

# PRO BONO MATTERS

## Lawsuit Challenges Lack of Discharge Planning for Jail Inmates

You are a person with a mental illness who has been receiving treatment while serving a three-month sentence at Riker's Island. Now your three months are up, and a bus from Riker's has dropped you off at crime-riddled Queens Plaza.

**It's 3 a.m.**

**You have only \$1.50 and a two-fare Metrocard in your pocket.**

**You have no referrals for treatment, no medication, and no public assistance to pay for treatment.**

**What do you do?**

Thousands of Riker's Island inmates face these circumstances every year. Significant change in those circumstances, however, is one step closer in light of the July 12 injunc-

tion ordered by Manhattan Supreme Court Justice Richard F. Braun requiring New York City jails to provide discharge planning for prisoners who have received mental health care while incarcerated. The injunction was the result of a class-action lawsuit, *Brad H. v. City of New York*, brought on behalf of City inmates by the Urban Justice Center (UJC), Debevoise & Plimpton, and NYLPI. The suit claims that inmates who

are receiving mental health care in City jails are being deprived of their right to discharge planning, the process of planning for how an individual with mental illness will receive continuing care as he or she makes the transition from one care provider to another. The order was affirmed by the Appellate Division, First Department in December, and the parties are now preparing for trial.

The origins of *Brad H.* can be traced to the investigative work of Heather Barr, who first researched the possibility of suing the City under the Mental Hygiene Law while attending law school and working part-time at UJC. Barr's investigation revealed a "revolving door" problem in which people with mental illness continually cycle through City jails. Each year approximately 25,000 pretrial detainees, sentenced individuals, and other inmates receive mental health care while in City jails. As a result, Riker's Island is the second largest facility for persons with mental illness in all of the United States, second only to a prison in Los Angeles. The services provided by the jail include the prescription of psychotropic medications, and inpatient and outpatient individual and group therapy.

The causes of the revolving door were not hard to identify. Riker's Island's discharge policy of dropping off the majority of inmates at Queens Plaza between 2 and 6 a.m. with \$1.50 in cash and two subway tokens or a two-fare Metrocard certainly exacerbates the problem. Inmates with mental illness usually are given no appointments with or even referrals to treatment providers, no transitional supplies of medication, no public benefits or other means to pay for treatment or medication (inmates lose their benefits while incarcerated and often lack the information or capacity to reapply), and often no

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RIKER'S INMATES BEING DROPPED OFF AT QUEENS PLAZA

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(CONTINUED FROM PAGE 1)

place to live. As a result, the vast majority has no means of continuing the treatment received while in jail. Without continuing care, many deteriorate until they are rearrested or hospitalized. Then, the cycle begins again.

In addition to the harm it inflicts on inmates with mental illness, the discharge policy is a costly burden to the public. The cost of confinement in jails or hospitals is much higher than costs for outpatient care. Also, people with mental illness can sometimes pose a danger to themselves and others if not receiving proper treatment. Accordingly, discharge planning – arranging for continuing treatment through referrals, benefits assistance, etc. – is recognized by all relevant professional standards as an essential part of psychiatric care. It is required of all licensed providers of inpatient mental health services by Article 29.15 of the Mental Hygiene Law. Yet City jails generally fail to provide any kind of discharge planning to the vast majority of those who are entitled to it.

Acting on Barr’s investigative work, UJC determined that in order to stop the revolving door, it needed to file suit against the City to compel jails to provide discharge planning. With Debevoise & Plimpton and NYLPI acting as co-counsel, UJC filed the class-action suit in August 1999. One critical legal issue in *Brad H.* turned out to be whether the plaintiffs had an individual right to sue under the Mental Hygiene Law. In his July 2000 opinion, Justice Braun found that such a right, while not explicitly stated, was implied by the Legislature and consistent with the legislative scheme of the Mental Hygiene Law. A panel of five judges in the Appellate Division affirmed that judgment in December.

Debevoise & Plimpton made the victories possible with its contribution of significant resources to the case, including thousands of *pro bono* hours. Partner Christopher Tahbaz and associates John Beaglehole, Kristen Sauer, Eileen Sullivan, Faune Devlin,

Caroline Luckenbach, and Hadassa Waxman have devoted a tremendous amount of time and effort to the case. UJC’s attorneys Douglas Lasdon, Raymond Brescia, and Heather Barr have worked on the case from the beginning, to the benefit of thousands of people with mental illness. NYLPI senior litigation counsel John Gresham brought years of experience to the case and proved an invaluable resource.

It is unknown at this point whether the City will pursue a further appeal of the preliminary injunction entered last year. In the meantime, the parties are preparing for trial, with summary judgment motions scheduled to be briefed this spring.

New York Lawyers for the Public Interest (NYLPI) was created in 1976 to address the unmet legal needs of disadvantaged New Yorkers. NYLPI finds unique ways to tackle the problems facing low-income and underrepresented people throughout New York City using two distinct approaches:

1. Our *pro bono* Clearinghouse provides low-income individuals and community groups with free legal assistance on a wide range of issues by drawing on hundreds of lawyers from 80 of New York’s most prestigious law firms and corporate legal departments.
2. NYLPI’s staff attorneys, community organizers, and paralegals provide direct legal representation, advocacy, and organizing assistance to low-income New Yorkers through our three in-house program areas: disability rights, environmental justice, and access to health care.

**NYLPI Personnel Update**

After an extensive search to fill a staff attorney position in the Disability Law Center, we are pleased to have found Amanda Masters, an accomplished 1996 graduate with experience litigating police brutality cases in federal court. Amanda has also worked as a staff attorney at CAMBA, a not-for-profit community based organization, where she focused on the rights of immigrants.

**PRO BONO MATTERS  
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- Denise P. White, Executive Assistant
- Pauline H. Yoo, Staff Attorney



## Sheila L. Birnbaum Honored at 2001 Law & Society Luncheon

New York Lawyers for the Public Interest honored Sheila L. Birnbaum at its 2001 Law & Society Luncheon, attended by over 450 lawyers and judges representing over 80 major New York City law firms and corporate law departments. Ms. Birnbaum, a member of Skadden, Arps, Slate, Meagher & Flom, is highly regarded for both her litigation skills and her long-standing commitment to public service. Most recently, Chief Judge Judith Kaye of the NYS Court of Appeals, who attended the lunch, appointed her Chair of the Statewide Commission on Fiduciary

Appointments. Ms. Birnbaum has also served as Executive Director of the Second Circuit Task Force for Racial, Ethnic, and Gender Fairness; President of the New York Women's Bar Association; a Member of the Board of The Legal Aid Society; and was the first woman to receive tenure at Fordham University School of Law. She has received numerous awards, including the ABA's Margaret Brent Women Lawyers of Achievement Award and New York University's Florence E. Allen Award for distinguished achievement in law.



SHEILA L. BIRNBAUM ACCEPTS THE L&S AWARD FROM DEAN JOHN FEERICK OF FORDHAM LAW SCHOOL

## Credit Suisse First Boston and Davis Polk & Wardwell Fund NAPIL Fellow

Thanks to the generosity of Board Members David Brodsky, General Counsel of Credit Suisse First Boston, and Ogden Lewis, a member of Davis Polk & Wardwell, NYLPI will have a new attorney on board. Grants from Credit Suisse First Boston and Davis Polk & Wardwell enabled NYLPI to secure a matching grant from the Open Society Institute for a Fellowship from the National Association for Public Interest Law's Equal Justice Program. NYLPI will fill the two-year fellowship position with an attorney who will work on the Access to Health Care Project, addressing barriers to health care

faced by linguistic minorities.

The NAPIL Fellow will build on NYLPI's longstanding relationship with community groups in New York's low-income communities of color using a multi-pronged approach of testing, education, and advocacy to remove barriers to health care and ensure that the shift to Medicaid managed care expands rather than constricts access to care.

The Fellow will develop and implement a testing program to identify which providers accept Medicaid participants and which

providers offer culturally and linguistically appropriate care for the populations in their communities. In addition the fellow will:

- Conduct community education;
- Gather information through an extensive outreach campaign;
- Represent individuals in Medicaid fair hearings;
- Engage in administrative advocacy and file administrative complaints.

### NYLPI Launches Website

NYLPI is proud to announce the launch of its website, [www.nylpi.org](http://www.nylpi.org). The site contains a wealth of information about the organization's work, from detailed descriptions of NYLPI's in-house practice areas to examples of its partnership with the private bar. Of particular interest to attorneys at NYLPI's member firms will be the list of current *pro bono* opportunities offered through the organization's clearinghouse. Attorneys can review descriptions of the new matters and express their interest in a particular matter at the click of a button.



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## Joan Vermeulen Steps Down as Executive Director

After 15 years, Joan Vermeulen stepped down as NYLPI's Executive Director on January 1st. Under Ms. Vermeulen's direction, NYLPI's staff and programs grew tremendously. She oversaw the formal creation of NYLPI's three in-house practice areas — the Disability Law Center, Environmental Justice and Community Development Project, and Access to Health Care Program — and the expansion from a staff of six to one of 24.

At her final meeting of the Board of Directors and again at her farewell party, Ms. Vermeulen was lauded by colleagues for her vision and her extraordinary accomplishments as Executive Director. All agreed that she would be sorely missed.

“Over 15 years, Joan has provided the unique mix of idealism, vision and effectiveness that has made NYLPI the magnificent public interest enterprise that it is today,” said Director Alex Sussman of Fried, Frank, Harris, Shriver & Jacobson.

“A symbol of Joan's commitment to social justice is NYLPI's Environmental Justice & Community Development Project,” said Eddie Bautista, NYLPI Director of Community Planning. “Early on, Joan recognized the devastating health and economic impacts of disparate environmental policies for communities of color, and the desire of these communities to fight for self-determination. With Joan's support, NYLPI became the only citywide public interest law office offering organizing and legal assistance to communities fighting for environmental justice. Now, for the first time, saturated neighborhoods are not only successfully blocking noxious facilities — but are also promoting their visions of sustainable community development.”

A life-long crusader for the public interest, Ms. Vermeulen has sat on the Board of Directors of Alliance for Justice, New York Civil Liberties Union, New York University Public Interest Law Foundation, and Volunteers of Legal Service, among others.

Ms. Vermeulen's future endeavors will take on a greater international flavor, as she promotes the development of NYLPI's model of private bar involvement in several emerging democracies. Her colleagues at NYLPI wish her all the best.



## Rothenberg Takes Reins as Executive Director

On January 1st Michael Rothenberg, Associate Director at NYLPI since 1997, succeeded Joan Vermeulen as Executive Director. Mr. Rothenberg was formerly Ombudsman Coordinator for the Citizens Jury Project, a project of the Vera Institute of Justice. Prior to that, he served as a program associate with the Rockefeller Family Fund and a staff attorney in the housing unit of South Brooklyn Legal Services. A graduate of New York University School of Law, where he was an Arthur Garfield Hays Fellow, he served as President of the National Association for Public Interest Law, and NYU's Public Interest Law Foundation.

Mr. Rothenberg was drawn to NYLPI's approach to providing legal services.

“I value the unique public private partnership that NYLPI has developed,” he said. “It sits at the intersection of the private bar, the public interest bar and the needs of the community. It is a powerful engine for helping the disadvantaged and that is what initially attracted me to the organization.”

“Looking forward, we hope to expand our work on access to health care as the number of under and uninsured Americans continues to grow despite the country's economic prosperity. We will continue to address racial and class discrimination with our environmental justice work, opposing the disproportionate siting of noxious, environmentally unsound facilities in low-income neighborhoods and communities of color. I also hope that we can demonstrate to an ever-widening audience that people with disabilities can join and contribute to mainstream American life if we simply remove the barriers they face every day.”

Evan Davis, the President of the Association of the Bar of the City of New York added, “For a long time, Michael has been one of the most active members of the City Bar. He brings a lot of energy and commitment and real legal expertise to the Executive Director position. Michael's leadership will insure that the vision of the original City Bar founders — to aid disadvantaged and underrepresented New Yorkers — continues to be realized at NYLPI.”



## Disability Rights Task Force

NYLPI's Disability Rights Task Force entered its fourth year in September. The Task Force brings together attorneys from NYLPI's member firms and corporate law departments who possess a substantial interest in disability rights law and a desire to do *pro bono* work in that area.

Task Force membership has two components. First, members attend four meetings a year, which feature presentations on a case or issue pertinent to disability rights. The meetings foster the growth of expertise as well as cooperation and a sense of community among Task Force members. During the past year, presentation topics included inclusive education for children with disabilities, challenges to the Americans with Disabilities Act based on sovereign immuni-

ty, and trends in television coverage of disability rights issues. As a second component of membership, each member is expected to take on at least one *pro bono* project.

Projects are varied in nature, scope, and subject matter, and NYLPI senior staff attorney Kim Sweet mentors and supports each effort. For example, a number of Task Force members have been involved in *Bartlett v. New York State Board of Law Examiners*, which deals with the right to reasonable accommodations for a person with a learning disability taking the bar exam. Two Task Force members and their law firms (Stroock & Stroock & Lavan and Fried, Frank, Harris, Shriver & Jacobson) have written amicus curiae briefs to the Second Circuit in the case. Another Task Force member, from Shearman & Sterling, is looking into non-litigation advocacy strategies for improving the process by which accommodations on the

bar exam are granted or denied.

Other Task Force projects focus on individual clients. In one, Task Force members at Patterson, Belknap, Webb & Tyler are representing a 58-year-old man who is deaf and was wrongly placed in a psychiatric hospital. In another, a Task Force member at Skadden, Arps, Slate, Meagher & Flom provides ongoing consultation to NYLPI and court-appointed lawyers on criminal matters involving adults with developmental disabilities who are members of the Willowbrook class.

The Task Force currently has 40 members from 26 different law firms and corporate law departments. They consist of partners and associates, litigators and transactional lawyers, and attorneys with and without prior experience in disability rights law. New members are always welcome. Interested attorneys should contact Kim Sweet at (212) 244-4664 or [ksweet@nylpi.org](mailto:ksweet@nylpi.org).

Lauren Aguiar  
Skadden, Arps, Slate, Meagher & Flom

Anne Beaumont

Norwood Beverage  
Lovell's

Frances Bivens  
Davis, Polk & Wardwell

Lisa Cleary  
Patterson, Belknap, Webb & Tyler LLP

Blair Connelly  
Latham & Watkins

Kevin Curnin  
Stroock & Stroock & Lavan LLP

Faune Devlin  
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Kieran Doyle  
Cowan, Liebowitz & Latman

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Shearman & Sterling

Loren Gesinsky  
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Kaye, Scholer, Fierman, Hays & Handler

Leslie Lupert  
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Sherab Posel  
Boies Schiller & Flexner LLP

Eric Rieder  
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Ken Rivlin  
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Lisa Schweitzer  
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Julie Spellman  
Cravath, Swaine & Moore

Larry Spiegel  
Skadden, Arps, Slate, Meagher & Flom

Deborah Steinberger  
Patterson, Belknap, Webb & Tyler LLP

J. Andrew Stephenson  
Patterson, Belknap, Webb & Tyler LLP

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Sophie Van Wingerden  
Davis, Polk & Wardwell

Joanna Weiner  
Paul, Weiss, Rifkind, Wharton & Garrison

Kele Williams  
Simpson, Thacher & Bartlett

Mark Williams  
Davis Polk & Wardwell

Sarah Zgliniec  
Patterson, Belknap, Webb & Tyler LLP

Emmy Zuckerman  
Colgate-Palmolive Company

Richard Zuckerman  
RubinBaum

Participating Students and Legal Assistants

Erica Benjamin  
Benjamin N. Cardozo School of Law

## Recently Placed Clearinghouse Matters

(The matters listed below were placed as of 2/1/01, and the attorneys listed took initial responsibility for each matter. NYLPI would also like to thank other attorneys and support staff at our member firms who have worked on these matters).

*Association of Community Organizations for Reform Now (ACORN)*

**Davis Polk & Wardwell**

*Harry Chernoff*

The firm is defending ACORN against a SLAPP suit (a strategic lawsuit against public policy).

*Bronx Colts Youth Services (BCYS)*

**Skadden, Arps, Slate, Meagher & Flom**  
*Byron Penstock, Adam Chassin*

BCYS, which provides young people in the Bronx with recreational sports programs and educational services, is receiving assistance from the firm to incorporate and obtain tax-exempt status.

*Cable Positive*

**Patterson, Belknap, Webb & Tyler**

*Bill Weisner*

The firm is assisting Cable Positive, the non-profit, AIDS action organization of the cable industry, with a real estate deal.

*Carroll Gardens Neighborhood*

*Women (CGNW)*

**Latham & Watkins**

*Erica Steinberger, Michelle Kelban*

The firm is representing CGNW, a Brooklyn-based not-for-profit literacy and adult education organization, in its merger with a larger not-for-profit.

*Center for Independence of the Disabled of New York (CIDNY)*

**Morgan, Lewis & Bockius**

*Elizabeth Leong*

The firm is providing a research memo to CIDNY on the effect on not-for-profits of recent changes in New York State law.

*Children's Learning Center (CLC)*

**Wachtell, Lipton, Rosen & Katz**

*Sara Geelan*

The firm is helping CLC, a nonsectarian school for children ages 6 months to 5 years located in Morningside Heights, to obtain tax-exempt status.

*Community Mapping Assistance Project (CMAP)*

**Kramer, Levin, Naftalis & Frankel**

*Caleb Pollack, Wendy Seltzer*

The firm is providing advice on a variety of transactional issues to CMAP, which supplies affordable, customized computer mapping services to nonprofit groups.

*Empowerment House*

**Simpson, Thacher & Bartlett**

*Edward Miller, Jennifer Franklin*

The firm is helping Empowerment House, which plans to create an after-care program in Brooklyn for people with mental illness, to incorporate and obtain tax-exempt status.

*Harlem United Community AIDS Center, Inc. (HUCAC)*

**Skadden, Arps, Slate, Meagher & Flom**

*Eric Manne*

The firm is defending HUCAC in a breach-of-contract suit.

*High School Law Teaching and Advocacy Program*

**Morgan, Lewis & Bockius:**

*Stephanie Dean, Scott Jaffee, Sandra Miller, Amy Wallace*

**Skadden, Arps, Slate, Meagher & Flom:**

*Nancy Abudu, Jana Eisinger, Valerie Wald*

**White & Case:**

*Marc Began, Michael Davey, Denise Julie-Diallo, Chiara Masciandaro*

**Weil, Gotshal & Manges:**

*Geoff Berman, Bernadette Ezring, Heather Goldstein, Beth Oliak, Amanda Samuel*

Each firm is matched with a participating

public school where its lawyers teach a course and provide basic legal advice to students.

*Jordan Perry Education and Sports Program*

**Davis Polk & Wardwell**

*Dana Willis, Rex Adebanjo*

The firm is helping this East New York, Brooklyn charitable group obtain tax-exempt status.

*LiFarm, Inc.*

**Skadden, Arps, Slate, Meagher & Flom**

*Andrew Fowler*

The firm is advising LiFarm, Inc., as it negotiates with another not-for-profit to develop a farm with permanent housing and associated services for individuals who are both deaf and blind.

*Matter of Leeana N.*

**Morrison & Foerster**

*Robert Murphy*

The firm is representing a five-year-old girl with autism to ensure that she receives an appropriate education in the New York City public schools.

*Matter of Linda V.*

**Stroock & Stroock & Lavan**

*David Ash*

The firm is advising a woman with mental illness who was excluded from her mother's will.

*Nkiru Center for Education and Culture*

**Patterson, Belknap, Webb & Tyler**

*Patrick Dussol*

The firm assisted Nkiru — which promotes awareness of the contributions of Blacks to literature, history, music, art, and the sciences — in lease negotiations.

*Partnership for Parks*

**Skadden, Arps, Slate, Meagher & Flom**

*Andy Chen*

A lawyer from the firm gave a presentation to the organization's staff on the basics of incorporation and tax-exemption.

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*Puerto Rican Association for  
Community Affairs*

**Brobeck, Phleger & Harrison**

*Gail Berritt, Jennifer Zwick*

The firm is assisting PRACA, a Harlem social service organization, in a payment dispute.

**Rosenman & Colin**

*Gerald Rosenberg, Michael Dannenberg*

The firm is defending the Board President of PRACA in a lawsuit.

*Renewal TMAU Support Group*

**Morgan, Lewis & Bockius**

*Amy Weinstein*

The firm is helping the Group, which provides social services to those suffering from a rare metabolic disorder, to incorporate and obtain tax-exempt status.

*Roosevelt Islanders for Responsible  
Southtown Development (RIRSD)*

**Leboeuf, Lamb, Greene & MacRae**

*Christopher DeMayo, Rebecca Franciscus*

The firm is representing RIRSD in an appeal of an adverse decision in their lawsuit challenging a local development plan.

*Thalia Spanish Theatre*

**Morgan, Lewis & Bockius**

*Stephanie Dean*

The firm is helping Thalia, a prominent non-profit theater group in Queens, in lease negotiations.

*United Association of Higaonon  
Tribes (UNAHI)*

**Kelley Drye & Warren**

*Bryan Mintz, Daniel Blumenthal*

UNAHI, which aims to preserve and protect the culture and home of the Higaonon people of the Philippines, is receiving assistance from the firm to incorporate and obtain tax-exempt status.

*United Puerto Rican Organization of Sunset  
Park (UPROSE)*

**Stroock & Stroock & Lavan**

*Eleni Demetriou*

The firm is helping UPROSE create a conservancy to develop and maintain a park on a site that was formerly a brownfield.

*Wildcat Service Corporation*

**Clifford Chance Rogers & Wells**

*Stephen Ahrens*

The firm is representing Wildcat — a private not-for-profit human services, training, and employment organization — in a lawsuit involving nonpayment of wages.

*Youth Venture*

**Skadden, Arps, Slate, Meagher & Flom**

*Andy Chen*

A lawyer from the firm gave a presentation to teenagers on the basics of incorporation and tax-exemption.

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**NYLPI, Morgan, Lewis &  
Bockius Team With Fleet,  
CCNYC to Assist Youth  
Entrepreneurs**

New York Lawyers for the Public Interest and member law firm Morgan, Lewis & Bockius (MLB) have joined forces to co-sponsor Fleet Youth Entrepreneur Day with Fleet Bank and the Citizens Committee of New York City (CCNYC). Now in its third year, Fleet Youth Entrepreneur Day is an annual event honoring young entrepreneurs from schools throughout New York City. The event, which takes place March 29, is designed to support and recognize youth entrepreneurs, promote youth innovation, increase the number of nonprofit organiza-

tions supporting youth entrepreneurship, and link youth-run businesses to the legal and business community.

Each year, the event is attended by hundreds of students, teachers, student advocates and prominent leaders from corporate, government, and nonprofit organizations. The winning youth entrepreneurs, aged 13-22, showcase their products or services and explain their businesses to prospective middle-school, high-school, and college entrepreneurs. The top four winners also receive college scholarships and recognition at several major citywide business meetings and in local media.

Information technology is the story of this year's competition, as grand prize and first prize will go to students who head web consulting firms. The winner in the category of community- and school-based businesses is Harlem Live, an after-school program that features a teen-produced Internet publication.

Last year, MLB participated in the Second Annual Fleet Youth Entrepreneur Day by organizing a legal workshop on the day and a follow-up workshop exclusively for the winning entrepreneurs. The firm also established a relationship with one of the winners, providing corporate, tax, and intellectual property advice to a 13-year-old girl who designed a swim cap for people with thicker hair.

"The MLB lawyers who participated in the legal workshop at the 2000 Fleet Youth Entrepreneur Day were amazed at the legal 'street smarts' of the young entrepreneurs and the degree to which their introduction to the world of small business had sparked their interest in the law and lawyers," said Joseph McDonald, a partner at Morgan, Lewis & Bockius.

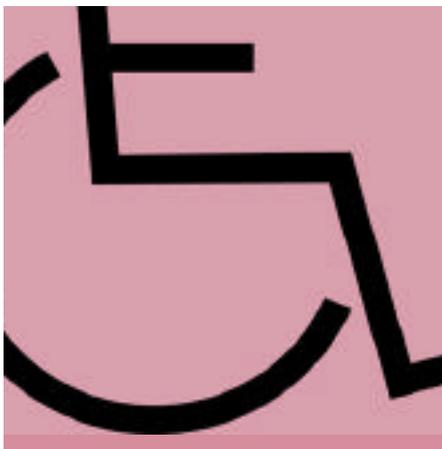
This year, MLB and NYLPI will again facilitate event-day legal workshops and make available *pro bono* legal services to the winners in what will surely be the largest and most successful Fleet Youth Entrepreneur Day yet.



## In-House Activities

This update is intended to provide a brief overview of the recent activities of NYLPI's in-house advocacy program.

### Disability Rights



■ **John A.:** NYLPI and Cleary, Gottlieb, Steen & Hamilton brought this administrative action on behalf of a 13-year-old boy who was not receiving an appropriate education in the public schools. His parents could not afford to pay tuition to an appropriate private school program and then seek reimbursement from the school system, as a wealthier parent would be allowed to do. This summer an impartial hearing officer agreed with our argument that the Board of Education should be required to pay tuition prospectively, where the public school system is not meeting the child's needs and the parents show they cannot afford to pay tuition up front.

■ **R.B.:** NYLPI and Kaye, Scholer, Fierman, Hays & Handler brought a suit for damages where the school system failed to provide our client, an 11-year-old boy, any educational services for nearly one year. The Board of Education failed to provide services in accordance with the child's individualized education plan and then, again, failed to implement the order of a hearing officer to provide services immediately. In June, we won a round in federal court, as a

judge denied defendants' motion to dismiss plaintiff's Section 1983, ADA and Section 504 claims. The court's decision was significant for declining to follow decisions from the Fourth, Sixth, and Eighth Circuits ruling that Section 1983 does not provide a cause of action for damages in this context. The case recently settled under terms favorable to the plaintiff.

■ **Bartlett:** NYLPI and co-counsel JoAnne Simon received notice of another at least partial victory from the Second Circuit in *Bartlett v. NYS Board of Law Examiners*. On remand from the Supreme Court, the Second Circuit considered whether our client, Marilyn Bartlett, has a disability within the meaning of the Americans with Disabilities Act (ADA), in light of a series of cases decided by the Supreme Court last year. Ms. Bartlett has significant learning disabilities, including difficulty reading and writing, and in earlier proceedings, the district court had held that the Board of Law Examiners was required to provide her with reasonable accommodations on the Bar Examination. We were pleased that the Second Circuit held that Ms. Bartlett may meet the stricter definition of disability and provided us with another opportunity to show that she does, in fact, meet the standard. In February, NYLPI returned to the District Court to present evidence on this issue.

■ **Garrett:** NYLPI and Stroock & Stroock & Lavan submitted a brief of amicus curiae on behalf of the ABA in *Board of Trustees of the University of Alabama v. Garrett*, the case before the Supreme Court raising the question whether suits against states pursuant to Titles I and II of the ADA are barred by Eleventh Amendment sovereign immunity. The Court heard oral arguments on October 11.

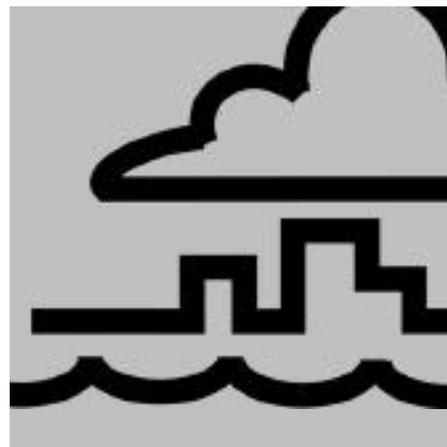
### Environmental Justice

■ **AMR:** On August 25, we received an 85-page decision from an Administrative Law Judge who had conducted a hearing into

issues we raised about an application for a solid waste management facility permit in the South Bronx. Our partners and we had argued that an application by American Marine Rail (AMR) to construct and operate a new barge-to-rail solid waste transfer station required an environmental impact statement (EIS). The ALJ agreed and remanded the case to the New York State Department of Environmental Conservation (DEC) for a redetermination on the environmental significance of the project. Upon redetermination, the DEC has now decided that a full EIS is required and is preparing a scope for the EIS. Unfortunately, the DEC did appeal one major issue regarding the review of fine particulate emissions associated with the project. We are awaiting a decision from the Commissioner on that matter. This was a well-fought battle and we are extremely pleased with the result.

■ **Brooklyn Crushed Materials:** A state supreme court judge ruled for plaintiffs in a suit brought by NYLPI on behalf of a number of community organizations in Red Hook. The suit challenged a permit issued to Brooklyn Crushed Materials for the siting of a waste transfer station within 50 feet of a park without any environmental review.

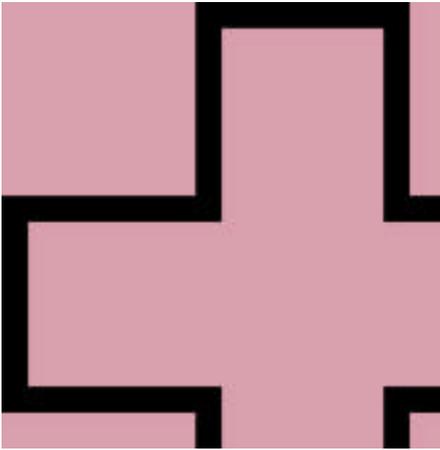
It should also be noted that as a result of our lawsuits and community organizing efforts, in conjunction with the work of NYLPI's community partners, the City has been forced to do what "Waste News" has called "an about face" on its plans for dealing with



waste. The City has moved away from plans to move 12,500 tons of waste daily through three communities and, instead, will process garbage at a network of marine transfer stations. This is a great victory, although we are monitoring how it is being implemented.

**Access to Health Care**

■ Medicare Buy-In Pilot Ombuds Project: NYLPI completed a one-year pilot project to evaluate and increase enrollment in a public health insurance program aimed at assisting



low-income seniors and people with disabilities obtain full Medicare coverage. During the year, NYLPI used numerous approaches to provide education and assistance to advocates and consumers in diverse communities across New York State and to gather feedback about this program. A team of NYLPI staff gave presentations in Brooklyn, Manhattan, Rochester, and the Cattarugus Indian Reservation south of Buffalo. We submitted our findings and recommendations to the Health Care Financing Administration in November. For a copy of NYLPI's final report, please feel free to contact Marianne Engelman Lado.

**Much is happening, and this update attempts to provide only a few highlights. Please feel free to contact Marianne Engelman Lado directly if you would like any additional information about any of the above cases or projects.**

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**New York Lawyers for the Public Interest would like to welcome three new members to its Board of Directors:**

**Evan A. Davis, Esq.**

Mr. Davis, the current President of the Association of the Bar of the City of New York, joins NYLPI's Board as Director Ex-Officio. As a partner of Cleary, Gottlieb, Steen & Hamilton and a long-time public servant, Mr. Davis was NYLPI's 2000 Law & Society honoree.

**Daniel J. Kramer, Esq.**

A partner in the litigation department of Schulte Roth & Zabel, Mr. Kramer specializes in complex commercial litigation, including securities, corporate, and professional liability matters.

**Christopher K. Tahbaz, Esq.**

A partner in the litigation department of Debevoise & Plimpton, Mr. Tahbaz focuses on complex commercial litigation and consumer class actions, recently representing life insur-

ers in sales practice class actions. He also served as lead counsel in *Brad H. v. City of New York* (see cover story).

**NYLPI would like to thank the following outgoing members of the Board of Directors for their generous support of our work:**

**Michael A. Cooper, Esq.**

Sullivan & Cromwell

**Frederick T. Davis, Esq.**

Shearman & Sterling

**John H. Hall, Esq.**

Debevoise & Plimpton

**Kenneth V. Handal, Esq.**

Philip Morris Management Corp.

**Anne K. Hilker, Esq.**

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Also, congratulations to new Judges **Allan Gropper** and **Alvin Hellerstein**, both former Board members.

## Arnold & Porter, NYLPI, Community Groups Reap Environmental Victory for Brooklyn

A coalition of community and transportation advocacy groups claimed a major victory in January with the settlement of a lawsuit against the New York State Department of Transportation and the Federal Highway Administration. The suit sought an environmental review of the planned rehabilitation of the Gowanus Expressway. The success of the suit was made possible by the organized efforts of the community groups and the work of NYLPI and member firm Arnold & Porter. Andrew Ratzkin, a senior associate with Arnold & Porter, served as lead attorney on the case, assisted by Gail Suchman, Senior Environmental Counsel at NYLPI, on behalf of the community groups.

The lawsuit, filed in November 1997 by Mr. Ratzkin, alleged that the transportation agencies had determined the manner in which the Expressway would be reconstructed without conducting a complete environmental review or considering alternatives proposed by the communities involved, in violation of federal law. The agencies' original plan would have forced tens of thousands of extra cars and trucks onto the streets of neighborhoods already suffering from some of the highest levels of asthma in the coun-

try. The case is the first successful lawsuit alleging failure to perform transportation analyses required under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

"This settlement has been a long time coming and it requires the State and Federal Governments to give much-needed attention to the environment and public health of the communities along the Gowanus," Ratzkin said.

The settlement calls for:

- An enhanced environmental impact study that will look at various alternatives for the reconstruction of the Expressway, including replacement of the elevated highway with a tunnel.
- Establishment of a stakeholder committee, including plaintiff representatives, which will insure that all alternatives for the Gowanus project will consider land-use, health, social, economic, air pollution and other environmental impacts on the residential communities along the Expressway corridor. The plan is widely considered to set a new benchmark for community participation in highway projects.



ANDREW RATZKIN

■ A precedent-setting fund of \$375,000 for a community technical advisor to assist the stakeholder committee in its ongoing review of the study. This is the first known instance in which a state DOT has provided technical assistance funds to communities affected by plans for a proposed highway.

Elizabeth Yeampierre, Executive Director of one of the plaintiffs, the United Puerto Rican Organization of Sunset Park (UPROSE), said, "UPROSE recently co-sponsored a design competition to present the vision of the Sunset Park community without the elevated highway, a vision in which our children who currently live beneath the shadow of the Gowanus will be able to breathe and play."

Suchman said of Mr. Ratzkin's work, "Andy worked tirelessly on this case. His hard work resulted in an important agreement requiring the State and Federal Governments to address long-ignored environmental concerns along the Gowanus and to provide the communities with a meaningful opportunity to participate in land-use decisions that will directly affect the quality of life in their neighborhoods."

THE GOWANUS EXPRESSWAY



## Orans, Elsen & Lupert LLP Fights Disability Related NIMBY

Regional Economic Community Action Program (RECAP) was founded in 1965 to provide a variety of educational, housing, treatment, and other social services for the low-income residents of Middletown, New York, with the goal of helping people to become self-sufficient. RECAP now serves over 10,000 people annually, with more than ten different programs.

In 1994, RECAP applied for Special Use Permits from the Middletown Planning Board in order to establish three facilities: a Head Start school, a home for recovering alcoholic women and their children, and a supportive residence for men recovering from alcoholism. The Board approved the Head Start facility on one piece of property but refused to grant a permit for the two residences on an adjacent parcel. RECAP believed the Board was discriminating against recovering alcoholics, and it filed a formal complaint with the U.S. Department of Housing and Urban Development (HUD) claiming that the Board's denial violated the Fair Housing Amendments Act (FHAA), the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act of 1993. Shortly after the complaint was filed, the Middletown Office of Community Development refused to provide promised funding for a low-income housing development that RECAP operated at another location.

In November 1997, RECAP approached NYLPI and Disability Advocates, Inc., seeking counsel to challenge Middletown's denial. NYLPI sought *pro bono* legal counsel to fight the Board's decision and address perceived retaliation on the part of the Office of Community Development for RECAP's HUD complaint. Through NYLPI, RECAP was able to secure the services of member firm Orans, Elsen & Lupert LLP. Partner Les Lupert and associate Bonnie Baker began work on the case immediately, filing a claim in the United States District Court for the Southern District of New York. The Department of Justice soon intervened on RECAP's behalf.

Following two years of discovery, the defendants filed a motion for summary judgment. The defendants' motion was granted in September 2000. Orans, Elsen & Lupert LLP plan to work with Disability Advocates, the Justice Department and NYLPI to perfect an appeal. According to Mr. Lupert: "We believe the decision to the effect that there were no facts in dispute is erroneous. There is substantial evidence that the denial of the permit for the residences was based on a desire to limit the number of social service programs in the City of Middletown, and not because of the impact these two small residences would have had on future industrial development, as the City claimed."

**NYLPI relies on the support of members of the bar to achieve our mission of providing superior legal services to New York's most vulnerable citizens. To make a contribution, please call Sofia Casini at 212-244-4664 or visit our web site at [www.nylpi.org](http://www.nylpi.org).**

### NYLPI's Probono.net Site

For over a year, NYLPI has hosted the disability rights practice area on [probono.net](http://probono.net). With the help of member firm Schulte Roth & Zabel, NYLPI created the site as a resource for advocates working on behalf of people with disabilities. The site provides members of the private bar with resources and support as they do *pro bono* work in the area. It includes recent news articles, a list of *pro bono* opportunities, a calendar of upcoming events, and a library of case law, statutes, and other relevant materials. While the current site is focused on New York, there are plans to expand to a national audience in the future.

We urge you to visit the site by logging onto [www.probono.net](http://www.probono.net), selecting New York from the location menu, and then selecting Disability Rights from the practice area drop down menu. You can then join the practice area, which will enable you to access the many resources available on our site.



### Associate Matters

**Ken Rivlin, an associate of Cravath, Swaine & Moore, co-wrote an amicus curiae brief with NYLPI senior litigation counsel John Gresham to the Second Circuit Court of Appeals in *Freydel v. New York Hospital*. The case was brought on behalf of a Russian-speaking woman who is deaf and had to wait a week after her heart attack for the hospital to provide a sign language interpreter. Though the court eventually upheld the lower courts' decision granting defendants' motion for summary judgment, Mr. Rivlin's work was an important contribution to the fight for equal access to health care for people with disabilities.**

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