



Association of Legal Aid Attorneys

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Testimony of UAW Local 2325

The Association of Legal Aid Attorneys

on

THE 2012-2013 EXECUTIVE BUDGET

TOPIC: PUBLIC PROTECTION

Presented before:

The Senate Finance Committee

and

The Assembly Committee on Ways and Means

Presented by:

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Financial Secretary/Treasurer

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Good afternoon. My name is George Albro and I am the Financial Secretary/Treasurer of UAW Local 2325, The Association of Legal Aid Attorneys (A.L.A.A.). Our union is affiliated with the United Auto Workers Region 9a which has over 60,000 active and retired members in New England, Puerto Rico and New York, including the City and Long Island up to Albany. In UAW Region 9A, our membership is very diverse and includes legal service and legal aid attorneys, technical and office professionals, casino dealers, auto mechanics, non-profit professionals, municipal employees, graduate students, adjunct professors and postdoctoral researchers, manufacturing workers, and more.

When founded 42 years ago, A.L.A.A. represented only the staff attorneys at The Legal Aid Society. Within the past seven years, A.L.A.A. has become an amalgamated local with three separate units; we proudly represent the approximately 830 staff attorneys employed in The Legal Aid Society's Criminal Defense, Civil, and Juvenile Rights Practice Areas, the 30 staff attorneys at the Federal Defenders of the Eastern and Southern Districts, as well as the 10 staff attorneys at The Legal Aid Society of Orange County. Our testimony today will focus on the impact of the proposed State budget on the services that our members at The Legal Aid Society provide to the communities of all five boroughs of New York City.

Equal access to justice is an important issue to the UAW, especially A.L.A.A. Since its founding in 1935, the UAW has been a leader in the struggle to secure economic and social justice for all people. The UAW played a vital role in passing such landmark legislation as Medicare and Medicaid, the Occupational Safety and Health Act, the Employee Retirement Act and the Family and Medical Leave Act. The UAW still fights today to raise the quality of life for all the beneficiaries of a more just and civilized society, not just for our members. Equal access to justice for all who seek it should be the cornerstone of our legal system, but, sadly, is not due to the constant underfunding of vital legal service programs, like The Legal Aid Society.

As Legal Aid attorneys, our members see the adversity people face every day when forced to confront the legal system without the aid of a trained, professional advocate. Our members are social first responders, addressing the most emergent needs of New York's poorest and most vulnerable citizens when all else fails. They make our systems work when they have otherwise not. In so doing, they avert personal and familial tragedies that need not occur. They personify our most cherished common values as a society. They deliver functional and economic efficiency in the short term, and minimize social costs in the long term.

Large and growing numbers of New Yorkers lack the economic opportunities and social supports to avert personal and familial crisis. When they turn to public systems that exist to provide a range of assistance, they too often do not receive the help they need. When they then turn to the courts and administrative fora that should vindicate their rights—and should provide a corrective to society's corrective measures when those fail—the poor find more often than not that without representation these courts and fora are unable to help them as well. Our members routinely avert the catastrophes that otherwise follow when a string of failures culminates in the lack of meaningful access to justice.

The success rates and cost-effectiveness of Legal Aid's programs owe much to the efficiency of the staff model. However, they must also be attributed in large part to the

experience, expertise, and continuity that result when legal services is made a viable career due to the wages and conditions for which our union has fought so long and so hard. Much credit must also go to the passionate dedication of the workers themselves, who have chosen these careers over other options that remain far more lucrative, and very many of whom routinely work additional, unpaid hours to see justice done. Our members who work in these programs dedicate themselves to serving clients, winning their cases and improving their lives.

Over the years, members of our Local have won many hard fought battles to both protect and improve the rights of our clients. The interests of our members are inextricably intertwined with those of the impoverished clientele they represent, and they feel this truth deeply. Justice is neither an abstraction nor a mere option for our members, and they find it intolerable when power relationships are used to treat people without fairness or respect. Despite the daily hardships that we face - struggling to provide quality representation while handling unconscionable caseloads; suffering inadequate levels of support staff and resources to assist in our work; being forced to turn away more and more New Yorkers seeking our help; desperately trying to make a living on lower wages while strapped with high levels of educational debt – our members fight every day with pride on behalf of the neediest of New Yorkers.

What our members bring to their jobs cannot be bought at any price, but the jobs themselves, of course, depend on adequate funding. Our members, the jobs that they do, the justice that they achieve, and the savings that they realize, are needed now more than ever.

But without adequate levels of stable funding, our members at The Legal Aid Society will no longer be the safety net that it has been to the many communities that make up New York City, especially at a time when the need for our services has skyrocketed due to the most extreme economic conditions seen since the Great Depression of the 1930s.

New York, as the rest of the country, is in deep economic crisis and all levels of government are grappling with massive budget deficits and the need to keep social service programs running at current or expanded levels. It is at times like these that government should be acting to strengthen the safety nets that are in place to help New Yorkers in dire need of assistance. The Legal Aid Society has always been a safety net to the communities that we serve, but instead of having our programs strengthened through additional funding, we have suffered from the constant chipping away of our support structures. Drastic reductions in funding have left us constrained to keep providing the same level of services.

Unless adequate funding for criminal defense and civil legal services is included in the adopted 2012-2013 budget, New Yorkers accused of crimes, and families and individuals who need legal help in the midst of this severe economic downturn, will suffer.

In our criminal defense practice, we cannot keep taking on new cases, provide the constitutionally mandated defense for New Yorkers, and absorb new State cuts, especially at a time when our criminal defense caseload of new cases continues to increase as a result of increased arrests in New York City – even as officials proclaim that crime is down.

On the civil side, the numbers of vulnerable New Yorkers who are seeking our civil legal assistance have increased dramatically during this extraordinary economic downturn. Without adequate State funding, we will have to turn away more families and individuals who need our legal assistance.

Funding for Criminal Defense Services

For years, our members in Legal Aid's Criminal Defense Practice have been carrying caseloads in violation of the annual caseload standard set by the Appellate Division's First Department, which limits a criminal defense attorney's annual caseload to 400 misdemeanors or 150 felonies with felonies counting as 2.66 misdemeanors for those attorneys carrying a mixed caseload. Despite Mayor Bloomberg's repeated assurances that crime in New York City is down, arrests have consistently been on the rise for roughly the past five years or more.

Each year, we have seen our annual caseload steadily increase from 210,000 in 2003 to in excess of 225,000 new cases annually. As a result of the increased arrests in New York City, the Society's criminal defense staff is annually handling more than 100,000 cases which survive a first court appearance, with a current annual felony caseload of 25,576 cases.

In the 2009-2010 budget, the Legislature enacted a landmark law authorizing the Chief Administrative Judge to promulgate caseload standards for The Legal Aid Society and other criminal defense lawyers in New York City that are being phased in over a four-year period. This action by the Legislature is so significant that the United States Attorney General cited this law as one of two major breakthroughs for the provision of indigent defense in the entire nation. The Chief Administrative Judge is proceeding with the process of implementing the required standards and the Judiciary's 2012-2013 budget continues to make provision for complying with this historic new law to ensure that New Yorkers accused of crimes – often wrongfully – are represented by Legal Aid lawyers with proper caseloads.

As a result of the Judiciary's implementation of the 2009 caseload law to date, the annual average weighted caseload of the Society's criminal defense lawyers has been reduced from 682 at the time of the implementation of the law to 533 through December 31, 2011. Pursuant to the caseload law, the Society's average annual weighted caseload must be reduced to 400 effective April 1, 2014, with felonies weighted as 2.66 misdemeanors. The Judiciary's 2012-2013 budget will enable the Society to continue to come into compliance with this annual weighted standard which is based on long-standing caseload requirements promulgated by the Appellate Division, First Department as well as well-established minimum national standards.

In order for The Legal Aid Society to continue to provide constitutionally mandated criminal defense services, we are also dependant on direct annual allocations of State Aid to Defense that the State Division of Criminal Justice Services provides. While the overall State budget has grown in recent years, Aid to Defense funding has actually been reduced despite the Society's high criminal defense caseload. For example, in 2003 the Society received \$10.8M from an overall State Aid to Defense allocation of \$13.6M. Since that time, the Society's annual State Aid to Defense funding has been reduced to \$8.6M in 2004, to \$7.6M in 2009 (out of an

overall allocation of \$9.8M); to the current level of \$6.29M (out of an overall allocation of \$8.8M).

The Executive Budget released on January 17th maintains our current State Aid to Defense funding of \$6.299 million for State fiscal year 2012-2013. We urge that this direct allocation to the Society be continued in the adopted budget, 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.

In addition to State Aid to Defense, funding from the Legislature is a crucial element of State support that the Society needs to provide constitutionally mandated representation for clients. In recent years, the Society has received the following legislative funds to provide criminal defense services to constituents: \$1.1 million in Senate legislative funding for criminal defense; \$300,000 from the Assembly in supplemental Aid to Defense funding; \$485,000 in Assembly funding to provide special representation services for juveniles in Criminal Court cases; and \$40,000 from the Assembly to focus on drug interdiction matters involving the airports. Because of the State's financial condition, for the 2011-2012 fiscal year, the Legislature was only able to provide the Society with \$288,000 in Assembly criminal defense funding. Restoration of these funds for the Society's criminal defense services in all five boroughs of the City is crucial again this year.

A further concern in the criminal defense area involves our representation of clients who are mentally ill and chemically addicted. The Division of Criminal Justice Services has allocated \$660,000 in annual Byrne funding to the Society to operate a special program for persons accused of crimes who are mentally ill and chemically addicted. Originally funded at a level of \$925,000, this program has also had significant success in preventing re-arrests for clients the Society represents. For 2012-2013, it is essential that the Division of Criminal Justice Services again allocate this Byrne funding to enable the Society to continue to operate this critical program for these vulnerable New Yorkers. In the past, the Legislature has urged the Division of Criminal Justice Services to continue this vital Byrne-funded program and we ask that the Legislature do so again.

The members of our Parole Revocation Defense Unit serve as the primary defender of persons accused of parole violations prosecuted in New York City. Annually, Legal Aid's Parole Unit conducts more than 7,000 preliminary and final parole violation hearings. With a well-trained staff, The Legal Aid Parole Revocation Defense Unit provides cost-effective, high quality representation 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.

The Legal Aid Society's innovative program develops alternatives to incarceration for this population in the form of medical discharge plans and program placements, and has achieved a demonstrable reduction in repeat offenses. Because treatment is a less expensive means of protecting public safety than returning a parolee to prison – averaging only \$15,000 per year as opposed to \$45,000 annually as the Assembly Speaker's prior report found – the Society's program for mentally ill parolees is particularly cost-effective. Our client services can

help reduce the substantial cost of incarceration of mentally ill clients that are otherwise absorbed by the Department of Correctional Services and local governments.

Historically, the State had provided \$1.3 million in Statewide funding to support these critical parole defense services. However, prior Administrations eliminated this State funding for indigent parolee defense. Most recently, the Assembly had allocated \$472,000 for the Society's representation of indigent parolees and a further special grant of \$273,000 for the Society's representation of mentally ill parolees. Because of the State's budgetary constraints, these funds could not be allocated in 2011-2012, but we urge the Legislature to consider maintaining this critical program in 2012-2013 in order to provide services to constituents that have a proven track record of reducing recidivism.

The Need for Funding for Civil Legal Services

Our members also provide 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 members represent poor and low-income New Yorkers on matters involving housing, homelessness, benefits, disabilities, family law, domestic violence, reentry, elder law, consumer law, foreclosure, immigration, employment, tax law, and health law. In addition to servicing our own clients, we also accept referrals from other legal services groups, who cannot provide all necessary services, have limited or no case intake capacity, or do not serve a particular community, as well as provide vital trainings for the legal community throughout the City. Over the past year, we worked on some 43,000 individual civil matters benefiting more than 100,000 of the most vulnerable New Yorkers

Again, we are mindful of the extreme financial difficulties that the State is facing. At the same time, these extraordinary economic conditions are having an especially harsh impact on low income New Yorkers. As legislators serving constituents – many of whom are our clients – you know that the need for the legal help that our members provide to these struggling families and individuals is increasing exponentially. Due to the lack of adequate funding, we are not capable of helping all those who come to us for legal assistance. For every one person that we are able to help, we turn away eight. Without ongoing substantial funding, we will be forced to turn away more families and individuals who desperately need our help.

This the toughest part of our members' jobs – having to turn away families and individuals who desperately need our help because we do not have enough staff or resources to deal with the cases. Every day, our members have to turn away families facing eviction and homelessness, victims of domestic violence, elderly and disabled people struggling with the bureaucratic maze of Medicare and Medicaid, families fighting to support children, people living in uninhabitable apartments, disabled people unable to secure government benefits, and people who have just lost their jobs and need help to win hearings on their claims for unemployment insurance benefits. Our members bring skill, creativity, and fierce advocacy to all of their cases, but there is a limit to the number that we can handle with fewer and fewer resources.

Our country continues to struggle with the worst economic crisis since the Great Depression, and vast numbers of the working class have suffered massive job losses. It is no surprise that the impact of this recession has been felt most acutely by those at the bottom of the earnings scale. Recently released federal poverty data shows that the number of children and adults living at 200 percent of the federal poverty level or below in New York State has increased from 5.6 million in 2008 to 6.3 million in 2009.

At the same time, the economic downturn has diminished available funds for these crucial legal services. Most notably, the Interest On Lawyers Account Fund of New York State (IOLA) – a critical funding source for providers of core civil legal services in every area of the State – has eroded from an amount close to \$32 million annually to less than \$6.5 million due to the drop in interest rates. In the 2010-2011 budget, the Legislature supported the Judiciary's effort to offset partially this dramatic reduction but the need to address this urgent problem is continuing.

Against this background, every day, civil legal services programs like Legal Aid provide for thousands of vulnerable New Yorkers a lifeline for basic survival. And the situations our clients are facing – loss of jobs, foreclosure, eviction, hunger – are the grim hallmarks of this current fiscal crisis. The work performed by civil legal services programs also brings millions of dollars into the New York economy each year and saves State and local government millions of dollars annually. Last year, for example, a task force appointed by Chief Judge Jonathan Lippman found that civil legal services programs in New York State obtained millions of dollars in retroactive and ongoing federal disability awards for clients, thereby bringing millions of dollars into the State annually which, in turn, sustained jobs and additional economic activity. Likewise, the Chief Judge's task force found that the provision of civil legal assistance saves millions of public dollars each year by preserving homes, averting homelessness for New Yorkers, and keeping families together.

Times like these make the work of civil legal services workers more indispensable than ever. At times like these, government should be keeping social service programs running at current or expanded levels instead of continuously slashing their funding to save a few dollars in the immediate overall budget. And yet, over the past several years, New York has consistently failed to protect the social safety nets that are already in place.

With the help of the task force, Chief Judge Lippman held a series of hearings in all four Judicial Departments that revealed widespread support for civil legal assistance from prominent business leaders, front-line Judges, local government officials, District Attorneys, leading educators, physicians and medical providers, providers of domestic violence prevention services, as well as prominent labor unions in New York. These unprecedented hearings highlighted not only the increasing need for civil legal services, but the positive impact that having legal representation can have on ensuring equal access to justice.

We urge the Legislature to support the Judiciary's budget which contains urgently needed Statewide support for civil assistance for vulnerable low-income New Yorkers. This Judiciary effort is targeted to the most basic needs for struggling families and individuals – help with legal problems involving the essentials of life: housing (including evictions, foreclosures, and homelessness), family matters (including domestic violence, children, and family stability),

access to health care and education, and subsistence income (including wages, disability and other benefits, and consumer debts).

Ultimately all New Yorkers will bear the increased costs when our lack of funding prevents us from providing legal assistance. Housing lawyers in our eviction and homeless prevention program save the state and localities millions in emergency shelter costs. The family law work done by legal services programs stabilizes families and keeps children with their parents, avoiding costly foster care placement. When we help a displaced worker get unemployment insurance benefits, this saves the state additional public assistance expenditures and keeps a worker connected to the job market through services offered by the Department of Labor. The consequences of eliminating critical legal services funding will be dire because there will be fewer attorneys to challenge bureaucratic mistakes and ensure equal access to justice.

Moreover, in addition to absolutely crucial Judiciary support, legislative funding has historically provided core support for civil legal assistance throughout New York State. For example, in the recent past, the Society has received the following essential legislative support for civil legal services: \$573,000 in Senate civil legal services funding; \$1,091,251 in Assembly civil legal services funding; \$140,000 as part of the Assembly's allocation for HIV legal services; and \$50,000 and \$75,000 grants as part of the Assembly's Legal Services Assistance Fund allocation for legal aid for senior citizens and supplemental domestic violence legal assistance. As a result of the State's financial limitations, for the 2011-2012 fiscal year, only \$45,000 and \$67,000 grants could be provided as part of the Assembly's Legal Services Assistance Fund allocation for legal aid for senior citizens and supplemental domestic violence legal assistance. Restoration of these funds for the Society's civil legal assistance in all five boroughs of the City is crucial again this year.

Maintain Funding for NYS Educational Loan Forgiveness Assistance Fund

Like State to Aid Defense, the Executive Budget has included the money allocated for the educational loan forgiveness fund for Assistant District Attorneys, Indigent Defense and Civil Legal Services attorneys. Until the law was amended in Fiscal Year 2009-2011, only the District Attorneys were afforded the opportunity to receive State assistance. Thankfully, many of our members have been afforded the opportunity to apply for much needed financial assistance in repaying their loans over the past two years. The amount of educational debt that the vast majority of our membership is carrying is staggering. Too often, I hear stories of the tough decisions that my members face in trying to figure out how to pay their rent, their monthly loan payments and buy food on a Legal Aid salary. This fund is essential to the Society's ability to recruit, but, more importantly, retain highly trained and dedicated attorneys and cannot be reduced. As the budget process proceeds, we urge the Legislature to continue to make specific provision for the educational loan forgiveness fund for Assistant District Attorneys and Indigent Defense and Civil Legal Services Attorneys and to avert any disproportionate cuts.

The Legal Aid Society Cannot Absorb any Reduction in Funding

Finally, I would like to stress one crucial fact. Despite the size of The Legal Aid Society, we simply cannot absorb any further reductions in funding. Despite the increased need for our services, our programs and our Collective Bargaining Agreement have been cut to the bone due to the constant underfunding of Legal Aid's Criminal and Civil Practices. As a result, our Local continues to face the possibility of layoffs, elimination of advocacy and support staff positions, dislocation of staff from areas of hard-won expertise, and reductions in client services.

For the past several years, we have been forced to operate with staffing levels well under capacity, especially in our Civil Practice. All vacant positions for both attorney and support staff positions have been eliminated from offices that were already understaffed. Any further reduction in funding will not only hurt our clients, but will create even more of a crisis in the courts and administrative forums where we appear.

The gaps in our budget that we are continuously forced to face cannot be filled on the backs of our members. For years now, the Society has been operating as lean as possible, dangerously too lean in many aspects, and there is nothing left to cut. We have exhausted the approach of trying to resolve budget gaps on the backs of our members through staff eliminations, givebacks at the bargaining table, and getting staff to try to do more with less.

Our members have been sacrificing for years. As you know, A.L.A.A. members work under very stressful conditions for low wages in comparison to what they could earn in the private sector. The money saving policies that many companies have only now put in place this past year have been in effect at Legal Aid offices for years. Our members have not received a cost of living increase since 2008. Our members began contributing to their healthcare plans years ago, only to face increasing costs during bargaining. Unlike many of our brothers and sisters in the public sector, we do not have a defined-benefit pension. We have given up the few other wage incentive benefits that we had in the past. We have done all of this in an effort to help alleviate the harm done by the State's constant underfunding of our programs and keep the doors of the Legal Aid Society open.

In these severe economic times, our clients need our legal assistance more than ever. We are mindful of the extreme financial difficulties that the State is facing, but it is time that funding for legal services becomes one of its top priorities. New York State was once an historic leader in protecting the poor and ensuring for all New Yorkers access to the basic necessities of life, shelter, sustenance and safety. It's time we become a leader once again.

We thank you for the vital support that you have given to The Legal Aid Society in the past, and we are hopeful that the critical continuing funding needs that we have highlighted in this testimony can be met.