

BEARING WITNESS:

LEGAL SERVICES CLIENTS TELL THEIR STORIES


BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW

THE ACCESS TO JUSTICE SERIES



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About The Access to Justice Series

This paper is the fifth in a series issued by the Center illuminating the accomplishments of legal services programs throughout the country, and documenting the impact of restrictions recently imposed by Congress on the federally funded Legal Services Corporation. It is the result of extensive investigative reporting by award-winning journalist Patrick J. Kiger in close collaboration with the Brennan Center's Laura K. Abel, Elisabeth S. Jacobs, Ilana Marmon, Kimani Paul-Emile, Amanda E. Cooper, and David S. Udell. The following individuals have been consulted as advisors for this series: Bonnie Allen, William Beardall, Martha Bergmark, Ann Erickson, Victor Geminiani, Peter Helwig, Steve Hitov, Carol Honsa, Alan W. Houseman, Esther Lardent, Linda Perl, Don Saunders, Julie M. Strandlie, Mauricio Vivero, Jonathan A. Weiss and Ira Zarov.

For more information, or to order any of the Brennan Center's publications, contact the Center at:

BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW
161 AVENUE OF THE AMERICAS, 5TH FLOOR
NEW YORK, NEW YORK 10013

212 998 6730

FAX 212 995 4550

www.brennancenter.org

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The fifth installment of the Access to Justice Series, *Bearing Witness* presents true narratives of individuals and families whose lives were altered for the better by the tenacious efforts of lawyers working on their behalf in programs funded by our nation's Legal Services Corporation.

These clients tell tales that shock the conscience. One client describes immigrating to the United States to enter a marriage, then facing a daily choice between physical abuse or the risk of deportation. Another tells how the public school system wrongly forced her child into classes containing only the most disturbed students. A third describes financial hardship when an illness ended her husband's career and forced the family into poverty, while the State denied them the Medicaid coverage that offered the best hope of treatment and recovery. A fourth tells how the federal government separated her family from its ancestral Alaskan land. And a fifth describes fighting to secure medical supplies vital to her diabetic daughter's survival.

What do legal services lawyers do? In each case, these clients — individuals and families with no place to turn and no hope at all — describe the creative and persistent efforts of their legal services champions to cut through injustice and establish compliance with the rule of law. Deportation, it turns out, was not inevitable. The school system could provide a decent learning opportunity after all. Medicaid would cover needed treatments and gear. And ancestral land could be reclaimed.

As the clients speak, they illuminate the fundamental role of legal services lawyers — as allies with technical expertise and keen loyalty, these lawyers are changing lives.

David S. Udell
Director, Poverty Program
Brennan Center for Justice at NYU School of Law



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FIGHTING TO STAY IN THE UNITED STATES

At first, Maria Jozviak¹ found her life following the plot of a romance novel. In 1996, she was just finishing her college degree in art education when she met a handsome, charming, young American businessman who was visiting her native country in Eastern Europe. He courted her, she quickly fell in love and, almost before she knew it, she accepted his offer of marriage. A few months later, Maria nervously stepped off the ramp of an airliner in Cincinnati, Ohio. She and her new husband moved into an apartment and began what she hoped would be an exciting new life together. “It’s hard to imagine how happy I was then,” she recalls, “especially considering what happened later.”

In just a few months Maria’s life turned into a horror story. Maria’s new husband, the man who had seemed so loving and gentle back in her native country, suddenly became harsh and dictatorial. When he was home, he paid little attention to Maria, except to criticize her. Sometimes he screamed and shoved, and he got so rough on a couple of occasions that the police showed up at their door to make him stop. Each time Maria’s bruises healed, she told herself it was just the stress of adjusting to one another that had caused

him to lash out. She tried to make new friends in Cincinnati so that she would not feel so alone. Then, abruptly, Maria’s husband told her that he had been reassigned by his company, and they were moving to Bloomington, Indiana. Once again, she found herself struggling to adjust to an unfamiliar place. Still, she hoped that a fresh start would improve things between her and her husband.

“Instead, things got worse,” explains Maria. “It seemed like every three to five days we’d have an argument. He would go off, and then come back and start screaming at me, pushing, shoving me against a wall. ‘You’re a bitch!’ he would shout in my ear. It was so frightening, being alone and waiting for him to come back again and do it some more.” She says the worst part was feeling so isolated: “When you have your mother, your friends, somebody to go to for support, that must make it at least a little easier to deal with. But I was thousands of miles from home, in a strange country. I’m in his house; I don’t have a car; I don’t even know how to drive.” Maria’s husband took cruel advantage of her dependence on him. While Maria had hopes of continuing her graduate education

¹ Clients quoted or discussed in this report are identified by pseudonyms to protect their identities (with the exception of Tim and Dixie Thomas, Lena Frakas, and Karen Divinity, whose names have been published elsewhere). For the same reason, some identifying details of their stories have been changed.

[Maria] eventually discovered that there was a legal way an abused immigrant spouse could gain permission to remain in the United States, even if her marriage ended. But that knowledge alone provided scant comfort. She knew that she needed a lawyer's expertise to solve her problem.

at an American university and starting a professional career, her husband threatened to divorce her and have her deported if she dared to flee his abuse.

Finally, Maria was fed up with living in fear. She took refuge in a woman's domestic violence shelter and tried to figure out what to do. "I went to the library and read everything they had about immigration laws," Maria says. She eventually discovered that there was a legal way an abused immigrant spouse could gain permission to remain in the United States, even if her marriage ended. But that knowledge alone provided scant comfort. She knew that she needed a lawyer's expertise to solve her problem.

Maria looked up the names of immigration lawyers in the phone book and began calling. But to her despair, she learned that hiring a private attorney was an unlikely proposition for someone who had no money and no job. "One lawyer practically hung up on me, when he found out my situation," she remembers. "It was so discouraging. They all wanted money, and I didn't have it. I couldn't believe that in the country you hear about all over the world, the place where there are laws and people have rights, I couldn't find anybody to help me."

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Maria Jozviak

Still a Need for Legal Services

At a time when the economy is booming, it is easy to forget that more than 35 million Americans are still living below the federal poverty level of \$16,700 in yearly income for a family of four. Another 10 million have incomes less than 25 percent above that mark. About one out of every five Americans is potentially eligible for federally funded legal services.

(Sources: Congressional testimony by Legal Services Corporation Chairman, Vice-Chairman, and President, March 3, 1999)

Maria had nearly given up when she had a stroke of luck. In a brochure that was faxed to the shelter, she noticed a listing for the Legal Services Organization of Indiana (LSOI). LSOI is one of the approximately 260 programs across the nation that, with the help of federal funding from the federal Legal Services Corporation (LSC), provide representation to people like Maria who otherwise could not afford a lawyer. "I'd



never even heard of legal services and wasn't exactly sure what it was," she recalls. "But I was at the end of my rope, so I decided to make one more call."

When she did, Maria says, the sympathetic voice at the other end of the line was a startling contrast to all the others who had rebuffed her. "My legal services lawyer was a really nice person," she says. "That first day, we ended up talking for more than an hour. The thing I really remember is that he said to me, 'Hang in there. We're going to help you. Here's what we're going to do...'" Over the course of the following year, Maria's legal services lawyer and a paralegal put many hours into her case, communicating with her frequently by phone and fax and meeting with her twice a month. As her husband made good on his threat to divorce her, the legal services team raced to amass the array of documentation that she needed to convince federal immigration authorities to allow her to remain in the United States. "In order for me to stay, we had to prove all kinds of things, for example, that I'd married and come to this country in good faith. So my lawyer had to research my entire relationship with my husband —

our letters, e-mail, and so on — and organize all that proof so that it told the story." In addition, her lawyer studied the status of women in her native country, so that he could argue that she would face hardship if she had to return. He also worked to obtain records from police agencies in Ohio to substantiate her husband's abusiveness.

Finally, in spring 1999, the efforts of her legal services attorney paid off. Maria's petition to remain in the United States was approved by federal immigration authorities. She is now in the process of becoming a permanent resident of the United States, and she dares again to dream of a future here. Maria is fluent in Spanish and English in addition to her native tongue, and she has a working knowledge of French. She hopes to parlay her talent for languages into a career as a teacher or translator. "My husband wanted me to leave, to be just wiped away, but that's not going to happen," she says. "I'm here to stay." Maria says she has her legal services lawyer to thank for that. "He restored my faith in America. I now know I'm in a place where justice can be made for anyone."

"[My legal services lawyer] restored my faith in America. I now know I'm in a place where justice can be made for anyone."

Maria Jozviak



THE MANY DIFFERENT TYPES OF LEGAL SERVICES CLIENTS

Opponents of the Legal Services Corporation tend to stereotype all legal services clients as being welfare cheats or drug dealers. These derogatory images have little to do with reality. Since the creation of LSC in 1974, its grantees have handled well over 30 million cases, and clients include the working poor, veterans, family farmers, people with disabilities, and victims of natural disasters.

Two-thirds of legal services clients are women, and many of them are fleeing violence. In 1996, for example, legal services programs across the nation closed 50,000 cases in which the primary issue was protection from domestic abuse.

That same year, Congress imposed harsh restrictions on federally-funded legal services programs, preventing them from representing women who, like Maria, are not permanent residents. However, as a result of the May 1996 murder of a Cuban woman who an LSC-funded office had been unable to help, Senator Edward M. Kennedy, D-

Massachusetts, persuaded Congress to amend the rules. The Kennedy Amendment, which became effective that October, allows LSC-funded legal services offices to use non-LSC funds to represent indigent aliens on matters directly related to domestic abuse they have suffered.

Legal services attorneys serve a strikingly diverse population. In rural Texas, agricultural workers turn to legal services to ensure they get paid for their long hours of labor and to fight for safe and humane working conditions. Alaskan natives rely on legal services in order to reclaim traditional fishing rights. In suburban Maryland, downsized white-collar workers forced to declare bankruptcy turn to legal services for assistance. In Oregon, rental applicants cheated by landlords who charge excessive application fees seek justice with the aid of legal services lawyers. In Virginia, when homeless people want a say in how local relief funds are spent, they ask a legal services lawyer to represent them.

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Legal services clients have one key thing in common: They all long for access to the same legal system that benefits other Americans who can afford to hire lawyers.

Geri Havard, an aide to United States Representative Bennie Thompson, D-Mississippi, can attest to the diversity of legal services clients. In the course of a year, she refers at least a dozen constituents who contact her office for help to a legal services lawyer. “We get people calling us who have problems with federal benefits programs,” she says. “But we also got a young man who had signed up to attend truck-driving school and discovered that he’d been cheated out of his money. We get consumer cases, people who have issues they can’t resolve with a local business, and we have people who need help with child-support issues.

“If anything, legal services needs to be expanded more to deal with these issues, because what we’re finding is that there are a lot of people who need an attorney and can’t afford one.” Havard may understand the value of legal services lawyers better than most. Before she went to work as a congressional aide, she herself was a legal services client. “A couple of years ago, I used them when I needed a divorce,” she

recalls. “They helped me do it. When you’re stuck between a rock and a hard place, it’s really good to have someone to help you.”

Legal services clients have one key thing in common: They all long for access to the same legal system that benefits other Americans who can afford to hire lawyers.

Mary Lawson, a legal services client in Indiana, notes: “I’d pay for a lawyer if I could, but I can’t afford it. What I like about legal services is that they didn’t make me feel like a nobody because I couldn’t afford to pay. That’s a big thing in my book.”

“A right without an ability to enforce it legally is not meaningful. If any Member of this House [of Representatives] had a dispute or a legal problem he or she would seek out the best legal services he or she could afford or raise the money to afford. So there is a general recognition that to have meaningful rights, you need competent legal representation in this society.”

(Source: 145 Cong. Rec. H6983-02, *H7007 (daily ed. Aug. 4, 1999) (statement of Sen. Nadler))

SEEKING AN EDUCATION

In the Bronx, New York, a legal services lawyer helped Bernice Walker get her young son into a school where he could get the special help he needed to succeed. “Legal services took a huge weight off my mind,” she says. “I don’t know where we would have turned, without them.”

Bernice is a single mother in her mid-thirties who, like many legal services clients, works long hours in a low-wage job — in her case, as an aide in a nursing home. Many of the residents are mentally impaired and in their confusion become combative. “It’s very rough work, very hard,” she says. “Patients are kicking you, spitting on you all the time.”

Her son Daniel has behavior problems, possibly related to a learning disability, that add to her burden. “When he was five years old, the kindergarten used to call me at my job every day, and I’d have to leave and come down to the school,” she says. “They said he used to throw things, bang on the doors, whatever. It was puzzling to me, because at home he had no problems at all.” As he grew older, Daniel scored high on intelligence tests, but teachers continued to complain of his emotional outbursts and disruptive behavior.

Though it is common for learning-disabled children to exhibit such emotional difficulties, school officials were reluctant to provide Daniel with the services to which he was legally entitled. Instead, Bernice recalls, the school’s response was to regard him as a troublemaker. “He was suspended, it seems like every day,” she says. When Daniel was 11, the situation exploded. “One day he came home and told me that the teachers had held him down to the floor and beat

him,” she says. “He had scratches on his neck as proof.” Subsequently, a teacher from the school called and left an angry message on her answering machine. “She called my son ‘a lunatic!’” Bernice says, her voice still quivering with anger. “She said, ‘I don’t want him in my class any more.’ She was the one who’d banged him on the head.”

“I went down to the school the next day,” Bernice explains, “but no one would give me an answer about what happened, about why they had abused my son. I even took the answering machine tape to the school with that teacher’s message, but they claimed they didn’t have a machine to play it on. After that, I called the Board of Education and asked them to investigate, but they didn’t do anything.”

School officials wanted to remove Daniel from the regular classroom and put him into the most restrictive setting available — a class full of students with disciplinary problems. Bernice feared that instead of getting the special therapy and supervision he needed to overcome his disability, the troubled but intelligent boy would simply be lost in the turmoil. She was desperate. She had a legal right to appeal the school officials’ decision; a federal law guarantees special-needs children the services they need and an education in the least-restrictive setting appropriate to their disabilities. But that right did her little good unless she could exercise it. Middle-class and affluent parents often successfully challenge schools’ decisions on special-needs treatment plans, utilizing the small group of attorneys who specialize in such appeals. But Bernice never even contemplated getting a private attorney. She assumed she could not afford the fee.





Bronx Legal Services Attorney Tanya Douglas (right) with clients Bernice and Daniel Walker

Fortunately, a neighbor told Bernice about Bronx Legal Services. She retained attorney Tanya Douglas, who specializes in representing parents of children with physical, learning, or emotional disabilities. “We got feedback from client surveys that this was one of their most pressing needs, so I started focusing on it,” Douglas explains.

Douglas treats the cases with urgency. “You may start with a child who’s got a minor learning disability,” she explains. “But if it isn’t addressed, the minor problem gradually becomes a major problem. We’ve seen kids who haven’t gotten services for a couple of years, and they’ve fallen so far behind everyone else that it’s very difficult to ever catch up. When you get to the high school level, you find that the kids who are acting out often have learning problems that have just never been dealt with. If they don’t get help early, it greatly increases the chances that they’re going to fail or just drop out.”

Younger children who have disabilities often need transportation to a pre-school center designed to deal

with their disabilities. Older students need the schools to provide them services in a way that does not disrupt their education. “Sometimes a public school will be willing to provide a kid with speech therapy,” Douglas explains, “but they’ll pull a kid out of class to get it. So he falls behind in class. You really have to be set up to provide these additional services during free periods, so it helps them succeed in their studies, rather than interfering with them.”

Unfortunately, public school systems often lack such programs of their own, because of the cost, and they are reluctant to pay for children with disabilities to attend private schools. Fortunately for Daniel and other children of low-income parents across the country, a legal services lawyer can step in and effect a solution. “We can do a mediation process or else take it to a hearing officer,” Douglas explains. “If that doesn’t work, we can appeal to the state Department of Education, and then to federal court if necessary. Usually, though, we end up negotiating a settlement.”

Douglas was able to ensure that Daniel received tuition to attend a private school in Queens instead of being put in a severely restricted setting. “It’s made a big difference,” his mother explains. “They give him a lot of personal attention. . . . Now he’s doing well, and he really likes school. And they talk to me like a human being. I don’t have that whole headache anymore, thanks to legal services. They really work hard for you.”

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Desperately Seeking Legal Services

In 1998, a Legal Services of Eastern Oklahoma (LSEO) staff attorney described some of the clients who called or visited the office on a typical day of intake.

Susie: On Saturday night her husband had shoved her into the wall and dislocated her shoulder. She was very angry and had filed charges with the police. She wants a divorce *today*. We discussed immediate concerns such as safety. She plans to get a Family Abuse Protective Order. We discussed other things she needs to consider before a premature filing for divorce. She will call back after her situation stabilizes a bit.

Mildred: She is senior citizen whose husband died last March. Her son was found on the street in December in a diabetic coma. He was sent to the VA hospital but did not survive. Mildred is on a fixed income and cannot afford to pay for two funerals in one year. The hospital cost for her son was \$55,000. She was greatly relieved and very appreciative when she found out that she is not legally liable for the cost of the funerals or her son's hospitalization.

Patrick: He had been sued by Ford Motor Credit on a deficiency, and a default judgement had been taken. He adamantly insists that a document in the court file which says that his wife was served at their home is blatantly false. He claims that no one was residing at the home where the process server claimed to have given the summons to his wife. We prepared a motion to quash service and set aside the judgment for him. It has been set for a hearing.

Ellen: She decided to divorce her husband, who is living with another woman in the cab of his truck. They have been separated for several months, and he has paid her \$500 each month in child support. This amount is much larger than what Oklahoma statutes would require. [After consultation] she decided to take the extra money for a while to get her bills caught up, before jumping into a divorce.

Mark and his wife: They wanted information about his adopting her child from a previous relationship.

Karen: She called about her concern that the father of her five-month-old child, who was born out of wedlock, would run off with the child if he is allowed visitation.

Joannie: The father of her 12-year-old daughter filed proceedings in district court on four different occasions to get custody of this child. He gets especially anxious about custody whenever he is ordered to start paying child support. Our client has a history of cancer and has had one eye removed. She is going into the hospital on Thursday for diagnostic surgery. The hearing is on Friday. We went to court to have the hearing postponed until we know results of surgery.

Veronica: She bought a used car yesterday that stopped running.

Richard: He is a senior citizen. He needs to be appointed the administrator of his deceased son's estate so that he can file a wrongful death action.

Patrick: He needs a divorce. He and his wife have been separated for two and a half years, and he has several mental and physical disabilities. He will be eligible for an increase in benefits if he gets a divorce.

Mike: He fears that his stepson is being abused by his stepson's father and wants to file for custody.

Vanessa: She wants to establish paternity of her out-of-wedlock child.

In addition, the LSEO attorney interviewed seven other people seeking legal assistance.

(Source: Legal Services of Eastern Oklahoma)



SECURING MEDICAID COVERAGE

In Greene County, Indiana, Tim Thomas, his wife Dixie, and their four children never imagined that they would be so impoverished and desperate that they would need help from a legal services attorney. Tim, after all, was a hard-working man who earned a good living as a truck driver. Then he started having problems. He felt exhausted all the time and found himself falling asleep at the wheel and having accidents. “We took him to all kinds of doctors,” Dixie recalls. “Nobody seemed to be able to figure out what to do to help him.” Eventually, Tim was fired from his job for refusing to go on disability.

Tim was diagnosed as suffering from severe sleep apnea, an abnormal physical condition affecting the ability to breathe during periods of sleep. Sleep apnea sufferers can stop breathing for as long as two minutes while they are unconscious, and the resulting deprivation of oxygen can have severely debilitating effects on them — fatigue, heart disease, blood-pressure problems, mental impairment, and bouts of depression. Sometimes, sleep apnea is caused by airway obstructions. More rarely, it is caused by the sudden, mysterious failure of nerves to tell the respiratory muscles to work.

The precise cause of Tim’s sudden affliction was unclear, but its effects were obvious. Soon, he was unable to work at all. Suddenly, the once comfortably middle-class family found itself dealing with the

strange, unfamiliar world of poverty benefits and public bureaucracies. “It felt belittling to have to walk in there and apply for food stamps,” Dixie recalls. “We’d never asked anybody for anything in our lives. But when you’ve got four little ones and they’re looking for something to eat, you just have to swallow your pride and do it.”

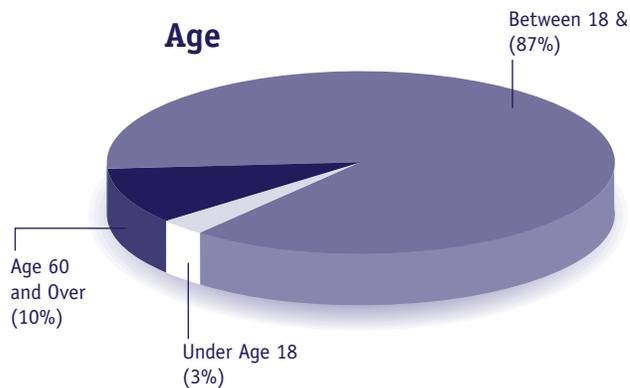
As Tim’s condition worsened, he needed round-the-clock care. “We’d be watching ‘Hollywood Squares,’ and we’d have to remind him, ‘Tim, don’t forget to breathe,’” she recalls. Tim, who had no medical insurance, applied for Medicaid. Considering the extent of his disability and his obvious financial hardship, he expected to have no trouble getting benefits. To his shock, the State of Indiana turned him down. The reason: Tim’s doctors had recommended diagnostic tests to see if his condition might be improved with surgery. Because there was a possibility that Tim’s condition might be treatable, state Medicaid officials ruled that he was ineligible for benefits. But without health insurance, Tim could not afford those tests, let alone the surgery, and his doctor was not about to provide them for free.

“The whole thing was absolutely crazy,” Dixie complains, and things became even crazier. The family had put the proceeds from the sale of their van in escrow to keep the bank from foreclosing on their home. But state welfare officials decided those funds

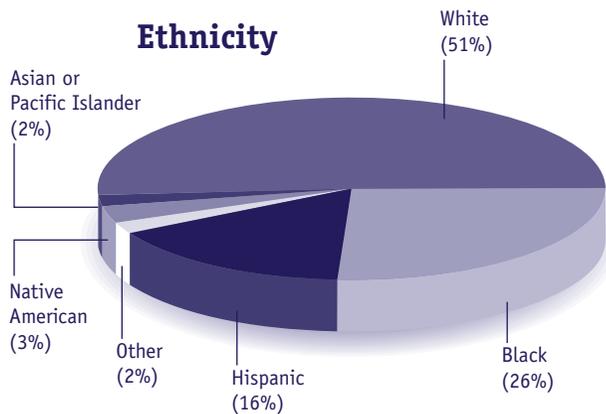


Age, Gender, and Ethnicity of Clients of LSC-funded Organizations

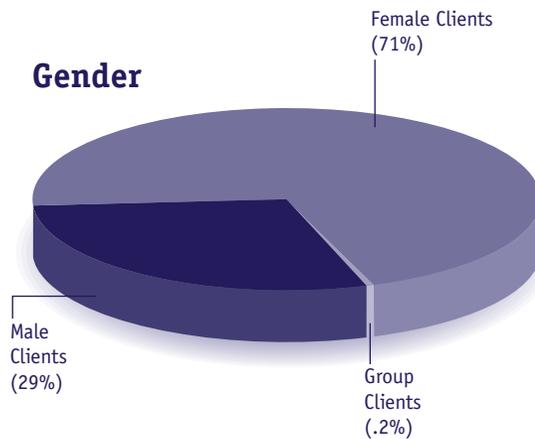
Age



Ethnicity



Gender



(Source: Legal Services Corporation, *Grant Activity Reports*, 1998)



were an asset that made the family ineligible for food stamps. “Suddenly, we had this choice. Eating, or having a roof over [our children’s] heads,” Dixie says.

Fortunately, though, Tim and Dixie had another choice. In early 1997, they sought help from the Legal Services Organization of Indiana. Legal services lawyer Jamie Andree appealed their food-stamp denial and won a reversal. “The money they supposedly had wasn’t available to them any longer, because the bank had control of it,” Andree explains.

Because they had a legal services attorney, the family could continue to fight for the help they knew they deserved. “Without Jamie, I don’t know what I would have done,” Dixie says. “I’d been fighting the system for so long, I was completely worn out.”

That same day, Andree also represented the family at a hearing before an administrative law judge over the Medicaid denial. This time, she was unsuccessful. “The judge agreed that Tim’s ability to work was impaired,” Andree says. “But there was a possibility his condition might improve with treatment, so he wouldn’t give him coverage. The Catch-22, of course, was that the state wouldn’t pay for the treatment. It’s a ridiculous law, and he’s not the only one hurt by it. There are all sorts of people who, if they could get medical treatment, could go back to work. The state thinks it is saving money with this rule, but really it’s a phantom savings, because if those people were back working, they’d be paying taxes and being productive.”

But because they had a legal services attorney, the family could continue to fight for the help they knew they deserved. “Without Jamie, I don’t know what I would have done,” Dixie says. “I’d been fighting the system for so long, I was completely worn out. But

now, I’d get these threatening letters from the welfare department, and I’d just call Jamie. She’d say, ‘Don’t worry, here’s what we’re going to do.’”

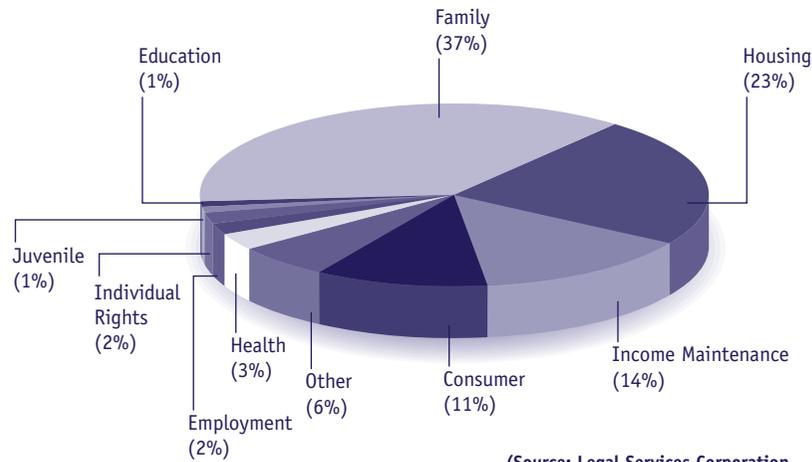
As Andree continued the family’s appeals of the Medicaid denial, she helped them navigate through the public benefits process. Dixie quit her minimum-wage fast-food job so she could stay home and take care of her stricken husband. Since she was no longer getting a paycheck, the family could apply for and receive public assistance. Until Dixie returned to work, the family qualified for Medicaid coverage. That, in turn, meant that Tim could finally get the diagnostic tests and the surgery that his doctors subsequently recommended.

In the four-hour operation, Tim’s lymph nodes, adenoids and tonsils were removed, and his jaw was broken and reset to give his tongue more room and enlarge his airway. Unfortunately, the surgery failed to provide the relief from his apnea that doctors had hoped to provide him. Tim’s health further deteriorated, and Dixie found herself having to work even harder to care for him. “I had to learn how to suction his ‘trach,’ things like that,” she says. “He’s on Dilantin [an anti-seizure medication] because he’s in danger of having seizures at night when his oxygen levels drop so low.”

Incredibly, Tim’s family faced yet another crisis. By qualifying for welfare they had become eligible for Medicaid, but as Andree explains, “If there was even a slight improvement in their financial situation, they’d be off [welfare], and lose their health coverage.” She continues, “That meant that Tim’s wife didn’t dare go back to work. The problem was that I knew their financial situation was going to improve, because the



Legal Problems Handled by LSC-funded Offices for Their Clients



(Source: Legal Services Corporation, *Grant Activity Reports, 1998*)

Social Security Administration, which moves slowly, eventually was going to approve Tim for Social Security Disability coverage, and when it did, he and his family would go off AFDC and be in danger of losing their medical benefits.” Oddly, although Tim was clearly disabled in the eyes of federal Social Security officials, Indiana’s Medicaid rules meant the state’s health-care bureaucracy did not consider him too ill to work.

In mid-1998, that cataclysmic scenario nearly came to pass. Fortunately, in settlement of a class-action lawsuit brought by Andree several years earlier, the state had agreed not to cut off Medicaid benefits without conducting a new review of the individual’s

eligibility. By invoking this settlement, Andree was able to prevent Tim’s Medicaid from being cut off.

In January 1999, Andree argued the case one more time before an administrative law judge. This time, the judge agreed not only that Tim was ill but that his condition was unlikely to improve and that he qualified for Medicaid benefits under Indiana’s rules. The victory in the appeal also entitled the Thomases to receive retroactive benefits back to the time that Tim originally had applied for Medicaid, covering the thousands of dollars in medical bills that the family still owed.

“Without Jamie, we never would have gotten all of this,” Dixie says. “Needless to say, I’ve become a big believer in legal services.”



REGAINING ANCESTRAL LAND

When Lena Frakas came to Alaska Legal Services for help, her problem was a land-claim case dating back to 1911, decades before she was even born. Sixty-five-year-old Lena lives in Yakutat, a remote fishing village of



Lena Frakas and her sister Nellie Lord

800 residents on the edge of a glacier in southeast Alaska. She's a Tlingit, (pronounced klin-kit), a member of Alaska's largest native tribe. The traditional Tlingit lifestyle is based on hunting and fishing and on living off the wilderness rather than trying to tame it. Like other Alaskan native people, the Tlingits have

struggled for more than a century to preserve this life, which has been threatened and destroyed since their land became part of the United States.

In 1905, President Theodore Roosevelt, worried about the effect that the Alaska gold rush was having on native peoples, had ordered an investigation of their plight. He reported some disturbing findings to Congress. The Alaskan natives' land, the report concluded, "is being overrun; their natural food supply . . . is being taken from them, their large game is being slaughtered and driven to a distance, and the waters

depleted of fish, the woodlands burnt over, and fatal diseases hitherto unknown brought to their midst to spread distress and death far and wide."

As a result, in 1906 Congress passed the Alaska Native Allotment Act. The law allowed the Secretary of the Interior to convey legal title for parcels of up to 160 acres of land to any adult Alaskan native. The law aimed to protect the traditional lifestyle and culture of people such as Lena's grandfather, the chief of a Tlingit village that once existed on a riverbank in the midst of what is now the Tongass National Forest. The 45-acre expanse around the village included wetlands rich in animal life. "There were ducks, and in the wintertime you could spot brown bears and even wolves," Lena recalls. "The waters off our land were rich in fish — steelhead, sockeye, coho, and humpback salmon, and trout." As chief, Lena's grandfather was charged with protecting that resource; he would put a flag up on the riverbank to let fishermen from outside the village know when they were permitted to fish and when they were not.

Given this strong link to the land, when Lena's grandfather applied for an allotment in 1911, he could not have anticipated the difficulty he would face in making his claim official. But the day after he submitted his claim, federal officials rejected it. Although Roosevelt and the Congress had created the

Although the [Alaska Native Allotment Act's] intent was to protect the rights of Alaskan natives, until 1975 federal bureaucrats would not even allow native people the right to hearings to challenge their rulings. As many as a thousand qualified native people had their claims denied.

For the next 25 years the paperwork moved slowly back and forth between various agencies. . . . Lena, who like other Yakutat residents worked in the fishing business, lacked the resources to push the case along. “We checked into hiring a private lawyer, but it was too expensive,” she says.

law to protect native Alaskans, it was left up to the federal bureaucracy to administer it. After Roosevelt left office, federal bureaucrats wrote their own regulations for granting or denying claims, imposing conditions contrary to the spirit and purpose of the law. They refused to view subsistence use of the land as constituting use and occupancy sufficient to stake a claim. They confined allotment claims to single parcels of no more than 160 acres, even though an Alaskan family traditionally might depend on several far-flung hunting and fishing spots to feed themselves. They automatically denied claims by married females, even though the Tlingit society was matrilineal and the Act itself contained no such discriminatory provision. And although the law’s intent was to protect the rights of Alaskan natives, until 1975 federal bureaucrats would not even allow native people the right to hearings to challenge their rulings. As many as a thousand qualified native people had their claims denied.

Lena’s grandfather and the other people of the village could not contest the ruling, because they could not speak or read English. The concept of a paper land claim was in itself alien to them, since the Tlingits had no written language. Fortunately, no one ordered them to leave the remote village, so they simply remained in their homes. “My sister and I and my brothers grew up there,” Lena explains. “I have a

lot of memories of that place.” In the 1950’s, however, the family finally had to leave when a fierce winter storm blew down their houses.

Although Lena has lived in Yakutat since then, she never gave up her dream of reclaiming the family’s land. As happened with many native people who had submitted claims, Lena’s grandfather’s paperwork was lost by the Bureau of Land Management and the Bureau of Indian Affairs — “buried in the bureaucracy,” as Tlingit tribal official Walter Johnson puts it. Fortunately, in 1971, just before enactment of a federal law foreclosing appeals of allotment decisions, her grandfather’s file was found. As sometimes happens with native land claims, for the next 25 years the paperwork moved slowly back and forth between various agencies. One reason: federal officials insisted that the family’s claim was for a different piece of land than the parcel where their village had been. Lena, who like other



Tlingit tribal official Walter Johnson



“She really had to do a lot of research, since the case goes back so many years,” Lena says. “The amount of time she’s put into the case, it probably would have cost us \$100,000 if we had a private lawyer. She’s worked hard for us”

Yakutat residents worked in the fishing business, lacked the resources to push the case along. “We checked into hiring a private lawyer, but it was too expensive,” she says.

Finally, in 1996, things came to a head. Lena and her family discovered that federal officials were building a road across her family’s land. In her sixties, she feared losing the place where she had spent her youth. While serving as a social worker for the tribe, Lena had learned about Alaska Legal Services, and she decided to seek their help. “They represent people who can’t afford lawyers,” she explains, “and that includes a lot of people around here. They’ve represented other people in efforts to try and get their allotments. It would be difficult for any of us to pursue claims to the land without them.”

In many parts of the country, legal services clients go to a nearby office and apply for help in person; but that is not possible when the client is in a fishing village hundreds of miles from the nearest city. Like many other low-income Alaskans, Lena reached Alaska Legal Services attorney Carol Yateman by phone and fax.



Attorney and native allotment coordinator Harold Curran, Receptionist Nora Sund, Legal Secretary Joan Meister, and Attorney Carol Yateman of Alaska Legal Services Corporation’s Anchorage office

Yateman then flew to Yakutat to interview Lena and gather more information. “She really had to do a lot of research, since the case goes back so many years,” Lena says. “The amount of time she’s put into the case, it probably would have cost us \$100,000 if we had a private lawyer. She’s worked hard for us, and I really like having her represent me.”

In June 1999, Yateman represented Lena in a hearing before a federal judge in Anchorage. After the hearing, Lena thanked her legal services lawyers, saying, “They can’t put things back the way they once were, but they can help us get the property back. That would mean a lot to me.” In February 2000 her wish was granted when the court ruled in her favor.

BEGGING FOR SYRINGES FOR A DIABETIC DAUGHTER

As a welfare caseworker and as

a legal services client, Karen Divinity has seen the good that legal services attorneys do for clients. “I worked for the state welfare department for 13 years in the 1970s and 1980s,” the 52-year-old New Orleans resident explains. “I was there when they started ‘trickle-down economics’ and tried to cut back on benefits. I was able to see the [welfare] system steadily decline, to the point where it was no longer client-friendly.” Karen and her colleagues were disillusioned by the hard-heartedness of this new attitude toward people who were struggling through very difficult times and needed help.

“We made a decision that if the system wasn’t going to treat a client fairly, we would advise the client, ‘You do have a recourse.’ And then we would send the person to NOLAC [the New Orleans Legal Assistance Corporation]. I referred clients there all the time. It kept the government from going too far to have some checks and balances and someone who could say to the client, ‘I can help you contest this.’ People really



Karen Divinity

needed that. But I never thought I’d need someday to use legal services myself.”

In the early 1980s, Karen’s daughter Rennell, then three, was diagnosed as an insulin-dependent diabetic. Rennell was frequently hospitalized, and Karen spent so much time at her daughter’s bedside that the state ultimately fired her. Karen was unable to

work full time because of her daughter’s illnesses, and she eventually found herself applying for the same benefits she had once administered for clients.

With Karen and her daughter struggling to subsist on a welfare check, Karen applied for federal Supplemental Security Income (SSI) disability benefits for her daughter. But, the disability claim was denied because the Reagan administration had imposed harsh criteria for SSI eligibility. Then, in 1990, in *Sullivan v. Zebley*, a class-action case brought by Community Legal Services of Philadelphia attorneys Jonathan Stein and Richard Weishaupt, the Supreme Court forced the federal government to reevaluate the cases of more than

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Karen Divinity



“The case made a tremendous difference in our lives,” Karen explains. “Before the suit, a lot of times I couldn’t pay the light bill or the phone bill because Rennell was out of her [medical] supplies. Once Medicaid started covering them, we didn’t have to worry about that.”

Karen Divinity

100,000 children who had been wrongly denied benefits.² Karen reapplied on behalf of Rennell, who was then deemed eligible for benefits. “The *Zebley* case directly helped us,” Karen says.

Even with the SSI funds, Karen and her daughter still struggled. Louisiana state Medicaid benefits did not cover the expensive supplies — costing in excess of \$300 a month — that an insulin-dependent diabetic such as Rennell needs. “They wouldn’t pay for syringes for the insulin, for the glucometer or the strips to test her blood. Fifty syringes cost \$25, and she used two or three of them a day. The strips cost \$10 for 50, and she went through at least four of those daily. They’d give you the insulin, but not the syringes — the excuse was that they considered it drug paraphernalia. They’d give a person a wheelchair or crutches, but they wouldn’t give a diabetic supplies. That’s how absurd the rules were.”

Eventually, Karen reached the end of her rope. “It was a night on a holiday weekend. Rennell ran out of syringes, and she had no strips left. I had just paid the rent, and I didn’t have any more money. Without her supplies, she got sick and I had to take her to the hospital. After they took care of her and sent her home, I went through the neighborhood with the supply box, door-to-door, begging people for money so I could come up with \$50 for the supplies. It was such a demeaning thing. I said to myself, ‘I just can’t do this again.’ The next morning, I went to NOLAC and said, ‘Can you help me?’”

After looking into the situation, Karen’s NOLAC attorney, David Williams, filed a class-action suit on behalf of Rennell and 200 other diabetic children in

Louisiana. In 1992, they won a victory that required the state’s Medicaid system to provide the children with whatever supplies were medically needed.

“The case made a tremendous difference in our lives,” Karen explains. “Before the suit, a lot of times I couldn’t pay the light bill or the phone bill because Rennell was out of her [medical] supplies. Once Medicaid started covering them, we didn’t have to worry about that. More importantly, because she always had her supplies, she didn’t have to go to the hospital as much, and she stayed in better health.” Freed from the demands of Rennell’s constant medical crises, Karen was able to resume her career. She now works part-time as a caseworker for a local medical clinic. Rennell, despite her still-fragile health, has managed to become an honor student in music at a local community college.

Today, however, NOLAC would not be able to bring the same lawsuit that so improved the lives of hundreds of sick children. The restrictions imposed upon federally-funded legal services attorneys by Congress in 1996 prevent NOLAC from filing class-action suits of the sort that once made such a big difference in so many children’s lives.

“When I was one of the caseworkers at the welfare department, we looked to legal services to be a check-and-balance for people on the government’s power,” Karen recollects. “Evidently, though, the government has gotten tired of that, and decided that it doesn’t want to be checked any more. If you don’t like the decision they make, then that’s tough.”

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² See the Brennan Center’s second report in the Access to Justice series, *Restricting Legal Services: How Congress Left the Poor with Only Half a Lawyer*.

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