

Neighborhood Legal The NLS Press Services Association

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“BROTHER CAN YOU SPARE A DIME” BANKRUPTCY REFORM – DOWNSIZING DEBTOR PROTECTION

by Marc Liberati
NLSA Summer Intern

Neighborhood Legal Services Association in concurrence with its network of pro bono attorneys has traditionally assisted low income clients with emergency bankruptcies to halt imminent foreclosure, public housing evictions, repossession, utility shutoff, sheriff and tax sales. In the modern world of downsizing, economic dislocation, income disruptions, and underemployment, families are increasingly impacted by instability in employment income, particularly at the lower end of the wage spectrum. A surprising statistic, based on data compiled by Visa and MasterCard, is that no more than 29% of bankruptcies are caused by overspending. The balance of filings are caused by other life events over which consumers have little or no control.

On April 20, 2005, when the new bankruptcy legislation was signed into law, the credit card industry finally got the bankruptcy law "reform" changes for which they had been lobbying. Scheduled to

take effect October 17, 2005, this law will enact the most drastic change to the bankruptcy system since 1978. Considering that the average income for a person filing for bankruptcy is \$22,000, these new changes are bound to have dramatic effect on lower-middle to low income clients.

The major intent of the bankruptcy reform was to eliminate the perceived abuses of the system and require that people who can afford to make some payments towards their debt make those payments, while still affording them the right to have the rest of their debt erased. This idea came about during unprecedented increases in yearly bankruptcy filings, peaking at 1,660,245 in 2003. However, the fact that more bankruptcies are being filed is not evidence, in itself, that debtors are abusing the system. The harsh reality is that more cases are filed because more American families are faced with crushing debt resulting from a myriad of social ills- including loss of jobs, divorce, predatory

lending, and skyrocketing medical bills along with limited insurance coverage.

Many low income clients find themselves caught in the sea change of the American economy with no other choice than bankruptcy to protect the few assets they possess. In spite of the bankruptcy reform's attempt to curb bankruptcy filing, the number of people in need of bankruptcy protection is predicted to continue in an

Continued on page 3

in this issue

Bankruptcy Reform	1
CLEs	2
Bankruptcy Reform (cont'd)	3
40th Anniversary News	4
Staff Profile: Daniel Haller	5
A Case Study	6
The Pro Bono Corner	7

Bankruptcy Reform *(continued from page 1)*

upward trend.

The challenge for legal aid offices across the country will be to recruit and retain enough attorneys to satisfy the surging demand for pro bono and reduced fee legal services for clients needing bankruptcy protection. Neighborhood Legal Services Association has so far been able to meet the demand through the dedication of its staff and network of partner attorneys, but the need for more pro bono work remains. As it has done in the past, NLSA will provide backup assistance to pro bono advocates grappling with the bankruptcy reforms. Attorneys offering pro bono services also reap some added protections within the new bankruptcy rules. Attorneys doing pro bono work are exempt from the extra "debt relief agency" notices required by the new law.

This law will require more research and paperwork, which inevitably will lead to higher legal fees. For many low income filers, these higher costs will present an onerous barrier, which only increases the need for reduced fee and pro bono legal services. The new reforms do provide some relief for low income debtors, in that the law now provides an opportunity for those debtors whose income is at or below 125% of the federal poverty level to proceed *in forma pauperis* and thus not have to pay the increased Chapter 7 bankruptcy filing fee. This change should assist the neediest of clients.

Much attention has been placed on the new rules relating to the attorney's investigation of fact. Many fear that the stringent new verification requirements will reduce the already small circle of dedicated attorneys assisting low income clients for fear of increased malpractice insurance costs. Catherine Martin of NLSA does not view these new verification requirements as adding an extra burden to the legal community, saying "Attorneys have always carried a burden of trust to comply with a reasonable standard in such matters." Attorneys providing pro bono (but not reduced fee) legal services through Neighborhood Legal Services Association should know that the Allegheny County Bar Association will continue to provide malpractice insurance for them.

Most protections contained in the bankruptcy safety net have been radically reduced in the new law in favor of the creditor's

interest. One of the most potent tools of bankruptcy for legal services clients facing eviction has been the automatic stay rule. This provision of the code allowed people facing eviction to stop the eviction process, triggering an injunction against the continuance of any action by any creditor against the debtor or the debtor's property (11 U.S.C. 362) and allowing the tenant to repay any back rent due through a Chapter 13 plan. The court had discretion to lift the stay at the creditor's request; otherwise the debtor was protected until discharge. However, the burden will now lie on the *debtor* to obtain the court's approval to continue the stay.

Upon signing the bankruptcy bill earlier this year, President Bush was quoted as saying "Bankruptcy should always be a last resort in our legal system." For many low-income working people, single mothers, students, and the elderly facing overwhelming debt, bankruptcy as a last resort will soon move farther from their reach. In a time in which economic forces are pushing more people into debt, the door to credit salvation is closing. Even though the end results of the new bankruptcy reforms are yet to be fully known, the age old problem of debt and poverty are clear.

With the October 17th deadline quickly approaching, NLSA and its partner pro bono network are entering uncharted legal waters. At a time when some are saying that the pool of pro bono attorneys is bound to decrease because of concerns and problems created by the new law, NLSA is appealing to the legal community to rise to the present challenge and to respond in even greater numbers to the needs of the poor in this area.

If your firm does bankruptcy work and you would be willing to accept referrals of Chapter 7 cases, please contact Barbara Kern at (412) 586-6138.

NLSA CELEBRATES 40TH ANNIVERSARY IN 2006

by Laurie Mansell Reich

NLSA Announces New Advocate's Society

As part of its 40th anniversary celebration in 2006, NLSA is inaugurating **The Advocate's Society** to recognize donors who contribute \$1,000 or more annually or who include NLSA in their planned gifts. Any donor who contributed \$1,000 or more to the recent 18th Annual Equal Justice Campaign will automatically be included in the 2005-2006 Advocate's Society. Members must make an additional gift of \$1,000 or more each year to retain membership.

As a component of the new Advocate's Society, NLSA will soon unveil a planned giving program through which donors can use a structured charitable giving vehicle such as a bequest, gift of stock, charitable remainder trust, or charitable lead trust to ensure the future access to justice in our community. If you have already made provisions for NLSA in your planned giving, you can become a member of the Advocate's Society by contacting Laurie Mansell Reich at 724-763-9049 or lreich@alltel.net.

By supporting NLSA at this level, donors are guaranteeing that its work of providing free civil legal services and access to justice to low-income, elderly, and abused individuals will continue.

Advocate's Society members will receive an invitation to an annual fall breakfast with the NLSA Executive Director, President of the Board of Directors, and NLSA staff. At the breakfast members will learn more about NLSA plans for the upcoming year and will be given a memento of their membership in the Society. In addition, members will receive special seating at any NLSA events, including the 40th Anniversary Celebration on April 28, 2006.

Your Advocate's Society gift is key to the future of NLSA. If you are not already a contributor of \$1,000 or more and would like to become a charter member of the Society, please send your fully tax-deductible contribution to NLSA, 928 Penn Avenue, Pittsburgh, PA 15222 or contribute online by using a major credit card at www.nlsa.us and clicking on the DonateNow button.

40th Anniversary Celebration Committee Forming

NLSA will mark its 40th anniversary in 2006 with an anniversary event at The Priory's Grand Hall on April 28 and with other activities throughout the year. You can help plan this year long celebration by volunteering for the NLSA 40th Anniversary Celebration Committee. In order to get the ball rolling, we need a committee of volunteers to assist with everything from invitations to an online auction to entertainment.

If you would like to be part of this exciting and historic year for NLSA, please send an e-mail to Laura Cohen, Esq, NLSA Board member and Chair, 40th Anniversary Celebration Committee, at lauracohen@adelphia.net. The first committee meeting will be held in early September—we look forward to seeing you there. Thank you, as always, for your tremendous support of NLSA!

40th Anniversary Donations Needed

If your firm, legal department, or you individually would like to make a special one-time contribution to the upcoming NLSA 40th Anniversary Celebration in 2006, please send your check to NLSA, 928 Penn Avenue, Pittsburgh, PA 15222. Be sure to mark on the check that it is for the 40th Anniversary. Contributions will help offset the cost of the Celebration Event at the Grand Hall and other anniversary expenses throughout the year.

We are also in need of auction items for our online auction, which will run six weeks prior to the Anniversary Celebration Event. If you are interested in donating an item or sponsoring an auction item (for which you will receive online publicity), please contact Laurie Mansell Reich at 724-763-9049 or lreich@alltel.net. Join with NLSA in celebrating 40 years of providing equal access to justice for our neighbors in need.

NLSA 18TH ANNUAL EQUAL JUSTICE CAMPAIGN A SUCCESS!

Thanks to those of you who contributed so generously to the 2004-2005 18th Annual Equal Justice Campaign, NLSA received \$185,000 in much-needed funds. This was our most successful EJC in NLSA history, and it could not have happened without your generosity of heart. It is obvious that the members of our legal community care deeply about the future of NLSA and the basic tenet of equal access to justice. We cannot thank you enough!

The 2005-2006 19th Annual Equal Justice Campaign will kick off in September this year, a bit earlier than usual so that the Campaign will be finished before the 40th Anniversary Celebration Event on April 28, 2006. So watch your mailboxes, snail and e-mail, in mid-September for information on participating in the 19th Annual EJC.

STAFF PROFILE: DANIEL HALLER

by John McCall
NLSA Summer Intern

Pearl S. Buck, the native Pennsylvanian writer, observed that, "One faces the future with one's past." If the same can be said of organizations, then NLSA is fortunate that it will continue to confront the vagaries of public interest law with Managing Attorney Dan Haller and his 31 years of dedicated service.

Like many attorneys and staff at NLSA, Haller brings to his work on consumer issues and landlord-tenant law a rich and varied background. When Haller entered law school at the University of Pittsburgh in 1970, he already had an impressive academic resume under his belt. A graduate of Wheeling Jesuit University, Haller headed to Notre Dame, where he earned his Master's degree in political science in 1964, concentrating on Russian and Eastern European studies.

After finishing at Notre Dame, Haller continued his study of the Russian language for one year at Georgetown. In the midst of the Vietnam War, he joined the Army Reserves in 1965, going on active duty for a year beginning in May of that year and eventually attaining the rank of Major 20 years later. He trained in Monterey, California, as a linguist to intercept Russian voice transmissions. Although the plan had been to put his knowledge of Russian language and culture to work for the Defense Intelligence Agency, Haller strayed from that path out of frustration over how long his security clearance was taking. (Of course, no one would say that his time in Washington, D.C. was all for naught, as Haller met his future wife, Linda, while she was in nursing school at Georgetown.) The security clearance did eventually come through, but by then Haller had moved on to other pursuits.

Upon returning to Pittsburgh in 1966, Haller worked as a market researcher for H.J. Heinz Co., but eventually moved on to teaching at the CCAC Boyce campus. Not one to embody Sir Walter Scott's aphorism on lawyers - "A lawyer without history or literature is a mechanic, a mere working mason" - Haller taught history and political science for two and a half years before beginning law school.

Upon graduating from law school in 1973, Haller clerked for Beaver County Court of Common Pleas Judge J. Quint Salmon. Finding that he enjoyed the collegiality and familiarity of the Beaver County Bar, Haller easily succumbed to the inducements of Judge R. Stanton Wettick, then the director of NLSA, who wanted Haller for the newly-opened Beaver County NLSA office. Haller and Wettick had already crossed paths at Pitt, where

Haller was a student in Wettick's Real Property, Constitutional Law, and Criminal Procedure courses. Haller spent the next ten years at NLSA in Beaver County before moving to the Allegheny County office.

Though his early focus at NLSA was primarily custody, divorce, and support issues, Haller later shifted his emphases to landlord-tenant law and consumer work, focusing on mortgage foreclosure defenses and bankruptcy. For the past several years, the epidemic of predatory subprime lending has occupied a great deal of Haller's time in defending clients who have fallen prey to these schemes.

One of the more memorable and gratifying experiences Haller has had as an NLSA attorney came in 1981, when he traveled to Philadelphia to argue an illegitimate child support case before the Superior Court en banc. Haller's client, the appellant, was precluded from obtaining support for her child from the putative father by a lower court decision that relied on a former two-year statute of limitations. The en banc Court ruled for the appellant, overturning the lower court and an adverse panel decision by the Superior Court.

While winning his case was important to Haller, the experience surrounding the victory is what left the most lasting impression. Haller argued the case against Attorney Robert Banks of Ambridge. Despite the fact that they were adversaries, they rode to Philadelphia in the same automobile and roomed together in the same hotel, each of them going over his notes in the other's presence the night before the oral argument. Haller laments that rancor and ad hominem attacks have become more common in the practice of law and hopes for more experiences that embody the same sort of collegiality and mutual respect among adversaries that he and Banks shared. Haller says, "That is the ideal way to practice law." Or, as Banks recalls, "I had to be nice to him because he had the car keys."

Managing Attorney Edward Van Stevenson is one of the few employees at NLSA who has served longer than Haller (33 years). Stevenson maintains that Haller has been the same since day one, "a very gracious, energetic, and sincere person." Stevenson says Haller is respected by his peers, judges, and trustees because he works so hard, knows the law so well, and is someone whom you can trust. All of these qualities make Haller one of the first to seek out when trying to find someone to teach a CLE program or explain an

Continued on page 6

CASE STUDY: STUDENT NEGOTIATES SUCCESSFUL END TO DISTRAINT CASE

by Duane Ramseur
NLSA Summer Intern

Mr. L, a client suffering from spina bifida, contacted NLSA because his landlord would not give him access to his personal property. Mr. L lived alone in Section 8 housing on Pittsburgh's North Side. His rent was approximately \$182 per month and he always paid it on time. However, Mr. L decided to live with a group of his friends, but he continued to make the monthly payments to his current landlord. While he was living with his friends, he allowed his recertification period to lapse. As a result, his rent increased from \$182 per month to \$750, which was the market value. At that time, Mr. L's only sources of income were \$486 from SSI and other funds he received from disability. Needless to say, he was unable to pay \$750 per month.

During the two months that he was living with his friends, Mr. L made occasional visits to his apartment because his medicine and medical supplies were stored there. Unfortunately for Mr. L, he lost the keys to his apartment and his landlord was unwilling to allow him access to the premises until he paid \$1,500. This meant that Mr. L could not take his medication or use the medical supplies that were vital to his health.

Marc Liberati, a summer intern for NLSA received the intake and handled all negotiations. Marc was faced with a tough situation. There were two issues with which he had to contend. The first was the personal property and the second was the threat of Mr. L being sued for unpaid rent.

Dealing with the personal property first, Marc contacted the landlord and informed her that it was against the law in the Commonwealth of

Pennsylvania to hold a tenant's personal property. If the landlord continued to hold the property, then Marc would advise Mr. L to file suit at the district justice for the value of his property. The landlord was reluctant, but she agreed to release Mr. L's property.

However, the landlord threatened to pursue her claim against Mr. L for unpaid rent. If the landlord had effectuated the eviction process and a judgment was entered against Mr. L, he could lose his eligibility to reapply for Section 8 housing. It was Marc's goal to keep this case as far away from district justice court as possible.

He informed the landlord that his client was judgment-proof. If she pursued the district justice action, she would obtain a judgment on which she would not be able to execute, as his income was protected and the value of his personal property was below the exemption amount. In the end, she would end up with nothing and would have expended time and money to pursue the case.

Therefore, Marc proposed that the landlord accept two months rent from Mr. L at the subsidized rate of \$182, keep the security deposit, and sign a written agreement that she would release Mr. L from all other claims she may have against him. This agreement would ensure that the landlord received some compensation and Mr. L did not lose his eligibility for Section 8 housing.

It took a lot of negotiation; however, the landlord agreed to the terms of the settlement. Mr. L now enjoys living at home with his parents. He no longer has to worry about skyrocketing rent payments or his personal property being held in distraint.

Staff Profile *(continued from page 5)*

abstruse legal concept. Stevenson believes Haller has passed over many opportunities to move to more lucrative private jobs or government positions because he is so dedicated to serving others at NLSA. Haller explains, "Whenever I have thought I might move on, something interesting has come up here."

When not in the office or courtroom, Haller is reading, drinking tea, cycling, working as a board member for Wheeling Jesuit University, or spending time with his wife Linda, who is a family therapist. Haller and his wife have two sons, Sam and Lee, ages 28 and 32 respectively.

Some time ago, Haller noted his wife's lament about retrieving the morning paper from the curb in cold and slushy weather. Haller, ever the teacher, trained his beloved dog Sasha how to fetch the paper for him and Linda every morning. Grateful for her fealty, Haller was eager to return the favor to Sasha when she came to him for credit counseling one day after receiving a letter in the mail from a generous credit card company explaining that Sasha D. Haller had been "pre-approved" for a credit card. Haller wryly noted that the recently enacted Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 is emblematic of Congress's deep concern about abuses of the bankruptcy process by potentially irresponsible credit card holders like Sasha.

No one-be he human or canine-would dispute that Haller's respectful and competent practice of the law ennobles the profession. NLSA is grateful that it will continue to face the future with a trusted friend like Dan Haller.

The Pro Bono Corner

For almost a year NLSA has benefitted from the invaluable assistance of **Attorney Michael Stephan**. When Mr. Stephan contacted us last year about volunteering, he informed us that he would be able to take one day from his work at the Duquesne University Law Library to provide us with in-house assistance. He has become a weekly Friday fixture in our Telephone Advice unit, providing advice on housing, consumer, and family calls. Client response to his work is evidenced by a telephone evaluation form which we recently received. It stated, "Michael Stephan helped me a lot. He calmed me down and gave me great advice. I really would like to thank him." And we at NLSA second that sentiment.



We would like to thank **Attorney James Malley** for his volunteer work at our Debt Advice and Family Law Clinics. Jim not only works on scheduled dates at both clinics; he also has been a life saver on occasions when we have had last minute cancellations at either clinic. Of course, the fact that the emergency SOS call is made by Mary Ann Troper-Malley, an NLSA staff member in charge of our PFA referral program, may have something to do with his quick response. No one is able to resist Mary Ann's urgent pleas for help, least of all her husband.



Every paralegal who makes pro bono referrals has at least one individual who, if all else fails, can be counted on to step in to avoid disaster. For Mary Ann Troper-Malley that person is **Attorney Gary Lang**. Even after many years of volunteering for NLSA, Mr. Lang continues to give an extraordinary amount of his time to represent PFA Plaintiffs. In 2004 he scheduled 12 dates, not including continuance dates, to assist victims. He is always willing, if

available, to handle any case-even those last minute calls in which another attorney has returned a case which involved a 1:30 hearing. He provides a model of pro bono commitment to those in need.



We would also like to thank **Attorney Sylvia Denys** for her long term volunteer work with our unemployment compensation referral program. Ms. Denys has not only taken many cases over a long period of time; she has also frequently agreed to take cases in which the issues were difficult and the client's chances of success were limited. Our clients' response to Ms. Denys' work is best summed up by a letter we received recently stating that "Ms. Denys not only represented me in a very efficient way, she also understood the real problems that not having income created for me and my family." We thank Ms. Denys for her continuing commitment to our program and to our clients.



This summer NLSA's Summer Intern Program has brought us first and second year law students from law schools across the country: **Melissa Gilbert**, an undergraduate from Davidson College in North Carolina; **Jessi Herman**, second year at Emory University School of Law in Atlanta; **Autumn Johnson**, second year student from Widener; **Marc Liberati**, who will enter law school at American University in September after spending a year in London in a pre-law program; **Mary Ann Mazzarini**, who will enter the Judge Advocate General Corps after graduating from Notre Dame University School of Law next spring; **John McCall**, first year student at Duquesne University School of Law; **Duane Ramseur**, currently a first year student at Dickinson School of Law who recently made Law Review; **Will Sheridan**, first year law student

from Boston College, who will be transferring this fall to Northwestern University School of Law, and **Brian Simek**, second year student at the University of Michigan, who will finish his law education this year as a visiting student at Duquesne University and who will be spending this year in Pittsburgh along with his family.

These students have provided telephone advice in landlord-tenant cases and represented tenants at District Justice hearings, Common Pleas arbitration, and Housing Authority grievance hearings. In the two months that they have been here they have been assigned and assisted clients in over 260 housing cases. They have also represented clients seeking unemployment compensation benefits at referee hearings. In addition, they have provided necessary research for some important ongoing cases. They have also worked on updating and improving the NLSA website and have written and produced this issue of the NLS PRESS. All in all, an active and productive summer.

We hope that our student interns have benefitted from their experience here; we know that Neighborhood Legal Services Association has benefitted from the work they have done for us and from the youthful enthusiasm they have brought to the building this summer. We wish them well as they begin their new academic year.

It is through programs such as this Summer Intern Program and our clinic and practicum programs held in conjunction with the University of Pittsburgh and Duquesne University Schools of Law that young people training for the law are introduced to the needs of the poor in our community and to the concomitant need of a pro bono commitment on the part of every attorney.



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**NLSA's mission is meeting the civil needs of the poor
and vulnerable in our community through effective
legal representation and education.**




Articles in this newsletter are for general information only and do not constitute specific legal advice. If you have a legal problem, you should consult an attorney.

The NLS Press

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