

Testimony of The Legal Aid Society

on

**THE 2007-2008 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 14, 2007

The Legal Aid Society welcomes this opportunity to testify at this 2007-2008 Executive Budget hearing concerning necessary State funding for the Society's essential legal services for clients in New York City as well as the parole revocation video conferencing proposal in the Public Protection section of the budget.

In some 275,000 cases, the Legal Aid Society annually provides civil, criminal, and juvenile rights legal services to low income families and individuals in all five boroughs of New York City. On an ongoing basis, the constituent services staff of State elected officials refers client cases to us for legal help. 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 funding allocations from the Legislature for civil and criminal services have provided crucial support for the Society's legal services for New Yorkers who have nowhere else to turn for legal help.

In this testimony, we want to update you on developments at the Legal Aid Society, and detail 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.

At the outset, we want to acknowledge that the Executive Budget includes restored and enhanced State funding for Aid to Defense criminal defense legal services and restored and enhanced State funding for civil legal services. We greatly appreciate this departure from budgets of the recent past which eliminated funding for these crucial services. Until now, the Society had been wholly dependant on partial annual restorations by the Assembly to preserve core client services.

Developments At The Legal Aid Society: As many of you know, just over two years ago the Legal Aid Society accomplished a dramatic financial and managerial turnaround, including a total restructuring of the Society's finances. A one-time infusion of \$9.4 million in private funds from the Society's Board of Directors and private law firms and a special infusion of \$11 million from the City and the City Council, in combination with significant sacrifices by managers and staff members of the Association of Legal Aid Attorneys/UAW and the SEIU/1199, were essential to the Society's turnaround.

For the Society's July 1, 2004 - June 30, 2005 fiscal year, the Society eliminated a \$22 million operating deficit. For the July 1, 2005 - June 30, 2006 fiscal year, the Society again operated with a balanced budget and is continuing to do so during the current July 1, 2006 - June 30, 2007 fiscal year. This progress did not come easy – staff positions were eliminated through layoffs, buyouts, and attrition, and compensation and benefit reductions were implemented. In Harlem, Queens, and Brooklyn, offices had to be consolidated, and at the Society's central office in Lower Manhattan space was consolidated. Further savings were achieved through the reduction of

administrative costs and expenditures for non-personnel services.

A crucial element of this financial restructuring was the special infusion at the end of December 2004 of private funds from major law firms in New York City, which enabled the Society to eliminate substantial debt on its balance sheet. These leading law firms in the City only provided these funds based on unequivocal evidence that the Society's financial stability is assured on a going forward basis, and because substantial changes were made in the management and operation of the Society to ensure that the Society will continue to be financially stable and managed appropriately.

In fact, there has been a complete change in management at the Society over the past two years. There is a new President with substantial business and managerial experience in the private sector and in government, a new Attorney-in-Chief who focuses on the legal practice, and new Finance Department management. No financial commitment can be made without the approval of a special Board Finance Committee, and financial reporting to the Board is now done on a monthly basis instead of once at the end of the year. In sum, the Society is now on stable financial footing.

Funding For Criminal Defense Services: Since 1965, the Legal Aid Society has served as the primary defender for criminal defendants in New York City who cannot afford counsel. The Society's Criminal Defense Division (CDD) 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 legislation and 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.

With trial offices in Brooklyn, the Bronx, Manhattan and Queens, CDD represents indigent defendants accused of crimes ranging in seriousness from disorderly conduct to first degree murder. CDD staff members are committed to ensuring that clients receive high quality legal services, and that representation is not compromised because clients cannot afford to hire an attorney.

The Executive Budget includes \$14.7 million in State Aid to Defense funding to support criminal defense legal services. Until State fiscal year 2003 - 2004, the State provided \$13.8 million in Aid to Defense funding, of which \$10.85 million was allocated to the Legal Aid Society. By State fiscal year 2006 - 2007, the prior Administration had reduced overall State Aid to Defense funding by 20 percent, and the Society's annual funding level was reduced by \$2.2 million to \$8.6 million. The Assembly has provided annual allocations of discretionary funds to partially ameliorate this annual funding cut.

By restoring and enhancing State funding for Aid to Defense to \$14.7 million, the Executive Budget provides crucial support for programs like the Legal Aid Society's

criminal defense practice, which is currently experiencing an increase in cases due to an increase in arrests in New York City. For example, based on the City's July 1 - June 30 fiscal year cycle, the Society's criminal defense staff is currently handling 5,485 more cases that have survived a first court appearance (typically an arraignment or an indictment) than we were a year ago. During the July 1, 2005 - June 30, 2006 City fiscal year, the Society's criminal defense staff of 425 line attorneys handled some 210,000 cases, of which nearly 95,000 survived a first court appearance. The 5,485 case increase at this point in the City fiscal year is against this annual caseload. Approximately a third of the Society's criminal defense caseload that survives a first court appearance consists of felonies.

Based on this increased caseload, the Society needs at least the \$2.2 million restoration of its State Aid to Defense funding to return the Society's allocation to at least the \$10.85 million level that had been the Society's historic allocation. As the primary provider of criminal defense services in New York City designated through a public process, it is also essential that these funds continue to be allocated by contract directly to the Society and not through a separate county contract. With the Society's increased caseload, however, the truth is that additional funding is needed beyond a greatly appreciated restoration of the 20 percent annual State Aid to Defense cut. We remain hopeful therefore that an additional allocation beyond a \$2.2 million restoration can be provided from the enhanced \$14.7 million State Aid to Defense funding level or with additional legislative funding. For example, the Assembly has allocated \$970,000 annually for the Society to operate a special juvenile offender program in the Bronx, Brooklyn, Manhattan, and Queens, and the Division of Criminal Justice Services has allocated \$910,000 annually to the Society to operate a special program for persons accused of crimes who are mentally ill and chemically addicted. Both of these programs have been highly successful in diverting New Yorkers from the criminal justice system and reducing repeat offenses. Similarly, the Assembly has supported a \$300,000 annual enhancement for Aid to Defense and a \$40,000 annual grant for "point of entry" services in connection with drug activity in New York City airports. Continuation of these crucial programs, in addition to allocating restored and enhanced State Aid to Defense funding to the Society, is necessary to preserve innovative services for New Yorkers and to enable the Society to handle the caseload increases.

At the same time, we urge the Executive and the Legislature to address the findings of the Chief Judge's Indigent Defense Commission report on the adequacy of constitutionally mandated criminal defense representation in the State. Although the primary focus of the Commission's June 2006 report was on inadequate criminal defense representation in the counties outside of New York City, the Commission found that there is a crisis in criminal defense representation in New York State that requires a State response in terms of adequate funding and caseload and quality of representation standards. The Commission recommended State oversight of criminal defense services. Irrespective of the structure of oversight for criminal defense services in New York State, providing adequate funding and setting caseload and quality of representation standards are pressing priorities. For instance, the First Department has

set caseload standards for the Society that are not incorporated in the Society's criminal defense contract with the City. Therefore, as the number of cases that the Society is handling increases, the Society is unable to maintain staff caseloads within the First Department's guidelines. As the Chief Judge's Commission found, there is an urgent need to set caseload and quality of representation standards to ensure the provision of constitutionally mandated criminal defense representation.

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 many cases, clients are referred to us by the constituent services staff of elected officials who have nowhere else to turn for help with emergency problems.

Annually, we handle more than 30,000 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 and homelessness. We help clients with legal problems involving: housing and homelessness; income supports such as public assistance, federal food stamps, federal disability benefits, employment and low wage worker matters, and earned income tax credits; immigration; elder law for senior citizens; health care, including Medicare Part D, Medicaid, and access to hospital charity support; family law, including domestic violence; HIV and AIDS; and housing and community development opportunities to help clients move out of poverty.

Beginning in 1993, the Assembly has funded a State-wide allocation for civil legal services, including funding for domestic violence and HIV legal services programs. For the State's 2006-2007 fiscal year, we are very thankful for the Assembly's allocation of civil legal services funding in these program areas: \$1,091,251 as part of the Assembly's State-wide civil legal services allocation; \$52,218 as part of the Assembly's special allocation for legal services for survivors of domestic violence; \$134,000 as part of the Assembly's allocation for HIV legal services; and \$50,000 as part of the Assembly's Legal Services Fund allocation for legal aid for senior citizens in Brooklyn.

As we noted at the outset, for the first time, the Executive Budget includes the entire \$4.6 million funding level that the Assembly has previously had to support alone. In addition, the Executive Budget provides revenue for \$5 million in civil legal services funding that was included in the Office of Court Administration's budget. This Executive Budget funding is an extremely important step in restoring New York State to what should be a national leadership role in supporting civil legal services.

In contrast to the record in New York, other States have created stable annual combined sources of funding for civil legal services through appropriations, fees, and fines. While New York's funding for civil legal services – which has been supported

solely by the Assembly – amounts to just \$2.54 per poor person, other States have made substantially greater investments. For example, Minnesota invests State funding for civil legal services at a rate of \$32.33 per poor person; New Jersey invests at a rate of \$23.44; Maryland's rate is \$16.87; Massachusetts' is \$16.50; New Hampshire's is \$12.35; Ohio's is \$12.21; Vermont's is \$11.48; Maine's is \$10.84; and Pennsylvania's rate is \$9.64.

Against this backdrop, the Executive Budget's proposed \$9.6 million in funding for civil legal services moves New York in the right direction. In 1998, the Chief Judge's Legal Services Project calculated that an infusion of \$40 million in State support for civil legal services programs was necessary to begin to meet the need and to address Interest On Lawyer Account funding decreases due to interest rate reductions and federal Legal Services Corporation cuts. Building on that nearly 10-year-old analysis, the Campaign for Civil Legal Services, of which the Society is a member, has calculated that \$50 million is now needed. Indeed, the federal Legal Services Corporation found that only one in five low income persons in the United States in need of civil legal help has been able to access legal services. This finding only confirms earlier studies in New York that found fewer than 15 percent of the legal needs of low income New Yorkers were being met. At current funding levels, because of lack of resources, our Civil program is forced to turn away at least six potential clients for every client who can be represented.

In order to build on the important first step for civil legal services in the Executive Budget, we urge the Executive and the Legislature to work together to: 1) combine the \$4.6 million and \$5 million civil legal services funding streams in the 2007-2008 Executive Budget and find an appropriate home for the program; 2) ensure that programs like the Society which are funded with the Assembly's \$4.6 million allocation through March 31, 2007 can maintain services effective April 1, 2007 while the new enhanced funding program is being implemented; 3) continue to increase civil legal services funding so that New York State can be in a position to reach the necessary \$50 million level as quickly as possible; and 4) work with the civil legal services community and others to implement appropriate funding allocations to preserve and expand essential and comprehensive civil legal services for low income New Yorkers.

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 budget and no funding is included in the Executive Budget itself. Nevertheless, we want to note some challenges in this practice area. The Society's Juvenile Rights Practice is the primary law guardian 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 Office of Court Administration is providing the Society with substantial assistance in the current fiscal year to enhance the Society's technology systems for the Juvenile Rights Practice, relocate our Queens office to be closer to the Family Court, and assist with other budget relief. OCA has also funded an additional eleven staff attorney lines and an additional four social worker lines in the

Society's 2006 - 2007 budget. As a result, the Society's OCA-funded staff attorney level has increased to 136.

However, the continuing impact of the tragic deaths of children who were known to the City's child welfare system highlight 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 law guardian representation. Recent press accounts have highlighted the huge caseloads for Family Court Judges in New York City as well as the Society's Juvenile Rights staff resulting from the dramatic increase in the number of abuse and neglect proceedings that have been filed in the wake of these deaths. The Society's staff is now representing 27,000 children. The Family Court and law guardian 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.

We urge the Executive and the Legislature to work with OCA and other parties, including the Society, to address the need for additional Family Court Judges in New York City as well as related personnel, including law guardians, to address the increased caseload problems in the New York City Family Court. As part of evaluating these new workload-related resource requirements for the Family Court, there is a need to determine standards for how many children a law guardian can represent at a time. Currently, there are no State standards. However, an emerging national caseload standard for law guardian representation is in the 100 range. For example, Arkansas has set a 75 case limit and California has set a 141 client limit. A federal district court in Georgia has found that adequate law guardian representation requires workload limitations and referred to the National Association of Counsel for Children's 100-client standard. Kenny A. Ex rel. Winn v. Perdue, 218 F.R.D. 277 (N.D. Ga. 2005). Currently, the Society's law guardians have caseloads well in excess of the 100-client standard, with substantial numbers of law guardians representing in excess of 200 children at a time.

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 accused parole violators prosecuted in New York City. Annually, the Society's Parole Unit conducts approximately 10,000 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 Society's staffing and programming efforts have 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, three social workers are specifically trained to identify special need parolees and refer them for necessary services and programs.

The State has provided \$1.3 million in funding to support these critical parole defense services. However, during the prior 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 \$515,870 in funding from the Legal Assistance Fund for the Society's representation of indigent parolees during the State's 2006-2007 fiscal year. Likewise, we greatly appreciate the Assembly's restoration of \$273,700 in funding from the Legal Assistance Fund for the Society's representation of mentally ill parolees in the 2006-2007 fiscal year. For the State's 2007-2008 fiscal year, restoration of these funds is critical to enable the Society to maintain these vital services for vulnerable parolees.

Since the Society's 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. 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 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.

The Need To Reconsider The Parole Revocation Video Conferencing Proposal In The Executive Budget: Aside from the funding issues described in this testimony, we would like to draw your attention to a proposal in the Executive Budget to amend Executive Law § 259-I for the purpose of eliminating the long-standing requirement of a local parole violation hearing for technical parole violators. Under the proposal, alleged parole violators who have not incurred a new criminal arrest will be immediately transferred to a Department of Correctional Services facility, and their parole violation hearings will be held via video conference. We ask that the Executive and the Legislature re-consider this initiative. Rather than being a cost saving measure, it will actually result in increased costs and delays in the parole violation hearing process. A far better way to save money would be to expand the available community-based treatment options for parole violators.

New York law currently provides for a local parole violation hearing reasonably near the place of the alleged violation when requested by the parolee or his attorney. This procedure complies with the United States Supreme Court due process mandate set forth in Morrissey v. Brewer, 408 U.S. 471 (1972), which requires a preliminary

hearing “at or reasonably near the place of the alleged parole violation,” and a final hearing at which the alleged violator has the “opportunity to be heard in person” Substituting a video hearing where the judge, attorney, prosecutor, and witnesses are in one location, and the accused may be hundreds of miles away, would not comply with this Supreme Court directive.

The video conference proposal will be difficult and expensive to accomplish in New York City, where over 61 percent of parolees reside. There were approximately 8,100 arraignments and 2,300 preliminary hearings held on Rikers Island last year. A total of 10 courtrooms operate on most days. In addition to capacity for a substantial number of hearings, there would have to be sufficient video capacity to handle the confidential attorney and social worker interviews which are required for such hearings. Confidential communication with a client during the course of a hearing to discuss witness testimony, a plea offer, or the multitude of other matters that arise during the course of a hearing could be impossible. In our experience, many hearings are resolved through off-the-record case conferences between counsel, the revocation specialist, and the Administrative Law Judge, who must gauge a witness’ credibility and a client’s sincerity in wishing to address his or her addiction. These routine courtroom assessments will be disadvantaged in a video conference environment.

The parole revocation proposal is focused on non-violent technical parole violators, rather than those charged with new crimes. These technical parole violators are most likely to be addicts who have relapsed to drug or alcohol use, and are the very people who would most benefit from alternatives-to-incarceration, such as community-based mental health, drug and alcohol treatment programs. Technical parole violators housed in DOCS prisons will not be available for local program placement interviews and screening. It will be difficult, if not impossible, for our social workers to complete an assessment and make an evaluation without personally meeting with the client. Even where a program placement is made, the frequently imposed requirement of an escort to the program could present a substantial obstacle. The inevitable result will be more incarceration instead of the more effective and less expensive option of treatment.

The parole revocation proposal will also have a negative impact on the parole revocation appeals practice. Writs of Habeas Corpus are the proper vehicle for challenging unlawful conduct in the parole revocation process. When the parolee is in a prison outside of New York City, petitions will have to be filed in counties where clients are located throughout the State. As inmates are transferred within the DOCS prison system, pending writs will have to be transferred as well, delaying their prompt adjudication and prolonging unnecessary incarceration. The City and State will have to bear additional costs for travel by assigned attorneys to appear on these 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 that we have highlighted in this testimony can be met.