2011 was a memorable (although not exactly good) year for flooding in North Dakota. Minot and everywhere else along the Mouse River experienced a disastrous record-breaking flood, Bismarck and Mandan suffered damage, and Devils Lake continued to rise, among other things. Over 10,000 North Dakotans have registered with FEMA, and FEMA has approved $94 million in individual assistance. The Small Business Administration has approved $240 million in loans to home and business owners.

Even with the federal assistance so far, and the assistance of private aid programs, many North Dakota residents need additional assistance in repairing damaged homes. The governor asked the legislature to consider flood relief during the special session held in November 2011. The result was Senate Bill 2371, which the governor signed into law on November 11, 2011.

SB 2371 contains numerous disaster provisions and appropriations. Most allow state or local agencies to spend money for various purposes, which can include infrastructure repair or assistance to individuals. For example, the North Dakota Department of Commerce is authorized to spend up to $235 million in federal community development block grant money (once it is received from the federal government) for loans or grants to flood-impacted individuals, property acquisitions, or for grants to flood-impacted communities for infrastructure development. Another example is the $30 million appropriated to the commissioner of university and school lands for infrastructure development grants to flood-impacted political subdivisions like counties, cities, and school districts. That money is designed to offset up to half the cost of infrastructure development or repair which isn’t paid for by other federal or state funds.

(continued on page 5)
The 12 Realities of Funding Cuts in 2012

Legal Services of North Dakota is looking at some significant funding reductions beginning in 2012. Take a quick look at the next page and you’ll see our federal funding got slashed in Congress. We’ve had some other funding losses as well.

I’ve often been accused of being brutally blunt and having no fine arts skills whatsoever. So in an effort to reinforce that viewpoint, allow me to outline the unfortunate impact of the reduced funding in the spirit of the holiday tune “The 12 Days of Christmas.”

1) LSND lost more than $250,000 in funding for 2012.

2) We will be reducing the hours our offices are open from 40 hours per week to 36 hours per week.

3) We will be reducing the hours we operate our toll free intake telephone lines by 15% weekly.

4) We will be reducing our monthly outreach visits to Dickinson, Wahpeton and Devils Lake to quarterly.

5) We will have to reduce our legal education programs in rural North Dakota communities in 2012.

6) We will have to reduce the number of cases we can take on, particularly in the areas of family law, consumer law and public benefits.

7) We have eliminated a staff attorney and secretarial position and we will have to reduce staff hours in 2012.

8) We have eliminated the Immigration Law Project based in our Fargo Law Office. While we will continue to help new Americans with cases in housing, family law, consumer, public benefits, domestic violence and more, we no longer have the resources to handle status cases.

9) Representation of clients in tribal court matters will be reduced.

10) Training for staff will be significantly reduced. This will be particularly difficult for our very good new lawyers and it will impact our clients.

11) Our ability to make timely home visits to disabled and very elderly clients has been significantly reduced.

12) Bottom line - the legal help we can provide to low income and disadvantaged elderly in 2012 will be considerably reduced compared to prior years.

While we are working with our board of directors to try and minimize, as much as possible, the impact of the cuts on our clients, there won’t be any partridge in the pear tree for LSND this year.

Happy Holidays to all!!!
Washington, DC—The House and Senate voted on November 17 to provide the Legal Services Corporation (LSC) with $348 million in funding for Fiscal Year 2012, a reduction of about $56 million from current funding. The funding reduction was taken from basic field grants, a cut of 14.8 percent.

The LSC funding was a part of a Fiscal 2012 appropriations bill for several federal departments and programs, including Commerce, Justice, Science and Related Agencies. President Obama signed the appropriations bill on November 18.

LSC was established by the Congress to provide equal access to justice and to ensure the delivery of high-quality civil legal assistance to low-income Americans. The Corporation currently provides funding to 136 independent nonprofit legal aid programs in every state, the District of Columbia and U.S. territories.

LSC grants help address the civil legal needs of the elderly, veterans, victims of domestic violence, disabled individuals and others with pressing civil matters. More than 60 million Americans have incomes at or below 125 percent of the federal poverty line and qualify for civil legal assistance—an income of $13,613 for an individual and $27,938 for a family of four.

According to John G. Levi the Chairman of the LSC Board of Directors, “Federal funding has long been the cornerstone for legal aid, and essential to fulfilling our nation’s promise of equal justice for all. We all understand that the rule of law is in jeopardy when the protections of the law are not available to increasingly large numbers of low-income citizens—especially victims of domestic abuse, the elderly and people facing the loss of their homes. The nation’s poverty population has never been this large, and, as a consequence, requests for civil legal assistance are increasing.

As a result of the economy and funding squeezes at state and national levels, 2012 is clearly going to be daunting for the 136 nonprofit legal aid programs funded by the Legal Services Corporation.”
Editor’s Note: Cole Roberts, a Bismarck High School student, worked in our Bismarck law office this fall under a Job Service of North Dakota program called Youth Opportunities.

My name is Cole Roberts and I am sixteen-years-old. I have a rare disability called WAGR syndrome. This has left me completely blind. In addition, I have had cancer and over 64 surgeries in my lifetime. Even though all of this has happened to me, I am just like every other teenager with a dream. I am also like every other teenager in that I would like to work and find a career.

Ever since I can remember, I have wanted to be in law enforcement. My first dream was to be a police officer. When I lost my sight completely at the age of seven, I knew I would never be an officer. I then started to focus on becoming a lawyer. I started to read books, watch television shows, and even talked with some blind judges. Being a lawyer became not only my dream but also my passion.

This summer I was very excited to begin working with a program, Youth Opportunities, that helps people with disabilities find employment. A quick disappointment occurred when the program did not have enough financing. Off to the farm I went for my third year of hauling trees, washing decks, and watering plants. The upside of that job was that it was on my grandparents’ farm and I got to spend valuable time with them.

Finally, I got the call from Job Service of North Dakota I was waiting for. Not only did I get placed with a job, but it was with Legal Services of North Dakota – could it get any better than that?

They took me in and gave me a glimpse of what it would be like working as a lawyer. Not only were they making my dream come true, but they were also changing my life and my future goals.

The longer I worked at Legal Services, the more I realized just how hard it might be to become a lawyer with my disability. Could it be done? Yes. But I realized I did not want to put so much of my life and time into what it might take. At first I was very devastated. I was giving up another dream that I had held for so long. I not only felt lost, but I also felt like a failure. My mom encouraged me to take it to the Lord for guidance. I realized being a lawyer was my dream, but maybe not God’s dream. I also realized that I was not a failure at all, and I was not lost. Rather, I was on the right path.

I have learned to take one day at a time now, keeping my options and dreams wide open for whatever it is God wants me to do. I have a few new career options that I am looking into. I hope I get a chance to work in all of them before I graduate from high school.

I will never forget my time and wonderful coworkers at Legal Services of North Dakota; they changed my life. Thank you!
(Flood Relief, continued from page 1)

The part of SB 2371 most directed to individuals is probably the establishment of the rebuilder’s loan program with the Bank of North Dakota. The rebuilder’s loan program is designed for North Dakota residents affected by a presidentially declared disaster. The purpose is to assist residents with rebuilding their homes in areas affected by the 2011 floods, or to assist with buying a replacement home in the same community.

To qualify for a rebuilder loan, you must:

- Be a North Dakota resident,
- Own a home,
- Live in an area in North Dakota where FEMA individual assistance for homeowners was available as a result of the 2011 flood event, and
- Have had the true and full tax valuation reduced from pre-flood value, or received a tax abatement by the county commission.

The terms of these loans include:

- The maximum amount of any loan is $30,000, or the documented amount of damage not paid by flood insurance, whichever is less. Up to 20% of the loan can be used to pay existing debt, like mortgages.
- The interest rate is 1%, and the maximum term of the loan is 20 years.
- Principal and interest payments are deferred for the first 24 months of the loan.
- Loan applications will be accepted until September 30, 2012.
- If you get one of these loans, and your home is later purchased for flood mitigation or otherwise sold, the loan balance and interest must be repaid when the sale closes.

If the Bank of North Dakota receives federal funds for this program, the Bank can lend more than $30,000 to an individual; how much more is up to the Bank.

The Legislature appropriated $30 million for the loan fund. If that initial appropriation is used up before June 30, 2013, then another $20 million will be available.

The Bank of North Dakota is developing more detailed policies on how the program will work. Local financial institutions are expected to start taking applications for the rebuilders loan program around December 1, 2011.
Consumers today face a mind-boggling barrage of scams promoted by con artists using the electronic and print media, telephone, door-to-door solicitations, and the mail. These con artists are not only slick, but they are also quick. Often they move around too fast for law enforcement to catch them. The best defense is a good offense. Don’t give your money to a con artist in the first place. Here are some tips to help you avoid being the victim of a scam:

1. **Be skeptical.** Don’t let promises of huge earnings, free prizes or huge discounts overpower your better judgment. If you are not familiar with the company making such offers to you, ask for references, and ask a lot of questions. Make them earn your trust; don’t give it to them and remember con artists make their living by making people trust them. If the “deal” sounds too good to be true, it probably is.

2. **Compare prices.** The best way to find out if you are getting a good deal is to see what a company’s competitor charges. What is “on sale” at one store may be “regular price” at another. Get several written estimates if you need service work done, especially on major repairs.

3. **Get it in writing.** If a salesperson makes promises or representations about a product, get them in writing. Otherwise, it is your word against the salesperson’s.

4. **Read everything.** Read and understand what you are signing before you sign it. Tell the salesperson that you will not sign a contract or sales agreement until you have had a chance to read it, even if that means waiting until the next day. Any legitimate salesperson will give you the extra time and not demand an immediate commitment. Keep copies of all receipts and sales slips.

5. **Keep personal information private.** Do not give credit card numbers, bank account numbers or personal information — even blank copies of your business stationary — to any strangers. This information can be used to process phony transactions to steal from you. Do not fall victim to phony “surveys” done by telephone and email, which are simply a con artist’s way to get personal information to steal from your wallet.

6. **Consider what you will do if you have problems.** What will you do if a product does not perform as advertised? You may have to pay postage on returned mail-order merchandise. The company may also charge a restocking fee or only give you credit toward another purchase. Buying locally may be your best bet. A mail-order firm based out of state may be less responsive to your complaints. Remember, no law requires a business to give you a cash refund on a sale, or for that matter, require the business to allow you to return the product at all. Check a company’s return, warranty or repair policy before you buy, not after you have problems.

*(continued on page 7)*
7. **Don’t believe empty promises.** Overused retail phrases such as “lifetime warranty” and “guaranteed” mean nothing if the business is not sound, legitimate and responsive to your needs. If the company goes out of business, you will have little recourse.

8. **Check the reputation.** A good consumer checks the reputation of retailers and service providers before buying from them. Call the North Dakota Attorney General’s Consumer Protection Division at 1-800-472-2600 to check out the complaint history of a company. Ask for references from past customers and watch out for any salesperson reluctant to provide references.

These are only eight ways to protect you as a consumer. There are many more, the most important one being – use common sense. If you do your research before the sale, you will lessen the problems you might encounter after the sale.

**DID YOU KNOW...**

You can donate to Legal Services of North Dakota!

As a nonprofit organization, Legal Services of North Dakota (LSND) relies on contributions to continue providing free legal services to low-income persons and our many advocacy projects. Any donation, large or small, supports the vital role we play in the struggle for equal justice.

LSND is a 501 (c)(3) organization, meaning that all contributions are fully tax deductible. You can make checks payable to Legal Services of North Dakota which can be sent to us at:

Legal Services of North Dakota  
PO Box 1893  
Bismarck, ND 58502

Your support will help LSND promote dignity, self-sufficiency and justice through civil legal aid for those with no place else to turn. Legal assistance stabilizes families and communities, saves taxpayers money, helps prevent legal problems that would otherwise further clog the courts, and helps people become self-sufficient and participate effectively in society. LSND works with other providers to remove the barriers that may prevent people from participation in programs designed to assist them. *If you have any questions regarding donations, please contact Keith Engbrecht at kengbrecht@legalassist.org or call (701)222-2110.*

**(Eight Ways to Avoid, continued from page 6)**

The Attorney General’s Consumer Protection Division investigates allegations of fraud in the marketplace. Investigators also mediate individual complaints against businesses. If you have a consumer problem or question, call the Consumer Protection Division at 328-3404, toll-free at 1-800-472-2600, or 1-800-366-6888 (w/TTY). This article and other consumer information is located on our website at [www.ag.nd.gov](http://www.ag.nd.gov).
A few days later the student receives a notice in the mail to appear in juvenile court to face a felony charge. The child has now entered the court system.

How do Miranda and the Fifth Amendment protection from self-incrimination fit into this quagmire?

The school officer is knowledgeable of the law and knows about the Miranda Warning. The school officer knows Miranda must only be given when the student is in a custodial setting. How does a student end up “in custody”? The school officer follows the general rule that when looking at the circumstances surrounding the questioning, one needs to consider how a reasonable person would feel in terms of whether or not they were free to leave. Pretty basic. If a person is being questioned by law enforcement and feels they are free to leave, then there is no custodial setting; therefore, no Miranda Warning is required.

The State argues the child was not in a custodial setting when called to the principal’s office; the State believes the student was free to leave the principal’s office at any time. Think about a time when you were called to your principal’s office. Did you get up and leave without permission? Probably not. Unfortunately, not many students understand that when they are being questioned by a school officer, they are likely in a custodial setting and have a right to remain silent. Without knowing this, they feel great pressure to confess to a crime, even a crime they may not have committed.

(continued on page 9)
(Prairie Perspective, continued from page 8)

The United States Supreme Court, in J.D.B. v. North Carolina, was asked to deal with the issue of whether or not a child’s age should be a factor in determining whether the child believes they are or are not in a custodial setting for Miranda purposes when questioned in a school. In the 5-4 decision the Court said age must be considered. By creating a “reasonable child standard,” as opposed to a reasonable person standard, the Court acknowledged children are different.

The J.D.B. holding followed the footsteps of Roper v. Simmons (regarding the death penalty) and Graham v. Florida (regarding life without parole for a non-homicide case) by continuing to find that children are different and therefore the law is to apply to them differently. The Supreme Court is not done figuring out how to treat children differently, though. The Court has just announced they will hear the cases of Miller v. Alabama and Jackson v. Hobbes involving two fourteen-year-olds serving life without parole.

The United States Supreme Court gets it – children are different. Because children are different, our laws need to see them differently and our courts need not hold children to the same standards they hold adults. Unfortunately, it takes a while for this new thought process to work its way through the legal system. I routinely watch the legal system fail to acknowledge the unique status children have and instead hold children to unrealistic expectations that even adults would have difficulty meeting. Just because a person is under eighteen-years-old does not mean the Constitution is inapplicable to them.

Hopefully, over time and with the continued guidance of the United States Supreme Court, the legal system will realize children should be recognized for what they are – children. Children who make mistakes, children who act impulsively, children who are subject to peer pressure, children who should be given a chance at rehabilitation, and children who will grow out of their youthfulness and become productive members of adult society.
Legal Services of North Dakota (LSND) offers free services to assist low-income taxpayers in three North Dakota reservation communities. With the help of two separate grants from the Internal Revenue Service in 2012, LSND will continue to operate a Low-Income Taxpayer Clinic (LITC) and Volunteer Income Tax Assistance (VITA) sites in the following areas in North Dakota: the Ft. Berthold, Turtle Mountain, and Spirit Lake Indian reservations and the counties of Benson, Dunn, McKenzie, McLean, Mercer, Mountrail, Ramsey, and Rolette.

The LITC assists low-income taxpayers who are experiencing tax problems with the Internal Revenue Service (IRS). Most taxpayers want to comply with their tax obligations and many tax problems can be resolved by simply completing forms or providing requested documentation. The LITC may be able to help with some of the following types of problems:

- Responding to IRS notices
- Amended or Prior year returns
- Earned Income Credit Problems
- Injured Spouse Claims
- Innocent Spouse Relief
- Self-Employment Issues
- Tax Debts & Payment Agreements

The VITA program is a partnership between the IRS and other organizations to assist low-income taxpayers by providing FREE preparation of federal and state tax returns. All VITA volunteers are trained, tested, and certified by the IRS. Most VITA sites provide free e-filing, and with direct deposit into their own bank accounts taxpayers can receive their refunds in as little as 8-10 days.

For more information about the LITC and VITA tax projects, or to see if you qualify for services, you can contact one of our following outreach offices:

**Ft. Berthold** - LSND New Town Office, 345 Main Street, New Town, ND
(701)627-4719 locally, or 1-877-639-8695

**Turtle Mountain** - LSND Belcourt Office, BIA Rd. 7, Bldg 85, Belcourt, ND
(701) 477-3710

**Spirit Lake** - LSND Spirit Lake Outreach, Courthouse, 709 3rd Ave., Ft. Totten, ND
(701) 350-1663

**OR** - LSND’s Central Intake Office 1-800-634-5263
Under a ruling by the North Dakota Supreme Court, the State of North Dakota may not impose a sales tax on American Indians within the boundaries of the reservation on which they are an enrolled member.

Effective July 1, 2007, the North Dakota legislature expanded the exemption to include sales made to a Native American who:

- Is an enrolled member of any federally recognized Indian tribe
- Lives on any reservation located within North Dakota, and
- Takes possession of the goods on any reservation located within North Dakota.

In 2009, the North Dakota Legislature also expanded the exemption to include tribal government agencies. Effective July 1, 2009, tribal government agencies are exempt from sales tax. An exempt tribal entity is defined as a tribal government agency, instrumentality, or political subdivision that performs essential government functions.

The North Dakota Tax Commissioner has issued a sales tax exemption certificate to each tribal government located in North Dakota. Native American individuals do not receive exemption certificates from the Tax Commissioner because purchases off the reservation remain subject to tax.

To document an exempt sale to a Native American individual, retailers must request the customer’s enrollment number. Retailers should retain the delivery address, customer’s name, and customer’s enrollment number to support an exemption granted to an enrolled member.

If you have any other questions on this topic, feel free to contact us or the North Dakota Tax Commissioner’s office at (701) 328-1246.
Please be advised that LSND’s outreach schedule is being changed for 2012 due to the funding cuts. The updated dates, times and places will be available on our website at www.legalassist.org. Thank you in advance for your patience and attention in this matter.
Linda Catalano

Long time legal aid attorney Linda Catalano continues to serve the immigrant population in her new career move to Lutheran Social Services. A native of New York, Linda found a second home in North Dakota and attended law school at UND, being admitted to the practice of law in 1974. Linda was hired as a VISTA volunteer and established a small legal aid program in the Devils Lake Region. Her early work included outreach to what is now the Spirit Lake Nation. Her heart was committed to serving the low-income and elderly population of North Dakota, which no doubt developed in her participation with the Clinical Legal Aid Program at UND.

Her dreams expanded as she was involved in the grassroots effort to develop a statewide legal services program in North Dakota, and eventually she became the executive director of the program known as Legal Assistance of North Dakota, Inc. (LAND). She was active in State Bar activities and Supreme Court committees, and she is well known in the legal community.

Later, when the Legal Services Corporation made the decision to have only one legal aid program in the state, she promoted and facilitated the merger with LAND and North Dakota Legal Services (NDLS), the Indian legal services program based in New Town. With the merger of the two programs into what is now known as Legal Services of North Dakota, she graciously stepped down as executive director and took on the position as managing attorney of the Fargo legal aid office. Eventually, she moved into the role as project manager of the immigration project and helped numerous new Americans through the legal hoops in a new country. It is with these new skills she moves on to continue helping these New Americans in her role with Lutheran Social Services.

All of us in the legal services community say thank you Linda, for your many years of service to our client population. Best wishes in your new endeavors.
2011 UNITED TRIBES INTERNATIONAL POW-WOW

Vickie Fox, LSND Tax Coordinator

Fancy Shawl Dancer

Vicki Alberts, Office of Special Trustee - Ft. Berthold and her niece Danica

Tracey Iron Road, Office of Special Trustee - Standing Rock and Vickie Fox, LSND

Alayna Hill and Haley Bearstail, Jr. Girls Dancers
News and Notes

Lynn Clayson Gifford

Legal Services of North Dakota board member Lynn Gifford passed away Tuesday, October 4, 2011, following a short stay at a Fargo care facility. Lynn was born in Minot and as a young child moved to Bismarck. She graduated from Bismarck High School and later married John Gifford.

Lynn graduated from the University of Mary with a degree in English. She loved performing in the theatre and always enjoyed the lighter side of life. In Fargo she was very active with the performing arts and with the FM Chamber Chorale.

Lynn was an energetic advocate for the less fortunate, and had a heart of gold. She represented the North Dakota Mental Health Association on the LSND Board of Directors and often offered good suggestions for our program’s progress. After moving to Fargo, she spent much time at the Myrt Armstrong Center helping individuals with mental illness, as well as other disabilities.

She loved spending time with her daughter Carolyn and with her 9 month old grandson.

Lynn was very involved in her church where she sang, led services and taught religious education.

Dr. Larry Gorospe

Two board members gone in one week – what a shock. We received notice of the death of Dr. Larry Gorospe, who passed away September 30, 2011, just hours before the notice regarding Lynn Gifford.

“Dr. Larry”, as he liked to be called, obtained his bachelor’s degree from UND, Grand Forks in 1970, a master’s degree from the University of South Dakota, Vermillion in 1971 and a doctorate from Pennsylvania State University, University Park, PA in 1983. Early on Larry decided that he wanted to live a life of service to Indian people and worked for Indian programs in California, Wisconsin and Texas before accepting employment with his own tribe at Belcourt.

Larry enjoyed the outdoors. He died of natural causes while on a camping trip with long time friends at Deep Lake National Park in Utah.

Larry had management experience and often provided suggestions for ways to change our program. He also provided the Native American insight for our board members.
LEGAL SERVICES of North Dakota

1025 N 3rd Street
PO Box 1893
Bismarck ND 58502-1893
701.222.2110

www.legalassist.org

BISMARCK OFFICE STAFF
Keith Engbrecht, Finances
Willa Rhoads, PAI Coordinator
Audrey Wingert, Legal Assistant
Audrey Solheim, Secretary
Stacey Fetzer, Paralegal
Jim Fitzsimmons, Attorney
Brad Peterson, Attorney
Mikayla Jablonski Jahner, Attorney
Meredith Vukelic, Attorney

Central Intake Office
1-800-634-5263

Senior Hotline
1-866-621-9886

MINOT OFFICE
Gale Coleman, Intake Coordinator
Lois Luchsinger, Legal Assistant
Crystal Davis-Wolfrum, Intake
Kelli Moe, Secretary
Tom Masa, Paralegal
Rich LeMay, Attorney

BELCOURT/NEW TOWN OFFICES
Clarine DeGroot, Office Mgr.
Vickie Fox, Paralegal
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