CLOSING THE JUSTICE GAP: PROVIDING CIVIL LEGAL ASSISTANCE TO LOW-INCOME AMERICANS

Senate Judiciary Committee
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Testimony of Maryland's Legal Aid Bureau, Inc.
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Introduction

Senator Cardin, Members of the Committee, thank you for inviting me to testify today on the issue of providing civil legal assistance to low-income Americans. The Legal Aid Bureau, Inc. (Maryland Legal Aid) was founded in 1911 by visionaries who understood the vital importance of civil legal representation for those individuals and families with the fewest resources and the least influence and power in our society.

Maryland Legal Aid is a non-profit, private law firm that provides free civil legal assistance to low-income residents from thirteen offices throughout Maryland. We have a staff of 260, including 140 attorneys and 56 paralegals. We receive funding from the federal Legal Services Corporation, the Maryland Legal Services Corporation, the State of Maryland (for representation of children in the foster care system), various foundations, private law firms, and individuals.

Maryland Legal Aid provides assistance to low-income[1] individuals, families and community-based organizations across Maryland, focusing on the most pressing and essential needs of our clients and the most isolated and vulnerable members of our population. We pay particular attention to the needs of youth (including those in the foster care system), seniors, disabled persons, low-wage workers, ex-offenders and migrant and seasonal farmworkers. Our expansive practice encompasses advocacy in the areas of housing, public benefits, access to healthcare, consumer, family, education and employment law. We attempt to achieve our clients' goals through a broad continuum of services, ranging from brief advice and service, pro se assistance and targeted referrals, to community education, policy advocacy, transactional work, collaborative endeavors with other organizations, litigation in state and federal trial and appellate courts and systemic advocacy.

We appreciate the opportunity to share with this Committee information about the complex legal needs of low-income Maryland residents, the challenges of trying to

provide those services with woefully inadequate resources and the benefits flowing to both clients and our larger communities as a result of our work. We particularly applaud the attention of Senator Cardin and others to the need to increase resources so that legal services programs across the county are able to help our low-income neighbors obtain basic necessities, stabilize their lives, and overcome barriers that keep them in poverty and crisis.

Our testimony will first focus on the clients we serve and the complexity of the legal problems they face. We will also explain the challenge of meeting the demand for our services with grossly inadequate resources and illustrate the consequences of successful advocacy and, conversely, those that occur when advocacy is not available.

Legal Aid clients include a diverse spectrum of vulnerable persons throughout all of our communities.

The demographics of Maryland are complex and changing and mirrored in Legal Aid's statewide practice. The new challenges we face are daunting: we are called upon to serve many new and culturally and linguistically diverse communities.[2] Laws upon which we have historically relied to vindicate clients' basic rights have been severely narrowed[3]; and new technology presents both new opportunities and new obstacles for low-income persons.[4] Our senior population is rising rapidly;[5] and Maryland has almost 300,000 impoverished children.[6] The number of poor Maryland residents has increased.[7]

Our communities are changing: rural areas are rapidly becoming suburban.[8] Lacking training for new "good" jobs, many people are relegated to low-wage, dead-end employment, without essential workplace benefits.[9] The drastic lack of affordable housing statewide means that homelessness is a constant threat for the hard-working poor.[10] Physically and mentally damaged veterans returning from Iraq and Afghanistan, unable to get adequate help, presage a serious surge in demand for our assistance.[11] Many children are still leaving school without mastery of basic skills.[12] Often, non-performing schools, sub-standard housing and few employment opportunities cluster in low-income, African-American communities, reinforcing the continued shameful correlation between race and poverty.

Many of the clients who contact us do so after a major family crisis or economic hardship such as a death in the family, loss of a job or other source of income, serious illness or divorce. Many of our clients are low-wage workers who have difficulty affording basic needs such as housing, food, childcare, transportation and medical services. A job layoff or illness can push a low-income family into a crisis, such as a tax sale foreclosure. Legal Aid provides legal assistance that directly addresses the most basic and essential needs of individuals and families including obtaining needed healthcare and disability benefits, preventing foreclosures, recovering unpaid wages, restoring utilities, preventing wage garnishments, preventing unlawful evictions, and improving substandard and dangerous housing conditions. The attached newspaper articles explain in more detail our efforts on behalf of elderly clients and provide an example of a recent case filed to prevent the unlawful eviction of low-income tenants.

The facts of two recent cases handled by Legal Aid highlight our clients' dire need for legal assistance and the complexity of their legal problems. We represented an 87-year-old man who has cardiac arrhythmias, significant dementia, osteoarthritis, gout, is hearing impaired and legally blind, has a sleep disorder and is incontinent. He takes numerous medications that he cannot keep track of by himself. He requires assistance with bathing, dressing, and has problems with his balance. His application for home health care benefits through Medicaid was denied on the basis that he was not medically eligible for services. Legal Aid challenged the state's overly restrictive interpretation of the medical eligibility criteria and after numerous legal proceedings over a two year period, the client was granted benefits. Subsequently, Legal Aid won an appellate court decision on the same issue, which resulted in a number of other clients being granted home health care benefits. [13]

Another compelling and complex case handled by Legal Aid involves a 62-year-old widow with serious health problems who was the victim of a foreclosure rescue scam and as a result was threatened with eviction from her home. The client was approached by a "foreclosure rescue agent" who convinced her to enter into an agreement in order to "save" her house. The widow was assured that the agreement would help her keep her house, but, in fact, it transferred title to the house to the agent for less than one-third of the value of the house and required her to make monthly "rental" payments that far exceeded her income. When the agent attempted to evict the client from the house, Legal Aid was able to prevent the eviction. We filed a lawsuit against the individuals involved in the foreclosure rescue scam and have obtained judgments against them, which rescinded the transfer of title to the house and kept our client from becoming homeless.

Legal assistance provides untold benefits to low-income individuals, families and communities and the inability to obtain assistance can be devastating.

Effective and timely legal assistance can help individuals and families stabilize their lives and provide people with a chance to get out of poverty. The benefit to individual clients of legal assistance can be tremendous and is usually obvious. What is not as obvious are the incalculable benefits, including cost savings, to communities and society. Some examples of the benefits that Legal Aid regularly obtains for clients and for the greater community include:

- Keeping families in their homes by preventing unlawful evictions and foreclosures – which helps to prevent homelessness and the costs associated with it[14] and benefits neighborhoods by reducing the number of vacant houses.[15]

- Helping people obtain needed health care benefits – which reduces the cost of medical care to society by allowing individuals to obtain preventive care and reduces the number of expensive emergency room visits.[16]

- Protecting children from abuse and neglect and advocating for the needs of children in foster care -- which provides children a voice in the potentially life altering decisions being made about them. [17]

- Helping families live in safe and sanitary housing, free of lead paint and other hazards -- which improves the health of family members and provides stability for families and communities.[18]

- Recovering unpaid wages for workers -- which reduces the need for them to obtain government assistance for survival and discourages unscrupulous employers from shortchanging other workers.

- Obtaining releases of bank account attachments for elderly and disabled clients -- which allows them to pay for food, rent, utilities, medicine and other basic needs and helps protect them from evictions, illnesses caused by inability to obtain medicine and the other consequences of loss of income.[19]

When low-income Americans are unable to obtain legal assistance to address their crucial legal needs, many suffer dire consequences such as suffering serious medical problems, even death, losing their homes to foreclosure, becoming homeless, living in unhealthy and unsafe conditions or being physically abused. The cost to society of failing to address these critical needs is untold, but clearly tremendous. The benefits of civil legal assistance to individuals, families and society, far outweigh its cost.

A significant increase in funding is needed in order to meet the need for civil legal service.

A recent report found that legal service programs only meet 20% of the need for civil legal services.[20] In Maryland, approximately 500,000 persons are financially eligible for legal services under LSC guidelines (up to 125% of federal poverty guidelines). In 1996, Maryland Legal Aid helped 32,000 individuals. In 2007, we served 53,000 people, still just a fraction of those who need legal assistance. As mentioned earlier, the dynamics of low or no wages, coupled with other precipitous events such as the sudden loss of employment, illness or disability often give rise to a real need for legal assistance. It is not surprising then that an average low-income person experiences a need for civil legal assistance (information, advice or representation) at least once per year.[21] In Maryland, as elsewhere, these factors produce an overwhelming need for legal services that cannot be satisfied with the current level of available resources.

Our program is constantly striving to meet the demand for our services, as are all other legal services programs around the country. We attempt to maximize our resources to serve as many people as possible, but we are woefully short of being able to meet the demand. We have stringent case acceptance guidelines and priorities, which proscribe the types of cases that we will take for full representation. In order to use our limited resources in the best possible way, we represent those clients with the most urgent need for legal assistance to protect their shelter, food, health care and other basic needs.

Unfortunately, we are unable to represent many others who need legal assistance, but whose matters are not as pressing.

We attempt to address the unmet need by providing pro se classes and assistance at court houses, so that clients can represent themselves; conducting extensive education and outreach to potential clients so they can learn their rights and avoid legal problems; operating telephone hotlines in order to provide brief legal advice, assistance and referrals for clients; and working extensively with the private bar to encourage private attorneys to take pro bono cases. In Maryland, lawyers are required to submit annual reports setting forth the nature and number of their pro bono hours. In 2006, over 1 million hours of pro bono service were reported.

These efforts provide some help, but will never be able to meet the need for full representation by an attorney. Without additional funding, legal services programs will continue to be unable to meet the demand for critical legal services.

Legal services programs face serious fiscal and operational challenges.

Legal services programs face many of the same fiscal and operational challenges as other organizations, such as how to pay for the steady inflationary increase in the cost of facilities, utilities, supplies and travel, when funding levels remain stagnant, or even decline. In the face of declining federal support, legal services programs have needed to devote some of their precious resources to fundraising and resource development. Legal services programs also face some unique challenges, such as staff recruitment and retention. In most parts of the country, legal services salaries are lower than those in comparable positions, such as with the public defender, state attorney general, or other government positions. The starting salary for attorneys at Maryland Legal Aid is $45,475 -- $8,000 to $10,000 less than comparable positions in the public sector and significantly lower than those in the private sector. When attorneys are faced with high student loan debt burdens (many of our attorneys have student loan debts of $80,000 to $100,000), it is often impossible for them to afford to work at a legal services program or if they do accept a legal services job, they are lured away after a few years by the higher salaries they can make in the private sector or with other public interest entities.

Conclusion

We at Legal Aid have the most exciting and satisfying jobs in the world. In a society that stresses individual achievement—where you pull yourself up by your bootstraps—Legal Aid helps those without boots.

By providing access to justice to tens of thousands of Marylanders each year, Legal Aid attorneys and support staff bring equity, order and stability to society, but we could do much more if we had additional resources.

[1] Our eligibility guidelines for most of our services require clients to be at or below 125% of the federal poverty guidelines. That means a family of 3 with an income of over $22,000 is ordinarily not eligible for our services and a single person must have an income that does not exceed $13,000 to be eligible for services.

[2] Based on census data, Maryland's Department of Planning reports that the total foreign born population in Maryland jumped from 313,494 in 1990 to 518,315 in 2000. The number of Marylanders who speak English less than very well increased from 148,493 to 246,287. http://www.mdp.state.md.us/msdc/census/cen2000/sf3/foreing_Born/foreign-born-md.ppt. It is safe to assume that a high percentage of those who speak English less than very well are poor. *See* *http://www.mdp.state.md.us/msdc/income_inequality/incomeinequality_1980_2000.pdf.*: "Income Inequality Continues to Grow in Maryland" (foreign immigrants filling many low wage jobs). These statistics undoubtedly undercount undocumented English speakers whose status makes them particularly vulnerable to workplace and other exploitation. *See also,* University of Maryland Law Journal of Race, Religion, Gender and Class, "Legal Services: Meeting New Challenges with Delivery Systems that Promise Lasting Impact for Maryland's Poor" (publication pending, Fall 2008 issue).

[3] *See, e.g., Gonzaga University v. Doe*, 536 U.S. 273, 122 S. Ct. 2268 (2002) (only "unambiguously conferred rights will support a cause of action under 42 U.S.C. § 1983); *Blessing v. Freestone,* 520 US 329, 117 S. Ct. 1353 (1997); *Seminole Tribe of Florida v. Florida,* 517 US 44, 116 S.Ct. 1114 (1996) (sovereign immunity barriers to obtaining redress for State violations of federal law).

[4] Telephone "hotlines" and intake systems, together with remote access to legal assistance via computer may make legal services providers more accessible to rural and home-bound persons. *See also* Commentary to ABA Standard 2.2 on use of technology to deliver services. More legal information is available over the Internet, but many low-income persons lack both basic and computer literacy skills to use computerized resources.

[5] The Maryland Department of Aging estimates that Maryland's over-60 population increased from 801,036 to 896,760 between 2000 and 2005. The Department expects the number to reach more than one million by 2010. The Department estimated that, as of 2000, almost 64,000 lived in poverty. http://www.mdoa.state.md.us/demographicsn.html. Other estimates are higher. The Kaiser Family Foundation reports that, of Maryland's' seniors aged 65 and older, 13%, or 87,563 live in poverty. http://www.statehealthfacts.org/profileind.jsp?ind=10&cat=I&rgn=22.

[6] The Kaiser Family Foundation reports that approximately 270,543 -- 19% of Maryland's total under-18 population -- live in poverty. This is a significantly higher percentage than that the 13% of adults in the State who are impoverished. *See* http://www.statehealthfacts.org/profileind.jsp?ind=10&cat=I&rgn=22.

[7] According to the Maryland Budget & Tax Policy Institute, approximately 417,207, or 8% of Maryland's population was poor in 1990. http://www.maryolandpolicy.org/html/research/POVERTYfaq2002.asp. ; Another of its reports indicated that 8.2%, or 544,000 of a growing population lived at or below federal poverty levels as of 2006. "The Great Divide: Poverty and Prosperity in Maryland, by Joanna Shoffner, Associate Director, at http://www.marylandpolicy.org/documents/PovertyPersistsDespiteEconomic Growth.pdf. Census estimates for 2004 were higher, indicating that 9.2 of Maryland's population was poor. http://www.quickfacts.census.gov/qfd/states/24000.html.

[8] *See, e.g.,* http://www.mdp.state.md.us/msdc/census/cen2000/Urban_rural/ua_rural2k_cnty.pdf (reflects over 17% decline in rural population between 1990 and 2000).

[9] *See, e.g.,* "Income Inequality Continues to Grow in Maryland" (shift from manufacturing to service jobs caused drop from good to inadequate wages for blue-collar and semi-skilled workers, many of whom had no more than a high school education). http://www.mdp.state.md.us/msdc/income_inequality/incomeinequality_1980_2000.pdf.

[10] *See* "Affordable Housing in Metropolitan Maryland: A Policy Analysis", Capstone in Public Policy, Department of Public Policy, University of Maryland, Baltimore County (2004), at http://www.umbc.edu/mipar/documents/FinalAffordableHousingAnalysis2.pdf.

[11] Bilmes, Linda, "Soldiers Returning from Iraq and Afghanistan: The Long-term Costs of Providing Veterans Medical Care and Disability Benefits", Faculty Research Working Paper Series, Harvard University, John F. Kennedy School of Government (January, 2007), at http://ksgnotesl.harvard.edu/Research/Wpaper.nsf/rwp/RWP07-001/$File/rwp_07_001_bilmes.pdf.

[12] *See, e.g.,* http://www.maaccemd.org/factsheet.html (20% of Maryland adults function at the lowest literacy rates; 959,000 residents need basic skill instruction; 632,000 persons without high school diplomas are unemployed).

[13] *Department of Health & Mental Hygiene v. Ida Brown*, 177 Md. App. 440 (2007). A Petition for *Certiorari* was granted by Maryland's Court of Appeals on March 12, 2008, (the highest court in the State), with argument scheduled for June 5, 2008.

[14] Brennan Center for Justice, *Access To Justice: Opening the Courthouse Door,* (2007), available at www.brennancenter.org for discussion of broad impact of homelessness on communities.

[15] The cost of foreclosures to neighborhoods and local governments has been widely noted. See Federal Reserve Board Governor Randall S. Kroszner's speech at the

NeighborWorks America Symposium on Stabilizing Communities in the Wake of Foreclosure, Cincinnati, Ohio, May 7, 2008. Available at http://www.federalreserve.gov/newsevents/speech/kroszner20080507a.htm

[16] National Academy of Science, *Hidden Costs, Value Lost: The Cost of Uninsurance in America* (2003). Available at http://www.nap.edu/catalog/10719.html

[17] ABA, Child Law Practice, *Seen and Heard: Involving Children in Dependency Court*, Vol. 25, No. 10 (Dec. 2006).

[18] Report To Congress For Fiscal Years 2001–2002, U.S. Department of Health and Human Services Centers for Disease Control and Prevention , *Childhood Lead Poisoning Prevention Activities Under The Lead Contamination Control Act Of 1988*, available at http://www.cdc.gov/nceh/lead/Legislation%20&%20Policy/Reporttocongress(2001-2002).pdf.

[19] National Consumer Law Center, *Frozen Out*: *A Review of Bank Treatment of Social Security Benefits*, Testimony before the Committee on Finance, U.S. Senate, September 20, 2007, available at http://www.nclc.org/issues/banking/content/Testimony_Frozen_Out.pdf

[20] Legal Services Corporation, *Documenting the Justice Gap In America*, p. 4 (September 2005).

[21] *Id.* at p. 11.

www.baltimoresun.com/business/realestate/bal-md.ci.housing17may17,0,6903435.story

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Families hope suit stops eviction

Action says city housing authority illegally forces public housing residents from homes

By Nick Madigan

Sun Reporter

May 17, 2008

Samantha Johnson hasn't had an easy time of it.

A year ago today, she was hospitalized in a psychiatric ward after attempting suicide, according to court documents, and was later fired from her job at Wal-Mart for missing too much work. One of her two sons, Timothy, 11, has severe asthma.

Now Johnson and her boys face eviction from their apartment in a Cherry Hill public housing project because she's behind on the rent. Had it not been for a lawsuit filed Thursday by the Legal Aid Bureau on her behalf and that of three other families, Johnson, 31, might have been on the street as soon as next week.

"I was on pins and needles trying to find somewhere to go," she said yesterday. "My sister's house is too crowded, my mum lives with a friend, and my father is on drugs, so there's nowhere to go."

The lawsuit seeks to force the housing authority to stop what Legal Aid calls "an illegal policy and practice of authorizing mass evictions of public-housing families" through a process that denies them the right to satisfy rental debts at the last minute.

If the practice is allowed to continue, the suit says, thousands of public-housing families "face the prospect of homelessness and the loss of their irreplaceable, low-income housing on entirely unlawful grounds."

Housing authority officials say they are only evicting people who are routinely late with their rent. But Theda Saffo, a lawyer for Legal Aid, which provides free civil legal services for low-income people, said the housing authority is using the practice as "an expeditious means of clearing out their housing stock."

In response to the lawsuit, housing authority officials backed off yesterday from enforcing eviction orders next week against the four families named as plaintiffs,

including Johnson's, until the outcome of a hearing in federal court. Four other families face eviction next month.

A spokeswoman for the housing authority, Cheron Porter, said such "chronically late" tenants were warned as long ago as October of the stricter enforcement. At that time, however, "everyone's slate was wiped clean," she said, meaning that the housing agency decided not to count tenants' previous tardiness against them. Tenants who are facing eviction now have failed to pay or been late in paying rent for at least five months since then, she said.

"There's really not a whole element of surprise here," Porter said. "It didn't just come out of the blue."

There are about 11,000 residents in what Porter called conventional public housing in Baltimore, and an average of 1,300 fail to pay their rent on time each month.

Porter said tenants may have up to four late-payment judgments against them without imminent eviction. On the fifth instance, however, the agency reserves the right to terminate a lease without giving the tenant any more chances. Under a local law the housing authority is invoking, tenants can be evicted after the fifth missed or late payment even if they later come up with the money.

But that's illegal, said Reena Shah, a lawyer for Legal Aid.

"The local law doesn't apply to public housing tenants because they have constitutional safeguards," Shah said. "They're protected by due process clauses under the Fifth and Fourteenth Amendments."

Shah said tenants must be able to present extenuating circumstances - whether related to health, employment or other problems - during a properly convened hearing. Porter responded by saying that agency officials personally inform tardy tenants what they face and that the housing authority is doing nothing illegal.

In Johnson's case, her rental debt has ballooned to about $1,400. Johnson, who receives no child support and is ineligible for food stamps, has found a job at another Wal-Mart and was recently hired to help care for an 87-year-old woman, but only temporarily. A baby sitter takes care of the boys.

Yesterday, Johnson seemed fatalistic.

"I'm just taking it one day at a time," she said. "Dealing with housing, you don't know what you're going to get."

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THE DAILY RECORD

Law

Of Service: Elder law practice gets ready for the boomers

JOE SURKIEWICZ
Special to The Daily Record
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In keeping with its mission of helping the most vulnerable residents in the state, Maryland Legal Aid focuses on low-income people, abused and neglected children, and folks 60 and older.

As baby-boomers move toward retirement, the state's largest nonprofit serving the civil legal needs of the elderly is marshalling its forces — and, not surprisingly, that includes hiring more attorneys to beef up what AARP Maryland Senior State Director Joseph DeMattos Jr. called a "service of immeasurable value to older Marylanders."

"These individuals deserve a voice and an advocate not because they are inherently vulnerable, but because of their intrinsic value to a vibrant and thriving Maryland," DeMattos said. "It is vital that they have access to legal representation on issues like health and long-term care, predatory lending, age and disability discrimination."

Last month, with the help of a major new grant, Legal Aid promoted Jennifer Goldberg into the newly created position of assistant director of advocacy for elder law and healthcare.

"We already have a very active elder law practice, but until recently we didn't have anyone to coordinate efforts statewide," said Cheryl Hystad, Legal Aid's director of advocacy. "With Jennifer, we'll be able to help more clients because she can coordinate our outreach, collaborate on casework and share pleadings, provide more training, and provide more case-consultation support for staff attorneys."

Goldberg, formerly a supervising attorney in the elder law unit of the Metropolitan Maryland office (which serves Prince George's, Montgomery and Howard counties), described her new job as "connecting the dots by supplying support to our attorneys and paralegals in all 13 of our offices who work with seniors."

Topping the list of concerns is health care: "Combined with fixed incomes, health problems can create a wide variety of legal services needs, which they should get without leaving their community," Goldberg said.

Some Legal Aid offices are partially funded by Title IIIB (through the Older Americans Act, which is funneled through various county governments), which pays for services that include advice, counsel and representation to access needed medical services, including nursing homes and assisted living facilities, Medicare, Medicaid and Social Security benefits.

Another critical issue for the elderly is housing.

"It's the one thing that spans everything, both tenants and homeowners, as well as senior subsidized housing," Goldberg noted. "If a senior is living on a fixed income of $643 a month, then obviously that person can't rent an apartment unless it's subsidized. Usually, they pay about a third of their income on rent. If the loss of that housing is threatened, Legal Aid helps maintain that housing."

Goldberg will also supervise Legal Aid's long-term care project for residents in nursing homes and assisted living facilities. "I'll be strengthening that project as well," she added. "We'll also be producing brochures and other materials aimed at clients for greater community education and awareness of the services we provide."

Seniors are also adversely affected by the subprime loan crisis, which is especially acute in Prince George's Co. and Baltimore City. "We've seen a drastic increase in foreclosures and victims of scams — for example, the senior didn't understand the refinancing documents — so we help them," Goldberg said.

Consumer law is another category that affects seniors, who are more likely to be victims of scams or exploited financially.

"We handle consumer cases, particularly for clients facing the garnishment of Social Security benefits, which are exempt from garnishment," Goldberg said. "We're also addressing that problem on a policy level. But many attorneys representing creditors don't know those benefits are exempt. It's scary if you're bank account gets frozen, you can't do basic things like pay the rent."

While Social Security helps people avoid being completely destitute, many seniors live on small fixed incomes: "They need help with food stamps, to stay in their homes," Goldberg said. "They are all essential to help provide for basic

human needs."

Another aspect of Goldberg's job will be to increase training of staff who serve seniors, including those who don't receive Title IIIB funding. "I'll be working with Legal Aid's new training coordinator and the new senior attorney for elder law and the new senior attorney for training," she said.

The goal: to serve more senior clients.

"We've always had a substantial number of elderly clients," noted Hystad, the director of advocacy. "With our new focus and the coordination of existing services, we will be able to serve more — and I anticipate the need will only grow with the aging of the baby boomers."

(Joe Surkiewicz is the director of communications at Maryland Legal Aid. His e-mail is jsurkiewicz@mdlab.org.)