



The Legal Aid Society is pleased to publish its inaugural Pro Bono Practice newsletter to highlight outstanding pro bono assistance by law firms, law departments, and law schools on behalf of Legal Aid clients. Last year, over 1,750 attorneys and paralegals — primarily from New York's large law firms — handled 2,200 Legal Aid cases. Legal work ranged from complex litigation to staffing an

immigration hotline. More than 20 law firms had at least one active class action matter.

The newsletter will include features on new or expanding pro bono projects at Legal Aid, noteworthy cases, affirmative litigation developments, and other aspects of our vibrant and enduring pro bono partnership to provide equal access to justice to low-income New Yorkers.

Law Firms Defend Former Inmates Subject to Unlawful Reincarceration

Pro Bono partnership established with Kaye Scholer; O'Melveny & Myers; and Paul, Weiss, Rifkind, Wharton & Garrison



From left: Max Schwartz, Kaye Scholer associate; William Gibney, Director of Legal Aid Criminal Practice's Special Litigation Unit; David Klingsberg, member of the Society's Board of Advisors and Of Counsel at Kaye Scholer; Kerry Elgarten, Legal Aid staff attorney, Criminal Appeals Bureau; Elon Harpaz, Legal Aid staff attorney, Criminal Appeals Bureau; Robert Newman, Legal Aid staff attorney, Special Litigation Unit; and Daniel Boglioli, Kaye Scholer associate.

In 1998 the New York State Legislature replaced "parole" for violent felony offenders with post release supervision (PRS), requiring submission by former inmates to a period of supervision with restrictions placed on various activities. It has become the practice of many sentencing judges neither to inform the defendant of the PRS component nor to sign the PRS order. Instead, the standard practice for the State Department of Correctional Services (DOCS) is to add PRS onto the sentence when the prisoner reaches State corrections.

In 2005 the New York Court of Appeals ruled in *People v. Catu*, 4 N.Y.3d 242 (2005), that the court's failure to mention PRS made the plea constitutionally defective; the following year, the Second Circuit ruled that only a sentencing judge could impose PRS. [*Early v. Murray*, 451 F.3d 71 (2nd Cir. 2006)].

Hundreds of former inmates, however, still are reincarcerated, or are at risk of such, for failure to comply with PRS. Legal Aid's Parole Revocation Defense Unit (PRDU), representing a small fraction of this population, has successfully challenged illegally imposed PRS administrative

Continued on page 7

In This Issue

| | | | |
|---|---|--|---|
| Firms Defend Against Unlawful Re-incarceration | 1 | Exemplary Inmate Wins Parole Hearing | 5 |
| Class Action Protects Rights of Disabled Clients | 2 | 2008 Summer Associate Program | 5 |
| Firms Launch Juvenile Delinquency Defense Project | 2 | Evan A. Davis is 2008 Servant of Justice | 6 |
| Inside Legal Aid's Community Development Practice | 3 | 2007-2008 CLE Pro Bono Training Series | 7 |
| Criminal Defense Externship Initiated | 4 | Articles in Upcoming Issues | 8 |

Milbank and LAS Protect Rights of Disabled Public Assistance Recipients

In *Lovely H. v. Eggleston*, 235 F.R.D. 248 (S.D.N.Y. 2006), Legal Aid and Milbank, Tweed, Hadley & McCloy LLP successfully challenged New York City's reassignment of more than 30,000 cases of disabled public assistance recipients from their neighborhood public assistance offices to three "hub centers," in violation of the Americans with Disabilities Act (ADA) and state and local statutes and regulations. Counsel demonstrated that, in most cases, these hub centers — part of the City's WeCARE program — were much farther from the clients' homes than their local Job Centers and entailed longer, more arduous, and often more expensive commutes.

Additional class members were intervened and the class definition amended to include persons on public assistance, food stamps, and/or Medicaid who are or will be participants in the WeCARE program. At present, plaintiffs are negotiating with the City's Human Resources Administration to correct systematic errors by the HRA in its operation of



From left: Kenneth Stephens, Legal Aid staff attorney; Kathleen Kelleher, Legal Aid staff attorney; Scott Rosenberg, Director of Legal Aid's Civil Law Reform Practice; and Kevin Ashby, Milbank, Tweed associate.

WeCARE. In one instance, HRA reversed without notice the status of 1,800 homebound elderly clients. As a result, hundreds of these clients were sanctioned or had their subsistence grants closed for failure to attend "workfare" appointments they could not keep and were not required to attend. The vigilant advocacy of Milbank and Legal Aid's attorneys has restored clients' benefits and is continuing to cor-

Continued on page 6

Five Firms Partner with Juvenile Rights Practice

Aim is to defend youths accused of misconduct

The Juvenile Rights Practice of the Legal Aid Society has partnered with five law firms in establishing the Juvenile Delinquency Pro Bono Representation Project. Though still in its initial phase, the level of enthusiasm and support from the five participating law firms ensures future success and effectiveness in representing some of the Society's youngest and most vulnerable clients.

Legal Aid, a recognized leader in child advocacy at the state and national level, represents 90 percent of the children who appear before New York City's Family Courts, including as respondents in Juvenile Delinquency Proceedings.

The establishment of an innovative pro bono project with prestigious law firms will expand Legal Aid's ability to provide quality representation for these troubled youth. It also will help these clients to receive essential social services, strengthening Legal Aid's capacity to keep them in their communities and steer them clear from future encounters

with the criminal justice system.

Each participating law firm is partnered with a Juvenile Rights Practice trial office in one of the five boroughs. Dechert LLP is working with our Bronx trial office; Morgan Lewis & Bockius LLP is paired with the Manhattan trial office, and Sidley Austin LLP has begun litigating cases with the Brooklyn trial office. Sullivan & Cromwell LLP is in the process of developing its partnership.

The participating firms have significant partner involvement and have made a commitment to litigating at least five or six cases in their entirety, which comprises client interviews, investigations, motions, conferences, settlement, trial, and disposition. On the appellate level, Davis Polk & Wardwell has begun handling a number of juvenile delinquency appeals under the supervision and mentorship of Gary Solomon, the Juvenile Rights Practice's Director of Legal Support.

Experienced Legal Aid staff attorneys and social workers designed an ex-

tensive training program, covering all aspects of Juvenile Delinquency representation in the New York City Family Court system. Attorneys from Sidley Austin currently are litigating their first cases in Family Court. Byron Goldstein, a first-year associate, spoke to the Pro Bono Practice about his participation in this new project.

Initially drawn to the opportunity to have a positive effect on the lives of children in New York while gaining litigation experience, Mr. Goldstein has found the work to be even more enjoyable and beneficial than he imagined. His representation has included two young teens on felony petitions. Under the supervision of Legal Aid staff attorneys and social workers, Mr. Goldstein negotiated successful placement of the two clients in community-based programs in Brooklyn as alternatives to incarceration. "I had clients in trouble and I helped them," Mr. Goldstein shared with us, "I litigated, and I learned a lot in the process."

Pro Bono Is Cornerstone of Community Development Practice

Whether assisting neighborhood nonprofit groups promoting AIDS awareness through performance of Caribbean arts, enabling an East Harlem cook to open a storefront restaurant, or helping low-income tenants become home owners, this dynamic transactional practice keeps residents from being displaced and expands jobs and economic opportunities for a population striving to move out of poverty. The success our Community Development Project (“CDP”) is rooted in a vital partnership with the private bar and support from the CDP’s Advisory Board. Member firms work on 75 percent of the legal matters handled by the project, whose Legal Aid staff is augmented by externs from Fried Frank and Weil Gotshal.

Education and Financial Services

Goodwin Procter’s commitment to community education for CDP’s clients ranges from representation of clients to leading workshops on commercial leasing

(“The Legal Essentials of Commercial Leasing for Small Businesses and Non-profit Organizations”) and low-income small business start-up (“The Legal and Financial Aspects of Starting a Small Business”). The firm has enlisted PricewaterhouseCoopers LLP to join future workshop panels and provide pro bono financial counseling services to the CDP’s low-income small business clients.

Intellectual Property Assistance

Hughes Hubbard & Reed, lead by the firm’s intellectual property counsel, has mentored our staff in this specialty, represented a neighborhood arts organization on copyright, trademark and website best practices, and staffed several IP workshops including two co-sponsored by the Bronx Council on the Arts and State Senator Jose Serrano. These efforts help to fulfill the mission of the CDP to not only represent individual clients but provide valuable business law information too frequently

unavailable to nonprofits and fledgling storefront businesses in low-income neighborhoods. Another terrific workshop, presented jointly with microfinance organization Acción New York, covers financing options available from traditional and nontraditional lenders and the legal and underwriting issues.

Health Services and Business Accountability

Dechert’s legal teams have guided the formation of a small East Harlem business with protected trademark status and assisted a non-profit organization providing therapeutic and recreational services to non-custodial fathers in the development of a HIPAA Manual (privacy rules for protected health information). After creating a non-profit and exempt organization legal compliance checklist, Dechert has begun work on a low-income small business compliance checklist for the legal, regulatory and tax compliance aspects of maintaining a small business.

The Legal Aid Society Community Development Project Advisory Board

The advisory board played a key role in establishing this project. Partner board members mentor staff, enlist their firms to accept cases, serve as faculty for community workshops, and contribute other valuable pro bono support.

Malcolm P. Wattman, Esq.
Cadwalader, Wickersham &
Taft LLP

Jeffrey Lewis, Esq.
Cleary Gottlieb Steen &
Hamilton LLP

Nicholas Potter, Esq.
Debevoise & Plimpton LLP

Glyn Lobo, Esq.
Dechert LLP

Lois Herzeca, Esq.
Fried, Frank, Harris,
Shriver & Jacobson LLP

Thomas Meriam, Esq.
Goodwin Procter LLP

John Pritchard, Esq.
Holland & Knight LLP

Carolyn Levine, Esq.
Hughes Hubbard & Reed
LLP

Mark Kingsley, Esq.
Kaye Scholer LLP

Roland Hlawaty, Esq.
Milbank, Tweed, Hadley &
McCloy LLP

Arthur Rosner, Esq.
Nixon Peabody LLP

Philip Isom, Esq.
O’Melveny & Myers, LLP

Alexander Shapiro, Esq.
Patterson, Belknap, Webb &
Tyler LLP

Mark A. Underberg, Esq.
Paul, Weiss, Rifkind,
Wharton & Garrison LLP

Anne Falvey, Esq.
Sidley Austin Brown &
Wood LLP

Todd Crider, Esq.
Simpson Thacher &
Bartlett LLP

Eileen T. Nugent, Esq.
Skadden, Arps, Slate,
Meagher & Flom LLP

Ross Moskowitz, Esq.
Stroock & Stroock & Lavan
LLP

Christopher Aidun, Esq.
Weil, Gotshal & Manges
LLP

Alison Dreizen, Esq.
White & Case LLP

Dewey & LeBoeuf Establish Criminal Defense Externship

Ilona Coleman-Lange, a sixth-year litigation associate at Dewey & LeBoeuf LLP, is Legal Aid's first extern with the Criminal Defense Practice. Legal Aid Attorney Claudia Conway is Ilona's primary mentor. We recently asked Ms. Coleman-Lange about her experiences.

LAS: What is a day-in-your-life like as a criminal defense trial attorney?

ICL: The first month, in addition to preparing briefs and motions, I shadowed Claudia as she handled arraignments, hearings, plea negotiations, and worked on a homicide case that had resulted in hung juries in two previous trials. This has been a phenomenal experience as Claudia is an excellent lawyer.

LAS: Were you able to squeeze in any formal training?

ICL: Claudia and I attended a forensics training, which helped in our discussion with the Office of the Medical Examiner on processing and analyzing DNA evidence in the homicide case. I also attended selected portions of Legal Aid's month-long New Lawyer Training.

LAS: Do you have any cases in which you are lead counsel?

ICL: At the sixth week mark of my externship I began independently to handle arraignments. This is very challenging work. In a compressed time frame, I examine the complaint and learn about the client's employment, immigration status, and other relevant factors. In order to be fully prepared to



Ilona Coleman-Lange, associate at Dewey & LeBoeuf LLP, interviews a client in Manhattan Criminal Court.

negotiate with the A.D.A. and make a bail application, I have had to call a client's boss at off-hours and speak with the client's spouse or partner. This is a critical phase in the case for a variety of reasons such as establishing a rapport with the client; obtaining as much information as possible to draft pretrial motions and determine the weight of the case. Of course the goal is to ensure that clients are released on their own recognizance and that bail is not set.

LAS: What kind of caseload do you have in your fifth month?

ICL: I have twenty-two cases that survived arraignment, plus matters I am working on with Claudia. Legal Aid attorneys have many times that caseload at all levels of preparation and complexity. Their caseloads are staggering.

LAS: What is your goal for the last one-and-a-half months?

ICL: I would love to go to trial. A couple of cases have come close. A gravity knife case may go to trial next week.

LAS: What has been the personal experience of joining the Legal Aid practice?

ICL: I have had a very rewarding experience with Legal Aid. I have terrific colleagues — talented lawyers — and have had an extremely interesting and challenging caseload.

LAS: What do you see to date as the greatest value you will take back to the firm?

ICL: Working at Legal Aid has allowed me to take control over all my cases. I am in charge of how my cases proceed. I think more strategically about the entire case. Claudia and I had a Martin Act commodities fraud matter and we had to consider several things, such as the facts of the case, the strength of the government's case, whether to plead or go to trial, the essential witnesses, the penalties, impact on the client's job prospects, and so on. It has been phenomenal to get that type of experience and my litigation skill-sets are sharper.

Law Firm Externships

In addition to the Dewey & LeBoeuf externship, the Society and its clients are extremely fortunate in having a vital and growing externship program in which law firms assign associates to work full-time on a rotational basis in our civil programs or offices. Fried, Frank, Harris, Shriver & Jacobson LLP; Milbank, Tweed, Hadley & McCloy LLP; Skadden, Arps, Slate, Meagher & Flom LLP; Weil, Gotshal & Manges LLP; and White & Case LLP have developed distinctive litigation or corporate externship programs with Legal Aid that will be featured in coming issues.

Kaye Scholer Attorney Wins New Parole Hearing For Exemplary Inmate

Jack South, 58, has served 19 years in jail, ten years beyond the minimum sentence. Each of the six times he has appeared before parole board hearings he has been denied release on a boilerplate formulation: “All factors considered, your release at this time is incompatible with the public welfare as the panel has concluded there exists a reasonable probability that you would not live and remain at liberty without again violating the law.” The board’s denial, based solely on his criminal history, ignored an exemplary record of rehabilitation.

While incarcerated, Mr. South worked towards bachelor’s and master’s degrees, followed by a doctorate in theology, overcame a heroin addiction, and has counseled other prisoners. Due to the absence of a disciplinary history while in prison, Mr. South secured release plans, including acceptance in a residential Veteran’s Administration program. He has obtained a certificate of earned eligibility, a presumption of being granted parole at his next hearing. Yet despite these accomplishments, Mr. South remains incarcerated in a maximum security prison.

Jacqueline Arana, an associate with Kaye Scholer LLP, filed an Article 78 petition against the parole board, challenging the arbitrariness of the most recent denial of parole. In April, Judge Emily Jane Goodman agreed, finding



From left, Jonathan Chasan, Supervising Attorney, Prisoner’s Rights Project; Jacqueline Arana, Kaye Scholer associate; and Steven Wasserman, Legal Aid Criminal Defense staff attorney.

that Mr. South’s latest parole hearing was unfair and writing that the parole hearing “suggests that the decision was a foregone conclusion before it even took place.” She continued: “One is left with the impression that the state’s position is that, because of this man’s past crimes, there would, in essence, never be a time that he would be suitable for

release.” The court ordered a new parole hearing “forthwith.”

News Flash

As this Newsletter went to press, the Parole Board granted Mr. South’s parole application. Mr. South will be released from prison shortly.

Summer Associates Program Represents Disabled Clients, Fights Homelessness

Every year summer associates at leading New York City law firms represent Legal Aid clients who seek disability benefits and are fighting to keep their public housing apartments. The tradition continues this summer when we will be working with the following firms:

Cadwalader, Wickersham & Taft LLP
 Cahill Gordon & Reindel LLP
 Hughes Hubbard & Reed LLP
 Kaye Scholer LLP
 O’Melveny & Myers LLP
 Shearman & Sterling LLP

Skadden, Arps, Slate, Meagher & Flom LLP
 Wachtell, Lipton, Rosen & Katz’s summer associates will offer additional pro bono help through two-week externships at Legal Aid’s law reform units.

Summer associates at Proskauer Rose are assisting Legal Aid’s efforts to give low-income New Yorkers advice and referrals about their rights under a new law that bans discrimination by landlords based on source of income. The summer associates also are assisting tenants whose Section 8 rent vouchers were suspended because landlords failed to maintain housing quality standards.

Evan Davis Is LAS's 2008 Servant of Justice

More than 650 members of New York's legal community, corporate leaders, and government officials joined in the tribute to Evan A. Davis, a partner at Cleary Gottlieb Steen & Hamilton LLP, as he received The Legal Aid Society's Servant of Justice Award. Mr. Davis served as counsel to former Governor Mario Cuomo, who presented the award to Mr. Davis during the 31st Annual Servant of Justice Award Dinner at the Waldorf Astoria on May 13, 2008.

Mr. Davis, honored for his enduring commitment to social justice and people living in poverty, served with great distinction as an officer and director on the Society's Board. He joined the Board in 1979 and became a Vice President in 1983, leaving in 1985 to become Governor Mario M. Cuomo's counsel. Upon rejoining Cleary Gottlieb in 1991, he returned to the Legal Aid Board and served until 1999.

During his service on the Board, his extraordinary energy, diplomatic skills and wise counsel were invaluable. He unselfishly shared his legal talents with the Society's management and staff, providing training and encouraging others to do the same, and representing the Society on a pro bono basis. Despite an incredibly tasking schedule, Evan always was available to offer leadership and support for pro-



Former Governor Mario M. Cuomo presents Evan A. Davis, partner at Cleary Gottlieb, Steen & Hamilton, with the 2008 Servant of Justice Award.

grams to expand and improve the delivery of legal services to low-income clients.

Milbank & LAS Protect Rights of Disabled on Public Assistance

Continued from page 2

rect systemic problems resulting from the City's program.

Milbank Honored

Milbank, Tweed, Hadley & McCloy LLP was the 2008 recipient of the New York State Bar Association President's Pro Bono Service Award. Milbank's partnership with the Legal Aid Society dates back more than a century. In the early 1980s, Alexander D. Forger served as the Society's Board Chairman while Chair of Milbank; the firm's current Chairman, Mel Immergut, serves as Vice-Chair on Legal Aid's Board.

In addition to serving as co-counsel in *Lovely H.*, examples of Milbank's outstanding work with the Legal Aid Society include:

First-Year Associate Externship program, in which new attorneys spend their first three months at the firm working in the Juvenile Rights, Immigration, and Community Development practices; Co-counsel to renovate the land-



Joseph Genova, supervising partner of *Pro Bono* at Milbank, Tweed, and The Honorable Judith S. Kaye, Chief Judge of the State of New York.

mark former Corn Exchange Bank Building in Harlem and establish it as the home of the new Harlem Culinary Institute that will enable low-income individuals to gain culinary arts degrees and pursue careers in New York City's restaurant and food service industries;

Led by Bruce Kayle, chair of the Milbank's Tax Practice, the firm has represented a large number of low-income taxpayers seeking earned income tax credit, including appearances in tax court to vigorously defend Legal Aid clients in a variety of tax disputes.

LAS's 2007-2008 CLE Pro Bono Programs Train 620 Attorneys

The Legal Aid Society recently concluded its tenth annual CLE Pro Bono Training Series for Volunteer Attorneys. This year's program, which ran from November 2007 to March 2008, featured 23 distinct training seminars covering diverse aspects of the Society's practice — administrative hearings and appeals, family law, prisoners' rights, children's rights, immigration law, and various other specialized areas where volunteer lawyers increased needed legal access. Attendees received two hours of CLE

credit for attending these seminars. [See "CLE Credit for Pro Bono Representation," below.]

More than 600 attorneys attended the training sessions, graciously hosted by participating law firms. Thirty-eight distinguished faculty members from Legal Aid, participating law firms, and Fordham Law School lent their expertise both as instructors and as contributors to training manuals. [See sidebar] The firms contributing faculty were Nixon Peabody LLP; Weil, Gotshal & Manges LLP; Stroock & Stroock &

Lavan LLP; Cleary Gottlieb Steen & Hamilton LLP; Paul, Weiss, Rifkind, Wharton & Garrison LLP; Debevoise & Plimpton LLP; Withers Bergman LLP; and Milbank, Tweed, Hadley & McCloy LLP. Seminars provided participants not only with CLE credits, but more importantly, with practical tools to represent many of Legal Aid's most vulnerable clients.

One of the highlights of this year's program was "Ethical Challenges in Pro Bono Representation," hosted by Shearman & Sterling LLP, in which Fordham Law School professors Russell G. Pearce and Matthew Diller, highly respected former Legal Aid attorneys, engaged in dialogue with participants regarding a myriad of ethical concerns for pro bono attorneys.

The 2008-2009 Training Series is currently in development. As has been the tradition since the program's inception in 1998, Legal Aid is planning for expansion in the number of sessions and increased engagement in pro bono work.

CLE Credit for Pro Bono

Legal Aid is an accredited Pro Bono CLE Provider. Have you represented a Legal Aid client pro bono and wish to obtain CLE credit for your representation? Download an affirmation to obtain CLE credit for pro bono representation by visiting Legal Aid's website, <http://www.legal-aid.org/en/getinvolved/volunteerprobono.aspx>.

Pro Bono Training Seminars

The 2007-2008 CLE Pro Bono Training Program featured seminars covering diverse aspects of the Legal Aid Society's Practice. Among them were:

- Children's Rights
- Criminal Law
- Prisoners' Rights Litigation
- Administrative Hearings and Appeals
- Housing Law
- Employment Law
- Immigration Law
- Ethics
- Community Economic Development
- Trusts and Estates
- Clients with HIV/AIDS
- Low-Income Tax Payers
- Domestic Violence

Pro Bono Net Library

Training manuals and selected videos from the Legal Aid Society's 2007-2008 Pro Bono Training Series can be accessed online at the New York City Pro Bono Center website, <http://www.probono.net/ny/nyc/>.

Law Firms Defend Inmates Subject to Unlawful Reincarceration

Continued from page 1

determinations. To expand its limited resources, the PRDU established a pro bono partnership with Kaye Scholer; O'Melveny & Myers; and Paul, Weiss, Rifkind, Wharton & Garrison to initiate Article 78 proceedings. In just a few months, the firms' attorneys have initiated litigation on behalf of eleven former inmates.

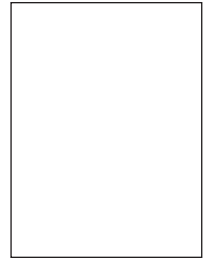
In addition to individual representation, Kaye Scholer by its former chair, David Klingsberg, served a critical appellate role. Acting as amicus for The Legal Aid Society in the New York Court of Appeals in a series of cases related to the Society's case, *Matter of Garner v. New York State Department of Corrections*, the firm argued that PRS that is not pronounced nor judicially entered by the sentencing judge

is constitutionally and statutorily infirm and cannot be corrected by a clerk merely listing it in the commitment order.

The recent decision of the Court of Appeals in the Society's Garner case and the related cases in which Kaye Scholer served as amicus resulted in a sweeping victory, prohibiting the administrative, non-judicial imposition of post-release supervision.

PRO BONO PRACTICE

The Legal Aid Society
199 Water Street
New York, NY 10038



Articles in Upcoming Issues

Cravath Stands Up for Homeless New Yorkers

•
Externship Programs

•
White & Case; Kramer, Levin; and Debevoise & Plimpton Initiate Criminal Defense Project

•
Pro Bono by Transitioning and Retired Attorneys

•
Hughes, Hubbard Aids *Jiggetts* Homeless Prevention Litigation

•
Corporate Pro Bono Developments

ALAN LEVINE

Chairperson of the Board

THEODORE A. LEVINE

President

STEVEN BANKS

Attorney-in-Chief

DAVID W. WESCHLER

*Attorney-in-Charge
of Pro Bono Practice*

MARLENE HALPERN

*Supervising Attorney
of Pro Bono Practice*

KATIE NIEJADLIK

*Pro Bono
Administrator*

ROSEMARY HARE-BEY

*Pro Bono
Coordinator*

Contact: Katie Niejadlik, 212-577-3919 • KANiejadlik@legal-aid.org