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## **Testimony of The Legal Aid Society**

on

# **THE MAYOR'S FISCAL YEAR 2009 PRELIMINARY BUDGET**

**Presented before**

**The New York City Council**

Presented by:

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

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The Legal Aid Society welcomes this opportunity to testify before the City Council concerning the Fiscal Year 2009 Preliminary Budget and its impact on the Legal Society's client services.

As you know, the Legal Aid Society provides civil, criminal, and juvenile rights legal services to low income families and individuals in all five boroughs of New York City. Last year, with a staff of 850 lawyers and 600 social workers, paralegals, investigators, interpreters, and support and administrative personnel, the Society provided legal assistance to New Yorkers in some 295,000 individual cases. In addition to individual cases, the Society has extensive experience in affirmative litigation on behalf of groups of similarly situated clients. Many of our clients are referred to us by the constituent services staff of elected officials. Based on the expertise of our staff, the Society is frequently asked by government officials to provide information and comments regarding existing and proposed public policies affecting our clients. Society staff members also conduct extensive "know your rights" community education for clients and neighborhood-based and city-wide organizations.

City funding is essential to support our city-wide criminal and civil legal assistance. For many years, the City Council has been a leading advocate for adequate funding for our services in order to ensure the availability of high quality legal services for community residents. Special annual funding allocations for criminal and civil services have provided crucial support for the Society's legal services for New Yorkers who have nowhere else to turn for legal help.

We greatly appreciate the support that the Council has historically provided in the budget process. In particular, we want to acknowledge the leadership of the Speaker and Chairperson Miguel Martinez and all of the other members of this Committee and the Council in supporting the restoration and enhancement of legal services funding in the City-wide Legal Services Initiative during the FY08 budget process. In this testimony, we will focus on the proposed funding levels in the Fiscal Year 2009 Preliminary Budget for the Society's criminal defense representation and civil legal services.

**Criminal Defense Services:** Since 1965, the Legal Aid Society has served as the primary defender for persons accused of criminal conduct 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 the Bronx, Brooklyn, Manhattan and Queens, CDD represents indigent persons 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.

With the support of the Council, in FY03 the Administration entered into a new agreement with the Legal Aid Society to provide criminal defense services to a greatly expanded number of clients by transferring a substantial portion of the cases handled by private “18-b” attorneys. The Administration’s approach has generated substantial savings for New York City because the Society’s criminal defense legal services are significantly more cost-effective than 18-b representation. At the same time, this contract has significantly enhanced the quality of the criminal defense services provided to people who cannot afford to retain counsel because the Society’s city-wide criminal defense program provides more comprehensive legal assistance than individual 18-b attorneys can offer. The Society also plays a crucial and central role in the New York City criminal justice system. Our size, history, and commitment to quality representation give us a unique vantage-point not only to represent clients but also to provide support and training for public defenders throughout the City.

Unfortunately, over the past six years, the Society’s criminal defense contract with the City has not provided sufficient baseline funding to enable the Society to cover annual cost increases and deploy sufficient staff to provide a constitutionally mandated defense, especially as the number of New Yorkers arrested has increased during FY07 and to date in FY08. Since the new contract went into effect in FY03, the Society has greatly appreciated the City’s provision of an additional \$2.82 million in FY05 to establish a City-funded Parole Revocation Defense program to further reduce City 18-b expenditures and improve client services, capital funding in FY07 and FY08 to enhance the Society’s technology infrastructure and case management systems, and a 3 percent baseline funding increase for a COLA for the FY08 fiscal year (after four years without a COLA increase). However, during these years, the Society could not have provided constitutionally mandated legal representation without special annual infusions of funding allocated by the Council in the adopted budget – \$11 million in the FY05 budget process, \$6.326 million for FY06, \$9.3 million for FY07, and \$10.8 million for FY08.

The Preliminary Budget for FY08 completely eliminates the Council’s allocation of \$10.8 million in supplemental funding for the Society. A restoration of this funding in the FY09 budget is essential to enable the Society to provide constitutionally mandated criminal defense representation, particularly at a time when the Society’s annual workload has increased. Until FY07, the Society’s annual criminal defense workload had been approximately 210,000 cases for a number of years. During FY07, based on an increased number of New Yorkers who were arrested and assigned to the Society for representation, the Society’s criminal defense workload increased to 225,000 cases. This increased workload trend has continued during the first eight months of FY08 from July 1, 2007 through February 29, 2008, and the Society’s criminal defense staff of 435 line attorneys will again handle an increased annual workload of 225,000 cases. During the last fiscal year, the Society’s criminal defense attorneys handled more than 100,000 cases which survived a first court appearance, and approximately 30 percent of those cases were felonies. In FY07, more than two-thirds of the Society’s staff lawyers handled caseloads in excess of annual caseload standards set by the Appellate Division, First Department which limit annual workload for attorneys to 400 misdemeanors or 150 felonies, with felonies weighted as 2.66 misdemeanors for mixed caseloads. For FY08, the increased number of police officers deployed in designated communities has continued to result in an increased workload for the Society. The prospects for FY09 are the same.

With the Society's increased workload, the truth is that additional funding is needed beyond a restoration of the \$10.8 million in funding that the Council allocated for the Society's Criminal Defense services for FY08. In addition to increased staffing needs resulting from the increase in the number of cases assigned to the Society, the Society's operating costs – including health care and rent – increase from year to year and core funding for the Society's constitutionally mandated representation should be increased accordingly. Accordingly, in addition to the critical \$10.8 million restoration that is needed in FY09, a \$3 million enhancement is necessary enable the Society to address annual cost increases as well as pressing staffing needs resulting from the workload increases.

The requested restored and enhanced funding is a good investment. Our staff provides high quality services for clients. During FY07, for example, our staff obtained dismissals in approximately 11 percent of our Criminal Court cases and approximately 8.5 percent of our Supreme Court cases. In addition, Society staff secured case dispositions of less than the top charge in more than 56 percent of our Criminal Court cases and more than 40 percent of our Supreme Court cases. As we previously reported to the Committee, a special study of our work found that approximately 40 percent of our cases involve clients with some form of impaired capacity such as mental illness. As revealed by measuring our case activity at various points during the year, our caseload is extremely active. For example, our "point-in-time" analysis revealed that nearly 40 percent of our cases had court activity within the past 15 days.

Our request for a \$10.8 million restoration and a \$3 million enhancement for a total supplement of \$13.8 million for our criminal defense trial practice in FY09 will permit the Society to maintain its current rate of client case assessment and disposition. Our cases in Criminal Court are typically resolved in less than four post-arraignment appearances. Indicted felonies are resolved, on average, in less than 10 post-indictment appearances. The current contract with the City requires the Society to handle all of the non-conflict cases in the arraignment shifts to which the City assigns us, and requires that we handle a minimum standard of 88 percent of the cases in those arraignment shifts or face a financial penalty. Typically, the Society is assigned to very heavy arraignment shifts. As required by our contract, based on the number of non-conflict cases in our shifts, the Society actually handles approximately 90 percent of the cases in the arraignment parts to which we are assigned. However, the contract makes no provision for increasing funding even when our caseload increases as it has during FY07 and FY08.

The requested level of funding for the criminal trials practice is also necessary for the Society to continue to provide the supplemental services to the New York City criminal justice system that the Legal Aid Society is in a unique position to provide. For example, the Society deploys 19 paralegals to provide client services to the public in various locations outside of the Society's offices. These services, which are not limited to Legal Aid clients, include four paralegals who serve the public in satellite offices or other locations in City courthouses, and 15 staff members who work full-time in the City jails, assisting clients to arrange for the payment of bail, correcting errors in release dates, securing medical attention, scheduling assessment interviews with ATI (alternatives to incarceration) programs, communicating with their attorneys, and retrieving personal property upon release.

In each of our borough offices, the Society deploys a paralegal every weekday to assist members of the public with legal matters, including arranging surrenders on arrest and bench warrants, assisting people in paying fines and scheduling community service, and securing emergency mental health and drug treatment services. The Society also assigns an attorney and paralegal to represent inmates who are appealing jail discipline assessments in the Rikers Island Writ Court, thereby further reducing City 18-b costs.

Legal Aid also continues to play a central role as the training ground for public defenders in New York City. Legal updates and training materials developed by the Society's 10-person training and support unit are provided at no charge to defenders and 18-b attorneys city-wide and state-wide. The Society also deploys special immigration staff to assist clients with immigration issues. In addition, the Society has assigned paralegals and attorneys to assist in handling the calendar in high-volume and specialized practice court parts created by Chief Judge Judith Kaye, including the integrated domestic violence, drug treatment, and mental health courts.

The annual cost of these systemic services – which is some \$6.2 million – is absorbed by the Society within our City funding allocation even though these costs are not always attributable to individual cases and thereby artificially inflate the Society's cost per case.

In addition to the Society's high quality trial level representation and the critical systemic services which the Council's annual allocation of funding has supported, the Society also provides appellate and post-conviction representation pursuant to the City criminal defense contract. For example, with \$7 million in annual contract funding, the Society's Criminal Appeals staff handled 701 filings for clients in FY07. Since July 2002, the Society's Criminal Appeals staff has filed nearly 100 C.P.L. Article 440 motions challenging the convictions of clients. Many of these motions have required comprehensive re-investigations of the underlying case. In one recent success that was reported in The New York Times, Legal Aid lawyers won release and vindication for two brothers, Carlos and Napoleon Cardenas, who had been wrongly convicted for robbing several jewelry dealers in Queens. By the time they had established the brothers' innocence, our attorneys had arranged for surgery to remove exculpatory ballistics evidence from Napoleon's hand, re-interviewed numerous witnesses, engaged in extensive negotiations with the District Attorney's Office, and appeared for the brothers in Queens County Supreme Court, the Appellate Division, Second Department, federal immigration court, the United States Eastern District Court, the Second Circuit, and the United States Supreme Court.

Since 2002, Legal Aid appellate attorneys have also litigated nearly 150 federal habeas corpus cases, many successfully raising ineffective assistance of counsel claims. In Bell v. Miller, 500 F.3d 149 (2007), for instance, the Second Circuit granted habeas corpus relief in a case where the defendant's attorney had failed to consult a medical expert whose testimony would have exposed glaring deficiencies in the account of the sole identifying witness, who had sustained serious injuries during the robbery. Similarly, in Cox v. Donnelly, 432 F.3d 388 (2005), the Second Circuit found that the defendant's Sixth Amendment rights had been violated by his attorney's failure to protest constitutionally-infirm and result-altering jury instructions. Likewise, in Henry v. Poole, 409 F.3d 48 (2005), the Circuit found an attorney ineffective for raising an alibi defense for the wrong date and, at the same time, raised important questions regarding the compatibility of the New York and federal ineffectiveness standards.

For all these reasons, the Society respectfully requests a restoration of \$10.8 million and an enhancement of \$3 million for criminal defense services in the FY09 adopted budget. The restoration and the requested enhancement will permit the Society to continue to handle an increased annual workload of 225,000 individual cases. Especially in view of the increased workload during FY07 and FY08, the requested restoration and enhancement funding is necessary for the Society to continue all of the Society's individual client services and systemic services, including maintaining adequate numbers of staff attorneys, supervisors, investigators, paralegals, social workers, and support and administrative staff.

**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. 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, unemployed workers, persons with HIV infection, and children and adults faced with evictions and homelessness.

The Fiscal Year 2009 Preliminary Budget proposes to eliminate civil legal services funding for the following Council civil legal services initiatives that the Council funded in the FY08 budget.<sup>1</sup> Based on the critical need for civil legal services throughout the City, restored funding for FY09 is essential:

**\$3.676 Million For The City-wide Low Income Civil Legal Services Program:** For more than a decade, 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, disabled children and adults, 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. In FY08, the program funding level is \$3.676 million, which is evenly divided between Legal Aid and Legal Services. 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.

Restored funding is especially important at a time when the exact level of State Interest on Lawyer Account Fund grant levels is uncertain because of interest rate fluctuations and Legal Aid and Legal Services are slated for State civil legal services funding cuts. In any case, the need for city-wide civil legal services is unremitting. For example, in light of the continuing housing crisis in this City, substantial numbers of community constituents seek our assistance with housing problems and we are not able to assist all of them. In fact, before September 11, an independent review of our services found that because of lack of resources, we were only able to assist one out of seven clients who sought our help. Over the last seven years, the situation has

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<sup>1</sup> The programs that will be eliminated include a grant for Legal Services NYC to provide representation to parents in Family Court cases while the Legal Aid Society is separately funded by the State to represent children in those proceedings.

only gotten worse. Referrals for the Society's city-wide civil legal services provided with support from this program frequently come from the constituent services staff of Councilmembers who turn to Society staff for help in crisis situations in which legal assistance is absolutely vital.

\$3 Million For 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, 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, disabled New Yorkers, and senior citizens, who are especially vulnerable to harassment and illegal eviction. 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, community residents in Bushwick, and to tenant associations in East Harlem, Harlem, Inwood, and Washington Heights.

\$765,000 For The Earned Income Tax Credit (EITC) Legal Assistance Program: Beginning in the Fiscal Year 2005 budget process, the Council established a new EITC legal services program operated by the Society, Legal Services, and the Community Food Resource Center to help working families qualify to receive the EITC refund, protect working families from unfair auditing practices, and increase tax credit benefits for these working families. The defunding of this Council initiative will result in the denial of critical legal assistance that helps families move from welfare to work and the elimination of a significant infusion of federal tax credit funds in the local economy.

\$2.5 Million For 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 disabled public assistance recipients 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 funding for this program will eliminate these cost savings.

The Council-funded SSI advocacy program funds Legal Services and Legal Aid to help low income disabled children and adults 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. The City Council's current funding for this combined SSI/UI Advocacy Program is \$2.5 million, which is evenly divided between Legal Aid and Legal Services. Without restored funding, the Society will be unable to continue to operate this program for constituents.

Restored Immigration Initiative Funding Of \$596,000 For The Society's Legal Services Program 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. We want to take this opportunity to express our appreciation to individual Councilmembers, Borough Delegations, and the Council as a whole for providing the Society with \$596,000 in special funding to support immigration legal services and legal assistance for low wage immigrant workers. These funds are not included in the FY09 Preliminary Budget and need to be restored in order to continue these critical legal services for immigrants.

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We thank the Council for your continuing support for these essential criminal defense and civil legal services programs. We will continue to update you during the FY09 budget process concerning our funding needs so that we can serve clients who depend on the Legal Aid Society to provide access to justice.