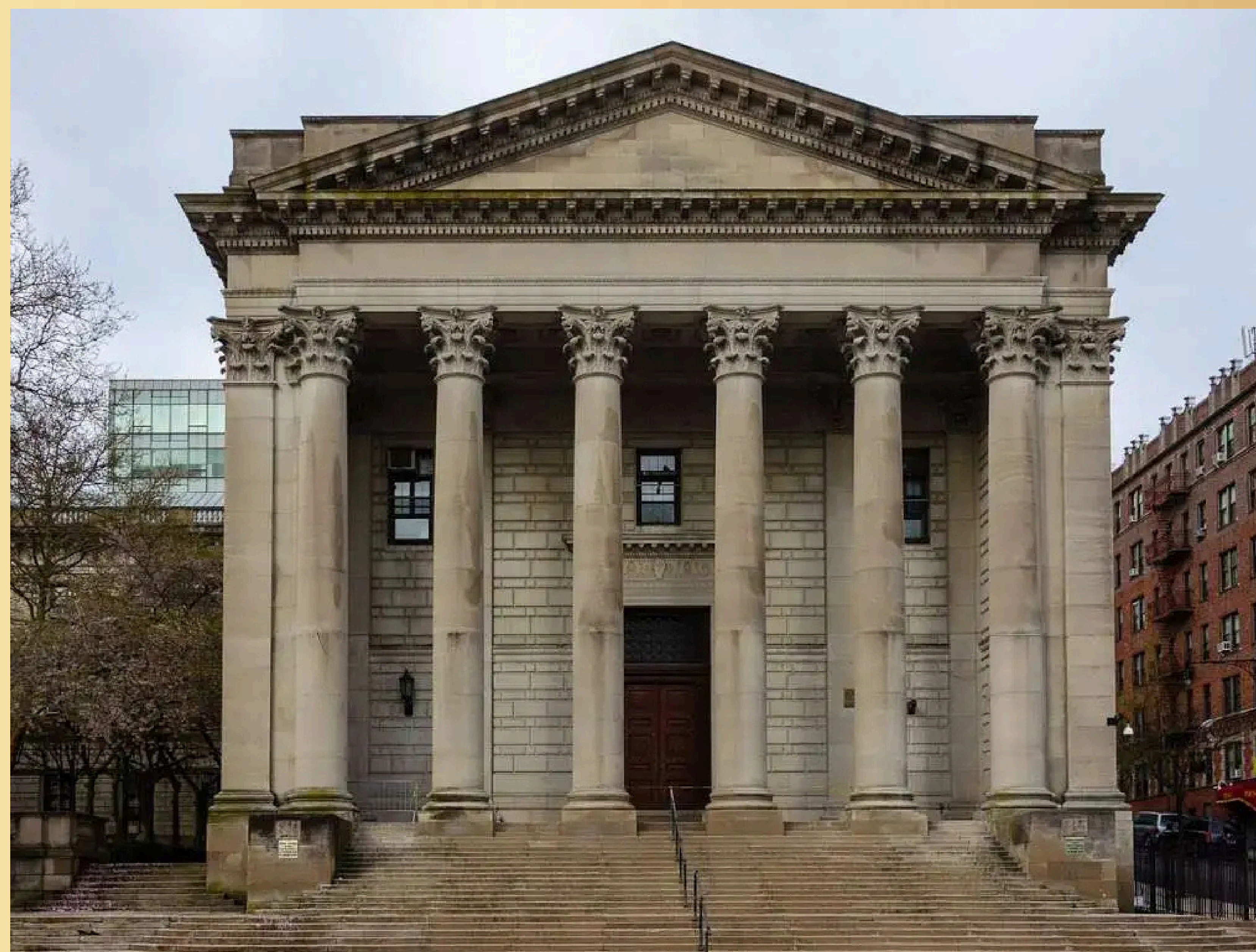


## MHLS WINS NEW CASE FOR RESTORATION OF RIGHTS

Last week we celebrated the retirement—and many accomplishments—of our friend and colleague Sheila Shea, Director, Mental Hygiene Legal Services (MHLS), Third Judicial Department, and noted MHLS's work protecting the rights of people with I/DD in guardianship proceedings. By happy coincidence, we've just learned of a recent decision in Surrogate's Court, Richmond County (Staten Island) in which a 34-year-old man, placed under guardianship at 18, had his civil and legal rights restored with MHLS as his counsel. Although the case, *Matter of Brian J.B.*, ([click here to read the full decision](#)) did not involve an SDMA, SDMNY or SDM facilitation, it is an important reminder of how much things have changed, and how far we've come.



*Richmond County Surrogate's Court*

Brian's parents were awarded guardianship 16 years ago, when, as a practical matter, nothing more than a diagnosis (of "mental retardation") – in a doctor's affirmation– was required to remove all a person's rights for the rest of their lives. In an attachment to the doctor's affirmation, a school psychologist who knew Brian well painted a very different picture of Brian as a "high functioning young man with excellent interpersonal skills." The psychologist explained that Brian had a part-time job on the weekends at K-Mart and volunteered for other organizations. When Brian expressed unhappiness with the level and frequency of his math lessons, he requested more challenging lessons from the NYDOE which subsequently provided additional math instruction one-on-one. Yet, as the Surrogate in the present decision pointed out

"this report was written by a school psychologist and therefore could only be submitted in circumstantial support, not as direct evidence of [Brian's] capabilities at that time. School psychologists are not permitted by S C A § 1750 or SCPA § 1750-a to provide affirmations."

Accordingly, the doctor's bare-boned diagnosis carried the day.

In his recent decision, the Surrogate observed how "the twenty-first century has seen a dramatic change in the social and educational acceptance of the [I/DD] population," criticizing the old "rigid standard" of a static and unchanging impairment, as based on an incorrect "assumption that an individual is unable to manage their diagnosis and benefit from continuous treatment options...[without allowing for the possibility of] maturity, supported decision-making, efficacy of targeted treatments and therapies, among other factors." He emphasized the now well recognized constitutional imperative of "least restrictive alternative" and how that imperative means that "guardianship should be the last resort as it deprives the person of power and control over their life in violation of due process."

The Surrogate reviewed the evidence adduced by MHLS at the hearing: that Brian lives in a group residence where he has a good relationship with the other residents and staff, is employed full time at a hospital in Manhattan to which he commutes, on his own, by ferry subway and bus, that he has bank account and competently manages his finances, that he is responsible about taking his medications, that he traveled on his own to Virginia to meet with a newly discovered half-sister, that he has a girlfriend and that, in general, he "comfortably makes his own personal and property decisions, having matured, and benefitted from the assistance previously provided." Based on that evidence the Surrogate determined that the guardianship should be dissolved and Brian's rights restored.

We know that there are many people like Brian, who at an earlier time, were inappropriately placed under guardianship when it was perceived as the only possibility for a person diagnosed with I/DD, regardless of their capabilities and possibility for growth. We are grateful to MHLS and our partner Disability Rights NY (DRNY) for the representation they provide to such individuals in proceedings to terminate their guardianships and restore their rights. The decision in Brian's case reminds us that, as the rights of people with disabilities are increasingly recognized and honored, the world is changing for them, and for those who will follow. We are proud and humbled to be part of the work that is making that change happen.

**CONGRATULATIONS BRIAN, AND THANKS TO MHLS  
FOR REMINDING US THAT OUR WORK REALLY MATTERS!**