

Law Services News



SEPTEMBER, 2006

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Nassau DSS Must Reimburse Improper Medicaid Claim of \$32,000

Nassau County Court Judge Joel K. Asarch recently ordered the Nassau County Department of Social Services (DSS) to reimburse one of our adult home clients \$32,000 because of an improper Medicaid claim. The case involved an adult home resident who inherited some property from his mother when she died in 1997. The client was not aware of the inheritance until 2003, and even then he had no access to it because he only owned a 12 percent share. This so-called "windfall" resulted in a "Statement of Assistance" being sent to the client's special guardian informing her that DSS was entitled to reimbursement of approximately \$350,000 in Medicaid benefits paid to the client over the course of almost 30 years.

After the property was sold, the client's inheritance was not sufficient to cover the entire amount that DSS demanded, so the client's special guardian paid

back DSS what she could, which was approximately \$64,000. DSS never itemized the \$350,000 claim nor did the special guardian inquire as to why the amount was so large. The Court signed an Order allowing the bulk of our client's inheritance to be paid to DSS.

Carolyn McQuade, a staff attorney in our Adult Home Project, filed a motion to reargue claiming that Social Services Law §369(2) prohibits Medicaid claims from being imposed against the property of any individual prior to his or her death because of medical assistance paid, except in two discrete circumstances. One exception is for institutionalized individuals, which did not apply to our client because he was in an adult home, not an "institution." The other exception involves cases where there has been a judgment obtained from a court because of Medicaid "benefits incorrectly paid."

(Continued on page 2)

Job Interview Constitutes Good Cause for Missing DOL Appointment

Our client, Ms. L., a recipient of Safety Net Assistance (SNA) and Food Stamps, was assigned to a welfare worksite and failed to appear on the day her unpaid placement was to begin. On the following day, she reported to the Department of Labor (DOL) citing her job interview as her reason for failing to report to the worksite. DOL rescheduled her assignment but the client had another job interview so reported to DOL the following day with this explanation, offering no

proof of the interview. The Department of Social Services (DSS) notified her of a 90 day public assistance sanction and a 2 month Food Stamps sanction. Ms. L. then requested a fair hearing to appeal the proposed sanction.

Cheryl Keshner, Social Worker, represented this client at the hearing. The appellant testified at the hearing that her second failure to report to the

(Continued on page 2)

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Law"*

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SPECIAL POINTS OF INTEREST:

- 2nd Annual David Project Picnic
- Thank You—Warren M. Berger
- NSLS Commitment to Justice Appointment Book
- Profiles in Commitment—Jim Denson
- Volunteer Attys Recognized for Their Work
- NSLS Fall 2006 Training Schedule
- "MyCause.com"
- Message from Executive Director



Improper Medicaid Reimbursement

(Continued from page 1)

Our client had never been notified that DSS believed that Medicaid benefits had been incorrectly paid to him because of his inheritance. No judgment had been obtained and no notice had been given to him or his special guardian about the reason for the lien. As such, our argument was one of basic due process.

McQuade also argued that our client was not even aware of the inheritance for several years after his mother's death. In addition, she contended that he only owned a small share of the property and that litigation would be necessary for him to obtain the proceeds of the inheritance. These circumstances did not translate into sufficient dominion and control over the resource for him to have been rendered ineligible for Medicaid. In addition to a refund of the money, we asked the Court to allow the refund to be used to fund a supplemental needs trust ("SNT") for our clients, and therefore, the client is once again eligible for Medicaid.

Ultimately, the Court determined that DSS should have obtained a judgment before collecting from the proceeds. The decision also held that our client was ineligible for Medicaid once the special guardian had been appointed because from that time on, it was presumed by the Court that our client had dominion and control over the resource in question. After performing a very time consuming recalculation of the benefits received, the Court ordered DSS to refund our client approximately \$32,000. The Court also authorized the money be deposited into a supplemental needs trust for our client.

Interview Good Cause for Missing DOL Appointment

(Continued from page 1)

DSS-assigned worksite was due to a job interview. She initially had trouble obtaining documentation of this, but presented a letter from the potential employer explaining that she had a rescheduled interview on the date of her second work assignment, and that she was ultimately not selected for the job. The Administrative Law Judge (ALJ) found her testimony and documentation persuasive, believing appellant presented sufficient evidence to establish good cause for her previous failure to present documentation to the Agency regarding her second missed work assignment.



The Administrative Law Judge found the agency's determination to discontinue the appellant's SNA and Food Stamps benefits based on her initial failure to report to her work assignment or provide documentation explaining her absence, was correct when made. But due to the new evidence, he directed the DSS to continue the appellant's SNA grant and Food Stamps and to restore any lost benefits as a result of the Agency's action, retroactively to the date of discontinuance. Great work, Cheryl!

**Don't leave them in the dark—
Please share a copy of this newsletter
with your colleagues.**



The Deficit Reduction Act of 2005 Affects Medicaid Coverage of Long Term Care



In a recent General Information System (GIS) message from the Office of Medicaid Management, Medicaid eligibility changes effective August 1, 2006 were announced. Most of these changes involve Medicaid coverage of nursing facility services. Here is a summary:

- The look-back period for transfers made **on or after February 8, 2006**, is increased from 36 months to 60 months.
- In the case of a transfer of assets made on or after February 8, 2006, the start date of the period of ineligibility is the first day of the month after which assets have been transferred for less than fair market value, or the date on which the otherwise eligible individual is receiving nursing facility services, **whichever is later**. (In most cases, this effectively delays the transfer of asset penalty period from starting until the person actually enters the nursing home!).
- Multiple transfers made during the look-back period, including transfers that would otherwise result in a fractional penalty, are accumulated into one total amount to determine the penalty period.
- The applicant/recipient must provide documentation of any interest he has in an annuity, regardless of whether the annuity is irrevocable or treated as an asset. For annuities purchased on or after February 8, 2006, the State must be named remainder beneficiary.
- Funds used to purchase a promissory note, loan or mortgage on or after February 8, 2006, will be treated as an uncompensated transfer of assets unless the note, loan or mortgage meets specific criteria.
- The purchase of a life estate interest in another individual's home is treated as an uncompensated transfer of assets unless the purchaser resided in the home for a period of at least one year after the date of purchase.
- An applicant for Medicaid coverage of nursing facility services or other long-term care services will no longer be eligible if the individual's equity interest in his or her home exceeds \$750,000. This provision does not apply if the individual's spouse, minor, certified blind or certified disabled child is residing in the individual's home.

For more information contact Nassau Suffolk Law Services Senior Citizen Project in Nassau 516 292-8088 or Legal Aid Senior Citizen Project in Suffolk 631 854-0401.





Utility Shut Offs Coming Fast and Furious

Anyone who lives on Long Island knows that utility costs, though always significant, have increased over the past months. While we are all facing the pressure of higher expenses, low income residents and people with special needs are feeling the pinch, especially when we factor in the rising cost of rentals, taxes, gas, etc.

The battle to restore utility services is usually fought on two fronts: LIPA and DSS. In preventing a shutoff or to restore services, we recommend that you start your advocacy efforts with LIPA.

Before terminating service, LIPA must make an offer for a Deferred Payment Agreement (DPA) that “fits the customer’s financial situation” and “will offer terms without a downpayment and installments as low as \$10 a month if required by the customer’s financial situation”. LIPA Tariff V.G. 4. p 146. This is where LIPA usually makes errors. Customers who are offered DPAs often face untenable agreements as a condition of restoring utilities. Then in the following month the customer reneges on the agreement because it’s just unaffordable. LIPA in turn refuses to offer a new DPA on the grounds that the customer broke a prior agreement.

If an advocate is involved early enough in the process, he should insist on a reasonable and affordable DPA in the first instance. If this is the customer’s subsequent request for a DPA, he should insist on a new and reasonable DPA as required by LIPA’s own regulations (see above), especially if they were not advised of their right to reasonable terms in the agreement.

If LIPA insists on an unaffordable payment plan, try negotiating with the administrative offices at 1 877-ASKLIPA citing the authority above. Finally, an informal appeal can be filed by writing to the LIPA Chairman at LIPA 333 Earl Ovington Blvd, Suite 403 Uniondale, NY 11553. Call the Legal Support Center for Advocates for technical assistance 631 232-2400 x 3369.

Another tack, when there are disabled members of the household, is to document the medical urgency for utility service. According to the regulations, “The Authority will not terminate or refuse to restore

service when a certified medical emergency exists.” The certification is simply a letter written by a medical doctor on her letterhead stating the name and address of the person, the nature of the illness or condition, and an affirmation that the “lack of utility service would aggravate the condition”. LIPA Tariff Section V.V.13. p. 125-127. The certification can also be done by the doctor by phone with a follow up letter within 5 days. This certification will be effective for 30 days and can be indefinitely renewed. Of course, this should not mean abandoning any attempts to pay the arrears.

If for some reason, efforts to negotiate with LIPA are stalled or have failed, then it’s time to turn to other sources for assistance. This can be HEAP (accessed at DSS during the winter months only— after early November), Project Warmth (application via many parish outreach programs) or Emergency Assistance programs at DSS. Be prepared to prove with documents: that there is an emergency (shutoff notice), that the client exhausted all options with LIPA, that the applicant’s current financial situation necessitates assistance*, and that the applicant is the tenant of record and the LIPA customer of record.



HEAP, Emergency Assistance to Adults (EAA) for SSI eligibles, and Project Warmth utility assistance do not have to be repaid and are preferable to other forms of emergency assistance. EAA grants should be followed by at least 6 months of DSS payments to LIPA, known as the “SSI Guarantee”.

Other emergency grants through DSS require repayment agreements and if not repaid, applicants will not be eligible for further utility assistance until she is current on her prior repayment agreement with DSS (note: this is NOT the same as the DPA thru LIPA).

For more information see our upcoming Utility Arrears training p.10 and mark your calendar for LIPA’s Energy Forum on October 24, 2006.

*If there are other household members with income, they are expected to contribute to the need unless there is a written statement that their income is not available to pay toward the arrears.

A Day at the Beach for David Project Clients

The David Project held its annual clients' picnic on July 21st at Lake Ronkonkoma Beach. The sun was shining and clients along with their families had a great day at the beach. The children who played games and won prizes seemed to enjoy the day immensely. Special thanks to SPARC for providing the transportation and Broadway Cares/Equity Fights Aids for their donation which funded this picnic. The picnic was a huge success thanks to the following Law Services' staff and friends who volunteered their time and special skills to help out at this fun outing:

Giovanna Ferdenzi—Caterer

Sal Simonetti—Assistant Caterer

Nancy Green—Grill Master

Cathy Lucidi- Children's Activity Coordinator

Lauren Adamkiewicz-Lifeguard

Darius Benjamin & Amanda Ezechi— Assistants



Options Staff Lisa Cioffi and Zandra Green



Law Services Staff , Standing left to right- Natasha Royer-Intern, Donna Famiglietti - Paralegal, Corrine Lundstrom-Staff Attorney, Victoria Osk,-Senior Staff Attorney, Darlene Rosch-Staff Attorney, Debbie Cohen-Intern, Meredith Nadler-Staff Attorney, Hannah Abrams-Staff Attorney, Kneeling Gabrielle Quinn-Paralegal, Angela Lampe-Social Worker, Carole Benjamin-Social Worker

We Can't Thank You Enough

Law Services acknowledges and thanks **Warren M. Berger, Esq.** for his generosity and expertise in serving as an uncompensated guardian *ad litem* for our most disabled clients. A guardian *ad litem* is appointed by the courts to make decisions for a litigant in a particular case who is unable to adequately understand his or her legal options, usually due to a mental impairment. For example, several clients, referred to us by other agencies, have denied they are facing eviction despite having been served with eviction papers. Guardians *ad litem* are not compensated in landlord/tenant matters before the Suffolk County District Court or the local justice courts.

Mr. Berger, who is in private practice, has long represented landlords in evicting many of our clients. Despite the adversarial circumstances, he is viewed by Law Services attorneys as very knowledgeable, highly effective and professionally reasonable. With this in mind and hat in hand, Barbara Liese, an attorney in our Suffolk Mental Health Law Project, asked him to serve as guardian *ad litem* without remuneration in a particularly unpleasant case. After hearing the details, he readily agreed. He has responded favorably to subsequent requests and, with respect and compassion, includes the client in the process to the extent possible. For example, in one case, where a supportive housing operator sought to remove a mentally ill man to a situation where his life-threatening physical disability could be better monitored, a removal the client and his family strongly opposed, Mr. Berger, as guardian *ad litem*, with attention to all concerns and alternatives, deftly resolved the matter to everyone's satisfaction.

According to Mr. Berger, "It felt good helping people who had no where else to turn." Mr. Berger has a general practice in Central Islip, New York.

Changes in NY State's EBT Policies

As of August 1, 2006, the following changes were made to New York State's EBT cash access and customer services PIN policies:

Cash Access

EBT cash accounts are now allowed two ATM withdrawals per month without having to pay a usage or transaction fee, down from four per month. ATM usage fees have been reduced to 50 cents, down from 85 cents, for each additional transaction above the allotted free two withdrawals per month.



Customer Service PIN Change

You can now select a new PIN through the EBT Customer Service Helpline. The call will be handled by the Helpline's Automated Response Unit (ARU). This new method should be much more user friendly than the old way. For ID purposes the Helpline will request the last four digits of your Social Security number and the zip code of your mailing address.

For a revised EBT brochure with its new procedures visit OTADA's website at

[Http://www.otada.state.ny.us/ebt/default.htm](http://www.otada.state.ny.us/ebt/default.htm).

Mobile Dentistry for Individuals With Special Needs

In an effort to provide a more extensive and efficient service to clients of Multi-Service Agencies, the Mobile Dental Network has designed a unique and convenient mobile dental clinic in which qualified dentists are able to treat patients just a few feet away from their facility. Individuals with special needs who are receiving treatment and/or residing in one of the following Nassau or Suffolk facilities are eligible for this service:

- Mental Health Programs
- Correctional Facilities
- Prenatal Healthcare
- Specialized Schools
- Foster Homes
- OASAS Programs
- Assisted Living Facilities
- OMRDD Programs
- Head Start Programs
- Homeless Shelters

The Mobile Dental Clinic will coordinate with the facility, and set up a scheduled day(s) of the week to come and provide the individual with all dental needs, eliminating the needs for long trips to healthcare professionals. There is no cost to the facility for the services rendered. The Mobile Dental Clinic accepts all major insurances and Medicaid. Initial oral exams and emergency treatment are provided free of charge to individuals with no insurance.

If you would like your organization to enroll in this program, or would like some more information, please contact the Mobile Dental Network at (516) 343-2772 for an application so they may customize a program for your facility.





Profiles in Commitment— Jim Denson

For 15 years, Jim Denson has been a paralegal at Law Services, serving in the Mental Health Law Project, the Civil Unit and, for the past 9 years, in the David Project in Hempstead, where he specializes in Social Security Disability law. Jim's gentle manner and soothing voice have always calmed clients under stress. More recently, though, he has found another for his beautiful baritone. In 2000, he began taking voice lessons, and for the past year he has been making public appearances, particularly at Danny's Skylight Room, on Restaurant Row in midtown Manhattan.

Jim's repertoire consist mainly of jazzy songs influenced by the blues; and has been known to include an occasional gospel song. In college, he developed a real affinity for jazz, and has since compiled a sizable collection of albums and CDs. Ella Fitzgerald, Billie Holiday, Johnny Hartmant, Nat King Cole, and Sarah Vaughn have been among his favorite singers. At first his interest in music was limited to just listening. Deeply inspired, Jim began to think he'd get more from the experience if he first learned the lyrics to the songs he was hearing, and then learn to sing them himself. A friend introduced him to his current vocal coach, and he was launched into his new vocation.

"Singing has made me more expressive as a person," Jim has remarked. "I always considered myself relatively quiet and shy, but singing has really helped me open up. A lot of the skills I learned vocally have also helped me to be even more effective in my paralegal work." Jim represents clients at hearings before the Social Security Administration, and has noticed a solid improvement in his oral presentations. He credits both breathing exercises, and the overall discipline that singing demands with helping him to overcome a life-long stutter. As a result, he now speaks more fluently and more often.

Is a full-time singing career in the offing for Jim? Time will tell, but he sees singing as a journey he is only just beginning. He last performed at Danny's Skylight Room on July 6th; and we'll definitely be looking forward to finding out his next performance date. Your certain to run into a number of his friends from Law Services who are always happy to encourage him and enjoy his music.



Volunteer Attorneys Recognized for Their Work

By Rhoda Slevin



Nassau Recipient

Janis Weissman's career proves once again how the legal profession has benefited from the women's movement and its early encouragement of women to become lawyers in their middle-age. A homemaker raising three children and working as a freelance commercial artist, Weissman responded to feminism in the 1970's by going to law school; being an attorney, she felt, was the best way she could contribute to solving women's issues. Now, retired from full-time practice, she has devoted more than 160 hours to the Landlord/Tenant Project since joining it three years ago. For this record she has been named Pro Bono Attorney of the Month for September 2006.

Weissman graduated from Brown University in 1952 and from St. John's University School of Law in 1979. From January 1982 to September 1985 she was a law assistant to a judge in the Civil Court of the City of New York, Bronx County. Her caseload included landlord/tenant matters, which along with some of her experience in the private firms provided an excellent background for her current work with the Landlord/Tenant Project. She was especially interested in public interest law, although she worked in several private law firms before she landed a position at the Long Island Advocacy Center, Inc. (LIAC) in 1988. As a staff attorney there until 2000, she was responsible for protection and advocacy of the developmentally disabled population in Suffolk County. Currently in part-time private practice, she represents students in school-related matters and applicants for 17A guardianship and does of counsel work for LIAC. Weissman is a member of the Nassau County Bar Association and its Women in the Courts and Education Law Committees, the Nassau County Women's Bar Association, the New York State Bar Association, and the Women's Bar Association of the State of New York. In the past she served on the Board of Directors of both women's bar associations.

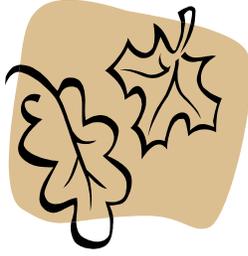
Suffolk Recipient

Patricia A. Waite is being honored as Pro Bono Attorney of the Month for September for her service of over 200 volunteer hours. She received both a B.A. and paralegal certification from Long Island University, C.W. Post Campus, in 1987 and her J.D. from Seton Hall Law School in 1992. After working in Brooklyn for the district attorney of Kings County for four years and spending another two years with a private firm, in 1998 she opened her private practice in St. Albans.

She is a member of the Suffolk County Bar Association, the Suffolk County Women's Bar Association, and the Amistad Black Bar Association; she served as secretary of the Amistad organization for two years. In addition to the Pro Bono Project, she provides free legal advice to the community as a member of the New York State Coalition of Concerned Legal Professionals. She is on the faculty of C.W. Post's paralegal program, teaching courses in real estate and ethics as well as the Notary Public course.

Until recently she volunteered at EAC's mediation program, handling small claims court situations. Now that she is the mother of three-month-old Kyra as well as one-year-old Olivia, however, something had to go. These days Patricia works primarily at home, going to her Queens office from time to time when necessary. Her husband, Everton Calquhoun, is a high school administrator.





Law Services Fall, 2006 Training Schedule

We will be conducting trainings at our Suffolk site: 1757 Veterans Hwy, Suite 50, Islandia and at our Nassau training facility: 1 Helen Keller Way, 4th Floor, Hempstead. Please note the site of the trainings you choose. To pre-register, please call the Training Line at 631 232-2400 Ext 3357 or you may e-mail Cathy Lucidi at clucidi@wnylc.com. The fee is \$30 per person per training session and is payable to "Nassau Suffolk Law Services". To confirm your phone reservation or e-mail reservation please mail your payment in advance of the training date with the registration form below. Space is limited so register early.

Keeping the Heat On- October 12, 2006 9:30-12:30 **Islandia office.** An interactive workshop designed to discuss the various programs available to low income families to assist with utilities and heat (e.g. HEAP, Project Warmth). The seminar will also review consumer rights relating to LIPA/Keyspan and emergency applications to the Department of Social Services. Representatives from United Way, DSS, and Keyspan will be participating in the presentation. Not to be missed! **\$30 Fee.**

Food Stamps- October 26, 2006 9:30-12:00 **Islandia office.** As the number of Food Stamps cases have decreased, community food pantries and soup kitchens are overwhelmed. Many eligible families may not be receiving Food Stamps, suggesting the program is underutilized. This workshop will educate advocates on the application process, eligibility criteria, budgeting, expedited Food Stamps and Fair Hearing appeals. **\$30 Fee.**

Public Assistance and Work Employment Programs November 2, 2006 9:30-12:30 **Islandia office.** This seminar will focus on DSS' Work Employment Programs and Dept. of Labor work rules. We will cover who should be exempt from work requirements and how to secure the exemption, how to request school as an approved placement, and what supportive services are available (child care, transportation, etc). We will also offer advocacy tips for dealing with threatened work sanctions. **\$30 Fee.**

Consumer Debt -November 14, 2006 9:30-12:30 **Hempstead office.** A review of some of the most common debt situations experienced by our clients with some suggestions for debt relief, asserting the debtor's rights, and curing defaults. Topics will include student loans, an update on bankruptcy law, tax intercepts, the Fair Debt Collection Practice Act, hospital debts, and exempt income. **\$30 Fee.**

Training Registration Form

Name _____

Agency Affiliation _____

Phone Number _____

Title of Training(s) _____

Date and site of Training(s) _____

Amount Enclosed _____

Please check if payment will be sent at a later date or on the date of the Training

Please return with applicable fee to: Nassau/Suffolk Law Services, 1757 Veterans Highway, Suite 50, Islandia, N.Y. 11749 Attn: Cathy Lucidi. This form may also be faxed to Cathy at (631) 232-2489

Nassau/Suffolk Law Services Committee, Inc.
1 Helen Keller Way, 5th Fl. Hempstead, N.Y. 11550
(516) 292-8100

1757 Veterans Memorial Hwy., Suite 50, Islandia, N.Y. 11749
(631) 232-2400

313 W. Main St., Riverhead, N.Y. 11901
(631) 369-1112

Touro Housing Law Project
300 Nassau Rd., Huntington, N.Y. 11473
(631) 421-2244 Ext. 339

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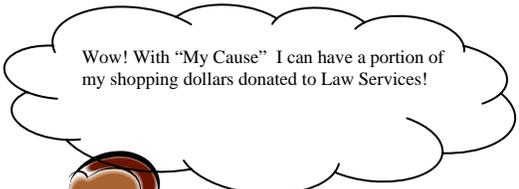


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Same Time**

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1. Visit My Cause.com
2. Choose a Cause– Nassau/Suffolk Law Services located in Hempstead, NY
3. Select a vendor you would like to make a purchase from, make the purchase

There are many vendors to choose from such as Amazon, Barnes & Noble, Dell, KBToys, Target, etc. Once your purchase has been made, MyCause.com will send a check to Law Services, it's that simple, so shop till you drop. Please keep us in mind while shopping on-line. Thanks for your support!



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Registration-free online shopping. Your purchases help support your cause. You pay nothing extra!

Message from the Executive Director,
Jeffrey A. Seigel



In the rollercoaster world of legal services funding, we are happy to inform the community that we currently find ourselves on the ascent of the ride. After facing a devastating year in 2005 and losing 20 staff positions, the recent positive news is uplifting. As we previously reported, a **Nassau County** grant has made it possible to reinstate our Homelessness Prevention Unit. With the new funding we are able to reconstruct the unit that provides critical legal representation in Nassau's eviction cases. Very recently, we were approached by the **Commission on Quality of Care** to take on a new focus: serving persons with developmental disabilities. With new funding, we will be advocating on education and disability discrimination cases for this population. This new effort will be combined with our existing PAIR Project that deals with disability discrimination and handicap accessibility cases.

To add to the list of new service initiatives, the **Department of Health** has funded us to launch a program to assist cancer patients with permanency planning and advance directives. We hope to hire two attorneys and a paralegal to staff these two new programs. As I reported in our Spring newsletter, we lost a significant amount of **Suffolk County** domestic violence funds. I am now pleased to report that we have been approached by the county to reinstate the program representing domestic violence victims in divorce cases. The program will be run in conjunction with Touro Law Center utilizing law students in a new clinic initiative. As a result, the combined domestic violence service funds will exceed the original budget before the cuts. Thanks to Deanna Marshall Director of the Suffolk County Office of Women's Services and Steve Stern, Cameron Alden, and the rest of the Suffolk County legislature for their support in this effort. Finally, our Mental Health Law Project funding in Suffolk has been partially restored and intake has resumed on a limited basis. Our appreciation is extended to all of our friends in the community whose high regard for our work has bolstered our reputation and encouraged the continued financial support of government and private funding sources.