

**Written Statements Submitted at the
Fourth Department Hearing on September 29, 2010**

Statements of Testifying Witnesses

Steven D. Blatt, M.D. (Associate Professor of Pediatrics/Director, Division of General Pediatrics
at University Hospital of SUNY Upstate Medical University)

Jean Claude Brizard (Superintendent of Rochester City School District)

Catherine Cerulli, J.D., Ph.D. (Associate Professor and Director of Laboratory of Interpersonal
Violence and Victimization, Department of Psychiatry, University of Rochester)

Rachael Ann Gazdick (Executive Director of "Say Yes to Education," Syracuse University)

Laura Hart (Client of Legal Aid Bureau of Buffalo)

Dr. Anne M. Kress (President of Monroe Community College)

Hon. Langston C. McKinney (Syracuse City Court)

Hon. Joseph G. Nesser (Monroe County Family Court)

Hon. Henry J. Nowak (Buffalo City Court, Housing Court)

Heather Oakes (Client of Legal Services of Central New York)

Kenneth Perri, Esq. (Executive Director, Legal Assistance of Western New York)

Thomas S. Richards, Esq. (Corporation Counsel, City of Rochester, former partner Nixon
Peabody LLP and former CEO of Rochester Gas and Electric)

Fran Weisberg (Executive Director of the Finger Lakes Health Systems Agency)

Hon. Joanne M. Winslow (Supreme Court, Monroe County)

Jane X (Client of Empire Justice Center)

Steven D. Blatt, M.D.

Associate Professor of Pediatrics/Director,
Division of General Pediatrics at University
Hospital of SUNY Upstate Medical
University



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Syracuse Medical-Legal Partnership
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Syracuse, New York

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90 Presidential Plaza
Syracuse, New York 13202
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blatts@upstate.edu

Dr. Blatt is currently Associate Professor of Pediatrics and Director, Division of General Pediatrics and Medical Director, University Pediatric and Adolescent Center at Upstate Medical University. Since 1991 Dr. Blatt has been the Director of ENHANCE Services for Children in Foster Care, a multidisciplinary, comprehensive and primary health care program for children in foster care. Along with faculty from Syracuse University College of Law, Dr. Blatt co-directs the Syracuse Medical-Legal Partnership a program to provide access to legal services for patients and their families. Dr. Blatt has collaborated with the Department of Health, the Department of Social Services and other community agencies in improving the health care of medically underserved and at-risk children in Central New York. Dr. Blatt has participated on local, state and national advisory committees to governmental agencies, the American Academy of Pediatrics, the Center on Human Policy, the Child Welfare League of America, and the New York State Permanent Judicial Commission on Justice for Children. In 2007, Governor Elliot Spitzer appointed Dr. Blatt to the Children's Cabinet Advisory Board. In 2007 he received a courtesy appointment as Associate Professor in the College of Law at Syracuse University.

Testimony to the Task Force to Expand Civil Legal Services in New York
September 29, 2010

This testimony will focus on the role of a Medical-Legal Partnership in providing an underserved population access to legal services. Medical-Legal Partnerships are collaborations between doctors and lawyers in a health care setting. At the Syracuse Medical-Legal Partnership, the physicians are from the Department of Pediatrics, Upstate Medical University and the lawyers are from the College of Law at Syracuse University. During the more than 25,000 visits to our inner city pediatric office, patients are identified who have unmet legal needs in the areas of public benefits, housing, education, immigration, custody or family law and referred to lawyers on site in our office or at the College of Law. This model provides easy access for a population which traditionally struggles to successfully address their legal issues.



Steven D. Blatt, MD
Syracuse Medical-Legal Partnership
Department of Pediatrics, Upstate Medical University
College of Law, Syracuse University
Syracuse, New York

Testimony to the Task Force to Expand Civil Legal Services in New York
September 29, 2010

Distinguished members of the Task Force, it is my distinct honor to appear here today to provide testimony about important issues facing my patients, their families, and people in need in my community. I am a pediatrician on the faculty at Upstate Medical University of the State University of New York in Syracuse. During the past twenty years, I have been working in our Outpatient Pediatric Department which provides care for a diverse population of the Syracuse community, including poor, inner city children. For most of this time, I have also been the Director of ENHANCE Services for Children in Foster Care, which provides comprehensive medical care to all of the children in foster care in Onondaga County. Since its inception in 2004, I am also the medical director of the Syracuse Medical-Legal Partnership, a partner site of the National Center for Medical-Legal Partnership.

As a pediatrician providing care to an underserved population, I congratulate you and your colleagues for looking for ways to improve access to civil legal services for my patients and their families. I want to share with you some of the characteristics of my patients, the obstacles they face, and some of the efforts currently underway to assist them. Patients and families seen in my office in Syracuse are remarkably similar to patients in Rochester, Buffalo, and the Bronx as well as to patients in the North Country or the Southern tier. Although some of the details are different, the similarities in their life issues are striking.

I do not want to spend a lot of time talking about statistics of my inner city families, but I do want you to have a clear idea of what this population is like. The average mother of my patients became pregnant for the first time when she was a teenager. She is less likely to graduate from high school or hold a full time job than women who delay childbirth until they are in their twenties or older. The father is unlikely to live in the home or provide financial or other assistance. They are poor. They receive public assistance funds and health care paid by Medicaid. Although this is all true, it doesn't even begin to capture the essence of who my patients are.

One thing that I would like members of this Task Force to consider is the negative impact of poverty on my patients and their families. By poverty, I do not mean the absence of money. My medical students are poor. College students are poor. After taking my four children shopping, even I feel poor. But we are not in poverty. If everyone on the Task Force left their wallets behind and moved to the Midwest with only \$50 in your pocket and the clothes on your back, within a short period of time you would

have a job, a place to live, and something to eat. That is because you have an education. You know how to find a job and manage your money. People in poverty do not.

Poverty is much more than the absence of money. It is also the lack of an education. It is living a disordered, chaotic life. It is not knowing how to manage the few dollars you have. People in poverty spend greater than 50% of their monthly income on housing, not uncommonly on an apartment that is without heat or full of mold or otherwise unfit to live in. Ever wonder why obesity, which now affects more than 30% of the pediatric population, is more common in poor people? People in poverty do not have easy access to healthy food or the money to buy it. The grocery stores in poor neighborhoods do not carry the same selection of healthy food as in the suburbs. Healthy food costs more than unhealthy food; for \$5, one can eat 2500 calories in a fast food restaurant. In a nice supermarket, that buys a head of lettuce, a cucumber and a tomato.

People in poverty often do not receive appropriate health care. At least most children in New York have good access to health insurance. But that does not mean they make it to the doctor. No matter where one is in the country, pediatric clinics for the Medicaid population have a 30-50% no show rate for appointments. There are multiple reasons for this. Certainly, the lack of recognizing the importance of preventive health care plays a role for some patients. However, most parents understand the need to take their children to the doctor for physicals and immunizations. I think the bigger issue is that it takes a lot of work and planning to get to the doctor. One must schedule the appointment, possess a calendar to help remember the appointment day and time, arrange transportation, battle inclement weather, arrange for Medicaid coverage, wait in offices, not schedule the appointment at the Civic Center for public assistance at the same time, and so forth. It is amazing that anyone makes it to my office when they are scheduled, but eventually most show up.

Unfortunately, for those living in poverty there are many situations outside of health care where people do not know how to access professionals or institutions that can significantly help their family succeed. My office has 25,000 visits annually. A few years ago we surveyed our families and found that 60% of them had at least one unmet legal need. This included income issues such as public benefits or entitlement programs, housing issues, education and special education, custody and guardianship, immigration issues, domestic violence, divorce, and elder law issues.

An obvious question is, why would a doctor care about these legal issues? In fact, most physicians do not routinely ask their patients about them. To be honest, I do not enjoy dealing with these issues. That's why I went to medical school and not law school. However, these issues significantly impact my patients and their health and I cannot succeed at my job if I ignore them. Based on a program from Boston Medical Center, the Syracuse Medical-Legal Partnership is how my office and my community respond to our families' unmet legal needs.

The Syracuse Medical-Legal Partnership is a collaborative effort between University Pediatric and Adolescent Center of Upstate Medical University and the Family Law & Social Policy Center and Children's Rights and Family Law Clinic of the College of Law of Syracuse University. Basically, pediatricians, nurses, and medical staff identify children and families in need of services and refer them to our legal partners for counsel and direct services. As both the medical and legal partners are part of

academic institutions, the daily work of the Medical-Legal Partnership provides unique educational experiences for our medical trainees and law students.

I think some examples will explain this better. A mother came to our office in early September and spoke to our Child Life Specialist. She explained that recently she had moved from the City of Syracuse to her mother's home in a suburb. When the mother attempted to enroll her two children in elementary school, she was told that her legal address was Syracuse and she must enroll her children in school Syracuse. The school official did not believe the mother when she tried to explain that she really did live in the suburb with her mother. Her children had already missed the first two weeks of school when she came to our office. The mother did not come to the pediatrician's office for legal help. I do not even think she knew this was a legal issue. She came to us because we take care of her children. We contacted our legal colleagues at the Medical-Legal Partnership and within two days the kids were enrolled in school. There were no other options for her as there are no free legal services available to help with unjustified prevention of school enrollment

It is common for patients to be brought to my office by someone other than the parent. In the past, I would say to the adult, "Are you mom?" If the person was not the parent I would make sure we had permission to treat and continue with the exam. Now I do things a little differently. When the adult is not the parent, but the grandmother, aunt, or friend, I now inquire as to custody. If I learn that the child lives with them without a legal arrangement, I offer the opportunity to meet with a lawyer to learn about filing for custody. It is obvious, even to a pediatrician like me, the many reasons why legal custody is needed.

However, doctors do not always know when something is a legal issue. A pediatric resident told me about a 9 year old child who was in the office for an annual physical exam. As an aside, the resident said that the child was receiving special education, but was recently suspended from school for behavioral issues. I didn't think much of it, but my legal partner was in the conference room during this discussion and explained to us that if behavior is part of this child's Individual Education Plan, then suspension is inappropriate. The lawyer worked with the mother and the school and the child's suspension was quickly lifted.

In similar fashion, we have identified and referred patients for landlord-tenant problems, immigration issues, problems with the utility company, child support, and SSI. Once again, these are people who were just "taking their kid to the doctor," yet they ended up with a lawyer. One might ask, "Why didn't they just go to the lawyer in the first place?" I know when I have a legal question I do not go to my internist. I call my lawyer.

My patients, people in poverty, may not know that their current problem has a potential legal remedy. The parent who comes to my office for medical help would not automatically think that the landlord has a legal responsibility for cockroach infestation, lack of heat during the winter, or lead paint that's being ingested by her infant. Other patients may suspect they need a lawyer, but do not know how to access one. Or they may just assume they will lose anyway because their prior experiences with the courts were all negative. Many are afraid to enter the legal system. For some people, language and culture are barriers. Syracuse has 500-1000 new refugees each year. My office

works closely with our refugee centers and we have interpreters in our office throughout the day so that we can provide medical care.

Law offices typically do not have built in interpreter services. I could not imagine a new refugee making their way to a lawyer without an incredible amount of support. For those who do attempt to seek legal assistance and are savvy enough to find the free legal service programs in our community, there is still no guarantee that they will receive assistance. Oftentimes, they are turned away because the office does not provide representation in that area of law (for example, family law issues) or because the attorney caseloads are too full to take another client at that time. When those patients are turned away at the door, many never go back.

The Medical-Legal Partnerships work so well because people trust their doctor. Most physicians shy away from inquiring about these legal issues for obvious reasons. How can a doctor fix an immigration issue, a custody problem, or landlord-tenant dispute? We can not. but we can help our patients find a lawyer who is able. Currently, the Syracuse Medical-Legal Partnership handles about 100 cases annually, most of them from my office. We have been expanding to other sites including our Child Development Program, our Pediatric Cancer Center, and Geriatrics as well as another hospital and the Visiting Nurses Association. We also partner with existing Legal Aid programs and pro bono attorneys.

I am proud of our program and how we have helped our patients. I am also grateful for the support of Upstate Medical University and Syracuse University which jointly fund all of us who work at the Medical-Legal Partnership. As I noted above, the majority of our patients have unmet legal needs. Clearly, not all of them need a lawyer, but many do. We and the other legal aid offices in town do not have the capacity to meet the demand for services of not only my patients and families, but those throughout our community.

However, increasing legal capacity alone will never be sufficient if one's goal is to provide access to lawyers to the people in need. From our experiences, many patients with obvious legal issues do not understand that there may be a legal remedy to their situation. Others have had negative prior experiences with governmental institutions and do not want to re-engage the legal system. This includes more than just those with previous criminal prosecutions or family court actions. Other families may be open to legal advice or intervention, but their life circumstances are too chaotic to pursue what needs to be done. Our refugee families, even if they understand English, may have no understanding of the concept of an effective civil litigation system.

Legal capacity must be increased for poor families. However, new models of interacting with legal clients must be developed. I know that in Syracuse, the "Say Yes" program works through the schools to reach families in need of legal services. The Syracuse Medical-Legal Partnership uses a different approach. Medical-Legal Partnerships are expanding throughout the country and throughout New York State. Legislation on both the New York State and Federal levels has been proposed to support Partnerships. The American Bar Association and the American Medical Association supports Medical-Legal Partnerships. Formal support from this Task Force, especially within the New York State Legislative and Executive Branches, would be wonderful.

I would encourage this Task Force to explore the role of Medical-Legal Partnerships and similar creative programs to help lawyers reach those most in need of

their services and to recommend support for attorneys who provide these services. I and my colleagues at the Syracuse Medical-Legal Partnership appreciate this wonderful opportunity to present my thoughts to you and we are available to assist you and your colleagues in this crucial endeavor.

Jean Claude Brizard

Superintendent of Rochester City School
District

JEAN-CLAUDE BRIZARD

“Every child is a work of art. Create a masterpiece.”

Jean-Claude Brizard is Superintendent of Schools for the Rochester City School District (Rochester, NY), a position he has held since January 2, 2008. He leads a district serving more than 32,000 students in pre-K through grade 12 and 10,000 adult students.

“Every child brings a wealth of talent, gifts, and potential to us,” Mr. Brizard says. “They also bring dreams, aspirations, struggles, and needs. We must embrace that talent and potential and equip every student with an education that draws forth their unique talents (the masterpiece) that lies within each of them.”

Under Mr. Brizard’s leadership, the Rochester City School District is seeing improvements in student performance. More students are meeting standards in English Language Arts and Math, and the district has seen a 13-point increase in its four-year high school graduation rate. It is also strengthening its portfolio of schools, offering students and families more high-quality school choices to meet student needs.

Mr. Brizard’s experience includes a 21-year career as an educator and administrator with the New York City Department of Education. Prior to coming to Rochester, he served as a Regional Superintendent, supervising more than 100 K-12 schools serving over 100,000 students in three New York City geographic districts. His positions in New York City also included:

- Executive Director for Secondary Schools
- Region 8 Instructional Superintendent
- High school principal
- High school physics teacher
- Junior high school science teacher

Mr. Brizard is a graduate of the Superintendents’ Academy of the Broad Center for the Management of School Systems. The program is a 10-month executive management training program preparing top executives from the business, non-profit, military, government, and education sectors to lead urban public school systems. He is also an Executive Committee member of the American Association of School Administrators (AASA). Founded in 1865, AASA is the professional organization for more than 13,000 educational leaders across America and in many other countries. Recently, Mr. Brizard was named a Fellow to the Aspen Institute and NewSchools Venture Fund’s prestigious *Entrepreneurial Leaders for Public Education Fellowship Program*. He is one of 24 accomplished leaders who will join with fellows from the first two cohorts as participants in the program, which is designed to recognize and support exceptional entrepreneurial leaders who are committed to transforming public education.

A commercial pilot and a native of Haiti, Mr. Brizard credits his parents—both of whom were educators—with inspiring him to pursue a career in education. He holds a Master’s Degree with honors in School Administration & Supervision from The City College of New York and a Master’s Degree in Science Education from Queens College, as well as a Bachelor’s Degree in Chemistry from Queens College.

He is married to K. Brooke Brizard and is the proud father of two beautiful children.

Rochester City School District



Testimony Before

The Chief Judge of the State of New York

Task Force to Expand Civil Legal Services in

New York

Wednesday, September 29, 2010

Presented By:
Jean-Claude Brizard
Superintendent of Schools

Introduction

Poverty is not an excuse for inadequate or ineffective education. At the Rochester City School District it is our responsibility to provide every child - regardless of background - with a first class education. We know of no other effective path out of poverty other than delivery of a quality education to each of our students. Our goal is to make each child college-ready when they leave the City School District.

We know, nonetheless, that social capital correlates well to how effectively we can deliver educational services to our children. I want to begin by sharing with you census data reflecting the economic conditions under which most of our students live.

Economic and Demographic Data

According to the most recent census data available, the City of Rochester ranks 12th in the United States in per capita child poverty.

While Monroe County ranks 11th in New York State in per capita *wealth*, the Rochester City School District has the second highest per capita poverty rate among all 720 school districts in the State of New York.

88.4% of our students are eligible for free or reduced lunches.

19.5% of our pre-K and kindergarten students were recipients of neonatal intensive care. This number has increased by one-third in the past decade.

20% of our parents report that their pre-K students have witnessed violence in their neighborhoods.

18% of our students have been classified to receive special education services.

One of the strengths of our community is our cultural diversity when compared to the City 20 or 30 years ago. Over the past five years, the number of English language learners in our district has grown from approximately 2,200 to over 3,000, a 27% increase.

The number of languages spoken by students within the Rochester City School District has grown dramatically from approximately 30 to 72 over the past decade. English language learners represent our fastest growing population.

Need for Civil Legal Services in Rochester

Given the economic and language barriers facing City families, the need for civil legal services is profound. Our families face much greater risks of foreclosure, eviction, mental and physical abuse, and unmet health and special education needs when compared to their suburban counterparts.

The Legal Aid Society and other legal service agencies address the following family needs in order that their children arrive at the school house doors ready to learn:

1. Assistance with applications for Social Security Disability, Unemployment, and Workers' Compensation benefits for families of our students.
2. Aid to homeless or abandoned children that are not living with a biological parent due to economic circumstances, abuse or incarceration.
3. Legal representation at meetings of Committees of Special Education which develop Individualized Education Plans (IEPs) that are required under the Individuals with Disabilities Education Act.
4. Assistance with matters of custody, guardianship, and foster care. Under the federal Fostering Connections Act of 2008, state and local social service agencies and school districts are expected to work together in order to minimize the disruption in academic settings.

Conclusion

Legal rights are empty promises unless citizens have the ability to enforce those rights. Children displaced from their homes due to foreclosure, eviction or abuse face enormous barriers to educational and workplace success. We support the initiative of Chief Judge Jonathan Lippman and ask that the State of New York identify permanent civil legal service funding streams, improve the delivery of those services, and thus remove the obstacles that stand in the way of protecting the legal rights of the families of Rochester students.

Dr. Catherine Cerulli

Professor, University of Rochester

BIOGRAPHICAL SKETCH

Provide the following information for the Senior/key personnel and other significant contributors in the order listed on Form Page 2.
Follow this format for each person. **DO NOT EXCEED FOUR PAGES.**

NAME Catherine Cerulli, J.D., Ph.D.	POSITION TITLE Associate Professor		
eRA COMMONS USER NAME (credential, e.g., agency login) ccerulli			
EDUCATION/TRAINING <i>(Begin with baccalaureate or other initial professional education, such as nursing, include postdoctoral training and residency training if applicable.)</i>			
INSTITUTION AND LOCATION	DEGREE <i>(if applicable)</i>	MM/YY	FIELD OF STUDY
Saint Mary's College, Notre Dame, Indiana	B.A.	5/87	Humanistic Studies
SUNY at Buffalo, School of Law	Juris Doctor	5/92	Law
Nelson A. Rockefeller College of Public Affairs and Policy School of Criminal Justice State University of New York at Albany	M.A.	5/98	Criminal Justice
Nelson A. Rockefeller College of Public Affairs and Policy School of Criminal Justice State University of New York at Albany	Ph.D.	5/04	Criminal Justice

A. Personal Statement

Dr. Cerulli is the Director of the Laboratory of Interpersonal Violence and Victimization at the University of Rochester School of Medicine and Dentistry in the Department of Psychiatry. Dr. Cerulli is a licensed attorney with a PhD in criminal justice and brings expertise from her extensive experience working with victims of intimate partner violence (IPV). Since 1983, Dr. Cerulli has been working with victims of IPV in a variety of capacities including as a counselor, advocate, and prosecutor. In 2006, she completed a 2 year post-doctoral fellowship to study the intersection of IPV and mental health, namely suicide. She is currently completing a NIMH randomized control trial (RCT) in Family Court, the first known RCT in such a setting, wherein she recruited 190 victims and studied their engagement with mental health services. Dr. Cerulli is committed to utilizing community-based participatory research principles and co-lead two Scientific Research Institutes, funded by NIMH, hosted in Rochester, New York. In addition to her IPV and research interests, Dr. Cerulli also has legal experience in addressing research methods with vulnerable subjects.

B. Positions and Honors

1990	Law Clerk, Office of the Attorney General, Albany, New York
01/91-08/91	Coordinator of Legal Clinic, Haven House and State University of New York at Buffalo
07/91-07/92	Consultant, Coalition for Economic Justice, Buffalo, New York
08/92-02/93	Co-Director and Founder, Family Violence Clinic, State University of New York at Buffalo, School of Law
02/93-08/96	Assistant District Attorney, Monroe County Office of the District Attorney, Rochester, NY
09/96-04/97	Graduate Research Assistantship as Legislative Analyst for the New York State Office for the Prevention of Domestic Violence
01/98-08/09	Director of Research, Family Violence, State University of New York at Buffalo, School of Law
09/02-Present	Director, Laboratory of Interpersonal Violence and Victimization, Department of Psychiatry, University of Rochester Medical Center

Academic Appointments

1992-1993 Clinic Instructor, Family Violence Clinic, State University of New York at Buffalo School of Law
1996 Appointed to Teaching Assistantship based on merit, the State University at Albany
Nelson A. Rockefeller College of Public Affairs and Policy, School of Criminal Justice
1998-2009 Clinic Instructor, Family Violence Clinic, State University of New York at Buffalo School of Law
2002-2010 Assistant Professor in Psychiatry, University of Rochester School of Medicine and Dentistry
2010-Present Associate Professor in Psychiatry, University of Rochester School of Medicine and Dentistry

Honors

May 1992 National Association of Women Lawyers Award and Law Faculty Award.
May 1998 Frank J. Remington Prize for Interdisciplinary Scholarship
July 1999 The Daily Record: Up and Coming Attorneys
Fall 2000 Alternatives for Battered Women, Inc.: Restore the Hope Award
January 2001 New York State Bar Association: 2001 Outstanding Young Lawyer Award
October 2001 The Daily Record: 2001 Nathaniel Award
June 2002 Erie County Coalition Against Family Violence: William B. Hoyt Award
October 2002 Justice Award: The Governor's 2002 Justice, Freedom and Courage Awards to End Domestic Violence
July 2005 National Institute of Mental Health New Investigator Award
March 2009 Kate Stoneman Award, Albany Law School

Postdoctoral training

04/04 – 02/05 National Research Service Award (postdoctoral) (PI:Caine)
Title: The Nexus between Suicide and Domestic Violence
06/08 The Interuniversity Consortium for Political and Social Research
Summer Training Program in Qualitative Methods of Social Research
Title: Analyzing Developmental Trajectories
07/08 The Interuniversity Consortium for Political and Social Research
Summer Training Program in Qualitative Methods of Social Research
Title: Structural Equation Models: An Introduction
07/10 10th Annual Randomized Control Trials Involving Behavioral Interventions, 2 week intensive residential course sponsored by OBSSR, NIH.

Bar Admission 1993 – Present New York State Bar

C. Selected Peer-reviewed Publications – selected from Last 5 years related to domestic violence

- Edwards, T.A., Houry, D., Kemball, R., Harp, S., McNutt, L.A., Straus, H., Rhodes, K.V., **Cerulli, C.** & Kaslow, N.J. (2006). Stages of Change as a Correlate of Mental Health Symptoms in Abused, Low Income African American Women. *Journal of Clinical Psychology*, 62(12), 1531-1543.
- Cross, W. & **Cerulli, C.** (2007). The Impact of Continuing Education Training on Law Guardian Knowledge, Efficacy, and Practice Behaviors. *Family Court Review*, 45(1), 92-102.
- Chan, K., Tiwari, A., Leung, W.C., Ho, H. & **Cerulli, C.** (2007). Common Correlates of Suicidal Ideation and Physical Assault among Male and Female University Students in Hong Kong. *Victims and Violence*, 22(3), 290-301.
- Houry, D., Rhodes, K., Kemball, R., Click, L., **Cerulli, C.**, McNutt, L.A., & Kaslow, N. (2008). Differences in female and male victims and perpetrators of partner violence with respect to WEB scores, mental health symptoms, and substance abuse behaviors; Emory University. *Journal of Interpersonal Violence*, 23(8), 1041-1055.
- Strauss, H., **Cerulli, C.**, McNutt, H., Rhodes, K., Conner, K., Kemball, R., Kaslow, N., Houry, D. (2009) Intimate Partner Violence Functional Health Status – Associations with Severity, Danger and Self-Advocacy Behaviors. *Journal of Women's Health*, 18(5), 625-631.

- Kothari, C., **Cerulli, C.**, Marcus, S. & Rhodes, K. (2009) Perinatal Status and Help-Seeking for Intimate Partner Violence. *Journal of Women's Health, 18(10)*, 1639-1646.
- Rhodes, K., Houry, D., **Cerulli, C.**, Kaslow, N., Straus, H. & McNutt, L.A. (2009). Intimate Partner Violence and Co-Morbid Mental Health Conditions Among Urban Male Patients. *Annals of Family Medicine, 7(1)*, 47-55.
- Cerulli, C.**, Edwardsen, E., Duda, J., Conner, K., Caine, E. (2010) Protection Order Petitioners' Health Care Utilization. *Violence Against Women Journal, 16(6)*, 679-690.
- Cross, W., **Cerulli, C.**, Richards, H., He, H., Herrmann, J. (2010) Predicting Dissemination of a Disaster Mental Health "Train the Trainer" Program. *Disaster Medicine and Public Health Preparedness Journal.*
- Cerulli, C.**, Cerulli, J., Santos, E., Lu, N., He, H., Johnson, K.A., White, A.M., Tu, X. (2010). Does the Health Status of Intimate Partner Violence Victims Warrant Pharmacies as Portals for Public Health Awareness, Advocacy and Facilitation. *Journal of the American Pharmacist Association. 50(2)*, 200-206.
- Rhodes, K.V., **Cerulli, C.**, Dichter, M.E., Kothari, C.L., & Barg, F.K. (2010). "I didn't want to put them through that": The influence of children on victim decision-making in intimate partner violence cases. *Journal of Family Violence, 25(5)*, 485-493.
- Thomas-Taylor, D. & **Cerulli, C.** Use of Non-Medical and Pediatric Primary Care Medical Services by Families Who Call Police for Domestic Violence Related Issues. *Violence Against Women Journal.* (In Press).
- Dichter, M., **Cerulli, C.**, Kothari, C., Barg, F., Rhodes, K. Engaging with the Criminal Prosecution: The Victim's Perspective. (In Press).
- Flicker, S.M., **Cerulli, C.**, Zhou, X., Tang, W., Watts, A., Xia, Y., & Talbot, N. Concomitant Forms of Violence and Help-Seeking Behavior among White, Black, and Hispanic Women who Experience Intimate Partner Violence. (In Press).
- Rhodes, K. V., Dichter, M. E., Kothari, C. L., Marcus, S. C., & **Cerulli, C.** The impact of children on victim decision-making regarding criminal prosecution and civil protection. (In Press).

D. Research Support

As Principal or Co-Principal Investigator:

Current

Title: Court-Based Mental Health Screening and Service Referrals for IPV Victims 2006-2011
 Agency: NIMH ID# K01MH075965-01 Career Development Award.
 This grant provides resources to launch a randomized control trial in the family court system.
 Role: PI

Completed

Title: 2006 WG-BX-0007 2006-2009
 Agency: NIJ
 This grant seeks to assess victim participation in prosecution and subsequent safety as measured by cross-systems service utilization patterns (e.g. emergency department, family court and 911).
 PI: K. Rhodes
 Role: Co-PI

Title: Safe Start Initiative 2001-2004
 Agency: OJJDP
 Two Technical Assistance Grants to track 300 families from point of entry with police calls for service across social services and court systems. Purpose was to measure interagency communication on an individual level utilizing case review method.
 Role: PI

Title: Mental Health Association Gottschalk Mental Health Research Grant 2004
Agency: Mental Health Association
Explored court consumer general and mental health using self-administered surveys to collect pilot data on the feasibility of implementing a court-based mental health clinic.
Role: PI

Investigator:

Current

Title: SBIR- Development of a Suicide Prevention Training Curriculum for Justice System 2007–2010
Agency: NIMH 610-4550-01
PI: H. Steadman
Role: PI on Subcontract

Title: R21 AG030683 Detection of Elder Mistreatment in the Aging Services Network 2007-2010
Agency: NIA
This project will develop a screening tool for elder mistreatment for use by social service providers in the community, and test in a preliminary fashion its performance characteristics.
PI: Y. Conwell, M.D.
Role: Investigator

Title: R34 MH078003-0182 2008-2011
Agency: NIMH
Forensic Assertive Community Treatment: An Emerging Model of Service Delivery
Assist in overseeing subject recruitment within the Rochester Area Criminal Court, and will consult regarding conducting this research project within the criminal court setting.
PI: J. S. Lamberti
Role: Investigator

Title: ICOHRTA: China-Rochester Suicide Research Center (D43 TW05814) 2001 – 2011
Agency: NIH Fogarty Center
PI: E.D. Caine
Role: Investigator

Completed (Selected)

Title: VAWA Grants to Encourage Arrests APA-000-019 2006-2008
Agency: VAWA
The major goal of this project is to explore evidence-based prosecution for intimate partner violence cases. Our subcontract is to conduct focus groups with Hispanic victims to explore hurdles to case adjudication.
PI: L.B. Rodwin
Role: Sub-Contract PI for research/evaluation

Summary of Testimony by Catherine Cerulli, J.D., Ph.D.

My testimony will be regarding the scientific evidence which documents the role civil legal services plays in protecting victims of violence and abuse. Protection orders reduce future violence and injury. Attorneys play a key role in securing these documents.

Testimony – 10 Minutes

Catherine Cerulli

1. These comments are based on my experience in working in the field of intimate partner violence (IPV).
2. According to national research, approximately 23% of women and 7% of men are affected by IPV.
3. IPV has long lasting mental health and health consequences.
 - a. Sleep issues
 - b. Depression
 - c. Post Traumatic Stress Disorder
 - d. Physical health consequences
4. Additionally, millions of children are exposed
 - a. See the violence
 - b. Are abused themselves
 - c. Watch the aftermath of the violence.
5. Healthcare and legal systems are the front line providers
 - a. We know the costs associated with healthcare according to the CDC.
 - b. The CDC did not account for legal costs associated with IPV
6. Why the law matters
 - a. Evidence-based interventions have been examined empirically and document that protection orders make a difference.
 - i. Well crafted protection orders reduce violence by 70%
 - ii. Our research documents that IPV trained attorneys reach better results with victims.
 - iii. If we can provide effective, trained civil legal services, we may be able to:
 1. Ameliorate the health consequences
 2. Ameliorate the mental health consequences
 3. Ameliorate the effects of children exposed to violence
 4. In addition to improving health, we can reduce future violence and crime.
7. We also know that divorce lowers the rates of suicidal ideation, femicide and assault.
 - a. We know the important role attorneys play in DV divorces.
 - b. Given the lower economic status of DV victims, civil legal services is imperative, either free or sliding scale.
8. The costs of civil legal attorneys seems a low cost to bear for a healthier community – both for the victims they serve, and their children. Only by breaking the cycle of violence can we improve our communities. At some point, the county will pay for these costs: increased homicides, increased healthcare costs, increased incarceration for perpetrators if the violence is left to escalate, the impact on children which impacts their socialization, school function and adult behaviors. Invest now – or pay later.

Rachael Ann Gazdick

Executive Director of “Say Yes”

WRITTEN SUBMISSION ON BEHALF OF THE SAY YES PRO BONO LAW CLINICS
Public Hearing on the Unmet Civil Legal Services Needs of Low-Income New Yorkers
September 29, 2010
Rochester, New York

Good Morning. Thank you for the opportunity to testify on this very important issue. My name is Rachael Gazdick and I am the executive director of Say Yes to Education Syracuse.

Say Yes Syracuse is the Syracuse chapter of the national, not-for-profit foundation Say Yes to Education, committed to dramatically increasing high school and college graduation rates for urban youth. What separates the Syracuse chapter from active chapters in Harlem (NY), Philadelphia (PA), Hartford (CT), and Cambridge (MA), is the implementation across the entire Syracuse City School district, serving over 20,000 students. By strengthening the model across the entire district, Say Yes demonstrates that with appropriate engagement, monitoring, support and coordination, schools and the communities they serve can significantly alter the course of urban education.

These supports are designed to address all areas that impact a student's readiness for college as they progress through grades K-12, culminating with the promise of free college tuition for students who meet graduation, residency and college admissions requirements.

The long term success of Say Yes rests largely on specially designed supports that are introduced early in a student's educational career. Say Yes to Education and Syracuse University have designed two components to Say Yes Syracuse that address these needs in (1) Comprehensive student support and enrichment beginning in kindergarten to help students reach their academic and social potential; and (2) Free college tuition at participating colleges and universities for all SCSD graduates who meet residency, admission and financial aid requirements.

Syracuse was chosen at the pilot program for a district-wide implementation under SAYYES because of substantial challenges that the school district was facing that affected children's success in school. In 2005, there was a city-wide poverty rate of 31%, 78% of children qualified for free & reduced price lunch, less than 50% of entering kindergarten classes were graduating high school 13 years later, only 65% of students entering ninth grade were graduating four years later. Before SAYYES, there was no independent assessment and individual student planning, limited access to after school, summer school, tutoring, mentoring and internships, only (1) Social Worker for every (550) students, no legal assistance within the schools, unstable funding for professional development and use of research-based academic programs and limited access to last-dollar scholarships to college/university.

However, under SAY YES, substantial changes have been made. Now there is a program of student assessment, individual growth planning, and service coordination, district-wide access to quality after school academic and enrichment programming and quality summer school programming, a structured tutoring program, mentoring and internship program, (1) Social Worker for every (200) students, pro bono legal clinics located inside six of our elementary schools, dedicated funding for research-based academic and social-emotional program implementation and professional development supports at every school, and universal access to scholarships at all SUNY/CUNY campuses as well as over 25 private institutions.

Say Yes begins in kindergarten, offering high-quality and sustained academic, social, emotional, health and family supports. These free supports include after-school and summer camp programs, tutoring,

mentoring, family outreach and engagement, social work/counseling services, financial aid counseling, and referrals for high -quality health care and pro bono law clinics.

The law clinics are an invaluable component to our support services because they provide many of our families with access to the legal system who would otherwise fail to obtain legal assistance of any kind or encounter many obstacles to accessing the limited free legal services available in our community.

In my role with SAY YES, I have the ability to interact with many young students and their families on a daily basis. I learn firsthand of the many obstacles that students face and ultimately must overcome to be able to perform to their abilities in school.

Many of the students who struggle in school come from families with very low income. Their economic status is further encumbered by their housing conditions and family problems that often have a legal matter as the root cause.

Parents and students have shared their stories with me and I have learned that many of them face legal problems that interfere with the child's ability to concentrate and learn while in school and complete homework and assignments outside of the classroom. For example:

1. We see many families who face eviction from their home for various reasons. Some are threatened with eviction because they have not paid the rent in an effort to force the landlord to remedy problems such as leaky roofs, broken windows, no heat, insect or rodent infestations, and mold. Some are unable to pay their rent because a parent has lost a job, or the family has had unexpected medical bills, or because they have lost benefits that enabled them to make ends meet. If the family is evicted, the child may become homeless or have to change schools. They may have to move in with other family members or friends into crowded conditions. None of these results will provide an environment that will enable a child to perform well in school. Even prior to eviction, the child may be burdened with worry about their housing and economic situation.
2. Many children are impacted by family issues such as divorce, custody and guardianship, child support, and paternity issues. When parents are unable to focus on providing guidance and nurturance to their children because they are distracted by familial disruption, the child is not able to perform well in school. Take for example a child whose parents continually argue and fight, often in front of the child, over parenting time with the child. If there was a court ordered custody order in place, it would hopefully provide the child with more stability in their home life and less exposure to parental arguments. In addition, many parents struggle to make ends meet when the other parent fails to pay child support. Without legal advice on how to obtain custody orders or enforce support judgments, many parents would be too overwhelmed to navigate the complex legal system.
3. Another example is a family struggling to put food on the table, especially when faced with a bitter cold winter and extremely high heating bills. A family who must choose between "heat or eat" often has children who go to bed hungry or cold. It is difficult to expect that child to be able to focus on homework and the next day's exam when their primary thought is of a rumbling tummy or trying to keep warm. Many of these families are eligible for public benefits but have been incorrectly denied. Without the assistance of a lawyer, many would be unable to access the government programs designed to help them.

I have provided only a few examples as to how children are affected by legal problems. The list of examples of how a family's lack of access to the legal system can have a severe negative educational impact on children is endless. However, I hope that these compelling examples provide you with some

insight as to why the SAY YES program believes that access to legal services is an important component to it's overall goal of helping children reach their full potential in school.

The SAY YES law clinics are possible because of successful collaboration between several large private law firms, Syracuse University College of Law, the Onondaga County Bar Association's volunteer lawyer project, the 5th Judicial District Pro Bono Program, and our local legal service providers. We have created a Taskforce of the collaborative partners which holds meetings on a regular basis to discuss the group's collaborative efforts, the clinic's successes and failures, and our vision for the future.

Our weekly "talk-to-a-lawyer" walk-in law clinics are held at six different school sites within three of the four quadrants in the Syracuse City School District. We anticipate opening two additional clinics in the final quadrant in fall 2011 for a total of eight law clinics. Any parent/guardian with a child enrolled in any school within the SCSD may attend any of the law clinics. No appointment is necessary and a parent may simply show up for a clinic at any time.

Each clinic is staffed by volunteer legal professionals such as attorneys, paralegals, and law students. Families who come to the clinic meet one-on-one with a volunteer legal professional for an assessment of legal issues and financial eligibility for services. Whenever possible, the volunteer connects the family with one of our community's free legal service providers. However, due to the very limited resources available in the public interest arena, many of these families require pro bono assistance or they would not have any avenue to obtain legal advice or representation. In those cases, the law firms affiliated with this project have agreed to undertake as many issues as possible as pro bono matters.

The law firms who are participating in this project have provided a tremendous service to the community by stepping up to assist with pro bono matters. As a result, we have been able to provide many families with legal assistance when they had no options. Alas, there is still great difficulty in placing all cases for pro bono assistance because there is always more need than volunteers, especially in specific areas of law. For example, legal matters in family law are the most difficult to place. The Justice Gap, a study done by Legal Services Corp., of which I am sure you are aware, found that the largest unmet civil legal need in the country is in the area of family law. This is very clear to us in the context of this project. The majority of the cases that require pro bono assistance are in family law matters. There are not enough free legal services that will assist low income families with basic family law matters. Those services that are available are very limited in capacity and usually have specific eligibility criteria that serve only a narrow portion of the population. In addition, many of our volunteer law firms and attorneys do not have expertise in family law matters. Therefore, more often than not, families seeking assistance with family law matters must proceed pro se. The lucky ones will obtain some very basic advice and guidance provided by an attorney before they petition the court for relief but the others will have to forge through on their own or forego court intervention altogether because the system is too intimidating or burdensome.

What we are doing in Syracuse with the leadership of five committed law firms and other key players is an excellent example of our legal community working together to meet the obvious need for assistance. However, we also recognize that we are unable to meet the need of our community with this service alone. We need additional resources to be committed to civil legal services so that even more families are able to gain access to the legal system. Expanding legal services available to the indigent society would in turn provide a tremendous benefit to at-risk students. By providing assistance for legal problems and minimizing stress within the home, the ultimate hope is that students would perform better in school and thereby become productive citizens in our community upon graduation.

Laura Hart

Client of Legal Aid Society, Buffalo

Laura Hart for Rochester Hearings 9/29/2010

Background:

Laura Hart is a 27 year-old woman with three minor children, twin daughters age 7 and a son age 5. Ms. Hart and her husband were married on August 7, 2003. Ms. Hart filed for divorce in August 2007. Ms. Hart has a high school education and was a stay at home mom during the marriage. After the separation, she was able to gain employment at Tops.

Summary of Testimony:

Ms. Hart originally retained private counsel for her divorce. The divorce was filed in August 2007. In October 2008, Ms. Hart contacted The Legal Aid Bureau of Buffalo for new representation. After finally obtaining the strength to leave a house full of mental and emotional abuse from her husband and his family, Laura was financially unstable and depressed. When she first left her husband, the 3 minor children were residing with her. In January of 2008, Ms. Hart was so despondent that she attempted suicide. At that point, the minor children went to reside with their father. She had limited contact with the children. With the help of Legal Aid, Laura was able to obtain unsupervised access with her minor children on a liberal basis, financial independence from her former husband, and a divorce. During the course of their representation, Legal Aid also offered emotional support to Ms. Hart that she would not have received elsewhere. During the divorce, Laura starting dating a man who severely abused her, both emotionally and physically. Legal Aid offered Laura a safe contact to talk to about the issues with the boyfriend, advise on how to get away from him, and support in pressing charges against him. He is now in jail. Without civil legal services, it is likely that Ms. Hart would have come out of the divorce depressed and broke.

Testimony of Laura Hart

I was married in August of 2003. Through a series of different events, I eventually decided leave. I suffered from severe emotional abuse not only from my husband but from his family who we were residing with. The emotional and mental abuse was not only directed at me, but at our very young children as well. This ultimately led to my decision to leave. With no established work history because I was a stay at home mom, I had no choice but to move in with my parents. I was initially represented pro bono by a private attorney. During the course of an on again/off again physically abusive relationship with a new man, I ultimately attempted suicide in December of 2007. My attorney at the time decided to cease representation and I sought legal assistance through the Legal Aid Bureau. Through Legal Aid's representation, I was ultimately able to regain liberal access with my children, including various parental rights and responsibilities. I was given the opportunity to rebuild my relationship with my children and regain their trust. I was able to reestablish myself with their schools and doctors and as their parent. Through the emotional and legal support of the Legal Aid Bureau, I was able to stand up to my abusive boyfriend, get myself out of that relationship, and pursue charges against him. He is now in jail. My divorce was final in 2009. As a result of the divorce, my husband kept all of the marital debt and the child support I was obligated to pay was very minimal. This helped me gain financial independence.

Currently, I am no longer living with my parents. I have my children half of each and every week. I am involved with activities at school, dancing, yoga and football with the children. I am involved in their doctors appointments. Currently I am seeking a change in the residential custody so that my children will live with me. Hopefully, with the assistance of Assigned Counsel, I will be able to regain residential custody of the children as I had before this nightmare began in 2007. I feel that my position regarding the children would not be as strong as it is if not for the assistance of the Legal Aid Bureau and Assigned Counsel.

Dr. Anne M. Kress

President of Monroe Community College

Anne M. Kress

As Monroe Community College's fifth president, Dr. Anne M. Kress leads a nationally-recognized, multi-campus college that enrolls more than 37,000 students.

Dr. Kress has more than 20 years experience as an educator and administrator in higher education. Prior to her presidential appointment in 2009, she was the provost and vice president of academic affairs at Santa Fe College in Gainesville, Florida.

During her tenure there, she established the Sustainability Council which integrated sustainability into the curriculum and academic practice. Kress also created the college's Center for Innovation and Economic Development, including a small business incubator, by renovating and repurposing an existing college facility, securing funding for the college's first assistant vice president for economic development and contracting the first Strategic Economic Impact Study.

Armed with a passion for student success and a commitment to community partnerships and academic excellence, Kress has led many successful collaborations resulting in new, innovative programs and opportunities. She has been successful in increasing enrollment in traditional, online, hybrid, honors, international and study abroad classes. She has designed new articulation agreements and created the college's first two bachelor of applied science degrees. In addition, she has written or co-authored a number of publications, including a rhetoric and composition textbook.

A native of Milwaukee, Wisconsin, President Kress earned a doctoral degree in higher education administration, master's and bachelor's degrees in English and a bachelor's degree with honors in finance from the University of Florida. She is a board member of the United Way of Greater Rochester and Greater Rochester Enterprise.

Dr. Kress enjoys reading, writing, quilting, cooking, baking, traveling and spending time with her family. She and husband Ned have two children, Harper and Penn.

Anne M. Kress, PhD
President, Monroe Community College
1000 E. Henrietta Road
Rochester, NY 14623

**Testimony to the Task Force to Expand Civil Legal Services in New York
Chief Judge of the State of New York**

Introduction

Good morning, I want to thank Chief Judge Jonathan Lippman and the Task Force for this opportunity to offer testimony on the need for consistent funding for indigent legal services.

Across our state, community colleges provide an open door of access to higher education and to the economic opportunities available to those with college degrees and advanced workplace credentials. Frequently, the students who cross our thresholds have been drawn not just by the quality of our colleges but also by their affordability. Their goals and aspirations are not matched by their financial realities. This fact is reflected in the financial aid figures associated with Monroe Community College. Although our annual tuition for a full-time student is just \$3000, almost 70% of our students receive some type of aid about 40% receive federal grants, meaning they fall into the area of highest financial need.

For many of our students and their families, the cost of college consumes most of their resources. They come to MCC seeking a better life, but the day-to-day strife of their current life sometimes derails their efforts. This is why I am honored to address the Task Force today. As the representative—and real—stories I share with you will underscore, our students need stable funding for indigent legal services. These stories were gathered from our students within the Equal Opportunity Program, a program designed to assist the students most in need of assistance to complete their degrees.

As their personal narratives reveal, their inability to access consistent and quality legal assistance has sometimes meant their dreams of a college degree have been deferred or abandoned. At a time with the nation is striving to restore its global competitiveness in degree completions, we truly cannot afford to lose talented college students because they cannot afford to access our legal system.

Student Stories

As might be expected, students' need to access legal services in connection with housing issues is a recurrent one. One student's mother took a home equity loan that she did not understand. The mother had a limited education. The rate on the equity loan escalated rapidly, and without recourse to assistance in understanding her options, the mother lost the family home. Because of the results of the stress on her mother, the student became responsible for finding a new home for the family, and the impact of this responsibility and her lack of transportation led her to withdraw from college.

Another student and her mother lost their apartment and, for a while, became homeless. They were able to find temporary housing, which initially seemed like it could become their new permanent home. However, after they moved in, they learned of significant problems with the property (including a rodent infestation), and the landlord never fulfilled repeated promises to address these issues. The house was condemned, forcing the family to move again. The repeated moves and interim homelessness led the student to miss classes and finally withdraw from three courses. Her failure to maintain academic progress resulted in a loss of her federal aid.

Other stories provide insight into the struggles our many student-parents face in their dealings with the legal system. For example, as a result of an ongoing personal dispute, the father of one student's son falsely reported the young woman to Child Protective Services. Though she was eventually cleared of any wrongdoing, she repeatedly missed classes to attend court and meet with officials. She subsequently lost her financial aid because of failure to make standards of academic progress. Other students, typically mothers, report extreme financial hardships suffered because of an inability to collect child support payments. They are forced to make tough choices between buying the textbooks for their classes or meals for their families.

Female students are also, unfortunately, the majority of those on the receiving end of abusive relationships. One student reported that her ex-boyfriend broke her car windows, destroyed the inside of her car, and stole her school work and text books. She withdrew from school for a period of time because she was left with no transportation, no books, and had no resources to replace either.

Conclusion

Too often, the students whose futures can be most improved by access to a college education will lose this opportunity because they cannot access consistent and quality legal services. This is a loss for all of us: Rochester, Monroe County, New York, and the Nation. For this reason, Monroe Community College supports the initiative of the Chief Judge. We join him in asking the State of New York to provide permanent and sufficient funding for indigent civil legal services.

Hon. Langston C. McKinney

City Court Judge,
Syracuse, NY

WRITTEN TESTIMONY NOT
AVAILABLE

Hon. Joseph G. Nesser

Monroe County Family Court,
Rochester, NY

**HONORABLE JOSEPH G. NESSER
6 ESTERNAY LANE
PITTSFORD, NEW YORK 14534
(W)(585)428-1906**

**EMPLOYMENT:
Legal**

Monroe County Family Court Judge

January 1, 2008 - Present

January 1, 2008 - December 31, 2010 - Juvenile Delinquency
Part

January 1, 2011 - Family Treatment Court

Joseph G. Nesser Law Office

Rochester, New York

April 1990 - December 31, 2007

General practice with a concentration in Family Law and
Matrimonial Law.

Union panel attorney for Western New York including CSEA,
NYSIT, Teamsters, and UNITEHERE

Litigated more than 400 Matrimonial and Family Court Cases

Redmond & Parrinello

Rochester, New York

September 1986 - April 1990

Attorney - Drafted pleadings, motions, discovery demands,
and memoranda, advocated in administrative hearings,
arbitrations, argument of motions, EBT's, civil proceedings,
family court hearings, suppression hearings, and trials.

AWARDS

2007 rated highly qualified by the Monroe County Bar Association

2007 rated highly qualified by the Greater Rochester Association for
Woman Attorneys

1999 Recipient of the Michael F. Dillon Law Guardian Award for the
Fourth Department, Western New York.

**PROFESSIONAL
MEMBERSHIPS**

Admitted to practice before:

New York State Courts - June 1986

U.S. District Court - Western District of New York
September 1986

U.S. Bankruptcy Court - Western District of New York
September 1986

New York State Trial Lawyer's Institute,

Institute-2009
National Institute for Trial Advocacy Seminar - 1988
NAACP
First New York Regional Child Abuse and Neglect

EDUCATION: **Ohio Northern University College of Law**
Ada, Ohio
J.D.
Graduation Date: May 1985
Mock Trial Competition 1984
Computer Law Society
Committee to interview prospective candidates for a position
as a Law Professor.

Saint John Fisher College
Rochester, New York
B.S. Business Management, Minor in English
Graduation Date: May 1979
Inter-collegiate wrestling team - 3 years
Inter-collegiate wrestling captain - 2 years
Wrestling Coach's Award - 1976

McQuaid Jesuit High School
Rochester, New York
Graduation Date: June 1975

PERSONAL Date of Birth: March 13, 1957
Place of Birth: Rochester, New York

Marital Status: Married to Helen M. Nesser with son, Joseph G. A.
Nesser, III

Interests: Enjoy traveling, music, good books, movies, and sports.

MEMBERSHIPS Knights of Columbus Catholic Organization - Fourth Degree
Gaeta Italian-American Society
Italian-American Sports Club, Inc.
Casa Italiana
Church of the Transfiguration

September 23, 2010

Honorable Joseph G. Nesser
Monroe County Family Court Judge
Hall of Justice
Rochester, New York 146014

Good morning, my name is Joseph G. Nesser and I am a Monroe County Family Court Judge. Thank you for giving me the opportunity to speak with you about the necessity of representation of indigent parties in Monroe County Family Court. It is critical to maintain strong public financial report and a solid IOLA program to maintain legal services for the indigent parties in Family Court.

My job is to protect children's rights which are jeopardized if the parties represent themselves pro se because they can not afford an attorney. Only an attorney can adequately and competently prepare a litigant's case, negotiate a reasonable settlement and if necessary try a case which can not be resolved through a settlement. Imagine an indigent litigant who usually is from a low socioeconomic class probably without a high school diploma and unable to articulate their position. Imagine further that they are in a custody trial and they are the better parent. The standard in Family Court are the best interests of the child. The child's best interests are not going to be served by having a litigant represent themselves, since they can not properly prepare and try a case.

Moreover, while in private practice, I represented many litigants pro bono in Family Court through the Volunteer Legal Services Program, VLSP. They were nonparents attempting to gain custody of children who were not adequately cared for by their parents. Histories were obtained from the litigants; disclosure was prepared and exchanged; there were many court appearances; settlement negotiations were engaged in; and sometimes emotional trials were necessary. The trials were fraught with many potential pitfalls and strategy decisions. Presenting evidence and challenging evidence during trial requires legal and practical knowledge, experience and trial skills that a pro se litigant lacks. The nonparent litigants were at a disadvantage because they had to prove extraordinary circumstances and best interests, which are difficult hurdles. This is no small task because there is a presumption that parents should take care of their own children. Fortunately, the vast majority of litigants I represented were successful and the best interests of the children came to fruition. These happy endings would probably not have occurred if the litigants were pro se.

In addition to adversely affecting the best interests of the child, unrepresented litigants cause additional time and work for the Court. The Court must take extra measures to explain procedure and what is happening without any guarantee that the litigants actually understand the Court. This extra time created by unrepresented litigants adds to the already unduly burdensome dockets the Court handles.

As a result of the economic recession, there has been a significant increase in the number of custody, family offense and child support petitions. There has been about a 1,600 filing increase in the past two years alone.

Finally, Family Court's purpose is designed to protect children. Litigants need attorneys who can give them expert legal advice and guide them through the many pitfalls of a legal proceeding. The attorneys can help expedite the case and assist the Court in achieving a result that is in the best interests of the child and protect the rights of the parents. Consequently, it is imperative that New York State maintain strong public financial support and IOLA program in order that the best interests of the child are protected and to protect the rights of parents in Family Court.

Please do not let these children down. They are the future of our country.

Thank you for allowing me the opportunity to speak to you today.

Hon. Henry J. Nowak

City Court Judge,
Housing Court, Part 14, Buffalo, NY

WRITTEN TESTIMONY NOT
AVAILABLE

Heather Oakes

Legal Services of Central New York

Heather Oakes is employed part-time and is a member of the United States Army Reserve with the 865th Combat Support Hospital in Utica, New York. Her fiancé, Jason Lewis, is employed and served with the United States Marine Corps at Henderson Hall Headquarters Battalion in Washington D.C. Both are 27 years old. Their children are ages 7, 5 and 1.

Summary of Testimony

Heather Oakes

Rochester, New York

September 29, 2010

Ms. Oakes and her fiancé, Jason Lewis, are raising three children. When Ms. Oakes was pregnant with their last child, they began looking for a house in the Syracuse area. Having little success finding something they could afford, they responded to a newspaper ad that read:

*Bad Credit, No Credit, No Problem. No closing costs
work with all credit! We can get you into your own home.*

They were referred to the company's (Best House) website to review available properties. Best House's principal is an attorney. Jason and Heather selected a house that met their needs. The house was occupied, but the representative assured Jason and Heather that the renters were leaving in time to move in before the birth of their child. Just prior to the moving date, the representative told them the house would not be available, but there was another one they could buy. That house was in terrible shape. Feeling desperate and receiving promises that repairs would be made, they agreed to take the second house.

When they moved in, nothing had been done. They spent \$4,000.00 and much time improving the house. Heather learned through the news that Best House was a defendant in a lawsuit brought by Legal Services of Central New York. As many as 50 families had been victimized in a "property flipping" scheme. Best House buys foreclosed houses in poor condition, sells them for three times their value, promising repairs and financing assistance. Repairs are not done and financing is either fraudulently obtained by Best House or not arranged at all.

The sale was never completed. In the meanwhile, the Best House attempted to evict Jason and Heather from the house, getting the benefit of the improved house. The litigation proceeds after Legal Services obtained an injunction preventing the company from using town or city courts to obtain eviction judgments. Best House and its principals are the subject of state and federal criminal investigations.

Testimony of Heather Oakes

Submitted to

The Task Force to Expand Access to Civil Legal Services

Rochester, New York

September 29, 2010

Hello and good morning. My name is Heather Oakes and I am a member of the United States Army Reserve where I serve with the 865th Combat Support Hospital in Utica, New York. My fiancé, Jason Lewis, served with the United States Marine Corps at Henderson Hall Headquarters Battalion in Washington D.C. Both of us are 27 years young and have developed an intertwined family with his two children from a previous marriage and our son who was born in May 2009. Our daughter Angela is a 7 year old princess, A.J. is your typical 5 year old high speed little boy, and our son Braydon is a very mobile little 16 month old.

Jay and I were living in a two bedroom house that I had been taking care of for my great aunt who was in a nursing home. We learned that our family would be growing when we discovered that I was pregnant in September 2008. Knowing that there would be no way to put three children in a two bedroom apartment, we started the long process of looking for a place we could call home. We looked at every apartment complex possible, but most had only two bedrooms. After long conversations, Jay and I came to the conclusion that we would only be able to move if we could find a house.

So began our search for the American Dream – being a homeowner. Not just any homeowner, but a first time homeowner. Jay and I spent hours each night after he came home from working a twelve hour day; sitting at the kitchen table looking through books of houses for sale, the Syracuse Post Standard classified ads, Syracuse.com's real estate section, and the Pennysaver. Throughout the months of December, January, and February 2009 we looked at dozens of houses.

Towards the end of February, we came across an ad in the Pennysaver weekly newspaper:

*Bad Credit, No Credit, No Problem. No closing costs
work with all credit! We can get you into your own home.*

I left a message at the listed phone number and several days later I got a phone call back from Paul with Best House. He asked a couple of questions about where we wanted to live, how many bedrooms we needed, driveway, garage – all the basics a real estate agent would ask a person looking for a home. Paul gave us the

Best House website (www.bestdream.biz) to review and see where he had houses available. Paul told us to call him back with a list of houses we wanted to look at.

We immediately found a house in Solvay, New York we wanted to see because it was very close to both of our parents' homes. We made a date to view the home. We met Paul there for the first time. As we walked into the home there were two adults sitting in the living room. We learned they were living there with their children. We viewed the whole house. I fell in love with it. It had everything we needed and wanted. The home had enough bedrooms so that all the children would get a room of their own and Jay and I would have our own bedroom. It was a truly beautiful house that needed just a coat of paint and a personal touch to be called our own. It was almost too good to be true. But, you know what happens when something is too good to be true.

After we viewed the house, we told Paul we would get back to him a couple of days. He told us to call when we were ready. Jay and I, along with both of our parents, talked about the house and made the decision to buy. I called Paul and told him we wanted that house and asked him what we needed to do next. He gave me a list of things to bring to him, plus \$100 to hold the house for us. Paul assured us Best House would arrange for financing through a bank and our \$750 monthly payments would be applied to the purchase price. We signed a contract that Paul claimed was a prepossession agreement. It said we are not just renters. We were thrilled. We were buying a home!

When Jason and I met with Paul to sign papers we made it very clear we needed to be in this house no later than May 1, 2009 as my aunt's house was being sold. He assured us that it would be no problem. He said the family that was living there would be evicted within the next thirty days. Towards the end of March I drove by the house and it still looked the same as when we viewed it in February. The family was still there even though Paul assured us they would soon be out. I was starting to worry and sent several emails and left phone messages for Paul. I had almost finished packing our possessions and was ready to go. The days were flying by and my due date was rapidly approaching. I still heard nothing back from Paul.

Finally, about a week into April, Paul called and told us they were having problems getting the people out of the Solvay house. Paul told us he only had one house that was available immediately. We agreed to look at the house with him. The first time I saw the house on Avon Road, I cried – the house was a wreck. Here I was, almost 8 months pregnant. I was supposed to be in our new home and relaxing to prepare for the birth of our child, yet I was again looking at houses. We were desperate and literally had nowhere to go. Jay and I reluctantly agreed to take the Avon Road house. Paul promised to repair a foundation crack, get rid of the black mold throughout the house, fix the bathroom plumbing, put new

carpeting in two rooms, replace a back door, install new basement windows, and do other repairs to make the house livable. Our dream was turning into a nightmare.

We moved in soon after, and I don't have to tell you that Paul's promises were nothing but words. After being in the house for a couple of weeks we had an inch of sewage in our basement. That happened on the same day that we were having our son's 4th birthday party. Paul would make dates to come and fix the things that were wrong with the house, and then never show up, or he would call 15 minutes after he was supposed to be here and tell us that he wasn't going to make it. Needless to say, all of the work done to make this house a home was done by Jay and I, our parents, my brother, and our friends. We have spent hundreds of hours and more than \$4,000 to make the house livable for ourselves and our children.

In August 2009, I picked up the local paper and read about a lawsuit filed by Legal Services of Central New York against Best House, Paul, and several individuals, including two Syracuse area lawyers. One of the lawyers was at the center of a scam to defraud first-time home buyers like us. They were operating what I later learned was called a property-flipping scam. I cried harder than I cried when I had to move into this run-down house. I called Legal Services and they have represented us since. Legal Services represents about 25 families in situations similar to ours. I understand this scam has been occurring for at least four years and involves many more families than those who have come forward. The scammers buy dilapidated HUD foreclosures and advertise them for sale, making the kind of promises we heard about repairs. The selling price is two or three times what the scammers paid. We also learned that for families who did get a mortgage, it was obtained fraudulently by the scammers.

We have put money and much effort into our home to make significant improvements. We want to own it and live there. When we fell behind in our monthly payments, the scammers started threatening to evict us in City Court in spite of the agreement that says we are not renters. After we fixed up the house, the scammers wanted it back! Legal Services has gone to court to prevent our eviction. The lawyers at Legal Services have worked with us for long hours to sort out all of our problems. Recently, we learned that water bills from before we moved in had never been paid and the city is now threatening to shut us off. Without the help from Legal Services, we would not have a roof over our heads. They have been working to make sure we can purchase our house for a fair market value.

Our story is far from over and it is going to require more time and money to come to a happy ending for my family. I took an oath to defend our country against enemies both foreign and domestic, but who is there to defend my family in our time of need? I ask that you help people who are in similar situations as we try to protect our families. Please make sure that Legal Services and other organizations like them have the resources to defend us. I thank you for the opportunity to tell my family's story here today.

C. Kenneth Perri

Executive Director,
Legal Assistance of Western New York
(LAWNY)

Brief Biography of C. Kenneth Perri

C. Kenneth Perri is a 1981 graduate of Boston University School of Law. He has worked with civil legal services programs his entire professional career. He began as a legal intern with Greater Boston Legal Services from 1980 - 1981. From 1982 - 1986, he worked as a staff attorney and then as a senior staff attorney with the Dothan Regional Office of the Legal Services Corporation of Alabama. In 1986, he became the managing attorney of Legal Assistance of the Finger Lakes in Geneva, New York. In 2002, he became the executive director of the program, overseeing the operations of the Geneva office and the larger urban office, Monroe County Legal Assistance Corporation, in Rochester, New York.

Since 2004, he has served as the executive director of Legal Assistance of Western New York, Inc., a program created by the merger of MCLAC/LAFL with Chemung County Neighborhood Legal Services and Southern Tier Legal Services. LawNY provides civil legal services to low-income people and other vulnerable populations throughout a large 14 county service area in western New York with staffed offices in Bath, Elmira, Geneva, Ithaca, Jamestown, Olean and Rochester. Present responsibilities include managing the \$7 million organization; resource development; working with funders, community groups, other civil legal service providers and the private bar; supervising the management staff of deputy directors, managing attorneys and the chief fiscal officer; providing some supervision of legal work; and handling a small caseload of his own.

Substantively, his practice areas in both Alabama and New York have been in government benefits (public assistance, food stamps, medicaid, social security and SSI disability and unemployment insurance benefits), housing (federally subsidized housing and mortgages, private landlord/tenant and real property) and domestic relations (divorce, support, custody and visitation).

Brief Summary of C. Kenneth Perri's Anticipated Testimony

C. Kenneth Perri anticipates testifying as follows:

- He will provide a brief summary of his background with civil legal services organizations;
- He will provide a brief summary of the structure and staffing pattern of the program which he serves as the executive director of, Legal Assistance of Western New York, Inc. (LawNY);
- He will provide demographic information regarding the 13 rural counties in the LawNY service area;
- He will provide an overview of the service delivery system of LawNY in the 13 rural counties which it serves;
- He will provide data regarding the types of cases which LawNY handles;
- He will provide information regarding the outcome of the unable to serve study which LawNY participated in in 2009, focusing on the turn away data from LawNY's rural offices;
- He will discuss gaps in LawNY's service delivery system caused by lack of resources, particularly in the areas of foreclosure prevention, enforcing the rights of mobile home owners, representing domestic violence survivors, representing elders who are being abused and providing representation in the areas of employment, education and land sale contracts; and
- He will discuss barriers to providing services in the rural counties in LawNY's service area, including the large geographical expanse, transportation problems, low starting salaries for attorneys, difficulty of pro bono delivery in rural areas, steep reductions in state funding in the current New York State fiscal year budget and the upcoming phase out of one time grants which have allowed for continuation of services in housing, foreclosure and domestic violence cases.

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TESTIMONY:

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

Rochester, New York

September 29, 2010

By: C. Kenneth Perri

Executive Director



I. INTRODUCTION:

On behalf of Legal Assistance of Western New York, Inc. (hereinafter LawNY), I thank you for conducting this hearing today and for conducting the hearing yesterday in the First Department and the ones planned for next week in the Second and Third Judicial Departments. I thank you as well for the opportunity to share our comments with regard to the crisis facing the civil legal services infrastructure in New York State and how it impacts those unable to access the justice system because of their inability to pay for an attorney.

I extend my thanks in particular to the Chief Judge of the State of New York, Honorable Jonathan Lippman, as well as the other members of the hearing panel, Presiding Justice Henry J. Scudder, Chief Administrative Judge Ann Pfau and New York State Bar Association President-Elect Vincent E. Doyle, III.

This year, in an unprecedented effort to help abate the shortfall in funding from the Interest on Lawyer Account Fund, Chief Judge Lippman successfully secured \$15 million in funding to help abate the IOLA crisis for the fiscal year from April 1, 2010 – March 31, 2011. The civil legal services community is thankful in particular to him for playing a leadership role in crafting a short term solution to the crisis facing civil legal services while longer term solutions are developed.

I also extend my thanks to Helaine M. Barnett, who chairs the Task Force To Expand Access To Civil Legal Services In New York, as well as to the other distinguished members of the Task Force. I would like to thank in particular C. Bruce Lawrence of Boylan Brown for the leadership role which he played in coordinating the logistics of today's hearing in Rochester.

II. LawNY:

My name is C. Kenneth Perri and I am the executive director of LawNY. LawNY is a 501(c)(3) not-for-profit law firm whose mission is to provide access to the justice system to low-income New Yorkers and other vulnerable populations.

I have been a civil legal services practitioner for 28 years and, throughout my career, I have worked almost exclusively in offices which have provided services to low-income people in rural areas.

From 1982 – 1986, I was a staff attorney and then a senior attorney in the Legal Services Corporation of Alabama's regional office in Dothan, providing services to low-income people in six rural counties.

In 1986, I became the managing attorney of the Geneva office of what was then the Monroe County Legal Assistance Corporation. The Geneva office provides services in five rural New York counties: Livingston, Ontario, Seneca, Wayne and Yates.

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I became the executive director of the program in 2002. In 2004, at the conclusion of a statewide planning process for civil legal services, my program merged with two other civil legal services programs, Chemung County Neighborhood Legal Services, Inc. and Southern Tier Legal Services.

Today, we have seven staffed offices which provide services to low-income people in 14 counties. Our office in Bath serves the residents of Allegany and Steuben Counties. Our office in Elmira serves the residents of Chemung and Schuyler Counties. Our office in Geneva serves the residents of Livingston, Ontario, Seneca, Wayne and Yates Counties. Our office in Ithaca serves the residents of Tioga and Tompkins Counties. Our office in Jamestown serves the residents of Chautauqua County. Our office in Olean serves the residents of Cattaraugus County. Our office in Rochester serves the residents of Monroe County.

With the exception of the urban center in Rochester and the small cities of Canandaigua, Elmira, Geneva, Ithaca, Jamestown, Olean and Salamanca, the 14 county service area covered by LawNY is primarily rural. In the counties in which we do not have staffed offices, we have sites where we can meet with and interview clients located in Belmont, Lyons, Montour Falls, Mt. Morris, Ovid, Owego and Penn Yan.

In 2006, our board of directors amended our Certificate of Incorporation to move our principal place of business from Monroe County to Ontario County.

In my testimony today, I will highlight the challenges which we face in providing delivery of civil legal services to low-income residents of rural counties.

III. POVERTY POPULATION:

As of 2008, the 13 rural counties in the LawNY service area had a poverty population of approximately 129,404 people. The following chart sets forth the approximate poverty population breakdown on a county by county basis:

County	Total Population – 2009 Estimate	Poverty Population – Percent - 2008	Estimated Number of Persons in Poverty - 2008
Allegany	49,157	17.2%	8,455
Cattaraugus	79,689	14.8%	11,794
Chautauqua	133,503	17.7%	23,630
Chemung	88,331	16.1%	14,221
Livingston	62,871	10.8%	6,790
Ontario	105,650	9.8%	10,354
Schuyler	18,720	12.4%	2,321
Seneca	34,049	11.9%	4,052
Steuben	96,552	13.5%	13,035

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Tioga	50,064	9.1%	4,556
Tompkins	101,779	17.3%	17,608
Wayne	91,291	9.9%	9,038
Yates	24,482	14.5%	3,550

The chart above sets forth the poverty population breakdown for the 13 rural counties in LawNY's service area in 2008, when the New York State poverty population was 13.7%. As can be seen, the poverty population in LawNY's rural service area exceeded the New York State rate in eight of the counties that we serve.

On September 16, 2010 the Census Bureau released its 2009 statistics on poverty, showing that the New York State poverty rate had increased to 15.8%, a 15.3% increase in the rate in just one year. Although a county by county breakdown of the new poverty rate for 2009 is not yet available from the Census Bureau, LawNY fully anticipates that both the poverty population and the percentage of persons in poverty in the 13 rural counties will have increased as well.

The number of people in poverty in 2008 in the 13 rural counties served by LawNY increased by 19,678 persons, or 17.93%, from the time of the 2000 census.

IV. SERVICE DELIVERY SYSTEM:

The 13 rural counties served by LawNY are comprised of 9,070 square miles, a geographical expanse larger than the states of Connecticut, Delaware, New Hampshire, New Jersey, Rhode Island and Vermont.

We provide services using a core staff model of attorneys and paralegals supplemented by AmeriCorps volunteers through programs funded by Equal Justice Works and the New York State Office of Children and Family Services, as well as pro bono attorneys, volunteer law students, pro se clinics, self-help materials and community legal education in various combinations to address the most critical legal needs throughout the rural counties.

In 2009, in our six rural offices, LawNY closed 4,049 cases benefiting 10,384 individuals.

Representation was provided across a broad spectrum of substantive law areas as follows:

- 1,359 (33.57%) income maintenance cases;
- 1,256 (31.02%) housing cases;
- 947 (23.39%) family law cases;
- 211 (5.21%) consumer/finance cases;
- 92 (2.27 %) health law cases;
- 83 (2.05%) employment law cases;
- 19 (0.47%) education law cases;
- 9 (0.22%) individual rights cases; and

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- 73 (1.8%) other miscellaneous matters.

Our income maintenance practice includes representation of families and individuals who are denied benefits or are having benefits terminated from the safety net programs of last resort – public assistance, food stamps, supplemental security income and social security disability benefits. Our ability to preserve or obtain income from these government benefit programs for low-income New Yorkers is critical in allowing them to continue to pay their rent and put food on their tables.

Our housing work includes representation in the areas of private landlord tenant, public housing, subsidized housing, foreclosures on homes being purchased by low-income people, evictions from mobile home parks and enforcement of fair housing laws which protect people against discrimination in the provision of housing. Our goal in our housing practice is to preserve or enforce the rights of low-income people to decent, safe and habitable housing.

Our family law practice includes representation of victims of domestic violence in their efforts to secure civil orders of protection and become safe from their batterers. We also provide representation in the areas of child support, custody and visitation.

Other miscellaneous matters which we handle include preparing wills, durable powers of attorney and health care proxies for senior citizens.

Our rural extended representation outcomes in 2009 included preventing and/or delaying evictions and foreclosures in 224 cases involving 687 people, providing time for our clients to seek alternative housing; obtaining, preserving or increasing food stamps for 442 people; obtaining or maintaining custody of children in 234 cases; and obtaining, preserving or increasing TANF or other public assistance benefits for 317 people.

V. PRESENT ECONOMIC CONDITIONS AND THE DEMAND FOR CIVIL LEGAL SERVICES/SOME MEASUREMENTS AND INDICATORS OF NEED:

Present economic conditions are dramatically affecting the demand for civil legal services among low-income people, including those who, because of loss of jobs, have recently fallen below the federal poverty level.

Even while the recession seems to be easing, jobless rates continue to rise, the number of available jobs continues to decline, and civil legal services providers are still seeing countless numbers of New Yorkers who have never needed our services before at our doors with a full range of legal problems. They need legal assistance to access their unemployment insurance benefits, to stave off an eviction or foreclosure, to secure desperately needed food stamps, public assistance, or medicaid. For many of these new clients, they are encountering these extremely complex legal systems for the very first time. And meeting the legal needs of this new clientele comes on top of the already pressing need that the service delivery system has never been able to meet.

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In its statewide labor market overview, the New York State Department of Labor reports that New York State's unemployment rate was 8.2% in August 2010. The unemployment rate in two of LawNY's rural counties, Allegany (9.1%) and Steuben (8.7%) exceeded the state rate. Since August 2009, the number of non-farm jobs in the private and public sectors in New York State decreased by 17,500. Sectors with job losses included trade, transportation and utilities; manufacturing; construction; financial activities; government; and information.

In August 2010, the unemployment rate in the 13 rural counties served by LawNY was as follows:

Allegany – 9.1%
Cattaraugus – 8.1%
Chautauqua – 7.6%
Chemung – 7.8%
Livingston – 6.9%
Ontario – 6.1%
Schuyler – 6.9%
Seneca – 7.1%
Steuben – 8.7%
Tioga – 7.3%
Tompkins – 6.1%
Wayne - 8%
Yates – 5.7%.

The number of employers in the 13 rural counties who have downsized, closed or relocated is long, including many small businesses and retailers. Large employers which recently announced reductions in force include Alstom Transportation in Hornell which in January 2010 announced the layoff of 502 employees; BorgWarner, which announced a reduction in force of 220 employees in early 2009; Lockheed Martin Corporation which announced in January 2010 that its plant in Owego would have a reduction in force of 1,200 jobs; and Parker Hannifin which closed in Lyons in December 2009, resulting in a loss of 230 jobs.

The number of people participating in the poverty programs of last resort – public assistance, food stamps and medicaid – has increased dramatically in the 13 rural counties served by LawNY.

The year to year monthly comparison by local districts reported by the New York State Office of Temporary and Disability Assistance (OTDA) shows that the number of temporary assistance recipients increased by 10.52% from June 2009 through June 2010 with 16,842 persons receiving assistance in 8,834 cases, up from 15,239 persons in 8,199 cases. Of these, the number of family assistance recipients increased by 10.67%, with 9,459 persons receiving assistance in 4,285 cases, up from 8,547 persons in 3,879 cases, and the number of people receiving Safety Net assistance increased by 10.18%, with 7,373 persons receiving assistance in 4,549 cases, up from 6,692 persons in 4,320 cases.

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During this same period, from June 2009 to June 2010, the number of persons receiving food stamps increased by 14.92%, with 113,469 persons in 56,023 households receiving food stamps, up from 98,735 persons in 48,842 households.

The New York State Department of Health reports that the number of medicaid enrollees in the 13 rural counties served by LawNY in March 2010 totaled 164,448 people, an increase of 9.89% from March 2009, when there were 149,642 enrollees.

The new Mortgage Foreclosure Law signed by Governor Paterson on December 15, 2009 accords the right to settlement conferences and other protections to people facing foreclosure who have conventional mortgages, which has resulted in yet increased demand for civil legal services by homeowners who have become unable to pay their mortgages. While the New York State Banking Department shows that 444 foreclosure proceedings were filed in the 13 rural counties served by LawNY during the period from January 1, 2009 – June 30, 2009, the number of 1 – to – 4 family residential properties that have received a 90 day pre-foreclosure notice between February 13, 2010 and May 31, 2010 totaled 2,567 in the 13 counties, a clearer indicator of the depth of the foreclosure crisis in this rural area.

For a two month period from March 16, 2009 – May 15, 2009, LawNY participated in an unable to serve study overseen by the Legal Services Corporation. The purpose of the study was to obtain a snapshot of the number of low-income people that LSC grantees throughout the United States turned away because of lack of resources. In participating in the study, LawNY complied with the instructions provided by LSC. LawNY tracked the number of people turned away who were both financially eligible for services and who presented with a problem within LawNY's substantive priority practice areas. LawNY tracked those individuals and families that we were unable to serve at all, those that we were unable to serve fully and those whose cases were accepted for representation.

The study showed that for every one person that LawNY was able to assist, two persons were turned away.

By substantive law area, the results were as follows for the callers to the six rural LawNY offices for the time period from March 16 – May 15, 2009. We were unable, or unable to serve fully:

- 78% of callers with consumer law problems (85 of 109);
- 75% of callers with education law problems (12 of 16);
- 73% of callers with employment law problems (27 of 37);
- 74% of callers with family law problems (367 of 499);
- 100% of callers with juvenile law problems (8 of 8);
- 65% of callers with health law problems (28 of 43);
- 59% of callers with housing law problems other than foreclosures (206 of 350);
- 39% of callers with foreclosure problems (21 of 54);

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- 52% of callers with income maintenance problems (180 of 343);
- 91% of callers with individual rights problems (73 of 80); and
- 92 % of callers with other miscellaneous problems (106 of 115).

On an annualized basis, the study showed that LawNY's rural offices were unable to serve or were unable to serve fully 6,678 callers who were financially eligible for our services and had legal problems in our substantive law priority areas.

The number of persons unable to be served over the two month period increased 12.45% over the same two month period in 2005. The number of persons unable to be served fully increased 89.23% over the same two month period in 2005.

VI. SELF IDENTIFIED GAPS IN LawNY'S SERVICES:

Annually, the LawNY board of directors establishes priorities for the allocation of the resources which LawNY has available to it. Our priorities are framed in terms of substantive law areas in which we strive to provide representation to low-income people, as well as particularly vulnerable components of the low-income population to which we target services. As a result of our priority setting processes over the past few years, we have self-identified gaps in our service delivery system and we expend considerable effort to try to bring additional resources into our program so that we can help abate these high areas of unmet need.

A. Foreclosure Prevention Services:

As noted above in section V, the number of foreclosures filed in the rural counties in LawNY's service area continues to increase. In addition, low-income homeowners now have additional procedural rights due to the expansion of the settlement conferences to include conventional mortgages. LawNY has received funding from the Division of Housing and Community Renewal to provide foreclosure prevention services, but our services must be limited to low-income homeowners who have subprime mortgages. Given the significant increase in the rate of conventional mortgage filings, there is a large unserved population and high unmet area of need that LawNY simply does not have the resources to address.

B. Mobile Homeowners' Rights:

In the rural counties of LawNY's service area, many tenants rent a lot in a mobile (manufactured) home park and place the mobile home that they own outright or are in the process of purchasing on the lot. Often these mobile homes are purchased on contracts with the owners of the park. Generally, the homes are older models and have been placed on the rented lot in the park so long ago that they are no longer moveable. Although considered to be a tenant of the park, a mobile home owner is in reality a homeowner and often has his or her life savings tied up in the mobile home.

If the mobile home owner falls behind on the rent, the owner of the mobile home park can, under Real Property Law (RPL) §233, commence an eviction proceeding to evict the mobile home owner (and the home) from the park. Because most of these homes cannot be moved (or can only be moved at great expense) the consequence of an eviction is that the mobile home owner can not only lose his housing but any investment he has made in the house as well.

According to the 2000 census, there are at least 49,195 mobile homes in the 13 rural counties served by LawNY, which represents 11.86% of all housing units in the area. According to the Division of Housing and Community Renewal, as of early 2008, there was a total of 176 mobile home parks registered in the five counties served by the Geneva office alone, with a total of 8,015 mobile home lots in them. LawNY's ability to provide representation to mobile home park owners is severely curtailed because of our lack of resources.

C. Domestic Violence Victims:

Victims of domestic violence, dating violence, sexual assault and stalking in the 13 rural counties in LawNY's service area face a confusing network of systems as they struggle to find safety and security for themselves and their children. Specialized legal assistance is currently provided by a collective total of approximately 1.0 FTE LawNY attorney time, focused in only three of our 13 rural counties. Invaluable services are offered by victim service agencies, ranging from education and referral to specific assistance completing paperwork and petitions and accompanying victims to court. Nonetheless, in a recent collaborative funding proposal prepared in February 2010, the area victim service providers were in consensus that there remains a large gap in the needed continuum of services, specifically for full representation by attorneys trained in the dynamics of domestic violence and sexual assault who can provide assistance on the wide range of legal issues that victims face, in a comprehensive, holistic way. LawNY unsuccessfully sought funding to expand domestic violence representation in 11 of the 13 rural counties in our service area. The domestic violence and sexual assault providers reported that in 2009 they collectively provided residential services to at least 593 families and individuals and non-residential supportive services to 1,847 families and individuals. At least 1,723 sexual assault victims were served. During that same period of time, in the 11 counties included in the proposal, LawNY was only able to close 62 cases in which we provided representation to clients whose primary presenting problem was domestic abuse.

D. Elders:

According to the 2000 census, 169,024 residents of the 13 rural counties in the LawNY service area are 60 years of age or older. One of LawNY's highest priorities is to allocate resources to improve outcomes for the elderly. In 2009 LawNY's rural offices closed 623 cases for seniors over the age of 60 benefiting 926 individuals.

In six of the rural counties in our service area, LawNY receives funding awarded pursuant to Title III-B of the Older Americans Act by the Administration on Aging, generally through contracts that we have in place with local Area Agencies on Aging or Offices For the Aging. The six counties are Ontario, Seneca, Tioga, Tompkins, Wayne and Yates. In addition to the funds that we receive to serve seniors who fall within our general priorities, the Title III-B funds are concentrated on the provision of legal services to those elderly individuals who have the least access to resources to meet their needs based on economic or non-economic factors, including the nature of legal questions involved. These include frail, isolated, disabled, institutionalized, minority and non-English speaking elderly.

As of the 2000 census, the population of seniors in the six rural counties for which LawNY receives Title III-B funding is 65,026. The Title III-B funding, although extremely appreciated and very helpful to us in our efforts to address the civil legal problems of seniors, comes nowhere near what is needed to meet the civil legal problems of residents over the age of 60, including elder victims of abuse and financial exploitation. We receive 61 cents in Title III-B funding for each senior over the age of 60 in the six rural counties.

With expanded resources, additional seniors, including victims of abuse and financial exploitation, can be served. Enhanced funding for civil legal services will allow providers to penetrate deeper and offer more extended services to elder victims of abuse and financial exploitation. Victims need attorneys to help them end physical abuse, to help them end neglect, to help them end financial exploitation and to proactively redress the harm done to them by the perpetrators of physical abuse, neglect and financial exploitation.

E. Employment Law:

LawNY is presently in the process of developing our substantive law priorities for 2011. To that end, surveys were conducted of low-income people asking them to advise us what types of legal problems they have had in the past two years. 427 survey responses were received from low-income people in the 13 rural counties in LawNY's service area. The single highest response was in the area of employment.

Because of similar results obtained in an earlier survey conducted in 2006, LawNY began to grow our services to the low-income community by providing extended representation and short term services to low-income residents of our service area with employment law problems. Generally, in our rural offices, however, our services can only be offered in clinic settings. LawNY lacks the resources necessary to provide representation to abate barriers to employment opportunities faced by our clients in cases such as transitional issues faced by reentering former offenders, such as discrimination against individuals on the basis of a criminal record, enforcement of wage claims and access to job training.

F. Education Law:

Similarly, in a case priority setting process that was undertaken in 2006, members of our client communities and the providers of other human services to low-income people identified education law as a high unmet area of need. Improving outcomes for children by providing representation which allows them to obtain access to an appropriate education, including children who are homeless and parenting teenagers, as well as reducing suspensions and expulsions of at risk students, remains a goal of LawNY. Except for small grants which have been secured to allow us to provide education law services in Ontario and Wayne counties, however, LawNY is unable to provide services to help low-income children receive appropriate individualized education plans and overcome barriers to enrollment in school.

G. Land Sale Contracts:

As traditional financing is not available to many low-income households, many people in the rural counties served by LawNY enter into installment land contracts to purchase homes. Invariably these contracts, drafted by the sellers and signed by prospective buyers, require the buyer to make a down-payment and then monthly installments toward the purchase price. Often, these contracts state that if a buyer defaults on the monthly installment payments, the buyer is then considered to be a tenant and all payments made under the contract and any improvements made to the home are considered rent. Upon the buyer's default, the seller then brings a summary eviction proceeding against the buyer to evict the buyer for nonpayment of rent. If the seller is successful, the buyer loses not only the down payment but also any equity the buyer has in the house. If the buyer has substantial equity in the house, the Fourth Department in Bean v. Walker, 95 A.D. 2d 70 (4th Dept. 1983), has held that the seller's remedy in the event of the buyer's default is to commence a foreclosure notwithstanding the terms of the contract. Despite the substantive and procedural rights which are accorded to low-income people who enter into installment land contracts as a result of Bean, LawNY does not have the resources to provide targeted legal services to this component of our low-income communities.

VII. BARRIERS TO PROVIDING CIVIL LEGAL SERVICES IN RURAL AREAS:

A. Geographic Expanse:

As noted earlier in section III, the 13 rural counties in LawNY's service area are comprised of 9,070 square miles, an area larger than the states of Connecticut, Delaware, New Hampshire, New Jersey, Rhode Island and Vermont. Limited transportation options leave many of our clients, including victims of domestic violence and elder abuse, isolated geographically, as well as socially and emotionally from family, friends and services. Many members of the low-income community face further obstacles imposed by the dynamics of rural life, such as difficulty accessing services in a confidential manner within a small community.

Testimony: Task Force To Expand Access To Civil Legal Services In New York
Legal Assistance of Western New York, Inc.

The geographic expanse also creates resource allocation problems for LawNY. For example, Livingston County is served by our staffed office in Geneva. An attorney providing representation to a low-income tenant in the Village of Nunda must spend three hours traveling round trip to stand in court with his/her client in the Justice Court there.

The large size of the service area makes it extremely difficult to provide necessary coverage for clients, for example, who face eviction from their apartments. The Town and Village Justice Courts have jurisdiction over summary proceedings. Each of our rural offices has from 1.0 FTE – 2.0 FTE attorneys responsible for housing cases. In the 13 rural counties, however, there are 264 separate town and village courts in which summary proceedings can be commenced.

B. Starting Salaries:

As is true of most other civil legal services providers serving rural areas, LawNY's salary scale creates tremendous difficulties in recruiting and retaining attorneys, as well as barriers in achieving diversity in our staffed offices. The present starting salary for a law graduate eligible to practice pending admission to the bar pursuant to LawNY's practice order is \$38,500. Salaries increase in increments of \$1,200 for each year of experience. Law graduates with significant student loan debt, and mid-level attorneys who are purchasing their first homes and starting families, often find it financially impossible to remain with LawNY, often despite a deep commitment to providing legal services to the low-income clients we serve. LawNY last adjusted our starting salary for entry level attorneys in 2007 when it was only \$35,000. Allocating our resources in such a way to ensure no diminution in level of services that we provide to our clients has caused LawNY to be unable to revisit adjusting our salary scale. In this regard, LawNY is significantly behind other civil legal services providers. According to a September 2010 report issued by the National Association for Law Placement, entry level civil legal aid lawyers earn a median salary of \$42,000 per year. According to the Legal Services Corporation, first year staff attorneys at LSC grantees earn an average of \$43,000 per year.

C. Pro Bono Services:

It is extremely difficult to recruit and retain volunteer lawyers to provide services on a pro bono basis in the rural counties in our service area. Often, private attorneys in rural areas are sole practitioners or members of very small firms comprised of two – five attorneys. Some sole practitioners run their practices with minimal support staff. It is extremely difficult for them to find the time or allocate the resources necessary to provide representation on a pro bono basis in extended service cases.

We have found that the most effective use of pro bono attorneys in the rural counties is to recruit them to staff clinics. A successful model has been developed by the LawNY Geneva office. In pro se divorce clinics, private lawyers meet on a 1:1 basis

with low-income people with uncontested divorces, where issues of child custody and child support have already been adjudicated in Family Court, and prepare the pleadings necessary to commence a matrimonial action. After the defendant is served, and the time to answer elapses, the attorney meets with the client at a second clinic to prepare the pleadings necessary to submit the judgment roll.

Although this has proven to be an effective way to allow low-income people with uncontested matrimonial actions to proceed in court on a pro se basis, there is no vehicle for securing extended representation in cases which are contested. Sole practitioners and private attorneys in very small firms without resources such as are found in large firm settings in urban areas find it very difficult to commit to providing extended representation on a pro bono basis to supplement the work of the staffed civil legal services offices.

D. Recent Reductions in State Funding:

LawNY's ability to provide services has been further diminished by the recent reductions in funding from New York State. In the 2010 – 2011 state fiscal year budget, the following reductions were enacted:

- Funding from the Department of State was reduced 72%;
- Senate discretionary funding was reduced by 72%;
- Funding from the Legal Services Assistance Fund administered by the New York State Division of Criminal Justice Services was reduced by 10%;
- Funding for the Disability Advocacy Project administered by the New York State Office of Temporary and Disability Assistance (OTDA) was reduced by 16.8%;
- The Homelessness Intervention Project administered by OTDA, funded by state general funds, was reduced by 26.73%; and
- The Supplemental Homelessness Intervention Project, funded by federal TANF funds administered by OTDA, was reduced by 78.8%.

As a result, LawNY suffered a \$505,000 annualized reduction in funding in this year's state budget. This translates into approximately eight full-time equivalent attorney positions and 1,200 fewer families able to be served.

E. Upcoming Losses of One Time Funding:

LawNY has been able to maintain stability because of one time funds which have recently been secured.

As noted above in section I, LawNY and the entire civil legal services community is grateful for the one time infusion of funds from the Unified Court System's budget to rescue the IOLA Fund. As budget preparations get underway for 2011, however, as things stand now responsible budgeting will cause us to zero out this funding when it ends on March 31, 2011.

LawNY has been able to maintain our housing work in some of our rural offices through funding received from OTDA for the Homelessness Prevention and Rapid Rehousing (HPRP) projects funded with American Recovery and Reinvestment Act funds. In our rural offices, HPRP funding has allowed us to maintain 2.5 FTE attorneys to provide representation in housing cases to persons who are homeless or at risk of homelessness. This funding will end in 2011 and 2.0 FTE attorneys will not be able to be maintained on staff.

As a result of the subprime foreclosure crisis, LawNY was able to secure funding from the Division of Housing and Community Renewal to provide foreclosure prevention services to low-income people with subprime mortgages. LawNY has been working in partnership with eight housing counseling agencies to provide services in all 13 of our rural counties. Our contract with DHCR, however, ends in a few weeks, in November 2010. Our ability to continue to provide representation to low-income homeowners with subprime mortgages will be drastically curtailed at that time.

In addition, LawNY secured a one time grant from the New York State Division of Criminal Justice Services, also through American Recovery and Reinvestment Act funds, to expand our domestic violence services in Steuben County. The LawNY Bath office administers the Domestic Abuse Response Team (DART), a collaboration which includes domestic violence and sexual assault providers and law enforcement. The expansion funds have allowed more clients to be served and permitted LawNY to retain a staff member to coordinate the service delivery system. This funding is also scheduled to end in several weeks, in December 2010, and our domestic violence services will likely have to be significantly curtailed after that time.

VIII. CONCLUSION:

Recently, John G. Levi, the Chairman of the Board of Directors of the Legal Services Corporation, issued a statement on the new federal poverty data, which showed that in 2009 57 million Americans qualified for civil legal assistance from Legal Services Corporation grantees, an increase of 3 million from 2008 and the highest number of people eligible for legal aid in the United States in LSC's 35 year history. In his statement, Mr. Levi quoted Supreme Court Justice Lewis F. Powell, Jr., who said that equal justice "is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists...it is fundamental that justice should be the same, in substance and availability, without regard to economic status". Mr. Levi stated that at LSC, "we are determined to help the nation fulfill the promise of equal justice for all".

We are gratified that the leaders of the Unified Court System and so many other distinguished New Yorkers are also actively working toward the creation of a system for the delivery of legal services in New York State that provides a full range of high quality, coordinated and uniformly available civil legal services for low-income New Yorkers in sufficient quantity to meet their civil legal needs. My fervent hope is that in the months and years ahead, New York State will rise to the challenge and become a leader in the effort to ensure equal access to justice for all.

LawNY and the other civil legal services providers throughout New York State welcome the opportunity to work with the Task Force To Expand Access To Civil Legal Services In New York to achieve this result.

Thank you for your time and your consideration.

Thomas S. Richards
City Corporation Counsel

Biography for Thomas S. Richards

Tom Richards is currently the Corporation Counsel for the City of Rochester. Most recently he was the volunteer founding Chairman of the Greater Rochester Enterprise, a public/private partnership dedicated to the economic development of the Rochester region. Previously he was the chairman, president and chief executive officer of RGS Energy Group, the parent company of Rochester Gas & Electric from 1998 to 2002. After joining RG&E in 1991 as general counsel, he served as senior vice president for corporate services, senior vice president for finance and as president and chief operating officer.

Prior to joining RG&E, Mr. Richards was a partner in the Nixon, Hargrave, Devans & Doyle (now Nixon Peabody) law firm. During his 20 years with the firm he specialized in civil litigation and served at various times as the managing partner and chairman of the management committee.

Mr. Richards serves on the Board of Canandaigua National Bank and Trust Company. He has been involved in a number of charitable and community organizations and is currently serving on the boards of Rochester Institute of Technology, Cornell Law School Advisory Council, University of Rochester, University of Rochester Medical Center, Strong Partners Health System, Center for Governmental Research, Greater Rochester Enterprise, Rundel Library Foundation, Greater Rochester Health Foundation, Volunteer Legal Services Program and George Eastman House.

Mr. Richards is a graduate of Bucknell University and Cornell University Law School and served in the U.S. Navy. He and his wife Betty live in Rochester and have two adult sons.

Testimony of Thomas Richards before the Task Force to Expand Access to Civil Legal Services in New York

September 29, 2010 at the M. Dolores Denman Courthouse in Rochester, New York

To the distinguished members of the panel,

Chief Judge Lippman, Justice Scudder, Judge Pfau and President Doyle;

I appreciate the opportunity to present testimony on the important issue of access to civil legal services in New York.

This is an important issue, not only to the administration of justice in our state, but to me personally, as it should be for any attorney. However, I would like to speak today, not only as an attorney sworn to uphold the fair administration of justice, but as an individual who has seen this issue from several perspectives.

I started my career thirty-eight years ago with the firm of Nixon , Hargrave, Devans & Doyle (now Nixon, Peabody) here in Rochester. During my 20 year career at the firm, I served as both a volunteer law guardian in Family Court and as a volunteer for the Volunteer Legal Services Project (VLSP), on whose Board I still serve. Eventually, as the managing partner of the firm, I was involved in developing its policy and practice with respect to pro bono legal service. I left the firm in the early 1990's to join Rochester Gas & Electric, the gas and electric utility for this region, and eventually became its CEO. RG&E is the supplier of an essential service with a mandated obligation to serve everyone. It is constantly dealing with people who, not only have difficulty dealing with the laws and regulations that govern their right to utility service, but whose interaction with the legal system in a myriad of ways interferes with their capacity to deal with the everyday obligations of their lives. For the past four and one-half years, I have served as the Corporation Counsel for the City of Rochester. In a city with a substantial number of people without the financial means to engage the legal profession in a conventional manner, this position has given me yet another perspective on the difficulties that many citizens experience as they try to deal with the laws and regulations that govern all of our lives.

As a result of my experience in each of these positions and the combined perspective that this experience has given me, I would like to suggest the following to the panel:

- The need and importance of competent civil legal assistance is not proportionate to a person's ability to afford it. Nonetheless, this is the basic method by which we allocate such service. This applies not only to the quantity of service, but to its sophistication. The inability to deal with civil legal and regulatory problems can be every bit as difficult and devastating to an individual and a family as many criminal problems. For criminal problems, we recognize that a person cannot be left on their own. However, for civil problems, but for poorly funded and largely volunteer efforts, people are often on their own with unfortunate and sometimes unfair consequences.

- The consequences of inadequate access to civil legal service is not just borne by the individual in need of that service. It is a burden on the legal system, civil society and very often the entity or individual, no matter how well represented, on the other side of the issue. Individuals wandering around the legal and regulatory system without proper guidance make it more difficult for everyone. Relatively simple aspects of the process take more time and are more likely to be adjourned or repeated. The outcome is less likely to be understood and accepted by the unrepresented party, which makes a resolution more difficult, even when an accommodation is offered. All of this adds time, frustration and expense that is borne by everyone involved and ultimately by society with a less effective legal system.
- Adequate access to civil legal service will not result from the present system that depends on various underfunded and inconsistently funded agencies and the volunteer efforts of attorneys. I believe that pro bono service should always be an important part of providing civil legal service, but I do not believe that it will be adequate without a reasonably and consistently funded dedicated infrastructure. This infrastructure is necessary to consistently have legal service with the requisite qualifications available and to organize the volunteer effort. This will require greater and more consistent funding than has ever been the case in New York. We are in a difficult time to discuss additional funding for anything. However, I believe that much, if not all, of the necessary funding already exists in the waste and inefficiency that comes with the struggles of unrepresented parties in the legal and regulatory system. We would all be better served by spending those funds on delivering a fairer and more efficient legal system of which we could be proud.

Again, I appreciate the opportunity to share my testimony with the panel and would be pleased to answer any questions you might have.

Thomas S. Richards
Corporation Counsel
City of Rochester
City Hall
30 Church Street
Rochester, New York 14614

Fran Weisberg

Executive Director of the Finger Lakes
Health Systems Agency

Biography of Fran Weisberg

Fran Weisberg is the Executive Director of Finger Lakes Health Systems Agency (FLHSA). She has more than 25 years of experience in human service, community leadership, administration, policy-making and fundraising within the Rochester community. As FLHSA's Executive Director, she oversees an independent health planning organization working to improve health care in Rochester and the Finger Lakes region. As the only fully functioning health systems agency in New York State, FLHSA provides a “community table” where all stakeholders physicians, hospitals, consumers, employers, insurers, business, labor and others can work together to debate and resolve critical health-care issues.



THE NEW YORK STATE CHIEF JUDGE'S HEARINGS ON CIVIL LEGAL SERVICES

The Fourth Department Hearing

Public Hearing Panel

On

Healthcare

September 29, 2010

Testimony

of

Fran Weisberg, Executive Director
Finger Lakes Health Systems Agency

Good afternoon, Judge Lippmann. My name is Fran Weisberg and I am the Executive Director of the Finger Lakes Health Systems Agency. The Finger Lakes Health Systems Agency is the only fully functioning independent, community-based and community oriented health planning entity left in New York State.

We serve the Finger Lakes region, which is – as you know – a nine-county area within the Fourth Department. Our mission is to improve health care in Rochester and the Finger Lakes region by analyzing the needs of the community, bringing together stakeholders and organizations to solve health problems and measuring result.

Our health planning work is made real through three major initiatives to make people healthier and save money by delivering the right care, in the right place and at the right time for everyone in the community:

- We convene, staff and support the processes and infrastructure of our 2020 Performance Commission (2020 PC). The Commission is a broad-based, diverse group of community leaders who meet and convene workgroups that are working to reduce preventable hospitalizations (PQI related hospitalizations); to reduce sub-optimal emergency department visits; and to strengthen the system of regional hospitals.
- We are working, through the deliberations and recommendations of our SAGE Commission – an equally auspicious multi-stakeholder group – to develop a person-centered integrated health care service system for older adults that will allow them to enjoy life in the most

appropriate, least restrictive setting and help shift investment appropriately into community resources.

- Third, FLHSA convenes and supports our community's African American Health and Latino Health Coalitions. These groups of community leaders, including Sheila Gaddis, support and inform our planning work and support our work to eliminate health disparities by helping our community build non-medical approaches to reducing health disparities. In 2008, each Coalition supported our work to document and report the pressing health issues that confront our local communities of color with regard to expanding access to needed services, empowering people to be navigate complex systems and helping healthcare providers to meet the unique needs of Latinos and African Americans.

As we do our work, our greatest asset in our work is the more than 1,115 community volunteers who sit on the more than 15 different major coalitions, task forces and commissions we convene: each of which is a multi-stakeholder group of business, insurer, hospital, county government/health department, physician, community representatives and civil legal services providers.

Civil legal services providers are vital to our work in improving health: whether it's improving health status, ensuring health access or advocating for improvements in the health care system. Civil legal services organizations and their staffs have been critical to our work to combat childhood lead poisoning and overweight/obesity, to support the needs of refugees and other immigrants to our community and to promote access to public health insurance.

Our region's Latino population continues to grow but over half the Latino children in the City of Rochester live in poverty; over half live in single female parent headed households and the Latino drop-out rate in the City School District is twice that of white students. More than one-third of African Americans living in our region do not have a high school diploma; the median African American household income in Monroe County is half that of white households; and African Americans in Monroe County are predominantly employed in service jobs and almost three times as likely as Whites to be unemployed.

While none of these facts is startling, what is underappreciated is the extent to which poverty, race and ethnicity, and geography interact and intersect. When our planning staff maps our region's socio-economic status, *[Figure 1]* clear patterns of economic segregation emerge. Poverty in the Finger Lakes region is concentrated in the City of Rochester and the Southern Tier and this concentration of race-related poverty has a meaningful impact on health.

With no difference in diabetes prevalence, Latinos are twice as likely as non-Latinos to wind up being hospitalized. With a 2:1 disparity in diabetes, diabetic African Americans in our community are hospitalized at a rate that is almost 4 times greater than for Whites. And, in Monroe County, the Emergency Department visitation rate for African Americans was more than 2 times that of Whites.

And in addition to disparities in who gets sick and who goes to the hospital; there's sad disparities in who dies from disease and at what age. When we measure Years of Potential Life Lost (YPLL) *[Figure*

2], we see that it doesn't matter whether the disease is cancer, heart disease, diabetes or AIDS: people of color live sicker and die younger than the rest of our community.

And when we look at the impact of aging on the demographics of our community – and on long-term care demand – we see an equally troubling picture.

A “perfect storm” of challenges threatens the viability of health care services for older adults: a burgeoning aging population, an expected decline in caregivers, an unsustainable financing system, and a shortage of geriatric care workers.

Our recently released SAGE Commission report responds to the Census Bureau projection that the Finger Lakes region's older adult population is expected to increase by 38 percent from 2007 to 2025 – and will then comprise 21% of the region's population. While the aging population is increasing, the availability of “informal” caregivers – family, friends, relatives and neighbors – in the region is projected to decline.

FLHSA also just completed an Alternate Level Care Study for Monroe County and found that people in hospitals waiting for discharge to long term care services are symptomatic of problems certain segments of the population experience accessing care. These patients are dependent on Medicaid to pay for LTC services; are disproportionately people of color; and are people with varying kinds of disabilities including: mental illnesses, ventilator care needs, dementia and infectious diseases. They need lawyers to help them walk through the public health benefits system and to guide their entry into person-centered guardianship.

The Kaiser Family Foundation recently found that people under, 65 who have Medicare, as a result of a disability, are more likely to experience difficulties in accessing and paying for care. We know that, although health care reform will fill the “doughnut hole,” people need advocacy and help navigating the benefits system or else they often delay seeking care, stop taking their medications or split pills.

The hospitals and health care providers did not single-handedly create these problems and they cannot solve them alone. All of us must work together and legal services is a critical path to helping ensure that our elders, families in poverty, people with disabilities and our communities of color are ensured access through counseling and advocacy, educational programs and public policy initiatives. We need these services because health care improvement – like civil legal services, itself – is extremely complex and incredibly intertwined with other things – and what happens in one system can impact a family's access to another system.

We've had too many instances where we've seen how a misstep in recertification in child care or child support or temporary assistance can lead to public health insurance sanction and loss of benefits: what we've come to know as Medicaid churning. And churning leads to insurance discontinuity which interrupts care. According to 2009 Census Bureau data, those living below poverty level comprise 13.4% of Monroe County population, yet make up 17.6% of the uninsured population. Those living below two times the poverty level are 30% of the county population, but

make up 55% of the uninsured. Since all of these populations are likely Medicaid eligible, these data suggest a substantial barrier in becoming Medicaid enrolled.

FLHSA's daily work of moving health improvement from solutions design to driving concrete community improvement can't occur if we do not ensure that everyone in the community is able to get the right care, in the right place, at the right time.

We need the civil legal attorney who will help ensure that there is support and protection for people who need help with disability benefits, with special education services, with support services for people living with HIV/AIDS. We've leaned on public interest attorneys to help us understand how to close the gaps in uninsuredness, how to improve the language and cultural competency of health care providers, how to extend protection from landlords whose properties risk lead poisoning risks and how to lead this community in improving the quality of school lunches.

It closing, FLHSA reminds the Chief Judge of the Rev. Martin Luther King Jr.'s observation that "of all the forms of inequality, injustice in health care is the most shocking and inhumane."

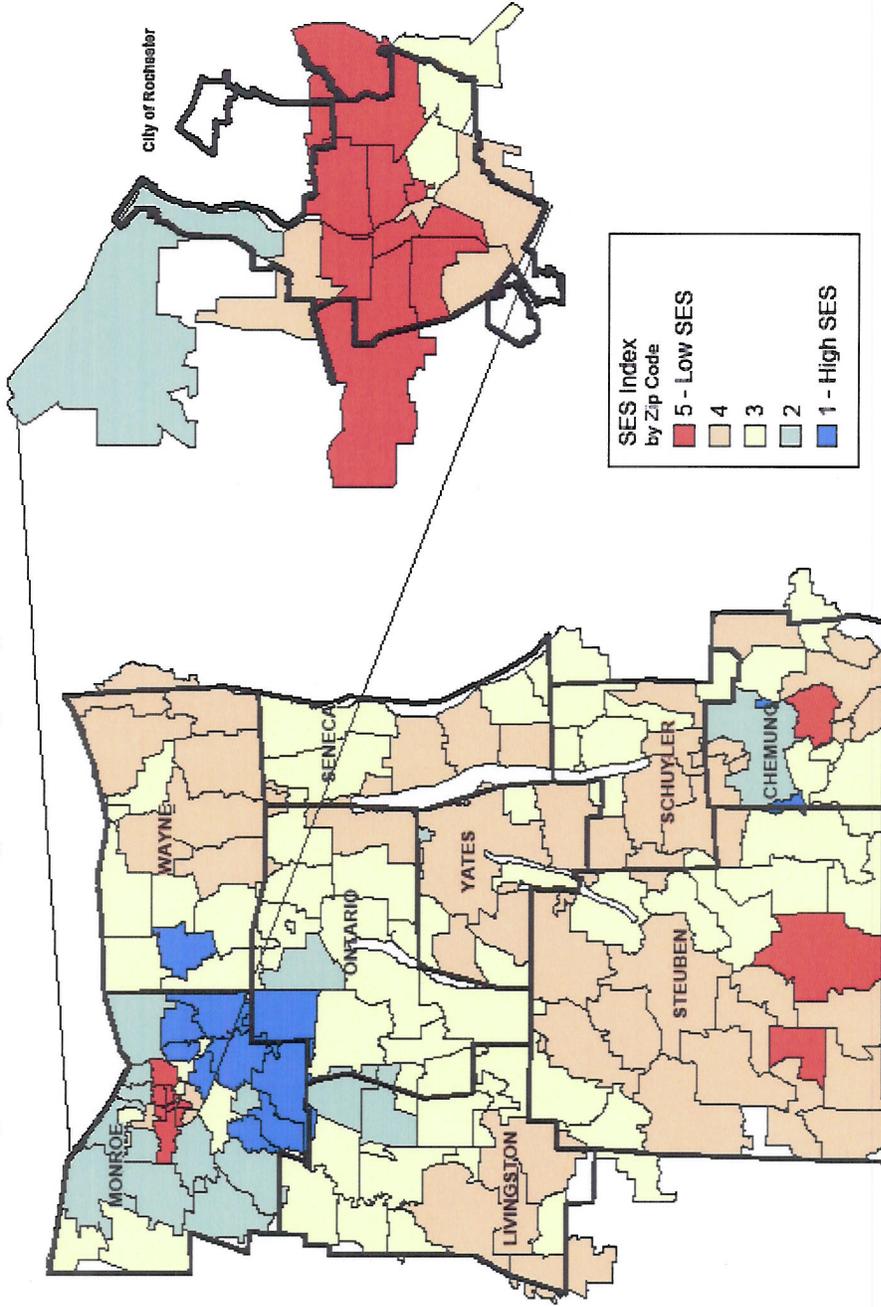
The disparities and challenges I've shared do not simply reflect "the choices people make, they also reflect the choices that people have." Expanding access to services, removing barriers to care, and eliminating structural bias must be part of health care improvement and that is the work of civil legal services. These services must be continued and they must be expanded.

Thank you.

Socio-Economic Status

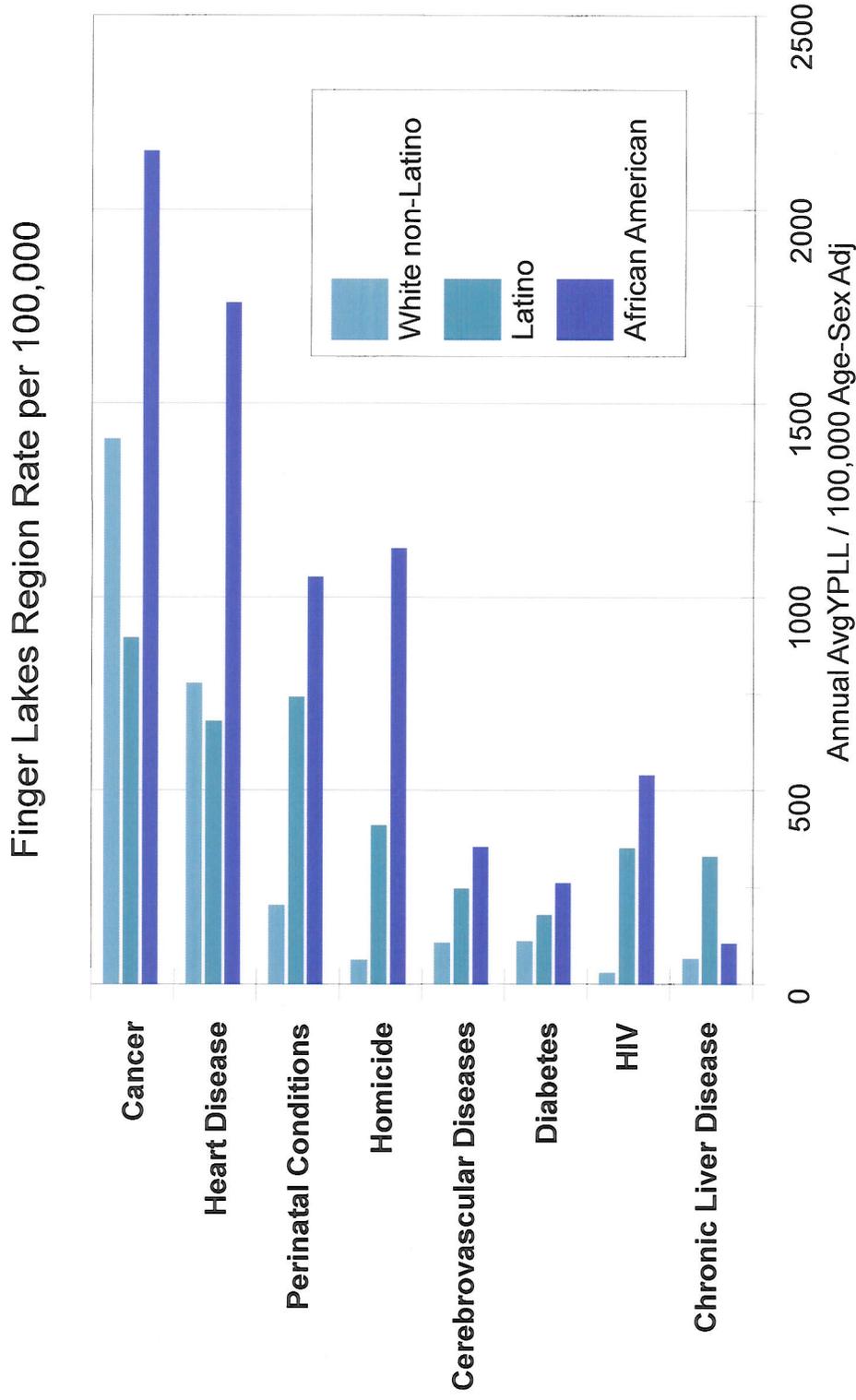
Socio-Economic Status Index Finger Lakes Region by Zip Code

Poverty in the region is concentrated in the City of Rochester and the Southern Tier.



Index based on U.S. Census Data, 2000

Years of Potential Life Lost (YPLL) by Race/Hispanic Origin, 2004-2006



As a measure of premature mortality or early death, the YPLL data reflect African Americans die at younger ages significantly more than whites and Latinos due to many leading causes of death. YPLL is also a measure of lost productivity or contributions to society, and suggests economic loss as a result of early mortality.

NYS DOH, Vital Statistics Files 2004-2006

Hon. Joanne M. Winslow

7th Judicial District Supreme Court

JUSTICE JOANNE M. WINSLOW BIOGRAPHY

Justice Winslow is a *magna cum laude* graduate of Springfield College, where she majored in education and received her undergraduate degree in 1981. After teaching social studies and driver's education for two years, she attended Albany Law School and graduated in 1986. Justice Winslow began working at the Monroe County District Attorney's office in 1987 and spent the next twenty-two years prosecuting criminal cases. During her tenure at the District Attorney's office, in addition to trying a large number of murder cases, she served as the Deputy Chief of the Local Courts Bureau, Chief of the Elder Abuse Bureau, and Chief of the Major Felony Bureau. Justice Winslow was elected in 2008 to a fourteen year term as a Supreme Court Justice serving the Seventh Judicial District. Justice Winslow is assigned to the Matrimonial Part of Supreme Court where she handles divorces and foreclosures. She has taught on a variety of topics in the matrimonial field and is a member of the Board of Directors of A.C.T., Assisting Children Through Transition, a program designed to educate divorcing or separating parents about the impact of their breakup on their children.

Hon. Joanne M. Winslow
Supreme Court Justice
Seventh Judicial District

September 29, 2010

I am a Supreme Court Justice elected to serve in the Seventh Judicial District which encompasses eight counties in and around Rochester, NY, a geographical area about the size of the state of Connecticut, one which Presiding Justice Scudder is uniquely familiar with. I preside over both matrimonial cases and foreclosure cases.

I want to first thank-you, Chief Judge Lippman for conducting this hearing and for providing the opportunity to testify about the very important issue of civil legal services in New York. I appreciate being able to address you as well as Presiding Justice Scudder, Administrative Judge Pfau, and President-Elect Doyle, regarding the need for attorneys for all litigants in civil litigation, and, in particular, how less funding for lawyers for the indigent will affect the everyday workings in courtrooms such as mine.

Currently, men and women come through the doors of my courtroom, and they carry with them, a wide range of emotions. Most of the time there is worry, frustration, and even fear. They are scared and worried because they come to the courthouse not knowing whether they will lose their children, or be able to put food on the table to feed themselves and their children, or whether they will be able to keep a roof over their head or clothes on their backs. The litigants who come to my courtroom and have been married a long time, with their children now grown and on their own, are worried about whether they will ever be able to retire or whether they will be able to afford sufficient health care coverage at a time when they will likely need it the most. These are the fears and emotions of the litigants who have lawyers to represent them.

Contrast this with the ever growing number of pro se litigants who come to court with the very same fears and emotions, and add to that the following: not knowing where to sit in the courtroom, not knowing what is important to tell the Judge or what is relevant, not knowing how to tell the Judge what they are most concerned about, not knowing what the process is to either ask for any kind of relief or not

knowing how to properly oppose any relief that is requested by their spouse's attorney.

A pro se litigant who has to face an opponent who is represented by counsel is at a distinct disadvantage in a forum where important issues are decided on a daily basis. Issues to be decided such as where the children will live, how much time will each parent spend with the children, how much money will each parent have to pay for housing, food, a car, clothing and other monthly expenses, for themselves and their children? Issues such as who will provide health care coverage for the children? Issues such as what happens if court orders are not followed and one of the litigants falls behind in the payments they are supposed to make? In many ways, a person representing themselves pro se against a litigant with counsel, is akin to speaking a foreign language and not having the benefit of an interpreter, the pro se litigant doesn't know where to begin and simply does not have the ability to do so.

Now imagine both litigants appearing pro se and the courtroom process becomes even more onerous and inherently unfair. As a Judge, I cannot step out of my role as the objective arbiter to advise the litigants. This results in a very slow and cumbersome process that is fraught with potential for error. As you well know, in a matrimonial case, the paperwork that is required to be completed must be done in a proper form and without error. In a case without an attorney involved, there is neither any knowledge nor any ability whatsoever, when it comes to the voluminous paperwork to be submitted. This lack of knowledge results not in my job becoming harder, but rather, results in my job becoming impossible.

In my foreclosure cases, the homeowners are already on the verge of losing their home, and the lending institutions are always represented by counsel who are well versed in the language that will get their client a Judgment of Foreclosure and Sale of the homeowner's residence.

Does all of this mean that Judges like me will have to just be more patient and do the best we can with a difficult situation? No, that is not all that it means, if that was it, the easy answer would be buck up and deal with it. What it really means is that Judges will spend a great deal more of their finite time with the growing percentage of litigants who appear pro se. This will affect each and every filing in my courtroom and every other courtroom in the state. The way it will affect our courtrooms is that by taking more of our judicial time out of necessity, there will

either be less time for every other case or the pace we are currently able to achieve will come to a grinding halt. The unfortunate result is that the perception of the Court system as a whole is damaged, the perception becomes one of a system which is slow, repetitive, and inefficient.

What effect has the downturn in our economy had in our courtrooms ? Well, I can only speak for mine and I can tell you that last December, I was able to adjourn a matrimonial or foreclosure matter one month between court dates. Currently, the period of adjournment, barring an emergency, has grown to a two month period. If the number of pro se cases I have continues to climb due to a significant decrease in funding, it will absolutely affect the administration of justice in my courtroom and will likely at least double the amount of time needed for either type of case to reach completion. In cases where both litigants are pro se, it will quadruple the amount of time needed for the case to reach completion.

Does this just mean people will have to wait longer to be divorced or will it simply lengthen the amount of time a homeowner has to either work out a settlement or to in effect be a “squatter” in their own home ? No, it means children will have to suffer with warring parents who have not obtained closure from the courts, it means spouses will have to wait twice as long to obtain temporary maintenance when they are the non-moneyed spouse and their spouse has frozen them out financially, it means children will have to wait twice as long to have their voice heard in the courtroom on issues such as who it is in their best interests to live with.

Does this only affect the litigants ? No. It will affect everyone who works in the justice system, the law clerks, the secretaries, the court clerks and the court reporters, the court deputies, the clerks working in the filing offices, the private attorneys, the criminal courtrooms and all of their staff who have proceedings related to the matrimonial.

Who are the people coming into my courtroom who are currently represented by counsel supported by IOLA funding ? They are mostly the indigent members of our community. They are often less educated than other litigants, frequently they themselves have, or they are coping with spouses who have a myriad of issues such as alcoholism, drug addiction, or disabilities related to mental health. They are the most vulnerable people in our community, and as such, they are the people who need representation and services more than any other segment of our population.

In my experience, the issue of a lack of or a reduction in funding for all civil litigants, and in particular indigent litigants, is not only an issue of effective representation, but it is an issue of our ability to offer justice to all New Yorkers, period.

THANK-YOU

Jane X

Client of the Empire Justice Center,
Rochester

Kate Kressmann-Kehoe resides in the City of Rochester with her husband and two school-age children. In second grade, her daughter evidenced the need for special education services, but the Rochester City School District resisted providing the services. When Ms. Kressmann-Kehoe contacted the Empire Justice Center, she was able to obtain legal representation for her special education case, at no charge. Empire Justice filed for an impartial hearing, and was able to obtain a settlement in which the student received all the services to which she was entitled. Now that she is receiving the services, Ms. Kressmann-Kehoe's daughter is doing much better in school and is on the path to academic success.

Legal Services for Educational Rights

Testimony of Kate Kressmann-Kehoe, 9/29/10

My story is about how having legal services helped me break down bureaucracy that I never would have been able to do on my own. Because we had access to legal services, my daughter is learning to work to her educational potential, instead of becoming an academic failure.

When my daughter started 2nd grade last year, we thought it might be a little bumpy. She had not had an easy time in the first two years, but it was not terrible. There also was not a lot of writing in Kindergarten or First grade.

But 2nd grade, with much more writing, was a whole different story. Within a few weeks the teachers were calling us in because my daughter was refusing to do any writing. We all agreed that there was a possible learning disability. We requested a formal evaluation.

As the evaluations began, the gap between my daughter's intelligence and her ability to write became even clearer to us. Except for her writing, which was at kindergarten level, all her work was at or above grade level. For instance, when they were studying the solar system, she was the only one in the class who could say – in detail -- why we have seasons. But, when she had to write, she would use only a few words. It was clear that in writing she was choosing the smallest words and shortest sentences. And getting those phrases could take hours, accompanied by tantrums and tears. The evaluators found several clear disabilities that made writing hard for her and would benefit from therapies.

At the end of March, we went to a meeting of the CSE – Committee on Special Education – to officially make a plan for in-school therapies according to the evaluators' recommendations. My husband and I and my daughter's teachers all thought the proposed services were appropriate. We expected to be working on how best to help educate my daughter.

Instead, the meeting was a nightmare. The CSE representatives, who had never met my daughter and who never referred to the relevant reports, seemed to be trying to find ways NOT to help her. They ran the meeting very unprofessionally. My daughter's teachers, who have attended many CSE meetings, had never seen anything like it. The CSE representatives, directly contradicting the RCSD evaluations, ruled that my daughter did not have a disability. So, she was denied services that she needed and was legally entitled to.

Now, my husband and I had to decide what to do. We didn't think of a lawyer at first. We thought that we could navigate the bureaucracy ourselves. We'd be fine. The ruling was an obvious error, and we are used to advocating for ourselves. The school staff strongly encouraged us to talk to Empire Justice. We would not be able to do it on our own, they told us. The mere presence of lawyer would change and accelerate the process. Because it had already been 7 months since we first asked for evaluations, and because every day our daughter was falling more behind and becoming more discouraged about her abilities, we decided that we did need help.

We contacted Jonathan Feldman at the Empire Justice Center, and when he reviewed our file, he felt that we had a strong case. Empire Justice agreed to represent us, and to our surprise, they told us that there would be no charge for their services. This was a great relief to us.

As soon as we began the process of appealing the CSE ruling, we started to understand how much it

mattered to have a lawyer. The process was complex and confusing, and Jonathan knew which steps really mattered. Early on, in the appeal, we received a discouraging letter from the district, reiterating the CSE ruling. Therapies, they said, were not necessary for our daughter to receive an appropriate public education. If we had been alone, we might have given up then. But, thanks to the advice of our lawyer, we didn't. Jonathan responded to that letter with a renewal of our appeal.

After that, we attended a "resolution session," with lawyers for both sides present. Our lawyer was able to negotiate a settlement, and the District agreed to provide all the services that our daughter needed.

To finalize the settlement, we had another CSE meeting, this time with Jonathan present. It was as if the first CSE meeting had been from an alternate universe. At this meeting, people were actually trying to help our daughter. They had actually read the reports, and they were using their expertise to think about what would help her learn. The fact that we had a written settlement in hand meant that they had to truly respond to her needs.

As I listened to the teachers and CSE staff work, it reinforced just how valuable it is to getting the services in the school setting, and with the input of professional educators. Even with unlimited resources, there would be no way we could have reconstructed that. And without legal help, we would not have been able to get that from the educational bureaucracy. When the system was working with us, they could integrate the support with the curriculum and daily schedule, so that the services could be available when and where our daughter was having the struggles. And the teachers were able to anticipate where help would be useful in ways that we would never have thought of. Having our lawyer in the room, and having him refer to the settlement agreement, had a visible effect.

Services have only just begun, but already third grade is going much better. Writing is still a struggle, but without the tantrums and fear. My daughter has more confidence, and is willing to try. The teachers are able to coordinate their schedules with the availability of the in-class therapist, for instance switching math and writing so that they do writing when therapist can help. The teachers and the different therapists can quickly and easily coordinate strategies, without waiting to bring us into the loop. Therapy work is done with the real class work, instead of exercises from a generic workbook. My daughter no longer says "I hate school". We are very hopeful that with this early intervention we will be able to set her on a path for success in her entire academic career.

Our family is relatively able to advocate for itself, but without legal help, we would not have been able to make the system provide our daughter with the educational services that it is legally obligated to deliver. We know that there are hundreds, or even thousands, of parents in Rochester alone who must attempt to navigate the special education system without a lawyer. Thank you for your work to make lawyers available to those other families, too.