who live peacefully together in our communities are afforded the same resources when the basic necessities of life are at stake. We need more adequate funding for civil legal services regardless of the downturn or upticks in the economy. Only permanent stable funding can ensure adequate legal services for low income New Yorkers.

Thank you for taking the lead on this important issue. If I can provide you with any additional information, please do not hesitate to contact me.

Denis M. Hughes

President, New York State AFL-CIO

NYS AFL-CIO Officers

Denis Hughes - President



Denis M. Hughes, President of the 2.5 million member New York State AFL-CIO, became a union member at the age of 16 when he joined the Retail Clerks Union.

In 1968, Mr. Hughes became a member of Local Union No. 3 of the International Brotherhood of Electrical Workers. In 1975 he completed his apprenticeship and became an "A" journeyman electrician.

In 1985 Mr. Hughes joined the New York State AFL-CIO staff as Political Director and Assistant to the President. In February, 1990 he was appointed to the position of Executive Assistant to the President. In this capacity, Mr. Hughes was responsible for the coordination of the COPE and Legislative programs as well as the overall policy and development of the staff departments within the State Federation.

On March 23, 1999 Denis Hughes was elected President of the New York State AFL-CIO. He was subsequently re-elected to four year terms in August, 2000, August, 2004 and August 2008.

As President of the New York State AFL-CIO, Mr. Hughes has made creating a more mobile, active and aggressive statewide labor movement a top priority. He has set a tone for organizing new members into the movement and has led the way in developing proactive legislative and political statewide strategy.

Under his leadership, in 2007 the New York State AFL-CIO engineered the passage of historic legislation, reforming the state's workers' compensation system. As a result, for the first time in state history, workers' compensation benefits are now indexed to 2/3 of the average weekly wage, thus insuring that injured workers will never again have to bargain for a benefits increase.

President Hughes has been successful in helping to pass historic legislation that provides farm workers a minimum wage equal to that of all other workers in the state, as well as leading labor's efforts to secure Pension COLA legislation that will help New York's public sector workers live their retirement years in dignity.

In addition, historic "card check" legislation was passed that recognizes union designation by showing a majority interest through card check. This groundbreaking legislation speeds up the recognition process for those employees whose bargaining rights fall within the jurisdiction of the State Employee Relations Board.

In another legislative organizing victory, in 2002 President Hughes led a successful statewide effort to pass legislation that prohibits public employers and state contractors from using state funds to deter union organizing. In 2001, President Hughes led the way for New York State to become the first state in the country to adopt and implement the New Alliance. This historic restructuring initiative consolidates the economic, political and legislative force of the labor movement. The New Alliance allows the labor movement to better utilize its resources in order to secure progressive legislation and help labor supported candidates gain victory on Election Day.

Under President Hughes' leadership, the New York State AFL-CIO formed the state federation's Arts and Entertainment Industry Committee in 2000. The committee was formed as a result of organized labor's coordinated efforts to help resolve the SAG/AFTRA commercials strike that same year. The committee's purpose is to join together unions from across the spectrum of the entertainment industry in New York, and to work cooperatively on issues of shared interest and concern. Over the years, the committee has

been instrumental in showing a united front on numerous contract negotiations and legislative lobbying efforts including securing tax credits that helped to sustain the industry.

Following the September 11th tragedy, President Hughes coordinated labor's successful efforts to secure \$20 Billion in federal funding to help rebuild New York City and New York State.

President Hughes currently serves on Cornell University's Board of Trustees and serves as a member of the university's Standing Committee on Governmental Relations as well as the Standing Committee on Alumni Affairs and Development.

In 2008, President Hughes was appointed to a three year term as a Commissioner of the New York State Insurance Fund.

In October of 2008, President Hughes was appointed to the New York State Commission on State Asset Maximization, which was established under Governor Paterson to examine the role of public-private partnerships in the long-term economic growth of New York State.

Also in 2008, Brother Hughes was appointed by the Governor to serve as a Board Member of the New York State Racing Association.

In 2004, Brother Hughes was appointed to the Board of Directors of the Federal Reserve Bank of New York. On August 24, 2009, Brother Hughes was designated chairman of the Federal Reserve Bank of New York's Board of Directors.

Denis Hughes is a graduate of the Empire State College, with a Bachelor of Science Degree in Labor and Industrial Relations.

TESTIMONY OF
The New York State AFL-CIO

On

**IMPACT OF THE UNMET CIVIL LEGAL SERVICES
NEEDS THROUGHOUT NEW YORK STATE**

Presented before:

Hon. Jonathan Lippman, Chief Judge of the State of New York
Hon. Cardona, Presiding Justice of the Third Department
Hon. Ann Pfau, Chief Administrative Judge
Katheryne Grant Madigan, Past President of NYS Bar Association

Presented by:

Denis Hughes
President
New York State AFL –CIO

October 5, 2010

Good morning. My name is Denis Hughes. I am the President of the 2.5 million member New York State AFL-CIO.

I would like to extend my thanks to Judge Lippman and to today's panel for the opportunity to present my point of view on this most important and urgent matter.

My organization represents working men and women from every sector of our workforce. Our members are the backbone of every city, town, neighborhood and community in our state. As such, we are acutely aware of the effects political, social and economic policies have on the everyday lives of working people.

It is my belief that the unmet civil legal service needs throughout this state can be traced directly to public policy decisions carried out over the last three decades.

These policies have greatly influenced the lives of our members, and have negatively impacted the lives of those men and women who need these services the most.

From 1980 to the present, an anti-union, anti-collective bargaining perspective has led to an increase in exports and outsourcing, resulting in massive job loss across the country.

As a result of diminished competition, most remaining businesses have latched onto a race to the bottom mentality. Lower wages, reduced health care and defined contribution (rather than defined benefit) pensions have become the norm.

While this strategy may result in short term gains for those employers, the economy as a whole falters. While corporate profits may rise, workers have less money in their pockets to spend. As such, small businesses suffer as a result of fewer customers. The municipal and state tax base decreases as sales drop off.

When these policies fail, we end up with a low wage, high debt society. With less money to spend, people rely on borrowed money. So there is more credit card debt and an increase in home equity loans. As people go deeper into debt, it becomes increasingly more difficult to get out. They lose their homes, their assets, and have nothing in the back to fall back on.

In contrast, public policy from the 1950's through the 1970's centered on a high wage strategy. People were able to save, and as a result were able to purchase necessities, as well as a few luxuries. They had disposable income.

The fact is, most people who participate in this economy don't participate as investors, they participate as consumers. So when consumers have less money to spend, the economy ultimately collapses.

That theory has withstood the test of time, as we are currently in the midst of the greatest economic downturn in memory. We have seen the residual effects of shortsighted public policy decisions through double digit unemployment rates, throughout all sectors of our workforce. Public sector, private sector, service sector, building trades; no one has been immune to the ravages of this recession. We have seen across the board job loss in our state, from Buffalo to Brooklyn.

That is why equal access to justice is so important to the organized labor movement. While there is little to no equality in the everyday lives of working men and women, the justice system is built on equality, fairness and respect of the individual.

Civil legal services are vital to all New Yorkers, but particularly those hit hardest by this economic downturn. Those most in need have nowhere else to turn.

At a time of great economic and social distress, the services provided by

civil legal services workers are more vital than ever before.
That is why I respectfully urge that the judiciary create a consistent,
adequate source of funding for civil legal services.

Thank you.

Anne E. Knapp

Client of Empire Justice Center

Biography of Anne E. Knapp

I am a 48 year-old mother of five: three biological children ages 19, 14 and 10. My husband and I are also in the process of adopting a 6 year old from Haiti with us on Humanitarian Parole since 1/25/10. We have also initiated the adoption process with the young man about whom I will be testifying, seventeen year-old, Ronald Vertilus. I am a teacher with Millbrook Central Schools where I have taught English for 24 years. My husband and I own a beef, horse and goat farm in Ghent, NY where my husband of 15 years, Daniel Knapp, farms as well as works as an arborist.

ANNE E. KNAPP
34 WATER STREET
GHENT, NY 12075
(518)392-3446

September 24, 2010

Greetings Chief Judge Lippman and Members of The Task Force to Expand
Access to Civil Legal Services in New York,

Thank you for allowing me the opportunity to address you on such a personal and important topic. I appear here today with a new member of our family, seventeen-year-old, Ronald Vertilus. Ronald joined us in May of this year when the family who was adopting him encountered personal difficulties making it impossible for them to complete his adoption process. They turned to friends and family in their search for a home for him and were approaching the point of institutional placement as a final alternative when we agreed to have Ronald come to live with us.

Perhaps a bit of history will help you to understand Ronald's plight and the important role the Empire Justice Center has played in it. When Ronald was 11, Joseph Vertilus, Ronald's father, a poor farmer from a remote province in Haiti, discovered his son was dying. Joseph went to great effort to get his son to HIS Home for Children, an American orphanage in Port-au-Prince, Haiti. The nurse who runs that facility arranged for a visiting cardiologist to examine Ronald. The diagnosis was Cardiac Mitral Valve failure, a condition that, without surgery, would be fatal. As quickly as was possible, arrangements were made to get Ronald to the United States for emergency Mitral Valve Replacement Surgery; without it, he would have died within months. After his recuperation here in the States for a year, Ronald's host family decided to adopt him. As this process was not complete by the time his Medical Visa expired, Ronald had to return to the orphanage.

Sadly, about 18 months later, Ronald's repaired valve failed and a second emergency surgery became necessary. By the time all paperwork was approved and Ronald could be transported back to Albany Med., the site of his original surgery, he had double pneumonia as well as congenital heart failure and had little prospect for survival. Thank the Lord, Ronald survived and underwent surgery once again for Mitral Valve Replacement in the summer of '09. Last winter, after a successful recuperation period, Ronald's medical visa expired. At this point the adoptive family searched in vain for legal assistance to secure a Visa for Ronald to remain in the United States as a return to Haiti without access to cardiac care and necessary prescriptions would be life-threatening for him.

Despite having completed four international adoptions, this family could not find any information regarding assistance for a child in Ronald's

circumstance. Then, as we all know, tragedy struck Haiti in the form of earthquake. Had a return to Port-au-Prince been hazardous before, it certainly would be fatal for Ronald now. Again, the family searched for help. In so doing, after MANY calls to Homeland Security, they were incorrectly informed that Ronald would qualify for Humanitarian Parole. In fact, on January 25 the family received an erroneous call from USCIS stating that Ronald had, in fact, been granted Humanitarian Parole. A few weeks later, after many more calls searching for paperwork to prove this, the family discovered this was not the case. At this point they did not know where to turn. In desperation they contacted a private attorney and were told of something called Temporary Protective Status. This attorney would charge in excess of \$2000 to complete this process for Ronald; an impossibility for the family.

At about this time, late May of this year, Ronald came to live with us. I immediately called the attorney who had told his previous family about TPS. Not only was I told that the attorney was not taking any new clients, but that the application deadline for TPS was in mid July. I then did some online research and I must confess, despite a Masters degree in English, I could not comprehend what would be necessary to secure TPS for Ronald. I then made numerous calls to several state and federal offices searching for clues. I must tell you that not only was I given conflicting information, but in some cases, time wasting rabbit trails to follow. Finally, I was given the name of a private attorney who might be able to help us. When I contacted her office and was told of the fee schedule I was horrified. With one child in college, having just brought home the six-year-old we had been in the expensive process of adopting from Haiti on Humanitarian Parole, and two other children to support for a total of 5 on a teacher and a farmer's income, this figure was an impossibility. Hard though it is to admit, I broke down on the phone and sobbed out a plea for someone to help Ronald. The receptionist took pity on me and said she would try to find out if there was any way to help us. She later called back with the name and contact information for the Empire Justice Center where I connected with Barbara Weiner. Ms. Weiner was God-sent. She worked with us and in the course of one afternoon, not only applied for TPS for Ronald, but helped point us in the right direction for Medicaid and told us of the possibility for a permanent VISA process. As promised, she found an attorney we can afford and who informed us that not only can we apply for such a visa and she is willing to help us, but that we can, in fact, adopt Ronald (a fact we were unaware of as we were told he was too old for a legal adoption).

Quite frankly, I don't know where we would be without the help of Barbara and the Empire Justice Center. I know the Lord has brought Ronald and my entire family down this path for a very good reason, but we would be lost without the guidance this office offers. I can only imagine if understanding this complicated process and finding this office was difficult for me, how hard it must be for foreign visitors who do not have the advocates that Ronald does.

Christopher Layo

Client of Legal Aid Society's Canton office

Chris Layo's Bio.

My name is Chris Layo. I'm a disabled 25-year-old college student with Duchenne Muscular Dystrophy, which is a muscle wasting condition that left me wheelchair bound and totally dependent on 24 hour care. I have been living in my own apartment with 24-hour care since the age of 19, through the Consumer Directed Personal Assistant Program (CDPAP). This vital program allows me to manage my care, by hiring, training, and supervising my own personal care aides. This program is essential because it gives me a lot of independence, and allows me live a fairly normal life in my community. As of now I go to college at SUNY Potsdam where I'm a junior working toward a double major in communications and creative writing. I want to become a public speaker and a writer that deals with disability issues. My life experiences have made me into a strong disability advocate for myself and others. I try not to let my disability keep me down, and I try to live my life to the fullest.

Here are some of my accomplishments:

-In August 2004 I became the first disabled person ever to live on SUNY Potsdam campus that required 24-hour care, after a lengthy battle, with housing, and other campus agencies.

-In 2008 I successfully fought and won a case with the help of Legal Aid Society of Northeastern N.Y. against the Department of Health. This happened when they said that personal care aides could no longer transport consumers places with the consumers own vehicles, leaving those in rural areas stranded in their homes. Winning this case resulted in me getting an award for my work from the Consumer Directed Personal Assistance Association of New York State.

-I serve on the Consumer Directed Personal Assistant Program board.

-I routinely do public speaking for organizations, churches, classes, and on advocacy.

-This year I wrote a paper that allowed me to win the Eva Straight-Dean scholarship, which was a real honor because it recognized all my hard work.

Summary of testimony by Chris Layo

My testimony will focus on the importance of having legal services available in rural areas, such as the area I'm from, St. Lawrence County in Upstate N.Y. I will explain this importance through my personal experience with legal services provided by Cynthia Eyler my attorney through The Legal Aid Society of Northeastern New York. I will point out how my experience with legal services has been beneficial. I'll make a point on how detrimental it would have been to my life if I had not found legal assistance, and what I would have did if I found myself in this fictional position. I will make sure it's understood that legal services has had a long ranging impact on my life even as of today. In my closing remarks I'll show how my geographic isolation is a great factor in why it's very important to have legal services offices and attorneys available locally in rural areas. I'll conclude with some recommendations on how legal services could be improved upon in rural areas.

Testimony

Hello my name is Chris Layo. I came from Norfolk, New York a small town in St. Lawrence County. I rode here for four and a half hours just to explain the importance of having legal services available in rural areas. I'll explain this importance through my personal experience with legal services provided by Cynthia Eyler my attorney through the Legal Aid Society of Northeastern New York.

In 2008 I needed the assistance of legal services for a case against the Department of Health. The D.O.H. would no longer allow my Personal Care Aides to drive me in my own vehicle anywhere. Having your own vehicle is a **must** to have access to the community in my rural area. After over six months of fighting, my attorney and I were able to win back my right.

My experience with legal services during the case has been beneficial in three main ways. The first way is that their services are free. This free legal representation was a godsend in my situation because I couldn't afford legal representation with my fixed income. The second way is in how I was treated. I was treated with the utmost respect and dignity. When I had to sign paperwork my attorney made the 30 minute ride out to my apartment because I couldn't get a ride to her office. The final and biggest benefit was that my attorney and legal services really worked hard and produced winning results in a case that if left unaided, would have ruined my life.

If I didn't find legal assistance it would have been very detrimental. My life would have been forever altered; I wouldn't have the freedom to go do the things I need to do in my community. This would have led me to be depressed because I would have been stuck in my home. Also I'd be frustrated because there'd be nothing I could do about it, and inconvenienced because I couldn't get even the most basic tasks done such as grocery shopping. You may ask what I would have done if I couldn't get legal assistance, and the answer to that is I couldn't do anything. When it comes to laws, courts, and government you cannot do anything unless you have a lawyer. My case would have never got the attention it needed, and I would still be a prisoner in my home if I didn't find legal representation.

The case that legal services won for me had a long ranging impact on my life that continues even today. Every time I have my personal care aide take me somewhere I am reminded of what legal services has done for me. I also feel a sense of liberation; that we made a difference, because what we won wasn't just for me, it applied to anybody in my situation in the state. I am forever grateful for what they were able to do, because nobody should have to be a prisoner in their own home, especially in an area lacking decent public transportation.

In closing I want to explain that geographic isolation is one of the greatest factors of why it's very important to have legal services offices available locally in rural areas. Where I'm from we are about two hours away from Watertown and Plattsburgh. That's a long haul for most people. It would be bad to take away legal services in my area, because it's a low income area. If

somebody can't afford a lawyer they probably can't afford to travel. If they are disabled they might not have the money or ability to travel. At least by having offices in the local area people may have less trouble getting to them. If needed the attorneys are within driving distance of clients.

In conclusion I want to leave you with one recommendation on how legal services could be improved upon in my rural area. It has become apparent to me that an increase of funding would greatly help. In my neck of the woods there are few jobs and a lot of low income households, that can't afford legal representation. They have legal issues and need legal representation from legal services. Legal services can't seem to keep up with the need; therefore some people wait and suffer. So extra funding could end up helping many more people that are waiting for legal representation. Thank you for your time.

Legal Aid *matters*

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, Schoharie, Warren and Washington Counties, and the St. Regis Reservation.

executive director

Lillian M. Moy

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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,

continues on page 7

Celebrating Pro Bono

Dear Friends:

I'm delighted to report that the Legal Aid Society of Northeastern New York celebrated pro bono during National Celebrate Pro Bono Week the last week of October throughout northeastern New York. The kick-off celebration at the Court of Appeals on Friday, October 23 featured remarks from the Honorable Jonathan Lippman, Stephen Younger, President-Elect of the New York State Bar Association, David Miranda, President of the Albany County Bar Association, Dan Hurteau of Nixon Peabody, an ardent PAI volunteer, and Dorothea Medina, a client of The Legal Project. Each and every speaker was superb.

It was heartening to hear Judge Lippman and others call for recognition of the \$15 million needed to "bail out" the IOLA Fund for 2010. Only with an infusion of funds can the IOLA Fund maintain support for legal services programs in the Capital District and throughout New

York State. And Dan Hurteau's Top 11 reasons to do pro bono can be found later in this newsletter.

The week that followed was terrific. The Legal Aid Society and the Albany County Bar Association staffed clinics open to the public offering free consultations with bankruptcy attorneys (Guy Criscione, Christian Dribush, Martin Mooney and Scott Dillon). The Albany County Bar Association volunteers (James Barnes, Paul Czech and Laura Hoffman) provided free advice on wills and estate planning. In Canton, the St. Lawrence County Bar Association worked with Legal Aid to offer free Ask-A-Lawyer Clinics at the local courthouse. Jondavid DeLong and Jerry Leek volunteered.

We finished the week with a wonderful celebration hosted by the Schenectady County judiciary and the Schenectady County Bar Association, honoring Legal Aid Society Board member Ellie DeCoursey and former Legal Aid Society Board President, Peter Coffey, for their stalwart pro bono efforts.

Thanks to the New York State Bar Association, the Honorable George Ceresia, the Honorable Vito Caruso, Regina Treffiletti, Erika Hanks and Joanne Haelen for making our programs possible. This week highlighted the importance of pro bono services to our clients and communities. If you haven't done a pro bono case in the last year, please call me at 518-689-6304 or shoot me an email at lmoy@lasnny.org to let me know what type of case you would like us to send you.

In 2010 the Society's IOLA grant will drop by almost \$500,000. For Legal Aid it's a double whammy as we also lost a significant federal grant that supported our rural Domestic Violence Legal Assistance Project. We

FROM THE *executive director*



will no longer be able to provide the full range of civil legal remedies to victims of domestic violence in our most rural counties. We are reminded, yet again, how fragile government funding can be.

Although we have been fortunate to receive some stimulus funding, we rely on you to build our annual Justice For All Campaign so that the provision of civil legal services will not vary according to government funding or a downturn in the economy. I know that this is a challenging year for everyone and ask that you join the leaders of the legal community to make giving to the Legal Aid Society your top priority.

Best wishes to you and yours for the year to come.

Client Programs:

Children's Law Project
Community Legal Education and Training
Disability Advocacy Project
Domestic Violence Legal Assistance Project
ECHO Project
Foreclosure Prevention Project
HIV/AIDS Legal Consortium
Homelessness Intervention Project
Homeless Prevention and Rehousing Project
Legal Aid Society Homelessness Project
Nutrition Outreach & Education
Protection & Advocacy for the Developmentally Disabled
Protection & Advocacy for the Mentally Ill
Saratoga Springs Homelessness Prevention Program
Senior Legal Services Program
Upstate New York Immigration Law Project

Volunteer & Donor Programs:

Java and Justice
Justice for All Campaign, Annual Appeal
Law Day Celebration
Legal Aid Endowment Fund
Private Attorney Involvement Program (PAI)

Legal Aid *matters*

January 2010

A regular bulletin published by the Legal Aid Society of Northeastern New York, Inc.

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(518) 587-5188, (800) 870-8343

Top 11 Reasons To Do Pro Bono

11. **Professional and Ethical Obligation** — as licensed professionals we all have an obligation to serve those in our communities that are underserved and underprivileged.
10. **Improves Job Satisfaction** — all involved in the practice of law, staff, paralegals and lawyers alike, want to feel that they are part of something more than just doing a job. Pro Bono provides the opportunity to give back, do more and get involved outside our small windows on the world.
9. **Improves Recruitment** — motivated young lawyers and laterals are looking for law firms and places of employment that “do the right things” both in the office and community.
8. **Improves Retention** — see job satisfaction — people like to work in an environment where they feel the organization is not only doing great work but doing great things in the community. Happy people stay.
7. **Great Training** — for all, pro bono offers opportunities and experiences clients simply do not want to pay for. From gaining confidence in client relations all the way to trying a case, the training is invaluable.
6. **CLE** — many referral sources, for example The Legal Aid Society of Northeast, New York, are qualified CLE providers and a percentage of your pro bono work is given CLE credit.
5. **Resume Builder** — a great way to learn and get hands on client and even trial experience with new areas of the law, that can fill holes in the resume and expand new areas of practice.
4. **Great Publicity** — so much bad press is directed at the legal profession, that it is refreshing to see attorneys out in the community helping others and getting recognized for the positives.
3. **Visibility** — whether you want recognition or not — our peers, neighbors and friends do see the

PROFILE: *PAI volunteers*



*contributed by
Dan Hurteau,
Nixon Peabody
LLP*

- good that we do through pro bono.
2. **Good for Business** — more and more clients and prospective clients are asking and making hire decisions based on commitment of attorneys to pro bono and community investment. Several important local and national rankings of law firms include as a component the firm commitment (based on hours per attorney) to pro bono.
 1. **It Just Feels Good** — nothing is better than the feeling of doing something that you know and see helps people in a very real and positive manner.

Thanks to the following attorneys who have accepted cases

From August 1 through December 31, 2009:

Albany County

Albany Law School (20)
Jerrold Bartman (2)
Lawrence Becker (2)
Sharon Beilinson
Frank Brennan
Guy Criscione, Jr. (3)
Michael DiFabio
Scott Dillon (3)
Crystal Doolity
Christian Dribush (2)
Daniel Hurteau (2)
Kristen King (2)
David Marinucci (2)
Martin Mooney
Michael J. O'Connor (5)
Frank M. Pell
Thomas A. Welsh (3)

Clinton

John E. Clute, Jr.
Allan B. Cruikshank
Heidi Dennis
Cheryl Maxwell (9)
Kevin L. Peryer
Mark A. Schneider
Greene
Marilyn Carreras
Thomas Fori
Edward Kaplan
Joan P. Tailleir
John W. Winans (2)

Montgomery

Bethany Schumann-McGhee (5)

Rensselaer

Marc Ehrlich

Saint Lawrence

Neil Bhatt
Alice Carrothers
Jondavid DeLong
Richard Gardner (30)
– Pro Se Divorce Clinic)
Natasha Hill (2)
Jerry Leek (2)
Charles Nash

Saratoga

Linda Berkowitz
James Cox (2)
David DeVall
Robert L. Katzman
Alan R. LeCours
Martin W. Pozefsky
James P. Trainor

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David Burke o/b/o
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Teneka Frost
Peter B. McHugh

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Preparing for the Event

JUSTICE FOR ALL

Leaders

Gather at Dale Miller October 1, 2009

E. Stewart Jones Jr addresses the crowd.

Tim Morrison, LASNNY Board President



Tim Morrison, Pat Rodriguez, Ellie DeCoursey



Margaret Vella, Lillian Moy, Margaret Reed



Greg Rinckey, Matt Tully, Lillian Moy, Chad Balzer



Chad Balzer, Marc Antonucci, Erica Hines, Peter Lauricella, Caroline Ahn



Lillian Moy, Michael Whiteman, Skip Meislahn



Kevin Hickey, Ricja Rice, Peter Coffey



Dan Hurteau, Garrett DeGraff, Theresa Marangas

Mel MacKenzie, Philip Gitlen



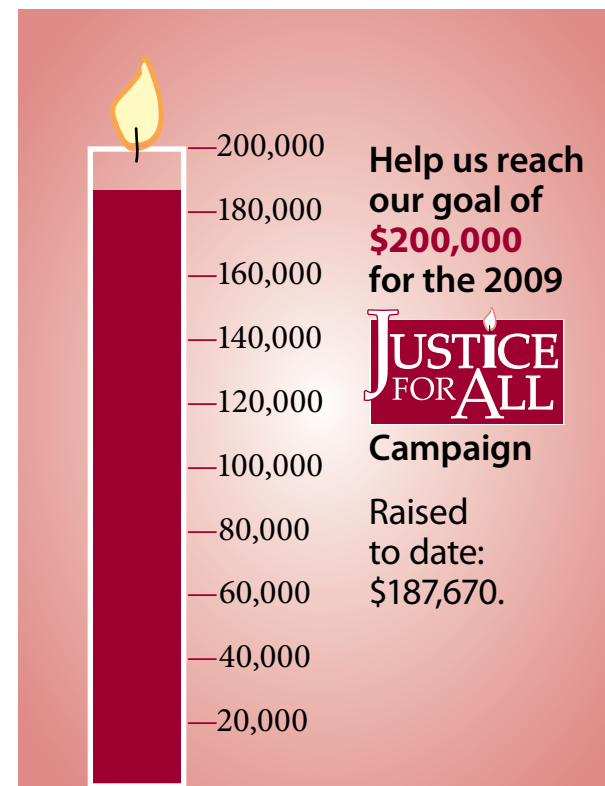
James Peluso, Don Boyajian, Ron Orlando, Lillian Moy, Vic Mazotti



Ellen Breslin, Deanne Grimaldi



Neil Rivchin, Richard Weiskopf, Peter Danziger, Kevin Hickey



Nicholas Pignone

Horses, Carpentry...and Public Service

While some people have career aspirations that lead directly to a certain profession, Nicholas Pignone took a more circuitous route. In his late teens, Nicholas became a farrier (a specialist in equine hoof care) for several years in the Berkshires. He says he "went to law school later in life," attending law school at Queens College

decided to "put down roots" in St. Lawrence County, where they now live with their two children. Upon arrival, he again worked as a Public Defender.

After working in St. Lawrence County for ten months, Vern Ingram suggested that he had space in his office for Nicholas to establish his own practice. Thirteen months later, Vern indicated that he would be interested in "partnering at that point, which was October of 2008," says Nicholas. Their practice, Ingram & Pignone Law Firm, is located in Potsdam.

While specializing in "mostly family law and criminal law," Nicholas has maintained an interest in the "rewarding work" of immigration rights harkening back to his time as an intern for the CUNY School of Law's Immigrant and Refugee Rights Clinic. In St. Lawrence County, he says,

sometimes domestic violence issues and immigration issues collide when a "mail order bride" seeks help from the legal system.

Nicholas was approached by Dick Gardner about becoming a member of the LASNNY Board of Directors in the fall of 2008, around the same time he became a partner at his current firm. Similar to his interest in assisting immigrants, Nicholas finds the association with LASNNY in keeping with his desire to be involved in public service.



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of the City University of New York (CUNY). After graduation in 2004, he says he "didn't take the Bar right away." Instead, Nicholas says he "did some carpentry work, building set designs," while employed by Ralph Lauren. After taking the exam in early 2005, he went to work in the Public Defender's office in Bethel, Alaska. After receiving word that he had passed the exam, he and his wife

**Donate NOW to the 2009
Justice for All Campaign
online at www.lasnny.org
or use the enclosed envelope**

Funding:

The Legal Aid Society of Northeastern New York is funded by grants from the Legal Services Corporation, the U.S. Department of Justice, 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, Equal Justice Works, 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, Law Firms and private contributors through the Justice for All Campaign.

Battle for Independence — Won

continued from page 1

“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 statewide 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

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Domestic Violence in the LGBT Community; Family Court Issues

Part II: February 18, 2010
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*The Annual Campaign for the
Legal Aid Society of Northeastern New York*

Representatives of leadership firms at the campaign kickoff on
October 1, 2009 at Dale Miller Restaurant in Albany.

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Steven T. Longo

Executive Director,
Albany Housing Authority

TESTIMONY OF
Steven T. Longo
Executive Director, Albany Housing Authority

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

My name is Steven T. Longo and I am the Executive Director of the Albany Housing Authority in Albany, New York. I have served as the Director since 1990. The Albany Housing Authority owns and operates 2,400 subsidized housing units, administers an ongoing public housing rehabilitation program averaging \$2.5 million annually, and administers the Section 8 program that provides assistance on behalf of 2,200 households in the City of Albany. The Albany Housing Authority also administers four publicly and privately financed homeownership development programs with a total development cost approaching \$8 million. These programs include the Housing Authority's successful North Albany Homebuyer Program, the Frederick Douglass Housing Program and the South End Homebuyer and Rehabilitation Program. More than just providing housing, today the Albany Housing Authority offers families a foundation from which to build successful lives, inspiring investment in self and community through quality rental, homeownership and small business opportunities.

We are honored to provide testimony to Chief Judge Jonathan Lippmann and Presiding Justice Anthony V. Cardona with respect to the urgent need for public funding for civil legal services. Thanks to both of you for convening this hearing.

We have been fortunate to partner with various community organizations over the years, including legal service providers, in order to fulfill our mission to lead the community with professionalism, integrity and spirit in providing quality housing of choice for a diverse population and to partner with the community to maximize social and economic opportunity

As the largest landlord in the City of Albany, the Albany Housing Authority is in daily contact with lawyers from the Legal Aid Society of Northeastern New York. Legal Aid's involvement in representing public and subsidized housing tenants is essential to ensure fairness in our interactions with tenants and homebuyers. The Albany Housing Authority is a large

operation, with over 120 employees, and hundreds of policies and procedures. Thanks to the Legal Aid Society's involvement, our actions are well vetted. Mistakes are avoided and fairness is ensured. At times the eviction process must be invoked. On occasion residents find themselves in situations that may be beyond their control, but which place them in violation of their obligations under the lease and AHA is left with no alternative but to resort to a Summary Proceeding to Recover Possession of its property in order to enforce our lease and protect our residents and our property. AHA's primary concern is to have the eviction process proceed fairly and accurately. Legal Aid representation helps to ensure a just result.

The Albany Housing Authority files about 3,000 eviction matters each year. The Albany Housing Authority and the Legal Aid Society of Northeastern New York negotiate a huge number of these cases. In these negotiations, the involvement of the Legal Aid Society lawyer ensures that the tenant's full story is heard and that their rights are well protected. For example:

The Housing Authority issued a termination notice to a tenant because she had an unapproved individual living in her apartment. The basis for this information was a police report in which a man who had been arrested for serious drug charges gave the tenant's address as his home. Legal Aid represented this tenant, who was a young single parent with two children, one of whom was severely autistic. The tenant was working as a medical assistant and studying to become an LPN. Although she was doing well in school, and making every attempt to increase her household's stability, she was also dating the man who was arrested on serious drug charges. Upon arrest, he gave her address. The Housing Authority received the police report and issued a termination notice for having an illegal boarder/lodger. The Legal Aid Society represented this client, explaining her family and individual circumstances. We ultimately agreed to allow the tenant and her family stay after making an agreement to prohibit the boyfriend from the premises. Legal Aid also assisted her in obtaining follow-up

case management services. So far, the tenant remains housed and the Authority has protected the other residents from the offender.

Legal Aid also represented a client who received a 72-hour lockout notice after defaulting on his non-payment eviction. The client had failed to make payment because his unemployment insurance benefits were substantially delayed. The Legal Aid Society talked with the manager who granted an extension on the lockout so that Legal Aid could work with the Department of Social Services to pay the tenant's arrears. The Department of Social Services ultimately made this payment, preventing the eviction. Once his unemployment benefits began, he was able to stay on track with his payments. Legal Aid also arranged for him to receive follow-up case management services.

The Legal Project, Inc. has provided us with a free legal clinic on a monthly basis for well over 5 years. The legal clinics provide our clients with a free half-hour consultation with an attorney on any number of legal issues including labor and employment issues, disabilities, civil rights, immigration, discrimination, matrimonial, and child custody and visitation. On the average, 53 clients take advantage of this opportunity every year. An important aspect of this program is that the volunteer attorneys come to our building to meet with the clients where they feel most comfortable and are not intimidated to speak to an attorney. The information provided at these consultations is invaluable in helping our clients to make choices about their life circumstances. I am certain most of the clients that participate in the clinic would not have otherwise had the benefit of legal counsel in making those choices.

I know that the resources of these providers, like civil legal services providers throughout the State, are limited by current funding. I urge the Court to do all that it can to ensure that a Legal Aid lawyer is available for every public or subsidized housing tenant who faces eviction throughout New York and every client has the opportunity to consult counsel in order to make

informed choices about their circumstances. When a public housing resident does not have access to the same quality representation that the Housing Authority has, the process may be unfair. Mistakes happen. The adversarial system relies upon the adversaries being on equal footing to present their positions to the court. When the tenant has representation equal to our own, the correct outcome is most likely achieved. Affordable housing is preserved for low income people, exactly as the government intended. The economic and social benefit to maintaining the stability of an individual household, a public housing project, a neighborhood, our state, cannot be underestimated. Legal services providers are essential to ensure this stability.

The loss of one's housing can be as devastating to an individual and their family as the loss of one's freedom. A Public Housing Authority has a responsibility as a landlord to enforce the terms of its lease and to protect its residents from those other residents who present a threat to the peaceful enjoyment of the property. At the same time, Albany Housing Authority recognizes that commencing the eviction process presents a major impact upon a public housing resident and we feel a social responsibility to make the process as fair as possible. We firmly believe that adequate legal representation for tenants faced with the loss of their housing is in the best interest of the community.

If I can provide you with any additional information, I stand ready to do so.

Paul J. Lupia

Executive Director, Legal Aid Society of Mid-
New York, Inc.

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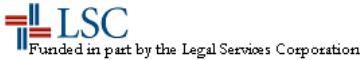
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Paul J. Lupia, Esq.
Executive Director

Reply to:
Utica Office

Biography of Paul J. Lupia

Paul Lupia is the Executive Director of the Legal Aid Society of Mid-New York, Inc. (LASMNY), a thirteen county legal services provider in Central New York. In addition, LASMNY maintains an office in New Paltz for its statewide Migrant Farmworker Program.

Paul Lupia graduated from Case Western Reserve University College of Law in 1978 and has since been associated with the provision of civil legal services in Upstate New York. After graduation and his admission to the New York State Bar, he served as a VISTA Volunteer in Rochester, New York, representing children with disabilities. From 1979 to mid-1980, he was a Staff Attorney with North Country Legal Services providing civil legal services to clients in the Adirondacks. In 1980 he joined LASMNY's predecessor, the Legal Aid Society of Oneida County, Inc., as a Staff Attorney and continued to be employed by LASMNY until the end of 2003. From 2004 through December 2007, he was the Director of Advocacy of both Legal Services of Central New York, Inc. and LASMNY. Since December 17, 2007, Mr. Lupia has been LASMNY's Executive Director.

Paul Lupia is a member of the New York State Bar Association, the Onondaga County Bar Association, the Oneida County Bar Association, the Oneida County Bar Association Pro Bono Committee, and the Sixth Judicial District Pro Bono Committee. He was also recently appointed to the New York State Bar Association Committee on Legal Aid.

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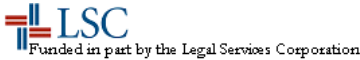
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Task Force to Expand Access to Civil Legal Services of New York

Summary of Testimony of Paul J. Lupia, Esq., Executive Director

Legal Aid Society of Mid-New York, Inc.

- I. INTRODUCTION: Work of the Legal Aid Society of Mid-New York, Inc. (LASMNY), its primary funding sources, a description of areas served, and where offices are located
- II. IMPACT IN RURAL AREAS WHERE LASMNY DOES NOT HAVE A PHYSICAL PRESENCE
 - A. Transportation issues for clients make it very difficult for clients to access our services.
 - B. When services are accessed, there are increased costs in providing such services in terms of travel and staff time.
 - C. Where there is no physical presence, a legal services provider does not have the traditional contacts at local agencies that makes it easier to resolve the client's problems.
 - D. Where no physical presence, local funders are less likely to provide funding. A description of what occurred with local funding in Otsego and Delaware Counties when LASMNY closed its Oneonta office in May 2009.
- III. WHAT LASMNY HAS DONE TO ATTEMPT TO PROVIDE EQUAL ACCESS OF SERVICES IN RURAL AREAS
 - A. A description of the counsel and advice services provided through LASMNY's intake system, the Central New York Legal HelpLine.

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- B. A description of the cost of the HelpLine technology and the sources of funds used to purchase this technology.
- C. An analysis of LASMNY's 2009 closed cases, comparing the percentage of cases closed with extended service in LASMNY's rural counties to LASMNY's other counties.

IV. RECOMMENDATIONS

- A. Funding streams specifically for rural counties.
- B. Funding for innovative uses of technology to increase rural access, i.e., a State Technology Initiative Grant (TIG) program patterned after LSC's TIG program.

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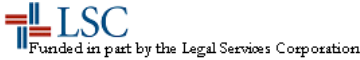
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Executive Director

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Task Force to Expand Access to Civil Legal Services in New York Testimony of Paul J. Lupia, Esq.

October 5, 2010
Albany, New York

Good Afternoon:

My name is Paul Lupia and I am the Executive Director of the Legal Aid Society of Mid-New York, Inc. (LASMNY). LASMNY is a 13 county civil legal services provider and one of seven Legal Services Corporation (LSC) providers in New York State. In addition to our 13 county area we also have a statewide Migrant Farmworker Program centered out of New Paltz. Our 13 counties range from the Canadian border in the north to the Pennsylvania border in the south with offices in Watertown, Utica, Syracuse, Oswego, Cortland, Norwich, and Binghamton. However, we also have six rural counties where we do not have a physical presence: Lewis, Herkimer, Otsego, Delaware, Madison, and Cayuga Counties. I am here today to talk to you about LASMNY's experience in providing civil legal services to clients who live in rural counties where we do not have a physical presence.

Some of the consequences of not having a physical presence in a county are obvious. Clients have to travel further to access our services and many, if not most, of our clients are without reliable transportation in areas where public transportation is unreliable or virtually not

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existent, making such travel extremely difficult if not impossible.

When we are able to provide service in such rural counties there are increased costs to us in terms of travel and time. For example, a summary eviction proceeding in Utica City Court being done by one of our Utica attorneys is likely to take less than an hour. That same proceeding in one of our rural counties may take half a day when you include the travel time that our attorney might have to take in order to get to the Justice Court and back.

Traditionally, legal services providers work very closely with agencies such as community action agencies, domestic violence agencies, and local Departments of Social Services. Not having a physical presence in an area results in LASMNY casehandlers having less local contacts in that area. Having these local contacts makes it more likely that advocates are more easily able to solve problems by a simple telephone call. Therefore, providing services in rural areas where we do not have a physical presence is much less efficient.

Not having a local presence also makes it much more difficult for us to obtain and retain local funding sources. For example, LASMNY used to have an eighth office, in Oneonta, which served Delaware and Otsego Counties, but we were forced to close that office for fiscal reasons on May 1, 2009. We have discovered that closing an office in a rural county has a negative financial ripple effect. Just three months after closing our Oneonta office, a grant that we had been receiving for years from the Otsego/Delaware United Way was terminated effective August 1, 2009. Likewise, a grant that we had for many years with the Delaware County Office for the Aging was terminated by that agency effective June 30, 2010. In a letter from the Director of the Delaware County Office for the Aging, I was informed that the reasons for terminating this contract had nothing to do with the quality of services we were providing; rather, it was “tied to the barriers presented by distance and time”. These local funding sources in rural areas are

scarce and without that local presence become even more difficult to obtain and keep.

LASMNY's response to this problem has been multi-faceted. Of course, we have continued to search for any and all available funding to allow us to maintain our rural based offices and have made efforts to increase pro bono in these counties. But we have also looked to technology and, along with a non-LSC program, Legal Services of Central New York, Inc., have created the Central New York Legal HelpLine (HelpLine). The HelpLine is designed to be a telephone single point of entry for our entire 13 county area. The HelpLine provides equal access to our intake system to all clients within our 13 county area, whether they live in an urban area or whether they live in one of our rural counties. The Central New York HelpLine can be accessed either by calling a local telephone number or a toll free number. Once the client is in the system they receive advice from one of our two HelpLine attorneys. If the case cannot be resolved by counsel and advice from one of the HelpLine attorneys, the HelpLine attorneys refers the case to one of our attorneys in one of our local offices or another legal services provider if appropriate. However, sometimes we are forced to tell HelpLine clients that all we can provide them with is counsel and advice even though they may be in need of more in depth representation. A typical case where that might occur would be an eviction where we provide the client with counsel and advice and of the defenses we believe that the client may have available to her or him. We might even provide the client with some documents or written information and/or pro se pleadings to aid them in representing themselves. However, we simply do not have the attorney staff to cover all of the Town and Justice Courts in our 13 county area.

The cost for the HelpLine technology, which consists of hardware and call center based software was approximately \$225,000. Those funds were raised over a period of several years

from private foundations, a New York State member item from Senator John A. DeFrancisco, two separate grants from the New York Bar Foundation, and a 2005 Technology Initiative Grant, also known as a TIG grant, from the federal Legal Services Corporation. And, now, several years later we are faced with having to update the software that runs our HelpLine system at a cost of over \$25,000.

In 2009, according to the Legal Services Corporation, the national LSC program median for closed cases per 10,000 people was 265 cases. LASMNY closed 402 cases per 10,000 poor people. We attribute this success to the HelpLine and our efforts to make our intake services available in rural counties. These figures raise the question of how much in depth service are we providing to rural clients. In 2009, 21% of all LSC program cases were closed with extended service while 26% of LASMNY cases were closed with extended service.¹ However, in counties where we have a physical presence the extended service closure percentage rate was 28% as compared to just 11% for those counties where we did not have a physical presence. Therefore, despite our best efforts and despite the effective use of technology, these figures demonstrate that we still have a large challenge to overcome in providing equal access to clients who live in rural counties where we do not have a physical presence.

I am making two recommendations. First, given the uncertainties of the current State funding system, all civil legal services providers, whether urban, rural or mixed, will benefit from a permanent funding stream. A certain percentage of those funds should be specifically designated for underserved rural areas. Of course, this should be done in a manner that does not adversely impact current recipients of funding. Secondly, I believe that we should explore

¹ LSC Fact Book 2009 (June 2010). LSC requires LSC recipients to track and report to LSC the level of service provided to clients. Providing counsel and advice or limited service such as communication by letter or telephone to a third party is deemed not to be extended service by LSC. However, cases closed by settlement with litigation, settlement without litigation, administrative agency decisions, uncontested court decisions, contested court decisions,

establishing a State Technology Initiative Grant program, not to replace the LSC TIG program, but to supplement it. Such a program will aid programs to obtain appropriate technology to provide in depth service in rural areas that are currently underserved by civil legal services providers.

On behalf of LASMNY's clients, Board, and staff, I thank you for your time and for your service on this Task Force.

or appeal are considered extended service by LSC.

Dorthea Medina

Client of The Legal Project

TESTIMONY OF

Dorthea Medina,
Client of The Legal Project, Albany, NY

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

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

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

Thank you to Chief Judge Lippman and the Task Force for holding these important hearings on the need for and the future of civil legal services in New York State.

My name is Dorteia Medina and I am here to speak as a former client of The Legal Project, here in Albany. I know that New York State is in a financial crisis and I know how hard it must be to determine what gets funded and what doesn't. I must tell you that civil legal service organizations are the ones that simply cannot get cut. By not having programs like these, you could be putting people's lives in danger.

Without The Legal Project, there will be more people that will feel hopeless and scared to leave their abusive relationship. This is because they will not have the money to hire an attorney to guide them through the many complicated steps it takes to get a divorce or to establish custody of their children.

I am example of someone who often falls through the cracks in terms of getting assistance. I am a 32 year old single mother of 2 daughters and a son. My daughters are 13 and 8, and my son is 3. I am a CSEA member and have worked for the Dept. of Motor Vehicles for the last 11 years. In 2005 I met a man who I thought was perfect for me. He accepted me and treated my two daughters as his own. In 2007, I ended up marrying him. This is where my story begins.

In February of 2008, after having experienced a history of abusive and controlling behavior by my husband, we got into an argument and I told him that I no longer wanted to see him. He must have realized at that moment how serious I was because he became enraged and started screaming at me. He sent me to the basement so I could get a bag so he could pack his things and leave. He then followed me continued to argue. My husband then grabbed an electrical cord and wrapped it around my neck and tried to strangle me. I was able to remove it but from there I was punched, kicked, slapped and spit on for the next 40 minutes or so. Just when I thought it was over, he took the same cord and wrapped it around my neck again.

Before this all happened, I never understood the phrase "My life flashed before my eyes" Believe me, when you know that you aren't going to live past the moment, your life truly does pass before your eyes. I could see my daughters and my baby son crying at my funeral and I could see my husband on the news claiming that somebody broke in and murdered me and that he was the loving husband that found me dead. It was those thoughts that gave me the strength to fight and maneuver myself out of his hold. He wasn't just trying to scare and intimidate me—he was trying to kill me. I've never seen anybody look so evil before.

He then decided his next round was to put a box cutter to my neck and tell me to move my hand from there so he could get a clean cut. It took 5 minutes for me to accept my fate and remove my hands. Fortunately, he bluffed because there was no blade in the gadget.

Around 8'o clock that morning, I came up with an excuse to go downstairs without him. Once I was down there I ran to the police station, and from there I went to the hospital. That was the last time I saw my husband. He was captured a year later and is currently serving 7 years. At the time, I spoke with a representative from the Equinox domestic violence program concerning my financial situation. I explained to her that I had spoken with an attorney previously but I could not afford their services. This is where I found out about The Legal Project. When I called, I couldn't believe how fast I was able to start the process of getting my life back. I was given an attorney so I could establish sole custody of my son and then, I was provided with an attorney to begin the process of my divorce.

If I didn't have the Legal Project, I would still be married to the man who tried to take my life. There is absolutely no way I would have been able to afford a divorce attorney and understand the legalities of the legal system. My attorney at The

Legal Project was able to break things down and explain things step by step to me. She had nothing but patience and understanding of the horrific event that almost took my life.

It is women like me that would be devastated without a program like this because unfortunately I've always been the one that fell into the cracks. I'm a single mother of 3 that works for the State. I make too much money to receive assistance like section 8 or social services but yet I don't make enough to live decently. The Legal Project has a program that helps people like me who work but still can't afford legal assistance.

What I don't understand is why there is even a question about the need for funding for these programs that help save homes and jobs and lives. Please do all that you can to make sure that funding is *always* there for these programs. They need to be able to do the important work that they do without always worrying about losing funding and cutting services. Otherwise, women like me would have no way out. The Legal Project gave me the gift of freedom and that is priceless. Without that help, I may not be here today to tell my story. Thank you for taking the time to listen.

Jeanne Noordsy

DVCCC/DELTA Coordinator,
Domestic Violence Project of Warren &
Washington Counties

JEANNE NOORDSY

Jeanne Noordsy is Coordinator of the Domestic Violence Community Coordination Council (DVCCC), and DELTA Project Coordinator, on the staff of the Domestic Violence Project of Warren and Washington Counties, NY, a program of Catholic Charities. Jeanne has been involved in the work to stop violence against women for 20 years. As DVCCC Coordinator, Jeanne leads an interdisciplinary body whose mission embraces both response to and prevention of domestic violence, involving criminal justice, health care, social and human services, communities of faith, workplaces, schools, community groups, and other sectors. Among a range of diverse projects designed to enhance the community-wide response to domestic violence, the DVCCC has been successful in holding training programs for criminal justice professionals, creating a set of health care model policies and training program, and engaging area faith leaders and workplace leaders in both prevention and intervention. Within the DELTA Project, Jeanne assists a range of community organizations to build their capacity to help prevent domestic violence from occurring in the first place. Successes of the local DELTA Project include developing models to engage men and male youth in acting as allies and peer leaders in the movement to prevent violence against women. Jeanne has served on the planning teams that developed two local misdemeanor Domestic Violence Courts, has presented to a variety of audiences, and has served on the board of the NY State Coalition Against Domestic Violence.

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(Appearing with the panel on Rural Issues)

Testimony will focus on: Rural Victims of Domestic Violence: Unmet Needs for Civil Legal Services
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I. Important for victims of domestic violence to be able to meaningfully access Family Court as a forum to address family offenses (legal representation needed in order for this forum to be meaningful)

- Right of concurrent jurisdiction – a civil remedy may be different than a criminal court outcome
- Barriers to rural victims accessing criminal justice system may result in Family Court as “the only avenue” for many victims
- These barriers include:
 - Fears she will be hurt worse for going to police (abuser has threatened this)
 - Criminal case controlled by the prosecution; alternatively, Family Court forum may provide petitioner some measure of ownership
 - Stigma/embarrassment of public nature of criminal case; Family Court case somewhat less public. (If police arrest both, then her name is in newspaper, too).
 - In rural community, sometimes battering partner is well-known/liked in local community, victim feels this rules out going to local court
 - Batterer often also parent of her children; if he loses job due to arrest, can’t pay her the child support that she depends on
 - Family may blame her for “having him arrested”

II. Equally important for victims of domestic violence to be able to meaningfully utilize Family Court as a forum to attempt to protect their children from the abuse, by seeking custody of the children.

III. Importance of legal representation for domestic violence victims in Family Court for both of the above critical matters:

- In criminal court case the district attorney is the attorney handling the case; in Family Court the victim/petitioner must move the case forward herself – extremely difficult to know what to do without representation by a professional
- Most domestic violence victims cannot afford their own attorney
- In one local county, parties are not permitted to apply for assigned counsel prior to first hearing. Victim/petitioner must appear and then ask the judge for assigned counsel at that first hearing. However decisions about the matter, including visitation, are sometimes already made at that first hearing while she is unrepresented. She is at a severe disadvantage if the battering partner can afford a private attorney and is already represented at the first hearing, while she is not.

IV. What happens when rural victims of domestic violence don't have access to legal representation in Family Court:

- Difficult/scary/dangerous to face person who has battered her, in court, while representing herself (batterer often uses threatening looks, gestures, etc.) Due to these fears, without an attorney a victim may not even file case, or may not continue case beyond petition – exposing her to ongoing abuse.
- May need assistance filing petition and without that, may not even file
- If she does go forward with case, may be unable to achieve needed safety outcomes without legal representation, including:
 - May be unable to obtain an Order of Protection
 - Adversely affect custody case, including losing custody. Family Court Judges must take domestic violence into account in determining what's in the best interest of the child when deciding custody – however, it is the job of the victim's attorney to present those facts about the domestic violence to the judge, to paint the picture. Additionally:
 - With the recently changed law regarding the role of the attorney for the child to represent “what the child wants”, rather than what is “in the best interest”, an ongoing tactic used by batterers is playing out in a newly dangerous way. Sometimes children (both young children and teenagers) will state they want to live with the batterer, due to factors such as the aligning with the batterer syndrome, or the battering parent offers treats and doesn't enforce limits, a tactic used to manipulate children. With the new standard for how children's attorneys represent what children want, these statements may be taken at face value. With no attorney for the adult victim, this is difficult to put into the context of the ongoing abuse/manipulation.
 - When victim leaves the home in an emergency and attempts to go back for kids, very hard to make it understood why she couldn't take children with her at that time; this may negatively influence court's view of her. We have seen even victims who were breast-feeding infants not awarded custody in such situations. Victims need attorney to present the reasons.

- Victims wrongly arrested when acting in self-defense and removed from home by police, have a very hard time getting custody of children back.
- In all these situations, above, that victims face in Family Court, having quality legal representation helps achieve better outcomes. We have seen examples of attorneys who presented strong quality cases for victims, presented all the facts about the domestic violence; this significantly helped turn victims' case around.

V. Matrimonial matters: It is important to many domestic violence victims to get a divorce from the batterer, to no longer be tied legally to the batterer – they need attorneys for this.

- Batterer may be refusing to divorce her, as another means of power & control – refuses to let her move on with her life.
- There is no legal assistance available to assist low- and no-income victims with divorces. Divorce seen as non-emergency.
- The battering spouse may begin a matrimonial matter and then the victim will end up in this forum, whether she can afford it or not.
- Victims of domestic violence at a severe disadvantage when the battering spouse can afford strong representation in matrimonial matters, and she cannot.
- Family Court → Supreme Court:
 - Custody matters are referred by Family Court to Supreme Court when there is a matrimonial matter. From this point forward, the custody aspect is being heard in a forum where the victim is often unrepresented. We have seen many victims in this situation lose custody of the children to the batterer, without an attorney to represent the facts adequately.
 - Cases take longer in Supreme Court than Family Court. Huge resource-drain when victim cannot afford legal services; or goes unrepresented.

VI. Local Courts acting as Family Court when FC not in session

- Given this power of local courts including town and village courts, important for victims to have knowledgeable legal representation in this forum.

VII. Volume of un-met need

- Huge need for quality legal representation for the many complex dynamics of domestic violence matters outlined above.
- There is a particular problem for the “working poor” – domestic violence victims who earn too much to qualify for assigned counsel, but cannot afford to retain a private attorney.

- Even with new divorce reform statute indicating that the more monied party in a matrimonial action can be made responsible for the legal costs, this does not help a low-income victim afford the initial cost of retainer for an attorney.
- The need for legal assistance in all these forums far exceeds the level of voluntary pro bono cases taken by private attorneys and the existing civil legal services programs for victims of domestic violence.

VIII. Conclusion

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Appearing with the panel on Rural Issues, Third Department Hearing, October 5, Albany.

Rural Victims of Domestic Violence: Unmet Needs for Civil Legal Services

Good afternoon, and thank you for this opportunity to testify.

We know how critically important it is for victims of domestic violence to be able to meaningfully access Family and Supreme Courts: as forums to seek protection from the violence, to attempt to protect their children from the abuse by seeking child custody, and for matrimonial matters that can help the victim finally live legally free of the offender. This access is central to a coordinated community response to domestic violence. Quality legal representation, that is knowledgeable about domestic violence dynamics, is urgently needed in order for these forums to be truly meaningful avenues for victims.

These civil forums are doubly important, as there may be perceived barriers to rural victims accessing the criminal justice system for relief from the abuse, resulting in the victim seeing Family Court as “the only avenue”. These barriers include: threats of retaliation by the batterer for going to police; the stigma/embarrassment of a public criminal case; in a rural community the battering partner may be well-known/well-liked, leaving the victim wary of accessing a local court; economic dependence on child support payments the abuser may fail to pay if he loses his job due to arrest; and family members blaming the victim for “having him arrested”. Finally, a criminal case is brought or not brought by the prosecution, while filing a case in Family Court may provide the petitioner some measure of self-directedness.

In addition to these barriers, a civil remedy may be different than a criminal court outcome and under the right of concurrent jurisdiction the victim has the right to seek such remedy.

Legal representation is imperative for domestic violence victims attempting to access Family and Supreme Court settings. As our law enforcement colleague, Patrolman Sheryl Allen of Granville Police Department comments, “The system is very difficult to navigate without an attorney; victims have no idea what their rights are. Dealing with court systems is very intimidating for victims who are already scared and getting pressure.”

Most victims of domestic violence with whom we come into contact cannot afford their own attorney. In some courts, parties are not permitted to apply for assigned counsel prior to the first hearing. The victim/petitioner must appear and then ask the judge for assigned counsel at that first hearing. However, aspects of the matter may be moving forward at that first appearance while she is unrepresented. The victim is at a severe disadvantage if the battering partner can afford a private attorney and is already represented at the first hearing, while she is not.

When rural victims of domestic violence don't have access to legal representation, they may simply not access civil courts, or may be unable to achieve needed safety outcomes. It can be scary and in fact dangerous for a victim to face the person who has battered her in court, while attempting to represent herself. Abusers often use threatening actions and looks in the courtroom to intimidate the victim and let her know she will be retaliated against. As a result a victim may not use the courts at all, or may not continue the matter beyond the initial petition – exposing her to ongoing abuse. Without needed assistance filing a petition, she may not even bring her case.

If she does go forward unrepresented, the risks she faces are many and severe. Without legal representation she may be unable to obtain an Order of Protection. Her attempts to protect the children by obtaining custody will likely be adversely affected by lack of representation, up to and including losing custody. Family Court Judges must take domestic violence into account in determining custody – however, it is the job of an attorney for the victim to present the facts about the domestic violence to the court.

While many judges are generally informed about domestic violence, the survival strategies of victims may be misunderstood, without an attorney to represent to the court why the actions were necessary. For example when the victim leaves the home in an emergency and attempts to go back to get the children, it is difficult to make it understood why she couldn't take the children with her at that time; this may negatively influence court's view of her. We have seen even victims who were breast-feeding infants not able to regain custody in such situations. Victims need attorneys to present the reasons. Victims wrongly arrested when acting in self-defense and removed from the home by police, also have a very hard time getting custody of children back.

With the recently-changed law regarding the role of the attorney for the child to represent what the child wants, rather than what is "in the best interest", an ongoing tactic used by batterers is playing out in a newly dangerous way. Sometimes children (both young children and teenagers) will state they want to live with the batterer, due to factors such as the aligning with the batterer syndrome, or the battering parent offers indulgences and doesn't enforce limits, a tactic used to manipulate children. With the new standard for how children's attorneys represent what children want, these statements by children may be taken at face value. With no attorney for the adult victim, this is difficult to put into the context of the ongoing abuse/manipulation.

As Patrolman Allen states, "Children in domestic violence cases are assigned attorneys who need to work with the adult victim's attorney to keep the victim and the children safe. The biggest reason we hear from women about returning to abusive partners is visitation with the offender."

“Without legal representation for the victim,” Patrolman Allen continues, “Family Court may not consider law enforcement intervention as serious. The offender gets adjournments in Family Court while awaiting criminal court action, thus placing the victim and children at greater risk of further harm. Further, law enforcement in our area will rarely arrest an offender for violating a Family Court Order; the victim is generally advised to file in Family Court the next day. Legal representation for victims could move this forward, making victims and children safer.”

In all these situations that victims face in Family Court, having quality legal representation helps achieve better outcomes. We have seen examples of attorneys who presented strong cases for indigent victims, and presented all the facts about the domestic violence to the court; this has significantly helped turn victims’ cases around.

Matrimonial matters are an additional fundamental setting where victims of domestic violence need representation. It is imperative to many domestic violence victims to become divorced from the batterer, to no longer be tied legally to him. Often batterers will refuse to divorce her, as another means of power & control – refusing to let her move on with her life. Currently, there are little to no legal services available to assist low- and no-income victims with divorces. Divorce is seen as a non-emergency. However, the battering spouse may begin a matrimonial matter and then the victim will end up in this forum, whether she can afford it or not. Victims of domestic violence are placed at a severe disadvantage when the battering spouse can afford strong representation in matrimonial matters, and she cannot.

Custody matters are usually referred by Family Court to Supreme Court when there is a matrimonial matter. Cases may take longer in Supreme Court than Family Court, thus representing a huge resource-drain when the victim cannot afford quality legal services, or goes unrepresented. We have seen many victims in this situation lose custody of the children to the batterer, without an attorney to represent the facts adequately.

With regard to other settings, Patrolman Allen notes, “Victims need representation in navigating the Social Services system. My experience is that victims may be held more ‘accountable’ for the abuse than the offender is. Victims need an attorney to hold the system accountable for their rights and to ensure their safety.” Also, because local courts have the ability to act as Family Court when it is not in session, it’s important for victims to have knowledgeable legal representation in that forum.

The volume of the un-met need is tremendous. There is a large and immediate need for quality legal representation for the many complex dynamics of domestic violence matters I have outlined. There is a particular problem for the “working poor” – domestic violence victims who earn too much to qualify for assigned counsel, but cannot afford to retain a private attorney. Even with the new divorce reform statute indicating that the more monied party in a matrimonial action can be made responsible for the legal costs, this doesn’t help a low-income victim afford the initial cost of retainer for an attorney. The need for quality legal assistance in all these forums far exceeds the level of voluntary pro bono cases taken by private attorneys and the existing civil legal services programs for victims of domestic violence.

In conclusion, it is of the utmost importance, in order to uphold NY State's commitment to combat our epidemic of domestic violence, that quality civil legal services, that are knowledgeable about domestic violence dynamics, are provided for poor rural victims of domestic violence.

Thank you very much.

Hon. Judith F. O'Shea

Chemung County Supreme Court

HON. JUDITH F. O'SHEA

Judith Ferrell O'Shea was elected to the New York State Supreme Court, in November of 1999.

She served as Chemung County's Family Court Judge from 1993 through 1999. She holds a Bachelor's Degree from Skidmore College and is a graduate of Albany Law School. She is past president of the Chemung County Council of Woman, past Executive Board member of the Elmira Business and Professional Women's club and was a founding member of CASA of Chemung County which assists children in foster care. Judge O'Shea serves on the New York State Courts' Family Violence Task Force, on the Courts' Gender Fairness Committee, of which she was Chairperson for four years, and on the Courts' Outreach and Education Committee. She was a member of Corning Community College's Advisory Board, and was appointed to Governor Patacki's Task Force on School Violence. Judge Kaye also appointed her to the Feeric Commission to Promote Public Confidence in Judicial Elections.

In September , 2000, she was appointed Administrative Judge of the Sixth Judicial District and supervised the day-to-day operations of the courts in ten counties, as well as performed her duties as a Supreme Court Judge. She was Administrative Judge until July, 2008.

Judge O'Shea is married to Attorney Kevin M. O'Shea. They have three daughters, Molly, Margaret and Tara.

**REMARKS OF JUDGE JUDITH F. O'SHEA,
SUPREME COURT JUSTICE, SIXTH JUDICIAL DISTRICT
TO THE TASK FORCE TO EXPAND ACCESS TO
CIVIL LEGAL SERVICES,
CHIEF JUDGE'S PUBLIC HEARING
IN ALBANY, NEW YORK ON OCTOBER 5, 2010**

Good morning,

Thank you for this opportunity to comment on the impact unrepresented litigants have on our Court System.

My observations come from working in Courthouses for over thirty (30) years, first as a Court Attorney, then nine years as Family Court Judge in Chemung County and I'm now completing my eleventh year as a Supreme Court Justice. I also served as Administrative Judge of the Sixth Judicial District and have heard cases in all ten of the predominantly rural counties in that District.

There is no question that the volume of cases being heard in our courts has risen dramatically over the last decade. There also can be no doubt that the number and percentage of self-represented, or unrepresented, litigants has also increased. For example, in Chemung County, a county with roughly 100,000 people, in Supreme Court in 2006 there were 74 cases with at least one self-represented litigant, or 8% of the total cases filed that year. Compare those numbers to the first nine months of this year, where there have been 178 cases involving self-represented litigants, comprising almost 30% of the total Supreme Court filings this year.

I divide the ramifications of this dramatic increase in unrepresented litigants into three categories: the impact on the litigants themselves, the impact on the day-to-day operations of our Court System, and the impact these cases have on the Judges and how they do their jobs.

LITIGANTS

Whether it be in City Court, Family Court or Supreme Court, the people involved have something terribly upsetting going on in their lives. Many times, they appear for one problem (an eviction, a support matter, a divorce or foreclosure) but really, they have a host of problems (no money, no job, illness, etc.) and I am not just speaking of chronically poor litigants, but also those who may be working but don't hardly make enough to meet their daily expenses. If they have not had an opportunity to speak with an attorney, the people will be more nervous, upset, emotional and even confrontational. They don't know what to expect or what the possible outcomes might be. When the opposing party has an attorney, the attorney is usually hesitant to speak to the self-represented person, and this causes delays in proceedings, negotiations and

settlement. This type of delay can cost the opposing party a lot of extra expense in paying attorney's hourly rates. But most importantly, my personal experience has been that those parties who have access to an attorney obtain a better result. For example, I personally am doing, unfortunately, a lot of foreclosure conferences. The people who have taken advantage of the opportunity to meet with legal aide, or Catholic Charities, or one of the other listed providers, have more success in re-negotiating their mortgages than those who come in with piles of unorganized papers.

COURT SYSTEM

The impact of self-represented litigants on the work of the Court System starts on Day 1. On any given case, it can be a few phone calls looking for instructions, a few trips to the Court Clerk's Office looking for forms or help filling out forms, multiple appearances in Court because of faulty service or miscommunications, calls to Chambers looking for instruction or legions of ex-parte communications that have to be returned. All of these things take time. With most of our Courts working with numerous unfilled vacancies, our processing is suffering.

JUDGES

Last but not least, let's talk about the impact the enormous increase in self-represented litigants has on our Judges and Justices. I think it's fair to say that a good portion of the increase in cases is due to poor economic conditions: foreclosures, credit card debt, divorces, even Domestic Violence cases. These people, these families are in crisis mode - there are tears and despair. And, truthfully, most Judges want to help people (foreclosure cases). We want people to feel they have gotten a fair shake and not been "railroaded". When one party is at a distinct advantage, it puts the Judge in a very difficult, stressful situation.

In conclusion, in our District, and I think it's true around the state, we have made decent strides in expanding pro bono bar activity for civil proceedings through the Court's Pro Bono/Access to Justice Committees. In the Sixth Judicial District in 2009, we had approximately 192 attorneys services approximately 271 cases. As commendable as that is, pro bono work is simply not enough. There are still far too many civil cases that warrant representation. I hope you can find a way to provide it.

Thank you.

CHEMUNG COUNTY

CASES BY YEAR WITH AT LEAST
ONE SELF REPRESENTED
LITIGANT

YEAR	# SELF REP	PERCENT OF TOTAL FILINGS
2006	74	8%
2007	123	13%
2008	126	13.7%
2009	181	21%
2010 (TO DATE) 9-28-10	178	28%

Chief Clerk
10/1/10

Susan Patnode

Executive Director,
Rural Law Center

Susan L. Patnode, Bio

Susan L. Patnode is the Executive Director of the Rural Law Center of New York, Inc. The Rural Law Center is committed to focusing attention on the legal and economic needs of low-income, rural New Yorkers. Through the Center she has been engaged in several community collaborations and partnerships designed to address systemic rural issues. Among these issues are: access to justice, rural transportation challenges, rural homelessness, increased rural pro bono, and rural community economic development. She received her J.D. from Vermont Law School. Prior to her work with the Rural Law Center, Ms. Patnode worked in her own private practice concentrating in Family Law. She is a certified arbitrator and mediator through the Rural Law Center's 5 county Community Dispute Resolution Centers. Susan has an undergraduate degree in Political Science and a Masters Degree in Teaching. In addition, Ms. Patnode is currently an adjunct faculty member at the State University of New York at Plattsburgh, where she offers courses in Family Law, Social Services Law and Women and the Law.

Susan L. Patnode.....Testimony Outline

I. Rural Challenges: Should Geography determine the quality of justice?

BARRIERS

- Transportation
- Lack of health and human services
- Few Legal Resources
- Isolated, generational poverty
- Entrenched perceptions about rural poor

LOW INCOME NEW YORKERS' ACCESS TO THE LEGAL SYSTEM IS THROUGH TWO PORTALS

- Town and village courts
location, lack of legal expertise
huge responsibility
- Family Court
No access for working poor

SOME SPECIFIC RURAL LEGAL ISSUES

Manufactured Homes Homelessness Immigration
Land Contracts Consumer Debt Health Care
Payday Loans Illegal Debt Collection Domestic Violence

II. Rural Solutions: "What suggestions do you have for improving delivery to rural areas.?"

- Build on Local Strengths
- Use models that work
- Don't be a Peace Corps Volunteer
- Set broad Service Goals
- Allow for a Local Process
- Let Local Leaders Create the Delivery Model

ADDRESS LOCAL QUESTIONS

- What are the local unmet needs?
- Who needs service?
- What is the plan for serving these people?

LEVERAGE EXISTING, EXTENSIVE RURAL NETWORKS

Libraries Offices for the Aging Cornell Cooperative Extension
Magistrates Organizations County Bar Associations Community Colleges

WHAT IS THE PLAN FOR SERVING THESE PEOPLE?

- Technology
- Commit funding specifically for Rural Areas
- Give people credit

Susan L. Patnode

Executive Director
Rural Law Center of New York, Inc.

Testimony

before the
Task Force

To Expand Access to Civil Legal Services

Third Department Hearing

October 5, 2010 10:00 AM

NYS Court of Appeals,
20 Eagle Street, Albany, NY 12207

Good morning. My name is Susan Patnode and I am the Executive Director of the Rural Law Center of New York, Inc. The Rural Law Center is a statewide not for profit legal services program devoted to addressing the systemic legal and economic issues that affect low-income New Yorkers who live in our state's 44 rural counties.

I would like to thank Judge Lippman for his leadership, and for providing me with the opportunity to talk about some of the challenges low-income people have accessing and navigating through the rural justice system. The speakers on our rural panel will testify about the complexities of providing legal services in rural areas and about how important it is to have legal services available for victims of domestic violence. Also, you will hear testimony from someone who can personally attest to what a difference legal services made in his life. Before that important testimony I would like to pose a question:

Should Geography Determine Justice?

In the Spring of 2006, Debra Lyn Bassett published an article, entitled "Distancing Rural Poverty" in the Georgetown Journal on Poverty Law and Policy. In her article she said, "Our society distances rural poverty. We don't want to see it, we don't want to talk about it, and we don't want to think about it." (*Georgetown Journal on Poverty Law and Policy*, Vol. XIII, Number 1, Spring 2006, p.4). So thank you again for taking a few minutes to look at it, talk about it, and hopefully think about it as you develop a strategic way to improve legal services for all New Yorkers.

Ms. Bassett goes on to say, "The physical and psychological 'Distancing' of rural poverty contributes to discrimination against the rural poor — discrimination on the basis not only of race and of class, but also on the basis of place." And, "The 'Distancing' of rural poverty suggests a geographical divide but, in fact, the distancing is both physical and psychological." (*ibid.* p.12)

In rural New York, there is discrimination based on place.

Only 26 of New York's 44 rural counties have a legal services office. That is not because the Legal Services programs do not care about low income rural New Yorkers; it is because there is so little funding available. Additionally across the country, private foundations grant only 1% of their funds to rural areas. Most often the allotment for state and federal resources is based on population. Funders have taken that for granted. However, recently there is new thinking about rural resource distribution. For example, the Rural Policy Institute has written about rural human services, proposing that funding should be place based, and one size does not fit all. And to fund programs purely on population is a form of discrimination that shuts out the very low-income New Yorkers who need help the most.

So what is rural New York? Who do we mean when we talk about rural New Yorkers? Here are some short facts about rural New York.

- Forty-four of New York's 62 counties are officially designated as rural.
(*NYS Executive Law, Article 19-F, 481(7)*)
- Rural New York encompasses over 41,000 square miles, and that represents over 85% of the state's physical area. As a comparison, rural New York is geographically about the size of Virginia.
- The aggregate population of rural New York is nearly 3 and ½ million, which is roughly the total population of Connecticut.

Therefore, when we talk about rural New York, we are talking about a large area, with a substantial population. We know in the political scheme of things, states like Virginia and Connecticut, would not be neglected and shut off from resources. Yet in New York, legal and human services to rural counties are sparse, and that sparseness results in unfair encounters with the legal system and persistent, generational poverty.

In terms of justice and the courts, there are two major entry places where rural people come to interface with the justice system. These are the Town and Village Courts and the County Family Court

There are 873 Town or Village Courts in New York. The locally elected town or village justice presides over the court. Much has been written about the Town and Village Court system, so I will not dwell on the arguments for or against them. There is no question that New York's Judiciary has made some improvement in that system. The fact is, it looks like a system that is here to stay. However, I would point out that serious civil matters that affect housing, income and domestic violence, are heard in these small courts. You do not have to be a lawyer to be a town justice. I remember in fact when one town justice in my community, wrote in to the newspaper to say how proud he was that all the justices in our county had a high school education. However it is in this Town and Village Court system where rural discrimination comes into play. Most of these justices are not attorneys. In some rural counties, closer to cities, there are a few more lawyers serving in that capacity, but currently there are 1387 judges and, of those, 188 are attorneys. Several counties have no attorneys serving as justices. For example, there are 44 justices in Allegany County, but only 2 are attorneys. There are 22 justices in Franklin County, and none are attorneys. (*see Exhibit I*)

In contrast, cities with populations over 20,000 qualify for "City Court" designation, and those judges, must be attorneys. However a City Court judge and a Town/Village Court judge hear basically the same type of cases. This is an example of discrimination based on place, because when someone is facing a serious legal matter that could result in homelessness, or family safety issues, or significant loss of income there should be at least an attorney in the room. Cities have that benefit, most rural towns and villages do not.

In terms of rural Family Courts, there is an 18-b indigent defense plan in each county. Judges in Family Court determine whether someone will receive free counsel. However, there are many working poor people, where everyone in the household is working at something to generate income, but who do not qualify for assigned counsel. This matters

in a rural area because these working families, whose median incomes are far below their urban or suburban counterparts (*see Exhibit II*), cannot afford an attorney and they usually cannot access a legal services attorney nor are there local resources, or extensive pro bono programs, or court clerk staff who will help them navigate through the legal system.

There are also some problems that are uniquely rural. Lack of transportation stands out as a barrier for legal access as well as access to other human services. There are virtually no homeless shelters in rural counties. People purchase homes with land contracts, only to find out the seller owes a mortgage that is now in foreclosure, and the buyers do not know how to protect themselves. The rural poor are targets for predatory lending and for illegal debt collection practices. Illegal evictions can take place because there is no one to enforce eviction procedure. Victims of domestic violence live in small communities, where privacy is a rare commodity, and therefore a victim fears taking protective action.

What are Some Rural Solutions?

So, I have enumerated some of the challenges and barriers that stunt legal and other human service delivery in rural areas. However, in your correspondence you also asked, “What suggestions do you have for improving Delivery to rural areas?” From my experience, occasionally attention is given to rural areas, but then after the “action plan” is developed, often there is no engagement in solutions. I think when the leaders in the judiciary or in legal services look at the problem, they tend to consider urban solutions, and those solutions are cost prohibitive. However, if one looks to the rural community, reasonable, cost effective solutions can be found.

My first suggestion is to build on local strengths. Those may vary from county to county, but there are leaders in these communities who see the need and would like to be part of the solution.

My second suggestion would be to look at other successful rural models that have addressed “access” issues. What comes to mind is the rural Health Care Network

movement. There are at least 45 rural Health Care Networks in New York, that have a broad base of stakeholders, and who are devoted to increasing access to health care. In that model, they form a group that works together, identifies problems, and creates a delivery system to solve those problems. For example there is a relatively new Tele-medicine rural project in New York that came about because in several identified counties it was determined that if someone had a stroke, there was no way to get the person the medical attention needed within the first three critical hours. Now, through training, technology, and urban-rural resource sharing, a system is being put into place that will quickly identify a stroke victim and then access the emergency help.

One of the mistakes made in rural areas is that well-meaning “outsiders” try to solve a problem from afar. This does not work. These resilient, resourceful communities do not often appreciate someone from the outside, telling them, how something should be done.

Instead, should rural delivery become a priority, we need to set broad based goals, with broad questions. Questions like: What are the unmet local legal needs? Who needs services? Who is and who is not receiving them? What parties should be at the table to design a solution?

My third suggestion is to leverage existing, extensive rural networks. In rural New York there is a well developed library system that has a library in virtually every small town. Cornell University has Cooperative Extension offices in every county. There is a Magistrates Organization in every rural county. Community colleges often have services for the broader community. Senior Citizens through volunteer programs can be harnessed. I know these local partnerships work. The Rural Law Center has been engaged in a number of them, including community partnerships that gave away 450 cars to people moving from public assistance to work. Working with the community of faith based organizations to create the first “hospitality network” where homeless families actually stay in the church facility, with volunteers from the church, who assist in finding permanent housing and employment. Working with members of the Judiciary, local county bar associations and local legal services offices to create a viable program that significantly increased pro bono in rural New York.

My fourth suggestion is to make better use of technology to reach remote areas.

Whether using the court's video-conferencing capacity to help with petition assistance, or to give legal consultation.

My fifth suggestion is to establish a solid base of legal services funding, so that these organizations can plan and build programs and use their resources to develop sustainable services that endure. The sheer time and talent spent in anxiety every year, looking for funding, depletes the few rural resources that exist. Solid funding would allow some of the great minds in this room to problem solve and serve those who need our services the most.

And my final suggestion is to commit funding specifically to develop delivery systems in rural areas. As funders you can set the priorities, and suggest a procedure. It needn't be so costly.

Again, thank you for giving me the opportunity to testify. I look forward to reading your report and to working with you in the years to come.

**Town and Village Courts
in the Rural Counties of New York State
IN 2010, ONLY 13% OF JUDGES ARE ATTORNEYS**

EXHIBIT I

COUNTY	COURTS	JUDGES	JUDGES who are Attorneys
Allegany	36	43	2
Cattaraugus	36	57	2
Cayuga	27	41	4
Chautauqua	31	51	8
Chemung	14	25	4
Chenango	26	34	1
Clinton	17	30	1
Columbia	22	44	11
Cortland	15	15	2
Delaware	23	34	4
Essex	19	31	1
Franklin	22	31	0
Fulton	11	18	0
Genesee	16	27	2
Greene	17	31	3
Hamilton	9	15	0
Herkimer	26	37	5
Jefferson	32	53	7
Lewis	19	22	0
Livingston	23	42	8
Madison	20	31	5
Montgomery	13	20	1
Ontario	17	31	3
Orleans	11	21	0
Oswego	24	41	1
Otsego	27	42	1
Putnam	9	18	16
Rensselaer	17	33	15
Saratoga	21	40	9
Schenectady	6	11	6
Schoharie	19	23	0
Schuyler	11	15	0
Seneca	11	15	2
St. Lawrence	35	51	6
Steuben	38	53	6
Sullivan	19	37	15
Tioga	13	19	0
Tompkins	11	23	3
Ulster	22	41	21
Warren	11	16	4
Washington	24	32	1
Wayne	21	42	7
Wyoming	21	38	1
Yates		13	0
TOTALS	873	1387	188

Compiled by the Rural Law Center of New York, Inc. 2010

DEMOGRAPHIC INFORMATION FOR NEW YORK STATE'S RURAL COUNTIES

County	Population	Population in Poverty	Percent in Poverty	Median Household Income	Per Capita Income	Land Area (in square miles)
Allegany	50,562	7,669	15.1	37,954	14,975	1,030.22
Cattaraugus	83,354	11,403	13.6	40,830	15,959	1,309.85
Cayuga	81,726	4,408	11.5	45,105	18,003	693.18
Chautauqua	137,645	22,604	16.4	38,926	16,840	1,062.05
Chemung	40,413	13,254	14.7	40,891	18,264	408.17
Chenango	51,659	7,055	13.7	45,462	16,427	894.36
Clinton	81,366	10,779	13.2	45,462	17,946	1,038.95
Columbia	63,405	6,266	4.4	53,214	22,265	635.73
Cortland	48,691	4,855	14.1	40,770	16,622	499.65
Delaware	47,226	7,254	15.4	41,862	17,357	1,446.37
Essex	38,992	4,572	11.7	43,132	18,194	1,796.80
Franklin	51,056	7,174	13.9	39,199	15,888	1,631.49
Fulton	55,206	7,805	14.1	40,259	16,844	496.17
Genesee	60,020	5,992	10.0	48,499	18,498	494.11
Greene	48,865	5,491	11.2	44,966	18,931	657.75
Hamilton	5,278	526	10.0	42,188	18,643	1,720.39
Herkimer	63,704	8,562	13.4	38,732	16,141	1,411.25
Jefferson	114,651	15,999	14.0	42,316	16,202	1,272.20
Lewis	26,626	3,508	13.2	41,587	14,971	1,275.42
Livingston	64,658	6,160	9.5	49,927	18,062	632.13
Madison	70,182	8,049	11.5	50,924	19,105	655.86
Montgomery	49,371	7,930	16.1	41,869	17,005	404.82
Ontario	102,445	4,953	9.7	53,107	21,533	644.38
Orleans	43,629	5,451	12.5	43,029	16,457	391.40
Oswego	123,495	18,429	14.9	44,854	16,853	453.50
Otsego	62,196	9,841	15.8	42,572	16,806	1,002.80
Putnam	99,550	4,800	4.8	84,622	30,127	231.28
Rensselaer	154,007	15,555	10.1	50,840	21,095	653.96
St. Lawrence	111,655	16,865	15.1	39,035	15,728	2,685.60
Saratoga	209,818	15,661	7.5	62,607	23,945	811.84
Schenectady	147,289	17,072	11.6	53,182	21,992	206.10
Schoharie	31,685	3,289	10.4	44,524	17,778	622.02
Schuyler	19,455	2,256	11.6	44,511	17,039	328.71
Seneca	35,183	3,706	10.5	43,440	17,630	324.91
Steuben	99,012	12,844	13.0	41,519	18,197	1,392.64
Sullivan	74,948	11,978	16.0	45,555	18,892	969.71
Tioga	51,746	4,548	8.8	49,235	18,673	518.69
Tompkins	101,411	15,225	15.0	44,379	19,659	476.05
Ulster	181,111	21,001	11.6	55,589	20,846	1,126.48
Warren	64,715	6,762	10.4	47,043	20,727	869.29
Washington	61,872	6,246	10.1	44,043	17,958	835.44
Wayne	93,728	8,922	4.5	51,853	19,258	604.21
Wyoming	42,932	4,252	10.0	49,050	17,248	592.91
Yates	24,720	3,372	13.6	40,924	16,781	338.24
Total	3,271,258	390,343				37,547.08

Source: U.S. Census Bureau: State and County Quick Facts
Prepared 1-20-10

Hon. Mark Powers

Schenectady County Family Court

TESTIMONY OF

Honorable Mark Powers
Judge. Schenectady County Family Court
Acting Supreme Court Judge, Schenectady Supreme Court

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

Good afternoon, my name is Mark Powers. I am a Family Court Judge and Acting Supreme Court Justice in Schenectady County. I appreciate the opportunity to participate in this hearing and I thank Judge Lippman and the Task Force for making the funding of civil legal services a priority in New York.

I would like to address the issue of access to civil legal services, and how that makes a difference in effectuating justice in our courts. Each year, our Family Court hears about 12,000 petitions, which include, among other matters, custody, abuse, neglect, juvenile delinquency and pins adjudications. I routinely assign counsel in these proceedings. However, in my role as a full-time Acting Supreme Court Justice, in which I am assigned 25% of all matrimonial proceedings in Schenectady County, I recognize the difficulties encountered by unrepresented litigants. Although case law supports the assignment of counsel when custody and parenting time issues are involved, these same litigants are unrepresented by counsel with regard to the issues of maintenance, support and equitable distribution.

The present system is not cost effective for the courts. Often, pro se litigants have difficulty serving papers, obtaining witnesses and understanding the proceedings. Settlements become harder to accomplish without an attorney to discuss what is a reasonable proposal. The process becomes slower and more cumbersome. There is no question of a lack of available and affordable civil legal representation for people in need. During the past year I have dealt with a significant number of cases involving domestic violence. Some parties are eligible for a public defender or an 18 B attorney, but many others are not. For those who are not eligible, there are

some resources for help, but not nearly enough.

We are fortunate to have some excellent civil legal assistance available to our court through The Legal Project and Legal Aid, but they cannot meet the ever-growing need that exists without additional resources. Each of these organizations is constantly struggling to find funding for their work, making it difficult to know at any given time whether these services will continue to be available. They have waiting lists, especially in matrimonial cases. We regularly have to adjourn matters more than once in order for parties to seek representation. Time is wasted. Domestic violence cases need to be handled with considerable dispatch and care. Without an attorney, such cases can continue for months. Sadly, victims sometime feel like they have no other choice but to stay or return to their abusive partner.

When clients are provided representation by legal services programs, they receive excellent assistance. Free does not mean less effective. The Legal Project, for example, handles many pro bono divorces involving domestic violence victims in my court. This is one of the few programs of which I am aware that provides total representation to victims of domestic violence. I see first-hand how valuable representation is, ensuring a faster, smoother and more just process. Clients receive a trained lawyer, either staff or volunteer, who understands the dynamics of domestic violence and who will work in conjunction with the local victim advocates. I see the glaring difference in the experience of victims in court when they have a knowledgeable and sensitive lawyer by their side, as opposed to sitting alone in a courtroom, with no legal guidance, and the abuser standing only feet away. We cannot ensure just resolutions when one person is left fending for themselves on the legal playing field.

One thing is clear - - things are getting worse in our court system. We have had more

cases in this past year, and they are more complicated, volatile and challenging to resolve.

When a victim of abuse is unrepresented, the dangerous imbalance of power that is at the heart of domestic violence is exacerbated. A lack of effective legal representation adds to this dynamic and our justice system becomes an unwitting partner to the abuse. The abusive party gains an unfortunate advantage in the process. My role as a judge is to be an impartial fact finder who applies the law; however, I often feel the urge to offer assistance to unrepresented parties, in helping them admit certain evidence. This is contrary to my role as a judge. The unrepresented victim may be unable to present the evidence in a way that I can consider in my determination. I may be forced to make decisions without the benefit of having access to important information regarding the family dynamics.

Conversely, when I have litigants before me who are victims of abuse and have counsel by their side from specially trained civil legal services programs, the process is fairer and more efficient. The attorney is able to inform the client each step of the way about the case. The imbalance of power is mitigated by the presence of the attorney, who can work with the victim and local advocates to consider options and explore safety issues. Safety is an issue. Statistically, the most dangerous time for a victim is when they take action - - leave their abusers and file for an order of protection, custody or divorce. More victims are injured or killed during this time than at any other point. This is the time when they need an attorney to help them through this difficult and dangerous time. However, many abuse victims, mostly women, simply cannot afford an attorney. Even if they have a job, the majority of victims do not have access to income due to the economic abuse they suffer. Sometimes, because of what appears to be income (in that the perpetrator has control of finances), they may not be eligible for assigned

counsel. Often, victims who fit this scenario, fall between the cracks and come to my court with no legal representation - no one to guide them, give advice, provide options and help them negotiate a frightening system. For some, the system is as frightening to deal with as their abuser, and more of an unknown. I have seen unrepresented victims withdraw petitions for orders of protection, be potentially compromised when entering into custody agreements, and even forego support because they had no one advocating for them in court. Tragically, I have seen victims in this situation go back to their abusers because they are not fully aware of their options. We cannot allow that to happen. We cannot stand by and facilitate injustice through inaction. I recognize there are few resources these days, but we cannot be so shortsighted to overlook the value of a relatively small investment in civil legal services.

We also need to provide critical support for pro bono programs. These programs make a difference in the lives of many people. However, pro bono alone is not the answer. These attorneys do not participate on their own - but under the auspices of a civil legal services program, which provide essential training, mentoring, insurance and other support for volunteers. These programs provide experienced staff attorneys and paralegal support staff. The New York State Bar Association encourages lawyers to contribute at least 50 hours of pro bono service. But this remains a goal, not a mandate in this state. Even if every attorney in New York reached that goal, we still would have an inexcusable number of people without benefit of counsel in complex, life changing and sometimes dangerous cases. We must have a way to support those who need legal help the most, and ensure that we do not leave our most vulnerable unrepresented.

With the downturn in the economy, creating a budget crisis, there is a greater need for

legal services attorneys. We must find a way to allow these programs to work - representing those in need. Such programs should not spend time scrambling for grants or holding fund raisers in order to keep a float. As a State, we need to do better than that. We must find a way to have a consistent, core funding source that provides stability for these programs so they can help their clients find safety and justice. I have faith that through this process and the work and commitment of Chief Judge Lippman and the Task Force, and all branches of state government, there will be a light at the end of this long tunnel. I have faith that finally, access to civil justice in New York State will be more than just a goal, but a reality.

Thank you.

Lauren Raffe

Client of Legal Aid Society of
Northeastern New York

Brief biography of Lauren E. Raffe

Lauren E Raffe is the mother of two disabled boys ages 14 and 7 years old. Mrs. Raffe is retired from a twenty year career in public service. Mrs. Raffe lives locally and currently owns an Albany area business.

Short Summary of Testimony to Chief Judge's Public Hearing on Access to Justice.

Aidan Raffe is the 7 year old son of Lauren and Michael Raffe. Aidan suffers from multiple disabilities. Aidan has a Gastronomy Tube, (G-tube,) this device serves as the only portal through which he receives all of his fluids, nutrition and medication. Aidan requires skilled medical management of this device so that he can participate in out-patient life.

Our family returned to the Capitol District in April of 2009 where we rented a home in a local blue ribbon suburban school district. Despite prior notice and meetings with district administrators Aidan was denied school access. The Children's Law Project (CLP) was consulted and agreed to advocate for Aidan.

The key points of assistance offered by the attorneys and staff of CLP ultimately led to the school district providing the appropriate medical training to critical district staff so Aidan could exercise his right to a Free and Adequate Public Education. Aidan now receives all the services he needs in order to attend the local public school.

Full testimony will detail the urgency of the swift action taken by CLP and the success of their advocacy.

Testimony

Good Afternoon. My name is Lauren Raffe and I am here today representing my son Aidan Raffe who is seven years old. Aidan suffers from severe medical issues and is awaiting a multiple organ transplant. Aidan takes nothing by mouth and relies on assistive technology, a feeding tube, for all of his fluids, nutrition and medication. Aidan is confined to a wheelchair while attached to his feeding pump.

In January of 2008, shortly after my retirement from law enforcement, my husband Michael became unemployed. We lived in Ithaca NY where both of our children attended the local public schools. After a full year of unemployment it was clear that we needed to move our family from Ithaca back to the Capitol District to pursue a business opportunity. We timed the move for the Spring of 2009 during April break so that the boys could be enrolled at the local public school. We met with a Senior Administrator for the school district prior to signing realty contracts for property in this suburb. We wanted to be sure that the district was able and willing to provide services for our two disabled sons aged 12 and 5 at the time. The district official assured us that they were able and willing to provide the complex and high level of services the boys required. The entire move was coordinated around the new district's deadlines for review and granting of Summer Special Education Services for the boys. It was important to all of us that the boys have continuity of services through the family transition.

Classes started up after Spring break and my older son was able to attend the Middle School but my younger son Aidan was not admitted to the Kindergarten of the local elementary school. Once we brought Aidan, and his home care nurse, to meet with the elementary faculty and staff, the administration backed away from their prior assurances and continuously delayed his admission. The reasons for delay and denial changed rapidly depending on the excuse of the day. Aidan's doctor had issued clear written orders for actions that should be taken by the attendant nurse to deal with Aidan's various health needs. The district declared that the doctor's orders would not be followed. When pressed for an explanation, the district responded that their attorneys had advised them that the care my son needed was not permissible on school property and that he would need to be home schooled.

Once the district invoked their legal counsel I looked for representation for Aidan. A friend referred me to Legal Aid, specifically "The Children's Law Project." The intake process was quick and I was soon speaking to a competent and experienced attorney who was familiar with education law and ADA issues. Our attorney was able to sort through the barriers the district was presenting. Soon after she became involved Aidan was admitted to his local elementary school under a temporary compromise that allowed his home care nurse to be present in the school. The stipulation at the time was that Aidan be removed from school property and treated by the home care nurse on adjoining public property should there be a medical emergency.

As time passed our attorney pointed me to other resources available to advocate for Aidan. We were relentless in contacting oversight agencies such as VESID and the NYS Nursing license bureau. As pressure grew the district became reluctant to communicate

with us even through their legal counsel. After our attorney researched education law, the Nurse practice Act and [contacted the Elementary Middle Secondary and Continuing Education School Health Department and the State Nursing Department for a written opinion](#), she [presented the information to the school attorney](#). In the end we prevailed and the school district acknowledged that they were in fact responsible for Aidan's safety. The attorneys drafted an Individualized Health Plan which not only provided 1:1 nursing services for Aidan but also required that all nurses in the district be trained on how to reinsert the feeding tube. This Health Plan allows Aidan to fully participate in school.

The Legal Aid Society allowed my family access to resources and expertise in a timely and professional manner. The phrase "Justice Delayed is Justice Denied" is on point in this case because a medically fragile child has only small windows of opportunity to experience normal community life. Aidan spends so much time in medical facilities that every minute in school with "typical" children is precious. "The Children's Law Project" protected and ensured Aidan's right to a free and appropriate public education. At the same time The Legal Aid Society has enriched our community by allowing Aidan to participate in normal daily activities.

If the Legal Aid Society's Children's Law Project had not represented Aidan, he would be confined to home school, with no chance for a normal education and social development. I hope that there will be more funding for legal services providers so that all disabled children can experience educational success. Thank you for taking your valuable time to consider the important question of access to counsel for all New Yorkers. I hope you will do all you can to increase access to justice.