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SYMPOSIUM: Is Workfare Working? A Panel Discussion Sponsored by the Association of the Bar of the City of New York

Authors

Robert B. Stulberg, Ronald J. Tabak, Alan Finder, Mark Hoover, Liz Krueger, Mary J. O'Connell, Gail Aska, and Lawrence M. Mead

**IS WORKFARE WORKING?
A PANEL DISCUSSION SPONSORED BY THE
ASSOCIATION OF THE BAR OF THE CITY OF
NEW YORK, APRIL 19, 1999**

The following panel discussion, addressing the issue of New York City's recent welfare reforms, includes the transcripts of several notable panelists, who were kind enough to permit the *Journal of Law and Policy* to publish their remarks. The discussion was followed by an opportunity for the audience to present questions to the panelists, portions of which have also been included.

The Editorial Board and Staff of the *Journal* supplemented the transcripts with footnotes and commentary in order to provide background material for the speakers' statements and to offer a starting point for readers to begin research on some of the issues raised by the panelists. The footnotes and commentary are those of the *Journal* and do not necessarily represent the opinions of the speakers. Similarly, the opinions of the speakers do not necessarily represent the opinions of the *Journal*.

Introduction
Robert B. Stulberg

Moderator
Ronald J. Tabak

Panelists
Alan Finder
Mark Hoover
Liz Krueger
Mary J. O'Connell
Gail Aska
Lawrence M. Mead

Workfare, as many of you may know, is the popular phrase loosely applied to various government programs requiring welfare recipients to apply for and perform work as a condition of receiving benefits.² Two factors made workfare a pressing and controversial issue, particularly in New York City. First, in 1996, Congress enacted the Temporary Assistance to Needy Families Act (“TANF”),³ which, for the first time, required states to implement

* Association of the Bar of the City of New York, Chairman, Labor and Employment Committee; Partner, Broach & Stulberg, LLP; J.D., Antioch School of Law; B.A., Columbia College.

² “The Committee [on Labor and Employment Law of the Association of the Bar of the City of New York] uses ‘workfare’ to refer to any program under which welfare recipients are required to work in exchange for their benefits.” *Workfare: Labor and Employment Law Issues*, COMMITTEE ON LABOR AND EMPLOYMENT LAW, ASS’N OF THE BAR OF THE CITY OF NEW YORK 1 (July, 1997) [hereinafter *Bar Committee Report*]. Welfare reform programs, mainly composed of workfare programs, have been implemented at both the federal and state level. Patricia A. Quigley, *Protection of Existing Workers and the Implementation of “Workfare,”* 14 HOFSTRA LAB. L.J. 625, 625 (1997). The theory behind workfare is that no one should receive “a free ride.” *Id.* Advocates of workfare programs state that work experience will teach job skills to those on welfare, which they can use to move into the real job market. *Id.* Critics of workfare fear that welfare recipients will displace existing workers, since many are being laid off due to budget constraints. *Id.* at 625-26.

³ Temporary Assistance to Needy Families (“TANF”), 42 U.S.C. § 601 (Supp. III 1997). TANF is a block grant program that gives the states broad discretion in establishing and maintaining their welfare programs. *Id.* Although the states are subject to some statutory limitations, they decide themselves who is eligible for assistance, what kind of assistance will be provided, for how long assistance will be provided and the terms and conditions under which the assistance will be provided. *Id.* The stated goals of TANF are to increase the flexibility of the states, provide assistance to needy families, and to end the dependence of needy parents on government benefits by promoting job preparation, work and marriage. *Id.* See Sheryll D. Cashin, *Federalism, Welfare Reform, and the Minority Poor: Accounting for the Tyranny of State Majorities*, 99 COLUM. L. REV. 552, 552-53 (1999) (explaining TANF as a block grant program giving discretion to states to design and administer welfare programs).

mandatory work requirements as a condition of receiving block welfare grants. Second, in New York City, the Giuliani Administration, for a number of years, has been aggressively expanding its workfare programs, which now involve approximately 34,000 participants.⁴ At any given time, this workforce has been assigned to various City agencies⁵ and has functioned outside the civil

⁴ In fiscal year 1999, 33,833 public assistance recipients participated in New York City's workfare programs. CITY OF NEW YORK, MAYOR'S MGMT. REPORT, Vol. II, at 108 (1999). New York State enacted legislation in response to federal mandates, putting welfare recipients to work in order to earn their benefits. N.Y. SOC. SERV. LAW § 331 (McKinney 1992 & Supp. 1999). The Social Services Law states, "[i]t is hereby declared to be the policy of the state that there be programs under which individuals receiving public assistance will be furnished work activities and employment opportunities, and necessary services in order to secure unsubsidized employment that will assist participants to achieve economic independence." *Id.* In 1995, New York City commenced its "enhanced Work Experience Program," ("WEP") with the goal of moving public assistance recipients into full-time jobs. *See Brukhman v. Giuliani*, 662 N.Y.S.2d 914, 916 (Sup. Ct. 1997), *rev'd*, 678 N.Y.S.2d. 45 (App. Div. 1998) (discussing New York City's workfare program). Under the program, welfare recipients must seek out private-sector work for 30 to 45 days with the supervision of New York City Human Resources Administration ("HRA") welfare caseworkers. Liz Willen, *Change is in the Cards/For Better or for Worse, New Laws and Attitudes Will Continue to Remake the Welfare State*, NEWSDAY (N.Y.), May 23, 1999, at A19. Welfare recipients who cannot find private-sector jobs must take City workfare employment at the penalty of having their benefits suspended. *Id.* To enable welfare recipients to find employment, between May 1998 and July 1999, HRA converted 19 Income Support Centers into 16 Job Centers. CITY OF NEW YORK, MAYOR'S MGMT. REPORT, Vol. I, at 251 (1999) [hereinafter MAYOR'S MGMT. REPORT Vol. I]. By August 1999, 10 Job Centers included on-site services or Learning Labs. *Id.* By the end of Fiscal 1999, all 16 Job Centers included Resource Rooms that provide public assistance applicants with assistance in arranging child care, referrals for assistance with home and family problems and employment related activities such as help with job searching, resume preparation and interviewing techniques. *Id.* at 252.

⁵ WEP participants are sent to various employment sites in both the private and public sectors. For instance one such agency, the New York City Housing Authority ("NYCHA"), provided full time employment to 469 WEP participants during the 1999 fiscal year. MAYOR'S MGMT. REPORT Vol. I, *supra* note 3, at 122. The New York City Department of Parks and Recreation also employed WEP participants. MAYOR'S MGMT. REPORT Vol. I, *supra* note 3, at 150. In addition, the Department of Parks and Recreation also provides a career training

service system and outside the regular wage hour and collective bargaining structures of public employment.

I should make brief disclosures before we go further. I have represented union members as plaintiffs in a lawsuit challenging certain workfare assignments at a City agency. In addition, the Association has taken certain public positions concerning workfare.⁶

We are most fortunate to have an extraordinary panel of speakers to discuss this topic and I would like to introduce them.

Alan Finder, who many of you may recognize from NY1,⁷ has been a reporter on the Metropolitan Staff of the New York Times for thirteen years covering housing, labor, transportation, legal affairs, government and politics. He served in the New York Times' City Hall bureau from 1986 through 1987, during the Koch

program that found 279 WEP participants employment in the private sector for 30 days or longer. MAYOR'S MGMT. REPORT Vol. I, *supra* note 3, at 150. WEP participants are sent to over 350 WEP sites throughout New York City. Human Resources Administration, *Welfare to Work* (visited Nov. 8, 1999) <http://www.ci.nyc.ny.us/html/hra/html/welfare_to_work.html>.

⁶ See generally *Bar Committee Report*, *supra* note 1 (discussing the Committee's recommendations on welfare). The Committee has recommended to the State Legislature to use its authority under TANF to minimize the displacement effects of workfare on regular workers. *Bar Committee Report*, *supra* note 1, at 19. With regard to the minimum wage protection contained in the Social Services Law, the Committee recommends that these laws be maintained with a modification for workfare participants. For workfare participants, the Committee recommends that the work requirement be "calculated on the basis of the prevailing wage for comparable work within six months after starting work." *Bar Committee Report*, *supra* note 1, at 29. The Committee supports explicit protections for workfare participants under the State's workfare laws against discrimination. *Bar Committee Report*, *supra* note 1, at 46. In order to ensure that workfare participants are protected in the workplace, the Committee recommends that workfare participants be classified as public employees and, accordingly, receive protections under the State's Public Employee Occupational Safety and Health Law. *Bar Committee Report*, *supra* note 1, at 52.

⁷ NY1 is Time Warner's 24-hour news channel available to Time Warner's cable customers in New York City. Its primary focus is a half-hour "news wheel," which begins with a "NY1 Minute," followed by the weather and news reports. See NY1, *About NY1* (visited Nov. 8, 1999) <http://www.ny1.com/-AboutNY1/ny1_info.html> (discussing the purpose and focus of NY1).

Administration, and was City Hall Bureau Chief in 1992 and 1993, during the Dinkins Administration. He currently works on project-length stories on various urban issues and is also co-host of a weekly reports show on New York 1. Last April, the New York Times ran an exhaustive four-part series about various aspects of workfare of which Mr. Finder was both one of the writers and coordinators.⁸

Mark Hoover is the First Deputy Commissioner of the New York City Human Resources Administration (“HRA”), which is the City agency responsible for the administration and implementation of the City’s welfare programs, including its workfare components. Mr. Hoover, along with HRA Commissioner, Jason Turner, came to New York last year to take over responsibility for that agency. For many years they have been involved in the development of workfare programs that largely have been reported and viewed as a model for other jurisdictions. Mr. Hoover worked for twenty-five years in the Wisconsin Department of Health and Social Services,⁹

⁸ The New York Times published a series of four articles, entitled *Does Workfare Work?*, evaluating several aspects of workfare. See Alan Finder, *Evidence Is Scant That Workfare Leads to Full-Time Jobs*, N.Y. TIMES, Apr. 12, 1998, at A1 (discussing findings that workfare has failed to move a significant number of people from welfare to full-time work); Steven Greenhouse, *Many Participants in Workfare Take the Place of City Workers*, N.Y. TIMES, Apr. 13, 1998, at A1 (revealing that workfare participants are doing the same jobs as municipal workers but are not being paid equivalent salaries); Rachel L. Swarns, *Mothers Poised for Workfare Face Acute Lack of Day Care*, N.Y. TIMES, Apr. 14, 1998, at A1 (focusing on the lack of free day care promised to workfare participants); Vivian S. Toy, *Tough Workfare Rules as Way to Cut Welfare Rolls*, N.Y. TIMES, Apr. 15, 1998, at A1 (reporting that workfare participants have not successfully left the public assistance program).

⁹ The Wisconsin Department of Health and Social Services is now called the Wisconsin Department of Health and Family Services. This agency administers health programs in the areas of maternal and child health, dental health and disease prevention. See Wisconsin Department of Health and Family Services, *About the Department of Health and Family Services* (visited Nov. 8, 1999) <<http://www.dhfs.state.wi.us/aboutdhfs/index.htm>> (discussing the purpose and function of the Wisconsin Department of Health and Family Services). The workfare program called “Wisconsin Works,” or “W-2,” went into effect between July 1996 and September 1997. WIS. STAT. § 49.141(2)(b) (Supp. 1999). Wisconsin Works requires recipients of aid to work, virtually without exception.

and holds a masters degree in public administration and a bachelor's degree in business administration from the University of Wisconsin at Madison.

Liz Krueger is the Associate Director for the Community Food Resource Center ("CFRC").¹⁰ She has been associated with CFRC for ten years. CFRC is a non-profit organization dedicated to helping New Yorkers in need gain and maintain access to nutritious food, affordable and decent housing, adequate income, and supplemental government benefits. As Associate Director of CFRC, Ms. Krueger has directed its program known as "Access to Benefits." The mission of the Access to Benefits program is to help ensure the best practices and maximum utilization of government programs intended to improve opportunities for low income New Yorkers. Ms. Krueger has been quoted prominently in stories and surveys about the workfare programs in New York City and has been an outspoken critic on certain aspects of those programs.¹¹

Id. § 49.141(2)(a). The State itself creates community jobs and pledges services, such as child care, to all who need them. Jason DeParle, *Wisconsin Welfare Overhaul Justifies Hope and Some Fear*, N.Y. TIMES, Jan. 15, 1999, at A1. Since the inception of Wisconsin Works, the percentage of former recipients who found jobs has remained high. *Id.*

¹⁰ CFRC, founded in 1980 in New York City, runs a wide variety of programs, which include: soup kitchens; eviction prevention; welfare advocacy; food stamp pre-screening; child and adult nutrition education; and referrals to food pantries and soup kitchens. See *Advocacy on Behalf of Low-income People in New York City* (Community Food Resources Center, New York, N.Y.), Nov. 1999 (on file with the *Journal of Law and Policy*) (describing CFRC's programs).

¹¹ See, e.g., Dan Janison, *Legality of Welfare Policy in Question/Focus on Whether City Withheld Benefits*, NEWSDAY (N.Y.), Nov. 9, 1998, at A19 (discussing Liz Krueger's explanation that New York City's workfare programs "create delays and obstacles, legally, on would-be welfare applicants [and] makes it impossible for them to claim their legal right to federal food and Medicaid benefits if poor"); Robert Polner, *Welfare Sweep/City Evaluating More Mothers, Pregnant Women for Work Detail*, NEWSDAY (N.Y.), Apr. 3, 1999, at A3 (discussing Liz Krueger's concern about the vulnerability of those affected by City's workfare programs); Graham Rayman and Mohamad Bazzi, *Ax to Food Stamps/City Will End Waiver of Work Requirement*, NEWSDAY (N.Y.), Feb. 25,

Mary J. O'Connell is Assistant General Counsel to District Council 37 ("DC 37") of the American Federation of State County and Municipal Employees ("AFL-CIO").¹² Ms. O'Connell currently serves as lead counsel on now a total of four cases challenging workfare assignments at various City agencies including the New York City Health and Hospital Corporation and the Parks Department.¹³ She is a graduate of the State University of New York at Buffalo School of Law and an active member of the Committee on Labor and Employment Law of the Association.

1999, at A3 (discussing Liz Krueger's explanation that changes in the requirements may result in one million food stamp recipients losing their benefits); Rachel L. Swarns, *A New Broom Needs a New Handle; Welfare as We Know It Goes Incognito*, N.Y. TIMES, Jan. 29, 1998, at D1 (discussing Liz Krueger's statement that the naming process does little to help welfare recipients find work).

¹² Mary J. O'Connell is now the Senior Assistant General Counsel to DC 37. DC 37, an unincorporated labor and public employee organization, is a confederation of 56 local labor unions that represents over 100,000 employees of New York City. See Brief Amicus Curiae in Support of the Plaintiffs-Appellants at 4, *Brukhman v. Giuliani*, 678 N.Y.S.2d 45 (App. Div. 1998), *appeal docketed*, (N.Y. Nov. 30, 1999). The members of DC 37 are employed in various City agencies, boards and public corporations. *Id.*

¹³ DC 37 currently is challenging the use by the City of New York to displace its members with WEP participants. In four cases pending before the New York State Supreme Court, New York County, DC 37 alleges that the City has and continues to violate a section of New York State Social Services Law, which states that workfare assignments that displace currently employed workers are illegal. N.Y. SOC. SERV. LAW § 336-c(2)(e). See *Saunders v. City of New York*, No. 107675/1999 (N.Y. Sup. Ct. filed Apr. 14, 1999) (challenging the City's use of WEP workers to perform clerical work at the New York City Human Resources Association, Administration for Children's Services, and Department of Sanitation); *Rosenthal v. City of New York*, No. 103750/1999 (N.Y. Sup. Ct. filed Feb. 24, 1999) (challenging the City's use of WEP workers to perform entry level work and more skilled tasks in the Park's Department); *Saunders v. City of New York*, No. 102129/1999 (N.Y. Sup. Ct. filed Feb. 4, 1999) (challenging the City's use of WEP workers in the Park's Department); *Saunders v. City of New York*, No. 106673/1998 (N.Y. Sup. Ct. filed Apr. 16, 1998) (challenging the City's use of WEP workers in public hospitals).

Gail Aska is a founding member, former Administrative Director and presently the Program Coordinator of Community Voices Heard.¹⁴ Community Voices Heard is a community organization representing low income people in the New York City area. It focuses on organizing benefit entitlements and advocating welfare reform. Ms. Aska left the shelter system with her son some time ago to enter permanent housing. Shortly thereafter, she became a volunteer and leader of an organization called Project Welcome at the Grand Wyndham Social Services Agency. Afterwards, she became a founder of Community Voices Heard. Ms. Aska will share with us the activities of her organization and the perspective of being on workfare.

Finally, Professor Lawrence Mead is a professor of politics at New York University where he teaches public policy on American government. Professor Mead is a graduate of Amherst College. He received his Ph.D. in political science from Harvard University. He has been a visiting professor at Harvard, Princeton and the University of Wisconsin. He has also been a visiting fellow at Princeton and at the Hoover Institution at Stanford University. Professor Mead is an expert on issues of poverty and welfare in the United States. He has authored several books on the subject including *Beyond Entitlement*,¹⁵ *The New Politics of Poverty*,¹⁶

¹⁴ Community Voices Heard ("CVH") is a welfare advocacy group from New York City. See John Caher, *Welfare Recipients Rally to Press for Jobs, Benefits*, TIMES UNION (Albany, N.Y.), July 16, 1997, at B2. The group is involved in trying to obtain benefits, education and training for welfare recipients. *Id.* Members have lobbied the New York State Legislature to create a program to "provide low-income people with jobs as health educators, community gardeners, outreach workers, building rehabilitation specialists and teachers aides." *Id.* The organization opposes Governor Pataki's welfare-to-work initiatives because it believes that the initiatives "force[] public assistance recipients to perform meaningless work in inhumane conditions." *Id.*

¹⁵ LAWRENCE M. MEAD, *BEYOND ENTITLEMENT: THE SOCIAL OBLIGATIONS OF CITIZENSHIP* (1985).

¹⁶ LAWRENCE M. MEAD, *THE NEW POLITICS OF POVERTY: THE NONWORKING POOR IN AMERICA* (1993).

and *The New Paternalism*.¹⁷ He is currently working on a book on welfare reform in the State of Wisconsin, which he studied at the same time Commissioner Turner and First Deputy Commissioner Hoover were carrying that program forward.

Our moderator for the evening is Ronald Tabak who is special counsel to the law firm of Skadden, Arps, Slate, Meagher & Flom. He is Chair of the Committee on Civil Rights of the Association of the Bar of the City of New York.

¹⁷ LAWRENCE M. MEAD, *THE NEW PATERNALISM: SUPERVISORY APPROACHES TO POVERTY* (1997).

To introduce the subject of workfare, I would imagine that everybody on the panel, and everybody in attendance, favors the idea of moving people off of welfare and into paying jobs, with the proviso that those who need suitable day care for their children will be provided for, and that those people with disabilities will be reasonably accommodated. The question, of course, is how best to achieve that goal. Workfare in theory, and workfare in New York, which is called the Work Experience Program or “WEP” is a form of job training focused on how to become an employee.¹ One works for a period of time while under the auspices of the welfare program and what one “earns” goes toward paying for one’s benefits. A goal of WEP is that participants will end up with a workfare-independent paying job. Obtaining a workfare job is not the ultimate goal; paid employment is the ultimate goal.

There are questions about whether workfare, even if administered under an ideal program, is preferable to a system, where after a certain amount of job training, people are placed directly into paying jobs. There is also an issue about whether, as proposed by pending state and federal legislation, welfare recipients could obtain paying jobs through the use of federal and state funds.² Thus, one

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¹ The New York City Human Resources Administration has been converting Income Support Centers to Job Centers, at which services are provided to those receiving public assistance in conjunction with the State Department of Labor. CITY OF NEW YORK, MAYOR’S MGMT. REPORT, Vol. I, at 251 (1999). The Centers are administered by the State Department of Education. *Id.* Through this program, participants’ skills first are assessed by staff to determine skill level. *Id.* Participants then are engaged in 14 hours a week of job search, education, or training activities and 21 hours a week of WEP activities, resulting in a 35-hour work week. *Id.*

² For example, Assemblyman Roberto Ramirez (D-Bronx, New York) has introduced a bill to create the Empire State Jobs Program that would create at least 4000 wage-paying public and non-profit jobs that welfare recipients

broad issue is whether job training and job creation programs are possible alternatives to workfare for public assistance recipients.

But, let us assume that there is reason, even if only temporarily, to have a workfare program. Questions then arise, and in some instances lawsuits and even court decisions, about how New York City has gone wrong in implementing workfare.³ That includes questions as to who is participating in workfare and the reasons why people have been removed from welfare for not complying with workfare regulations. Do the workfare assignments help people get paying jobs? Is any individualized assessment done with regard to who should be placed in workfare and where they should be placed? Or, is there a danger that, or a reality in which, welfare recipients are forced to decide between being sanctioned off of welfare or, alternatively, to have to take inadequate day care for their children? Has New York City unnecessarily deterred people from getting education by, among other things, requiring a greater number of hours in noneducational work activities or by disapproving placements on campus under the workfare program?

required to work could fill for up to 18 months in order to lead to permanent employment. Bill No. A07632, 1999-2000 Reg. Sess. (N.Y. 1999).

³ See, e.g., *Matthews v. Barrios-Paoli*, 676 N.Y.S.2d 757, 764 (Sup. Ct. 1998) (holding that work assigned to high school students under the workfare program “interfere[s] with [their] educational activities in violation of the [applicable] statute”); *In re Hesthap v. Hammons*, 660 N.Y.S.2d 602, 603 (Sup. Ct. 1996) (holding that the decision of the New York City Department of Social Services to assign a nursing student to workfare activities interfered with her nursing school schedule and thus violated the applicable statute). See also *In re Santana v. Hammons*, 673 N.Y.S.2d 882, 888 (Sup. Ct. 1998) (holding that public assistance recipients “are subject to irreparable harm from the improper termination of assistance and the requirement that they engage in mandatory [workfare] activities that are beyond their medical capabilities or are inconsistent with their medical diagnosis”); *In re Bryan v. Hammons*, 662 N.Y.S.2d 691, 695 (Sup. Ct. 1997) (holding that the decision of the New York City Department of Social Services to terminate a public assistance recipient’s benefits for her alleged refusal to comply with workfare requirements was “arbitrary, capricious, and contrary to law”). But see *In re Ortiz*, 654 N.Y.S.2d 993, 994-95 (Sup. Ct. 1997) (stating that amendments to the Social Services Law require that “all able bodied adults receiving Home Relief participate in Workfare,” and dismissing a 20 year-old’s petition to annul the termination of his benefits for his failure to participate in the workfare program).

Regarding this question, a decision earlier this month by Justice Braun in a case called *Davila v. Turner*, held that the Social Services Law was violated by assigning virtually all welfare recipients to workfare at the exclusion of other qualifying activities such as education and training.⁴

For people with disabilities, there are additional questions. Are there people who are being required to engage in workfare who should not because of their disabilities? Or, are there people who could function in the workfare program but who need reasonable accommodations in order to function and, are they being accommodated? There was a recent First Department decision called *Mitchell v. Barrios-Paoli*,⁵ that raised questions about that subject. With regard to City employees and former City employees, has the workfare program been used in a manner to displace workers on the payroll of New York City through workfare appointments? If this has truly occurred, is that result proper? There are lawsuits that

⁴ *Davila v. Turner*, N.Y.L.J., Apr. 16, 1999, at 26, Col. 4 (N.Y. Sup. Ct. Apr. 15, 1999). *Davila* was a class action suit, in which plaintiffs, single parents on public assistance, challenged the City's workfare requirements for the receipt of public assistance benefits. *Id.* Plaintiffs claimed that work assignments interfered with their education and that defendants did not comply with the requirements regarding individual assessments, employability plans and individual preferences. *Id.*

⁵ *Mitchell v. Barrios-Paoli*, 687 N.Y.S.2d 319 (App. Div. 1999) (reversing the New York supreme court's class action certification and modifying the preliminary injunction). The court ruled upon a claim of public assistance recipients, who alleged failure of the Commissioner of the City Department of Social Services to assign them, as welfare recipients, to employment consistent with their employability limitations as required by City regulations. *Id.* at 325. The appellate division modified the supreme court's order enjoining the City from assigning certain disabled WEP participants to WEP jobs and sanctioning other disabled individuals for not participating in WEP. *Id.* While finding the City's notification and appeal procedures regarding assigning the disabled to WEP placements to be flawed and unfair, the appellate court upheld the lower court's injunction only to the extent of suspending the named plaintiffs' WEP assignments during the pending action and requiring the City to provide disabled welfare recipients "adequate and timely notice of their rights." *Id.* See also *id.* at 321-24. (describing in detail the City's procedures for placing, notifying and handling the appeals of disabled welfare recipients).

challenge the use of workfare participants in place of paid employees.⁶

There are also issues regarding whether health and safety precautions are implemented at workfare job sites. Are mechanisms for dealing with grievances that workfare participants may have about their placements being implemented? There is one case that is on appeal called *Stone v. Sweeney*,⁷ in which the lower court held that a workfare participant is not entitled to have an advocate represent his interests at a worksite health and safety inspection, a right that would be available to him, if he were a part of a formal union. Yet, a workforce worker does not have the right to join or form a union.⁸ Is there any difficulty with that? Finally, what happens if a workfare participant is sexually harassed?⁹

These are some issues that have been raised, and I hope that, as we go through the panel, we will hear discussions on these and other subjects. We will now start with Alan Finder of the New York Times who will summarize the reporting that the Times has conducted on the workfare program.

⁶ District Council 37 is currently challenging the displacement effect of workfare participants on City employees. See *supra* comments of Robert Stulberg, at p. 114 & n.13 (listing the lawsuits).

⁷ *Stone v. Sweeney*, 698 N.Y.S.2d 645 (App. Div. 1999) (refusing to find arbitrary and capricious the Public Employee Safety and Health Bureau's decision to disallow a third party representative who is not a WEP worker or a union representative to assist a workfare worker in the health and safety complaint and review process).

⁸ See Alan Finder, *Marchers Call on Giuliani to Support Workfare Union*, N.Y. TIMES, Dec. 11, 1997, at B24 (citing New York City officials as stating that since welfare is temporary and recipients are not City employees, those participating in workfare are not permitted to be represented by a union).

⁹ New York City contends that workers are not entitled to the protections provided by the federal civil rights laws prohibiting sexual discrimination in the workplace. Nina Bernstein, *City Must Shield Workfare Force on Harassment*, N.Y. TIMES, Oct. 1, 1999, at A1.

*Alan Finder**

Allow me to talk briefly about how we happened to take on this workfare series and what we were trying to accomplish by doing it. The series ran about a year ago, which meant it was reported from November or December of 1997 through early April of 1998.¹ The original purpose of our effort was to find an answer to a very broad question: What has been happening to all the people who leave the welfare roles in New York City?

As you all know, people have been leaving welfare in record numbers, but no one knows exactly what has become of them after departing. There is a methodology that social scientists use that we employed to answer that question. This method is used around the country and it is usually undertaken with the aid of local, state or county authorities. Basically, you take the full list of people who have left the welfare roles between point A and point B, tens or hundreds of thousands of people in the case of New York, and

* Mr. Finder is currently an Enterprise Editor for the New York Times. Previously, he served as a reporter on the metropolitan staff for 13 years covering housing, labor, transportation, legal affairs, government and politics. Mr. Finder served in the City Hall Bureau in 1986 and 1987, during the Koch Administration, and was City Hall Bureau Chief in 1992 and 1993, during the Dinkins Administration.

¹ The New York Times published four articles evaluating several aspects of New York's Work Experience Program ("WEP") in a series entitled *Does Workfare Work?*. The first article discussed the author's findings that workfare has failed to move a significant number of people from welfare to full-time work. Alan Finder, *Evidence Is Scant That Workfare Leads to Full-Time Jobs*, N.Y. TIMES, Apr. 12, 1998, at A1. The second article in the series revealed that the workfare participants are doing the same job as municipal workers but are not being paid equivalent salaries. Steven Greenhouse, *Many Participants in Workfare Take the Place of City Workers*, N.Y. TIMES, Apr. 13, 1998, at A1. The third article focused on the lack of free day care promised to workfare participants. Rachel L. Swarns, *Mothers Poised for Workfare Face Acute Lack of Day Care*, N.Y. TIMES, Apr. 14, 1998, at A1. The final article reported that workfare participants have not successfully left the public assistance program. Vivian S. Toy, *Tough Workfare Rules as Way to Cut Welfare Rolls*, N.Y. TIMES, Apr. 15, 1998, at A1.

from that group a random sample is drawn of four, six or eight hundred participants. Then, you go out and try to find and interview them. Clearly, this is no easy task. We had a hard time doing this because the City would not grant us a list of welfare participants for several reasons. One such reason was the confidentiality component of the Social Services Law that states that the City may not disclose the names of people on welfare.² The New York Times ultimately sued for the release of the information and prevailed.³

During the year or so that the lawsuit was in progress, the editors decided upon a rigorous look at workfare, without the social science method, but under the usual journalistic practice of talking to as many people as possible. What we sought to do was to get in the middle of what has been a passionate debate between the Giuliani administration, which thinks that workfare has been a very useful tool to teach people various skills that will help them get jobs, and people who are critical of the WEP program who think that it is punitive, draconian and unfair. We intended the series to examine the workfare program, not by reporting what the City said and how advocates responded, but by reporting based upon scores of interviews and accounts of visits to many workfare job sites.

We sought answers to several questions: What are the working conditions like? What do participants think of workfare? Did they learn things from workfare, and if so, what? Do people move from workfare to real jobs and, if so, how? Are participants in workfare replacing civil servants? Is there enough child care for this very large group of workers? How are the rules used by the City? Are people thrown off the roles through the enforcement of rules? How

² N.Y. SOC. SERV. LAW § 136(1) (McKinney 1992) (stating that the “names and addresses of persons . . . receiving public assistance and care shall not be . . . printed in any newspaper”). However, “a bona fide news disseminating firm or organization” shall be allowed to inspect the books and records of the disbursements made for public assistance and care. *Id.*

³ *New York Times Co. v. City of New York*, 673 N.Y.S.2d 569, 578 (Sup. Ct. 1998) (finding that the New York Times was entitled to inspect the books and records of the public welfare system under § 136(1) of the Social Services Law pursuant to the 1960 amendment to the Social Services Law that authorized such examination upon request).

frequently does that occur and is it for major infractions or minor infractions? Is workfare in fact responsible for the sharp decline in the welfare roles in New York City?

In the end, we entered the series with the assumption that we would have to try to answer these questions on our own. This assumption turned out to be true. None of the officials from the government chose to be interviewed for the series. The Mayor's spokesman explained that it is a well known program and they did not want to participate in our investigation. Of course, this was their prerogative but, on the other hand, one would think the Administration would want to discuss a program of which the Mayor is very proud. Ultimately, we sought the answers by going on a daily basis to job sites, indoor and outdoor, and talking to workfare participants and their supervisors. We hoped these people would help shed some light on the independent data that existed.

We found a number of unexpected things. We found that the vast number of adults who are on welfare at any given time are not actually enrolled in workfare. In fact fewer than ten percent of the adults were enrolled at that time.⁴ I am sure that the proportion has changed somewhat since our investigation, but at the time fewer than ten percent of the adults on welfare were actually in workfare.⁵ We found this to be true for a variety of different reasons, including that some welfare recipients are not healthy enough to participate in workfare and that the City appears to running out of appropriate jobs for workfare participants.⁶

⁴ See Finder, *supra* note 1, at A1 (stating that the 34,100 people in workfare make up fewer than 10% of the adults on welfare).

⁵ According to the Mayor's Management Report, in fiscal year 1999, 33,833 out of the approximately 690,000 welfare recipients participated in WEP. CITY OF NEW YORK, MAYOR'S MGMT. REPORT, Vol. II, at 108 (1999). It must be noted that these figures constitute all welfare recipients, many of whom are children who are not eligible to participate in workfare. See N.Y. SOC. SERV. LAW § 332(1)(b) (McKinney 1992 & Supp. 1999) (exempting from work requirements all children under 16 years of age and those under 19 years of age attending school on a fulltime basis).

⁶ See Finder, *supra* note 1, at A1 (stating that often workers are sent home early since there is not enough work to do). The number of workers available for workfare may be impacted due to the difficulty of approximately 3000 single workfare mothers to find suitable day care for their children. See Swarns, *supra*

We found that often there was not enough for workfare workers to do, especially for those in the outdoor jobs—street sweepers and the like—and especially in the winter when people are not outside and thereby littering. In fact, very often I would go to a park in the mid-morning and the crew that had come to work at eight or nine o'clock had already gone home.

We also found that most WEP workers were treated well and respected by their supervisors. Many supervisors expressed a degree of empathy for them as many low-level supervisors come from the same communities as the WEP workers. Many supervisors, especially in the Parks Department, came out of similar programs in the 1970s and 1980s such as CETA⁷ and worked their way from welfare to civil service.

We found that working conditions were not as poor as they had been the year before in the most extreme cases. Some of those extreme cases involved women who had been denied access to bathrooms while they were working on the sides of highways cleaning. There was a lawsuit about this, in fact.⁸ This situation

note 1, at A2. The low turnout rate in workfare programs has been attributed to many things. For example, many welfare recipients are also victims of domestic violence and fear being beaten if they leave the house to report for their work assignment. Karen Lam, *Economics of Abuse*, A. MAG., July 31, 1998, available in 1998 WL 12447139).

⁷ Comprehensive Employment and Training Act of 1973 ("CETA"), Pub. L. No. 93-302, 87 Stat. 839 (1973). Under CETA, the federal government provided funds to local governments for the creation of job training programs. The programs also created publicly funded jobs in public and non-profit agencies to assist people without jobs during periods of high unemployment. See Kathryn R. Lang, Note, *Fair Work, Not "Workfare": Examining the Role of Subsidized Jobs in Fulfilling States' Work Requirements Under the Personal Responsibility and Work Reconciliation Act of 1996*, 25 FORDHAM URB. L.J. 959, 982 n.160 (1998). In 1978, more than 700,000 people were employed across the nation at an annual cost to the federal government of \$4 billion. *Id.* In 1982, CETA was repealed and replaced with the Job Training Partnership Act, Pub. L. No. 97-300, 96 Stat. 1322 (1982); Pub. L. No. 97-404, 96 Stat. 2026 (1982), amended by Pub. L. No. 99-496, 100 Stat. 1261 (1986). The authorization to create publicly funded jobs is not included in the new law. Lang, *supra*, at 982 n.160.

⁸ Tamika Capers, on behalf of WEP participants, brought a class action lawsuit against New York City Mayor Rudolph Giuliani seeking injunctive relief, claiming that their WEP assignments violated the United States Occupational

has been fixed by and large, although in some cases access to rest-rooms, drinking water and appropriate gear was still a problem.

During the course of our investigation, we often found a sense of purposelessness in the program. One example is a slightly dramatic one, but, it makes the point. I met a woman, Eustacia Ojeda, just outside Prospect Park in the Parade Grounds in Brooklyn. She was in her late fifties and Latino. She grew up outside the country and has lived here for a number of years. She worked for fourteen years in a liquor store in Williamsburg. The owner of the shop retired and the shop closed. She said she tried to get another job, but that she was unable to do so. She thought that this was because of her age and her English—she can make herself understood but it is difficult. Now, through workfare, for the past year she has been assigned to raking the City Parade Grounds. When I met her she was very upset at the fact that raking leaves and showing up on time has not helped her get a job in the private sector. Every participant in workfare is not like Eustacia Ojeda, but a substantial number are.

One of the things we found was that the “one size fits all” aspect of workfare in many cases is inappropriate. We found that there were many cases of workfare participants and civil servants doing the same tasks side-by-side. As an example, there was a building downtown that once had twenty civil servant custodians but, through attrition, the staff shrunk to three civil servant custodians. Oddly enough, the gap had been filled by dozens of WEP workers who did virtually the same work as the civil servants who remained in the building. This was not the case with the park cleaners and street sweepers. These jobs had once been done by civil servants, whose jobs had been done away with in the early 1990s for budgetary reasons. The tasks went unperformed until the

Safety & Health Act (“OSHA”). They claimed that they were “not adequately provided with personal protective clothing and equipment” and that they had “inadequate access to toilet facilities and potable water.” *Capers v. Giuliani*, 677 N.Y.S.2d 353, 354 (App. Div. 1998), *appeal denied*, 711 N.E.2d 199 (N.Y. 1999). Although the New York State Supreme Court granted the injunctive relief, the appellate division dismissed the complaint because the plaintiffs did not exhaust their administrative remedies. *Id.* at 355. The New York State Court of Appeals denied the plaintiffs’ leave to appeal. *Capers*, 711 N.E.2d at 199.

workfare participants arrived in the late 1990s. Unlike with the street sweeping, the City never stopped the daily cleaning of the buildings. It is just being done by different people.

In child care we found that there was a severe shortage of licensed child care and that City caseworkers were often leaving workfare participants with the impression that they would be cut from welfare if they could not find child care. But, what the law says is that, if the City is unable to find child care, a mother on welfare is not required to perform her workfare assignment.⁹ The impressions of the workfare participants were accurate, however, because the reporter who did the article on childcare actually went with a number of clients and listened to their conversations with caseworkers.¹⁰

Finally, we also found that WEP participants are very vulnerable to abuse. They enjoy few rights, few protections and virtually

⁹ N.Y. SOC. SERV. LAW § 332-a (McKinney 1992 & Supp. 1999) (stating that “[a] social services district shall, subject to the availability of federal and state funds, provide such supportive services, including but not limited to . . . child care for children up to age thirteen . . . in accordance with regulations of the department, to enable an individual to participate pursuant to this title.”). *Id.*

¹⁰ Swarns, *supra* note 1, at A1. In one instance, a caseworker in the borough of Queens said to a mother, that had made 12 attempts to find child care, “they’re [workfare administrators] going to reduce your benefits if you can’t find anyone. . . . Can you survive on less money? No? Well, you have to find somebody—a neighbor, a friend, somebody. You have 10 days. No more excuses.” Swarns, *supra* note 1, at A1.

The New York Times series found that while no one seems to have actually lost benefits for refusing to work when they could not find child care, many of the 17,000 women on workfare have been left scrambling to find someone to watch their children. Swarns, *supra* note 1, at A1. The “threats” by caseworkers have forced women to leave their children in sub-standard care. Swarns, *supra* note 1, at A1. Seventy-five percent of the mothers in workfare rely on unlicensed babysitters. Swarns, *supra* note 1, at A1. For example, one woman who was so frightened by a caseworker’s threats to revoke her welfare benefits left her 17-month-old daughter with a woman who kept the girl strapped in a dirty stroller all day. Swarns, *supra* note 1, at A1. The baby sitter thought that was the best way to keep the baby safe. Swarns, *supra* note 1, at A1. Overall, New York lacks child care for 61% of the children whose mothers are supposed to participate in workfare this year. Swarns, *supra* note 1, at A1. The City needs to create 29,000 more day care slots in order to be able to move all welfare mothers into work. Swarns, *supra* note 1, at A1.

no leverage in dealing with City supervisors. For example, in the Castle Hill neighborhood in the Bronx, there is a small playground. Assigned to the playground were three or four workfare participants who worked there several times a week. One of the workers mentioned that they did not have rain gear or boots and that they were working outdoors often when it was wet and cold. She did not think it was fair, and found it odd that they were not provided with equipment, since she had seen in the nearby district park office storeroom, large quantities of new coats, gloves, hats and related equipment. When she asked for the equipment they would not let her have it. At some point after speaking with the WEP workers, their supervisor, who happened to be a former CETA participant, joined the conversation. Two things happened the next day. Every WEP worker in that district was driven to the district office and outfitted with raingear, boots, gloves and hats. The other, was that a senior member of the Parks Department called me up and angrily asked me what I was doing in the parks without their permission. My answer was this: I have been doing this for two months and purposely so without their permission because I knew it would not be granted. Furthermore, it was not their park.

I am First Deputy Commissioner of the New York City Human Resources Administration.¹ To begin, I think that we all know that the Mayor has announced that he wants to end welfare and replace it with work opportunities for everyone by the end of this year.²

* First Deputy Commissioner, New York City Human Resources Administration (“HRA”).

¹ HRA is the City agency responsible for the implementation of New York City’s welfare system, including its workfare program, which helps individuals and families receiving public assistance to achieve financial independence. CITY OF NEW YORK, MAYOR’S MGMT. REPORT, Vol. I, at 249 (1999) [hereinafter MAYOR’S MGMT. REPORT Vol. I].

² The Mayor intends to end welfare by the year 2000 “by establishing a comprehensive work and support structure that enables public assistance applicants and recipients to progress toward and achieve self-sufficiency and unsubsidized employment.” MAYOR’S MGMT. REPORT Vol. I, *supra* note 1, at 249. In a more detailed description of New York City’s welfare-to-work program, the Mayor stated in August 1998:

Since 1995, we’ve moved more than 400,000 people off our welfare rolls and towards lives of self-sufficiency. Over 250,000 people have moved through our Work Experience Program, which gets people back in the workforce and reasserts the basic social contract—that for every right there is a duty, and for every benefit, an obligation.

Now, to make these gains permanent, we’ll go even further. On July 20 [1998], I announced that New York City will take the unprecedented step of ending welfare by the year 2000, and put in its place a system of earnings in exchange for benefits Welfare offices throughout the city will be turned into Job Centers, as four centers across the city already have been transformed. Instead of looking to add another person to the rolls, Job Centers do everything possible to add another person to the work force—to give people real independence in their own lives.

Rudolph W. Giuliani, *The Mayor’s Corner: Getting People Off Welfare and Toward Self Sufficiency*, FILIPINO REP., Aug. 20, 1998, at 22. According to the City’s current official estimates, since the initiation of the Work Experience Program (“WEP”), the number of persons receiving public assistance funds has decreased to 655,633. MAYOR’S MGMT. REPORT Vol. I, *supra* note 1, at 252. This is a 43.5% decline from the 1,160,593 public assistance recipients in March

What has amazed me since coming to New York, quite frankly, is that New York seems to have the greatest wealth of programs in the country, but for the most part what you hear from the outside is, of course, the kind of thing we will hear tonight about what does not work with workfare or about something that happened to an individual. A lot of these problems have always been here; they are not new. They happened to get attached to welfare reform, but in fact, go way back because there have been work requirements and work programs long before TANF ever began.³ I think the thing that has changed with TANF, of course, is that it envisions time limits and that it envisions that everyone who is able to work

1995. MAYOR'S MGMT. REPORT Vol. I, *supra* note 1, at 252.

³ Temporary Aid to Needy Families ("TANF") is a program under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 that provides public assistance block grants to states. 42 U.S.C. §§ 601-608 (Supp. III 1997). The states may then distribute money under their individually designed welfare systems. *Id.* TANF fundamentally altered the nature of the welfare system by setting mandatory work requirements in order for states to receive federal grants, thus eliminating guarantees of public assistance. Kathryn R. Lang, Note, *Fair Work, Not "Workfare": Examining the Role of Subsidized Jobs in Fulfilling States' Work Requirements Under the Personal Responsibility and Work Reconciliation Act of 1996*, 25 FORDHAM URB. L.J. 959, 960-61 (1998). While TANF mandates work requirements, it was not the first welfare program to do so. The last 30 years have seen several modifications toward work requirements of the initial welfare benefits program started under the Aid to Families with Dependent Children program ("AFDC") in 1935. *Id.* at 962-63. In 1967, Congress enacted the Work Incentive Program ("WIN"), which provided welfare recipients an incentive to work by allowing a portion of money earned at an unsubsidized job to be disregarded by the government when calculating the amount of monthly welfare benefits a family receives. *Id.* at 963-64 & n.35 (citing Social Security Amendments of 1967, Pub. L. No. 90-248, Title II, Part I, § 202, 81 Stat. 821, 884-92 (1967)). In 1981, the Omnibus Budget Reconciliation Act ("OBRA") amended and supplemented the WIN program initiating three new voluntary work programs. *Id.* at 965-66. The OBRA voluntary work programs were the precursor to the 1988 Family Support Act ("FSA"), which extended work participation mandates to a larger portion of welfare recipients. *Id.* at 966-67. Under the FSA, for the first time, the federal government mandated that specific proportions of AFDC recipients participate in a federal work program. *Id.* at 966. The federal government has now replaced these work requirement programs with the TANF block grant programs. *Id.* at 969.

works.⁴ It is no longer an entitlement program. There is sort of a mandatory reciprocal agreement under TANF in which a beneficiary receives benefits in exchange for work. The result is that if you do not want to participate in work activities, then you do not reap the benefits either. I think that what we have been looking at, in terms of excluding from this program any welfare, is providing everyone with a real opportunity to move into work; it is the ideal of making sure that one is always trying to move people right into a job from the day they come into the welfare office. Whatever activities you are working on when you are moving from welfare to work, your objective is to move quickly into regular paid employment. That is the most desirable situation. No one should stay in other activities if, in fact, one can get connected to a real job.

It is essential to have day care, and we have been looking at how to make day care seamless. New York just finally came out with rules to achieve a seamless system, although, it is really part of the welfare reform legislation that New York passed a couple of years ago.⁵ More funds are available for a day care system now that will really help the people, who are at risk of falling off of welfare unless they get day care assistance, or people who in fact are participating in activities, to move from welfare to work. We

⁴ An adult may not receive assistance under TANF for more than five years. 42 U.S.C. § 608(a)(7)(A) (Supp. III 1997). States receiving TANF grants must have a minimum rate of work participation by welfare recipients, which varies depending on the fiscal year. 42 U.S.C. § 607(a)(1) (Supp. III 1997). Participation is evaluated each month according to how many families participating are engaged in the work for that month. 42 U.S.C. § 607(b)(1)(B) (Supp. III 1997). “[A]n individual shall not be considered to be engaged in work by virtue of participation in [a job search or job readiness assistance] . . . after the individual has participated in such an activity for 6 weeks . . . or if the participation is for a week that immediately follows 4 consecutive weeks of such participation.” 42 U.S.C. § 607(c)(2)(A)(i) (Supp. III 1997).

⁵ The New York State legislature guaranteed child day care to each individual participating in public assistance employment programs such as workfare. N.Y. SOC. SERV. LAW § 332-a (McKinney 1992 & Supp. 1999) (stating that a “social services district shall, subject to the availability of federal and state funds, provide such supportive services, including but not limited to . . . child care for children up to age thirteen . . . in accordance with regulations of the department, to enable an individual to participate pursuant to this title”).

have a number of things that we have been talking about to a variety of people, who are actually in this room, as to how to make both the system seamless and how to make sure that people have adequate opportunities for a whole range of day care choices.

Another issue that we have been working on lately, which frequently arises, is education. We now have made sure that everyone that is participating in WEP also has educational opportunities that we pay for and for which we provide child care. In our vision, all workfare participants should be participating in a simulated work week of a combination of work and training if they are not able to move into a job right away.⁶ The other thing that we worked out recently with CUNY⁷ is that we will provide vouchers through the higher education aids to help working poor families who are still on welfare, but are not earning enough to actually leave welfare. I will not get into the details because I am not supposed to, but essentially, if you work and know that you are still eligible for welfare even though you are working, these vouchers will allow you to get additional training at CUNY in order to move to a higher paying job that allows you to truly move out of and to get some distance from poverty.⁸ In essence, the goal

⁶ One of the objectives of HRA, in accordance with the workfare initiatives, is to “[d]evelop models to support the requirement that public assistance recipients participate in a simulated 35-hour work week designed to engage them in work and improve their employability by the end of Fiscal 1999” and to “implement [these] models by the end of Fiscal 2000.” MAYOR’S MGMT. REPORT Vol. I, *supra* note 1, at 249.

⁷ The City University of New York (“CUNY”), working with HRA, has developed programs to assist welfare recipients with obtaining job skills. MAYOR’S MGMT. REPORT Vol. I, *supra* note 1, at 252.

⁸ HRA allocated \$3.25 million of a \$4 million state allocation in 1999 for the development of the Individual Vocational Educational Skills Training program (“INVEST”). MAYOR’S MGMT. REPORT Vol. I, *supra* note 1, at 252. INVEST offers “short-term vocational training courses at [] CUNY to individuals who are working but are still receiving” public assistance. MAYOR’S MGMT. REPORT Vol. I, *supra* note 1, at 252. The purpose of INVEST is to enhance the skills of its participants so that they may receive jobs with high enough salaries to eliminate their reliance on public assistance. MAYOR’S MGMT. REPORT Vol. I, *supra* note 1, at 252. CUNY offers courses at non-traditional times so that public assistance recipients who work may attend classes. MAYOR’S MGMT. REPORT Vol. I, *supra* note 1, at 252. HRA used the remaining \$750,000 of the

is to move welfare recipients to higher level jobs so that their welfare cases can be closed because they are earning enough money. We look forward to being able to do more of this kind of activity as funds are freed up as a result of the welfare roles declining.

I think it is important to, and we do recognize, that there are very many different groups of people in the welfare population. There are people who have attended college and people who, in fact, are not literate and have major issues in terms of English as a second language. To address this educational disparity, we have worked out a contract with the State Office of Vocational and Educational Services. They will be running a program for 20,000 of the welfare population in terms of movement from welfare to work, who are not on or going on Supplemental Security Income ("SSI"),⁹ to ensure that we have appropriately trained staff and appropriate programs to work with those individuals.¹⁰ That is really one of the major things on which we are focusing with the new welfare-to-work money that the City has received, because we feel that program has a long relationship with the community and has a trained staff and is licensed and certified to be able to appropriately assess and work with disabled individuals.

We also have major efforts underway now that we are working with the Office of Alcoholism and Substance Abuse Services

State allocation to fund community-based organizations in 17 locations on or near CUNY campuses that operate and monitor WEP work sites. MAYOR'S MGMT. REPORT Vol. I, *supra* note 1, at 252.

⁹ See 42 U.S.C. § 1383 (1994 & Supp. III 1997) (defining eligibility for SSI payments under Title XVI of the Social Security Act administered by the Social Security Administration). SSI is available to individuals who are blind or disabled and poor. *Id.* The amount of SSI an individual receives depends on several factors including, but not limited to, other sources of income and living arrangements. *Id.* SSI eligibility typically allows the recipient to receive Medicaid payments as well. *Id.* In January 1999, 6.6 million individuals received federally administered SSI benefits. See Social Security Administration, *1999 SSI Annual Report* (visited Nov. 21, 1999) <<http://www.ssa.gov/search97/cgi>>.

¹⁰ To assist welfare recipients deficient in the English language, HRA has increased the capacity of English as a Second Language, Adult Basic Education, and General Equivalency Diploma programs from 9060 slots to 13,925 slots. MAYOR'S MGMT. REPORT Vol. I, *supra* note 1, at 252.

(“OASAS”) and the substance abuse community on how to integrate work as a part of a drug treatment program. We are receiving funding from the State for drug programs.¹¹ The people who are heading these initiatives for HRA are clinicians, psychiatrists and other appropriately trained people to make the appropriate clinical decisions as to how to best evaluate people who have substance abuse problems, and how we make sure they are in the most appropriate treatment so they do not just cycle through detox. They will also decide how to provide the funding as fortunately there is greatly increased funding in the last year and a half that will allow us to do many more quality things for substance abusers, about which people have been concerned.

As noted, when discussing workfare, issues arise regarding food stamps and Medicaid and how to handle these areas. We have now approved new positions in all the Job Centers for people to focus on medical assistance.¹² There, the issue is one of inclusion and

¹¹ OASAS is a New York State agency that provides services for the substance-abusing populations throughout the entire State through a network of over 1200 community based providers. OASAS, *About the New York State Office of Alcoholism and Substance Abuse Services*, (visited Nov. 17, 1999) <<http://oasas.state.ny.us/pio/oasas.htm>>. In addition, OASAS operates 13 Addiction Treatment Centers around New York State. *Id.*

In the Spring of 1998, HRA integrated its substance abuse treatment services with welfare-to-work activities. MAYOR’S MGMT. REPORT Vol. I, *supra* note 1, at 252. Under this program, any public assistance recipient who is deemed to be a substance abuser under New York State’s criteria is referred for a drug treatment assessment and is “subsequently assigned to concurrent WEP activities and outpatient drug treatment as appropriate.” MAYOR’S MGMT. REPORT Vol. I, *supra* note 1, at 252. If it is determined that the recipient is a serious substance abuser, “HRA may grant up to a 90-day work exemption and mandate[] that individuals receive intensive treatment for a minimum of 15 hours a week as a condition of [public assistance] eligibility.” MAYOR’S MGMT. REPORT Vol. I, *supra* note 1, at 252.

¹² In response to an injunction stopping HRA from opening new Job Centers or converting Income Support Centers to Job Centers until the City formulated a plan to address “apparent systemic violations of federal and State law,” HRA has instituted a corrective action plan. *Reynolds v. Giuliani*, 43 F. Supp. 2d 492, 494. (S.D.N.Y. 1999), *modifying* 35 F. Supp. 2d 331 (S.D.N.Y.). One of the areas the City was ordered to improve was assisting welfare recipients in applying for and receiving Medicaid benefits. *Id.* at 495-97. HRA has now developed a training program to train Job Center staff to properly assist welfare

entitlement, trying to especially make sure that all children are covered by health care.¹³ This is an issue HRA considers very important. The issue of food stamps is a mixed one, in which you have some of the population for which there is no work requirement, and part of the population for which there is.¹⁴ The idea is that we should also be assisting them with finding employment opportunities so they can support themselves and their families.

I think that the real challenge to the City, and the challenge to all of those who are concerned about welfare-to-work programs, is how do we take these high quality programs and learn from them to help the participants. What I think was stated earlier was that most of us believe that people are much better off being included in society—included in terms of being able to support themselves. The real challenge to everyone is how to change the welfare system into a guaranteed work opportunity program from a welfare entitlement system that excluded many people and wrote them off. The old system had considerable social consequences that I doubt

recipients. *Id.* at 497.

¹³ Approximately 20% of children in New York City lack health insurance. Amanda Gardner, *The Trouble With Being Uninsured; Rising Costs of Healthcare Leaving More Low-Income Patients—Especially Kids—in Harms Way*, N.Y. DAILY NEWS, Feb. 15, 1999, at 29. Some children may seek coverage under Child Health Plus, a medical insurance program for uninsured children in low-income families who earn incomes above the level which qualifies one for Medicaid. *Id.* New York State's implementation of the Child Health Plus program was delayed in fiscal 1999 "pending the selection of enrollment facilitators." MAYOR'S MGMT. REPORT Vol. I, *supra* note 1, at 255.

¹⁴ Under federal law, food stamp recipients may be required to find work in three months or lose their benefits. Graham Rayman & Mohamad Bazzi, *Ax to Food Stamps—City Will End Waiver of Work Requirement*, NEWSDAY (N.Y.), Feb. 25, 1999, at A3. Areas with high unemployment, however, have the option to waive the work requirement. *Id.* In March 1999, New York City required "able-bodied adults" without dependents that receive food stamps to meet the federally mandated work requirements. MAYOR'S MGMT. REPORT Vol. 1, *supra* note 1, at 254. According to HRA, requiring work in return for food stamps is "the best way to help people gain self-sufficiency." Rayman & Bazzi, *supra*, at A3. To ensure that those required to work do not lose their food stamp eligibility, HRA and the State Department of Labor will "offer them job search assistance and, when necessary, work assignments." MAYOR'S MGMT. REPORT Vol. 1, *supra* note 1, at 254.

anyone really wants to see continue. People are much better off participating with all of us in this wonderful world of work. I think that we at HRA embrace all of you to help us realize that goal.

I will end with that point rather than begin to defend the workfare program against all the criticism it has received. I think it is better to focus on what we can do to realize what everyone seems to agree is a desirable goal, giving everyone employment opportunities and enabling them to work to support themselves and their families.

I represent the Community Food Resource Center.¹ According to the newspapers, it is the best economic times in about twenty-five years. After all, the stock market is above 10,000, but there are still two million people living in poverty in New York City.² We have 1100 emergency food pantries and soup kitchens turning people away each month.³ We have an enormous homeless problem. We have an enormous housing problem. We also have an enormous responsibility handed to us under federal and state welfare reform acts to convert large numbers of unemployed into workers, with the goal of moving them out of poverty.

* Associate Director, Community Food Resource Center ("CFRC").

¹ CFRC, founded in New York City in 1980, runs a wide variety of programs including: soup kitchens; eviction prevention; welfare advocacy; food stamp pre-screening; child and adult nutrition education; and referrals to food pantries and soup kitchens. *See Advocacy on Behalf of Low-income People in New York City* (Community Food Resource Center, New York, N.Y.), Nov. 1999 (on file with the *Journal of Law and Policy*) (describing CFRC's programs). CFRC also runs a program, "Access to Benefits," which "works to promote fair and rational policies on hunger, income support, and access to living wage jobs." *Id.* Access to Benefits staff digest complex welfare data and prepare "user-friendly" analyses of the data for other advocacy groups, politicians and the media. *Id.*

² *See* Nina Bernstein, *Poverty Rate Persists in City Despite Boom*, N.Y. TIMES, Oct. 7, 1999, at B1 (stating that "despite the strongest economy in years, nearly one out of four [New York City] residents had incomes below the Federal Government's poverty threshold last year . . . [which is] twice as high as the national average" and that the 24% poverty rate in the New York-New Jersey metropolitan area was higher than that of other major urban areas in the United States).

³ Andrew C. Revkin, *As Need For Food Grows, Donations Steadily Drop*, N.Y. TIMES, Feb. 27, 1999, at A1. ("New York City, which had only three dozen [food] pantries and soup kitchens in 1980, had 600 in 1992 and now has about 1,100."). These food pantries and soup kitchens are organized by both small "church-basement" groups and larger county, state and national operations such as the Community Food Bank of New Jersey and Second Harvest. *Id.*

My first criticism of the workfare program, as we have it in New York City, is that it is not moving people out of poverty. It is helping to move people off of welfare, but off of welfare does not mean out of poverty. There are many models of welfare that New York City is currently using that are moving people off of welfare. Unfortunately, or in some cases fortunately, several of them have been found illegal by the courts.⁴ I do not believe the task is to move people off of welfare. I believe the assignment is to move people up and out of poverty, and workfare, as a model, has not proven to be successful at that task.

When I was doing research for tonight's presentation, I found an article by the New York City Housing Authority ("NYCHA").⁵ It goes on to say how successful the City agencies' workfare programs have been. Their data showed that between 1996 and 1998, 10,750 Work Experience Program ("WEP") program participants went through NYCHA assignments and 274 were hired as employees of the NYCHA.⁶ That is a two and one-half percent hiring rate, or you can look at it as a ninety-seven and one-half percent non-hiring rate.

The City of New York uses a variety of criteria to measure the probable success of programs in order to have welfare recipients assigned to those programs or to receive government funding in exchange for operating their programs. I have not seen any

⁴ See, e.g., *Matthews v. Barrios-Paoli*, 676 N.Y.S.2d 757, 764 (Sup. Ct. 1998) (holding that work assigned to high school students through workfare programs "interfere[s] with [their] educational activities in violation of the [applicable] statute"); *In re Hesthap v. Hammons*, 660 N.Y.S.2d 602, 603 (Sup. Ct. 1996) (holding that the decision of the New York City Department of Social Services to assign a nursing student to workfare activities interfered with her nursing school schedule and thus violated the applicable statute). See also *In re Santana v. Hammons*, 673 N.Y.S.2d 882, 888 (Sup. Ct. 1998) (holding that public assistance recipients "are subject to irreparable harm from the improper termination of assistance and the requirement that they engage in mandatory [workfare] activities that are beyond their medical capabilities or are inconsistent with their medical diagnosis").

⁵ See Eileen Elliot, *From Welfare to Work in Pomonok Houses Two Profiles in Perseverance*, N.Y.C. HOUSING AUTHORITY J., Mar. 1998, at 5 (commenting on the success of WEP).

⁶ *Id.*

program that had only a two and one-half percent hiring rate that was recognized as an acceptable or approvable program, except for workfare. Furthermore, NYCHA has its own federal Housing and Urban Development (“HUD”) obligation to hire low income tenants into jobs.⁷ Just to stress this point, NYCHA is supposedly one of the great success models. That same article states that about half of the people that they have hired out of the two and one-half percent figure were in fact tenants of NYCHA developments.⁸ So again, my frustration with workfare is for multiple reasons, but the greatest frustration is that I believe it does not work to accomplish the goal of moving people out of poverty and into living wage employment.

Along the line of not succeeding with that goal, workfare has done a number of things to which I also object. It ultimately decreases the opportunities for people to move from welfare-to-work. Workfare actually decreases people’s opportunities to move into jobs because it shrinks the labor market. I know that one of my fellow speakers is going to address that,⁹ but basically, from an employer’s perspective, if you can get the work done without paying a real living wage, why would you go ahead and pay somebody. The workfare system also decreases people’s opportunities to continue to participate or to get into programs that would better meet the need of helping people move up and out of poverty. It takes people away from the time they would otherwise have for education and training or for job placement programs that have had more success, such as the CUNY system, in moving people off of welfare and into paid employment and out of poverty.¹⁰

⁷ See 12 U.S.C. § 1701u(c)(1)(A) (1994). “The Secretary shall require that public . . . housing agencies, and their contractors and subcontractors, make their best efforts, to give low- and very low-income persons the training and employment opportunities generated by development assistance.” *Id.*

⁸ See Elliot, *supra* note 5, at 5.

⁹ See *infra* comments of Mary J. O’Connell, at pp. 145-47 (discussing the effects of workfare on the labor market).

¹⁰ Many of the colleges in the City University of New York (“CUNY”) system have created programs to aid students receiving public assistance to find permanent employment. For instance, Medgar Evers College sponsors a program to train students for significant New York area employment positions. City University of New York, *A Report on the Economic Impact of CUNY* (visited

Workfare has been a very successful model for sanctioning people off of welfare. It is a churning program with between thirty and fifty percent of the people in workfare assignments at some point in time having their cases closed or their benefits reduced based on their failure to participate successfully in some way in the program.¹¹ The problem with this “fail-or-participate” concept is that it is an extremely subjective decision made by agencies that have no real requirement to defend their decision of when they sanction someone, or why they find somebody non-compliant. They target a population of people that has few means of challenging the non-compliance decision and resulting sanction.

Of course, the other irony of sanctions, is that sanctioning people does not move them into jobs. Nor does it move them out of poverty. Sanctioning is also quite expensive administratively for the City because people have to reapply and have their case opened and closed, over and over again. There has been some talk in the past that workfare did not work so well for City agencies, but that it would work better for not-for-profit agencies. There is no evidence that shows that in fact it does. While I do not have many details, perhaps the Commissioner can speak on this issue.

I am particularly concerned about the combination of the displacement effect¹² and our taxpayer dollars going to subsidize

Nov. 13, 1999) <<http://www.cuny.edu/textonly/abt/cuny/fff/impact98/-medgar.html>>. Those who complete the program obtain such well-paying jobs that fewer than one percent who have completed the program have had to apply for transitional first year public assistance benefits. *Id.*

¹¹ Liz Krueger et al., *An Update on the Current Reality in New York City for Welfare Recipients Participating in a Mandatory Work Experience Program (WEP)*, WORKFARE: THE REAL DEAL II (Community Food Resource Center, Inc., New York, N.Y.), July 1997, at 7.

¹² The displacement effect refers to the fear that workfare jobs are replacing those same opportunities for non-workfare regular employees. See Christopher Tilly, *Workfare's Impact on the New York City Labor Market: Lower Wages and Worker Displacement*, RUSSELL SAGE FOUNDATION WORKING PAPER NO. 92, at 1 (March, 1996) (discussing the impact of workfare programs on the workforce as a whole). In conducting a “standard labor market analysis,” Tilly estimates that the likely effect of workfare on New York City’s workforce would be to displace 20,000 regular workers and to reduce wages. *Id.* According to New York State law, a workfare assignment may not result in the displacement or partial displacement of other members of the workforce. N.Y. SOC. SERV. LAW

the for-profit companies using unpaid workers instead of paid employees.¹³ There has been a lot of research on this point about how the larger a WEP program becomes, the more likely paid workers are displaced by unpaid WEP workers. In fact, there is an economic depression impact on the price of labor.¹⁴ Again, if you can get labor for free or close to free, why would you pay living wages? Or, why would you stay with unions and pay their level of wages and benefits? I think this is an ongoing concern that we see challenged through the courts and now being challenged by District Council 37.¹⁵ WEP is leading to lower labor standards, not just for WEP workers, but for all workers in general.

To close, Commissioner Hoover spoke about wanting quality programs and I agree with him one hundred percent. New York City needs to get back on the road towards finding quality programs that invest in people and help them move into real living-wage jobs while ensuring that they get the maximum government subsidies for which they are eligible. I would hope that we would have a chance now to reevaluate what we have learned in this City over the last five years from an expanding workfare program and face the challenge that we have—to move from programs that to some degree are “one size fits none” into a variety of programs. In fact, the programs should address the real needs of the true diversity of people that are receiving public assistance in New

§ 336-c(2)(e)(i) (McKinney 1992 & Supp. 1999).

¹³ N.Y. SOC. SERV. LAW § 336(1) (McKinney 1992 & Supp. 1999). “Social Services districts may provide, and require applicants for and recipients of public assistance to participate in a variety of activities, including but not limited to the following . . . (b) subsidized private sector employment.” *Id.*

¹⁴ See Tilly, *supra* note 12, at 1 (stating that the addition of workfare workers to the workforce will likely result in a nine percent wage decrease for the lowest-paid 30% of New York’s workforce).

¹⁵ District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO is a confederation of labor unions that represents approximately 120,000 employees of New York City. See Brief Amicus Curiae in Support of the Plaintiffs-Appellants at 4, *Bruckman v. Giuliani*, 678 N.Y.S.2d 45 (App. Div. 1998), *appeal docketed*, (N.Y. Nov. 30, 1999) (describing District Council 37). See *infra* comments of Mary J. O’Connell, at p. 146-47 & n.17 (discussing DC 37’s involvement in *Bruckman v. Giuliani*, 678 N.Y.S.2d 45 (App. Div. 1998)).

York City. They need a lot more than they are getting in order for them to become employable and to move out of poverty.

*Mary J. O'Connell**

I am here representing District Council 37,¹ to discuss the effect of workfare on the regular civil service workforce. Before I do that, I want to discuss for a moment what the regular workforce should look like and how employees who work for a public employer should be treated. We know, first of all, that there should be enough workers to do the job at hand. We know that they should be selected on the basis of merit and fitness. We also know that they should receive a decent wage and work under appropriate and decent terms and conditions of employment. These principles as to what the civil service system is supposed to look like are embodied in our public policy and in our state constitution, as well. In light of this, it has been questioned what the workfare program is supposed to look like. At the very least, workfare is not supposed to be an end in and of itself, but a means by which to find a real job. In addition, workfare is not supposed to displace the regular workforce. This leads to the question, what is displacement?

New York State law, in effect since 1997, sets forth a number of ways in which displacement might occur and, in fact, should not occur.² A recipient cannot be assigned to a WEP placement if that assignment results in displacement or the loss of a position,

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¹ DC 37 is an unincorporated labor and public employee organization and a confederation of 56 local labor unions that represents approximately 120,000 employees of New York City. Members of DC 37 are employed in various City agencies, boards and public corporations. *See* Brief Amicus Curiae in Support of the Plaintiffs-Appellants at 4, *Bruckman v. Giuliani*, 678 N.Y.S.2d 45 (App. Div. 1998), *appeal docketed*, (N.Y. Nov. 30, 1999) (describing DC 37).

² *See* N.Y. SOC. SERV. LAW § 336-c (McKinney 1992 & Supp. 1999) (effective Aug. 20, 1997 and setting forth the restrictions on Work Experience Program ("WEP") assignments).

including partial displacement of a regular worker.³ Partial displacement results if such a worker were to lose an employment benefit.⁴ The WEP assignment is also not to impair a collective bargaining agreement.⁵ The assignment is not supposed to occur when there is an employee layoff or if the employer has otherwise reduced its workforce with the intention of putting a workfare participant into that vacancy.⁶ Workfare is not supposed to cause any infringement of promotional opportunities for regular employees.⁷ It is also not supposed to allow workfare participants to perform work ordinarily and actually performed by the regular workforce.⁸ Furthermore, workfare is not supposed to result in a loss of bargaining unit positions.⁹ So what does all of that mean? Simply stated, at least from the union's perspective, we believe that workfare cannot be used to create a second-class workforce—a virtual underclass of permanent workers for whom there is no real opportunity to secure regular employment.

³ A workfare assignment may not result in “the displacement of any currently employed worker or loss of position [] including partial displacement.” *Id.* § 336-c(2)(e)(i).

⁴ A work assignment violates the law if it has a partial displacement affect such as, “reduction in the hours of non-overtime work, wages or employment benefits” *Id.*

⁵ A work assignment may not result “in the impairment of existing contracts for services or collective bargaining agreements.” *Id.*

⁶ “[T]he employment or assignment of a participant or the filling of a position [is invalid] when any other person is on layoff from the same or any equivalent position or the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the effect of filling the vacancy so created with a participant assigned pursuant to this section.” *Id.* § 336-c(2)(e)(ii).

⁷ A workfare assignment is illegal if it results in “any infringement of the promotional opportunities of any current employed person.” *Id.* § 336-c(2)(e)(iii).

⁸ A workfare assignment shall not result in “the performance, by such participant, of a substantial portion of the work ordinarily and actually performed by regular employees.” *Id.* § 336-c(2)(e)(iv).

⁹ A workfare assignment shall not result in “the loss of a bargaining unit position as a result of work experience participants performing, in part or in whole, the work normally performed by an employee in such a position.” *Id.* § 336-c(2)(e)(v).

With that background in mind, let us talk about the workfare program in New York City as it presently exists. We believe the program as it is constructed undermines these fundamental principles and protections which are entrenched in our public policy in New York State. Additionally, we have found in talking to our current and former members who either were or now are WEP participants that the program does not lead to a real job. We know, and it has been mentioned this evening, that many agencies have come to rely on WEP participants. They are used extensively by the Parks and Sanitation Departments and the Human Resources Administration ("HRA").¹⁰ We know that the current administration is quite proud of this because they tout that information and talk about it in the *Mayor's Management Report*.¹¹ However, these workers are not doing work that otherwise would not get done. Furthermore, this workforce has become entrenched and when one WEP worker leaves, another comes to take his or her place.

So then, what effect does this have on the regular workforce? In speaking with our members I have noted the following. First, many workers are grateful for the help of the WEP workers. The number of regular workers is sometimes insufficient to complete all the work that needs to get done at a given work site. Second, all of our members feel that WEP workers are good workers and are being treated unfairly and should get a regular job because they are doing the same work that they are. The regular workforce does feel threatened in the context of a layoff situation such as what happened in the City hospitals about a year ago.¹² The regular workers certainly believe that if the WEP participants were there,

¹⁰ The Department of Parks and Recreation assigned a bi-weekly average of 5207 WEP participants to workfare placements. CITY OF NEW YORK, MAYOR'S MGMT. REPORT, Vol. I, at 150 (1999). The Department also assigned 465 of the most motivated participants of the program in the Department's Parks Career Training Program. *Id.* At HRA Job Centers, participants worked 21 hours under the WEP program and had 14 hours of training a week as part of its job placement services. *Id.* at 251.

¹¹ *Id.*

¹² See *Saunders v. City of New York*, No. 106673/1998 (N.Y. Sup. Ct. filed Apr. 16, 1998) (challenging the City's use of WEP workers in public hospitals).

the WEP participants would be used to perform the work that they have been performing and would prevent their recall to their regular job. Even without the immediate threat of layoffs, workers still feel threatened—why should the City pay for its workers when they can get this work so cheaply?

In addition, we find that the WEP program not only impacts the entry level workforce, but higher level workers as well. Contrary to popular belief, we have found that WEP workers frequently do have skills. They can perform complex and responsible duties not typically associated with entry level workers or workers who have had no prior employment experience. New York City is using these skills and in so doing is not only exploiting the WEP workers, but is depriving regular entry level workers of promotional opportunities or the opportunity to learn a skilled trade.

Our bargaining units are also being eroded by the use of WEP workers, harming organized labor. This is a simple and obvious argument. There is strength in numbers and when those numbers decline, so does the union's strength and, consequently, the ability of the union to fight for and secure better working conditions for its members. Finally, another argument voiced by organized labor is that the use of workfare participants drives down the wages of lower level workers. I am not an economist, but they argue that these programs undermine wage rates, not only of the participants' counterparts in the public sector, but of low wage workers in the private sector as well. If I may, I would like to quote an article by Christopher Tilly written in 1996, published by the Russell Sage Foundation.¹³ He noted that the estimated effect of the 30,000 current workfare placements of home relief recipients, now called Safety Net, is to displace 20,000 other workers, to reduce wages for the bottom-third of the workforce by nine percent, or some combination of the two extremes. The nine percent wage drop would reduce average hourly wages for the lowest paid thirty

¹³ See Christopher Tilly, *Workfare's Impact on the New York City Labor Market: Lower Wages and Worker Displacement*, RUSSELL SAGE FOUNDATION WORKING PAPER NO. 92, at 1 (Mar. 1996) (discussing the impact of workfare programs on the workforce as a whole). In conducting a "standard labor market analysis," Tilly estimates that the likely effect of workfare on New York City's workforce will be to displace 20,000 regular workers and to reduce wages. *Id.*

percent of New York's workforce from \$6.33 to \$5.76, emphasizing that this estimate is not for City employees alone. It implies that wages will be nine percent lower than they would have otherwise been for the bottom third of the entire New York City workforce, both public and private. We argued this policy point unsuccessfully when DC 37 along with the American Federation of State, County and Municipal Employees,¹⁴ the Service Employees International Union¹⁵ and the New York State AFL-CIO¹⁶ appeared as amici to the plaintiffs in the *Brukhman v. Giuliani* case.¹⁷

¹⁴ The American Federation of State, County and Municipal Employees ("AFSCME") is a union that represents employees in a wide variety of public services and in the non-profit private sector, such as clerical workers, hospital workers, social workers and correctional officers. American Federation of State, County and Municipal Employees, *Join AFSCME* (visited Nov. 14, 1999) <<http://www.afscme.org/join/index.html>>.

¹⁵ Service Employees International Union ("SEIU") is a union for healthcare, building service, and public sector workers. Service Employees International Union, *Join SEIU* (visited Nov. 3, 1990) <<http://www.seiu.org/join/index.html>>. Members of SEIU include doctors, nurses, health technicians, janitors, food service workers, office workers, school employees and professionals. *Id.* SEIU has 1.3 million members. Service Employees International Union (visited Nov. 3, 1990) <<http://www.seiu.org/body.html>>.

¹⁶ See New York State AFL-CIO, *New York State AFL-CIO Introduces Newly Elected President Denis M. Hughes at Press Conference Albany, New York* (visited Nov. 14, 1999) <www.nysaflcio.org/news_releases/-president_hughes_release.htm> (describing the union). The New York State AFL-CIO, "an umbrella union of unions," is the largest State Labor Federation in the country, representing more than one-third of the workforce in the State. *Id.*

¹⁷ *Brukhman v. Giuliani*, 678 N.Y.S.2d 45 (App. Div. 1998). Recipients of Home-Relief and Aid to Families with Dependent Children ("AFDC") brought an action challenging the level of wages received pursuant to WEP assignments within the New York City workforce. *Id.* at 47. Plaintiffs claimed that as WEP workers they performed equivalent tasks of regular City employees and thus deserved equivalent wages and benefits, the denial of which violated several state constitutional and statutory provisions. *Id.* Plaintiffs succeeded at the trial court level in obtaining an injunction to stay the enforcement of WEP obligations. *Brukhman v. Giuliani*, 662 N.Y.S.2d 914, 921 (Sup. Ct. 1997), *rev'd*, 678 N.Y.S.2d 45 (App. Div. 1998). The appellate division reversed, holding that recipients were not entitled to the protection of constitutional provisions extending prevailing wage protection to employees of contractors and subcontractors performing public work, that WEP did not result in an unconstitutional taking, and that the program did not violate equal protection. *Brukhman*, 678

To sum up, we do not believe workfare is working. We do not believe it is working for either the participants or the regular City workforce. Ultimately, we do not believe that it is working for the citizens of New York City because it does not, in fact, put people to work. A real jobs program we believe, would not be a cure-all, but it would present a real opportunity for welfare recipients to obtain real jobs—for with each WEP assignment is a lost opportunity to train somebody for a real job.

N.Y.S.2d at 47.

In October 1999, DC 37, AFSCME, AFL-CIO, the New York State AFL-CIO and SEIU, submitted a brief appealing the appellate division's decision. Brief Amicus Curiae in Support of the Plaintiffs-Appellants at 4, *Brukhman v. Giuliani*, 678 N.Y.S.2d 45 (App. Div. 1998), *appeal docketed*, (N.Y. Nov. 30, 1999). The appeal will come before the New York Court of Appeals in January 2000. Specifically, DC 37 is arguing that the failure of the City to calculate the number of hours to be worked by workfare participants based upon a wage rate paid to City employees for comparable work is unfair and unjust to workfare participants and that such action has a deleterious effect on the current workforce. *Id.* at 6.

I am coming to you from the perspective of some of the actual workers in New York City's Work Experience Program ("WEP"). The organization that I represent, Community Voices Heard¹ represents quite a few of these workers and what we like to say is that WEP, as a training program, instead of getting people into jobs, has succeeded in being a punitive program. It is punishing people for being poor and having no means. It is not a program that offers training of any real caliber. We have people who have been put into WEP who spend an entire day changing the roles of toilet paper in a bathroom. I do not see that as skill-building. I do not see those skills as helping to build a career. We have people who have been in the sanitation programs who have been forced to work with the remains of dead animals with no proper covering on their hands or bodies. We also have people who have been threatened that if they complain they will lose their workfare placement. At one point, we had to go to court to make sure that workers were properly clothed with raincoats, gloves, boots and coverings.² I am sure everyone realizes the threat that taking toxic

* Founding member and Program Coordinator of Community Voices Heard. Ms. Aska has served on the New York City Board of Education Advisory Board for Special Education and on the Advisory Board for the Edna McConnell-Clark Foundation.

¹ Community Voices Heard ("CVH") is an advocacy group consisting of low income people challenging the welfare reform proposals at the City, State and federal levels. *What is CVH?*, 3 CVH ACTION NEWS (Community Voices Heard, New York, N.Y.), Summer 1999, at 2. "CVH has worked to fight cuts in the welfare grant, make improvements in workfare, and give people on welfare a chance to access real jobs, education and training." *Id.*

² Tamika Capers, a representative of WEP participants, brought a class action lawsuit against Mayor Rudolph Giuliani seeking injunctive relief, claiming that their WEP assignments violated the United States Occupational Safety and Health Act ("OSHA"). *Capers v. Giuliani*, 677 N.Y.S.2d 353 (App. Div. 1998), *appeal denied*, 711 N.E.2d 199 (N.Y. 1999). Plaintiffs claimed that they were "not adequately provided with personal protective clothing and equipment" and that they had "inadequate access to toilet facilities and potable water." *Id.* at 354.

waste home on one's clothing poses, but we have had members who have come to us and told us that these stories are true.

What we see here are individuals being treated in a way simply because they represent the poor. We believe it is as simple as that. There is no reason why any person should not be granted safety measures to protect their own person and health and there is no reason why we should have to go to extremes in order to get those things to protect our safety. WEP workers have been threatened in many different ways. We hear frequent complaints about harassment, both sexual harassment and harassment of the type where a worker is told that if he or she does not do something, he or she will lose that placement. And, of course, every worker knows they must adhere to their assignments in order to maintain their benefits.³

Many WEP workers, through the program, have attempted to acquire the skills necessary to get real jobs that will help them get off of welfare. They have been denied that opportunity. We have individuals who, knowing that they have no skills, have requested that they be trained in computers and their requests have been refused. There is the educational aspect, where members who are attempting to go to college and obtain degrees are being denied that education. For example, the chairman of our board, Diane Reese, is going to school to become a nurse. Over the past couple

New York State Supreme Court Judge Jane Solomon granted injunctive relief, however, the appellate division dismissed the complaint because plaintiffs did not exhaust their administrative remedies as required by law. *Id.* at 355-56.

³ Unless due to sickness, minority, old age, pregnancy or the need to care for an infant, applicants for or recipients of welfare are required to participate in work activities. N.Y. SOC. SERV. LAW § 332(1) (McKinney 1992 & Supp. 1999). If workers fail to meet their work assignments, they are ineligible to receive public assistance unless "good cause" for failing to meet such requirements is shown. *Id.* § 342(1) (McKinney Supp. 1999). A recipient of public assistance is considered to have failed to comply with the work requirements if he or she quits or reduces his or her hours of employment without good cause. *Id.* § 342(4). The law defers to the State Social Services Agency the discretion to define good cause. *Id.* § 342(1). However, good cause may be shown if a worker is "the parent or caretaker relative of a child under thirteen years of age." *Id.* Good cause may also be shown if the worker is unable to meet the work requirements due to "his or her health status." *Id.* § 342(5).

of years she has received a letter at the end of the summer telling her not to register for the full term because she was going to have to comply with a WEP assignment. She had to go to court to fight the potential sanctions that accompanied that threat. If I am not mistaken, she had three court appearances because her benefits were sanctioned and she had to return to court to get them. When she first entered school she was waiting for childcare placement for her child. Finally, she had to resort to taking her child with her to school on several occasions because she did not receive proper placement and could no longer jeopardize her education. Thus, as many times as she could, she took the child with her.

Then we had the individual who, realizing there were certain rights to which he was entitled, complained to us that he had no coats, gloves or even plastic bags for the garbage that he was being asked to pick up. We went to that site and tried to see supervisors. While there, we spoke to some of the people and they confirmed that they were no longer being given plastic bags for the containers in which they picked up the garbage in the street. When the supervisors became aware that this initial individual was speaking to us, he was taken aside within the next few days and told that if this continued he would be sent to another site and, in addition, would lose his benefits.

We provide a legal clinic for workfare workers with WEP-related problems to consult a lawyer. This legal clinic, the Workers' Rights Clinic⁴ is run in conjunction with the National Employment Law Project⁵, and we provide WEP workers with

⁴ The Workers Rights' Clinic provides low-wage workers with information about their rights. *Workers Rights Update: Workers' Rights Clinic Expands to Service More Low Wage Workers*, 3 CVH ACTION NEWS (Community Voices Heard, New York, N.Y.), Summer 1999, at 5. The Clinic also informs workers about what they can do if they are not being paid for the work they do, being paid below minimum wage, being harassed at work or are working with dangerous substances. *Id.* The Clinic also allows and encourages workers to come together to demand fair treatment and potentially organize unions. *Id.*

⁵ The National Employment Law Project ("NELP") is the only national civil rights organization that focuses exclusively on the range of employment issues facing the working poor and the unemployed. National Employment Law Project, *NELP News Page* (visited Nov. 18, 1999) <<http://www.nelp.org/About.htm>>. Created in 1969, NELP's goals include: ensuring that employment laws cover all

advice and referrals so that they can fight the injustices that they are experiencing. The gentleman just mentioned came consistently every couple of weeks to find out as much as he could and he took information back to the workers, and for that he was threatened with losing his placement. Thus, workers' rights do not really exist for the workfare worker.

As part of our goal to service our members, as well as the community, we went to the membership and asked what it would take to get them off of welfare. We asked them what they needed because it was quite obvious that nobody had asked them up until now. What they told us was that it would be lovely to have a large grant, a larger grant, but that is not the answer. They want to spend their efforts getting a job, the training that they need to get that job and a helping hand to get it. They want to get off of welfare and stay off. After polling the membership, CVH, along with other organizations whose memberships held the same beliefs, began to spearhead a campaign to create jobs for people, give them some real training and, along with that training, healthcare, childcare and a livable wage. The campaign spelled out in black and white what it would take to get a particular individual off of welfare. We have been fighting for over two years to get this done and I am very proud to say that we are very close.

A bill was recently introduced in the New York City Council, the Transitional Employment Program,⁶ and shortly following that legislation the Empire States Jobs Program⁷ was introduced at the

workers; supporting worker organizing and alliance-building among key constituent groups working with low-wage workers; helping workers stay connected to jobs and employment benefits; and expanding employment laws to meet the needs of workers and families in changing economic conditions. *Id.*

⁶ The Council of the City of New York introduced a bill to create the Transitional Employment Program that would provide temporary transitional employment as an alternative to workfare assignments. The program is designed to create 10,000 permanent jobs in the public and non-profit sectors over a period of five years. The program would also provide participants with job skills, education and training. Council of the City of New York, Local Bill No. 354 (introduced July 15, 1998).

⁷ The Empire State Jobs Program was proposed as an amendment to the New York Social Services Law. No. A07632, 1999-2000 Reg. Sess. (N.Y. 1999). The bill has a five-fold purpose:

state level. What we have here are possibilities and potential ways that people can be trained, given good benefits, childcare and a wage that will somewhat sustain them. We are not saying it will be perfect, but what we are suggesting is a simple alternative to workfare. We were fortunate enough with these proposals that we have acquired support from both Democrats and Republicans, so we feel confident in these proposals.

Workfare is not working. We surveyed approximately 500 workfare workers this past summer at workfare sites and what we found was that they had no hope that their placement was going to lead to a job.⁸ We spoke to people who have been at a particular site for three years and had never been asked or encouraged to fill out a job application. They felt that it was a no-win situation. One individual said to us, "I am going to come out of this door the same way that I went in—I gained nothing new."

(1) to establish and operate a transitional employment program that will lead to unsubsidized permanent jobs in the private and public sectors and as a means of providing participants with relevant job skills, education and training.

(2) to create at least four thousand transitional wage-paying jobs in the public and nonprofit sectors that benefit the community.

(3) to address barriers to employment for public assistance recipients and the long-term unemployed through effective assessment and appropriate support services, training and case management.

(4) to protect existing workers from being displaced by the jobs created by this title.

(5) to increase opportunities for career advancement for current workers in entry-level jobs and meet the increased employer demand for skilled workers, by promoting incumbent worker training.

Id.

⁸ In the summer of 1998, CVH conducted a survey of 483 people on welfare and published a report for the purpose of analyzing the effectiveness of WEP in moving its participants toward real paying jobs. Andrew Stettner, *Welfare to Work: Is it Working? The Failure of Current Welfare-to-Work Strategies to Move the Hardest to Employ into Jobs: A Case for Public Job Creation*, (Community Voices Heard, New York, N.Y.) (Jan. 14, 1999), at 1. *Id.* The data for the survey was collected through field research conducted by CVH volunteers, interns and organizers at workfare work sites in New York City. *Id.* A follow-up survey was conducted in December 1998. *Id.* Professors at the Georgetown University Graduate Public Policy Institute in Washington, D.C. supervised the research. *Id.*

We asked those surveyed if they were properly trained and were told by one gentleman placed in the Parks Department that he was given instructions on the first day and from that point on he was left alone to do the job. He received no more instructions and had no more contact with anyone who was considered an instructor. There was just a supervisor who came around to make sure that he was doing what he was told to do. After three years in the program, this gentlemen in his sixties said he received no encouragement that down the road, if he showed that he was capable, he would be asked to fill out an application for permanent employment. He stated that he did not want to be taken care of by his children but wanted to be able to learn a new trade and new skills so that he could take care of himself. That gentleman is still working in the workfare program and is going on four years and he has yet to be offered any kind of position or even shown a job application.

The bottom line is that a lot of the people that are in need of help are being denied help, benefits, and the training that they need to catapult them to success. Our latest survey showed, following the first, that only eight percent of the people that we talked to from our first survey actually went on to get jobs.⁹ We also found that twenty-two percent had been sanctioned and were pretty much worse off than they were before.¹⁰ We believe this presents the reality of what is going on. There is nothing wrong with people working for their benefits. But, the question remains, is work leading to a real job and is there real training going on. I do not believe there is a career for an individual in changing toilet paper roles in bathrooms. We want real positions and real training for people. We want people who have already been diminished by being in the system to have a chance to uproot themselves and take complete control of their lives again. From polling most of the membership, they want the same thing. They are tired of being used as pawns and want to make it for themselves.

⁹ Community Voices Heard, *City-wide Organization of Welfare Recipients Releases Report Documenting the Failure of New York City's Welfare-To-Work Programs to Move Welfare Recipients Into Jobs* (visited Nov. 3, 1999) <<http://home.earthlink.net/~cvhaction/prjan141.htm>>.

¹⁰ *Id.*

Lawrence M. Mead*

As you see, I am sitting on your *far right*. That is normally my situation, but I noticed that I am on the *far left* of the panel. I would argue that I and Mark Hoover are the real radicals here, as I will try to make evident. Let me try to set this debate in a somewhat broader perspective. In the nation as a whole, welfare reform is proceeding with startling swiftness. Since the passage of the Personal Responsibility Act in 1996,¹ and indeed for a couple of years prior to that, we saw a dramatic drop in the welfare rolls. They are now barely half of what they were five years ago². By most estimates, the main reason for that, besides the very good economy, is the spread of the work requirement in many states and localities around the country. In many places, people on welfare are

* Professor of Politics, New York University; Ph.D. Political Science, Harvard University; B.A. Amherst College. Professor Mead teaches public policy and American government. He is an expert on the problems of poverty and welfare in the United States and the politics of these issues. His books include: *BEYOND ENTITLEMENT* (1986); *THE NEW POLITICS OF POVERTY* (1992); and *THE NEW PATERNALISM* (1997). These works develop the case for work requirements, which has dominated the recent welfare reform.

¹ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in scattered sections of 7, 8, 21, 25 and 42 U.S.C.). The Personal Responsibility and Work Opportunity Reconciliation Act made significant changes to numerous aspects of the federal welfare system, including food stamps, supplemental security insurance, child care, child support and the eligibility of immigrants to receive federally funded benefits. See Craig L. Brisken, *The Waging of Welfare: All Work and No Pay*, 33 HARV. C.R.-C.L. L. REV. 559, 562 (1998).

² *Id.* at 564. "Trumpeting the success of these reforms, backers of the Personal Responsibility and Work Opportunity Reconciliation Act point to the precipitous drop in the state welfare rolls." *Id.* at 565. Statistics of the United States Department of Health and Human Services showed a drop in the number of Americans receiving welfare from 14,225,591 or 5.5% of the population in 1994 to 9,995,000 or 3.7% of the population in August, 1997. *Id.* at 565 & n.28.

simply expected to work, usually in the private sector, and they are doing so or they are not receiving welfare at all.³

The effects of this so far are positive, indeed more positive than I expected. It looks like most people who are taking jobs are better off than before. However, this is not always the case. There are some people who are worse off. But, a large majority are better off now that they are employed. Poverty is falling, work levels are rising, and there is even some evidence that children are doing better in school. It looks like, overall, the effects are quite remarkably positive and the work requirements appear to be a success.

Now, against that backdrop, what is going on in New York is rather strange. The Work Experience Program ("WEP") is unusual in several respects. New York is the only city in the country which has a large stake in public employment as a welfare reform strategy.⁴ The WEP program with over 30,000 slots is much larger than a public employment program that you might find in any other city in the country. There is simply nothing like WEP anywhere in America. It is huge and I think some legitimate questions can be raised about whether this is the best way to move people into jobs.

WEP, by itself, does not create jobs in the private sector. There is legitimate concern among critics that the WEP program is not necessarily moving people outside government. One can ask

³ For example, in 1996, Oregon altered its welfare system and took aggressive steps to get welfare recipients to work as quickly as possible through its JOBS Plus Program, in which welfare clients are placed in six-month on-the-job training positions with local businesses. See Dixie R. Switzer, *Welfare Reform: Oregon's Response to the Personal Responsibility and Work Opportunity Reconciliation Act*, 77 OR. L. REV. 759, 774 (1998). Wisconsin's workfare program focuses on placing clients first with private employers, then with subsidized employers and, if unsuccessful, with community services groups or agencies. *Id.* at 772-73.

⁴ New York City's workfare program is the largest public works jobs program as a result of its compliance with the 1996 federal welfare reform legislation. See David L. Gregory, *Breaking The Exploitation of Labor? Tensions Regarding The Welfare Workforce*, 25 FORDHAM URB. L.J. 1, 14, (1997) (citing David Firestone, *New York Girding for Surge in Workfare Jobs*, N.Y. TIMES, Aug. 13, 1996, at A1). See also Switzer, *supra* note 3, at 772-74 (discussing other states' programs that put people to work in the private sector).

whether WEP is moving people out of poverty. You have heard those concerns tonight. I do think the program probably is having a substantial effect in moving people off of welfare, but we do not have any direct measurement of that, and so the concern and the fear that this program is simply putting people through the hoops is an understandable one. In principal, it would be better to have a policy where we first emphasize a job search in the private sector and then moved on from that to a WEP-like program if people were unsuccessful in getting a private sector job. New York is certainly out of step with the rest of the country, where the emphasis on the private sector is much stronger.

Despite this I think there are some special reasons why New York has been wise to build up the WEP program and why it is, in fact, an asset for the future. A hidden reason for this is bureaucratic. The City, for a number of deeply seated reasons, has had difficulty building a private sector job search into the welfare experience in New York. We have welfare-to-work programs, but they have lacked the authority and bureaucratic resources to subject more than a small share of the case load to a private sector job search. The Human Resources Administration ("HRA") is now moving to rectify that problem, but it is a slow process. It means building a private sector experience into a welfare system that is huge and, on the whole, remote from the private sector.

The second, and I think more serious problem, is that the political opposition to serious work requirements is much stronger in New York than anywhere else in America. This is not because the program is unpopular with the voters. Quite the contrary, as WEP is approved by ninety percent of New Yorkers and eighty-nine percent of welfare recipients.⁵ Thus, although there are certainly welfare recipients who do not like this program, the vast majority of people think it is a good idea. They think it is fair. Surveys of clients in programs like WEP show that most feel good

⁵ Richard J. Behn & Douglas Muzzio, *EMPIRE STATE SURVEY: NEW YORKERS ON THE LIMITS OF WELFARE* 72 (1994).

about their jobs.⁶ The notion that the majority of WEP participants are being abused and resent the program is simply false.

On the other hand, many advocacy and community groups and some politicians strongly resent this program. I think that is what is really peculiar about New York. In most other parts of the country, politicians come around in favor of welfare reform, and the significant opposition is from the academic world, but not from politicians. In New York, you have strong opposition among elected officials, and that I think is unusual. Now, a number of particular issues have been raised in this discussion about what that opposition is about. Issues like displacement, violation of labor rights and the sanctioning of welfare recipients have come up, but I do not think that these are the deepest issues.

The bottom line concern is the question of entitlement. What should we require of people as a condition of aid? I think everyone on this panel would like to have more recipients go to work, but many would like to have that be on a voluntary basis with additional benefits and support from government, without a strict requirement that you go to work. Whereas, what the public wants, and what is effective, is to require definite work effort in return for support. This is not a choice—it is something that must be required as a condition of aid.

In that context, despite the bureaucratic problems and political resistance, I think the WEP program is well justified. WEP ensures that at least some welfare recipients have to work. However, WEP is a second-best way of ensuring that the work experience means something for at least some people. Eventually, it will hopefully move towards something more like what we see in the rest of the country. The real solution, the thing that would eliminate the need for WEP, would be to build in a private sector job search strategy within the welfare system. That is something HRA is trying to do, by implementing the Job Centers which have an up-front job search

⁶ Thomas Brock et al., *Unpaid Work Experience for Welfare Recipients: Findings and Lessons from MDRC Research*, tbl. 5 (Manpower Demonstration Res. Corp., Sept. 1993).

feature, and by taking steps to improve job searching also for people already on the welfare rolls.⁷

It must be emphasized that the really deep problem with New York's WEP program is the political one. The resistance to the work test or work requirement, even in principle, remains extremely strong in New York. I believe that if we focus narrowly on the legal challenges and we talk about particular clients who are abused, we will fail to address the real issue here, which has to do with entitlement: Whether we are prepared to enforce some work requirement in return for aid. Again, the issue is not really work itself, because everyone is in favor of that. It is really whether a work requirement is enforced, and by work, I mean the work that other people face in the private sector. It is one thing to say, let us have a work requirement, but quite another to add all these conditions such as, placement must be in a good job, it has to provide training, and that it has to get you out of poverty immediately. These are conditions a lot of people in the private sector are not able to get themselves. A lot of people are paying taxes in New York City who are working near the poverty line, or under the poverty line, without resorting to benefits. They do not think it is fair that people on welfare should be able to turn that program into a college scholarship. They do not necessarily expect people on welfare to get off of welfare. They do expect them to work

⁷ Between May 1998 and July 1999, HRA converted 19 Income Support Centers into 16 Job Centers. CITY OF NEW YORK, MAYOR'S MGMT. REPORT, Vol. I, at 252 (1999). As a result of this development, by August 1999, 10 Job Centers included on-site services, or Learning Labs, which were provided in conjunction with the State Department of Labor and through contracts that were administered by the State Department of Education. *Id.* These services are available to those participants who are already receiving public assistance. *Id.* Under this system, the skills of the participant are assessed by the contractor staff. *Id.* The participants are then placed in a 35-hour work week with in 14 hours a week of job search, education, or training activities and 21 hours a week spent doing WEP activities. *Id.* The job search activities include "one-on-one appointments with [State Department of Labor] staff, who utilize their on-line job bank, as well as other Internet and HRA resources, to provide employment referrals and placements." *Id.* The remaining six Job Centers are expected to have Learning Labs by the end of fiscal 2000. *Id.*

alongside the taxpayers in available jobs, an available job being the standard.

Now I get to my radical proposal, and that is, that people who oppose workfare must accept work as the beginning of aid and not as the end of aid. There is an attitude that if you take a job you somehow give up all claims to governmental aid. It is much more constructive to say, if you need help, the first thing you do is take a job—the first thing, not the last thing. Then the government can help you, not necessarily with cash because you probably will not need that. Instead, we will give you earned income tax credit, food stamps, Medicaid, childcare, and we will help you work. But, what we will not do is help you without demanding work. That is what has to be required. Then, after finding work, recipients will go out and join trade unions and shove politics to the left. But as long as they are without work, as a vast majority of them are today, you are absolutely breeding votes for the Republican party and all kinds of conservatism in this country. As long as there is a large welfare class not working, you can count on conservative politics, oriented to public order rather than fairness toward workers. Whereas, if people are working, then there is a chance to get the old left agenda back on the table. There is a chance to pursue larger purposes, to create a more egalitarian society in which ordinary working people are appreciated. But, first, recipients must become workers.

*Audience Discussion**

Audience Member

What are the views of the panel members on the efficacy of the training workfare participants receive?

Mark Hoover

In order to provide training to Work Experience Program (“WEP”) participants, New York City created “Job Centers,” into which we brought the State Office of Vocational and Educational Services, the State Department of Education and the State Department of Labor.¹ This is a method that has been used all over the country and now the Workforce Investment Act will help to support upgrading one-stop Job Centers.² The intent here literally

* Following the presentations of the panelists, members of the audience, consisting of representatives of a wide range of social services and advocacy groups, presented questions to the panelists.

¹ To enable welfare recipients to find employment, between May 1998 and July 1999, the Human Resources Administration (“HRA”) converted Income Support Centers into Job Centers. CITY OF NEW YORK, MAYOR’S MGMT. REPORT, Vol. I, at 251 (1999) [hereinafter MAYOR’S MGMT. REPORT Vol. I]. Some Job Centers include on-site services or Learning Labs and all 16 Job Centers have Resource Rooms that provide public assistance applicants with assistance in arranging child care, referrals for assistance with home and family problems and employment related activities, such as help with job searches, resume preparation and interviewing techniques. *Id.* at 252.

² See Workforce Investment Act of 1998, Pub. L. 105-220, § 106, 112 Stat. 936, 945 (codified at 29 U.S.C. § 2811) (stating that the purpose of the statute is to provide “workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earnings of the participants, and increase occupational skill attainment by participants, and, as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the

is to provide people with real jobs and opportunities through the Department of Labor and to connect them with employers. There are all kind of providers, including the traditional ones that most people are aware of such as, the Wildcat Service Corporation,³ Goodwill Industries,⁴ and CUNY⁵ that are involved in training and providing educational opportunities to those on public assistance. The City and State combined spend in excess of \$300 million a year in training.⁶ Thus, there are huge amounts of money and effort being invested in training programs.

Alan Finder

It is hard to determine the efficacy of the training programs, as we last examined the subject one year ago. The workfare programs

nation"). The federal government will allocate funds to states and localities to create one-stop Job Centers that will assess the skills of the unemployed, provide training, and assist in job search and placement. Workforce Investment Act of 1998, Pub. L. 105-220, § 134, 112 Stat. 936, 990 (codified at 29 U.S.C. § 2864(d)(2)).

³ The Wildcat Service Corporation is a nonprofit group that trains low-skilled workers to obtain real jobs. See Michael M. Weinstein, *Welfare to Work Partnerships: Promises That Might be Kept*, N.Y. TIMES, Nov. 26, 1998, at C2. For example, Chase Manhattan Bank has utilized the Wildcat Service Corporation to train welfare enrollees to become bank tellers at Chase branches by learning to use Chase computer programs and terminals. *Id.* After the enrollees complete the Wildcat training, they then go through Chase's own two-week training course. *Id.* These jobs would pay as much as \$24,000 a year. *Id.*

⁴ Goodwill Industries is a nonprofit group that provides job training for welfare recipients. See Jim McTague, *Back to Work: Basking in Success, Parties Gird for Battle Over Welfare Reform's Next Phase*, BARRON'S, Feb. 1, 1999, at 20 (discussing welfare-to-work programs).

⁵ The City University of New York ("CUNY") sponsors the Individual Vocational Educational Skills Training program ("INVEST"), which offers job training courses to public assistance recipients. MAYOR'S MGMT. REPORT Vol. I, *supra* note 1, at 249. The purpose of INVEST is to enhance the skills of its participants so that they may receive jobs with high enough salaries to eliminate their reliance on public assistance. See also *supra* comments of Mark Hoover, at pp. 132-33 (discussing CUNY's training programs).

⁶ For example, HRA spent \$3.25 million in Fiscal 1999 to create the INVEST program to assist in training welfare recipients to find employment in the private sector. See MAYOR'S MGMT. REPORT Vol. 1, *supra* note 1, at 252.

discussed by Commissioner Hoover and others are always evolving. As I said earlier, only ten percent of the adults on welfare are on workfare at any given moment, and I would imagine that percentage has probably gone up as the number of adults on welfare in general has gone down.⁷ When we looked at workfare, it was basically two programs. One was the program for single adults who were childless. It used to be called Home Relief and is now entitled Safety Net.⁸ Home Relief participants were not provided, at that time, with training once they were on workfare. They simply had to do their workfare job. They did not receive any supplemental training or help that we were aware of. The participants also did not receive any supplemental training to help them move from their workfare assignment to a permanent job in the private or public sector.

For the mothers in TANF under the block grant oriented Personal Responsibility and Work Opportunity Reconciliation Act, which used to be known as the federal entitlement program, Aid to Families with Dependent Children, there are various options.⁹ One of the reasons we could not report anything more about the program was that nobody in HRA would talk to us about it. We

⁷ See *supra* comments of Alan Finder, at p. 123 (discussing the New York Times' findings on the number of welfare recipients participating in workfare).

⁸ The Home Relief program was administered under several sections of New York's Social Services Law and has been replaced by Safety Net, New York State's new program. N.Y. SOC. SERV. LAW §§ 157-165 (McKinney 1992 & Supp. 1999). Safety Net provides allowances for, among other things, support, maintenance and "suitable training in a trade to enable a person to become self-supporting." *Id.* § 157. Examples of individuals eligible for Safety Net assistance include: applicants that reside in a family that is ineligible for family assistance funded by federal block grants; adults who would otherwise be eligible for "family assistance" except that they do not live with dependent children; and minors under the age of 18 who have no adult family member with whom to live. *Id.* § 158(1). A person eligible for and receiving aid under "family assistance" may not receive assistance under Safety Net. *Id.* § 158(2). Title 10 of New York's Social Services Law provides aid under the name "family assistance" to parents of children for the benefit of the children under various guidelines. N.Y. SOC. SERV. LAW §§ 343-360 (McKinney 1992 & Supp. 1999).

⁹ Temporary Assistance to Needy Families ("TANF"), 42 U.S.C. §§ 601-603 (1994 & Supp. 1996). See *supra* comments of Mark Hoover, at pp. 130-31 & nn.3-4 (discussing the federal entitlement programs).

understood from mid-level people in HRA that the program was expanding and that more opportunities were being given to people to spend one week at a WEP assignment and the following week at a training program. I believe there have always been variations of such training programs, but now I think the proportion of those receiving training is increasing.

Is there some training available? Absolutely. Are there a variety of programs for the population on welfare? Yes. Some of the programs are quite successful and some are not. If we are talking about workfare, we are talking about a fairly confined portion of the welfare population. Much of the reporting showed, and in fact Professor Mead made reference to the fact, that there are surveys that show that people who are in workfare basically like the program and believe in its principles.¹⁰ I know from talking to literally hundreds of participants that when asked if they should have to work for their benefits, almost without exception, they said yes. However, if you talk to people not in their first or second month on workfare, but in their sixth or twelfth month, then by and large our experiences have been that you find people who are becoming embittered because they do not understand how to take that next step and find a permanent job. Furthermore, they do not seem to be getting a lot of help in doing that.

Gail Aska

A lot of individuals who might appear to enjoy working seem happy because they want to believe in the program. They want to believe that this program is going to train them and lead to a job. But after a couple of months, even a couple of years, we have found that most of the individuals have come to the conclusion that they are not going to get a job out of the program.¹¹ They are getting the sense that they will consistently receive their benefits check but that they are not going to get a permanent job out of

¹⁰ See *supra* comments of Lawrence M. Mead, at p. 157 (discussing the fact that 89% of welfare recipients approve of WEP).

¹¹ See *supra* comments of Gail Aska, at p. 153 (discussing a survey of 500 workfare participants who generally expressed no hope that their workfare placement would lead to a job).

WEP. Perhaps that explains Mr. Finder's research that most people enjoy the idea of working for their benefits—they want to believe in it.

Lawrence M. Mead

I think workfare participants do believe they will find permanent work, but I think what Mr. Finder has said is a legitimate criticism. I think that WEP does not, in and of itself, lead to a job in the private sector. I believe it is true that there are many people who leave WEP and leave welfare and get jobs in the private sector. Having said that, I do not think it is improper to point to the underlying political issue. While no one on this panel has raised the general question of whether there should be work requirements, I believe that is one of the issues that lies in the background. In the few recent debates that I have attended, I have noticed a tendency in those who oppose the City's workfare policy to concentrate on how individual clients are being abused or how a particular policy is illegal. I am not saying these concerns are wrong. These issues should be adjudicated and deserve serious attention in court. However, we have to debate the policies at the foundation of how we should conduct a welfare-to-work program in order to achieve the best results.

Audience Member

Is there any way to evaluate the success of the job training programs and has the City conducted any longitudinal studies to determine how many people have obtained jobs after participating in the Work Experience Program?

Mark Hoover

As was noted by Mr. Finder, studies that track the future movements of WEP participants are extremely difficult to conduct correctly and credibly. While some have expected the City to conduct such studies, aside from the difficulty such studies present, they also require a substantial investment of time and money.

Lawrence M. Mead

Research has been conducted regarding the efficacy of training programs and mandatory work programs nationally.¹² Most of this research is from outside New York, but there is no reason to suppose it does not apply in a broad sense. What we find, in general, is that welfare-to-work programs that focus on education and training perform less well on average than those that stress immediate work in available jobs.¹³ At the same time, programs that required immediate entry into available jobs also provided a fair amount of education training.¹⁴ I believe there is a reasonable reading of the research that supports that is what New York City is doing.

I believe that immediate entry into work is preferable in terms of actually advancing one's skills than a policy of all training and no work, or a policy of training for work in the future. That does not appear to be as effective because without some actual work, people do not really learn the skills they need and do not actually appreciate the value of training. There is tendency, rather, to see training as the thing that postpones engaging in work.

¹² See JUDITH M. GUERON ET AL., FROM WELFARE TO WORK 13-20 (Manpower Demonstration Res. Corp. 1991) (reviewing the effectiveness of welfare programs in 13 different states). See also Daniel Friedlander et al., *Evaluating Government Training Programs for the Economically Disadvantaged*, 35 J. ECON. LITERATURE 1809, 1809-10 (1997) (discussing the empirical method used to study welfare programs).

¹³ STEPHEN FREEDMAN ET AL., THE JOBS EVALUATION: EARLY FINDINGS ON PROGRAM IMPACT IN THREE SITES, EXECUTIVE SUMMARY 3 (Manpower Demonstration Res. Corp. 1995) (finding that programs that delayed job entry for the benefit of education did not lead to the expected increased earnings impact and welfare role reductions over programs that stressed quick entry into jobs). The report also indicates that the long-term impacts of the educational programs are unknown since the evaluation was conducted only two years after the education program's inception. *Id.*

¹⁴ JAMES RICCIO ET AL., GAIN: BENEFITS, COSTS, AND THREE-YEAR IMPACTS OF A WELFARE-TO-WORK PROGRAM 51 (Manpower Demonstration Res. Corp. 1994) (stating that programs that forego skill-building education provide on-the-job skill training).

Audience Member

Without advanced training, how are WEP workers supposed to gain skilled employment?

Lawrence M. Mead

Employers do not contend that the main problem people have is lack of skills. Employers discuss a lack of work preparedness.¹⁵ They state that most good workers have to be able to come to work on time, take orders and get along with co-workers. In other words, in some basic sense, make a fundamental adjustment to the work place. If workers can make the adjustment, employers are willing to train them.¹⁶ That is what programs that stress immediate placement, including the WEP program, are designed to inculcate. This does not mean that workers do not need to learn greater skills but that training has to come after beginning work at some level.¹⁷ The notion that people should be trained first before commencing work at all is the idea that has been discredited by the research.

Audience Member

What are the types of jobs that people are being trained for? Are they skill-level jobs or are they more clerical in nature?

¹⁵ Harry J. Holzer, *Will Employers Hire Welfare Recipients? Recent Survey Evidence from Michigan*, 18 J. POL'Y ANALYSIS & MGMT. 449, 463 (1999) (stating that the most common problems faced with hiring welfare workers were absenteeism, work attitude, lack of both basic skills and job skills, substance abuse and crime).

¹⁶ *Id.* at 469 (stating that most employers are willing to provide job-related training to welfare participants).

¹⁷ RICCIO, *supra* note 14, at 51.

Mark Hoover

These jobs run the gamut as one might expect. I think over 40,000 people informed us that they moved into employment last year.¹⁸ These jobs included professional level jobs at high wages.¹⁹ I know that the Queens Job Center recently worked with the Metropolitan Transit Authority and successfully had fifteen people employed at twelve to fifteen dollars an hour. There are a large number of people, that have obtained jobs in New York City agencies that will pay anywhere from ten to twenty dollars an hour.²⁰ Others have reported finding entry level jobs at department stores.

Audience Member

What are the participants' positions on the proposed City and State transitional jobs bills that were said to have the support of both Republicans and Democrats?²¹

¹⁸ According to the City's statistics, in fiscal 1998, a total of 46,413 workfare participants reported job placement. *See* CITY OF NEW YORK, MAYOR'S MGMT. REPORT, Vol. II, at 108 (1999). In fiscal 1999, a total of 48,830 workfare participants reported job placement. *Id.* In fiscal 2000, the City anticipates 50,000 job placements of workfare participants outside the workfare program. *Id.*

¹⁹ *See* Weinstein, *supra* note 3, at C2 (discussing a Wildcat Service Corporation program that has helped some welfare individuals obtain employment at Chase Manhattan Bank earning approximately \$24,000 a year).

²⁰ For example, the Department of Parks and Recreation placed many workfare participants in full-time jobs. MAYOR'S MGMT. REPORT Vol. I, *supra* note 1, at 150. Additionally, the New York City Housing Authority placed 469 WEP participants in full time jobs. MAYOR'S MGMT. REPORT Vol. I, *supra* note 1, at 122.

²¹ The Council of the City of New York introduced a bill to create the Transitional Employment Program, designed to create 10,000 permanent jobs over the next five years in the public and non-profit sectors. Council of the City of New York, Local Bill No. 354 (introduced July 15, 1998). The New York State Assembly has proposed the Empire State Jobs Bill, which aims to provide training and up to 4000 entry-level positions in the public and private sectors in an effort to establish long-term employment without displacing existing workers.

Lawrence M. Mead

I am not familiar with these proposals, although they sound like government jobs programs that would involve a level of paying benefits above the WEP level. It would involve working for pay, and not for welfare benefits, and it would involve assorted benefits of various other kinds. I am not against that in principle, but it does raise a question of fairness. It would apparently mean that many people on welfare who go into these jobs would enjoy better conditions and pay than many people enjoy in the private sector. I do not know whether that is fair.

Audience Member

Is this something that the City has a position on? If not, is the City willing to talk with the proposals' advocates to attempt to reach a common ground?

Mark Hoover

I do not think the City has taken a formal position on it at this time.²² I think that the real concern is that we just do not replace welfare with indefinite jobs at minimum wage, or close to

No. A07632, 1999-2000 Reg. Sess. (N.Y. 1999). *See supra* comments of Gail Aska, at pp. 152-53 & nn.6-7 (further discussing the legislation).

²² On September 28, 1999, New York City Mayor, Rudolph Giuliani, issued a statement criticizing the proposed City transitional employment program and called on the City Council not to approve the legislation. Press Release #380-99, *Mayor Giuliani Calls on City Council Not to Undermine Welfare Reform* (visited Nov. 14, 1999) <<http://www.ci.nyc.ny.us/html/om/html/99b/pr380-99.html>>. The Mayor stated:

This bill is a product of the philosophy of dependency. Instead of encouraging self-sufficiency and independence, this bill encourages reliance on government instead of on one's self. . . . It was programs like these that made New York City the welfare capital of the world from the 1960's until the mid-1990's. Simply put, this legislation attempts to end welfare reform as we know it.

Id.

minimum wage, and that we do not create a dependant population that has different working conditions. We want to help people move to jobs in the private sector without creating special privileges or benefits or jobs for those on welfare.

To the best of my knowledge, the approaches taken by these bills is not how the rest of the country has approached welfare.²³ What they have done is operated effective programs that provided that while you were on welfare, there was truly an exchange of work and training for your grant. There were strong efforts to connect you as quickly as possible to get you into a private sector job and then if you were not able to find one, you could use welfare only as a temporary measure until you could get connected to a private sector job. I think those are the kind of changes that are being made to the program. I think the money is better spent this way than to create an indefinite number of make-work jobs.

Audience Member

Ms. Aska, are you advocating an indefinite number of make-work jobs?

²³ In Oregon, efforts to move people to jobs in the private sector were accomplished through education, training and job placement. Dixie R. Switzer, *Welfare Reform: Oregon's Response to the Personal Responsibility and Work Opportunity Reconciliation Act*, 77 OR. L. REV. 759, 775 (1998). A cooperative partnership between private employers and community planners was created through which welfare recipients were placed in six month, on-the-job training positions in local businesses. *Id.* Wisconsin will only subsidize jobs for those who cannot find one on their own. Brendan P. Lynch, *Welfare Reform, Unemployment Compensation, and the Social Wage: Dismantling Family Support Under Wisconsin's W-2 Workfare Plan*, 33 HARV. C.R.-C.L. L. REV. 593, 599-600 (1998). The subsidy is an hourly wage, and similar to traditional employment positions, the wages are conditioned on their work. *Id.* Furthermore, like traditional employment, those who do not go to work do not get paid. *Id.* Thus, there is no meaningful way to distinguish workfare jobs from jobs independently gained in the private sector and workfare workers are treated much like independent workers on the job. *Id.*

Gail Aska

No, the City's Transitional Employment Program is not intended to cover a long duration of time. It is only supposed to last somewhere between eighteen and twenty-four months.²⁴ The purpose of the program is to give these individuals the chance to be trained and to be competitive in the workforce. They cannot use their workfare experience as experience in the real world. It is not recognized as work experience. If you say that you have been in the WEP program, you are going out the door the same way you came in. Employers are not going to consider you.

The Transitional Employment Program is going to give people the experience to be more competitive when looking for a real job after getting many months of real-life experience under their belts. It will allow people the experience of working and getting paid for their labor. This particular program is going to pay them for their labor and, at the same time, give them training, additional education, and additional skills that they are going to need to be competitive. This is not a program that is going to incite dependency like the workfare program does.

Audience Member

What is the state of the New York Times' intention to do the social scientific research that might answer some of these questions?

Alan Finder

The New York Times did not fully appreciate how difficult the social science research method would be to conduct. The method

²⁴ See Council of the City of New York, Local Bill No. 354, § 21-501(h) (introduced July 15, 1998) (stating that "enrollment in the transitional employment program shall be for a period of 18 months, with a six-month extension at the discretion of the [New York City Department of Employment] commissioner when requested by the participant and the sponsoring employing agency").

is difficult for several reasons. First, the former welfare population is a more mobile population than the middle class. They also tend to be people who have proportionately fewer home telephones, making them difficult to contact. Thus, surveys must be conducted immediately upon people leaving welfare because the longer one waits, the harder and more expensive it is to locate them. One of the ways that researchers around the country have dealt with this difficulty is to offer a financial incentive to people to participate. After considering this proposal, the editors decided that it would not be advisable because it would appear that we would be buying an interview.

Audience Member

Ms. Aska, please discuss the position of Community Voices Heard on the need for a formal grievance procedure for WEP workers to address work site abuses.

Gail Aska

Community Voices Heard certainly believes there is a need for a grievance procedure. Approximately a year and a half ago, there was an election among WEP workers where ninety-nine percent of them voted in favor of having representation in dealing with the City over work site conditions.²⁵ Following that election, after the Mayor refused to negotiate with the WEP workers, worker advocacy groups drafted legislation to institute a grievance procedure that would require the City to negotiate with WEP

²⁵ On October 24, 1997, under the leadership of the Association of Community Organizations for Reform Now ("ACORN"), nearly half of the workfare participants in New York City informally voted in favor of union representation. Lynette Holloway, *Plurality of Workfare Recipients Said to Vote in Favor of a Union*, N.Y. TIMES, Oct. 24, 1997, at B5. Similar attempts to unionize workfare participants have been made in other parts of the country. See Steven Greenhouse, *Labor Leaders Seek to Unionize Welfare Recipients Who Must Go to Work*, N.Y. TIMES, Feb. 19, 1997, at A18 (recounting the AFL-CIO's attempt to unionize the workfare participants in California).

workers in the same manner it negotiates with all other City employees.²⁶ The legislation is currently in front of the City Council.

There always has been a need for grievance procedure reform because, unless people are held accountable, the abuses will not stop. Therefore, there must be a forum to address the concerns of WEP workers. We are talking about workers' rights and fairness. While New York has the largest workfare program in the country, it is certainly deficient in handling workers' grievances. Furthermore, if the workers want to unionize, that is their right and we will support their wishes.

Audience Member

Professor Mead pointed out that for some reason private job placement has not worked in New York. He stated that it likely is a bureaucratic problem. An alternative explanation may be that the problem is not bureaucratic, but rather, the lack of private job placement is due to weakness in the New York City labor market. The unemployment rate in New York is much higher than the national average²⁷ and if you look at the unemployment rates for

²⁶ The Mayor's administration refuses to allow workfare workers to unionize since placements are supposed to be "temporary" assignments, therefore making it "inconsistent for welfare recipients to become [C]ity employees." *Id.* (quoting Randy L. Levine, Deputy Mayor for Economic Development). Since WEP workers are not considered union employees, the Administration states that they are not permitted to be represented by a union. Alan Finder, *Marchers Call on Giuliani to Support Workfare Union*, N.Y. TIMES, Dec. 11, 1997, at B24. City Councilman Steven DiBrienza introduced a bill that would establish a formal grievance procedure for workfare participants. Council of the City of New York, Local Bill No. 316-A (introduced May 21, 1998). The legislation would also provide participants protection from sanctions during the grievance process. *Id.* In order to encourage use of the grievance procedure, the City would be required to advise workfare participants of their rights to the grievance procedure. *Id.*

²⁷ Through November 1, 1999, the average unemployment rate in New York City was 6.9%. Bureau of Labor Statistics, *Local Area Unemployment Statistics* (visited Dec. 27, 1999) <<http://www.bls.gov>>. During the same period, the average unemployment rate for the entire United States was 4.2%. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey*

African American or Hispanic women or women with less than a high school education, you are looking at unemployment rates even higher.²⁸ Thus, is the difficulty in placing WEP workers in private jobs a bureaucratic problem, or is it the lack of available job placement in the private sector?

Lawrence M. Mead

I do not accept that the labor market is worse here. It is true that measured unemployment is higher, however, I think the reason for that is not that there is an unusual number of people looking for jobs and failing to find them, but rather that the labor force is unusually small. That is the denominator in the proportion that leads to the high unemployment rate. The labor force participation rate in New York is only about sixty percent,²⁹ whereas in the rest of the country it is sixty-six percent.³⁰ One may contend that the participation rate is low because people have given up trying to find jobs, but many immigrants are finding work instantly. What is it that causes them to get jobs, while native born Americans do not? I think the major reason is that we have so many people dependent on the welfare system rather than looking for work. If these people, as a condition for receiving their benefits, were moved into employment, many of them would find paying jobs without ever being unemployed. The labor force would grow and measured unemployment would fall. That is my interpretation.

(visited Dec. 27, 1999) <<http://www.bls.gov>>.

²⁸ For the first half of 1999, the unemployment rates for African American and Hispanic females were 9.5% and 10.6%, respectively. Bureau of Labor Statistics, *Detail From the Current Population Survey, Bureau Labor Statistics* (1999) (unpublished statistics on file with the *Journal of Law and Policy*).

²⁹ For the first half of calendar year 1999, the labor force participation rate in New York City was 58.2%. Bureau of Labor Statistics, *Detail From the Current Population Survey, Bureau Labor Statistics* (1999) (unpublished statistics on file with the *Journal of Law and Policy*).

³⁰ Through November 1, 1999, the labor force participation rate in entire country was 67.1%. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey* (visited Dec. 27, 1999) <<http://www.bls.gov>>.

Audience Member

Having worked with immigrant workers, and having parents who were immigrant workers, I believe that immigrants are finding work instantaneously because they are working below minimum wage and without labor protections.

Lawrence M. Mead

That may be true in some cases but I do not believe that is so in the majority of cases. What I am saying is that the wage level is sufficiently high in New York, so that it is hard for me to believe that the minimum wage is a real constraint on people being hired. Therefore, I certainly do not condone what happened to your parents but I do not think that is the usual situation.

Audience Member

What is the rationale for expanding the requirements and obligations of disabled individuals, both Safety Net recipients and now for disabled parents or caretakers of disabled children, to be required to participate in WEP?³¹ Many are concerned because a large percentage of individuals on public assistance are people with disabilities or are caring for children with disabilities and are, therefore, likely to encounter difficulty in finding jobs in the private or public sector.³²

³¹ In June 1998, New York City ordered hundreds of disabled women to participate in workfare assignments tailored to their impairments. Rachel L. Swarns, *Giuliani to Place Disabled Mothers in Workfare Jobs*, N.Y. TIMES, June 8, 1998, at A1. Non-profit groups that work with the disabled assist these welfare recipients in finding proper placements. *Id.* Women with severe disabilities that qualify for federal benefits remain exempt from the work requirements. *Id.*

³² As of June 1998, of the 200,000 mothers on welfare in New York City, 33,000 of them were disabled. *Id.*

Mark Hoover

There really has not been any change in policy. If one is a caretaker of someone who is disabled, or is a dependent who is disabled, that person is exempted and continues to be exempted from work requirements, unless there are appropriate alternative activities.³³ There are huge numbers of people that are caring for a disabled child or adult and are exempted from any work participation requirement. Other individuals may only have some disabling condition. We are currently working with the State Office of Vocational and Educational Services for Individuals with Disabilities to assess those individuals appropriately and, if in their judgement they can be assisted in being provided work opportunities, and move into work, their contractors help them get employment.³⁴ Under the Americans with Disabilities Act, it is important

³³ Welfare recipients are required to perform WEP assignments unless they are exempted due to physical or mental disabilities. *Mitchell v. Barrios-Paoli*, 687 N.Y.S.2d 319, 321 (App. Div. 1999) (citing N.Y. SOC. SERV. LAW §§ 131(5), 164 (McKinney 1992 & Supp. 1999)). Public assistance recipients that must remain home to care for individuals that are ill or incapacitated are also not required to participate in work activities. N.Y. SOC. SERV. LAW § 332(1) (McKinney 1992 & Supp. 1999). A welfare recipient claiming a disability must be examined by doctors of the Health Services Systems, New York City's medical contractor to determine the extent of the disability. *Mitchell*, 687 N.Y.S.2d at 321. Doctors classify the disabled as follows: "E-I (employable); E-II (employable with limitations); E-III (temporarily disabled); or E-IV (permanently disabled)." *Id.* E-II persons are expected to work but are assigned to workfare placements compatible with their disabilities while E-III and E-IV persons are exempted from work requirements for the duration of their disability. *Id.*

³⁴ In July 1999, the HRA, in collaboration with several State agencies, began the Personal Roads to Individual Development and Employment 2000 program ("PRIDE 2000") to assess disabled public assistance recipients and help move them toward employment. MAYOR'S MGMT. REPORT Vol. I, *supra* note 1, at 252. PRIDE 2000 participants will receive intensive care and one-on-one interaction from assessment through 180 days of their employment. MAYOR'S MGMT. REPORT Vol. I, *supra* note 1, at 252.

to realize, that we can not exclude people who have disabling conditions if they want to work and are able to work.³⁵

³⁵ Disabled individuals who receive Supplemental Security Income (“SSI”) and wish to work are protected from discrimination under the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213 (1994 & Supp. III 1997).

