

**Testimony of The Legal Aid Society**

**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:**

**Steven Banks**  
Attorney-in-Chief  
The Legal Aid Society

**February 8, 2010**

The Legal Aid Society welcomes this opportunity to testify at this 2010-2011 Executive Budget hearing concerning necessary State funding for the Society's essential legal services for constituents in all five boroughs of New York City. During the past year, with a staff of 1450 – including 850 lawyers – the Society provided legal assistance in more than 300,000 cases and legal matters for clients.

State funding supports the Society's legal assistance in the areas of civil legal services, criminal defense, indigent parolee defense, and juvenile rights. Special annual allocations from the Legislature for civil and criminal services have provided crucial funding for the Society's legal assistance for New Yorkers who have nowhere else to turn for legal help. This testimony describes the impact of proposed State Executive Budget funding levels for civil legal services, criminal defense, and indigent parolee defense. The Society's Juvenile Rights Practice representation of children in Family Court proceedings is funded separately by the Office of Court Administration, but we will also highlight needs in that practice area.

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 and the need for the legal help that the Society provides to these struggling families and individuals is increasing exponentially.

Against this backdrop, the proposed State cuts for criminal defense and civil legal services in the Governor's 2010-2011 Executive Budget will hurt families and individuals who need legal help in the midst of this severe economic downturn and New Yorkers accused – often wrongfully – of criminal conduct.

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 and we are forced to turn away eight out of every nine New Yorkers who seek our help. With the new proposed State cuts, we will have to turn away more families and individuals who need legal aid to get unemployment and disability benefits, flee from domestic violence, and prevent evictions, foreclosures, and homelessness – which is at record levels in New York City.

**The Legal Aid Society:** The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform.

The Legal Aid Society has performed this role in City, State and federal courts since

1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of 850 of the brightest legal minds. These 850 Legal Aid Society lawyers work with 600 social workers, investigators, paralegals and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 25 locations in New York City, the Society provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel.

The Society's legal program operates three major practices — Civil, Criminal and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. With its annual caseload of more than 300,000 legal matters, the Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession.

The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits some 2 million low income families and individuals in New York City and the landmark rulings in many of these cases have a State-wide and national impact.

**Funding For Criminal Defense Services:** Since 1965, the Legal Aid Society has served as the primary defender for persons accused of crimes in New York City who cannot afford counsel. With criminal defense trial offices in the Bronx, Brooklyn, Manhattan and Queens, the Legal Aid Society represents indigent defendants accused of crimes ranging in seriousness from alleged disorderly conduct to first degree murder. The Legal Aid Society's criminal defense program is at the forefront of efforts to address new issues in the criminal justice system, ranging from assisting in the design and staffing of specialized court parts that deal with drug abuse, domestic violence, mental illness and juvenile offenders to consulting regularly with State and City officials on policy issues of importance to our clients and securing system-wide reform through our Special Litigation Unit. The Society's Special Litigation Unit, for example, litigated the landmark case that established the 24-hour standard for arrest-to-arraignment in New York State.

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.

This law was enacted in order to ensure that low income New Yorkers who are accused of crimes – often wrongfully – in New York City will be represented by lawyers with proper caseloads. This action by the Legislature is so significant that the United States Attorney General Eric Holder has cited this law as one of two major breakthroughs for the provision of

indigent defense in the entire nation.

Unfortunately, three proposals in the Governor's 2010 – 2011 Executive Budget threaten to undo this landmark criminal defense case cap law.

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 \$6.8 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 State 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 on 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 the 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 proposals 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.

As we reported to the Legislature last year prior to the enactment of the case cap law, 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 83 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 per attorney.

Making this situation even worse – as the Governor's three budgetary proposals would do – is intolerable, especially given the significant impact for New Yorkers charged with even relatively minor offenses in terms of collateral consequences for housing, employment, education, public benefits, and immigration.

A final budget concern in the criminal defense area involves our representation of clients who are mentally ill and chemically addicted. The Division of Criminal Justice Services had allocated \$910,000 in annual Byrne 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 Need For Restored Funding For Indigent Parolee Representation:** The Legal Aid Society's Parole Revocation Defense Unit (PRDU), established in 1972, was the first program in the nation to provide legal representation and social work diversion services specifically to persons who have been paroled from State prisons. By contract with New York City, the Society serves 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 had 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 again 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 2010 – 2011 fiscal year, restoration of State funding in the amounts of \$472,122 and \$273,700 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 \$45,000 annually as the Assembly Speaker's report found – 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:** The Society provides 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. Our civil program provides legal assistance in literally every community in New York City.

In addition to contacting us directly, clients are referred to the Society by the constituent services staffs of elected officials as well as the courts, community and social services organizations, government agencies, or by word of mouth. Other legal services groups also refer their clients to us when they cannot provide all necessary services, have limited or no case intake capacity, or do not serve a particular community.

Annually, we handle some 32,000 individual civil matters for the most vulnerable New Yorkers: survivors of domestic violence, senior citizens, disabled or chronically ill children and adults, immigrants fleeing oppression, unemployed workers, persons with HIV infection, and children and adults faced with evictions, foreclosures and homelessness. We help clients with legal problems involving: domestic violence and family law; elder law for senior citizens; housing and homelessness; income and economic security assistance such as federal disability

benefits, employment and low wage worker matters, earned income tax credits, federal food stamps, and public assistance; immigration; health care, including Medicare Part D, Medicaid, and access to hospital charity support; HIV and AIDS; and housing development and community development opportunities to help clients move out of poverty.

The continuing extraordinary economic conditions are having an especially harsh impact on low income New Yorkers and the need for the civil legal help for these struggling families and individuals is increasing exponentially. Without ongoing substantial support for the provision of civil legal assistance in New York State, the Society and other civil legal services programs across the State and in New York City will have to turn away more families and individuals who need legal aid to get unemployment and disability benefits, flee from domestic violence, and prevent evictions, foreclosures, and homelessness.

This increasing need for substantial support for civil legal services in New York State 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 comparison 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.

Against this background, we are extremely grateful for the Legislature's strong support for a bailout of the IOLA Fund in the April 1, 2010 – March 31, 2011 fiscal year budget. The Legislature's leadership on this issue has now led to Chief Judge Jonathan Lippman's inclusion of \$15 million in the Judiciary's proposed budget in order to make the IOLA Fund substantially whole for one year in an effort to 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 budget 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 attempts to preserve the current status quo in which there is a significant gap in available civil legal assistance and the increasing need for civil legal services. It also may not cover the entire reduction of available IOLA funding during the 2010 – 2011 State fiscal year. Moreover, this one-year bailout does not address the need to stabilize the IOLA

Fund after March 31, 2011.

Every day, civil legal services programs like the Society provide for thousands of vulnerable New Yorkers a lifeline for basic survival. And the situations our clients are facing – loss of jobs, foreclosure, eviction, hunger – are the grim hallmarks of this current fiscal crisis. The work performed by civil legal services programs also saves New York State millions of dollars a year and is a proven, tested and wise investment. Last year, for example:

- millions of public dollars were saved by legal services programs because they were able to preserve homes, avert homelessness for New Yorkers, and keep families together;
- legal services programs obtained \$24,494,483 in retroactive federal disability awards for clients and \$131 million in total benefits for clients, bringing millions of dollars into the State annually;
- the monthly disability benefits, Earned Income Tax Credit refunds, and Unemployment Insurance benefits civil legal services programs obtained for New York residents were reinvested by them and stimulated the economies of their communities; and
- these community investments, in turn, sustained jobs and additional economic activity.

Based on the number of low income families and individuals seeking civil legal services at the Legal Aid Society and at other civil legal programs across the State and in the City, the looming IOLA cuts could not come at a worse time for vulnerable New Yorkers. Even at current funding levels before any IOLA reductions, national studies have found that at least 80 percent of the low income persons who need civil legal assistance are unable to obtain it

For example, the Society annually handles some 32,000 civil legal matters in literally every zip code in the City, consisting of 35.9% of our cases from Brooklyn, 26.7% from the Bronx, 16.5% from Queens, 14.4% from Manhattan, and 6.5% from Staten Island. However, we are able to help only one out of every nine New Yorkers who seek our help with civil legal problems because of lack of resources. The situation has become particularly dire since the economic downturn which is having such a harsh impact in our client communities, and the need for our civil legal services is more crucial than ever. Homelessness, for example, is at record levels in New York City, and unemployment, hunger, and foreclosures are on the rise.

In recent months, we have seen unprecedented increases in requests for help in core areas of need:

- a 29% increase in requests for help with unemployment benefits and employment problems;
- a 40% increase in requests for health law assistance and help obtaining Medicaid, Medicare, and other health care coverage;
- a 12% increase in requests for help to obtain food stamps, federal disability benefits, and public assistance;
- a 16% increase in requests for domestic violence and family law help;
- a 15% increase in requests for help from current or former low wage workers with earned income tax credit or other low income taxpayer problems;

- a 21% increase in requests for eviction prevention representation; and
- a stunning 800% increase in requests for foreclosure defense assistance.

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 to address the dramatic drop in the Fund’s revenue for civil legal services because of the economic downturn. In these severe economic times, civil legal assistance is needed now more than ever.

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. With the leadership change in the Senate last year, the Senate has also supported civil legal services with special legislative funding during the current fiscal year. These levels of Senate and Assembly funding are essential to continue as part of efforts to preserve and expand access to justice through the provision of civil legal services.

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 Assistance Fund allocation for legal aid for senior citizens and supplemental domestic violence legal assistance.

Against this background of proposed State funding cuts, decreased IOLA funding, and an increased need for civil legal help in the economic crisis, a restoration of core State funding which has historically been provided as part of a series of State-wide civil legal services initiatives is 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 because of bureaucratic mistakes that cannot be challenged effectively in the absence of counsel.

**The Need To Support The Representation of Children In Family Court:** The Society's Juvenile Rights Practice is funded through the Office of Court Administration's budget and no funding is included in the Executive Budget itself. The Society's Juvenile Rights Practice is the primary counsel for children in the Family Court in New York City who are the subject of abuse and neglect proceedings, persons in need of supervision cases, and juvenile delinquency proceedings.

The continuing impact of the tragic deaths of children who were known to the City's child welfare system highlights the need to make sure that there are adequate resources for the child welfare system as well as for the Family Court system, including the Society's representation of children in these cases. The Family Court workload problem in New York City has been further exacerbated by the new State permanency law which requires semi-annual hearings on cases instead of annual hearings, but does not provide funding for these additional hearings.

To begin to address this crisis, during the 2007 session the Legislature passed and the Governor signed a new law requiring the Office of Court Administration to set workload standards for lawyers representing children in these Family Court cases, including the maximum number of children who can be represented at any given time. As a result of this landmark legislation, the Office of Court Administration implemented a client case cap rule to reduce the number of children our lawyers represent in Family Court to 150 at any given time from an average of approximately 250 when the legislation was introduced. This new law has had an extremely positive impact on the children we represent.

As the budget process proceeds, we also appreciate the Legislature's continued focus on the need to increase the number of Family Court Judges to help alleviate Family Court workload problems that adversely affect children by delaying consideration of their cases.

\*\*\*\*\*

Again, we thank you for the vital State support that you have allocated to us in the past to provide client services, and we are hopeful that the critical continuing funding needs we have highlighted in this testimony can be met.

Submitted by,

Steven Banks  
Attorney-in-Chief  
The Legal Aid Society  
199 Water Street  
New York, New York 10038  
Tel: 212-577-3277  
sbanks@legal-aid.org