

**Written Statements Submitted at the
Third Department Hearing on October 3, 2011**

Statements of Non-Testifying Witnesses

Empire Justice Center

Legal Aid Society of Northeastern New York, Inc.

New York State Bar Association

Prisoners' Legal Services of New York

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Empire Justice Center



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The Chief Judge's Hearing on Civil Legal Services

October 2011

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

I. Introduction

The Empire Justice Center is a statewide organization dedicated to expanding access to legal assistance and securing social and economic justice. As a legal services provider, Empire Justice provides a full range of legal representation in core areas of poverty law. As a statewide backup and training center, we provide training, support and technical assistance to legal services organizations and to other non-profits serving the needs of poor, low income and disenfranchised clients, including those living with disabilities, victims of domestic violence and vulnerable immigrant populations.

In providing and pursuing a powerful blend of impact litigation and direct legal assistance, policy analysis and advocacy, and training, support and technical assistance, we strive toward our mission to make the law work for all New Yorkers, especially for those who need its support and protection most.

With four offices located strategically around the state in Rochester, Albany, White Plains and Central Islip on Long Island, our work cuts across over thirty fundamental areas of law that most impact our clients. These areas include public assistance, including food stamps, cash assistance, child care, kinship care and child support; consumer law, including foreclosure prevention, debt collection and credit protections; special education; disability benefits, including Supplemental Security Income (SSI) and Social Security Disability (SSD); health coverage, including Child Health Plus, Family Health Plus, Medicaid and Medicare Part-D for seniors; domestic violence, including a specialization in issues impacting the LGBT community; immigration and immigrant access to assistance, including language access; civil rights; employment; and public and subsidized housing.

This hybrid model of service delivery prioritizes being responsive to the needs of the community -- both clients and providers -- emphasizes collaboration and efficiency, and facilitates identification of high impact solutions to emerging client issues.

II. Empire Justice Center's Role in the Community

Each of our four offices provides a different mix of services, based on history and the needs of the community they are located within. We work hard to ensure that our services compliment and supplement the local delivery system and are developed in collaboration and consultation with local legal services and human services providers. In 2010 our staff closed a total of 1,122 cases, impacting 2,590 individuals. We worked on 26 major impact cases, which affected well over 20,000 additional individuals. All told, we were able to direct over \$29 million in benefits to our clients.

In our Rochester office, we are one of the core legal services providers for that community, housed at the Telesca Center for Justice. We provide legal assistance to individuals and families with issues that involve disability benefits, special education, civil rights, the need for specialized legal assistance for those living with HIV/AIDS, and consumer law – including foreclosures and predatory lending.

We also run the C.A.S.H. program (Creating Assets Savings and Hope) jointly with the United Way of Greater Rochester. Through C.A.S.H. we train, certify and deploy between 450 and 600 volunteers every year who, in addition to providing free tax preparation, work to connect clients to basic banking services, to health, nutrition and economic supports and to on-going financial counseling. During the 2011 tax season, C.A.S.H. volunteers assisted over 13,000 households in claiming \$25.2 million in tax refunds, including \$10.9 million in Earned Income Tax Credits; virtually all of which is pent in the Greater Rochester community, adding to the region's economic vitality.

In the Capital District we focus primarily on policy analysis, research and systems change advocacy. Our direct legal assistance in the Capital Region focuses on two specific areas of law. We work in collaboration with the three major domestic violence shelters in the region, providing legal assistance to immigrant victims of domestic violence on referral from the shelters and we provide community legal education in a variety of substantive law areas to their staff and others in the community. We also have a contract with Legal Aid Society of Northeastern New York to provide targeted foreclosure legal assistance in the greater Albany area. Given our extensive expertise in this area, the cases referred to our Albany office are the more complicated and time consuming cases.

We have three bilingual attorneys in our White Plains office, located on the Pace Law School Campus with a small office in Mt. Vernon from which we serve the immigrant populations of the Hudson Valley. Our staff provides legal assistance primarily to immigrant victims of domestic violence, handling everything from VAWA self petitions to specialized U visas to naturalizations and work authorizations. Under contract with Westchester County, we are now providing legal assistance to immigrants facing employment issues including wage and hour claims and instances of wage theft. Our staff works closely with Legal Services of the Hudson Valley, the Pace Women's Justice Center, My Sister's Place and other smaller community-based organizations throughout the region, providing technical assistance and support to their staff and taking direct client referrals of immigrants in need of legal assistance.

Our Long Island office, housed at the Touro Law School, provides a combination of public benefits and immigrant representation – areas of need that were identified by the community when we opened our Long Island office. Thanks to funding from three community foundations and support from IOLA, we have a three-person staff at Touro and are stationing our paralegal at one of the local Hispanic agencies – *Pronto* – for intake on a bi-weekly basis. Our Long Island staff is providing ongoing community leadership on issues involving language access, working to form a newly emerging collaboration – the Long Island Language Access Coalition (LILAC).

III. Working as a Backup Center, Convener and Facilitator

Empire Justice is a traditional backup center for legal services and provides training, support and technical assistance to local and regional legal and human services providers primarily in the regions outside of New York City. These critical services help individual staff attorneys stay abreast of constant changes in law, rule and regulations that impact the legal rights of their clients on a daily basis.

Our training and support staff are acknowledged leaders in their field, many recognized on the national as well as the state level for their knowledge and expertise in the area of law where they focus. To provide the best possible training opportunities we also tap individuals outside our organization to participate in our training events. This helps to build leadership among the field program staff as well increasing the dimension and diversity of the training offered.

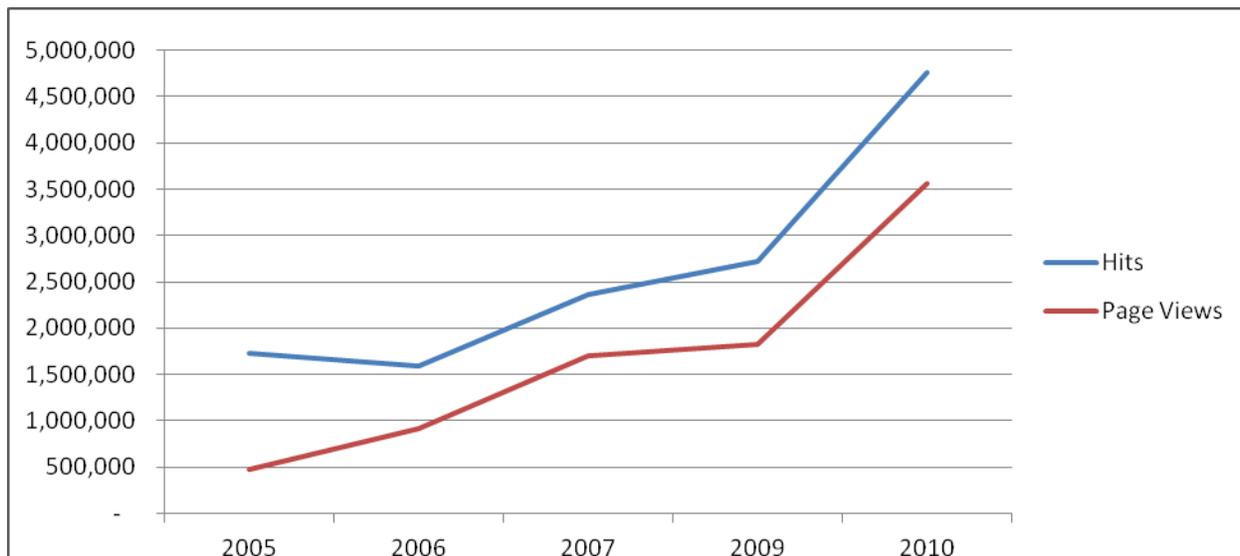
In 2010, we organized 115 training events, reaching 4,035 participants, covering 1,069 Continuing Legal Education (CLE) training hours. A total of 24 substantive law task force meetings were held, reaching 544 advocates working in diverse areas of law, including health, disability, domestic violence and public benefit. We provided webcast access to 14 trainings, which were viewed for a total of 813 hours.

We also publish two legal journals – The *Legal Services Journal* and the *Disability Law News*. Each is published quarterly and e-mailed to close to 6,000 registered users. In addition the articles are posted and archived on our website and accessed on an ongoing basis.

Empire Justice continues to strive to make the most efficient and effective use of our resources and to tap new and emerging technologies to meet the needs of the community. We created and maintain the only statewide website devoted to meeting the substantive law needs of the legal services community in New York. With the help of our technology partners at the Western New York Law Center (WNYLC) we are constantly updating and streamlining our web offerings.

The website is used extensively – topping over 4.5 million hits in 2010 with over 3.5 million page views.

Usage of the Empire Justice website: www.empirejustice.org



We have also created very specialized web-based resources for legal services attorneys. For example, recognizing the significant role Fair Hearings play in our clients' lives and in light of the fact that the State was not making precedential hearing decisions easily or readily available to the community, Empire Justice Center's predecessor, the Greater Upstate Law Project created and maintained a filing system of hearing decisions that our public benefits staff would summarize, alert the community to and make available upon request. In 1999, we converted that filing system to a web-based resource that allows now 3,444 registered users to search 2,900 summarized decisions and to get access to the full decision to help support them in their work. The Fair Hearing Bank continues to grow as advocates around the state submit key decisions to be included. To help maintain the bank, Empire Justice has a regular placement for law students from Albany Law School every semester and as a summer placement.

More recently, we worked with WNYLC, SelfHelp and the Legal Aid Society of New York City to create a special area of the web dedicated to health law issues contracting our clients and the legal services staff working to meet their needs.

In addition to our trainings and web based resources, as a backup center, our staff is available to field staff to provide technical assistance on specific cases, including legal research, strategy, referrals and moral support, helping to ensure the best possible representation and outcomes for clients across a host of substantive law areas. Tapping into the efficiencies offered by new technologies, Empire Justice and the Western New York Law Center (WNYLC) launched a number of listservs to help connect legal services staff to each other to allow for more peer-to-peer networking and assistance. We now co-host a growing number of listservs including in domestic violence, disability, public benefits, housing, special education, health/Medicaid, and family law.

IV. Ensuring Client Issues are Heard in all Forums: Legislative and Administrative Advocacy and Systems Change Litigation

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

The American Bar Association, in its Standards for the Delivery of Legal Services, envisions a statewide system that can effectively meet the full range of client needs; one that can provide a full range of representation of client needs in all forums including before legislative and administrative bodies and in complex litigation. In fact, the ABA notes that “cases that threaten permanent loss of shelter, or income, or that threaten the stability and safety of the family, for instance, call for full representation because of the potential harm that may befall clients.”

The ABA goes on to point out that “some issues affect large numbers of people and are rooted in policies and practices of governmental agencies and businesses that frequently interact with low income persons. Such issues sometimes require advocacy aimed at changing the underlying policy or practice.”

Empire Justice incorporates a range of representation into our overall practice, including legislative and administrative advocacy and class action litigation where needed and appropriate. Through our training and support, our interaction with the community, and our own direct representation of clients, we are able to identify trends and systemic concerns that impact clients and warrant systemic solutions.

As leaders in the statewide policy arena we often act as conveners, bringing together key players, including legal services colleagues to craft legislative or administrative policy solutions and to determine whether a legal challenge is necessary. Our work with statewide and national coalitions allows us to bring issues to a wider audience and solicit additional support for policy change. All of this “big picture” work, when successful, results in broad positive change for groups impacted – often thousands or tens of thousands of New Yorkers benefit.

Empire Justice works to maximize the number of people who benefit from our legal help by bringing cases that benefit thousands of people who are being harmed by the same illegal policy or practice.

One example of this work is in our efforts to remove illegal barriers and delays for public assistance eligibility that exist in many counties. People generally do not apply for cash public assistance, Food Stamps, or Medicaid until their financial situation is pretty desperate. Because of this, the law requires counties to make decisions on applications within either 30 days or 45

days for most types of benefits. Despite the law, many counties were taking twice as long as they were allowed, or even longer, to make eligibility decisions. The effect of the illegal delays on families is devastating. They have done everything and provided everything that was required to show they are eligible but can't get the help they so desperately need and often can't even find out when a decision will be made. In the cases of some of our clients the county workers sat on the information the client provided for so long that when the worker finally looked at the file she decided the information the client provided months ago was now stale. Adding insult to injury the workers actually further delayed opening the case and made the client go back and get updated information.

This is the type of problem that needs a systemic solution, not simply an individual solution that moves one client to the head of the line and pushes those who have waited longer even further back in the line.

Working with other legal services programs that are allowed to do class actions and in some cases pro bono counsel we have filed suits in Federal Court to enforce the timely case opening rules in six counties. Five of the counties have settled, agreeing to process all cases within the time periods required by law and submitting to monitoring to make sure that they comply. The sixth case is close to settlement.

Over a hundred thousand applicants for needs-based assistance will benefit from these lawsuits. Many will receive their benefits twice as quickly as during the time when illegal practices prevailed. Many will not be evicted while waiting for benefits to start saving the time of our overcrowded state courts.

V. The Full Cycle of Services

A perfect example of the way our services inform and strengthen each other and lead to systemic changes is our work on foreclosure prevention. Through our consumer law work in Rochester, our staff recognized an unmet need for direct representation for low wage families facing the loss of home ownership. We sought and obtained local funding nine years ago to represent low income homeowners at risk of foreclosure.

Through this work we began to see clients with non-traditional, subprime mortgages who were victims of fraudulent sales and mortgage origination practices. Utilizing the skills of our researcher, we began looking more closely at data related to the problem and were able to use proprietary data supplied by the Board of Governors of the Federal Reserve to map regional trends and lending data, which we released in January of 2008. It was this data that identified minority neighborhoods on Long Island as the regions among the hardest hit by the Subprime Mortgage Crisis after specific neighborhoods in New York City. Until then, the crisis was thought to be an issue almost exclusively in New York City. Ultimately, the maps and data we developed helped to secure and drive \$25 million in funding to housing counselors and legal services providers to begin assisting at-risk homeowners. That funding resulted in the creation

of the Subprime Mortgage Prevention Services Program – creating collaborations that now exist among 120 legal services and housing counseling organizations across the state.

When the program was created, only a handful of attorneys outside of New York City were handling foreclosures. As one of the first trainings we offered in this area, Empire Justice Center developed a webinar series that provided a road map for legal services programs interested in developing a foreclosure practice. Today, New York boasts a vibrant community of attorneys and paralegals providing representation in foreclosure matters.

As the subprime crisis shifted into a financial crisis and recession, we were on the ground, representing homeowners and training advocates on best practices and changes in the law. Once we realized the shift was occurring, we worked through the statewide coalition, New Yorkers for Responsible Lending, to build on previous expansions of the foreclosure process that created the mandatory settlement process – to open it up to all homeowners in foreclosure, not just those with subprime loans.

We continue to carefully monitor all facets of the foreclosure process to identify problems, improvements and best practices and share our observations with advocates and policy makers. As this testimony is submitted we are working on finalizing our fourth report on foreclosure trends in New York, which we hope will inform the discussions about this ongoing crisis as the 2012 Legislative Session begins.

This is the “wrap around” approach that, given the resources, we would take in every area of the law we practice in. As it stands we put our resources where we believe they will have the highest impact.

VI. Support for the Chief Judge’s Recommendation

Clearly the need for expanded access to legal services is evident in the testimony provided at the hearings on Civil Legal Services and the research done by the Task Force to Expand Access to Legal Services. We feel this need every day in the clients we turn away, the caseloads our staff handle and the stress we witness among the front line staff across the state.

We deeply appreciate the leadership role the Chief Judge has taken in establishing a thoughtful and thorough process to assess the need for funding for these vital services. We look forward to working with the Office of Court Administration in support of the 2012-13 recommendations of the Chief Judge.

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



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

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

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TESTIMONY OF
Lillian M. Moy
Legal Aid Society of Northeastern New York

To the

Chief Judge's Hearing on Civil Legal Services
Third Department

October 3, 2011, 10 AM to 1 PM

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



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Thank you to Chief Judge Jonathan Lippmann, Chief Administrative Judge Anne Pfau, Presiding Justice Thomas Mercure and President of the New York State Bar Association, Vince A. Doyle, for the opportunity to present this written testimony in response to the Notice of Public Hearing on Civil Legal Services. I am the Executive Director of the Legal Aid Society of Northeastern New York. The Legal Aid Society of Northeastern New York (LASNNY) is the primary provider of civil legal services to low income New Yorkers throughout northeastern New York. As of the date of this hearing, we have a total staff of 61: 32 attorneys, 10 paralegals, 12 support staff and seven management staff.

LASNNY serves 16 counties including the Capital District, part of the Catskill Mountains, the Lake Champlain Valley, the St. Lawrence River Valley, and most of the Adirondack Park. This area comprises much of the Third Department. Our main office is located in the City of Albany, New York's Capital. The service area is about 16,264 square miles, 30% of all of New York. Our service area is rural, urban and suburban.

I am pleased to offer this testimony in response to the issues outlined in the Notice of Hearing.

Current State and Scope of the Unmet Need

As of 2009, in northeastern New York, 383,838 people in the service area have incomes below 200% of poverty. The 16 counties in our service area have a total population of 1,480,157 according to the 2005-09 ACS estimates; fully 25% of all here are low income. As of today, 2010 data is only available for the six counties in our service area (Albany, Clinton, Rensselaer, Saratoga, Schenectady, St. Lawrence and Warren). Those counties experienced a 10.1% increase in the population with incomes at 200% of poverty in only one year. Poverty rates in individual communities range as high as 45% in the inner city of Albany to 28% in the Town of Gouverneur, one of our most impoverished rural communities. The overall poverty rate – about 11.7% based on the 2005-09 ACS data -- is also significant in northeastern New York. The 2005-2009 aggregate American Community Survey data shows that there are about 173,115 people living in poverty, a 17.6% increase since 2000 and a 3.8% increase since the 2008 estimates. As of 2010, the poverty population in six of our counties increased by 5.7%, with the poverty rate increasing significantly in Albany, Clinton, Rensselaer and St. Lawrence counties.

As of March 2011, there were 64,202 temporary assistance and SSI recipients in the service area. Based on the 2009 population estimates, 63% of people living in poverty have no public assistance or SSI income at all.

LASNNY strives to be one of the most efficient and effective legal services providers in the state. We have aggressively developed a diverse funding base, with 36 funding sources. We consistently seek funds to further our mission, which is to provide 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.

Unfortunately, there remain significant areas of unmet need for civil legal services in northeastern New York, especially with respect to legal problems involving “the essentials of life”.

Last year, when LASNNY was blessed with several staff funded by federal stimulus funds, we estimate that we turned away even more eligible clients than the almost 8700 turned away during our 2009 count. Clients with problems in every area of “the essentials of life,” housing, benefits, domestic violence, consumer, are turned away every day. According to the most recent Legal Needs Study performed for the Chief Judge’s Task Force last year, approximately 47% of all low and moderate income New Yorkers experience one or more legal problem per year. Given the low income population in our 16 counties, approximately 186,404 low income northeastern New Yorkers experience one or more civil legal problems in a year. Current funding allows us to assist only a small fraction of the eligible population who need a lawyer or paralegal.

Much of LASNNY’s work has always focused on providing “the essentials of life” to our clients. With the new infusion of Judiciary Civil Legal Services funds, LASNNY will continue to concentrate resources on maintaining housing, protecting victims of domestic violence, providing preventative education and advice to clients with consumer debt, housing or public benefits issues, and providing representation in public benefits, particularly in disability benefits cases to ensure health care and income to those who are too disabled to work. Each area faces continuing unmet needs.

There is a significant issue with respect to domestic violence in northeastern New York. In 2010, in the 16 counties we serve, there were 8150 domestic violence victims reported to the police. In that same year, only 4787 family offense petitions were filed originally in the family court; it is clear that civil remedies cannot keep pace with domestic violence. The need for safety is particularly acute for a battered immigrant. While hard numbers are not available, it is estimated that there are almost 7000 female undocumented immigrants in the Capital Region. If the prevalence of domestic violence is about 30%, as it is in the general population, there are thousands of battered immigrants. Undocumented victims of domestic violence cannot ever attain safety, the most essential of “the essentials of life,” without gaining legal status. LASNNY provides some representation to ensure safety for battered spouses and crime victims who need immigration relief, e.g., T and U visas and self-petitions, but more is needed.

Although mortgage foreclosures have slowed in the last few months while lenders regroup in the wake of the Robo-signing scandal, as of September 1, 2010, there were more mortgages in distress (90+ days past-due – 4182) in the Capital Region and North Country than were currently in foreclosure (3,761). Indeed, in all but two of the Capital Region counties there were more loans in distress than in foreclosure as of September 2010. And Albany County, one of the top 20 counties in New York for foreclosure filings, has twice as many loans at risk than in foreclosure. We expect a flood of foreclosures to be filed just as our NYSDHR funding lapses at the end of 2011. We will use Judiciary Civil Legal Services funds for eligible clients facing mortgage foreclosure, but after March 2012, these funds will be exhausted.

Tenants are also at constant risk of homelessness throughout northeastern New York. Given the increasing poverty population, the lack of affordable housing is acute. Households with only public assistance income are at constant risk as the shelter allowance they receive does not even approach the actual cost of local rents. For example, in Saratoga County the three person shelter allowance for a public assistance household is only 35% of the fair market rent for a two bedroom apartment of \$900.

Beyond representation from LASNNY, few tenants can access a lawyer for representation in an eviction case. In July 2011, LASNNY conducted an informal collection of eviction data from local Courts. Although responses were inconsistent, in Saratoga, Warren and Washington Counties, 18 courts reported that 767 evictions were filed. In one of the busiest courts, Hudson Falls, the clerk's office estimated that 100% of landlords are represented but only 10% of tenants. Saratoga Springs City Court reported that 78% of the landlords and 23% of the tenants were represented in 136 evictions. In Glens Falls City Court it is estimated that 45% of the landlords were represented and less than 1% of the tenants in the 186 evictions filed last year.

Whether a homeowner or tenant is at risk of homelessness, what could be more essential than one's housing? Although Judiciary Civil Legal Services funding is available until March 31, 2012, more is needed to ensure continued access to an attorney.

Consider also the number of disabled individuals in northeastern New York. The 2000 Census data shows there were 92,829 unemployed disabled individuals in northeastern New York. ACS data for 2009 indicates that about 425,664 people over the age of 16 are not in the labor force. 2010 Bureau of Labor Statistics (U. S. Department of Labor) data shows that nationwide 24.7% of those not in the labor force are people with a disability; thus about 105,565 over the age of 16 in Northeastern New York are not in the work force, have a disability and may need SSI/SSD benefits. Even with LASNNY's success in increasing the number of SSI recipients in our service area, as of March, 2011, the New York State Office of Temporary & Disability Assistance (OTDA) statistics show that only 39,270 were on SSI and 24,932 on temporary assistance (either TANF or Safety Net). At least 63,303 unemployed disabled people are without public assistance or SSI income. Additionally, both Safety Net and Family Assistance households often have an incapacitated household member who could qualify for SSI. Overall, the number of welfare recipients continues to decrease while the number of unemployed is on the rise – indeed, St. Lawrence and Schoharie Counties are among the counties with the highest unemployment rates (11.4% each as of February 2011) in all of New York. More Judiciary Civil Legal Services funding is needed to maintain and increase advice, brief service and representation in public assistance, unemployment and SSI/SSDI disability cases.

Finally, we count low income children among those with unmet legal needs. The 2005-09 ACS estimates that there were 49,279 children living below poverty throughout our service area. Even more recently, the March 2011 OTDA statistics indicate that 14,257 children were receiving temporary assistance benefits, only about 28% of all children living in poverty. More and more children live without even the most basic safety net assistance. Their future is at risk without access to the resources legal advocacy can help obtain. In 2010, LASNNY implemented a small Medical/Legal Project serving children who are patients of the Albany Medical Center. More funding is needed to help children with disabilities or illness access the "essentials of life;" health care, housing, income or education.

The need for increased legal services to assist clients with legal problems involving "the essentials of life" remains significant. Between 2009 and 2010, eviction intakes increased by 15%, domestic violence intakes increased by 12% and unemployment intakes increased by 18%. Our experience shows that the demand for such services, and the unmet need, continues to rise.

Cost and Benefits to the Courts and to Communities from the Provision of Civil Legal Services

You will hear substantial testimony from judges, business leaders and community partners with respect to both the cost and benefits to the courts and to communities from the provision of civil legal services in northeastern New York. In my testimony, I wish to highlight the economic benefits generated by the work of LASNNY in particular.

LASNNY's work provides substantial economic benefit to this region. In calculating our approximate 2010 economic impact, LASNNY considered the federal funds we attained for SSI/SSD beneficiaries. Taking only five years of such benefits and the retroactive benefits received by our clients in 2010, LASNNY lawyers and paralegals brought approximately \$5,978,083 in SSD/SSI benefits into northeastern New York. In addition, considering the safety and stability brought to victims of domestic violence through a variety of cases, and using the savings per case relied on by the Task Force last year, LASNNY estimates it saved \$470,028 through its successful representation of victims of domestic violence. Finally, considering all of the eviction prevention work done by Legal Aid lawyers in 2010, and assuming only a modest portion or 30% would have resulted in emergency shelter, we estimate that we saved local counties approximately \$265,597 in avoided emergency shelter costs.

LASNNY's Nutrition Outreach and Education Project helps low income people qualify for food stamps. In the program year that spanned 2010-11, a total of about \$2,184,840 food stamp benefits were earned for 630 households in Albany, Montgomery and Saratoga Counties. Using the formula developed by our funder, Hunger Solutions New York, an estimated economic impact of \$3,932,712 accompanied the food stamps that we generated. Taking half of that as earned in 2010, the total approximate benefits plus economic impact of LASNNY's services was \$3,058,776. Our estimated total economic benefits generated in 2010 is \$18,641,568. For every dollar LASNNY received in 2010, another \$3.32 was generated for the community of northeastern New York.

Potential for Reduction in Unmet Need

The Society is one of the most efficient and effective legal services providers in the state. We have taken early and aggressive steps to meet the legal needs of low income people for "the essentials of life" in cost-effective ways. With respect to preventive and early intervention services, the Society has long been committed to an effective community legal education program. Our series of 55 Legal LifeLines provides up to date legal information in a form that clients find easy to understand. The complete list of our Legal LifeLines is attached as Exhibit A. Additionally, LASNNY lawyers do regular outreach and community legal education in order to spread the word about the availability of legal services and particular rights and responsibilities that low income people have with respect to their housing, income and personal safety. In 2010, our program of community legal education in person, in print and on the internet reached approximately 34,000 people throughout northeastern New York.

The Society is also a leader in the use of technology. We use technology every day to provide legal services effectively and efficiently. We also have a current application pending at the Legal Services Corporation for a Technology Initiative Grant to build a national gateway for Limited English Proficient (LEP) speakers to the national and local Lawhelp platform.

We are known for our strategic partnerships with non-legal services providers. Indeed, LASNNY is the hub that anchors the wheel of social, human, legal and pro bono services to low income residents of northeastern New York. LASNNY is well known for its collaborations with social services agencies and other legal services providers.

With respect to assuring that our clients have “the essentials of life”, LASNNY has a number of strategic partnerships and community collaborations. For example, LASNNY has funded relationships with nine domestic violence service providers in the following rural counties: Clinton, Columbia, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Saratoga, St. Lawrence, Schoharie, Warren and Washington Counties. Through our Legal Assistance to Victims (LAV) grant, we are able to provide funding to domestic violence service provider partners to provide referrals, safety planning and social services to our domestic violence clients. In addition, LASNNY attorneys also provide an advanced legal issues training to the staff of domestic violence service provider partners.

Our homelessness prevention and intervention projects, which serve all of northeastern New York, involve collaborations with local departments of social services, community action programs such as Schenectady Community Action Program and other human services agencies such as ETC Housing Corporation, Wait House and various county-based departments of social services. Our Foreclosure Prevention Project similarly involves collaborations with other local legal services providers such as The Legal Project and the Empire Justice Center, as well as a number of housing counseling agencies including Housing Assistance Project of Essex County, Friends of the North County, Albany County Rural Housing Alliance and the HomeSave Project in Albany. With respect to ensuring that our clients have access to safety and security, our Upstate New York Immigration Law Project is a collaboration with the Legal Aid Society of Rochester and ensures that representation for domestic violence immigration matters is available in all 16 counties in northeastern New York. With respect to public benefits, our Disability Advocacy Project (DAP) is a collaboration with the Empire Justice Center and various local departments of social services. Through the Disability Advocacy Project, DAP funds and our judiciary civil legal services funds are used to ensure that clients have access to income and health care services they need. Our Medical/Legal Project for children with disabilities also provides a range of civil representation and is a growing collaboration with the Albany Medical Center.

Through these collaborations, we have also had the chance to work effectively with non-lawyers in narrowing the issues that our attorneys address. Our staff includes paralegals who provide case management services to homeless or formerly homeless clients. We also work closely with non-lawyers from community partners who provide information, referral and lay advocacy to victims of domestic violence and low income individuals at risk of homelessness. This work targets the cases that require the assistance of a lawyer.

Finally, the Society is committed to collaborating with other local legal services providers to maximize available legal services. The local legal services providers work closely to increase the availability of pro bono legal services. In both the Third and Fourth Judicial Districts, the Society has worked closely with the New York State Bar Association, Albany County Bar Association, the Empire Justice Center and The Legal Project to do outreach with respect to

increasing pro bono services, to develop an innovative community law day program and doing joint trainings to recruit and retain pro bono volunteers.

Providers such as LASNNY are committed to exploring the potential for reduction in the unmet need for legal services to preserve “the essentials of life” through a variety of means. However, there remains significant unmet need for an attorney’s service to provide legal services to preserve the essentials of life for our low income clients.

Clearly the work of the Society is good for our clients, the local courts and for the communities in which we practice. We are grateful to the Chief Judge for holding these hearings and championing the cause of civil legal services. We stand ready to provide any additional information as may be requested or desired.



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

Legal Lifelines

*Fighting for Fairness
Promoting Justice*

This Lifeline contains general information, and does not constitute individual legal advice about your situation. You should consult with an attorney for individual legal advice about your situation and to find out how this information applies to your situation. To see if you qualify for free legal services, call the Legal Aid office nearest you.

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New York State Bar Association



**THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES
OCTOBER 6, 2011
TESTIMONY OF VINCENT E. DOYLE III
PRESIDENT OF THE NEW YORK STATE BAR ASSOCIATION**

The Task Force to Expand Access to Civil Legal Services

October 6, 2011

Testimony of Vincent E. Doyle III

President of the New York State Bar Association

My name is Vincent E. Doyle III, and I am the President of the New York State Bar Association. On behalf of the State Bar, I would like to commend the Task Force for its work, and thank you for involving our Association in the process. I submit this testimony, however, to address the specific need for civil legal services for our nation's veterans.

Many veterans face a host of difficult issues as they re-enter civilian life. As a result of our country's involvement in multiple armed conflicts around the world in the past decade, many members of the military have experienced combat-related physical and psychological injuries or disability. When they return home, they may have trouble accessing their benefits, or suffer from indirect consequences related to active duty, such as financial hardship, stress in their family lives, mental health issues, and even substance abuse or homelessness. Some veterans may be reluctant to seek assistance, fearing that it could be viewed as a sign of weakness or failure, and those who wish to seek help may not know where to turn. Many civilian lawyers are unfamiliar with the benefits and services available to veterans, and military lawyers may lack experience with state laws governing landlord-tenant disputes, or matrimonial or family law cases. And although many veterans' legal matters are substantively routine, the issues may be compounded by untreated emotional problems or substance abuse.

When I became president of the State Bar earlier this year, I designated veterans' issues as a top priority and we formed a Special Committee on Veterans to focus on this important area. The committee has already begun its work identifying issues that merit further examination and developing proposals for reforms. The committee is working to help veterans identify their legal problems and to connect them with qualified attorneys, many of whom are eager to help for a low fee or on a pro bono basis. The committee will compile information about existing legal services that are currently available and develop a manual for distribution to veterans to help them find free or affordable legal services. It will work to bolster the quality and availability of legal representation by identifying areas in which civilian lawyers may need specialized substantive training, such as how to navigate the various benefit systems. The committee is developing training in those areas that will also address issues related to military culture and encourage sensitivity to veterans' unique needs. The committee will also examine existing lawyer referral services and propose ways in which they could be revamped to screen for veterans in need of legal assistance.

Unfortunately, some veterans become involved in the criminal justice system. Due to issues that may be present in these cases, such as post traumatic stress disorder, traumatic brain injury, depression, and other mental health issues, a separate intervention is often more conducive to veterans' rehabilitation than typical criminal prosecution. Veterans courts or special veterans treatment tracks are currently operating in several areas throughout the state. These specialized courts and programs recognize that issues related to veterans' service may contribute to involvement in criminal activity, and deal with veterans in a constructive, non-adversarial manner. With the cooperation of judges, prosecutors, members of law enforcement and dedicated volunteers, they work to treat the underlying factors and help veterans get their lives back on track. The Special Committee aims to facilitate the implementation of additional

Veterans Courts around the state and to encourage the transfer of veterans' criminal cases to these programs.

One of the Special Committee's goals is to improve the quality and availability of pro bono services for veterans, and the generosity of volunteer lawyers has had a significant, positive impact in many lives. However, in this and so many other areas, pro bono services cannot completely address the need. Pro bono work will continue to play a critical role in this mission, but there are costs associated with these efforts, and additional full-time advocacy is also necessary to ensure that veterans receive the benefits and assistance they deserve. In order to provide quality representation, pro bono work must be coordinated by organizations that require funding to perform important functions such as maintaining and updating educational resources, training attorneys, operating referral services, screening cases and providing mentorship and guidance to volunteers.

In today's challenging economy, where resources and job opportunities can be scarce, it is especially important that we provide our veterans with the help they need after they have sacrificed so much to serve our nation. I urge the Task Force to support policies that will provide an adequate and consistent source of funding for organizations that provide these important services. I would like to thank you for your consideration.

Prisoners' Legal Services of New York

PROPOSED TESTIMONY
OF
PRISONERS' LEGAL SERVICES OF NEW YORK

BEFORE

CHIEF JUDGE LIPPMAN'S TASK FORCE TO
EXPAND ACCESS TO CIVIL LEGAL SERVICES

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I. INTRODUCTION

We would like to thank Judge Lippman and the members of this Task Force for inviting Prisoners Legal Services (PLS) to testify about our knowledge of the need to expand civil legal services. PLS is a statewide agency that was created by New York State in 1976 in response to “the bloodiest prison confrontation in U.S. history”: the Attica uprising. Since then, PLS has worked tirelessly to address the civil legal issues that were found to have caused the Attica riot.

Our testimony demonstrates that PLS, like other civil legal organizations in New York State, provides vital civil legal services to thousands of low income New Yorkers every year. Like other civil legal services groups, PLS addresses significant legal problems associated with the “essentials of life” such as the living conditions of institutionalized persons, family stability, personal safety and access to health care and education. Like other civil legal services groups, we were created in response to recognition that indigent individuals need competent legal representation to ensure that their civil and constitutional rights are protected. Like other civil legal services organizations, the indigent client population we serve consists predominately of people of color, as well as the illiterate, the physically impaired and disabled and those who suffer from developmental disabilities and/or mental illness. And like the majority of civil legal services organizations in New York State, although the need for our services continues to grow, our funding has been significantly reduced. The only difference

between PLS and other civil legal services organizations is that the low income New Yorkers whom we represent happen to be incarcerated. Moreover, unlike other low income New Yorkers – who, however limited it may be, at least have access to a wider range of legal service providers – our client population has very limited options for, and access to, legal assistance. As is shown in our testimony below, PLS is the only legal services organization in New York State that is equipped and devoted to responding to the direct civil legal services needs of low income incarcerated New Yorkers.

II. THE CURRENT STATE AND SCOPE OF THE UNMET NEED FOR CIVIL LEGAL SERVICES FOR PRISONERS

As noted above, PLS’ clients share many of the same “essentials of life” issues with the clients of other civil legal services organizations such as lack of access to adequate health care and education and the need to ensure family stability, and with other institutionalized persons, such as the conditions in the institutions where they are confined. In addition, there are other “essentials of life” issues that are unique to prisoners, notably, basic, fundamental human rights issues such as protection from torture and cruel and inhuman treatment and the fundamental right to freedom which, for prisoners, manifests itself as the right to be released from prison on the court ordered release date.

A. THE STATE OF THE UNMET NEED

1. The unmet need to protect individuals from prolonged solitary confinement.

New York State prisoners can be disciplined for a host of prison rule violations including, e.g., failing to have an ID card; being out of place; creating a disturbance; fighting; drug charges; and assaults. If a prisoner is charged with misconduct, a disciplinary hearing is held against him. Although prisoners have some limited rights at these hearings such as notice of the charges and the right to call, but not cross-examine, witnesses, for the vast majority of prisoners facing disciplinary hearings, there is no right to counsel.

The punishment for violating a prison rule can range from ‘counsel and reprimand’ to placement in solitary confinement, loss of good time and loss of packages, phone and commissary privileges and loss of good time. Although the Department of Corrections and Community Supervision (DOCCS) has internal “guidelines” for imposing solitary confinement,¹ these “guidelines” are not mandatory and are often exceeded. The fact is that there is no limit to the amount of time a prisoner in New York State can be placed in solitary confinement.²

¹ For instance, DOCCS’ guidelines for an assault without a weapon and minor or no injury has a guideline range of 3 to 9 months in solitary confinement and 3-6 months loss of good time; an assault with a weapon with serious injury has a guideline range of 12-24 months in solitary confinement and 12-24 months loss of good time.

² Due to litigation by PLS, Prisoners’ Rights Project and Disability Advocates, Inc. and legislative efforts by various advocacy groups, there has been a movement in New York State to reduce the

Whether DOCCS follows its existing guidelines, however, is not really the issue. The research on the effects of solitary confinement on humans shows that even the application of DOCCS' existing guidelines can result in conditions of confinement that jeopardize the physical and mental health of people so confined. Human rights experts across the world, including Human Rights Watch, the Human Rights Committee and the Committee against Torture, have criticized the use of long term solitary confinement.³ The U.N. Commission on Human Rights through its Special Rapporteur on Torture has found that prolonged solitary confinement may very well violate the International Covenant on Political and Civil Rights. A noted human rights scholar wrote: "Solitary confinement and prolonged segregation in U.S. prisons follow neither international standards for prison management nor internationally established protections for prisoners rights."⁴ A Human Rights Watch report on "*Solitary Confinement: International Norms and Health Consequences*," notes that: "Empirical research on solitary and supermax-like confinement has consistently and unequivocally documented the harmful consequences of living in this kind of environment"⁵ Presidential hopeful John McCain talked about his experience in solitary confinement

amount of time a mentally ill prisoner might face in solitary confinement, but there is no such limit for other prisoners.

³ See: <http://www.hrw.org/en/news/2010/03/22/solitary-confinement-and-mental-illness-us-prisons>

⁴ Elizabeth Vasiliades, "Solitary Confinement and International Human Rights: Why the U.S. Prison System Fails Global Standards," *American University International Law Review*, vol. 21, p. 98, 2005.

as a prisoner of war in Vietnam where he spent five and a half years in isolation in a fifteen-by-fifteen-foot cell. He stated: “It’s an awful thing, solitary [i]t crushes your spirit and weakens your resistance more effectively than any other form of mistreatment.”⁶

But even if one should take issue with the notion that solitary confinement is *per se* torture, we can all agree that placing someone in solitary confinement, often for years at a time, without sufficient evidence that such punishment is warranted, is unjust and violative of the Constitution; yet, such incidents occur within our State prisons all too often.

Since 2009, PLS has received requests from prisoners to review over 2400 disciplinary hearings – hearings that resulted in dispositions of prolonged placement in solitary confinement. Due to our limited funding we were only able to review approximately 16% of those hearings. Of the 389 cases that we were able to review we found that, in many of the hearings, there were procedural and substantive errors that warranted the filing of an administrative appeal and, if unsuccessful, an Article 78 proceeding. **PLS’ advocacy on those cases resulted in expungement of a total of**

⁵ Craig Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” *Crime and Delinquency*, vol 49, no. 1, January 2003, p. 130.

⁶ Antul Gwande, “Hellhole,” *New Yorker*, March 2009. “And this comes from a man who was beaten regularly; denied adequate medical treatment for two broken arms, a broken leg, and chronic dysentery; and tortured to the point of having an arm broken again. A U.S. military study of almost a hundred and fifty naval aviators returned from imprisonment in Vietnam, many of whom were treated even worse than McCain, reported that they found social isolation to be as torturous and agonizing as any physical abuse they suffered.”

over 80 years of solitary confinement time from prisoners' records. PLS' ability to review those hearings and advocate accordingly resulted in numerous men and women across New York State being removed from wrongfully imposed solitary confinement, but there are hundreds of other prisoners who were not as fortunate.

2. *The unmet need to ensure an individual's right to freedom.*

Our Constitution ensures the right of liberty for all citizens, but often prisoners are held beyond their court ordered release date. Whether the error is due to a jail time or sentencing computation mistake, or loss of good time as a result of a due process violation at a disciplinary hearing, denying an individual's right to freedom flies in the face of one of the most fundamental "essentials of life" that exists in America.

For 2010 and the first two quarters of 2011, PLS received 5053 requests from prisoners to investigate parole, jail time, sentencing and good time issues. Once again, due to our limited resources we were only able to accept a fraction (13%) of those cases for review, but even with the limited number of cases we were able to accept, **PLS' advocacy resulted in over 96.5 years of jail time, sentencing time and good time being restored to prisoners across New York State.** Although the clients whose freedom we were able to protect are very appreciative, there are literally thousands of others for whom our services were unavailable due to our lack of adequate resources.

3. *The unmet need to prevent cruel and inhuman treatment.*

PLS' work over the past 35 years to eliminate the use of excessive force in the State's prisons has resulted in the placement of cameras in most facilities, better training in the use of force and alternatives to using force for prison guards, a requirement that officers submit detailed use of force reports and improved medical exams after the use of force. In spite of these gains, in 2010 PLS received over 600 complaints alleging excessive use of force or harassment by correctional officers. Although the use of excessive force is not the norm, when it does occur, there is a need for swift and strong advocacy. Take, for example, the case of Mr. Williams.⁷ Mr. Williams was assaulted in a State prison by a number of corrections officers. He suffered a broken nose, fractured orbit, fractured thumb and possibly fractured rib. He also had a large laceration around one eye requiring 32 sutures. His broken nose required surgical repair. His broken thumb required immobilization in a cast for six weeks. PLS filed a federal 42 U.S.C. Section 1983 action and engaged in extensive discovery lasting over two years and, just recently, the State agreed to settle the case.

Interestingly, although the prison population has decreased approximately 7.4 percent since January 1, 2008,⁸ the volume of requests for assistance with excessive use of force complaints does not appear to be following the same trend. In 2008,

⁷ The name of the client has been changed to protect honor attorney-client confidences.

⁸ http://www.pewcenteronthestates.org/uploadedFiles/Prison_Count_2010.pdf DOCCS' reported prison population as of January 1, 2008 was 60,347. DOCCS' reported prison population as of June 22, 2011 was 55,871.

PLS received 609 complaints of brutality by guards and, as stated above, we received 600 such complaints in 2010. These figures demonstrate that brutality complaints are on the rise.

Once again, even though PLS receives hundreds of complaints annually, we are only able to fully investigate a handful of them, and although not all of the allegations of excessive use of force result in the need for PLS to intervene, the sheer number of complaints, the evidence that such complaints may be increasing and the results of our advocacy in the cases we do accept, highlight the need for civil legal services in this area. Moreover, experience, as well as anecdotal evidence, strongly suggests that PLS' mere presence and proven ability to investigate and litigate such claims when necessary, serves as an important deterrent to staff abuse and misconduct.

4. *The unmet need to ensure access to adequate medical and mental health care.*

Adequate medical and mental health care for prisoners is not only constitutionally required, but critically important to public health and safety. PLS investigates hundreds of allegations of inadequate medical and mental health care claims annually. We successfully advocate in many of those cases. As a result of our work, many prisoners receive the medical and mental health attention that they need which translates into a reduction in tension within the prison population. Additionally, because they are treated for their medical and mental health issues, upon release, they

are better able to reintegrate into society and reunite with their family and loved ones which often lessens the likelihood that they will re-offend and return to prison.

In 2007, together with Prisoners' Rights Project and Disabilities Advocates, PLS settled a lawsuit focused on the treatment of the mentally ill in prison. As a result the treatment of the seriously mentally ill in prison has improved. However, as reported by the *Poughkeepsie Journal* on December 26, 2010, there remain significant deficiencies in the care and treatment of the mentally ill in our State prisons as suicides are on the rise and "mental health care was criticized in 9 of the 21 suicides that occurred since the prison lawsuit was settled."

As reported in the Dec. 26th article in the *Poughkeepsie Journal*: "Suicides in New York state prisons soared in 2010 to their highest rate in 28 years as 20 inmates took their own lives." Since 2010, PLS has received over 1135 complaints concerning inadequate medical and mental health care but was only able to accept approximately 20% of those cases. Such statistics demonstrate the critical need for the type of civil legal services that PLS provides.

5. *The unmet need to help maintain family stability.*

Maintaining family ties is crucial to successful reentry. A strong family support system upon release has been shown to be a significant factor in reducing recidivism rates. Strong family ties translates into safer prisons. In 2010, PLS received approximately 200 complaints from prisoners involving family issues such as visitation

and custody and although we were unable to accept every case, because of our involvement in many of them, visitation was restored and our clients were able to maintain and strengthen their family relationships.

B. THE SCOPE OF THE UNMET NEED

As can be seen from the case acceptance numbers set forth above, the scope of the unmet legal needs of prisoners is wide spread and significant. Our inability to accept a greater number of cases stems from the reduction in funding that has occurred over the past decade, which has, in turn, resulted in a significant reduction in staff.

In the 1990's when the prison population reached 72,000, PLS had a staff of 40 attorneys plus additional support staff and an allocated State budget of over \$4,000,000.00. Today the prison population is approximately 55,000.00, our State budget is \$1,000,000.00 and PLS has a staff of 11 attorneys.

To understand the breadth of the unmet legal need for prisoners in New York State it is helpful to look not only at case acceptance numbers and current PLS staffing, but at a comparison of the number of private attorneys providing civil legal services to the general population with the number of PLS attorneys providing civil legal services to New York State's prison population. Per a 2007 report by the Legal Services Corporation entitled "Documenting the Justice Gap in America"⁹ the ratio of private attorneys providing civil legal services to the U.S. population in 2000 was roughly 1 to

⁹ <http://www.lsc.gov/justicegap.pdf>

525. The present ratio of PLS attorneys providing civil legal services to prisoners is 1 to 5090.

III. ECONOMIC AND SOCIAL CONSEQUENCES OF REDUCED OR ELIMINATED PLS' SERVICES

A. PLS' WORK HAS HELPED PREVENT ANOTHER "ATTICA"

PLS was created to address the issues that were found to have caused the Attica rebellion. We have helped reduce the use of excessive force against prisoners, we have significantly reduced the use and misuse of solitary confinement, we have worked to increase programming and education for prisoners, we have assisted prisoners in peacefully airing and resolving their grievances and we have been instrumental in improving the overall conditions of New York State prisons. In addition, over the years PLS has been instrumental in the development of significant case law in the areas of prison discipline, jail time and sentence calculation, and parole, as well as federal civil rights and due process protections.

The benefit that PLS provides to New York State in helping to prevent another Attica is immeasurable. The New York State Association of Criminal Defense Lawyers (NYSACDL) has stated that PLS' "work has made the prisons safer, more humane and less violent." New York State Bar Association Past President Stephen Younger stated: "One of the greatest values of PLS is that it works to avoid conditions of confinement that resulted in the devastating Attica riot. PLS is – and should remain – a vital,

integral part of the state’s criminal justice system and a critical component of public safety.” The cost of another Attica would be astronomical; not just in dollars but in lives and in the threat to the future stability of our criminal justice system. Thus, the economic and social consequences of continuing to reduce PLS’ services cannot be overstated.

PLS IS THE ONLY STATEWIDE LEGAL SERVICES ORGANIZATION WITH THE EXPERTISE AND CAPACITY TO FULFILL THE LEGAL MANDATE OF PROVIDING PRISONERS ACCESS TO THE COURTS

The State has a legal responsibility to provide meaningful access to the courts for inmates confined in state prisons. Bounds v. Smith, 430 U.S. 817 (1977). New York has, in the past, wisely chosen to fund PLS to provide this access to at least part of the inmate population. In a letter to Governor Pataki several years ago, the then President, the immediate past President and the President-Elect of the New York State Bar Association, addressed the need for PLS’ continued funding: “Experience demonstrates that citizens are not able to adequately represent themselves in litigation, particularly that which requires discovery or trial. And inmates who are not literate, who do not speak English well or who are mentally ill surely are entitled to the services of lawyers. The fact is that lawyers are essential to the fair administration of justice for prisoners.”

C. PLS IS THE ONLY LEGAL SERVICES ORGANIZATION THAT PROVIDES DIRECT LEGAL REPRESENTATION TO ALL NEW YORK STATE PRISONERS

Although significant improvements have been made within our prison system, abuses still occur, and PLS is the only statewide legal services organization that prisoners can turn to for direct legal services representation.¹⁰ This is borne out by the hundreds of referrals PLS receives annually from outside agencies, organizations and individuals including requests from the Executive, Legislative and Judicial branches including Assembly members, Senators, Judges and lawyers asking us to investigate prisoner complaints that are received in their offices.

The New York Civil Liberties Union (NYCLU) notes that NYCLU, “which is not a direct legal services organization, receives many hundreds of compelling requests for assistance each year, from prison inmates who have been assaulted, deprived of necessary medical or mental health care, and denied fundamental constitutional rights. *Almost all of these cases are referred to PLS, as only it has the mandate, the expertise, and the capacity to address these matters.*” (emphasis added)

The Office of the Appellate Defender points out that, “PLS is the sole organization that serves the entire population of incarcerated individuals in the State...PLS serves as a vital resource to other legal service providers in the State, as well as families of incarcerated persons. Our attorneys often call upon our PLS

¹⁰ Although the Legal Aid Society’s Prisoners’ Rights Project does handle some prison related cases, PRP focuses primarily on class action litigation in the State prisons and in the New York City jails concerning sexual assaults.

colleagues for advice on handling certain matters within their expertise. Moreover, when we encounter situations that are outside of our purview, we will refer individuals directly to PLS for representation....As a matter of fairness and decency, and as a matter of public safety, PLS must not be permitted to close.”

Disability Advocates, Inc. states:” We have worked with PLS for many years, and can assure you that if this fine organization goes out of existence there is no other organization that can pick up the task.”

The Correctional Association of New York notes that PLS provides “an essential avenue for incarcerated persons to obtain meaningful access to civil lawyers, the courts, and legal rights information. It is a strength of New York State that the Executive and Legislative branches have consistently recognized this fact and protected this civil legal access.”

The New York State Defenders Association noted the overwhelming requests for assistance that were received when PLS went unfunded for one year in 1998. “Before the demise of PLS, we received approximately 300 requests a year from prisoners. A majority were referable to PLS, most of which were resolvable by PLS without litigation. At least three times that many cases are now coming into our office, most not referable.”

And solo practitioners across the State are also urging funding for PLS. One such attorney writes: “PLS has helped me perform my job as an Assistant Public

Defender better. I often get letters requesting assistance that my office cannot provide; I refer them to PLS and never get letters back saying they were not able to help. PLS provides services that help us all in ways many do not see or understand.”

The above is just a small sample of the comments made by organizations and individuals who understand the purpose and need for Prisoners’ Legal Services and who know, first-hand, that PLS is the only organization they can turn to for individualized legal assistance in cases concerning conditions of confinement in State prisons.

D. PLS SAVES THE STATE MILLIONS OF DOLLARS EVERY YEAR

By correcting jail time and sentencing errors and successfully seeking restoration of good time, **PLS saved the State over \$3.6 million in 2010, and over \$4.6 million in 2009.**¹¹ PLS’ work since 2009 has resulted in a total of 205.5 years being credited to prisoners’ sentences and, through the reversals of disciplinary hearings, the expungement of 80 years of solitary confinement. But for PLS’ work, men and women would have been illegally held in our prisons or in solitary confinement for years, costing the State millions of unnecessary dollars in actual confinement costs and untold dollars in subsequent wrongful confinement awards. NYSACDL has stated that: *“It is quite probable that the work of PLS has protected*

¹¹ Attached as an Appendix to this testimony is a document setting forth how PLS saves the State millions every year.

the State from litigation and judgments for faulty jail time calculations or sentencing errors.”

IV. COST AND BENEFIT TO THE COURTS AND COMMUNITIES

PLS, by answering over 12,000 prisoner complaints annually, has discouraged, and often prevented, the filing of many lawsuits that would have otherwise been a costly burden to DOCS, OMH, the Judiciary and the Attorney General’s Office. In addition, when PLS accepts a case, the courts benefit from having experienced legal counsel steering the litigation. Finally, through our *Pro Se* newsletter, Facebook page and website, PLS educates, not only prisoners, but their families and society at large on the constitutional and regulatory rights of prisoners, our criminal justice system in general, prison conditions and reentry resources.

In addition, there are benefits to the community in terms of public safety. Because of our work, many prisoners receive the mental health care, medical care, programming and education they need to succeed in life once they are released. Through our work, prisoners learn that society will not tolerate unjust treatment of its people. Our work instills in prisoners the sense that the criminal justice system is fair and just. Thus, when they are released from prison, our clients are much more likely to successfully adjust to life outside the prison walls and become law-abiding productive members of society.

**V. POTENTIAL FOR REDUCTION IN UNMET NEED THROUGH
PREVENTION AND EARLY INTERVENTION, CLIENT EDUCATION,
COLLABORATION AND COST SHARING AND EXPANSION OF
PRO BONO EFFORTS**

A. PREVENTION AND EARLY INTERVENTION

By intervening early in disciplinary, medical and mental health, visitation and other conditions of confinement matters, PLS helps prevent prisoners from being subjected to constitutional violations. Our interventions also help them prepare for successful release into society, thus reducing the “essentials of life” issues that typically arise upon release. In addition, PLS is currently collaborating with DOCCS to produce educational videos that DOCCS will show to all prisoners upon reception into custody to educate and advise them of their rights and obligations while in prison and to help guide them on a path to early and successful release and reentry. Early intervention on these issues will help prisoners better navigate and understand the prison system, thus helping them to avoid the many pitfalls of incarceration.

B. CLIENT EDUCATION

PLS publishes a bi-monthly newsletter, *Pro Se*, that advises prisoners of changes in the law, provides practice pieces to assist its readership in complying with statutory and regulatory requirements, and explains technical aspects of various laws affecting prisoners. *Pro Se* is provided free of charges to all prison law libraries, over 7800 individual prisoners and over 250 outside organizations, including the NYS Bar

Association, judges, professors, the Division of Criminal Justice, community activists and DOCCS. PLS also publishes over 75 self-help and educational memos covering a wide-variety of legal topics typically encountered by prisoners.

Our educational and self-help materials give guidance to prisoners in many areas including, for example, how to access and navigate the prison grievance system. Proper use of the grievance system can, in turn, result in the resolution of issues without court intervention. In addition, our materials advise prisoners on how to cope with issues such as guard harassment in a peaceful non-adversarial way which, in turn, helps prevent escalation of emotions which inevitably result in charges of misconduct that might otherwise occur. Finally, our educational materials help prisoners realistically assess the merits of their cases, thus reducing the burden on both counsel and the judiciary.

C. REGIONAL PROVIDERS, COLLABORATION AND COST SHARING

On a number of occasions, PLS has partnered with various legal services organizations and law schools to leverage resources, thereby increasing the number of prisoners whom we can assist. An example of this is our partnership with City University of New York Law School (CUNY) and the students in CUNY's Criminal Defense Clinic. PLS provides training to the clinic students on the procedural and substantive issues surrounding disciplinary hearings. The students are then supervised

by a CUNY professor in their review of and advocacy on prison disciplinary hearings that PLS refers to them. If PLS were given additional funding, we would be able to expand such efforts and, in turn, provide additional legal services for our clients, thereby further reducing the unmet need for legal services within our prisons.

PLS also works with DOCCS in its Reentry Program at both Orleans and Hudson Correctional Facilities. These programs are available to between 60 and 90 prisoners at each facility and are offered to inmates who are scheduled for release to the Buffalo and Albany regions. As part of the program, PLS, the Legal Aid Bureau in Buffalo and a number of other volunteers, make presentations on issues such as education, employment, parole and family law. Additional projects along these lines would help in providing positive guidance to our clients, all of which result in reduced tension and concomitant improvements in overall conditions of confinement, including the safety and security of our prisons.

D. EXPANDING PRO BONO SERVICES

As a result of a one year grant from the Tides Foundation, PLS recently hired a Pro Bono Coordinator. Since beginning at Prisoners' Legal Services, on July 18, 2011, our Pro Bono Coordinator has been working steadily on developing a comprehensive pro bono program. Our goals for the year are to: improve collaboration among civil legal services providers; develop procedures,

forms and manuals for the pro bono program; form partnerships with the courts, law firms, law schools, similarly-tasked organizations and state agencies; identify cases that can be referred through the Pro Bono Program; create a network of support services for pro bono attorneys; develop a training component for volunteer attorneys and law students; and organize a kick-off event to advertise the existence of the program.

Over the last two months, many of these goals have been achieved. We have improved collaboration between organizations who provide referrals for prison-related cases by creating a resource referral spreadsheet.¹² We have drafted a manual to be provided to the attorneys volunteering through our Pro Bono Program. We have met with the Chief Clerk of the Albany County Supreme Court, to discuss a partnership through which law students would screen *pro se* petitions submitted by prisoners, identifying those that would benefit from an attorney's assistance.¹³ We are also exploring a collaboration between DOCCS, Albany Law School's Pro Bono Program and PLS.¹⁴

¹² The spreadsheet lists the civil legal service and referral agencies throughout New York, and details the services, if any, offered to prisoners. This information has been distributed to over 100 bar associations, legal service providers, and law school clinics.

¹³ The proposal we have put forth consists of law students reviewing prisoners' *pro se* Article 78 filings at the Albany Supreme Court Clerk's office twice weekly. Students, trained by PLS staff, would examine the papers, focusing on procedural compliance, timeliness and substantive issues to determine if the case would benefit by being referred to a pro bono attorney. If referral is deemed appropriate, PLS' Pro Bono Coordinator would work to locate appropriate pro bono counsel.

¹⁴ Specifically, we have proposed to train student volunteers on prisoners' rights issues to enable them to visit two state prison facilities monthly, and conduct seminars on issues relate

To recruit attorneys, our Pro Bono Coordinator has engaged in targeted outreach to various law firms, the Albany Law School Pro Bono Program, the Syracuse Law School Pro Bono Advisory Board and Volunteers of Legal Services. In an effort to create a support system for volunteer attorneys, our first venture will involve a CLE training on handling disciplinary hearings. The training will initially be offered to Albany Law School Pro Bono students and will also be made available on the American Bar Association's website.

To ensure that people are aware of our new Pro Bono program we have organized a kick-off for the Pro Bono Program during National Pro Bono Recognition Week (October 23-29, 2011).¹⁵

Though still in its infancy, a bright future shines for this program. Over the course of four weeks, seven cases have been referred to our Pro Bono Coordinator in the hope that pro bono counsel can be found. Clearly a need exists for additional resources – resources that would allow PLS to extend the Pro Bono Coordinator's position beyond one year and hopefully expand our pro

to incarceration and reentry.

¹⁵ On October 26th, we will host a screening of the film *Crime After Crime*, a documentary about one woman's fight for freedom, following her conviction for the murder of her abusive husband. Her case was accepted pro bono by two attorneys, who demonstrate the value of pro bono work as well as working with incarcerated persons. We are advertising the event through the New York State Bar Association, the Albany County Bar Association, and the ABA's Celebration website (<http://www.probono.net/celebrateprobono/>), as well as e-mailing announcements to approximately 350 individuals throughout New York State. We will also be providing information about the event to local news outlets and posting fliers throughout the Capital Region.

bono efforts statewide. Increasing the chances for successful pro bono referrals will help reduce the unmet need for the civil legal services prisoners desperately need.

CONCLUSION

For 35 years, PLS has worked tirelessly to address the “essentials of life” legal problems so often confronted by its clients, the indigent New Yorkers who have ended up confined in our State’s prisons. PLS has helped keep the peace in our State prisons and has increased the likelihood that prisoners will be able to successfully reintegrate into society when they are released. PLS is a critical and necessary component of New York State’s civil legal services infrastructure. PLS is also an important, necessary and sound investment, not only from an economic, but also from a moral, ethical and human rights vantage point.

Additional resources will enable PLS to increase its ability to respond to the critical, but unmet civil legal services needs of this State’s indigent and oft-forgotten prison population.

Dated: September 9, 2011

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**APPENDIX
PLS SAVES THE STATE MILLIONS ANNUALLY**

I. TIME SAVED

A. Good Time, Jail Time Sentence Computation Time and Parole Release Time

PLS ensures that prisoners' sentences are calculated accurately and that they receive all of the jail time to which they are entitled. PLS' also ensures that prison disciplinary hearings comply with procedural and due process requirements and when they do not, PLS' advocacy results in prisoners recovering lost good time and being removed from solitary confinement, commonly referred to as the "special housing unit" or SHU. PLS' advocacy in these areas results in millions of dollars of savings for the State annually. For every year of good time restored and jail time and sentence computations corrected, PLS saves the State at least \$36,835.00.¹⁶

B. SHU Time

When inmates are released from SHU they are able to participate in educational and other rehabilitative programs. Participation in such programs increases the likelihood of early release and dramatically reduces the recidivism rate. In addition, if an inmate is in general population as opposed to SHU when he/she appears before the parole board, release is much more likely. Thus, although release from SHU may not save the State the entire \$36,825,00 per inmate, it does significantly reduce the overall cost to the State. Factoring in SHU time at only half the time saved results in the following savings:

**TOTAL TIME SAVED
FOR 2009**

SHU Time Cut	436 months
Good Time Restored	352 months
Jail Time Credit	222.5 months
Parole Release	9 months
Sentence Computation	727.5 months

Total Good Time, Jail Time, Sent. Comp. & Parole Release:

$$109.25 \text{ years} \times \$36,835.00 = \$4,024,223.75$$

½ SHU time:

$$18.17 \text{ years} \times \$36,835.00 = \$ 669,169.17$$

Total State Savings for 2009

\$4,693,392.92

¹⁶ Bureau of Justice Statistics Special Report June 2004 reported that in 2001, the average yearly cost of housing an inmate in a New York State Prison was \$36,835.00. See: <http://www.ojp.usdoj.gov/bjs/pub/pdf/spe01.pdf>.

**TOTAL TIME SAVED
FOR 2010**

SHU Time Cut	352 months
Good Time Restored	139 months
Jail Time Credit	168 months
Parole Release	0
Sentence Computation	692 months

Total Good Time, Jail Time, Sent.Comp. & Parole Release:

$$83.25 \text{ years} \times \$36,835.00 = \$3,066,513.75$$

½ SHU time:

$$14.06 \text{ years} \times \$36,835.00 = \underline{\$ 540,246.67}$$

Total State Savings for 2010

\$3,606,760.42

**TOTAL TIME SAVED
FOR
JAN. 2011- JUNE 30, 2011**

SHU Time Cut	184 months, 5 days
Good Time Restored	72 months
Jail Time Credit	41 months, 12 days
Parole Release	14 months, 29 days
Sentence Computation	34 months, 26 days

Total Good Time, Jail Time, Sent.Comp. & Parole Release:

$$13.5 \text{ years} \times \$36,835.00 = \$ 497,272.50$$

½ SHU time:

$$7.6 \text{ years} \times \$36,835.00 = \underline{\$ 279,946.00}$$

Total State Savings for 2010

\$ 777,218.50

Alyssa L. Talanker, Esq.

Judicial Hearing on Civil Legal Services
October 3, 2011, Albany, New York
Statement by Alyssa L. Talanker, Esq.

Thank you for the opportunity to present a statement on the need to fund representation for low-income New Yorkers at unemployment benefit hearings. I am Alyssa Talanker, an attorney in Troy, New York. For the past year, I have volunteered weekly at the Legal Aid Society's unemployment clinic in Albany and met with over 75 unemployment claimants. The clinic helps claimants to represent themselves at benefit hearings by providing an understanding of their hearing rights, the hearing process, and the legal standards for denying unemployment benefits in their particular case. The unemployed workers who use the clinic would prefer to have legal representation at their hearings. Many choose self-representation, however, because they cannot afford the legal fees they would owe if successful at their hearing. Most low-wage workers live paycheck to paycheck, and have no savings when they lose their jobs. Unemployment benefits are their sole source of income to pay for rent, food and other basic needs to support their families until they can find new work.

Providing funding for legal services for unemployment representation may reduce the demand for other types of legal services for the poor. As Chief Justice Burger recognized, "Unemployment benefits provide cash to a newly unemployed worker at a time when otherwise he would have nothing to spend, serving to maintain the recipient at subsistence levels without the necessity of his turning to welfare or public charity." California Human Resources Department v. Java, 402 U.S. 121, 131-132. At the clinic, it is not unusual to learn that unless a claimant can get unemployment benefits, the family will have to move into a shelter or apply for public assistance.

Without representation at their unemployment hearings, claimants are less likely to receive unemployment benefits. A study by the National Employment Law Project found that claimants are twice as likely to win their unemployment benefit hearings when they are represented. Another study by the Massachusetts Division of Unemployment Assistance to the Massachusetts Supreme Judicial Court's Access to Justice Commission

in 2006 reported that in cases where the employer was represented and the claimant appeared pro se, the claimant succeeded 49% of the time, but when both parties were represented, the claimant's rate of success rose to 68%.

These findings are not surprising. Most unemployed workers who come to the clinic have never participated in any type of administrative hearing. Many are not comfortable with the idea of cross-examining their former employer or co-workers. For some, recalling their discharge and the circumstances leading up to it may be too emotional or challenging to effectively present their own case. They need counsel who “can help delineate the issues, present the factual contentions in an orderly manner, conduct cross-examination, and generally safeguard the interests” of a claimant. Goldberg v. Kelly, 397 U.S. 254, 270-271 (1970).

Most of the cases at the clinic involve disqualifications on the grounds that a former worker quit without good cause, or that her acts constituted misconduct. In some cases, the employers did not object to the claim until after the claimant had been collecting unemployment benefits for several weeks, or even months. The need for effective legal representation becomes readily apparent. In the majority of the misconduct cases, the facts as explained by the claimant do not indicate any volitional act or omission detrimental to the employer's interest that would satisfy the disqualification standard under the case law. Often, claimants are able to recall other instances where their employer condoned the same conduct as part of its ordinary operations, and can identify witnesses who would testify in support. With counsel to cross-examine the employer and present witnesses to refute any suggested detrimental impact from the claimant's conduct, an effective argument for benefits can be presented to the administrative law judge. For a claimant who unsuccessfully represents herself at the hearing, however, the consequences can extend well into the future. Once disqualified for misconduct, she remains ineligible to receive unemployment benefits until she returns to work and earns five times her weekly benefit rate. This impact can be especially severe for many low-wage workers in

New York where the 2010 unemployment rate for african-americans was 14.4%, 12.2% for latinos, and 17.2% for youths.

At the clinic, a claimant has the opportunity meet for an hour with an attorney and share -- often for the first time -- the details of her work experience. This consultation often brings out important facts to present at an unemployment hearing for quitting without good cause. During the consultation, it is not uncommon to hear about wage violations or job discrimination involving hostile work environments that contributed to the reasons for quitting. This information, however, does not always come to light during the claimant's telephone conversation with the Department of Labor's unemployment representative. Often, claimants may not realize their employer's actions were unlawful and never bring them up to the representative who initially determines the claim.

A smaller number of claimants seek help because the Department has stopped their benefits and sent a notice of overpayment to recover the benefits paid. These cases often involve charges that the claimant stated the wrong reason on the claim form for job termination and willfully misrepresented eligibility for benefits. Several decisions by the Unemployment Insurance Appeals Board have recognized that inadvertent errors, such as claiming "lack of work" where downsizing was imminent but layoffs had not yet started, is not willful misrepresentation. Many claimants at the clinic do not understand these fine points or their disqualification notices. Although they are advised to articulate any inadvertent misunderstanding to the judge, the need for counsel is again apparent. Ineffective self-representation may result in an order to repay several thousand dollars in benefits already spent for rent, utilities, food and clothing to support the claimant's family.

Unemployment benefits are as crucial as public benefits to the support of low-income New Yorkers. The safety net provided by unemployment benefits though can disappear instantly and permanently once a benefit claim is denied. The cost of funding representation for unemployment hearings is far outweighed by the benefits. Unemployment benefits are spent in the local community on basic necessities such as

rent and food. Costly public assistance by the government can be avoided and claimants must pay taxes on their benefits. As you consider how to improve the delivery of legal services to those most in need, I urge you to support funding legal representation at unemployment hearings for low-income New Yorkers. Thank you again.

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