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Testimony of UAW Local 2325

The Association of Legal Aid Attorneys

on

THE 2010-2011 EXECUTIVE BUDGET

TOPIC: PUBLIC PROTECTION

Presented before:

**The Senate Finance Committee
and
The Assembly Committee on Ways and Means**

Presented by:

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President**

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UAW Local 2325, The Association of Legal Aid Attorneys, welcomes this opportunity to testify at this 2010-2011 Executive Budget hearing. Our Local is comprised of 800 attorneys who staff the criminal, juvenile rights, and civil practices at the Legal Society. Today my testimony focuses on the devastating impact that the proposed cuts to critical State funding for the Legal Aid Society will have on our ability to maintain essential legal services for constituents in all five boroughs of New York City.

Before becoming President in 2007, I proudly defended clients accused of crimes, many times wrongfully, for nine years in the Society's Manhattan criminal defense office. I came up through the ranks and know firsthand how difficult it is to manage an unconscionable caseload with very few resources. This level of dedication is not unique, but is shared by all of us at the Society as we strive to achieve the same goal - to give a voice to the poor who are still treated unequally in our legal system. For forty years, the members of our Local have always felt our interests to be inextricably intertwined with the clients that we represent.

Despite the daily hardships that we face - struggling to provide quality representation while handling unconscionable caseloads coupled with inadequate levels of support staff and resources, not having the capacity to assist all that seek our help, struggling to make a living on lower wages than the private sector while strapped with high levels of educational debt - we fight every day with pride on behalf of the neediest of New Yorkers.

Equal access to justice is an important issue for labor. As attorneys, we see every day the adversity low-income New Yorkers face when they confront the legal system on their own, without the aid of a trained legal advocate. We see this in the many forums in which we appear as Legal Aid staff attorneys for our civil clients: housing court, civil court, welfare centers, unemployment offices, administrative hearings for administrative benefits ranging from food stamps and federal disability benefits to welfare and Medicaid. We see this in State and Federal courts. We represent New Yorkers on matters involving housing, homelessness, benefits, disabilities, family law, domestic violence, prisoner's rights, reentry, elder law, consumer law, foreclosure, immigration, employment, tax law, and health law.

Equal access to justice for working families, individuals, and all who seek it should be the cornerstone of our legal system, but, sadly, it is not due to the constant underfunding of vital legal service programs like the Legal Aid Society. Without adequate funding, the rift that already exists between the rich and the poor in our legal system continues to widen. We can add more judges and court personnel, fix up court houses, and distribute pamphlets and sample court papers to unrepresented litigants, but without advocates like the attorneys at Legal Aid, litigants will still not have full access to justice. Without proper funding, Legal Aid cannot be the presence it has been in the communities in every borough of New York City, especially at a time when the need for our services has skyrocketed due to the most extreme economic conditions seen since the Great Depression of the 1930s.

New York, as the rest of the country, is in economic crisis, and all levels of government are grappling with massive budget deficits and the need to keep social service programs running at current or expanded levels. Unlike other states, and most notably New York's closest neighbors, New York is almost dead last in the amount spent per-poor-person for legal services. This is both deplorable and shameful, yet the amount that New York has allocated to spend each year on legal services for the poor has continued to decrease.

The proposed Executive budget for FY 2010-2011 chooses once again to cut vital funding for legal service programs across the board. It is at times like these that government should be acting to strengthen the safety nets that are in place to help New Yorkers in dire need of assistance. The Legal Aid Society has always been a safety net to the communities that we serve, but instead of having our programs strengthened through additional funding, we have suffered from the constant chipping away of our support structures. Drastic reductions in funding have left us constrained to keep providing the same level of services.

If the cuts proposed for criminal defense and civil legal services in the Executive's 2010-2011 budget are enacted, New Yorkers accused of crimes, and families and individuals who need legal help in the midst of this severe economic downturn, will suffer.

In the criminal defense area, we cannot keep taking on new cases, provide the constitutionally mandated defense for New Yorkers, and absorb new State cuts, especially at a time when our criminal defense caseload of new cases continues to increase as a result of increased arrests in New York City – even as officials proclaim that crime is down.

On the civil side, the numbers of vulnerable New Yorkers who are seeking our civil legal assistance have increased dramatically during this extraordinary economic downturn. With the new proposed State cuts, we will have to turn away more families and individuals who need our legal assistance.

Funding for Criminal Defense Services

The caseloads of our members in Legal Aid's Criminal Defense Practice have been in violation of the Appellate Division, First Department standards for years. Despite Mayor Bloomberg's assurances that crime in New York City is down, arrests have consistently been on the rise over the past several years. The Society's annual criminal defense caseload increased from approximately 210,000 new cases in City fiscal year 2005-2006 to nearly 227,000 new cases in 2007-2008. During 2008 – 2009, our caseload increased even further to 232,000 new cases and that trend of increased cases is continuing this year.

As a result of these increased arrests in New York City, annually the Legal Aid Society's criminal defense staff of 435 attorneys is handling more than 100,000 cases which survive a first court appearance, and approximately 30 percent of those cases are felonies. Nearly eighty-three percent of our criminal defense attorney staff has caseloads significantly in excess of the annual standards set by the Appellate Division, First Department, which limit annual criminal defense attorney caseloads to 400 misdemeanors or 150 felonies, with felonies counted as 2.66 misdemeanors in mixed caseloads. The average annual weighted caseload for attorney staff who handled more than the First Department standards permit is now 718 cases, and our overall average pending caseload is in excess of 100 cases.

In the 2009 – 2010 budget, the Legislature enacted a landmark law authorizing the Chief Administrative Judge to enact caseload standards for the Legal Aid Society and other criminal defense lawyers in New York City that will be phased in over the next four years. The Chief Administrative Judge is proceeding with this process and the Judiciary's 2010 – 2011 budget makes provision for implementing this historic new law. Finally, it appeared that New York State was about to address a

long standing problem by ensuring that low income New Yorkers accused of crimes would be represented by attorneys with proper caseloads, but then Governor Paterson released his Executive Budget for FY 2010-2011 which threatens to undo this landmark legislation before it even begins.

First, the Governor's proposed 2010-2011 Executive Budget cuts State Aid to Defense funding from \$9.8 million to \$8.8 million, including a cut from \$7.6 million to approximately \$6.7 million for the Legal Aid Society based on the traditional allocation of this funding. This proposed reduction comes on top of a cut of nearly \$1.1 million in State Aid to Defense funding for the Legal Aid Society in the final 2009 – 2010 State budget. The proposed 2010 – 2011 reduction also comes on top of annual reductions from the 2003 State-wide Aid to Defense funding level of \$13.6 million, of which \$10.8 million had been allocated to the Legal Aid Society.

The proposed \$1 million cut in State Aid to Defense funding can be restored without adding any expense to the 2010 – 2011 Executive Budget by reallocating \$1 million to the Aid to Defense budget line from the \$10 million in new funds the Governor has proposed to add to the Division of Criminal Justice Services' budget from new court fees for unspecified improvements in indigent defense. It makes no sense to propose to add funds to improve indigent defense while at the same time cutting existing funding for Aid to Defense which the Legal Aid Society is currently using to represent clients in New York City.

Second, the Governor's proposed 2010 – 2011 Executive Budget also eliminates essential legislative funding which the Society needs to continue to provide constitutionally mandated representation to clients. In the current 2009 – 2010 State budget, the Society is relying in the following legislative funds to represent clients: \$1.1 million in Senate legislative funding for criminal defense; \$300,000 from the Assembly in supplemental Aid to Defense funding; \$485,000 in Assembly funding to provide special representation services for juveniles in criminal court cases; and \$40,000 from the Assembly to focus on drug interdiction matters involving the airports. Without a restoration of these funds, the Society's criminal defense caseload crisis will be exacerbated and the 2009 landmark case cap law will be negated.

Third, the Governor's 2010 – 2011 Executive Budget proposes to cap the allocation of State indigent legal services funding for New York City and make other changes in State Finance Law which will also negate the 2009 landmark case cap law. Indeed, the City has contended that the Governor's proposal will result in a reduction of funding for criminal defense in New York City.

The urgent need to reverse these three budgetary actions by the Governor is highlighted by the continuing caseload crisis which we are experiencing. This extreme situation is what led to the enactment of the landmark case cap law nearly a year ago. Unfortunately, even before the case cap law implementation process has begun the situation has become worse and the Governor's proposed budgetary actions will only exacerbate this criminal defense crisis.

Two final budget concerns in the criminal defense area involve our representation of clients who are mentally ill and chemically addicted and those are parole from State prisons. The Division of Criminal Justice Services has annually allocated \$910,000 in Bryne funding to the Society to operate a special program for persons accused of crimes who are mentally ill and chemically addicted. This program has also had significant success in preventing re-arrests for clients the Society represents. In

both 2008 – 2009 and 2009-2010, the Legal Aid Society was allocated reduced funding of \$825,000 for this program. For 2010 – 2011, it is essential that Division of Criminal Justice Services continue to allocate Byrne funding to enable the Society to continue to operate this critical program for these vulnerable New Yorkers. In the past, the Legislature has urged the Division of Criminal Justice Services to continue this vital Byrne-funded program and we ask that you do so again.

The members of our Parole Revocation Defense Unit serve as the primary defender of persons accused of parole violations prosecuted in New York City. Annually, the Society's Parole Unit conducts approximately 7,300 preliminary and final parole violation hearings. With a well-trained staff, the Legal Aid Parole Revocation Defense Unit provides cost-effective, high quality representation. The Legal Aid Society has designed specific intake procedures to meet the special needs of parolees with chemical addiction and with mental illness in order to prevent the cycle of re-arrest, release, and recidivism. In addition to lawyers, social workers are specifically trained to identify special need parolees and refer them for necessary services and programs.

Historically, the State has provided \$1.3 million in funding to support these critical parole defense services. However, during the Pataki Administration, this State funding for indigent parolee defense was eliminated from the Executive Budget and restored by the Assembly. This year, the Executive Budget also does not include this funding.

We are very grateful for the Assembly's restoration of \$472,122 in funding for the Legal Aid Society's representation of indigent parolees in the adopted 2009-2010 budget. Likewise, we greatly appreciate the Assembly's restoration of \$273,700 in funding for the Society's representation of mentally ill parolees in the 2009-2010 budget. For the State's 2010-2011 fiscal year, restoration of the \$472,122 and \$273,700 in funding for parolee legal assistance is critical to enable the Society to maintain these vital services for vulnerable clients.

Since our indigent parolee defense program is designed to divert low-risk parole violators from prison to community-based treatment programs, the loss of these funds would result in a larger number of parolees returning to prison. The Legal Aid Society's innovative program develops alternatives to incarceration for this population in the form of medical discharge plans and program placements, and has achieved a demonstrable reduction in repeat offenses. Because treatment is a less expensive means of protecting public safety than returning a parolee to prison, averaging only \$15,000 per year as opposed to \$34,000 annually, any savings from the elimination of this State indigent parolee representation funding would be offset by the need to commit significantly higher amounts of money to the budget of the State Department of Correctional Services. The Society's program for mentally ill parolees is particularly cost-effective given the substantial cost of incarceration of mentally ill clients that would otherwise be absorbed by the Department of Correctional Services and local governments.

The Need for Restored Funding for Civil Legal Services

Our members provide civil legal services through our neighborhood-based offices in all five boroughs of New York City and city-wide units that serve families and individuals with special needs. In addition to servicing our own clients, we also accept referrals from other legal services groups, who cannot provide all necessary services, have limited or no case intake capacity, or do not serve a particular community, as well as provide vital trainings for the legal community throughout the City.

We are mindful of the extreme financial difficulties that the State is facing. At the same time, these extraordinary economic conditions are having an especially harsh impact on low income New Yorkers. As legislators serving constituents – many of whom are our clients – you know that the need for the legal help that the Society provides to these struggling families and individuals is increasing exponentially. Due to the lack of adequate funding, we are not capable of assisting all those who come to us for legal assistance. For every one person that we are able to help, we turn away eight. Without ongoing substantial funding, we will be forced to turn away more families and individuals who desperately need our help.

This the toughest part of a Legal Aid attorney's job – having to turn away families and individuals who need our legal assistance because we do not have enough staff or resources. Every day, our members have to turn away families facing eviction and homelessness, victims of domestic violence, elderly and disabled people struggling with the bureaucratic maze of Medicare and Medicaid, families fighting to support children, people living in uninhabitable apartments, disabled people unable to secure government benefits, and people who have just lost their jobs and need help to win hearings on their claims for unemployment insurance benefits. Our members bring skill, creativity, and fierce advocacy to all of these cases, but there is a limit to the number of cases that we can handle with fewer resources. Our members dedicate themselves to serving their clients and winning their cases, turning away others in need is heartbreaking.

This increasing need for legal assistance is coming at a time when a catastrophic drop in Interest on Lawyer Account funding for civil legal assistance in New York State is looming in 2010. The IOLA Board allocates civil legal services funding on a calendar year basis. In December 2008, IOLA made State-wide grants to civil legal services providers totaling over \$31 million covering a 15-month period. This 15-month funding level is equivalent to \$24.8 million annualized over 12 months, which is the approximate level of the 2008 calendar year IOLA funding. However, primarily as a result of the drop in interest rates as well as the drying up of economic activity when the downturn began, the IOLA Fund's program revenue is projected to drop to approximately \$6.5 million for the period April 1, 2010 through December 31, 2010. This \$6.5 million revenue level for the first 9 months of the State fiscal year that begins on April 1, 2010 and runs through March 31, 2011 is in stark contrast to \$18.6 million which had previously been the proportionate level for a 9-month period. These substantial losses are expected to continue during calendar year 2011 through the last quarter of the State's April 1, 2010 – March 31, 2011 fiscal year and thereafter into the April 1, 2011 – March 31, 2012 fiscal year. Based on these projected losses, the Society's \$4.5 million annual 12-month IOLA grant will be decimated. Other providers in New York City and in the rest of the State are facing similar deep cuts.

We are extremely grateful for the Senate's strong support for a bailout of the IOLA Fund in the April 1, 2010 – March 31, 2011 fiscal year that, together with support from the Assembly, has now led to Chief Judge Jonathan Lippmann's inclusion of \$15 million in the Judiciary's proposed budget in order to make the IOLA Fund whole for one year and thereby preserve current levels of civil legal services in New York State. This proposed funding will be reviewed by the Governor and the Legislature during the budget process and it will not become final until the 2010 – 2011 State budgets is adopted on April 1, 2010. Continued support for this \$15 million IOLA bailout is therefore critical to ensure that this funding is included in the final 2010 – 2011 State budget. However, the proposed bailout for 2010 – 2011 simply preserves the current status quo in which there is a significant gap in

available civil legal assistance and the increasing need for civil legal services and it does not address the need to stabilize the IOLA Fund after March 31, 2011.

In fact, the sad truth is that even with the inclusion of \$15 million in IOLA bailout funds in the Judiciary's 2010 – 2011 budget, there is more that New York State can and should do to address the shocking gap in access to justice that our staff sees first-hand every day. For many years the Assembly has supported civil legal services with special legislative funding. In the past year, the Senate has also supported civil legal services, providing special legislative funding in the current fiscal year. Those levels of funding are essential to continue as part of efforts to preserve and expand access to justice through the provision of civil legal services.

In other States, however, the Executive has become a partner with the legislative branch to provide far more significant funding for civil legal services. Beyond stabilizing the IOLA Fund this year, New York must commit substantial additional resources to bridge the access to justice gap. In the mid-1990s, a task force led by then Chief Judge Judith Kaye found that at least \$40 million in additional annual State funding was needed to bridge the justice gap in New York State. Sadly, the situation that we now find ourselves has only become more dire and the looming cuts of IOLA and general funding could not come at a worse time for vulnerable New Yorkers.

Unfortunately, notwithstanding the harsh impact the economic downturn is having on low income New Yorkers, the Governor's 2010 – 2011 Executive Budget eliminates all of the civil legal services funding that the Assembly and the Senate provided in the 2009 – 2010 State budget. Without a restoration of this critical funding, the Legal Aid Society and other civil legal services programs across the State and in New York City will have to dramatically reduce staff and turn away even more constituents who need civil legal help to address problems resulting from the continuing economic downturn. For example, without a restoration of this legislative funding in the final State budget for 2010 – 2011, the Society will lose the following funding which is crucial for continuing to provide civil legal aid to low income families and individuals: \$573,000 in Senate civil legal services funding; \$1,091,251 in Assembly civil legal services funding; \$140,000 as part of the Assembly's allocation for HIV legal services; and \$50,000 and \$75,000 grants as part of the Assembly's Legal Services Fund allocation for legal aid for senior citizens and supplemental domestic violence legal assistance.

We are proud that we represent clients to effect systemic changes through law reform and class action litigation and advocacy. Even with the plummeting levels of unrestricted IOLA funding, we currently represent clients in twenty-one law reform cases on behalf of 2 million low income children and adults living in New York City.

One example of our Law Reform work that will have an impact on low-income New Yorkers is a class action lawsuit we filed related to the foreclosure crisis. As the economic crisis places record numbers of homeowners at risk of losing their homes, we filed one of the first federal class action lawsuits against a national mortgage servicer. That servicer is denying homeowners access to the Obama Administration's Home Affordable Modification Program (HAMP) for spurious reasons, and denied them the ability to contest such denials. Our clients include Ms. K., a mother of three employed as a registered nurse, who fell behind in payments on her mortgage as a result of a temporary loss of income. If her home is foreclosed on, Ms. K and her children would become homeless. Even though Ms. K meets the eligibility criteria to be considered for HAMP, her servicer claimed that she was only eligible for a plan that would not lower her payments and would require her to waive all of her legal

rights. When Ms. K asked why she did not qualify under the President's plan, her servicer lied to her, telling her that the plan did not cover loans like hers. If our lawsuit is successful, Ms. K and others in her situation will be given the opportunity to save her home.

Another example is our work of our employment law practice, responding to a hugely increased demand for assistance from unemployed low-wage and immigrant workers. According to the NYS Department of Labor, the New York state unemployment rate edged up to 9 % in October 2009. In New York City, the unemployment rate officially hit 10.3%. However, according to the report of James Parrot, Deputy Director and Chief Economist for the Fiscal Policy Institute released on November 10, 2009, our "real unemployment rate" in New York City is 16 % when we factor in under-employed and discouraged workers -- and over 20% for blacks and Hispanics who make up half of the City's workforce.

We help displaced workers obtain unemployment insurance and other crucial benefits every day. For example, one of our clients, Ms. A, worked as a custodian. She struggled to make ends meet at her job where she worked 25 hours a week. Due to the economic crisis, Ms. A's hours were slashed to seven hours of week -- not enough earnings to live on -- and thereafter she lost her job altogether. When she applied for unemployment benefits, her employer contested the application. Ms. A represented herself at the hearing and lost. She applied for public assistance benefits and was denied as well. When she came to us, she had no money and was on the verge of eviction from her home. We got her an expedited hearing and with our representation, Ms. A received unemployment benefits, was able to pay her back rent, and saved her home.

Ms. A's story is not unusual. Without representation, only 24% of claimants win unemployment benefits. With representation, 41% win benefits. When we represent claimants, 80% win their hearings.

Our Immigration Law Unit is the only free, citywide provider of comprehensive immigration legal services with intake or referral sites in all five boroughs of New York City. We represent low-income immigrants in obtaining lawful status, dealing with employment issues, and defending against deportation and removal proceedings. Despite the high stakes and the dire consequences of deportation, including separation from family, clients in immigration proceedings have no right to appointed counsel. Last year, more than 60% of immigrants whose cases were completed in immigration court had no attorney or legal representative. With our current limited funding and resources, the Legal Aid Society is only able to represent a small percentage of those detained and non-detained immigrants facing removal each year. Loss of IOLA funding would be devastating because the Society will not be able to continue to provide free legal representation to vulnerable low income immigrants.

These examples just give you a small picture of the work we do every day and the desperate straits of the people who seek our help. Many of you know our work because the people we assist are your constituents.

The situation will become even more extreme in 2010 if the final 2010 -- 2011 State budget does not include the \$15 million in the Judiciary's budget to bail out the IOLA Fund, as well as a restoration of core State funding which has historically been provided as part of a series of State-wide civil legal services initiatives. Both sources of funding are essential to preserve client services in all five boroughs of New York City. The consequences of eliminating critical State civil legal services funding will be

dire – increases in evictions, foreclosures and homelessness, increases in the number of women and children who cannot escape domestic violence, increases in the numbers of immigrants lawfully in this country who will be wrongfully deported, and increases in the numbers of children and adults who will go without subsistence income, health care, and food.

Ultimately all New Yorkers will bear the increased costs when our lack of funding prevents us from providing legal assistance. Housing lawyers in our eviction and homeless prevention program save the state and localities millions in emergency shelter costs. The family law work done by legal services programs stabilizes families and keeps children with their parents, avoiding costly foster care placement. When we help a displaced worker get unemployment insurance benefits, this saves the state additional public assistance expenditures and keeps a worker connected to the job market through services offered by the Department of Labor. The consequences of eliminating critical legal services funding will be dire because there will be fewer attorneys to challenge bureaucratic mistakes and ensure equal access to justice.

Reduction in Funding for NYS Educational Loan Forgiveness Assistance Fund

The FY 2010-2011 Executive budget proposes a 10% reduction in funding for the educational loan forgiveness fund for Assistant District Attorneys, Indigent Defense and Civil Legal Services attorneys. Until the law was amended last year, only the District Attorneys were afforded the opportunity to receive State assistance. Thankfully, many of our members were afforded the opportunity to apply this year and receive much needed financial assistance in repaying their loans. The amount of educational debt that the vast majority of our membership is carrying is staggering. Too often, I hear stories of the tough decisions that my members face in trying to figure out how to pay their rent, their monthly loan payments and buy food on a Legal Aid salary. This fund is essential to the Society's ability to recruit, but, more importantly, retain highly trained and dedicated attorneys and cannot be reduced.

The FY 2010-2011 Executive Budget also proposes new language restricting that these funds be solely available to New York residents. This restriction cannot be adopted by the Legislature. Again, our members do not earn the types of salaries that are available in the private sector and struggle everyday to live in an expensive city and pay their bills. Unfortunately, some are forced to live outside of New York City in neighboring states and bear the burden of ever increasing commuting costs. It would be unfair to restrict much needed assistance to only those who both live and work in New York at an eligible place of employment, especially when our members who live outside of New York still pay city taxes. This program must remain available to all eligible attorneys who have dedicated their lives to serving the neediest of New Yorkers.

The Legal Aid Society Cannot Absorb any Reduction in Funding

Finally, I would like to stress one crucial fact. Despite our size, we simply cannot absorb any further reductions in funding. Due to years of constant underfunding, we have been cut to the bone and these gaps in our budget cannot be filled on the backs of our members. For years, the Society has been operating as lean as possible - we have nothing left to cut.

Any further reduction in funding will not only result in a disruption of services, but will most likely result in layoffs of our members. This would not only hurt our clients, but it would create even more of a crisis in the courts and administrative forums where we appear.

Our members have been sacrificing for years due to the constant underfunding of our programs. As you know, A.L.A.A. members work under very stressful conditions for low wages in comparison to what they could earn in the private sector. The money saving policies that many companies have only now put in place this past year have been in effect at Legal Aid offices for years.

Our members began contributing to their healthcare plans years ago, only to face increasing costs during bargaining each year. Unlike many of our brothers and sisters in the public sector, we do not have a defined-benefit pension. We have given up the few other wage incentive benefits that we have had in the past, and have been working under a wage freeze this past year. We have done all of this in an effort to help alleviate the harm done by the State's constant underfunding of our programs and keep the doors of the Society open.

In these severe economic times, our clients need our legal assistance more than ever. We thank you for the vital support that you have given to the Legal Aid Society in the past, and we are hopeful that the critical continuing funding needs that we have highlighted in this testimony can be met.