

Testimony of The Legal Aid Society

on

**THE MAYOR'S FISCAL YEAR 2012
EXECUTIVE BUDGET**

Presented before

The New York City Council

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June 6, 2011

The Legal Aid Society welcomes this opportunity to testify before the New York City Council concerning the Fiscal Year 2012 Executive Budget and its impact on The Legal Aid Society's client services.

City funding supports the Society's legal assistance in the areas of civil legal services, criminal defense, and parole revocation defense. Special annual allocations from the Council for criminal defense and civil legal 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 the FY12 Executive Budget funding levels for criminal defense and civil legal services for low-income New Yorkers in all five boroughs of the City.

We are mindful of the extreme financial difficulties that the City 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 City budget cuts for civil legal services in the FY12 Executive Budget will hurt families and individuals who need legal help in the midst of this severe economic downturn. The numbers of vulnerable New Yorkers who are seeking our civil legal assistance have increased dramatically during this downturn even as our City funding has decreased and we are forced to turn away eight out of every nine New Yorkers who seek our help. With the new proposed City cuts, we will have to turn away more families and individuals who need legal aid to obtain unemployment and disability benefits, flee from domestic violence, and prevent evictions, foreclosures, and homelessness – which is at record levels in New York City.

We greatly appreciate the support that the Council has historically provided in the budget process. In this testimony, we will focus on the proposed funding levels in the FY12 Executive Budget for the Society's criminal defense representation and civil legal services.

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 900 of the brightest legal minds. These 900 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 the 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.

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, Queens, and, most recently, Staten Island, 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.

As you know, the City has recently completed a RFP process for indigent criminal defense and parole revocation defense services. Through this RFP process, The Legal Aid Society has again been awarded the largest number of primary criminal defense trial-level cases so that it will continue to be the primary indigent criminal defense provider in the Bronx, Brooklyn, Manhattan, and Queens. In addition, the Society has been restored to its role as the primary indigent criminal defense provider in Staten Island. The prior City Administration had prevented the Society from providing indigent defense representation in Staten Island beginning in the mid-1990s. Accordingly, as a result of the RFP, the Society is the primary indigent criminal defense provider in each of the five boroughs and city-wide. The Society has also been designated to continue to serve as the sole institutional provider of indigent parole revocation defense representation on Rikers Island.

The Society's first 2002 contract with the current Administration assumed that its annual caseload would be 210,000 trial-level cases. As a result of increased arrests, the Society's annual caseload exceeded 225,000 cases for a number of years and the Council had to provide supplemental annual funding at the level of \$11.3 million. In the new RFP contract, the City has allocated 213,000 primary cases to the Society and base-lined the \$11.3 million in supplemental

Council funding for FY12 along with other funding to cover certain fixed contractual expenses, such as health care. As a result of a prior RFP for appellate cases, the Society has continued to serve as the largest provider of indigent appellate criminal representation with funding for FY12 projected to be \$8.1 million – the same as it has been in FY11.

In addition to 213,000 primary trial-level non-conflict cases, the City planned to allocate to the Society a substantial number of conflict cases to maintain the Society's annual caseload in excess of 225,000 cases and thereby provide the Society with additional funding associated with this caseload. The City was blocked from doing so as a result of litigation claiming that the City cannot assign conflict cases to institutional providers like Legal Aid. Therefore, the Society intervened in the litigation in support of the City. In December, the trial court agreed with the City and Legal Aid that State law provides the City with the authority to assign any cases – whether non-conflict or conflict cases – to institutional providers like Legal Aid. However, there is a stay of that trial court ruling pending an expedited appeal that was argued and submitted on May 31. As a result, the City is proceeding with contracts for indigent defense services without assigning conflicts to Legal Aid. Currently, 18-B attorneys handle in excess of 40,000 indigent criminal cases annually and the number of cases that would be assigned to Legal Aid is a relatively small portion of that.

The City's inability to provide the caseload and associated funding to Legal Aid that it wants to means that the Society will not be able to maintain its current level of client services. Unless the litigation challenging the City's right to award of these additional cases to the Society is expeditiously resolved in favor of the City and Legal Aid, Legal Aid's ability to provide the following client services and staffing will be compromised: paralegal assistance based on Rikers Island; systemic client representation such as the monitoring and enforcement of the 24-hour arrest-to-arraignment rule that was established through Legal Aid's litigation; and a number of investigator, paralegal, social worker, staff attorney and supervisory positions. The paralegal and social worker positions affect members of 1199 SEIU and the staff attorney positions affect members of the Association of Legal Aid Attorneys, UAW.

The pending litigation is also impeding Legal Aid's ability to implement the Chief Judge's case cap limitation that the Society is required to phase in over the four-year implementation period set in State law. This problem is compounded by the recent \$500,000 reduction in the Society's prior \$6.8 million State Aid to Defense funding as well as uncertainty due to federal funding cuts regarding the Society's continued receipt of a special allocation of \$825,000 to support our program for clients with Mental Illness and Chemical Addiction – which is especially troubling because our MICA program has a proven track record of enabling clients to avert repeat offenses.

Notwithstanding these current problems presented by the pending litigation and State and federal funding matters, we are extremely grateful for the supplemental criminal defense funding the Council has provided since 2004 and for the City's determination to base-line these funds in FY12. As a result of the City's determination to include this funding in our budget, we do not need to seek a restoration of these funds for FY12.

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.

During the past year, our Civil program handled more than 38,000 individual civil matters benefiting nearly 100,000 children and adults living in poverty in all five boroughs of the City. Our clients are the most vulnerable New Yorkers: survivors of domestic violence, senior citizens, children and adults with disabilities and/or chronic illnesses, immigrants fleeing oppression, unemployed and low-wage 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; housing development and community development opportunities to help clients move out of poverty; and reentry to the community from correctional facilities.

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. Every day, the Society provides for 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 Legal Aid also saves government millions of dollars a year and is a proven, tested and wise investment. Last year, for example:

- millions of public dollars were saved because we are able to preserve homes, avert homelessness for New Yorkers, and keep families together;
- millions of dollars in retroactive federal disability awards were obtained for clients in place of State and City public assistance payments;
- the monthly disability benefits, Earned Income Tax Credit refunds, and Unemployment Insurance benefits we obtain for New Yorkers were reinvested by them and stimulated the economies of their communities; and
- these community investments, in turn, sustained jobs and additional economic activity.

The more than 38,000 civil legal matters which the Society handled last year involved constituents in literally every zip code in the City: 28% of our cases are from the Bronx, 24% from Brooklyn, 21% from Queens, 19% from Manhattan, and 7% 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 is at record levels in New York City, and unemployment, hunger, and foreclosures continue to be at high levels.

Since the economic downturn began, 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.

To make matters worse, the FY12 Executive Budget proposes to eliminate all civil legal services funding for the civil legal services initiatives that the Council funded in the FY11 budget. The consequences of eliminating this critical Council 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.

Again, although we are mindful of the City’s fiscal condition, based on the critical need for civil legal services throughout the City, restored funding for FY12 is essential for these programs which are slated for elimination in the Executive Budget:

The City-wide Low Income Civil Legal Services Program: Since 1993, the City Council has allocated annual funding to the Legal Aid Society and Legal Services NYC to provide civil legal services in all five boroughs for particularly “at-risk” clients, including senior citizens, survivors of domestic violence, children and adults with disabilities, and persons living with HIV/AIDS. Substantial numbers of these New Yorkers are referred to Legal Aid and Legal Services offices by the constituent services staff of Councilmembers and City agency staff. Funding for this program is evenly divided between Legal Aid and Legal Services. In the adopted FY09 and FY10 budgets, funding for this program was reduced by 59 percent from a pre-FY09 level of \$3.676 million to \$1.5 million currently, which has resulted in at least 1,822 fewer households served this year. If this funding is not restored, we will have to substantially reduce our provision of civil legal services in the Bronx, Brooklyn, Manhattan, Queens, and Staten Island notwithstanding the increasing numbers of New Yorkers who desperately need legal assistance in these difficult economic times.

The Supplemental Security Income (SSI)/Unemployment Insurance (UI) Advocacy Program: In the FY06 budget process, the Council established a new initiative to allocate \$2.5

million to Legal Services and the Society to provide legal representation to help public assistance recipients with disabilities secure federally-funded Supplemental Security Insurance (SSI) benefits and unemployed workers obtain Unemployment Insurance Benefits. This Council initiative generates significant City and State savings in averted public assistance expenditures when constituents receive federal benefits or unemployment benefits. Eliminating this program will eliminate these cost savings.

The Council-funded SSI advocacy program funds Legal Services and Legal Aid to help low-income children and adults with disabilities obtain Social Security disability benefits and move off public assistance. By securing federal SSI benefits for these individuals, the program shifts the costs of cash benefits and Medicaid to the federal government and secures federal refunds for the City to cover the cost of benefits paid prior to a determination of eligibility for SSI. The Council-funded Unemployment Insurance (UI) Advocacy Program helps public assistance-eligible New Yorkers who were initially denied unemployment benefits on appeal. Unemployment benefits cost the City and State nothing; they are paid from a special fund created through payroll taxes. Each public assistance-eligible person who gets unemployment benefits saves the City not only their 25 percent portion of cash public assistance but also Medicaid and administrative costs.

Funding for this combined SSI/UI Advocacy Program is evenly divided between Legal Aid and Legal Services. In the adopted FY09, FY10 and FY11 budgets, funding for this program was reduced by 60 percent from a pre-FY09 level of \$2.5 million to \$1 million currently, which has resulted in at least 1,551 fewer families served this year. If this funding is not restored, we will have to reduce substantially our provision of crucial unemployment and disability legal assistance in the Bronx, Brooklyn, Manhattan, Queens, and Staten Island notwithstanding the increasing numbers of New Yorkers who are seeking these vital services to receive assistance in obtaining unemployment insurance benefits and federal disability benefits.

The Anti-Eviction and SRO Legal Services Program: Since the 1980s, the City has funded legal services programs in all five boroughs (including The Legal Aid Society, Legal Services, the Westside SRO Project, MFY Legal Services, and the Northern Manhattan Improvement Corporation) to provide legal assistance to low- and moderate-income tenants faced with illegal evictions from their homes as well as services for tenants in single-room occupancy buildings known as SRO housing. These programs have helped thousands of low-income working families, New Yorkers with disabilities, and senior citizens, who are especially vulnerable to harassment and illegal eviction. In the adopted FY09, FY10 and FY11 budgets, funding for this program was reduced by 33 percent from a pre-FY09 level of \$3 million to \$2 million currently, which has resulted in at least 2,533 fewer “units” service (including full case representations, training programs, outreach sessions, and tenant association assistance). If this funding is not restored, the Legal Aid Society will be unable to continue to operate our anti-eviction program that provides legal assistance to tenants faced with homelessness in the Bronx, Queens, and Staten Island, to senior citizens in Brooklyn and community residents in Bushwick, and to tenant associations in East Harlem, Harlem, Inwood, and Washington Heights.

The Immigration Initiative Funding For Legal Services For Immigrants: The Society is the preeminent provider of legal assistance for low-income immigrants through our network of

neighborhood-based offices and community outreach sites in all five boroughs of the City. Together with Legal Services NYC, the Society provides IOI-funded immigration legal services and legal assistance for low-wage immigrant workers in all five boroughs of the City. IOI funding for each organization has been awarded at a level that has been reduced from a pre-FY09 level of \$596,000 to a current level for the Society of \$265,000, with the result that fewer low-income immigrants will receive legal assistance. Again, the FY12 Executive Budget completely eliminates funding for this program. If this funding is not restored, we will have to reduce substantially our provision of civil legal services for immigrants in the Bronx, Brooklyn, Manhattan, Queens, and Staten Island.

The Foreclosure Defense Program Funding: For several years, the Society and Legal Services NYC have received foreclosure defense funding through the Center for New York City Neighborhoods, which the Administration and the City created jointly to address the mounting foreclosure crisis across the City. In FY11, the Legal Aid Society and Legal Services NYC have received a total overall allocation of \$1.8 million from the Center for these vital legal services to keep New Yorkers in their homes. In recent years, the Administration and the Council made annual allocations to the Center that total \$1.5 million for foreclosure defense assistance – which the Center combined with other funds to provide the support for the Society and Legal Services NYC. In the Executive Budget, the Administration has allocated \$750,000 for foreclosure assistance. Based on the prior joint funding, a matching Council allocation of at least \$750,000 is needed to continue funding for our foreclosure defense legal assistance. But due to other funding reductions for the Center, such a joint allocation of \$1.5 million may not be sufficient to maintain current funding for the Legal Aid Society and Legal Services to continue existing levels of legal assistance in all five boroughs – despite the fact that the foreclosure crisis shows no sign of abating because filings are expected to increase over the course of the next year. If the necessary funding to continue foreclosure defense legal aid is not restored, we will have to reduce substantially our provision of foreclosure prevention legal assistance to preserve homes for constituents throughout the City.

For all these reasons, we urge that these crucial civil legal services programs be restored in the adopted FY12 budget to at least the FY11 levels. However, the sad truth is that in these dire economic times increased funding is required because the most vulnerable low-income New Yorkers have an even greater need for civil legal assistance to obtain the necessities of life – housing, health care, food, subsistence income or self-sufficiency, and family stability and security.

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We thank the Council for your long-standing support for our essential criminal defense and civil legal services programs. We will continue to update you during the FY12 budget process concerning our funding needs so that we can serve clients who depend on the Legal Aid Society to provide access to justice.

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