

Testimony of The Legal Aid Society

on

**THE MAYOR'S FISCAL YEAR 2010
PRELIMINARY BUDGET**

**Presented before
The New York City Council**

Presented by:

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The Legal Aid Society welcomes this opportunity to testify before the City Council concerning the Fiscal Year 2010 Preliminary Budget and its impact on the Legal Society's client services.

As you know, with a staff of 1,450, including 850 lawyers and 600 social workers, paralegals, investigators, and support and administrative staff, the Legal Aid Society provides crucial civil, criminal, and juvenile rights legal assistance to low income families and individuals in literally every community in the five boroughs of New York City. During the past year, the Legal Aid Society handled some 295,000 cases and legal matters for New Yorkers in desperate need of legal help. In addition to individual cases, the Society has extensive experience in affirmative litigation on behalf of groups of similarly situated clients. Many of these clients are referred to the Legal Aid Society by the constituent services staffs of elected officials or by community-based organizations serving every district of the City. 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. Indeed, since its founding in 1876, the Legal Aid Society has been a vital part of the fabric of the City.

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 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 cuts for criminal defense and civil legal services in the FY2009-2010 Preliminary Budget will hurt New Yorkers accused of crimes and families and individuals who need civil legal help in the midst of this severe economic downturn. In the criminal defense area, we cannot keep taking on new cases, provide the constitutionally mandated defense for New Yorkers, and absorb new City cuts on top of \$2.7 million in cuts that we have already sustained in the 2008-2009 City and State budgets this year. On the civil side, we have also already suffered \$3 million in cuts in the 2008-2009 City and State budgets and we are forced to turn away six out of every seven 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 get 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 Fiscal Year 2010 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 criminal defendants 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 New Yorkers 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 City and State 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.

With the support of the Council, in FY2002-2003 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 substantially 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 comprehensive criminal, civil, and juvenile rights legal services program give us a unique vantage-point not only to represent clients but also to provide support and training for public defenders throughout the City.

Over the past eight years, however, the Society's criminal defense contract with the City has not provided sufficient baseline funding to enable the Society to cover annual cost increases – such as occupancy and health care cost increases – or, more importantly, deploy sufficient staff to provide a constitutionally mandated defense, especially as the number of New Yorkers who are arrested has increased. 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, FY08, and FY09 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). Nevertheless, during these years, the Society could not have continued to provide criminal defense representation to indigent New Yorkers 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, \$10.8 million for FY08, and a reduced amount of \$8.6 million for FY09. While fully funding constitutionally mandated criminal defense representation is an Executive branch obligation, annual Council funding has become integral to the Society's ability to operate a criminal defense program for indigent New Yorkers.

Regrettably, the 2009-2010 Preliminary Budget proposes an \$11.1 million reduction in the Society's criminal practice funding and again eliminates essential funding allocated by the Council. Subsequent to the issuance of the Preliminary Budget, the City acknowledged that \$2 million would be restored to the Society's criminal practice budget in the 2009-2010 Executive

Budget. However, the remaining \$9.1 million City cut comes on top of \$2.7 million in City and State cuts in our criminal defense funding that have already been implemented during this fiscal year. These cumulative cuts of \$11.8 million for our criminal practice in 2009-2010 are coming at a time of increasing arrests in New York City and increasing need for our constitutionally mandated criminal defense services. In fact, the Society's annual criminal defense caseload increased from some 197,000 new cases in fiscal year 2002-2003 to approximately 210,000 new cases in 2005-2006 to nearly 227,000 new cases in 2007-2008 and that trend of increased cases is continuing during the current fiscal 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. Eighty-one percent of our criminal defense attorney staff has caseloads significantly in excess of the annual standard set by the Appellate Division, First Department, which limits annual criminal defense attorney caseloads to 400 misdemeanors or 150 felonies, with felonies counted as 2.66 misdemeanors in mixed caseloads. The average annual caseload for criminal defense staff attorneys is now 592 cases – which is nearly 50 percent above the First Department limit – and the average pending caseload is 103 cases, when it should be 70 if we were in compliance with the First Department's annual standard.

Our criminal defense 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. 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. Noncompliance with the First Department caseload standard is a direct consequence of this situation.

The proposed Preliminary Budget cut of \$9.1 million for 2009-2010 on top of the \$2.7 million in City and State cuts that the Society's criminal defense practice has sustained during 2008-2009 – which will be a cumulative \$11.8 million cut in 2009-2010 – will further impair the Society's ability to provide constitutionally mandated criminal defense representation. With an increasing caseload and decreasing funding, the Legal Aid Society is being left without the resources to keep taking on new cases and provide the constitutionally mandated defense for New Yorkers.

Although we are mindful of the extraordinary fiscal situation, in order to address this immediate crisis with respect to the governmental obligation to provide resources for constitutionally mandated defense representation, it is essential that the adopted City budget for 2009-2010 restore the \$9.1 million proposed Preliminary Budget cut as well as the \$2.2 million criminal defense cut in Council discretionary funding that we have suffered during 2008-2009. We simply cannot absorb the combination of the proposed \$9.1 million cut and the current \$2.2 million cut during 2009-2010 in light of the continuing increased caseloads for our staff attorneys which are substantially in excess of the First Department standard. Without a 2009-2010 restoration back to the \$11.3 level, we cannot keep taking new cases and provide

constitutionally mandated criminal defense representation - 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,.

The requested level of 2009-2010 funding for our criminal practice is also necessary to enable the Society to continue to provide special client services in 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 former Chief Judge Judith Kaye, including the integrated domestic violence, drug treatment, and mental health courts.

Not including additional appellate and post-conviction representation which the Society provides for New Yorkers pursuant to other contractual arrangements with the City, the annual cost of these systemic services is approximately \$6 million. These expenses are 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.

For all these reasons, the Society respectfully requests a restoration of \$11.3 million. However, with the Society's increased criminal defense workload, the truth is that in order to bring the Legal Aid Society's caseloads into compliance with constitutional requirements additional funding is needed beyond this interim restoration of \$11.3 million for 2009-2010. Former Chief Judge Kaye's Indigent Defense Commission found that there is a criminal defense crisis in New York State. In the New York City section of the Kaye report, excessive caseloads, inadequate funding, and a counter-productive RFP process were highlighted as problem areas. Beyond the interim restoration of \$11.3 million in the 2009-2010 adopted budget, the Council can resolve the criminal defense crisis in New York City in the long-run by enacting Intro 820,

which mandates compliance with the First Department caseload standard and which will eliminate the need for annual allocations of Council discretionary funding to support constitutionally mandated criminal defense representation.

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 the 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 like the current dramatic increases in homeowner foreclosures and evictions of tenants of buildings in foreclosure proceedings.

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, 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.

During FY2008-2009, we have already sustained City and State civil legal services cuts of approximately \$3 million which means we have to turn away increasing numbers of vulnerable New Yorkers with legal problems that we could otherwise solve. Prior to the economic downturn and these cuts, we were able to help only one out of every seven New Yorkers who sought our help with civil legal problems because of lack of resources. The economic downturn is having a particularly 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. Over the last six months, we have seen exponential increases in requests for help in core areas of need: a 29 percent increase in requests for help with unemployment benefits and employment problems; a 40 percent increase in requests for health law assistance and help obtaining Medicaid, Medicare, and other health care coverage; a 12 percent increase in requests for help to obtain food stamps, federal disability benefits, and public assistance; a 16 percent increase in requests for domestic violence and family law help; a 15 percent 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 percent increase in requests for eviction prevention representation; and a stunning 800 percent increase in requests for foreclosure defense assistance.

In the face of this unprecedented need for civil legal assistance, during FY2009-2010, we have also been told to expect a dramatic decrease in our State Interest On Lawyer Account Fund grant as a result of the economic downturn which has resulted in near zero interest rates and a drying up of economic activity. The current State-wide annual IOLA funding level of \$25 million is projected to be reduced by at least 60-70 percent during calendar year 2010.

Consequently, the Society is facing a minimum 60-70 percent reduction in our \$4.5 million annual IOLA grant.

To make matters worse, the FY2009-2010 Preliminary Budget proposes to eliminate all civil legal services funding for the following Council civil legal services initiatives that the Council funded in the FY09 budget.¹ The consequences of eliminating this critical City 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 2009-2010 is essential for these programs which are slated for elimination in the Preliminary 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, 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. Funding for this program is evenly divided between Legal Aid and Legal Services. In the adopted FY2008-2009 budget, funding for this program was reduced by 59 percent from \$3.676 to \$1.5 million, 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 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 this program will eliminate these cost savings. Funding for this combined SSI/UI Advocacy Program is evenly divided between Legal Aid and Legal Services.

¹ 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.

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.

In the adopted FY2008-2009 budget, funding for this program was reduced by 48 percent from \$2.5 million to \$1.3 million, which has resulted in at least 1,241 fewer families served this year. If this funding is not restored, we will have to substantially reduce 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, disabled New Yorkers, and senior citizens, who are especially vulnerable to harassment and illegal eviction. In the adopted FY2008-2009 budget, funding for this program was reduced by 25 percent from \$3 million to \$2.25 million, which has resulted in at least 1,900 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, community residents in Bushwick, and to tenant associations in East Harlem, Harlem, Inwood, and Washington Heights.

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. In the FY2008-2009 budget, funding for each organization has recently been awarded at a level that has been reduced from approximately \$596,000 in 2007-2008 to \$354,000, with the result that fewer low income immigrants will receive legal assistance. Again, the Preliminary Budget completely eliminates funding for this program. If this funding is not restored, we will have to substantially

reduce our provision of civil legal services for immigrants in the Bronx, Brooklyn, Manhattan, Queens, and Staten Island.

For all these reasons, we urge that these crucial civil legal services programs be restored in the adopted FY2009-2010 budget.²

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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 FY2009-2010 budget process concerning our funding needs so that we can serve clients who depend on the Legal Aid Society to provide access to justice.

² In the adopted FY2008-2009 budget, Council funding for the \$765,000 Earned Income Tax Credit (EITC) Legal Assistance Program was completely eliminated. Beginning in the FY2004-2005 adopted budget, the Council established a new EITC legal services program operated by the Society and Legal Services 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 de-funding of this initiative has resulted in the denial of critical legal assistance for 740 households, which helps families move from welfare to work, and the elimination of a significant infusion of federal tax credit funds in the local economy.