



NEW YORK STATE LEGISLATURE
2011-2012 JOINT BUDGET HEARING
FEBRUARY 9, 2011 - 9:30
PUBLIC PROTECTION
HEARING ROOM B
LEGISLATIVE OFFICE BUILDING

NYS Office of Court Administration	Honorable Ann Pfau Chief Administrative Judge
NYS Division of Homeland Security	John Gibb Commissioner
NYS Division of Criminal Justice Services	Sean M. Byrne Commissioner
NYS Department of Correctional Services	Brian Fischer Commissioner
NYS Division of Parole	Andrea W. Evans Chairwoman & CEO
NYS Division of State Police	Joseph D'Amico Superintendent
NYS Office for Technology	Dr. Melodie Mayberry-Stewart Chief Information Officer & Director of Office of Technology

NYS Correctional Officers	Donn Rowe President
NYS Troopers PBA	Thomas Mungeer President
Commission on Judicial Conduct	Robert Tembeckjian Administrator & Counsel
New York State Bar Association	Stephen P. Younger President
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Legal Services of NYC	Edwina Martin Director, Communications & Gov't Relations
The Fund for Modern Courts	Dennis Hawkins Executive Director
ATI & Reentry Coalition	Tracie Gardner Director of NYS Policy
Empire Justice Center	Anne Erickson CEO Kristine Brown Lilley Director, Policy Advocacy
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Association of Legal Aid Attorneys	Deborah Wright President
NYS Defenders Association	Jonathan Gradess Executive Director
Legal Services Funding Alliance	Lillian Moy
NYS Association of Criminal Defense Lawyers	Sandra Rivera Counsel
The Constantine Institute	Terry O'Neill Director

The Legal Project

Lisa Frisch
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Leap Coalition

Harvey Epstein
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Samuel Seymour
President

Correctional Association of NY

Jack Beck
Director
Prison Visiting Project

NYS Coalition for Operation SNUG

Barbara Smith
Advocate
Albany Operation SNUG



JOINT LEGISLATIVE HEARING ON THE 2011-2012 JUDICIARY BUDGET

REMARKS OF CHIEF ADMINISTRATIVE JUDGE ANN PFAU

February 9, 2011

Good morning Chairpersons DeFrancisco, Farrell, Bonacic and Weinstein, committee members, staff, ladies and gentlemen.

I appreciate this opportunity to appear before you to discuss the Judiciary's budget request for Fiscal Year 2011-2012. First, I want to thank you for your support of the court system over the years. In particular, I want to thank you for addressing a long-standing issue of crucial importance to the Judiciary as an institution, as well as to our judges and their families – by establishing a quadrennial commission for the regular adjustment of judicial salaries. Especially at a time when difficult economic choices are being faced throughout our state government, we recognize and deeply appreciate the initiative required to address this issue. We look forward to working with the commission to achieve its mission.

* * *

As Governor Cuomo noted in his State of the State address, today we are at a time of crisis in New York. It is a crisis that reaches the Judiciary as it does every branch of government, every municipality, every agency. More than ever before, we have an obligation to reduce the costs

of government, to innovate, to be creative in the economical delivery of services to the people of our State. We are indeed at a crossroads.

And yet the Judiciary, as an independent branch established under our State Constitution, has an immutable duty to seek the resources necessary to providing justice to the people and businesses that call New York home – to meet constitutional and statutory duties that grow annually, and leave little or no discretion to curtail or diminish.

The strength of a State as a place to build a business or raise a family ultimately rests upon its ability to fulfill its commitment to the rule of law, as articulated by its Legislature and Executive. Simply stated, courts cannot turn people away or close shop to certain litigants or to certain categories of claim. We are constitutionally-bound to deliver justice in a timely and evenhanded manner to all – whether a large corporation seeking injunctive relief to block an international banking transaction or a parent seeking an emergency order of protection against an abusive spouse. Our doors must be open to all, in the best economic times and in the worst – maybe especially in the worst.

It is a balance between the imperatives of economic crisis and the constitutional duty of the courts that we seek in the budget proposal that

lies before you.

Two years ago, we submitted a flat operating budget request. Last year our operating budget request included only mandatory and statutory related increases. This year we present a negative growth operating budget.

The proposal is shaped by the fact that the judicial business is heavily labor-intensive. More than 90 percent of Judiciary expenditures are upon personnel, and our efforts at cost reduction must begin there. Two years ago, we undertook a program to encourage targeted nonjudicial employees to leave State service. As result we were able to reduce the nonjudicial workforce by more than 140 positions, for a savings of more than \$10 million. During the current fiscal year, we implemented a Retirement Incentive Program which led to more than 1,550 employee retirements – including more than 60 in the Office of Court Administration. About half of these vacated positions - and the vast majority of those in the Office of Court Administration – remain vacant. The operating budget request as submitted includes nearly \$47 million in early retirement savings. As a result of these programs, the court system's nonjudicial workforce is currently 1,180 less than it was in 2008.

As Governor Cuomo has suggested, this reduction has provided opportunity for restructuring the way we do business. Our reduced workforce has been forced to innovate, to expand roles vertically and horizontally. Chief court clerks in some counties have assumed supervisory authority for multiple courts, while others have taken on the responsibilities of lower-level managers whose positions remain vacant. Court workers previously exercising administrative responsibilities are being redeployed to positions that directly support court operations and case management. Court managers are closely monitoring daily court calendars and rotating courtroom staff to court parts where, due to fluctuations in day-to-day caseloads, they are most needed.

We've also been cutting non-personnel costs, the old-fashioned way. Over the past two years, we've banned all but essential travel (saving 28%), restricted the purchase of equipment (16% savings), limited overtime (7% savings), reduced print legal materials in favor of flat-rate online legal research (26% savings), and increased the use of web-based remote training (79% savings in conference and training expenditures).

Looking ahead, we have undertaken a comprehensive, systemwide re-examination of every aspect of court operations. As part of this effort

we are partnering with the National Center for State Courts, a nationally-known think tank, ensuring that we have access to the broadest possible range of experience and innovative ideas. Our goal is not just to reduce our own costs, but to improve service to the public while finding efficiencies for all participants in the justice system, including prosecutors, other government entities, the private bar, jurors and litigants.

Technology will play a key role here. Last year, the Legislature authorized expansion of electronic filing, including mandatory e-filing pilots in a number of counties. We thank you for that, and I am pleased to report that the first program is operating well. Thousands of cases have already been filed in the pilot mandatory program for commercial cases in New York County; a similar program commenced in Westchester County last week; and we continue to work with the other authorized counties.

This year we also inaugurated online attorney registration, and are moving forward with a variety of innovative projects with government agencies to improve inter-agency transmission of data, in order to reduce costs, increase efficiency, and improve service to the public.

These measures and others have allowed us to continue to hold the line on increases in the Judiciary's operating budget. And we have done

so in the face of an ever-increasing burden of cases – a burden that we must address, but cannot control.

From 2001 to 2010, the Judiciary's caseload grew by 15 percent – there are now more than a half million new cases filed annually than there were just a decade ago. The sharpest recent increases have come, not unexpectedly, in those categories that are particularly sensitive to the economy. As I said in my testimony last year, and as our judges see day in and day out, the state courts are the emergency room for society in troubled times. When families are unable to pay their mortgages, when consumers default on credit card payments, when business deals go bad, and when frustrations over household finances erupt into domestic violence, it all ends up as a matter on a court docket.

Among the case types that have grown especially quickly in recent years are foreclosures, which have more than doubled since 2006. And that's where we've tried to make a difference. Pursuant to legislation enacted in 2008 and 2009, the courts conducted more than 113,000 settlement conferences in foreclosure cases in 2010. These conferences have imposed a significant additional burden on the courts, but it's been worth it because they are producing results. For example, in Queens

County, more than 50 percent of the cases in which conferences are held result in loan modifications or other agreements. Family violence cases are another category that has continued to increase, with a growth of 32% in just three years. Nearly 9,000 petitions were filed last year in Family Courts across the State seeking orders of protection under the “intimate relationship” legislation enacted in 2008. Moreover, the overall number of orders of protection issued by the courts has increased by more than 65 percent over the past six years.

And of course, it is not only our most vulnerable who take refuge in the courts during an economic downturn: over the past three years, the number of contract disputes brought to the courts has increased by nearly 20 percent.

We are very grateful for the budgetary support that we have received over the years. However, over the past decade, as court filings increased by 15 percent, very few new judgeships were established. As a result, we have been forced to rely increasingly on the temporary assignment of lower court judges to higher courts to ensure the prompt disposition of the most serious cases. In short, we are robbing Peter to pay Paul. Perhaps more critically, for want of more judges we also have had to assign nonjudicial

personnel to act as quasi-judicial officers to handle matters in select categories of cases. Independent of this fact, it bears noting that the growth of nonjudicial positions has also significantly lagged behind the workload increase – the court system’s nonjudicial workforce is currently only about three percent greater than it was in 2001.

We’ve done our best. But the cumulative effect of years of steady increases in workload without a comparable increase in resources has stretched the Judiciary to the limit. For instance, a typical Family Court judge hearing child protective cases now has an active caseload of more than 500 cases at any given time. On average, a Family Court judge has less than one hour to devote to each of these critically important cases.

Moreover, the true workload of the courts is increasing in many ways that are not reflected in the growing dockets. For example, the courts are seeing an ever-increasing number of unrepresented litigants. It has been conservatively estimated that the number of unrepresented litigants appearing in the New York courts increased from 1.6 million in 2005 to 2.1 million in 2009. These litigants, who often face serious consequences in cases involving eviction, consumer debt, foreclosure, and family matters, have special needs that require disproportionate time and attention from

judges and court personnel. Other pressures on the court system include the background checks in multiple databases that are required before a judge issues an order in a custody or visitation case (more than 11 million searches since January 2009), and the requirement of heightened judicial monitoring of children in foster care, which has doubled the number of permanency planning hearings in our Family Courts.

These are terrific initiatives. But their impact upon the Judiciary and its resources is profound.

* * *

This, then, is the challenge. I'd now like to address in broad scope the budget that we have proposed to meet it.

The Judiciary's budget request for fiscal year 2011-2012 seeks the minimum funding necessary for the courts to fulfill their constitutional obligations in the face of these staggering workloads. The General Fund Court and Agency Operations and Aid to Localities portion of the Judiciary budget request is \$1.8 billion, a slight decrease over the current year's budget.

This year, as you see, the Judiciary is presenting its request for operating funds separately from its request for the so-called General State

Charges, which pay the fringe benefits of judges and nonjudicial employees. We believe that the presentation will aid in the understanding of our request, by following the format that has long been used by the Executive and Legislative Branches, and by separating our programmatic requests from the fringe benefits costs, over which we have little or no control.

This negative-growth operating budget request also addresses one of the most troubling problems that the courts face – the record number of litigants who appear without legal counsel in housing, consumer debt, and other cases involving the essentials of life. A Task Force convened by the Chief Judge documented a substantial need for civil legal services in New York, as well as the significant human and social cost imposed by the lack of adequate representation. The Task Force found that the lack of legal representation not only harms the non-represented parties, but also imposes significant burdens on the courts as well as on opposing parties who are represented. The proposed budget includes \$25 million to begin implementation of the recommendations of the Task Force. At a time of economic downturn, this initiative is crucial.

* * *

We believe that the Judiciary's 2011-12 budget request balances our obligation to join the other branches of government in addressing the serious fiscal challenges facing New York State with our obligation to secure the resources necessary to carry out our constitutional mission.

Even in the face of these challenges, however, New Yorkers can rely upon our judges and court staff continuing to work hard and delivering justice fairly and efficiently. Our entire court system – our three appellate courts and eleven trial courts, spread over 62 counties, 62 cities and hundreds of towns and villages – has but one function: to dispose of the cases brought before it fairly and in a timely manner. With your help, our judges have been performing this function with great professionalism and dedication, since the earliest days of our State. I want to thank you, the members of the Legislature, for your ongoing support of our efforts and for your consideration of our needs.

Thank you for inviting me to discuss the Judiciary's budget proposal. I would be happy to answer any questions.

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**Testimony of John R. Gibb, Acting Commissioner
New York State Division of Homeland Security and Emergency
Services
Before the Joint Legislative Fiscal Committees Hearing on the
Executive Budget
2011-2012 Executive Budget
February 9, 2011**

**Testimony of John R. Gibb, Acting Commissioner
New York State Division of Homeland Security and Emergency Services
Before the Senate Finance Committee and the Assembly Ways and Means Committee
Hearing on the Executive Budget
2011-2012 Executive Budget
February 9, 2011**

Introduction

Good morning Chairman DeFrancisco, Chairman Farrell and distinguished members of the Senate Finance and Assembly Ways and Means Committees.

My name is John Gibb and I currently serve as Acting Commissioner of the New York State Division of Homeland Security and Emergency Services.

I am pleased to appear before this joint session today to discuss the 2011-2012 Executive Budget. Our merged Division, created in last year's budget, is comprised of the Office of Counter Terrorism, Office of Emergency Management, Office of Cyber Security, Office of Fire Prevention and Control, and Office of Interoperable and Emergency Communications. I would like to think that the creation of DHSES is exactly what the Governor envisioned; a transformation of our agencies to be leaner and more efficient. Our collective mission of counterterrorism, cyber-readiness, disaster preparedness and response, fire training and support to the state fire service, and enhancement of the State's interoperable communications systems is furthered by our new structure.

The experience of our merger at the Division of Homeland Security and Emergency Services provides a solid example that the Governor's vision in redesigning New York State agencies can lead to successful cost-savings, while maintaining and enhancing services for the citizens we serve.

Just over a week ago, Governor Andrew Cuomo delivered the message to all New Yorkers that our State is at a crossroads and that, collectively and through a fair and responsible process, we can work together to do our fair share to take the path on the road to recovery.

As you know, Governor Cuomo's Executive Budget Proposal reduces General Fund State Operations spending by 10 percent. His stated desire for State agencies to lead by example is something we believe firmly in. As Commissioner, I will work to implement our budget cuts through management efficiencies and improvements. We are committed to meet the goals set forth by the Governor and to achieve the maximum savings in non-personal services. The Division is better positioned than ever before to accomplish what the Governor's budget seeks to achieve: to provide the most services to the people of the State of New York in the most efficient and fiscally responsible manner.

Merger Implementation

Since the effective date of the merger July 1, 2010, the Division has successfully transitioned the employees of the legacy agencies in to the new organization.

In order to achieve operational efficiencies, we devised a plan to incorporate the common, or overlapping, functions of the legacy agencies to serve the new unified Division, which include Legal, Administration, Public Information, and Information Technology.

The consolidation of the agencies has indeed strengthened the State's response capabilities to protect the people of the State of New York. As you are aware, within the last month, our State has been struck several times by major winter storms. The Office of Emergency Management coordinated the State's response from the State Emergency Operations Center. The new structure provided for an even more coordinated approach to the storms with

staffing from the EOC that was bolstered with additional key staff from the Offices of Counter Terrorism, Cyber Security, and Fire Prevention and Control.

We originally anticipated a total cost savings of \$1.5 million in the past year as a result of the merger and I am happy to report that we met that goal, primarily through non-personal cost saving measures.

Federal Funding

An area of continued interest and concern for the Division, both fiscally and programmatically, is the level of federal funding received by the State of New York.

In 2010, the U.S. Department of Homeland Security awarded the State of New York approximately \$294 million in homeland security funding, including \$113.5 million for the State Homeland Security Grant Program. While this represented an increase from 2009 funding levels for these programs, at this time we are unaware of what the final FY2011 award allocations will be.

At the federal level, the Administration's proposed budget for FY2011 includes an increase from the FY2010 levels for the State Homeland Security Grant Program, the Urban Area Security Initiative and the Emergence Management Performance Grants. However, with the appropriations process delayed and Congress' use of continuing resolutions, there are no definitive grant figures that we can rely on at this time.

We are fully cognizant of the upcoming 10-year anniversary of the attacks on September 11th and with 36 terrorism plots targeting the United States in the decade since – 11 of which specifically aimed at New York, the Office of Counter Terrorism remains as fully committed to its mission as it has ever been. Since the Terrorism tips line was initiated in 2002, the State Police has received 7,038 tips, for an average of more than 780 a year. Clearly our work continues.

State Preparedness Training Center

I would also like to provide a brief update on the work underway at the State Preparedness Training Center in Oriskany. The rehabilitation of the former terminal building is near completion and we expect the work to be finalized this summer. With the front entrance and road infrastructure improvements near completion, it will set the stage for the future development of a CityScape for multi-disciplinary preparedness training, a weapons training complex and enhanced emergency vehicle operations training. The 2011-12 Executive Budget provides re-appropriations of \$37 million to continue this multi-year, multi-phase development effort.

Programmatically, this past year the State Preparedness Training Center sponsored courses offered by the Division, as well training events offered by other State agencies. The Training Center collectively held a total 136 courses and served a total of 3,312 students - even as the Educational building was undergoing renovations

Conclusion

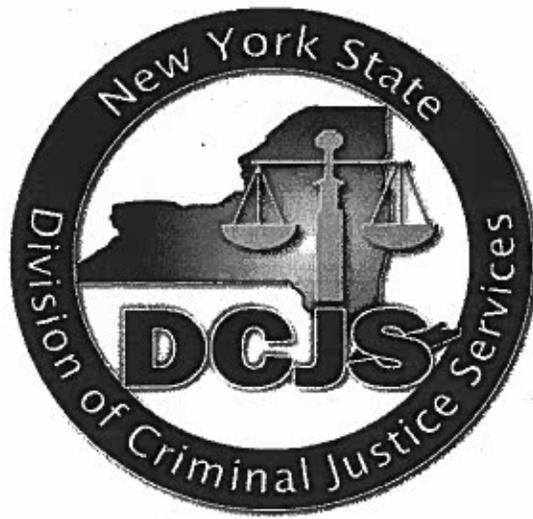
I want to assure you that our overarching goals and priorities have only strengthened with the merger and the public's safety is what we strive for on a daily basis. I and other senior officials in my agency will continue to reach out to our relevant stakeholders to receive their input not only on the budget, but also on changes that DHSES can and should make to work more collaboratively with local first responders and law enforcement. We are confident that we provide a strong example of how a redesign of government agencies can prove to be a successful endeavor.

Again, I want to thank you, Chairman Farrell, Chairman DeFrancisco and members of the committees for the opportunity to testify today. I am happy to answer any questions you may have.

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Budget Presentation

February 9, 2011



Sean M. Byrne
Acting Commissioner

**Testimony of Sean M. Byrne
Acting Commissioner, New York State Division of Criminal Justice Services
Before the Senate Finance Committee and the Assembly Ways and Means Committee
Hearing Room B
February 9, 2011
9:30 a.m.**

Good morning Chairman DeFrancisco, Chairman Farrell and distinguished members of the Joint Committee. I am Sean Byrne, Acting Commissioner of the Division of Criminal Justice Services.

Thank you for inviting me to appear before you today to explain how DCJS will redesign, recalibrate and rebuild to promote public safety in New York State. Governor Cuomo's directive to me is unequivocal: The status quo is not acceptable and it is not an option; the state cannot and will not continue spending at twice the rate of inflation; the day of reckoning is today; tomorrow has arrived.

The Governor's Executive Budget faces fiscal realities head-on and rejects the budget games of the past. The budget requires us all to make some difficult choices. But our shared sacrifice in the short term will bring shared prosperity in the long term.

The Governor's budget begins a transformation to a more efficient and effective government focused on core missions and obligations. The role of the Executive Branch agencies, including DCJS, is to implement and manage a 10 percent reduction. My role as Acting Commissioner is to work in partnership with the dedicated employees of DCJS, and with our stakeholders and constituents, to reorganize the agency by finding efficiencies to make it stronger than before.

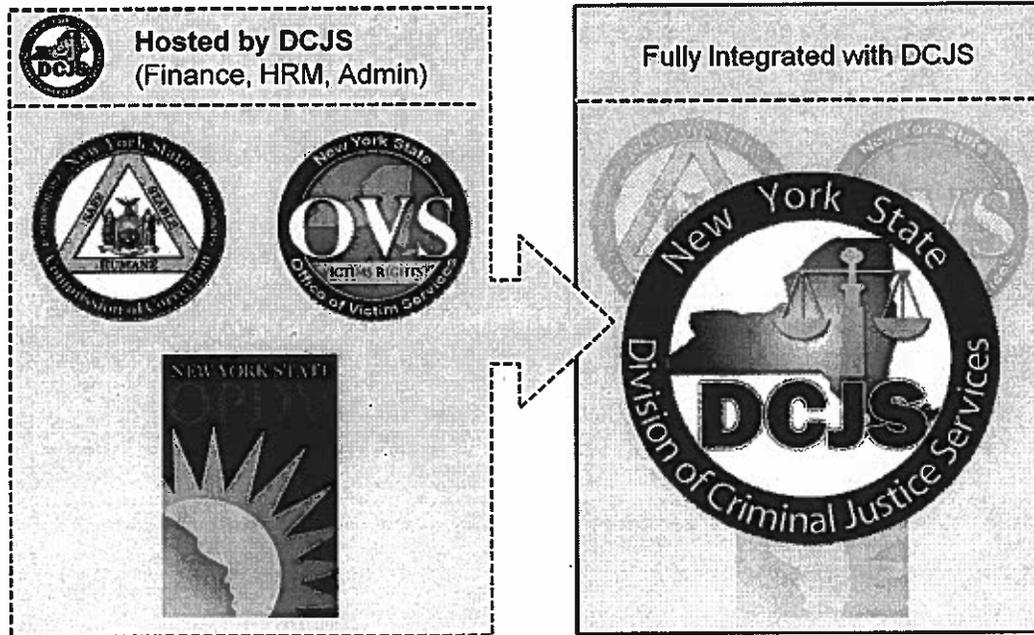
This budget proposal provides DCJS with the flexibility to help us deal with a tough fiscal reality. Governor Cuomo's budget empowers us to better utilize our resources through strategic agency mergers and allows DCJS to accomplish its mission despite reductions in state operations and local assistance spending.

Governor Cuomo's budget was crafted to balance the public protection and financial interests of taxpayers, without compromising either. From a budgetary standpoint, I would like to focus on three areas: agency mergers, state operations and local assistance.

Agency Mergers

The 2011-12 Executive Budget includes a recommendation to merge the Office of Victim Services, the Office for the Prevention of Domestic Violence, and the State Commission of Correction with the Division of Criminal Justice Services. All three of these agencies are currently hosted by DCJS, and we perform financial, human resources and administrative responsibilities on their behalf. The missions of these agencies will be preserved, and in fact enhanced, as specialized offices within DCJS. The merger offers opportunities for shared operations, program synergies and the optimization of funding sources.

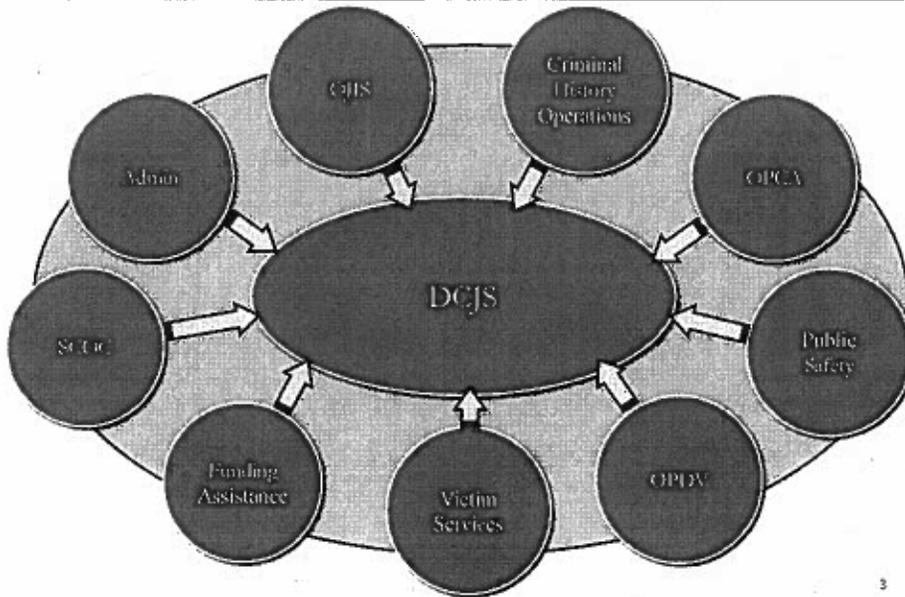
Agency Mergers



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We have experience at this: In the current fiscal year, we successfully merged the former Division of Probation and Correctional Alternatives into DCJS and we have already experienced the benefits of that consolidation.

Criminal Justice Services



Given the fiscal emergency, I'm happy to report, that we were able to consolidate, from a number of contract areas and maintain our ATI spending at the same level it would have been at had they only experienced a cut proportionate to all other local assistance programs. At the same time, we supported Prisoners Legal Services, the Legal Action Center, the Correctional Association of New York, and Civil Indigent Legal Services.

The additional mergers proposed in the Governor's budget will allow for the cost-effective delivery of the important services provided by these agencies.

I would like to stress right up front that the Commission of Correction – although it would be an office within DCJS under the Governor's budget proposal – will retain both its constitutional mission and independence, which is so critical for it to effectively operate.

State Operations Reductions

Like all agencies, DCJS will be required to absorb additional reductions in State Operations funding in fiscal year 2011-12. As we have for the past two years, the agency will manage through these difficult financial times by focusing on core mission activities, and ensuring that every dollar spent provides a return in enhanced public safety.

Core Mission Retained



DCJS will absorb reductions while continuing to focus on core mission activities related to Public Safety.

Local Assistance

Although there have been reductions, the 2011-12 Executive Budget provides the Division with the flexibility to develop a comprehensive plan for the distribution of criminal justice, probation aid and alternatives to incarceration grants. Distribution of these funds will be pursuant to a plan developed by the Commissioner of DCJS, after competitive bidding and taking into consideration performance measures.

All 2011-12 local assistance contracts will include performance-based work plans. Performance measures are already a standard element in most of our contracts. Now, performance measures will be standard in ALL of our contracts.

Each contract will include expected outcomes that demonstrate how the grants will improve public safety. In addition to providing a measure of the impact that grants have on improving crime problems in each jurisdiction, these outcomes will help us understand what strategies are working in our efforts to reduce crime.

Although we are in an economic crisis, I believe DCJS and its partner criminal justice agencies have proven their ability to perform in a manner that is responsive to the needs of our citizens and the fiscal realities within which we must operate. We have done that by concentrating on our core mission. We have not undermined the public safety. I am proud to say that the people's work is getting done at DCJS.

The Governor's budget proposal is designed to continue the historic progress we have made over the past two decades, recognizing that when we invest in initiatives that drive down crime, there is a ripple-effect return on that investment. Fewer crimes means fewer crime victims – which means fewer hospital bills, less strain on the insurance industry – fewer people on parole and probation and fewer people in our jails and prisons. It means businesses can operate safely, and people can work and shop in our cities without fear. A relatively small investment can pay enormous dividends – and in this economic climate we are committed to ensuring that the investment you make in public protection pays the greatest dividends possible.

In sum, Governor Cuomo's Public Safety budget is part of an overall, integrated blueprint to restore this state to greatness, to rethink State government. This budget presents a challenge – and an opportunity – to redesign, recalibrate and rebuild the structure of this government, including its components such as DCJS and our partner agencies. We welcome that challenge and relish that opportunity, and we are committed to working with Governor Cuomo and you to build a better, stronger and safer New York.

Thank you for allowing me to appear before you this morning. I would be happy to answer any questions you may have.

State of New York
Department of Correctional Services

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Testimony of New York State Department of Correctional Services Commissioner Brian Fischer on Governor Andrew M. Cuomo's 2011-12 Executive Budget before the Senate Finance and Assembly Ways and Means Committees, February 9, 2011

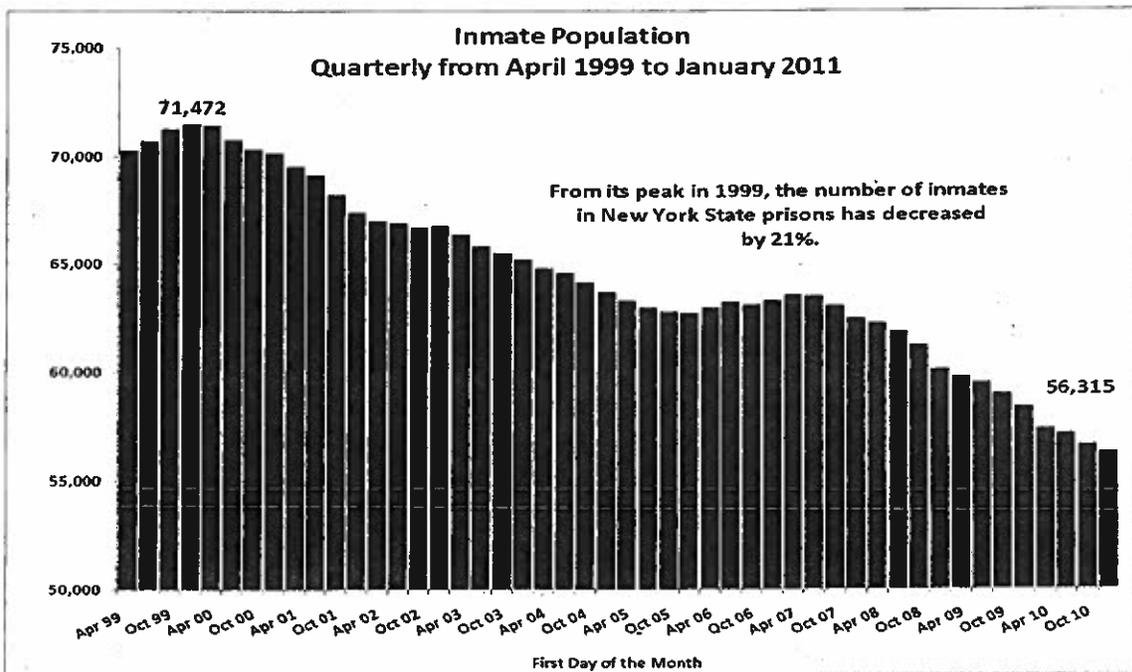
Good morning and thank you Chairman DeFrancisco, Chairman Farrell and members of the Senate Finance and Assembly Ways and Means Committees for this opportunity to speak with you about Governor Cuomo's vision for public protection services in the coming year. I am Brian Fischer, Commissioner of the Department of Correctional Services.

Governor Cuomo's Executive Budget is about redesigning the delivery of State services, recalibrating State spending to sustainable levels and rebuilding New York's economy. The fiscal crisis provides the opportunity to accomplish these important goals, and the Governor's public safety proposals take significant steps in these directions. As part of the overall effort to redesign government, Governor Cuomo's 2011-12 Executive Budget advances two major initiatives that will enhance public safety, improve the preparation of offenders for successful reintegration into society, transform prison communities and achieve significant savings for New York's taxpayers: closure of correctional facilities – coupled with economic development assistance for affected communities - and the merging of the Department of Correctional Services and the Division of Parole.

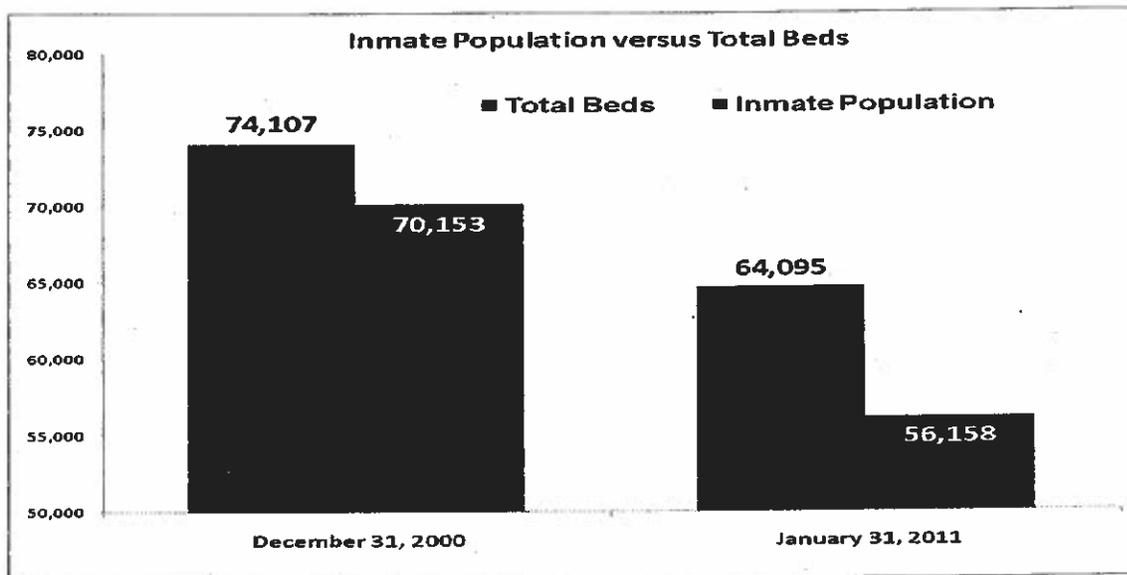
The Executive Budget proposal recognizes excess capacity of at least 3,500 beds in the prison system that impose an unnecessary cost on the State taxpayers. In an executive order issued today, the Governor creates a Prison Closure Advisory Task Force comprised of experts and legislators to recommend the closure of specific prisons. The task force will

recommend the closure of specific minimum and medium security facilities after it has engaged the community and received input from a variety of stakeholders. The factors they will consider include efficiency and cost of operations of the facility, planned capital investments and status of maintenance at a facility, and the impact on the workforce. Governor Cuomo also recognizes the potential impact closure will have on communities that have come to rely on prisons as major employers and economic drivers. That is why he is the first Governor in modern times to couple closure with State financial assistance to host prison communities by proposing up to \$10 million per location for economic development aid to those communities

This excess capacity is created in large part by a significant drop in the inmate population. In fact, there has been a 21 percent drop in the inmate population since 1999:



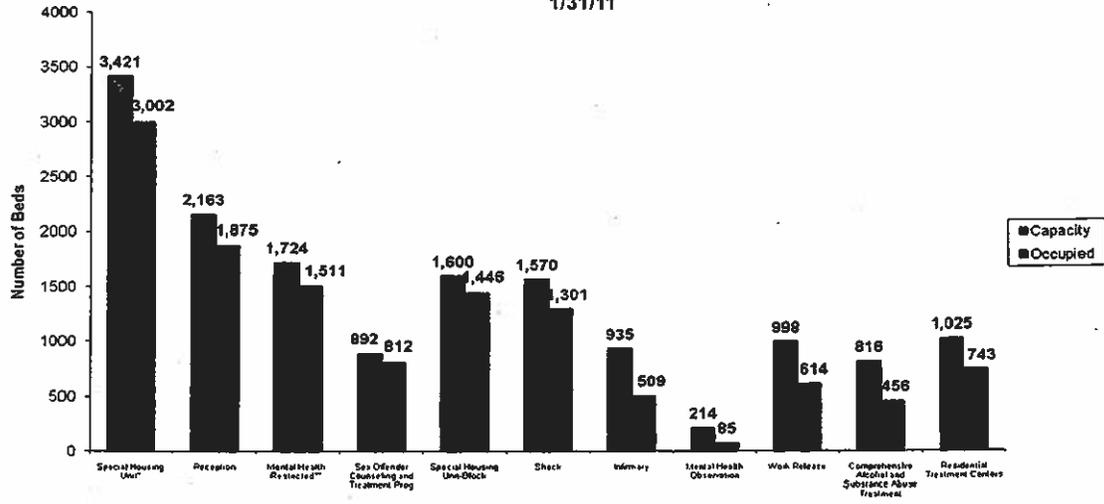
Since late 2008, DOCS has closed five correctional facilities and six annexes to eliminate 2,454 beds and has vacated numerous individual housing units within many facilities. Still, there were nearly twice as many vacant beds in DOCS as of the end of last month (7,937) than there were a decade ago (3,954):



There remains in the system more than 15,000 restricted beds in for special needs inmates:

**Breakdown of the Department of Correctional Services Statewide
Capacity**

65,120 Total Beds (includes 3,766 unstaffed beds)
49,762 General Confinement Beds (including 3,355 unstaffed beds)
15,358 Restricted Beds (including 411 unstaffed beds)
1/31/11



* Includes Specialized Treatment Program (STP)
** Includes Intermediate Care Program (ICP), Merit Cooper Program (MCP), Special Needs Unit (SNU), Community Orientation and Re-entry Program (CORP), Protective Custody (PC), Assessment and Program Preparation Unit (APPU), Behavioral Health Unit (BHU), Therapeutic Behavioral Unit (TBU) and 100 Mercy Residential Mental Health Unit (RMHU)

These include beds for offenders serving disciplinary sanctions or in need of any of a range of mandated medical, mental health and other services provided principally at maximum and large medium security facilities. However, vacancies in these beds should not be considered excess capacity. In addition, there are a number of unrestricted vacant beds that are located in facilities that provide the mandated medical, mental health and other services noted above which are included in unrestricted bed totals which numbered 5,018 at the end of last year. Because these beds are located at facilities serving a dedicated purpose, that capacity should also not be considered excess, leaving approximately 3,500 unrestricted beds as legitimate excess capacity.

The Department of Corrections and Community Supervision

The Executive Budget, by merging the Department of Correctional Services (DOCS) and the Division of Parole into a new Department of Corrections and Community

Supervision, will also redesign the delivery of state services to produce better outcomes and recalibrate the cost of government to more sustainable levels. The plan recognizes that seamless coordination of programs and services for offenders before and after prison will increase their chances of successful reintegration into their communities, bettering their own and their neighbors' lives by enhancing public safety.

In line with the Governor's commitment to provide better services more cost effectively, the new agency will undertake several important initiatives in the coming year, including:

- the opening of a new "special needs unit" for female offenders with developmental disabilities;
- completion of a second Residential Mental Health Unit at Five Points Correctional Facility in Seneca County to provide more programming and treatment for inmates with serious mental illness and lengthy disciplinary sanctions;
- completion of a centralized automated pharmacy at Mid-State Correctional Facility in Oneida County that will improve the delivery of constitutionally-mandated medical care to inmates at a lower cost to State taxpayers – and that could eventually provide similar savings to local property taxpayers through the provision of prescription refills for county jail inmates as well;
- exploration of ways to increase the effectiveness and efficiency of administrative services, including a centralized banking system and centralized operation of prison commissaries; and

- expansion of technology to improve services while saving money, including the digitization of inmate classrooms through secure networks.

Moving Toward Effective Redesign, Cost-Saving Recalibration

Governor Cuomo has rightly demanded that every agency of State government fundamentally rethink its operation, redesign the delivery of its services to fulfill core responsibilities while achieving better results, and recalibrate spending to sustainable levels. His Executive Budget requires strong leadership and decisive action to enhance public protection. We look forward to continued partnership with and support from the Legislature to meet these challenges in the coming fiscal year.

State of New York
Department of Correctional Services

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Testimony of New York State Department of Correctional Services Commissioner Brian Fischer on Governor Andrew M. Cuomo's 2011-12 Executive Budget before the Senate Finance and Assembly Ways and Means Committees, February 9, 2011

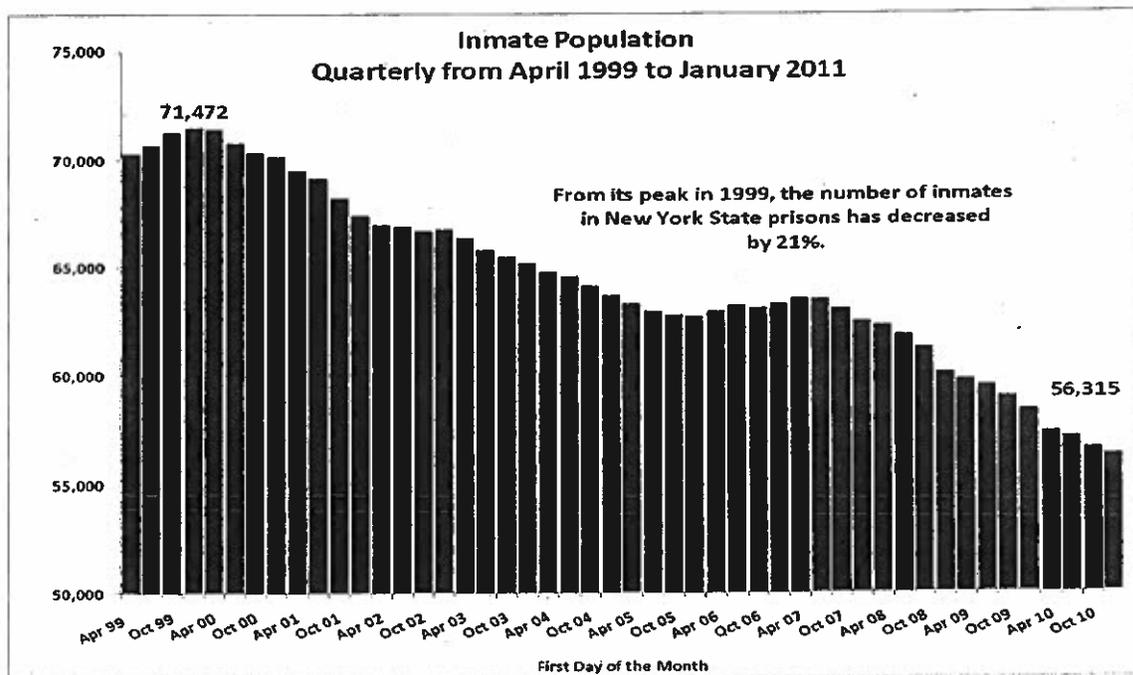
Good morning and thank you Chairman DeFrancisco, Chairman Farrell and members of the Senate Finance and Assembly Ways and Means Committees for this opportunity to speak with you about Governor Cuomo's vision for public protection services in the coming year. I am Brian Fischer, Commissioner of the Department of Correctional Services.

Governor Cuomo's Executive Budget is about redesigning the delivery of State services, recalibrating State spending to sustainable levels and rebuilding New York's economy. The fiscal crisis provides the opportunity to accomplish these important goals, and the Governor's public safety proposals take significant steps in these directions. As part of the overall effort to redesign government, Governor Cuomo's 2011-12 Executive Budget advances two major initiatives that will enhance public safety, improve the preparation of offenders for successful reintegration into society, transform prison communities and achieve significant savings for New York's taxpayers: closure of correctional facilities – coupled with economic development assistance for affected communities - and the merging of the Department of Correctional Services and the Division of Parole.

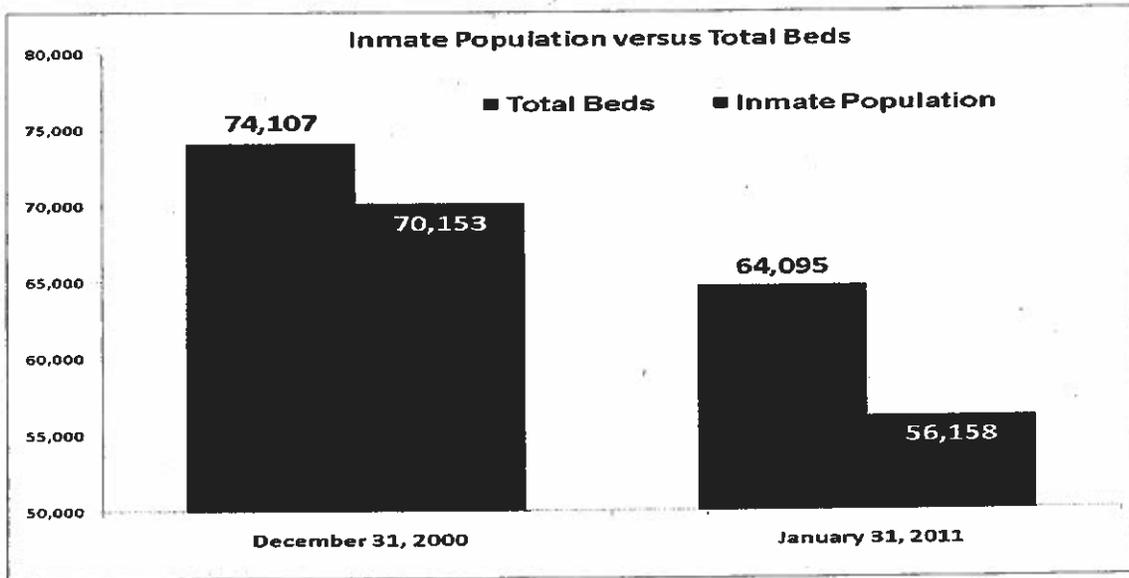
The Executive Budget proposal recognizes excess capacity of at least 3,500 beds in the prison system that impose an unnecessary cost on the State taxpayers. In an executive order issued today, the Governor creates a Prison Closure Advisory Task Force comprised of experts and legislators to recommend the closure of specific prisons. The task force will

recommend the closure of specific minimum and medium security facilities after it has engaged the community and received input from a variety of stakeholders. The factors they will consider include efficiency and cost of operations of the facility, planned capital investments and status of maintenance at a facility, and the impact on the workforce. Governor Cuomo also recognizes the potential impact closure will have on communities that have come to rely on prisons as major employers and economic drivers. That is why he is the first Governor in modern times to couple closure with State financial assistance to host prison communities by proposing up to \$10 million per location for economic development aid to those communities

This excess capacity is created in large part by a significant drop in the inmate population. In fact, there has been a 21 percent drop in the inmate population since 1999:



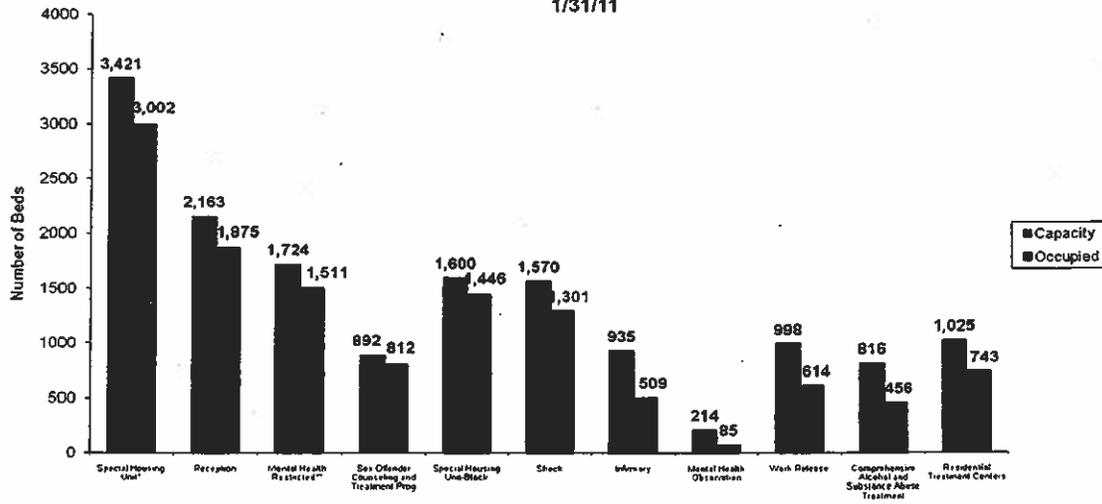
Since late 2008, DOCS has closed five correctional facilities and six annexes to eliminate 2,454 beds and has vacated numerous individual housing units within many facilities. Still, there were nearly twice as many vacant beds in DOCS as of the end of last month (7,937) than there were a decade ago (3,954):



There remains in the system more than 15,000 restricted beds in for special needs inmates:

**Breakdown of the Department of Correctional Services Statewide
Capacity**

65,120 Total Beds (Includes 3,766 unstaffed beds)
49,762 General Confinement Beds (including 3,355 unstaffed beds)
15,358 Restricted Beds (including 411 unstaffed beds)
1/31/11



* Includes Specialized Treatment Program (STP)
** Includes Intermediate Care Program (ICP), Mark Cooper Program (MCP), Special Needs Unit (SNU), Community Orientation and Re-entry Program (CORP), Protective Custody (FC), Assessment and Program Preparation Unit (APPU), Behavioral Health Unit (BHU), Therapeutic Behavioral Unit (TBU) and 100 Marcy Residential Mental Health Unit (RMHU)

These include beds for offenders serving disciplinary sanctions or in need of any of a range of mandated medical, mental health and other services provided principally at maximum and large medium security facilities. However, vacancies in these beds should not be considered excess capacity. In addition, there are a number of unrestricted vacant beds that are located in facilities that provide the mandated medical, mental health and other services noted above which are included in unrestricted bed totals which numbered 5,018 at the end of last year. Because these beds are located at facilities serving a dedicated purpose, that capacity should also not be considered excess, leaving approximately 3,500 unrestricted beds as legitimate excess capacity.

The Department of Corrections and Community Supervision

The Executive Budget, by merging the Department of Correctional Services (DOCS) and the Division of Parole into a new Department of Corrections and Community

Supervision, will also redesign the delivery of state services to produce better outcomes and recalibrate the cost of government to more sustainable levels. The plan recognizes that seamless coordination of programs and services for offenders before and after prison will increase their chances of successful reintegration into their communities, bettering their own and their neighbors' lives by enhancing public safety.

In line with the Governor's commitment to provide better services more cost effectively, the new agency will undertake several important initiatives in the coming year, including:

- the opening of a new "special needs unit" for female offenders with developmental disabilities;
- completion of a second Residential Mental Health Unit at Five Points Correctional Facility in Seneca County to provide more programming and treatment for inmates with serious mental illness and lengthy disciplinary sanctions;
- completion of a centralized automated pharmacy at Mid-State Correctional Facility in Oneida County that will improve the delivery of constitutionally-mandated medical care to inmates at a lower cost to State taxpayers – and that could eventually provide similar savings to local property taxpayers through the provision of prescription refills for county jail inmates as well;
- exploration of ways to increase the effectiveness and efficiency of administrative services, including a centralized banking system and centralized operation of prison commissaries; and

- expansion of technology to improve services while saving money, including the digitization of inmate classrooms through secure networks.

Moving Toward Effective Redesign, Cost-Saving Recalibration

Governor Cuomo has rightly demanded that every agency of State government fundamentally rethink its operation, redesign the delivery of its services to fulfill core responsibilities while achieving better results, and recalibrate spending to sustainable levels. His Executive Budget requires strong leadership and decisive action to enhance public protection. We look forward to continued partnership with and support from the Legislature to meet these challenges in the coming fiscal year.



5
Testimony of Andrea W. Evans
Chair, New York State Board of Parole
Chief Executive Officer, New York State Division of Parole
Senate Finance Committee and the Assembly Ways and Means Committee
Hearing Room B
9:30 a.m.
February 9, 2011

Senator DeFrancisco, Assemblyman Farrell, honorable members of the fiscal committees, I am Andrea Evans, Chair of the Board of Parole and Chief Executive Officer of the Division of Parole. I am pleased to appear before you this morning to describe how this Executive Budget will strengthen and promote the effectiveness of Parole while reducing costs and improving services.

Governor Cuomo has made it clear that New York State is in an economic crisis. But if we follow through on the Governor's vision for reform, we can turn this crisis into an opportunity to recalibrate our government, rejuvenate our economy, and rebuild our state.

The Governor's budget is a thoughtful approach, built on partnerships with others and on leveraging of resources so that we make meaningful and enduring changes that will transform and enhance the way in which we do business in this State.

The Division of Parole has two primary objectives: to enhance public safety and to successfully transition former offenders back to their community after release from prison. The Board of Parole achieves those objectives by determining which offenders meet the criteria for parole and then the Division staff carefully monitors those who are released to serve the remainder of their sentence in the community.

Governor Cuomo has proposed merging the Division of Parole with the Department of Correctional Services into a new Department of Corrections and Community Supervision in a manner which not only preserves the mission of the Board, but strengthens the missions of both agencies by recognizing their common goals of rehabilitation. A key provision of the proposal is to ensure that the merged agency continues to have a strong role in supervision which requires monitoring and mentoring. Public safety continues to be an overarching goal and Parole is constantly searching for the best, most cost-effective way to ensure public safety while promoting the individual's reintegration back into his or her neighborhood. The Governor's proposal enhances that goal by stopping the revolving door of criminality through a strategic re-entry program aimed at providing better results for all. When fewer ex-offenders return to State prison or community supervision, and more of them improve their own lives, public safety is enhanced and costs to State taxpayers are reduced. The Governor believes, and I wholeheartedly agree, that re-entry begins not at the "back door," or when an individual is released on parole, but at the "front door" when the individual enters the prison system. Merging the Division of Parole and the Department of Correctional Services into the Department of Corrections and Community Supervision recognizes the important role each existing agency plays at a critical juncture in the process of transforming lives while fostering an important continuum of services through one agency to ensure that former offenders have the necessary support, guidance and supervision to increase their chances of success once they are released from prison. We can also obtain cost savings with the merger. We will find ways to share services, reduce redundancies, and consolidate as a means for cutting costs.

The proposal also firmly safeguards the independence of the Board of Parole while recognizing the reality that there have been dramatic drops in the numbers of individuals

appearing before the Board – largely due to the rise of determinate sentencing. The proposal realigns the size of the Board with this drop and seeks to eliminate the six currently vacant positions on the Board, leaving thirteen members. I am confident that thirteen members can effectively address the reduced caseload, especially with the increased use of available technology such as utilizing video to conduct interviews off-site thereby alleviating the need to travel to the prisons.

Both of these initiatives – the merger and the downsizing of the Board – reflect the Governor’s goal of redesigning the delivery of State services to achieve better results and greater efficiencies while allowing the recalibration of State spending to sustainable levels. The Division of Parole will continue to implement the tools and policies that will effectively address the twin goals of public safety and successful re-entry. For example, Parole has developed an assessment tool to determine the “risk and needs” of releasees under field supervision. The objective is to base supervision levels on specific risk factors and needs of each parolee. The use of a “risk assessment” tool allows “high risk” releasees to be supervised more closely. By the end of 2010, all facility staff were trained in the use of the assessment tool and plans for its rollout in 2011 are being developed.

This is but one method of contributing to our ability to promote public safety by ensuring that parolees do not re-offend. Over the past decade the percentage of releasees returned to State Prison for committing a new crime has declined 40 percent which means far fewer New Yorkers are being victimized by an individual on parole. Additionally, the percentage of releasees returned to DOCS for a technical violation is declining steadily and has decreased 17 percent since 2007. Again, fewer releasees are being sent back to prison for a technical violation AND fewer are committing new crimes.

We have also taken important steps to achieve the objective of providing a robust re-entry program, in part through a relatively new approach called “graduated sanctions.” The New York State Commission on Sentencing Reform recommended in 2009 that the Division of Parole adopt a system of graduated sanctions for parole violators in which the severity of the sanction increases with the severity and frequency of the violation. There are times, many times actually, when a sanction other than a return to prison will achieve the desired result. In 2010, the Division successfully employed graduated responses by diverting close to 40 percent of all potential technical warrants to an alternative sanction.

We will also work to ensure that our Re-entry Services unit continues to partner closely with localities throughout the state to facilitate access to support services which encourage positive behavior and rehabilitation and discourage a return to criminality. The unit has developed referral sources for substance abuse prevention services, anger management, domestic violence counseling, mental health counseling, medical services, mentoring, employment and many other services needed by releasees – including housing. In the past year, the number of releases to homeless shelters in New York City has decreased dramatically, from 31 percent to 16 percent. I believe that the partnership that a merged agency represents will permit us to do even better, benefitting offenders and society alike.

All of the accomplishments that I have discussed this morning, by the way, have been achieved in the context of the States’ challenging fiscal environment and we will continue to meet the challenge by preserving our mission and providing better services under a new structure while achieving even greater efficiencies.

Thank you for the opportunity to appear before you today.



Testimony of Joseph A. D'Amico
Superintendent of State Police
The Senate Finance Committee and the Assembly Ways and Means Committee
On the 2011-2012 Executive Budget
February 9, 2011

Thank you Chairman *DeFranciso*, Chairman *Farrell* and distinguished members of the Senate Finance and Assembly Ways and Means committees for the opportunity to discuss with you Governor Cuomo's budget proposal for the Division of State Police. I am Joseph D'Amico, Superintendent of State Police.

The New York State Division of State Police is one of the 10 largest law enforcement agencies in the nation, and the only full-service police department in New York with statewide jurisdiction.

The New York State Police is divided into two branches, the Uniform Force and the Bureau of Criminal Investigation. While each branch has its own specific law enforcement responsibilities, each supports the other.

The Uniform Force conducts active patrols of specific geographic regions and is the first responder to most calls for police services. In many rural areas, the New York State Police is the principal, and sometimes only, department providing police services to the public. Even in areas that have their own local village and town police departments, Uniform Troopers provide essential support. Often, they are the only law enforcement officers available 24/7.

Cases requiring extensive investigation or involving felonies are referred to the Bureau of Criminal Investigation – or the “BCI.” In addition, to conducting investigations initiated by the State Police, BCI investigators regularly assist county and municipal law enforcement agencies that lack personnel, expertise or material needed for major crime investigations. Specialists within the BCI handle cases related to violent and serial crimes, child abuse and sexual exploitation, organized crime, narcotics trafficking, bias crimes and a plethora of other serious offenses.

In addition to those two main branches – the Uniform Force and the BCI – the Office of Counter Terrorism, staffed with personnel from both the Uniform Force and the BCI – oversees and coordinates all activities related to preventing, investigating and responding to terrorist-related matters. It serves as a liaison to the Division of Homeland Security & Emergency Services, the New York City Police Department, local law enforcement, the FBI and other federal, state and local agencies associated with investigating, preventing and responding to terrorism.

But wherever it operates, the State Police follow a simple philosophy: to provide whatever level of service or assistance is necessary, and to complement or supplement, as appropriate, the efforts of local law enforcement agencies.

In short, we exist to serve, protect and defend the people and we operate within a code of values dedicated to integrity, respect for individual rights, conscientious customer service, leadership and, in keeping with our state motto, “Excelsior,” or ever upward, strive continuously to better ourselves as an agency of individuals. We function under pressure and stress every single day. We view those pressures and stresses as

opportunities to do better, to be better – essentially what the Governor has asked all the agencies to do.

The Governor's budget requires all of us to make some difficult choices, but it also challenges us to become leaner and stronger, to focus on and hone our core mission and to rebuild New York through discipline and determination – two words that define the State Police.

The Governor's message to me as Superintendent and to all New Yorkers is that maintaining the status quo is simply not an option. State spending has swollen over the past ten years and is currently at an unsustainable level. We can no longer spend beyond our means and defer the unwanted consequences until tomorrow. Tomorrow has arrived. We must spend less and spend smarter. State agencies will lead by example by taking 10 percent cuts in their budgets. The State Police will do its part too while continuing to execute the agency's core mission. In doing so, I hope to be able to work together with the men and women of the state police to find savings while ensuring that the level of service is not compromised.

The Governor's budget strikes a balance to ensure that the citizens of this state receive the police services to which they are entitled, but in a manner that is fiscally responsible and accountable. We will continually assess and evaluate our deployment of staff to maximize their effectiveness and ensure that officers are deployed where they are needed most and best serve public safety.

As Superintendent, it is my job to implement and manage this. We in the State Police are team players and Governor Cuomo expects us to do our part to help him right-size and redesign State government. That we will do – without compromising our core

responsibilities, or our commitment to officer safety. During my tenure, my top priority will always be the safety of the employees of the State Police.

Thank you for your support of the New York State Police, and thank you for an opportunity to address you today.

①



ANDREW M. CUOMO
GOVERNOR

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MELODIE MAYBERRY-STEWART, Ph.D.
CHIEF INFORMATION OFFICER
DIRECTOR OF OFFICE FOR TECHNOLOGY

**JOINT LEGISLATIVE BUDGET HEARING
Senate Finance Committee
Assembly Ways and Means Committee
Wednesday, February 9, 2010
Hamilton Hearing Room B, Legislative Office Building**

**By Dr. Melodie Mayberry-Stewart
NYS Chief Information Officer and Director of the Office for Technology**

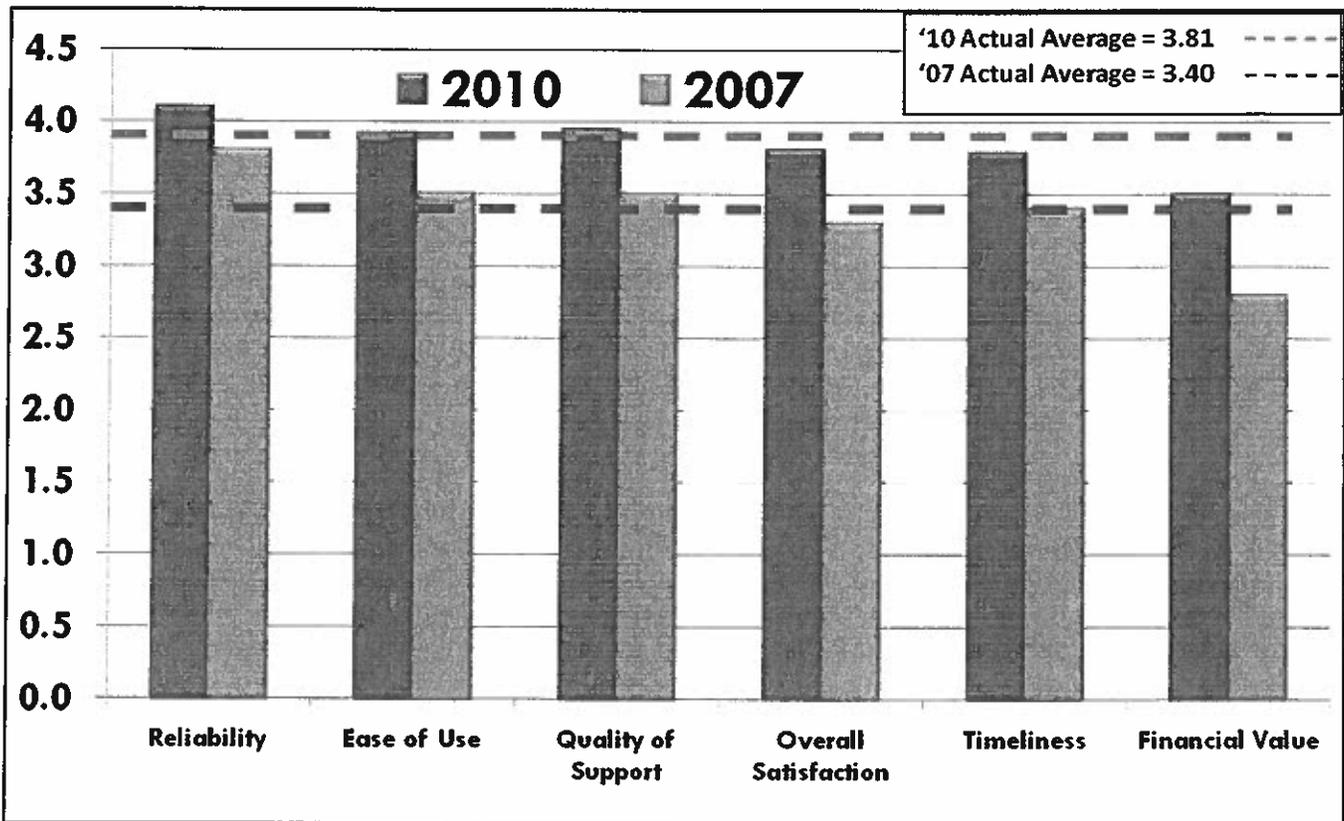
- Good morning Chairmen DeFrancisco, Farrell, Maziarz, Chairwoman Destito, and distinguished members of the Joint Senate Finance and Assembly Ways and Means Committees.
- I appreciate the opportunity to appear before you today and to share with you highlights of the work CIO/OFT is doing to leverage technology, thereby facilitating improvements in the delivery of government services and driving down the costs of those government services without sacrificing quality.
- The Governor's Executive Budget does not rely on budgetary gimmicks and one-shot deals to eliminate the deficit. Instead, it envisions the beginning of the transformation of our agencies into a leaner and more efficient State government. We must use the State Budget as both a budgeting blueprint and, equally importantly, as a management tool. State agencies will lead by example by taking 10 percent reductions in their operating budgets.
- As the State's Chief Information Officer and Director of the Office for Technology, it is my job to implement and manage this reduction in funding while continuing to focus on and make progress in CIO/OFT's core mission areas. In doing so, I hope to be able to work in partnership with you, with our workforce, and with the SAGE Commission to effectuate meaningful and sustainable change in how CIO/OFT supports State agencies in meeting their IT needs and leveraging technology to increase their efficiency and effectiveness in serving their constituencies.
- We must scrutinize not only what we are spending on and how much we are spending, but also the return on investment we are getting for the people of New York as a result of this spending.
- CIO/OFT's core mission is to deliver reliable and secure IT shared services, including data center operations, networks and telecommunications infrastructures, and mission-critical applications to support State agencies – our internal customers.

- CIO/OFT operates four mainframe data centers, all located in the Capital District, which house more than 50 mission-critical and enterprise-wide applications for approximately 44 state agencies. We operate and maintain extensive voice and data networks serving more than 90,000 users throughout the State.

Improving Customer Satisfaction

- To assess CIO/OFT's overall service delivery effectiveness to state agencies, starting in 2007, CIO/OFT takes an Annual Customer Satisfaction Survey that focuses on 15 major service areas, including data center operations, application support, help desk support, networks and telecommunications operations, technical training, and other IT services. As of the 2010 survey, efforts to redesign and restructure processes to streamline our operations are paying off. As shown in Figure 1 below, our overall customer satisfaction level rose from 3.4 in 2007 to 3.81 in 2010, representing a 12 percent improvement, in which 4.0 is considered an excellent rating.

Figure 1: Raising Customer Satisfaction of IT Shared Services



Raising NYS National IT Performance

- In 2010, New York State achieved its highest ranking in the prestigious National Digital States Survey. The national survey, conducted by the independent Center for Digital Government every two years, is a comprehensive study to examine best practices, policies and progress made by all state governments in their use of digital technologies to better serve their citizens and streamline government operations. This was New York State's highest ranking in the survey's 10-year history.

Our unprecedented rise from a “middle of the pack” national mediocre ranking of #18 (C-) in 2007 to a #5 (B+) in 2010 was the result of many State agencies, public and private partners collaboratively working to put New York State on the map as a technology leader in the public sector.

Transforming IT Service Delivery

- As articulated by Governor Cuomo in his Executive Budget Address, in the upcoming year, we must focus our efforts on actively returning more and long-overdue value to taxpayers through greater efficiencies and economies through restructured service deliveries. This requires CIO/OFT to continuously **Redesign, Restructure, and Rightsize** its IT assets and resources to **Realize** future sustained savings and **Reap** higher service quality at a lower cost.
- In my testimony today, I will briefly describe three strategic goals designed to achieve the desired outcomes outlined by Governor Cuomo’s Executive Budget, which are:
 - ✓ **Goal 1: Standardize and Consolidate Technology**
 - ✓ **Goal 2: Make Greater Use of Modern Technology**
 - ✓ **Goal 3: Create A Talented State IT Workforce**

Goal #1: Standardize and Consolidate Technology

Strategy 1: Migrate Agencies to a Single Email Platform to Achieve \$30 Million Savings

- **Today, the State’s IT model is mostly decentralized.** The New York State Enterprise IT Strategic Plan calls for a transformation into a more efficient and effective IT model. Most IT infrastructure services (e.g. networking, data storage, servers) should be performed as enterprise shared services to drive down costs. In addition, many common administrative applications such as, email, financial and human resource management should exist as “enterprise” solutions.
- In 2010, CIO/OFT deployed a plan to migrate all Executive agencies to a single email platform, referred to as NYSeMail. The plan migrates 40 agencies, representing approximately 158,000 email users over three phases. To date we are currently in phase 2 of the migration and have over 75,000 users and plan to migrate the rest in 2011. The estimated savings is approximately \$5.3 million annually, or more than \$30 million, over 5 years, when fully implemented. Savings are achieved by eliminating redundant efforts and expenses for licensing, data storage, and maintenance by individual agencies using individual contracts.

Goal #2: Make Greater Use of Modern Technology

Strategy 1: Transform IT Service Delivery Business Model To Reduce IT Ownership Cost

- Our second strategic goal requires refinement of the current IT shared services business model to drive a more effective and cost-efficient IT environment that optimizes the State’s enterprise buying

power; achieves greater economies of scale; and capitalizes on more innovative cost-efficient technology solutions.

- Agency IT assets (data, hardware, software, services, networks and facilities) can be shared among agencies and other public or private entities to reduce the overall costs of IT acquisition, deployment and ongoing support and maintenance.

Strategy 2: Upgrade Critical IT Infrastructures Through Consolidation Of Mainframe Data Centers

- The State must develop options to meet the State's expanding data center needs. The Executive Budget includes a \$99.1 million reappropriation for this purpose.

Goal #3: Create A Talented State IT Workforce

The third and final goal is to build a talented IT workforce.

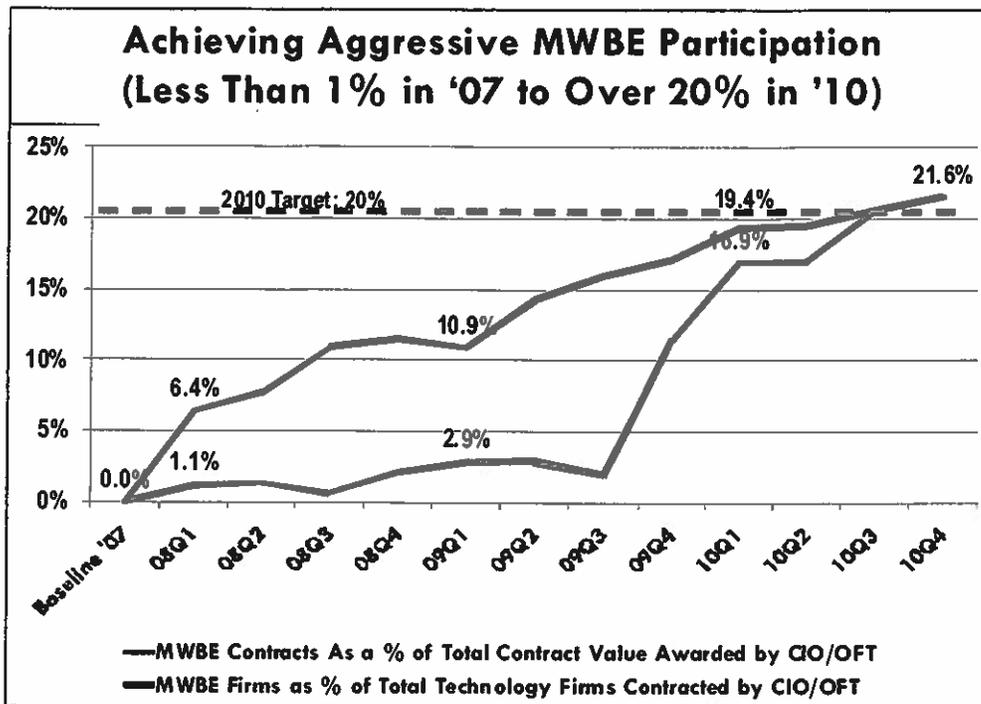
Strategy 1: Use the IT In-Sourcing Bill to Reduce IT Consulting Costs

- Chapter 500 of the Laws of 2009, known as the IT In-Sourcing Bill, represents the first significant step to address long-standing challenges to hire and promote highly-skilled quality IT professionals. These IT consultants are in much demand and are proficient in new and emerging more cost-efficient technologies deployed by the State. Under the legislation, the Division of the Budget is charged with monitoring and reporting on implementation of the In-sourcing initiative, and they recently submitted the second progress report at the end of December. Given the importance of this law to help CIO/OFT meet future workforce skills demands, we are working very closely with DOB to successfully implement this critical tool.
- To date, CIO/OFT has in-sourced 20 employees, with a DOB-approved plan to in-source 52 more in SFY 2011-12, to realize full annual savings of \$3.8 million.

Strategy 2: Increase MWBE/Small Companies' Participation In the IT Supplier Pool

- Governor Cuomo's State of the State Address includes a commitment to increase the MWBE participation rates for State contracts by setting an aggressive 20 percent goal statewide.
- **Figure 3** shows CIO/OFT's progression of MWBE participation rates from 2007 to 2010 to achieve our 20 percent goal by establishing annual incremental targets. We worked very closely with the State agencies who make a majority of the IT procurements and the State's IT vendors to achieve this result.

Figure 3: CIO/OFT MWBE Participation Rates (2007 – 2010)



- In support of Governor Cuomo's overall MWBE goal, CIO/OFT plans to raise its 2010 bar to ensure these businesses have greater opportunities to participate in our agency's procurements.

IN SUMMARY

- While New York State faces some of the worst economic difficulties in the state's history, it presents an excellent opportunity to implement sound and "out of the box" transformative strategies to increase operational and programmatic performance outcomes, while reducing the cost of achieving those outcomes.
- Reimagining and redesigning State government starts with the State Fiscal year 2011-12 Budget, but it cannot and will not end there. I, and other senior officials in my agency, will continue to reach out to all the relevant stakeholders to receive their input not only on the budget, but also on changes that the Office for Technology can and should make to drive efficiencies and shared IT services across the State Enterprise.
- Thank you for this opportunity to address your Committees and highlight the many IT efforts, challenges and risks we must tackle to deliver high quality services and drive down our total cost for high quality IT services.
- I welcome your questions and comments to enable CIO/OFT to better meet the needs of a new New York.

8

TESTIMONY PRESENTED BY

DONN ROWE

President



February 9, 2011

Testimony of Donn Rowe

New York State Correctional Officers and Police Benevolent Association, Inc.

February 9, 2011

Good morning Chariman DeFrancisco, Chairman Farrell and Members of the Legislature. My name is Donn Rowe and I am President of the New York State Correctional Officers and Police Benevolent Association (NYSCOPBA). NYSCOPBA represents more than 23,000 active and retired critical law enforcement personnel, including State Correctional Officers and Correctional Sergeants who provide an invaluable public service by ensuring the security of New York's prisons and in turn the safety of all New Yorkers.

In addition to our Correctional Officers, NYSCOPBA also proudly represents Security Hospital Treatment Assistants; Safety and Security Officers; Security Services Assistants; and Security Screener Technicians including those who work to protect all of you here every day in the Legislative Office Building and at the State Capitol. These are just some of the many security titles NYSCOPBA proudly represents.

On behalf of all our members, I would like to thank you for the opportunity to testify here today and to voice our members' serious concerns with the Executive Budget proposal from the New York State Department of Correctional Services (DOCS). We firmly believe the Executive Budget proposal, if enacted as currently written, will have

devastating impacts to the structure and safety of our prison system. These proposed cuts would further deteriorate what was once a nationally prized system, and still the nation's fourth largest, and would threaten to reduce it to little more than a warehouse for some of the world's most dangerous individuals.

I'd like to begin today by reminding you all where we have been and how we got to this point.

During the 1990's our prison system was overrun with inmates. At one point we housed more than 71,000 inmates that flooded our system. In order to accommodate these numbers, drastic temporary measures were necessary.

Double-bunking, the placing of two dangerous criminals in a space designed for one, became one of the preferred methods for handling this overcrowding crisis. In addition, we used whatever physical structure we could think of. Inmates were housed in gymnasiums, hallways and even former psychiatric wards. We utilized every square inch in what we understood to be temporary, emergency conditions. Never did we think these conditions were long-term as they are very simply not sustainable or safe.

Today, some twenty years later, while we have seen a significant reduction in non-violent criminals, our overall system currently remains at 100% capacity and our maximum-security facilities are currently operating at 122%. As a result, while we have closed

nearly all of the minimum-security facilities, we are still double-bunking more than 10,000 medium- and maximum-security inmates.

What's worse is that these inmates, many of whom are some of the most dangerous and prone to extremely violent acts, are now housed in medium-security facilities. As these centers do not have cells, violent offenders live in a dorm setting, meaning that these maximum-security prisoners are living in open areas where they are allowed to roam from room to room, interacting and engaging with virtually any other inmate as they wish.

For comparison, in a modern maximum-security facility inmates are locked in their cells for 8-10 hours per day. In these dorm room settings, there are no cells and the prisoners have nearly free rein.

Most troubling, some of these facilities are semi-converted psychiatric centers. These facilities were not designed to hold these prisoners long-term, let alone some of the most dangerous inmates, as they have diminished sightlines and nooks and corners where prisoners can hide, or worse, ambush prisoners and officers. Putting more and more of these prisoners into these environments is not only unsafe, it is unwise, and I will fear it will result in a catastrophe.

Now, if you couple those facts with the number of prisons that have closed and the number of officers and sergeant positions that have been eliminated in the past few years,

you can see clearly how what was once a nationally recognized system for excellence and safety has quickly deteriorated into a crisis waiting to happen.

In the past ten years, more than 2,000 corrections officers and sergeant positions have been eliminated. In the past three years alone we have seen a reduction of nearly 1,000 members.

These are not simply budgetary numbers; these are people with families and lives. They are also the men and women who safeguard these facilities. By removing them from the system, you have significantly decreased the safety and control of our prisons' environments. Anyone who says that our security force numbers have not changed as the minimum-security prison population fell, is simply not aware or not being honest.

In addition to a reduction in officers, since 2009, 5 prisons (Camp Gabriels, Camp Pharsalia, the camp at Mt. McGregor, Lyon Mt and Butler Minimum), and 6 annexes (Eastern, Green Haven, Groveland, Lakeview, Sullivan and Washington) have been closed.

As a result, you now have fewer officers watching more dangerous criminals crammed in a tighter space. For example, 30 years ago, a single State Correctional Officer working in a medium-security prison was in charge of supervising roughly 40 prisoners. Today, that officer is charged with supervising 65 inmates.

Doing more with less is what we have had to do for the past 30 years. At some point there comes a breaking point.

To understand all of the dynamics at play in today's prison system, it's also important to understand how the profile of today's inmate has changed in the past decade to become more violent and part of an organized group.

As everyone knows, in the past ten years the minimum-security prison population has decreased. The repeal of the Rockefeller laws, which removed small-time drug dealers and the like, significantly reduced the number of petty, non-violent offenders. What you have left in the system is a more concentrated group of extremely unstable and violent offenders.

As a result, we have seen a dramatic increase in violence in our system in the past few years. Just look at the comparisons from this year to last year alone, inmate-on-inmate violence is up 12%, inmate suicides doubled, the list goes on.

In fact, if you look at the numbers, due to the reduced staff and crowded conditions, virtually every violent statistic from inmate-on-inmate assaults to inmate-on-staff assaults to inmate suicides to contraband have all increased from 2009 to 2010. And these, of course, are only the attacks that DOCs decides to report. These numbers are low, artificially so, but the trend is strikingly clear: less security, more violence.

Overall, when you honestly look at New York's prison system today what you are left with is a more violent felon, being held in tighter quarters but in less secure environments with little or no programs for any help to change behavior and a significantly diminished security force to manage it all. That is where we stand today, a deteriorating structure that is quickly becoming a warehouse or holding pen that teaches these people how to become more violent and more destructive. And that is of course BEFORE we even begin to discuss any additional cuts to the system.

If you look at the cuts that are being proposed, it is no wonder why we are very deeply concerned. We are very seriously concerned for the safety of the inmates and the officers who guard them, and increasingly concerned about our ability to maintain order within these facilities. We cannot continually undermine the structure of the system and expect it to remain in tact. Sooner or later the system will break. Look again at the facts:

- 2,000 security force personnel have been removed from the system
- Since 2009, 5 prisons have been closed, 6 annexes and 987 (nearly 1000) Officer and Sergeants positions (front line staff) have been lost.
- Double-bunking remains a fact for 10,000 inmates
- NYS Maximum security prisons are at 122% capacity.
- Overall, NYS security prisons overall are at 100% capacity.
- Today's inmate population is comprised of more violent and hardened criminals
- Inmate-on-inmate assaults are up significantly (12%) in the past year
- Inmate suicides have doubled since last year
- Due to the reduced staff and crowded conditions, inmate-on-inmate assaults, inmate-on-staff assaults, inmate suicides and contraband have all increased from

2009 to 2010.

Carving out 3,500 beds is simply not possible without further compromising the core of our safety and security system. These cuts are putting my men and women in increasingly grave danger every single day. What is a budget cut today becomes an officer's wound tomorrow. Or worse.

To add insult to injury, this proposed plan also eliminates the one-year moratorium on closing a facility. The way it would be structured, in a matter of 24 hours my officers' lives and their families' lives could be completely turned upside down. To treat these men and women with such disrespect and without any regard to their wellbeing or their families' wellbeing is beyond reproach. It says what we have always feared but could not bring ourselves to believe: the commissioner does not care about people who fight, bleed and die for his system. It is amoral and the commissioner should be ashamed for pushing it forward.

Through it all, NYSCOPBA members recognize that these are incredibly challenging times for New York. Faced with a daunting budget shortfall and the need to make more out of less, there is no doubt that cuts must be made, spending must be reeled in and new cost saving measures must be employed.

To that end, last year we worked diligently with members of both legislature houses to craft a bill that could provide clarity on the number of empty beds in our prisons system. This number is at the heart of understanding the problem and how to address it correctly.

The bill was supported by both Democrats and Republicans and ultimately passed both houses. Unfortunately, the Commissioner vigorously fought for a veto citing the “cost associated with the bill” when in fact there were absolutely zero costs.

We have tried to help this State save money and save lives, but the commissioner stood in the way. Despite this, we again pledge our ongoing cooperation with the legislature and new Governor to rightsize our corrections system.

The Department of Correctional Services’ proposal to eliminate beds and close prisons is a direct threat to the public safety of all New Yorkers and will jeopardize the safety of inmates and the brave men and women who serve as New York's correctional officers. If enacted, these closures will represent a clear and present danger to our prison system and the men and women who serve in it. It is essential that everyone who has a vote in this decision understand the ramifications and the impact this may have on thousands of lives across New York, as well as the future of our State’s prison system.

Thank you for providing me with the opportunity to testify in front of you today. I would be happy to address any questions you may have or to continue this dialogue on these crucial matters at any time or place in the near future.

9

POLICE BENEVOLENT ASSOCIATION
of the **NEW YORK STATE TROOPERS, INC.**



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Remarks by NY State Troopers PBA President Thomas H. Mungeer on February 9, 2011 regarding the 2011-2012 Executive Budget

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MICHAEL A. WALSER
NCO West Delegate

DANIEL K. SHEA
NCO East Delegate

FRANK A. PACE
Officers Delegate

Members of the Legislature, thank you for allotting me time to present important information on behalf of all New York State Troopers as well as the citizens of this state.

My name is Thomas Mungeer, and I am honored to represent 6,000 active and retired Troopers and State Police Supervisors in my position as President of the New York State Troopers PBA, the labor union representing those dedicated public servants.

As you have probably already heard, the PBA has taken a strong stance in advocating for more Troopers to be added to the New York State Police. We are referring to manpower levels of sworn members, the men and women who wear the gray uniform, patrol our highways, and respond to emergencies. Simply stated, if the number of Troopers continues to decrease, there will be serious public safety issues.

The proposed 2011 – 2012 Executive Budget specifically provides for no new State Police Academy recruit classes to help fill in staffing gaps. The average attrition rate for the State Police is 130 members per year and we haven't had any new Troopers hired since 2008. It takes at least 18 months to "make a Trooper," if you will, when you combine the time necessary to complete background checks, reassign training and other staff back to the Academy, undergo six months of training at the Academy, and then complete another three months of field training. Given that there is no money budgeted for this year, the earliest that we could have new Troopers on the road with their "boots on the ground" is 2014. In this scenario, it will take years for the State Police to restore the number of sworn members to appropriate levels.

With fewer Troopers on road patrol, response times are going to be slower. Here are a few questions to ponder when you think of the impact this will have on everyday situations. Will a Trooper have back-up available when faced by a weapon-wielding criminal? How long will citizens have to wait for help because not enough Troopers are on road patrol due to low staffing?

Fewer Troopers on the road will endanger not only the public, but also the brave and dedicated Troopers who put their lives on the line each and every day. That being said, with fewer Troopers patrolling larger areas without adequate backup it is imperative that we equip them with the proper tools to carry out their jobs and return safely to their families at the end of their shifts. Two items that can help are patrol rifles and having an adequate statewide radio system. Currently, the State Police have patrol rifles assigned to approximately 260 Troopers. Recent tragic events – of which you are all aware - demonstrate the need for Troopers to be equipped with a patrol rifles. Having enough rifles to supply every patrol vehicle would ensure that our road Troopers would have a fighting chance against a heavily armed adversary in the future.

It is imperative that Troopers have a lifeline to their station and backup in the form of a reliable statewide radio system. For over 20 years the state has been attempting to rectify and overcome the problems of the diverse New York geography to no avail. That technology is now available to accomplish this goal and with the looming federal mandate, it is imperative that this is seen to its conclusion.

The reason we became New York State Troopers in the first place was because we care about the safety of you, your friends and family, and the communities across the state. Being a New York State Trooper is a very dangerous and unpredictable job, and the risks would not be worth it if we didn't feel strongly about serving and protecting the public. That's why I must speak out about the consequences of not having adequate manpower for sworn members of the New York State Police to properly do their jobs. You must ask yourselves: what price am I willing to pay for the safety of my constituents?

Thank you for your time and consideration.

10

STATEMENT OF
ROBERT H. TEMBECKJIAN
ADMINISTRATOR AND COUNSEL
COMMISSION ON JUDICIAL CONDUCT

TO THE
JOINT LEGISLATIVE BUDGET COMMITTEE HEARING
ON THE
2011-12 EXECUTIVE BUDGET



Albany, New York
February 9, 2011

New York State Commission on Judicial Conduct
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Members of the Legislature:

My name is Robert H. Tembeckjian, and I am the Administrator and Counsel to the New York State Commission on Judicial Conduct.

I thank you for the opportunity to discuss the Commission's budget for the coming fiscal year, as proposed in the Executive Budget.

Like most agencies in this time of financial struggle and sacrifice, the Commission has been struggling to manage its resources in a way that does not compromise its ability to execute its core constitutional responsibilities while confronting the unrelenting reality that for the foreseeable future, more must be done with less.

As a result, and as discussed more fully below, the Commission is asking for less money than it would need simply to meet our mandated, contractual obligations. Our current fiscal year budget is \$5.4 million. The average annual increase in our expenditures over the last four years, largely dictated by such contractual obligations as rent and salary increases, has been approximately 7%. Yet like everyone else, we have made economies in order to offset those increases.

For example, we voluntarily limited ourselves to 49 staff, rather than the 55 positions allotted to us – an 11% reduction in personnel. We permanently gave up one of those 55 positions upon the retirement of a long-time employee who exercised the retirement incentive offered last year. We suspended our valuable

annual training and education programs. We gave up certain physical assets, such as an agency automobile and periodical subscriptions, in order to save even relatively small amounts of money. We defer the hiring of replacement staff and, more often than not, hire replacements at lower salaries than their predecessors.

Most significantly, we suspended all staff wage increases for the past fiscal year and anticipate doing so for the coming fiscal year.

At the same time, we are maintaining a very active professional pace. We handle nearly 1,900 complaints per year (far more than any other state judicial disciplinary agency and about three times as many as in our early years), conduct more preliminary and full-scale inquiries per year than ever before (approximately 600) – and publicly discipline and average of 21 judges per year (as calculated over the last four years).

For FY 2011-12, in consultation with the Governor's Office, we are asking for a flat budget of \$5.384 million. This will require us to continue making serious economies, which we believe we can accomplish without compromising our core constitutional mission.

The Commission's Constitutional Authority and Independence

The Commission was created in 1978 in the Judiciary Article of the Constitution (Article 6, Section 22). Its enabling statute is the Judiciary Law (Article 2-A, Sections 40-48). The Commission's 11 members are appointed by

six different officers of government, none of whom commands a majority: four (4) by the Governor, four (4) by the leaders of the Legislature and three (3) by the Chief Judge of the State of New York. The Commission elects its own Chair and appoints its own chief executive officer (the Administrator, who in law is the agency head). It was purposely designed in such a fashion so as to work cooperatively with all three branches of government but not to be dominated or controlled by any one of them.

Although the Commission is not a gubernatorial agency, historically its budget request has been submitted to the Legislature by the Executive, as have the budget requests of other independent officers of state government: the Attorney General (Department of Law) and the Comptroller (Department of Audit and Control).

Notwithstanding its constitutional independence, my office continues to enjoy mutually respectful and cooperative relations with the Governor, the Legislature, the Attorney General, the Comptroller and the Office of Court Administration.

Mission and Recent History

The Commission is the sole state agency responsible for receiving, initiating, investigating and conducting evidentiary trials with respect to complaints of misconduct or disability against judges and justices of the New York

State Unified Court System, which is comprised of approximately 3,500 judges and justices. Where appropriate, at the end of such proceedings, the Commission has authority to render disciplinary decisions of confidential caution, public admonition, public censure, removal or retirement from office.

The Commission was originally created legislatively in 1974, began operations in January 1975 and expanded its authority as a result of constitutional and statutory amendments that took effect in April 1978 and remain in effect to the present.

The agency has only one program, *i.e.* its core constitutional mission. With their varying responsibilities, all agency staff – lawyers, investigators, administrative – are deployed and devoted to fulfilling the agency's sole and core mission: disposing of complaints that judges have engaged in misconduct.

The agency also handles its own appellate caseload. By law, disciplined judges have the right of review in the New York State Court of Appeals. In addition, the agency handles much of its own outside litigation, either in conjunction with the Attorney General's Office or on its own, such as when complainants or judges commence lawsuits attempting to compel or enjoin the Commission from investigating or prosecuting complaints.

The September 2008 Report by the Special Commission on the Future of the New York State Courts highlights the unique and critical role played by the

Judicial Conduct Commission in overseeing disciplinary rules enforcement among the far-flung statewide network of approximately 2,300 justices in approximately 1250 town and village courts.

The Commission, which provides the only forum for complaints of misconduct against the 3,500 judges and justices in the state Unified Court System, undertakes comprehensive and efficient investigations of such complaints; exonerates those judges who have been falsely accused; takes appropriate disciplinary action against those who have violated the high standards of conduct applicable to judges; and, by its presence and actions, makes the judiciary more sensitive to ethics standards and more apt to avoid misconduct.

This mission is of vital importance in protecting both the public and judges from potential abuse. Every judge wields considerable power and as such must follow high standards of ethical conduct. If a judge fails to follow these standards, it is in the public interest to provide the appropriate discipline, expeditiously yet with careful regard to due process; but if a judge is falsely accused, he or she should not be subject to prolonged procedures. Undue delay detracts from the Commission's mission and accomplishments and could inhibit the independence of the judiciary.

Continued Sacrifice in the Coming Year

For the past two fiscal years, in light of the significant financial situation constraining all of state government, the Commission, like many agencies, undertook its share of sacrifice. At the same time, the Governor and the Commission propose to follow through on the extraordinary commitment the Legislature made four years ago, when for the first time in more than a generation, after a downward budgetary trend of nearly 30 years, the Commission's resources were enhanced to reflect both the importance of its constitutional mission and the unrelenting burden of its case load.

Over the past four fiscal years, my office has worked cooperatively and successfully on a range of matters with the Governor, the Attorney General, the State Comptroller, the Office of Court Administration, the Office of General Services and the Division of Budget (DOB), to devise and implement strategies to make the best possible use of our resources.

Nevertheless, given the harsh realities of diminishing resources throughout state government, we like others have made important sacrifices.

- We have indefinitely limited our staff at 49, rather than our allotted 55 – an 11% reduction. Recently, we gave up one of our 55 positions permanently, upon the retirement of a long-time employee.
- Through careful stewardship of our resources and postponing certain hires, we absorbed \$250,000 in capital expenses three years ago which were expected to come from other state sources. That alone effectively meant a 5% reduction of our budget, as we diverted those

funds from their intended purpose to relieve the burden on other state entities.

- We have given up certain physical assets, such as one of our agency automobiles and certain periodical subscriptions, to achieve savings.
- We are asking for the same budget this coming fiscal year as we had last year, meaning we still have to find up to 7% in savings, which over the last four years has been the average annual increase required to maintain our operation and absorb contractually mandated increases in rent, salaries and other obligations.

While achieving these savings will not be easy – the Commission’s budget is remarkably free of discretionary funds – this proposed level of funding would permit the Commission to live up to its constitutional and legislative mandates to render discipline where appropriate, and dismiss unsubstantiated complaints, as fairly and promptly as possible. I thank the Governor for proposing this figure, I thank the Legislative leaders and staff who consulted with me and supported us in this process, and I respectfully request that the Legislature adopt the proposed budget as it relates to the Commission.

Indeed, there are many people for the Commission to thank for this achievement.

John A. DeFrancisco, Senate Finance Committee Chair and past Chair of the Senate Judiciary Committee, and Helene E. Weinstein, Chair of the Assembly Judiciary Committee, championed this cause, gave me opportunities to present my case in public hearings, met with and encouraged me individually on numerous

occasions and, throughout the past four years, have always been available when I sought their advice and guidance. They made the Commission a priority and saw it through. John L. Sampson, who last year chaired the Senate Judiciary Committee, introduced legislation that among other things would make formal judicial disciplinary proceedings public – long a Commission goal.

When both legislative houses took up the issue, our four legislative appointing authorities – the Assembly Speaker, the Senate President Pro Tem, the Senate Minority Leader and the Assembly Minority Leader – were all very supportive. That they would devote careful attention to a \$5 million item in a \$130 billion budget reflects their appreciation for the Commission's important role. I look forward to continued good relations with Speaker Silver, President Pro Tem Dean Skelos, and Minority Leaders John Sampson and Brian Kolb.

For the past four years, Attorney General Andrew Cuomo was especially helpful, generously responding to my various requests for guidance. As Governor, Mr. Cuomo has continued to insure the Commission has the resources to fulfill its constitutional mission. I appreciate our continuing good relations with Secretary to the Governor Steven Cohen, Appointments Secretary Leslie Leach, and Counsel to the Governor Mylan Denerstein.

Comptroller Thomas DiNapoli and his staff have been unfailing and unstinting in their advice and cooperation.

I look forward to continuing good relations with Attorney General Eric Schneiderman, with whom I worked when he sat in the Senate and served on this joint legislative committee.

While my office is sometimes in an adversarial posture with individual judges, the judiciary in general, and the leadership of the court system in particular, appreciate the valuable if difficult role the Commission plays in the administration of justice, and have fostered a professional and mutually respectful relationship. Without compromising its own or the judiciary's independence, OCA has offered us guidance in such areas as technology and security, so that the confidentiality and integrity of our information systems would be maintained.

In a microcosmic way, the story of this small agency from 2007 to the present is an example of government at its best – leaders of all three branches, working in harmony to promote the public interest.

From outside government, civic organizations such as the Committee for Modern Courts, chaired by Victor A. Kovner, have vigorously promoted the Commission's goals and offered encouragement and advice.

On the Commission's behalf, I offer our appreciation and respect.

Why is all this effort on behalf of a properly-funded and prudently-managed Commission so important? Because neither the judiciary nor the public would otherwise be appropriately protected. The prompt and effective

enforcement of judicial ethics is essential in promoting public confidence in the administration of justice. If the public is to have any assurance that judges are accountable for their behavior, without encroachment on their fundamental independence to call cases as they see them, the Commission must function efficiently as well as fairly. The resources allocated to the Commission now appropriately reflect its significant responsibility. I thank the Legislature for making that happen in 2007 and sticking with it in the years since. I thank the Governor for reaffirming this mandate in his current fiscal year budget proposal, even though we all agree that some sacrifice is unavoidable. And I respectfully request that both the Governor and Legislature continue this welcome and cooperative relationship, letting it serve as a template for all your efforts on behalf of the people of New York.



Testimony

Stephen P. Younger

President

New York State Bar Association

Joint Legislative Public Hearing

February 9, 2011

Proposed 2011-12 Public Protection Budget

I am Stephen P. Younger, President of the New York State Bar Association, the oldest and largest voluntary state bar association in the nation. On behalf of our 77,000 members, I thank you for the opportunity to submit testimony regarding the Unified Court System's budget proposal and to address some related issues of importance to both the public and the legal profession.

The New York State Bar Association, with members skilled in all disciplines of the law, is the statewide voice of the profession and an advocate for the public. Our members are involved in every aspect of the legal system, enabling us to speak from a broad and balanced perspective. We hope you will find our comments constructive as you face the challenges of this budget cycle.

BUDGET OF THE UNIFIED COURT SYSTEM

Year in and year out, New York's courts adjudicate millions of disputes, both great and small, and guarantee a "day in court" to all people, including the weak, the poor and the unpopular. New York's courts are crucial to maintaining an orderly society.

The Judiciary is the third, co-equal branch of our state's government. And, the Judiciary is comprised of relatively few judges, given the caseloads that confront them. Yet, on a daily basis, New York's judges resolve a substantial number of cases equitably and efficiently. Similarly, our court administrators face

significant challenges, given the size of the court system and the number of courts they oversee. They are able to address the issues facing our court system, and do so admirably, utilizing the limited resources available to them.

Chief Judge Jonathan Lippman and Chief Administrative Judge Ann Pfau are outstanding leaders, overseeing a system of justice responsive to the needs of the people of this state during the current economic crisis.

2011-12 JUDICIARY BUDGET REQUEST

New York's Unified Court System is recognized as one of the largest and busiest court systems, not only in the United States, but in the world.

We agree with the assessment that "in the current economic recession, as never before, the New York State courts have become an emergency room for New Yorkers in crisis." The Judiciary's budget request reflects a balancing between the constitutional duty to ensure access to justice for all New Yorkers and the obligation to reduce costs wherever possible.

Despite record workloads, the Judiciary has implemented an aggressive cost-control program. Consequently, the Judiciary's General Fund State Operations and Aid to Localities request for fiscal year 2011-12 is \$1.8 billion, .02 percent less than the current year appropriation. The All Funds budget request totals \$2.7 billion.

The challenges faced by the courts due to increased caseloads are remarkable:

- The total caseload of the courts statewide has risen sharply, growing by 12 percent since 2001;
- Foreclosure filings continue to increase, with 50,000 filings in 2010, more than double the number in 2005. In accordance with a statute intended to address the mortgage foreclosure crisis (Chapter 472 of the Laws of 2008), the courts have held more than 90,000 settlement conferences in foreclosure cases in 2010;
- Family offense cases are up 32 percent over 2006 levels;
- The caseload in the New York City Civil Court has increased 92 percent since 2001, and the civil caseload of city courts outside New York City has increased by 99 percent during the same period. Much of this growth is due to consumer debt cases; and,
- New York City arrest cases are up, with filings up 19 percent over 2005 levels.

We submit that the Legislature should provide adequate funding to sustain the essential functions of the courts. Despite a record-level workload and a number of mandatory cost increases (including \$20.2 million for salary adjustments required by law for non-judicial personnel), the Judiciary's proposed

negative-growth budget meets that description. Given the nature and function of the courts, and the fact that they have little control over the number of new cases filed, the proposed budget is an appropriate request, and we urge the Legislature to approve it as submitted.

FUNDING CIVIL LEGAL SERVICES

I turn now to an issue that has been the State Bar's high priority for many years: funding for civil legal services. Unfortunately, the need for civil legal services has far outpaced the available resources.

It has long been the position of this Association that it is the obligation of the State to provide a stable funding mechanism for civil legal services. To that end, it is important to reiterate our view that New York State should: 1) create a permanent Access to Justice Fund in the State budget; 2) provide for administration and oversight of this Fund by an appropriate office, such as one within the Judiciary; and 3) work with the legal community to ensure that access to justice receives sufficient support, attention and priority.

The Crisis at IOLA

As you know, the State Bar was one of the original advocates for the formation of the Interest on Lawyer Account ("IOLA") Fund. The IOLA Fund, which was created by the Legislature in 1983, is funded by the interest earned on

moneys held by attorneys for clients and deposited in interest-bearing accounts at the discretion of attorneys and law firms. The accumulated interest is transferred to the IOLA Fund, where it is used to provide grants to legal service providers around the state. Naturally, we have a great concern over the impact that the weak economy has had on the Fund.

Based on hearings conducted by the Senate and the Assembly in 2009 and 2010, the record is clear regarding the emergency that the IOLA Fund faces due to the economic recession and low interest rates. Funds from IOLA for civil legal services have fallen from approximately \$32 million annually to less than \$8 million.

Last year the State Bar applauded the Legislature's approval of the Judiciary's \$15-million allocation for the IOLA Fund, to help offset declining IOLA revenue due to low interest rates and the decline in the number of real estate transactions. We again applaud the Judiciary for including this item in its current proposal and we strongly urge that you and your colleagues in the Legislature continue to support that appropriation.

Task Force to Expand Access to Civil Legal Services

As you know, last year Chief Judge Jonathan Lippman established the Task Force to Expand Access to Civil Legal Services in New York as part of his efforts to ensure that the courts can meet their constitutional mission of ensuring equal

justice for all citizens. The Task Force included judges, lawyers, business executives, and labor leaders from all parts of the state. During the fall, the Chief Judge presided over a set of public hearings in each of the state's four Judicial Departments. Members of the State Bar Association assisted in presiding over these hearings. I was privileged to participate in the hearings held in New York City. The hearings assessed the extent and nature of unmet civil legal services needs throughout the State in order to help formulate recommendations to the Governor and the Legislature on the appropriate level and source of public resources to meet those needs.

In November the Task Force released its comprehensive report, which provides a roadmap with common sense recommendations to address the critical need to provide counsel to low-income New Yorkers in civil cases. The findings of the task force are overwhelming. The quality of justice in New York's courts is diminished and the rule of law undermined when so many New Yorkers go without legal representation in matters that involve day-to-day life. Clearly, it is the most vulnerable, low-income New Yorkers who suffer the consequences. As the report documents, failure to provide these New Yorkers with a lawyer to advocate on their behalf results in increased homelessness, domestic violence, and poverty – something we can ill afford during this time of fiscal uncertainty.

Each year, more than 2 million New Yorkers seek access to our civil justice system without a lawyer. The report sets forth the current “staggering” statistics:

- 99 percent of tenants are unrepresented in eviction cases in New York City, and 98 percent are unrepresented outside New York City;
- 99 percent of borrowers are unrepresented in hundreds of thousands of consumer credit cases filed each year in New York City;
- 97 percent of parents are unrepresented in child support matters in New York City, and 95 percent are unrepresented in the rest of the State; and,
- 44 percent of homeowners are unrepresented in foreclosure cases throughout the State.

Furthermore, the Task Force found that:

- The number of unrepresented litigants in civil legal matters adversely impacts the quality of justice for all parties, increases the amount of litigation, and undermines the rule of law;
- Providing civil legal assistance increases federal benefit payments for low-income New Yorkers, and reduces the need for State and local government assistance programs;

- The unmet need for civil legal assistance in New York State is profoundly impacting vulnerable New Yorkers and costing taxpayers millions of dollars by increasing homelessness, failing to prevent domestic violence, and increasing poverty;
- In these difficult economic times, current funding is inadequate to meet the critical need for civil legal services in our State of nearly 20 million people.

The State Bar applauds Chief Judge Lippman and the Task Force for providing a sensible roadmap that will help address the crisis faced by our court system because of the unmet civil legal needs of New Yorkers.

Lawyers are committed to doing their share. The bar contributes many hours a year in voluntary pro bono legal services to the indigent. Pro bono efforts by the bar have been conservatively calculated to be more than 2 million hours annually. Several years ago, the State Bar Association's Empire State Counsel Program was instituted by Past President, Mark H. Alcott to honor our members who donate a minimum of 50 hours of direct legal services each year to low income New Yorkers. With nearly 1500 NYSBA participants, this program alone accounts for two-hundred ninety-one thousand hours of pro bono services annually. However, these voluntary efforts alone are insufficient to meet the needs of the indigent. Ultimately, society as a whole, acting through its elected leaders,

must provide adequate public funding to do so.

New York must be able to provide a steady source of funding targeted to the “essentials of life” – housing, domestic violence, access to health care – reliably and quickly. Accordingly, the Judiciary’s proposed budget includes \$25 million to begin implementation of the Task Force’s recommendations to address the crisis in civil legal services.

At a time when some members of Congress are calling for the elimination of the Legal Services Corporation, the need for responsible action in New York State is all the more critical. The New York State Bar Association strongly supports the Judiciary’s \$25-million request.

INDIGENT CRIMINAL DEFENSE

At the request of then-Chief Judge Judith S. Kaye, the Commission on the Future of Indigent Defense Services examined New York State’s county-based indigent criminal defense system. The Commission concluded that there is “a crisis in the delivery of defense services to the indigent throughout New York State and that the right to the effective assistance of counsel, guaranteed by both the federal and state constitutions, is not being provided to a large portion of those who are entitled to it.” This is an alarming and disheartening finding in a state once

lauded for its progressive policies to ensure that people of lesser means are not marginalized.

Last year the state public protection budget created an Office of Indigent Legal Services. The State Bar views the creation of this Office as a step in the right direction toward establishment of an independent indigent defense commission with broad powers to adopt standards, evaluate existing programs and service providers, and generally supervise the operation of New York's public defense system.

We commend the Governor for maintaining in the proposed Executive Budget \$3 million for operation of the Office during the 2011-2012 fiscal year, and we recommend approval of this appropriation by the Legislature.

With the new Office as a starting point, we look forward to working with the Governor, the Assembly and the Senate to further the cause of making the constitutional guarantee of effective assistance of counsel a reality for all.

PRISONERS LEGAL SERVICES (PLS)

Also, I want to highlight for you the status of an important program that we helped initiate after the Attica riot --- Prisoners Legal Services ("PLS").

Based on the concern that prisoners in New York State lacked access to lawyers in order to deal with civil legal matters, in 1976 the State Bar Association helped establish PLS. One year later, the United States Supreme Court ruled that the states have an affirmative obligation to ensure that convicted felons have adequate, effective and meaningful access to courts, *Bounds v. Smith*, 430 U.S. 817 (1977). In 1978, the State of New York began to fund PLS as a state program.

PLS helps to provide equal access to our system of justice for those who are incarcerated and would otherwise be deprived of such access. The program reflects one of the State Bar's highest priorities -- the concept that an unpopular individual should be able to invoke the power of the world's most advanced legal system to protect his or her rights. That concept is, and should continue to be, a source of great pride and great strength for all New Yorkers.

We believe that PLS helps inmates resolve problems and reduce tension associated with incarceration. Also, we submit that PLS helps to foster a sense of fairness and to enhance the positive attitudes and behavior of prisoners. It also helps in the development of sound correctional policy. One of the greatest values of PLS is that it works to avoid conditions of confinement that resulted in the

devastating Attica riot.

PLS is -- and should remain -- a vital, integral part of the state's criminal justice system and a critical component of public safety.

The proposed Executive Budget does not include funding for PLS. Therefore, we respectfully urge that you work with the Governor to include adequate funding for PLS in the 2011-12 Executive Budget.

CONCLUSION

Access to justice has been the primary focus of my remarks, and it is the centerpiece of the Association's legislative priorities. We submit that the court system should be adequately funded to ensure access to justice for the poor, the weak, and the vulnerable. The ability of an impoverished or unpopular individual to invoke the power of the world's most prestigious legal system to protect his or her rights is, and should continue to be, a source of great pride and great strength for all New Yorkers. We urge you to remain committed to protecting access to justice and to ensuring the public's trust and confidence in our justice system.

TESTIMONY OF
PRISONERS' LEGAL SERVICES OF NEW YORK
BEFORE THE
JOINT LEGISLATIVE HEARINGS
ON THE
NEW YORK STATE PUBLIC PROTECTION BUDGET FOR 2011
CONDUCTED BY THE
ASSEMBLY WAYS AND MEANS AND SENATE FINANCE
COMMITTEES
Legislative Office Building
Albany, NY
February 9, 2011

Presented by:
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INTRODUCTION

Initially we would like to thank the members of this Committee for inviting Prisoners' Legal Services (PLS) to testify before you today. As we will demonstrate in our testimony, although Prisoners' Legal Services (PLS) has been good public policy and a sound economic investment for New York State for 35 years, without funding in this year's Executive budget, PLS will be forced to close its doors.

As you all know, PLS, is a state-wide agency created in 1976 in response to "the bloodiest prison confrontation in U.S. history": the Attica uprising. After Attica, a Special Commission was appointed to investigate the causes of the uprising. The Commission was chaired by Robert B. McKay, Dean of New York University's Law School from 1967-1975. In 1972, after dozens of hearings, the 'McKay Commission' issued its report. The Commission found, *inter alia*, that prior to the Attica riot, there was "no meaningful program of education" and "idleness" was the "principal occupation." Prisoners were allowed to shower only once a week and were limited to one roll of toilet paper every five weeks. Prisoners were forced to march in silence to their work and to the mess hall and no contact visits were allowed. The Commission determined that our prison system needed a safety valve - a mechanism for prisoners to air grievances - a window to the outside - a voice.

Four years after the McKay Commission Report was issued, and in response to recommendations made in the Report, the NYS Bar Association submitted a grant

application to the Federal Law Enforcement Assistance Administration (LEAA) to develop a plan for providing a comprehensive program of legal services to inmates. The NYS Crime Control Planning Board approved the Bar Association's grant application and Prisoners' Legal Services opened its doors in 1976.

As a state-wide agency, PLS has listened and responded to the concerns and grievances of those incarcerated in New York State prisons for 35 years. PLS is the safety valve the McKay Commission recommended. PLS is a voice for those prisoners who have no voice.

For the past 35 years, PLS has worked tirelessly to address the issues that were found to have caused the Attica riot. We have helped reduce the use of excessive force against prisoners; we have significantly reduced the use and misuse of solitary confinement; we have worked to increase programming and education for prisoners; we have assisted prisoners in peacefully airing and resolving their grievances and; we have been instrumental in improving the overall conditions of New York State prisons.

During the Administration of Governor Hugh Carey, PLS was included in the Executive Budget for over \$3 million. During the Administration of Governor Mario Cuomo, PLS was included in the Executive Budget for roughly \$4 million. Governor George Pataki defunded the program but, in 1995, the State Assembly (Assemblyman Aubry and the 48 other members of the Black, Puerto Rican, Hispanic and Asian Legislative Caucus, with the support of Speaker Silver) funded the program with an

annual legislative grant of approximately \$2.285 million since that time. In late 2009, the Paterson Administration supplemented that amount by \$2.3 million, bringing PLS' operating budget to a total of \$4.585 million, thereby making it possible for PLS to better assist the State in achieving its re-entry mission, re-open a regional office and essentially provide the level of service deemed critical during the first Cuomo Administration almost 30 years ago.

However, there was no "member item" funding in last year's State Budget and were it not for the 2009-2010 funding provided by Gov. Paterson, PLS would have closed its doors this past July. PLS has already commenced the process leading to a moratorium on intake and we are gradually laying off employees (18 to date), thus guaranteeing a skeletal staff of 11 in our four offices statewide awaiting final disposition of this year's State Budget negotiations. However, should the present proposed budget be adopted without including State funding for PLS, PLS will cease to exist by the time of this year's 40th Anniversary of the Attica riot in September 2011.

PLS Is a Sound Economic Investment

As part of our core work, we review and advocate for corrections in sentence and jail time computations. Such advocacy often results in our clients being credited with significant time toward their sentences. PLS also reviews disciplinary hearings and, either through administrative advocacy or litigation, we are often successful in

obtaining reversals of these hearings based upon lack of substantial evidence and/or other errors. As a result, inmates are released from SHU confinement and recommended loss of good time is restored.

By correcting jail time and sentencing errors and successfully seeking restoration of good time, PLS saved the State over \$3.5 million in 2010, and over \$4 million in 2009.¹ PLS' work resulted in a total of 192 years being credited to prisoners' sentences and we obtained reversals in Tier III disciplinary hearings that resulted in expungement of 65 years of solitary confinement. But for PLS' work, men and women would have been illegally held in our prisons or in solitary confinement for years, costing the State millions of unnecessary dollars in actual confinement costs and untold dollars in subsequent wrongful confinement awards. The New York State Association of Criminal Defense Lawyers (NYSACDL) has stated that: "It is quite probable that the work of PLS has protected the State from litigation and judgments for faulty jail time calculations or sentencing errors."

But PLS does so much more. When issues arise that prisoners do not understand or have questions about, we explain the law to them and answer their questions. PLS, by answering over 16,000 annual inmate complaints (a number that continues to grow despite a reduction in overall prison population), has discouraged and often prevented

¹ Attached as Appendix 1 is a document entitled: "How PLS Pays for Itself" documenting the time saved for 2009 and 2010 and the corresponding dollars saved by the State.

the filing of many lawsuits that would have otherwise been a costly burden to DOCS, OMH, the Judiciary and the Attorney General's Office.

More important than the actual money PLS saves or the services that PLS provides is the immeasurable benefit PLS gives to the State of helping to prevent another Attica. The NYSACDL has stated that PLS' "work has made the prisons safer, more humane and less violent." New York State Bar Association President Stephen Younger states: "One of the greatest values of PLS is that it works to avoid conditions of confinement that resulted in the devastating Attica riot. PLS is – and should remain – a vital, integral part of the state's criminal justice system and a critical component of public safety." The cost of another Attica would be astronomical; not just in dollars but in lives and in the threat to the future stability of our criminal justice system.

PLS Is The Only Statewide Organization With the Expertise and Capacity To Fulfill the Legal Mandate of Providing Prisoners Access to the Courts

The State has a legal responsibility to provide meaningful access to the courts for inmates confined in state prisons. New York has, in the past, wisely chosen to fund PLS to provide this access to at least part of the inmate population. In a letter to Governor Pataki several years ago, the then President, the Immediate Past President and the President-Elect of the New York State Bar Association, addressed the need for Prisoners' Legal Services continued funding: "Experience demonstrates that citizens

are not able to adequately represent themselves in litigation, particularly that which requires discovery or trial. And inmates who are not literate, who do not speak English well or who are mentally ill surely are entitled to the services of lawyers. The fact is that lawyers are essential to the fair administration of justice for prisoners.”

And the fact is that PLS is the only statewide organization that has the capacity and expertise to provide the civil legal assistance prisoners need. This is borne out by the hundreds of referrals PLS receives annually from outside agencies, organizations and individuals including requests from Assembly members, Senators, Judges and lawyers asking us to investigate prisoner complaints that are received in their offices. For example, the New York Civil Liberties Union (NYCLU) notes that NYCLU “which is not a direct legal services organization, receives many hundreds of compelling requests for assistance each year, from prison inmates who have been assaulted, deprived of necessary medical or mental health care, and denied fundamental constitutional rights. *Almost all of these cases are referred to PLS, as only it has the mandate, the expertise, and the capacity to address these matters.*”

The Office of the Appellate Defender points out that, “PLS is the sole organization that serves the entire population of incarcerated individuals in the State....PLS serves as a vital resource to other legal service providers in the State, as well as families of incarcerated persons. Our attorneys often call upon our PLS colleagues for advice on handling certain matters within their expertise. Moreover,

when we encounter situations that are outside of our purview, we will refer individuals directly to PLS for representation....As a matter of fairness and decency, and as a matter of public safety, PLS must not be permitted to close.”

Disability Advocates, Inc. states:” We have worked with PLS for many years, and can assure you that if this fine organization goes out of existence there is no other organization that can pick up the task.”

The Correctional Association of New York notes that PLS provides: “an essential avenue for incarcerated persons to obtain meaningful access to civil lawyers, the courts, and legal rights information. It is a strength of New York State that the Executive and Legislative branches have consistently recognized this fact and protected this civil legal access.”

The New York State Defenders Association noted the overwhelming requests for assistance that were received when PLS went unfunded for one year in 1998. “Before the demise of PLS, we received approximately 300 requests a year from prisoners. A majority were referable to PLS, most of which were resolvable by PLS without litigation. At least three times that many cases are now coming into our office, most not referable.”

And solo practitioners across the State are also urging funding for PLS. Tina Hartwell, Esq. writes: “PLS has helped me perform my job as an Assistant Public Defender better. I often get letters requesting assistance that my office cannot provide;

I refer them to PLS and never get letters back saying they were not able to help. PLS provides services that help us all in ways many do not see or understand.”

The above is just a small sample of the comments made by organizations and individuals who understand the purpose and need for Prisoners’ Legal Services and who know, first-hand, that PLS is the only organization they can turn to for individualized legal assistance in cases concerning conditions of confinement in State prisons.

PLS Ensures Prison and Public Safety

There is no question that PLS’ work over the years has helped to significantly reduce the amount of brutality in the prisons. Our work resulted in the placement of cameras in most facilities, more in-depth use of force reports being filed, improved medical exams after the use of force and better training on use of force techniques for officers. And yet, in 2010 we still received over 600 complaints from prisoners alleging excessive use of force or harassment against them by correctional officers. Although not all of these allegations resulted in the need for PLS to intervene, the number of complaints highlight the need for PLS to exist so that we can investigate and intervene when necessary.

When it comes to medical and mental health care the numbers are more disturbing. In 2010, PLS received over 780 complaints concerning inadequate medical

and mental health care. In 2007, together with Prisoners' Rights Project and Disabilities Advocates, PLS settled a state-wide class action focused on the treatment of the mentally ill in prison and, indeed, huge improvements have been made in this area. However, as reported by Mary Beth Pfeiffer in the Poughkeepsie Journal on December 26, 2010, there are still significant deficiencies in the care and treatment of the mentally ill in our State prisons as suicides are on the rise and "mental health care was criticized in 9 of the 21 suicides that occurred since the prison lawsuit was settled." As Ms. Pfeiffer reported: "Suicides in New York state prisons soared in 2010 to their highest rate in 28 years as 20 inmates took their own lives," evidencing a critical need for the continued services of PLS.

PLS investigates, advocates and, when necessary, litigates those cases we find to be meritorious. Our advocacy and representation helps ensure humane treatment of prisoners and often calms the fears of our clients. This translates into a reduction in tension within the prison population, a resulting decrease in the likelihood of another Attica and an increase in the chances of successful reintegration.

In terms of public safety, because of our work, many of our clients receive the mental health care, medical care, programming and education they need to succeed in life once they are released. Through our work, our clients learn that society will not tolerate unjust treatment of its people. Our work instills in prisoners the sense that the criminal justice system is fair and just. Thus, when they are released from prison, our

clients are much more likely to successfully adjust to life outside the prison walls and become law-abiding productive members of society.

PLS Increases the Likelihood of Successful Reintegration

PLS works hard to increase the chances of successful reintegration for our clients. Take, for example, our work on disciplinary cases. PLS often advocates on behalf of prisoners who have been given an internal disciplinary hearing for misconduct and found guilty. The typical punishment in disciplinary cases involves placing the prisoner in solitary confinement, taking away all of his privileges, such as phone, commissary and packages and taking away his good time (time off the end of his sentence.). We regularly review cases where individuals have been sentenced to years in solitary confinement because, in New York State, there is no time limit to the length of time a person can be placed in solitary confinement once he/she is found guilty of violating certain prison rules.

In 2009 PLS reviewed 876 disciplinary cases. In 2010 PLS reviewed 1036 disciplinary cases. In many of those cases we found procedural and substantive errors that warranted the filing of an administrative appeal and, if unsuccessful, an Article 78 proceeding. Below is an example of a recent disciplinary case that we reviewed and successfully appealed:

Alex R² is, a 5' 2", 125 lb., 16 year old boy who was sentenced as an adult because he committed his crime (stealing a car, a wedding ring and some foreign currency) 10 days after his 16th birthday. He was in a shock facility (boot camp) where he witnessed other inmates being slapped and mistreated. Alex himself was forced to run around a track with his mattress on his back the first day he arrived. He wrote a grievance but the officer he was complaining about was the collector of grievances and when the officer read the grievance he locked Alex in a closet overnight. Alex was very scared.

*A few days later, when he was on work detail in the yard, a 20 year old inmate approached him and suggested that they run away. Alex agreed, and they ran. They ran into the woods where Alex hid for a day, cold and hungry. When he was found, Alex told the police about the abuses he had witnessed but because he was in DOCS custody when he ran away, he was charged criminally with escape and charged internally with a misbehavior report for the same "escape." At his disciplinary hearing he told the Hearing Officer about what had happened at the shock program and why he ran away but the Hearing Officer rejected his justification defense and imposed a penalty of **three years in solitary confinement.***

PLS appealed the disposition and Alex was soon thereafter released from solitary confinement. Even though Alex, his family, and community members had contacted DOCS on his behalf, it was not until PLS filed a lengthy administrative appeal, supported by expert affidavits addressing the issues of the effects of long-term solitary confinement and the development of an adolescent's brain, that DOCS agreed to release Alex from solitary confinement. Had PLS not intervened, Alex would have languished in solitary confinement for three years without programming or education and would have soon thereafter been released. The chances of Alex ever being able to

² The name of our client has been changed to protect client confidentiality.

reintegrate into society after having been held in solitary confinement from the age of 16 to 19 would have been slim to none. In many cases, PLS' work is crucial to any chance of successful reintegration.

PLS also works with the Department of Correctional Services (DOCS) in its Reentry Program at both Orleans and Hudson Correctional Facilities. The programs service between 60 and 90 prisoners at each facility. The prisoners are transferred to Orleans and Hudson from other facilities across the State at least three months prior to their scheduled release to the Buffalo and Albany areas, respectively. PLS, together with the Legal Aid Bureau in Buffalo and a number of other volunteers, provides education on employment, parole, and family law issues.

PLS Needs Adequate Funding

In the late 1990's when the prison population reached over 70,000, PLS had a staff of 40 attorneys plus additional support staff and an allocated State budget of over \$4,000,000.00. Today the prison population is a little over 57,000 and, because we received no funding in 2010, PLS will soon have a staff of only 7 attorneys, and two paralegals. In the 1990's PLS had seven offices across the State but because of decreased and then stagnant funding we now have four. At present, our Albany office, which will soon have a staff of two attorneys, is responsible for providing representation to a total prison population of 25,000 in 35 prisons.

With adequate resources, PLS can continue to investigate meritorious cases and monitor the serious problems experienced by the prison population. With adequate resources, PLS can maintain the trust and respect we have earned throughout the prison population and continue to act as a safety valve thereby keeping peace within the prison walls.

CONCLUSION

In these times of economic turmoil everyone is looking for ways to save money; funding PLS is one way to accomplish that goal. PLS' work actually saves the State money and failing to restore funding for PLS in the 2011-2012 budget could quite likely end up costing the State millions in uncorrected jail time and sentencing errors and unconstitutional disciplinary hearings both of which could result in wrongful confinement lawsuits, litigation by unrepresented prisoners who no longer have PLS to help them assess the merits of their cases and - the most costly of all - the escalation of tensions in the prisons resulting in the increased possibility of another prison uprising. These are the times when an organization such as Prisoners' Legal Services is of upmost importance and yet, without funding in this year's State budget, PLS will cease to exist.

For 35 years, PLS' work has helped keep the peace in our State prisons and has increased the likelihood that prisoners will be able to successfully reintegrate into society when they are released. PLS is a critical and necessary component of New York State's public protection efforts and is a sound economic investment for New York State. PLS' funding of 4.6 million dollars should be restored in this year's Executive Budget to enable PLS to continue doing the job it was created to do; help ensure the humanity, safety and security of our New York State prisons.

Dated: February 9, 2011

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APPENDIX 1 HOW PLS PAYS FOR ITSELF

PLS - A FISCALLY SOUND INVESTMENT FOR NEW YORK STATE

I. TIME SAVED

A. Good Time, Jail Time Sentence Computation Time and Parole Release Time

PLS ensures that prisoners' sentences are calculated accurately and that they receive all of the jail time to which they are entitled. PLS' also ensures that prison disciplinary hearings comply with procedural and due process requirements and when they do not, PLS' advocacy results in prisoners recovering lost good time and being removed from solitary confinement, commonly referred to as the "special housing unit" or SHU. PLS' advocacy in these areas results in millions of dollars of savings for the State annually. For every year of good time restored and jail time and sentence computations corrected, PLS saves the State at least \$36,835.00.

B. SHU Time

When inmates are released from SHU they are able to participate in educational and other rehabilitative programs. Participation in such programs increases the likelihood of early release and dramatically reduces the recidivism rate. In addition, if an inmate is in general population as opposed to SHU when he/she appears before the parole board, release is much more likely. Thus, although release from SHU may not save the State the entire \$36,825,00 per inmate, it does significantly reduce the overall cost to the State. Factoring in SHU time at only half the time saved results in the following savings for 2009:

The charts below show the time saved for 2009 and 2010 and the corresponding dollars saved by the State due to PLS' work.

TOTAL TIME SAVED FOR 2009

SHU Time Cut	436 months
Good Time Restored	352 months
Jail Time Credit	222.5 months
Parole Release	9 months
Sentence Computation	727.5 months

Total Good Time, Jail, Sentence Comp
and Parole Release Time:

109 years x \$36,835.00 = \$4,015,015.00.

½ SHU time:

18.16 years x \$36,835.00 = \$ 669,169.14.

Total State Savings for 2009:

\$4,684,184.10

**TOTAL TIME SAVED
FOR 2010**

SHU Time Cut	352 months
Good Time Restored	139 months
Jail Time Credit	14 years
Parole Release	0
Sentence Computation	692 months

Total Good Time, Jail, Sentence Comp.
and parole Release Time:

83 years x \$36,835.00 = \$3,057,305.00

½ SHU time:

14.5 years x \$36,835.00 = \$ 534,107.00

Total State Savings for 2010:

\$3,591,412.00

(13)



TESTIMONY OF LEGAL SERVICES NYC

ON

THE 2011-2012 EXECUTIVE BUDGET

TOPIC: PUBLIC PROTECTION

BEFORE:

THE NEW YORK STATE SENATE FINANCE COMMITTEE

AND

**THE NEW YORK STATE ASSEMBLY COMMITTEE ON
WAYS AND MEANS**

PRESENTED BY:

**EDWINA FRANCES MARTIN
DIRECTOR OF COMMUNICATIONS
AND GOVERNMENT RELATIONS
LEGAL SERVICES NYC**

FEBRUARY 9, 2011

Edwina Frances Martin

Legal Services NYC

February 9, 2011

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”¹

Good afternoon. My name is Edwina Frances Martin and I am the Director of Communications and Government Relations of **Legal Services NYC (LS-NYC)**, the nation’s largest organization devoted exclusively to providing free civil legal services to the poor.

I am here today to present testimony on behalf of LS-NYC, and the people we serve, to thank you for the tremendous support from the Legislature.

I am also here today to ask that you restore funding for Civil Legal Services (CLS) in the State budget to the FY2010-2011 level, and to support funding for the provision of civil legal services in the FY2011-2012 budget of the Office of Court Administration, which, *inter alia*, provides a commitment that will help ensure a stable funding source for civil legal services.

WHO WE ARE

With community-based offices and numerous outreach sites located throughout the city’s five boroughs, LS-NYC has a singular overriding mission: to provide expert legal assistance that improves the lives and communities of low-income New Yorkers. We annually provide legal assistance across a full range of issues to more than 60,000 low-income clients throughout New York City—helping to ensure that they have access to housing, health care, food, and subsistence income.

Our services include a strategic combination of specialized law units, legal helplines, impact litigation, and *pro bono* private attorney efforts. These services are bolstered by LS-NYC’s Central Office, which provides expert litigation and advocacy support as well as Continuing Legal Education programs and trainings that are available to New York City’s greater poverty law community.

¹ Universal Declaration on Human Rights (Article 25(1), 1948).

THE IOLA FUNDING CRISIS CONTINUES

Legal services providers across the State are confronting the continuing crisis in the Interest on Lawyer Account (IOLA) Fund of the State of New York, which began last year as a result of the “perfect storm” of historically low interest rates and the decline in the real estate market. Indeed, since 2008, IOLA has suffered an almost 75 percent decline in funding revenues.

In addition to the IOLA funding crisis, general appropriations for civil legal services have decreased considerably. For example, in the FY2010-2011 Budget, general Senate and Assembly statewide appropriations for civil legal services experienced a 70% funding cut. And, in the FY2011 New York City Budget, LS-NYC experienced a 21% funding cut, which was on top of significant cuts in the prior year. These funding cuts inevitably lead to people losing their homes, losing benefits they are entitled to, such as disability and unemployment, or staying in dangerous domestic violence situations because of lack of options.

Last year, many of you and your colleagues supported an effort by Chief Judge Jonathan Lippman to enact a \$15 million appropriation to substantially supplement the diminished IOLA funds and help to ensure the continuation of critical legal services for low-income New Yorkers.

In addition to proposing IOLA “rescue” funding last year, the Chief Judge created a Task Force to Expand Access to Civil Legal Services in New York, which held a series of hearings across the State on the future of civil legal services funding. The Task Force collected and analyzed data showing not only the dire need for services, but also the significant benefit to the State when low-income people are represented in court.² As a result of these hearings, the Chief Judge’s Task Force recommended that in addition to another year of IOLA “rescue” funding, that the FY2011-12 budget include funding for CLS programs across the State.

In the “Great Recession” that New York’s poor are still experiencing, it is critically important that the Legislature and New York State maintain a commitment to free civil legal services for the poor, by renewing all current funding, and by supporting the additional funding in the Judiciary budget for civil legal services.

² The Task Force to Expand Access to Civil Legal Services in New York: Report to the Chief Judge of the State of New York, November 2010, <http://www.courts.state.ny.us/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>.

THE NEED FOR CLS CONTINUES TO GROW

"I saw many people waiting to speak to legal services in the reception area. I noticed that legal services were overwhelmed and that they had to turn some people away. . . To my relief, Queens Legal Services accepted my case."

Melenea Richardson, Domestic Violence Victim, Testifying before the Chief Judges's Task Force to Expand Access to Civil Legal Services in New York, September 28, 2010.

Along with the rest of the State, our client population has suffered during this Great Recession. They were hit hard with massive layoffs and off-the-charts rates of foreclosure, and are suffering more now than at any time since the *Great Depression*.

For example, census and survey data available for the first two years of the recession illustrate that almost all poverty indicators have increased:

- 17.2% of New Yorkers turned to food stamps to get by in 2009, up from 14.9% in 2008;
- Unemployment went from 7.3 in 2008 to 10.2 in 2009;
- The percentage of those living below poverty went from 18.4% in 2008 to 18.7% in 2009; and
- The median home value decreased in 2009 by 3.7% as compared to the previous year.³

As the unemployment rate continued to climb citywide, many exhausted their unemployment insurance benefits and now face difficulties paying rent and buying food and other necessities, leading to a greater need for legal help with housing issues and securing other public benefits.

Foreclosure continues to be a key issue for low-income New Yorkers. In 2009, there were 50,000 foreclosures in New York State; nearly half were in New York City.⁴ In the first quarter of 2010, the number of City foreclosures soared, increasing 16% when compared to the same period last year. The boroughs of Queens and Brooklyn were responsible for more than 70% of all foreclosures in the City.⁵

The resources allocated to meet these enormous needs are fairly meager. More than three million New York City residents have incomes below 200 percent of the federal poverty level. Yet, fewer than 800 of the 75,000 lawyers in New York City are dedicated to providing legal services to the poor. As a result and this and lack of funding for civil

³ Joseph De Avila and Sumathi Reddy, "City Held Firm In Recession," Wall Street Journal, September 29, 2010, A23, A26.

⁴ Constance Mitchell Ford, "City Foreclosures Climb in First Quarter," Wall Street Journal, May 21, 2010, <http://online.wsj.com/article/SB10001424052748703559004575256573362821934.html?KEYWORDS=%22City+Foreclosures+Climb+in+First+Quarter%22>.

⁵ Id.

legal services, the Chief Judge's Task Force found that less than 20% of the legal needs of low-income New Yorkers are being met.⁶

Not surprisingly, LS-NYC's resources and staff of 400 attorneys, paralegals, social workers, and administrative support staff are being stretched as never before—and the need to provide legal assistance that is crucial to our clients' survival is growing on a daily basis across all of our practice areas: Consumer Law, Disability Rights, Domestic Violence, Education Law, Elder Law, Employment Law, Family Law, Foreclosure Prevention, Government Benefits & Entitlements, HIV/AIDS, Housing, Immigration, Parent Representation, Preservation of Low-Income Housing, Tax Law, and Unemployment Insurance Benefits.

While all of our practice areas are seeing increases in requests for legal help, LS-NYC has noted in the past four years a dramatic surge in Unemployment Insurance Benefits Advocacy and Foreclosure work, two of the areas for which we would expect a greater need during an economic crisis:

	TOTAL CASES OPENED			
	2007	2008	2009	2010
UIB	669	959	1373	1334
Foreclosure	41	622	1806	1760

In the case of foreclosure, last year LS-NYC assisted more than 1700 families at risk of foreclosure, the vast majority of whom were low-income, minority home-owners living in the outer boroughs of New York City. Most of these homeowners were induced into risky, high cost subprime loans that were unaffordable from their inception. Most of the homeowners who sought assistance had adjustable rate mortgages, many with costly features like balloon payments and pre-payment penalties.

CLS PROGRAMS NOT ONLY SAVE LIVES, THEY SAVE THE STATE MONEY

"In late 2009, I had just returned from seven months in the Army and was struggling to find steady, stable work as a civilian. I had worked as a construction worker, a salesman, and a truck driver, but the work did not last long and I was constantly having to look for the next job."

John Brown, Returning Member of the Military, on Why He Needed Bankruptcy Assistance from Legal Services NYC, Testifying before the Chief Judges's Task Force to Expand Access to Civil Legal Services in New York, September 28, 2010.

LS-NYC and the other CLS programs in New York State provide critical services to thousands of low-income residents every year, serving as a life line to the many who, without our assistance, have nowhere else to turn. Every day, poor families are

⁶ The Task Force to Expand Access to Civil Legal Services in New York: Report to the Chief Judge of the State of New York, November 2010, <http://www.courts.state.ny.us/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>.

threatened with eviction, mothers do not get the child support to which they are legally entitled, victims of domestic violence have nowhere to turn for help, working people are victimized by predatory lenders, and elderly people live in unsafe conditions.

We provide legal advice, brief services and full representation to low-income families and individuals to help them solve the myriad and often complex legal problems they face. In light of the unprecedented demand for services, we are engaging in collaborative advocacy projects, we have increased litigation and advocacy to secure benefits such as Food Stamps and Unemployment Insurance, and we have increased our work in areas of growing need such as Consumer and Foreclosure advocacy. We are also working to address systemic barriers to receipt of benefits, such as Language Access barriers. We are also increasing our legislative advocacy—working with you, our legislative partners—to break down barriers to access to the court system.

Unfortunately, despite our best efforts to leverage our work with *pro bono* assistance and collaborations with colleague providers and community partners, the number of people we can serve compared to the need remains small. In 2009, we participated in the Legal Services Corporation *Justice Gap Survey*. According to the survey results, last year we were able to fully serve only 12 percent of the people who came to us for help. The remainder were either turned away (51 percent), not served fully (13 percent), or received only brief services and advice (24 percent) although they really needed representation.

This is most unfortunate since so many people are unable to get the legal help they need, but also because, in this time of economic crisis, the work we perform *saves New York State millions of dollars a year* and is a proven, tested and wise investment for the State. For instance, annually, LS-NYC's work results in almost \$60 million dollars in taxpayer savings, and earns monthly benefits for clients that aggregate to almost \$11 million dollars. We win hundreds of federal Supplemental Security Income (SSI) and Social Security cases each year, obtaining millions of dollars in federal disability benefits for clients and saving more than \$4 million in state and local funds. And the monthly benefits, Earned Income Tax Credit refunds, and Unemployment Insurance benefits we obtain for New York City residents are reinvested by them and stimulate the economies of their communities.

Indeed, last year, statewide, civil legal services programs

- **saved the State \$6.2 million** in domestic abuse costs;
- **saved the State \$97.5 million** in emergency shelter costs;
- **brought in \$321 million in federal benefits and grants** for low-income New Yorkers; and
- **brought in \$475 million into local economies** through the provision of free civil legal services.⁷

⁷ The Task Force to Expand Access to Civil Legal Services in New York: Report to the Chief Judge of the State of New York, November 2010, <http://www.courts.state.ny.us/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>.

Funding civil legal services, then, is in keeping with Governor Andrew Cuomo's goal to "set our state on a new path toward prosperity."⁸

CONCLUSION

"While the social costs of the lack of civil legal assistance for low-income New Yorkers in essential matters are difficult to measure precisely, a clogged, inaccessible system of justice necessarily results in arbitrary outcomes, often accompanied by human tragedy, and breeds contempt for the rule of law."⁹

We are very grateful to the Legislature for its leadership with respect to including funding for civil legal services for the poor in the State budget, and to Chief Judge Lippman for his efforts to create a stable, reliable source of funding for critically needed services.

New York City has become a City of extremes. It has the greatest disparities in income of any major United States city, with the top 1% of the population getting 44% of the income of the City, a share nearly four times as great as 30 years ago. It is also the most polarized among the 25 largest cities in the United States. Indeed, if New York City were a nation, its level of income concentration amongst the wealthy would rank 15th worst among 134 countries—falling between Chile and Honduras.¹⁰

It is crucial to our well-being as a society that we provide meaningful access to the courts for all, regardless of income. The most important measure of any system that resolves and adjudicates disputes is the extent to which it administers justice in a fair, equitable and credible manner. If a significant portion of New York's poor are denied meaningful access to the court system, a system for administering justice cannot serve its underlying purpose well, no matter how that system is structured.

This is a unique opportunity for New York State to put forth a vision of how to ensure a basic tenet of the promise of America—justice for all—that the nation could take notice of, and follow. I have confidence that you will do the right thing, and look forward to continuing to work with you to help the people of New York State.

⁸ Press Release: "Governor Cuomo's 2011-12 Executive Budget Provides Transformation Plan for a New New York" http://www.budget.state.ny.us/pubs/press/2011/pressRelease11_eBudget1.html.

⁹ The Task Force to Expand Access to Civil Legal Services in New York: Report to the Chief Judge of the State of New York, November 2010, <http://www.courts.state.ny.us/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>.

¹⁰ Fiscal Policy Institute, "Grow Together or Pull Further Apart: A Fiscal Policy Institute Report," December 13, 2010, http://www.fiscalpolicy.org/FPI_GrowTogetherOrPullFurtherApart_20101213.pdf.

Attached to this testimony are descriptions of a few cases handled by our offices in the last year. These cases demonstrate the enormous value of providing timely, high-quality legal assistance to poor people.

Thank you.

Edwina Frances Martin
Director of Communications and Government Relations
Legal Services NYC

LEGAL SERVICES NYC SAMPLE CASE NARRATIVES**FEBRUARY 9, 2011****Housing/Americans with Disabilities Act**

Mr. W, a blind tenant whose Section 8 rental subsidy was terminated without proper notice, filed suit in federal court alleging that the termination of his rental subsidy by the New York City Housing Authority (NYCHA) was in violation of the Americans With Disabilities Act. Among other things, when NYCHA terminated his subsidy, it failed to notify him in an effective manner given that he is blind.

NYCHA's failure to notify Mr. W of the termination was the culmination of a series of failures to notify him of important information, including two changes in the location of his NYCHA service center. In the lawsuit filed by LS-NYC, Mr. W asserts that NYCHA's policy of mailing only written notices to Section 8 tenants does not reasonably accommodate people with visual impairments, in violation of the Americans with Disabilities Act, the Rehabilitation Act, the Fair Housing Act, and the New York City Human Rights Law. He also claims that NYCHA denied him due process of law as guaranteed by the Fourteenth Amendment of the United States Constitution.

When he initially applied for the housing subsidy, Mr. W provided NYCHA with information regarding his disability and his receipt of Supplemental Security Income. Later, when Mr. W began to receive Social Security Disability benefits, he provided NYCHA staff with proof of this determination as well. In failing to provide Mr. W with actual notice that his housing subsidy was being terminated, NYCHA violated its duty to make reasonable accommodations for persons with disabilities.

Mr. W is seeking the restoration of his Section 8 subsidy as well as an order that NYCHA cease its discriminatory policy by providing equal and meaningful access to all Section 8 benefits information in formats that are accessible to people who are blind or visually impaired. Such an order would ensure that hundreds of others similarly situated to Mr. W will not have to go through the ordeal of facing homelessness because they cannot read notices. This case is still ongoing.

Unemployment Benefits

Ms. R was a secretary for a large Wall Street brokerage/securities firm for four years. She had a baby and returned to work after her maternity leave, but was treated differently after her return. Management increased her hours, forcing her to leave her home much earlier and arrive home later at the same pay level. Due to the change in shift, it became very difficult for her to breastfeed her baby and get to work on time. She was forced to bring her car to work in order to arrive on time which created huge expenses due to parking, tolls, etc. She also had increased childcare expenses.

She was not compensated for any of her expenses. Ms. R's stress level increased which elevated her blood pressure and made it difficult to produce milk for the baby.

Mr. R asked her employer to change her hours back to her old schedule for two days a week. She also requested other positions within the company which might allow her to work at the old schedule. Two fellow employees offered to cover the hours that she could not work. However, despite her many attempts to try to get the employer to modify the hours she was working, the employer denied all of her requests. After experiencing an anxiety attack where her blood pressure was elevated and she suffered dizziness, headaches and heart palpitations, she went to a doctor who told her it was stress related and that she should avoid anything that was causing her the stress. She was left with no choice but to give up her job. When Ms. R applied for UI benefits she was denied, but with representation from LS-NYC she prevailed on appeal and received her UI benefits.

Domestic Violence

Ms. D fled Mexico and came to the United States when she was 18 with her 6 month old daughter, K, to escape K's abusive father. She gave birth to a second child in 2005, whose father was also abusive. Ms. D suffered from verbal, physical and sexual abuse and first sought assistance after hearing a family worker from the Violence Intervention Program (VIP) speak at her daughter's school. She was referred to LS-NYC through VIP and we assisted her in obtaining an order of protection, custody of her daughters, a divorce, and work authorization for her, in addition to U Visas for both her and K.

Social Security Disability

Mr. H had been a Neurologist who helped people after injuries in rehabilitation. He was robbed and seriously beaten on the streets of New York City and his head injuries left him unable to continue his medical practice. He fell into depression, but then found a job at a non-profit that made him feel useful again. Mr. H was told by the non-profit that the money he earned at the job would not be counted against his SSD benefits, and they gave him a letter to give to Social Security. Unfortunately, he was only exempted for a trial period of time; nine years later, Social Security threatened to cut off his benefits. LS-NYC was able to advocate on his behalf with Social Security and save his SSD benefits.

Consumer Debt

Bankruptcy

J. and A. were a young couple with a load of debt that was breaking their back when they came to LS-NYC's Bankruptcy Assistance Project in late 2009. J. had just returned from seven months in the Army and was struggling to find steady, stable work

as a civilian. He had worked as a construction worker, a salesman, and a truck driver, but the work did not last and he was constantly having to look for the next job. A. was in college and had a very low-paying internship in the garment industry. A's parents were unemployed at the same time, and J. and A. tried to help them whenever possible.

Because the couple's income was low to begin with, the job losses set them back considerably, and they were forced to use credit cards to make ends meet. When they came to the Bankruptcy Assistance Project in November 2009, their burden of debt had reached over \$70,000. Volunteers at the Project worked with them to prepare their bankruptcy petition, but the case was complicated because J. had received a lump sum combat pay bonus that made them look better off than they were. But the Bankruptcy Project attorneys didn't give up—they found a special protection in the law for combat veterans that allowed J. and A. to proceed. J. and A. have now completed their creditor meeting and other steps, and are waiting for their debts to be discharged. A. just completed a BA at Queens College and is looking forward to going back to active duty in the Army early next year, and J. is working in completing her degree.

Debt Collection

One of the state's largest debt collectors agreed to settle a Fair Debt Collection Practices Act lawsuit brought by LS-NYC on behalf of two elderly pensioners. 94-year-old Mr. C and his wheelchair bound 85-year-old wife had their bank account containing \$6,000 in pension and Social Security payments frozen for a debt involving their 53-year-old son. Although the law firm that froze the account soon learned the account did not belong to the couple's son, it still refused to release it for six weeks until LS-NYC intervened. To deter similar conduct in the future, LS-NYC filed a Fair Debt Collection Practices lawsuit. Although not admitting any wrongdoing, the law firm settled in May 2010 for \$10,000 in damages.

Tax

Over the past year the Legal Services NYC-Bronx Low Income Taxpayer Clinic ("Clinic") has noticed a rise in cases of underreporting (where the IRS claims taxpayers reported less income on their tax returns than was actually due) involving taxpayers selling securities to have money to live on after losing their jobs. In one such case, the Clinic assisted a taxpayer, Ms. Y, who sold securities but failed to include a Schedule D, Capital Gains and Losses, with her tax return showing the cost basis of the securities sold.

Based on the information submitted by the mutual fund company, which only showed the taxpayer's proceeds from the sale of the funds, the IRS assessed additional taxes on the securities sold. The IRS shared the information of an increased adjusted gross income with the NY State Department of Taxation and Finance, prompting the State Tax Department to assess additional taxes as well. This State tax bill eventually caused Ms. Y to seek help from LS-NYC to resolve her tax debt.

After investigating the case and reviewing Ms. Y's investment statements, the Clinic determined that the additional tax was being assessed on the money the taxpayer invested in mutual funds and later withdrew. The attorney concluded that Ms. Y was not required to include the funds received from the securities transaction in her gross income and thus should not have been assessed any additional tax on those funds.

The Clinic attorney requested an Audit Reconsideration from the IRS by submitting an amended tax return (Form 1040X) and by submitting a Schedule D along with copies of the taxpayer's investment statements showing the cost basis of the securities sold. After a delay in the IRS resolving the case, the Clinic attorney contacted the Taxpayer Advocate Service (TAS), an independent organization within the IRS that helps taxpayers resolve problems with the IRS. Within a month, the attorney was informed that the IRS would refund over \$13,600 in payments made and in refunds applied to the Federal debt. The attorney sent the favorable IRS decision to the State Tax Department that then issued nearly \$3,000 in payments made and refunds applied to that debt as well. The approximately \$16,600 in payments and refunds represented over 50% of Ms. Y's yearly wages.

Foreclosure

Mr. C's mortgage problems date back to 2002, when he decided to take advantage of low interest rates and refinance his mortgage. The lender told Mr. C that he qualified for a low fixed rate mortgage, but then engaged in a typical "bait and switch" tactic – at the closing, it secretly changed Mr. C's interest rate to a higher rate. Mr. C discovered the true interest rate upon receiving mortgage bills, but when he called the bank to complain, he was told that he signed the papers and was stuck with the higher rate.

Later that year, Mr. C, a construction worker for 26 years, became disabled. He experienced a dramatic loss in income while waiting nearly two years for approval of his application for disability benefits. As a result of this loss in income, Mr. C fell behind on his mortgage and went into foreclosure. During the foreclosure proceeding, Mr. C finally began receiving disability payments and entered into a repayment plan. The repayment plan was a jumbled payment schedule that listed payments of \$2,300 for just over three years and required a down payment of \$10,000. It did not contain any language explaining the terms of the plan. Mr. C called the bank for an explanation of the terms, and was told that if he made timely payments under the repayment plan for one year, the bank would automatically modify his loan.

Mr. C made timely payments for one year, and then sought the promised loan modification. After spending countless hours trying to reach someone at the bank with information about his modification, Mr. C finally realized that the bank had no intention of modifying his loan. He then sought to refinance with a different lender, and learned that he did not qualify for a refinance because the bank had been reporting his timely payments as late for the duration of the repayment plan, causing enormous damage to Mr. C's credit score. Mr. C wrote letters for eight consecutive months to credit

reporting agencies disputing the bank's reporting of his payments, but the bank continued to report his payments as late.

Mr. C continued to make timely payments every month for the duration of the plan. However, in March 2008, the bank rejected Mr. C's payment and told him he owed a balloon payment of \$41,670 to reinstate the mortgage. When Mr. C told the bank that he could not pay \$41,670, the bank resumed foreclosure proceedings.

LS-NYC defended Mr. C in the foreclosure action and brought an affirmative lawsuit in federal court. As a result of our litigation, the bank dismissed the foreclosure action, repaired Mr. C's credit, and provided Mr. C with a very favorable loan modification that would enable him to stay in his home.

* * * *

In another foreclosure proceeding, Ms. Q first applied for mortgage modification with a housing counselor in the spring of 2009. Her loan servicer, First Franklin, approved her for a loan modification in late July 2009, but the modification was unaffordable and did not comply with the Home Affordable Modification Plan (HAMP) guidelines. With the help of LS-NYC, Ms. Q was able to decline the unaffordable modification and request an affordable HAMP modification. She subsequently submitted a new mortgage modification application, which First Franklin reported to be complete in December of 2009. Despite the completion of the application and her eligibility, the loan servicer still refused to provide Ms. Q with a timely HAMP modification, resulting in additional interest and fees accruing on the loan as well as months of confusion and worry for Ms. Q. During the months of delay by First Franklin, LS-NYC engaged in persistent advocacy by attending numerous mandatory settlement conferences with Ms. Q, requesting that the court set firm timelines, pressing for frequent conferences, filing papers requesting that the Settlement Conference Referee toll the interest on the loan due to First Franklin's delay, submitting papers to the Referee on the proper interpretation of HAMP guidelines, and working with the loan servicer to ensure that it had the correct financial information for Ms. Q. As a result of these efforts, in June 2010, First Franklin finally offered Ms. Q a trial loan modification with affordable monthly payments. After months of on-time trial payments, Ms. Q has now been approved for a final modification. If she had not obtained the assistance of legal services, it is unlikely Ms. Q would have obtained an affordable loan modification and averted foreclosure.

Section 8 Housing

On April 15, 2009, NYCHA assigned a section 8 voucher to Ms. U, which was set to expire on October 15, 2009. Ms. U found an apartment to rent, and a rental application was submitted to NYCHA's Queens Leased Housing Office on October 9, 2009. In accordance with the regular processing of the application, an inspection was scheduled and took place on November 13, 2009. The apartment passed inspection.

On December 10, 2009 the rental package, including the approved inspection, was sent to the Quality Control Unit ("QCU") for further processing. Ms. U heard nothing from NYCHA and, on December 18, 2009, her son, Mr. V, called the Leased Housing Office. NYCHA claimed that Mr. V was told that there was a problem with final approval because the landlord, a relatively new owner of the apartment, did not provide a recorded deed for the property. Mr. V states that his conversation with NYCHA never included any problem about the landlord's deed. NYCHA also claims that it contacted the landlord directly for this information and that no such information came by or before 12/31/09. Thereafter, on January 26, 2010, NYCHA notified Ms. U as follows: "On 10/15/09 your Section 8 Choice Voucher expired without rental. We have, therefore, canceled the Voucher and your application has been removed from our active file."

Attorneys at LS-NYC successfully argued that NYCHA's contention that the rental application was incomplete, because it did not have proof that the landlord's deed was recorded, lacked any rational basis. Once NYCHA wrongly concluded that it did not have adequate proof of ownership of the property, it led to a string of decisions and actions by NYCHA that could not be supported. After an 8-month battle, the Supreme Court finally directed NYCHA to reinstate Ms. U to the Section 8 Housing Choice Program.

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Testimony
Public Hearings on the Executive Budget
before the
Joint Fiscal Committees of the Senate and Assembly
Public Protection

Presented by Dennis R. Hawkins
Executive Director

February 9, 2011

The Fund for Modern Courts Testimony

Public Hearings on the Budget

February 9, 2011

On behalf of Modern Courts, I want to thank the Committees for providing our organization with the opportunity to present testimony today.

The Fund for Modern Courts is an independent nonpartisan statewide court reform organization committed to improving the court system for all New Yorkers. Modern Courts supports a judiciary that provides for the fair administration of justice, equal access to the courts, and that is independent, highly qualified and diverse. By research, public outreach, education and lobbying efforts, Modern Courts seeks to advance these goals and to ensure that the public confidence in the judiciary remains strong.

Modern Courts supports the budget as presented by the Judiciary. The Judiciary's core constitutional obligation is to hear each and every case that comes before it.¹ The Chief Judge in his 2010 State of the Judiciary stated, "As the economy has soured, families are unable to pay their mortgages, consumers default on credit card debt, business deals go bad, and incidents of violence occur in families torn apart by lost jobs and homes in jeopardy." To meet the Judiciary's constitutional obligation, especially during these precarious economic times, Modern Courts believes it is essential that sufficient resources be provided to the courts. Without proper resources, the courts will inevitably be able to do less. The question is what "less" can the people seeking justice do without? Cutting the Judiciary budget will not provide the kind of economic relief the state needs, but it would create costly crises elsewhere.

¹ Constitution of the State of New York, Article VI, Judiciary.

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The crisis facing the Family Court is one area in which a reduced budget for the courts will further undermine the ability of our courts to meet their constitutional obligations.² Reduced resources in this area directly threaten the safety and stability of thousands of families and children. Modern Courts Family Court Task Force Report, issued in 2008, detailed the problems facing Family Court.³ The array of specific problems in the Family Court is well-documented by many who have studied the court. The problems include huge dockets; lack of sufficient Family Court judgeships commensurate with dockets; unmanageable court calendars; frequent adjournments causing disruption in court proceedings and the effectiveness of judges' orders; the lack of legal representation for many individuals which causes ineffective advocacy; and the paucity, in many courts throughout the state, of information about how the system works or the provision of support for the parties when they first enter the courtroom resulting in more work for overburdened judges and court personnel.

In addition, Modern Courts' citizen court monitors have observed issues in Family Court that include how the lack of the simplest resource – thorough upfront

² Constitution of the State of New York, Article VI, Section 13 (b). The family court shall have jurisdiction over the following classes of actions and proceedings which shall be originated in such family court in the manner provided by law: (1) the protection, treatment, correction and commitment of those minors who are in need of the exercise of the authority of the court because of circumstances of neglect, delinquency or dependency, as the legislature may determine; (2) the custody of minors except for custody incidental to actions and proceedings for marital separation, divorce, annulment of marriage and dissolution of marriage; (3) the adoption of persons; (4) the support of dependents except for support incidental to actions and proceedings in this state for marital separation, divorce, annulment of marriage or dissolution of marriage; (5) the establishment of paternity; (6) proceedings for conciliation of spouses; and (7) as may be provided by law: the guardianship of the person of minors and, in conformity with the provisions of section seven of this article, crimes and offenses by or against minors or between spouses or between parent and child or between members of the same family or household.

³ The Task Force interviewed experts on family court from every part of the state. All interviewed were intimately familiar with Family Courts in rural, suburban and urban areas of the State. Many have spent their entire professional careers working in Family Court and their dedication and passion to the success of the Family Court system is profound.

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assistance with information on court processes – is a missed opportunity of prevention and safety, instead there are repeated delays, dismissals and repeat filings.

Modern Courts recognizes that, the largest portion of the Judiciary budget is needed to meet salary and benefit payments for which the system is contractually obligated. It appears that the only way to realistically reduce costs would be to cut a significant number of non-judicial positions primarily through layoffs, which is unthinkable in view of the increased caseloads. The caseload in Family Court, for example, suggests that more resources, not fewer resources are needed. This is demonstrated by the fact, that legislation was introduced in 2009, to address the increasing caseloads in Family Court. After a thorough statewide analysis of Family Court dockets, a bill was introduced to increase the number of Family Court judges in counties across the state with the greatest need. Recognizing the fiscal constraints, it provided for twenty-one new judges (an earlier bill sought more judges), 7 for the five counties of New York City and the remaining 14 for Albany, Broome, Chautauqua, Chemung, Erie, Monroe, Nassau, Niagara, Oneida, Oswego, St. Lawrence, Schenectady, Suffolk and Westchester. Many legislators supported this bill recognizing the difficulty Family Court was having in meeting the ever increasing caseloads. But the legislation did not pass both houses. As a result the resources in Family Court remain diminished and frankly, as reported by our citizen court monitors and our Task Force on Family Court, dangerous for families in crisis. Implementing cuts to the courts now would make an already overwhelmed system that is working with too few resources than needed, worse.

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Diminished resources for the courts that result in reduced services will undermine public confidence in the courts. In addition, providing appropriate resources for our courts impacts on the safety and well-being of our economy. Reporting on the need for access to justice for the most vulnerable, the Chief Judge's Task Force on Civil Legal Services captured this important relationship: "This crisis of the unrepresented adversely impacts everyone in our State, from the strongest financial institution to the most vulnerable child. For those on the other side of the unrepresented — landlords, banks, and other businesses — litigation and other costs are higher, and the opportunity to avoid disputes through mediation and settlement often is lost. Because Judges and court personnel must spend tens of thousands of hours trying to assist the unrepresented in navigating our complex court system, our courts have become less efficient, and the quality of justice has suffered for every New Yorker, including in cases between represented parties. And, the State's economy loses literally hundreds of millions of dollars — conservatively estimated at more than \$400 million each year — because unrepresented New Yorkers lose their right to obtain federal funds, from disability payments to veterans benefits, and the State and local governments — and, ultimately, taxpayers — must step into the breach, by spending greater funds, including to combat homelessness, domestic violence, and poverty."

The lack of resources – including the lack of representation for the most vulnerable New Yorkers - impacts not only the courts but the business community and localities, as well. The same is true for diminishing the sound budget the Judiciary has generated. The courts cannot function properly if doors are closed or court clerks, petition

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clerks, court referees, magistrates and support personnel are no longer available to meet the needs of litigants, both those who are represented, which includes businesses large and small, and the unrepresented. The consequences of reduced judicial resources extends far beyond the courtroom.

The State is facing an unprecedented budget deficit, but the budget gap should not be closed by denying our Judiciary the full resources it needs to promote the rule of law and to serve the public by providing just and timely resolution of all matters before the courts. When our economic downturn draws us closer to the courts for assistance and resolution of disputes, draining the court of the means to serve the public and the rule of law weakens one of the three branches of government, at a time when its strength is most critical to every aspect of our State.

Thank you for your considered review.

Modern Courts is a nonpartisan, nonprofit, statewide court reform organization founded in 1955. Through research, advocacy, and the efforts of more than 600 in-court volunteers statewide, Modern Courts helps ensure fair and efficient justice for all New Yorkers. Led by concerned citizens, prominent lawyers, and business leaders, Modern Courts is the only organization in New York State devoted exclusively to improving the judicial system.

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TESTIMONY OF THE LEGAL ACTION CENTER

ON BEHALF OF THE ATI COALITION

Assembly Ways and Means and the
Senate Finance Committees
Joint Public Hearing on Public Protection
Executive Budget FY 2011-2012

February 9, 2011

Presented by

Tracie M. Gardner
Director of NYS Policy
Legal Action Center

Endorsed by

Center for Alternative Sentencing and Employment Services (CASES)
NYAPSA - New York Association of
Pretrial Sentencing (NYAPSA)
Center for Community Alternatives (CCA)
Osborne Association
Center for Employment Opportunities (CEO)
Greenhope Services for Women
The Correctional Association
TASC of the Capital District
The Fortune Society
Women's Prison Association
Legal Action Center
New York State Association of Alternative
Sentencing Programs (NYAASP)

Good Afternoon. My name is Tracie M. Gardner. I am the Director of New York State Policy for the Legal Action Center. I appreciate the opportunity to address you today.

The Legal Action Center is the only public interest law and policy organization in New York City and the United States whose sole mission is to fight discrimination against and protect the privacy of people in recovery from drug dependence or alcoholism, individuals living with HIV/AIDS, and people with criminal records. The Center works to combat the stigma and prejudice that keep these individuals out of the mainstream of society. The Legal Action Center helps people reclaim their lives, maintain their dignity, and participate fully in society as productive, responsible citizens.

We also run a national center to promote the employment of individuals with convictions, the national H.I.R.E. network. H.I.R.E.'s goal is to increase the number and quality of job opportunities available to people with criminal records by changing public policies, practices and public opinion. H.I.R.E has worked for the last four years to serve as a national clearinghouse for information and technical assistance for non-profit and government agencies working to improve employment prospects for the formerly incarcerated across the country.

In New York State, we work closely with the coalition of Alternative to Incarceration (ATI and Reentry) and related programs (pre-trial services, defender based advocacy, client specific planning, community service sentencing, drug treatment diversion programs, TASC, legal and employment assistance). These programs divert appropriate individuals who have been arrested or convicted to community supervision and sanctions and thereby protect the public and save the state enormous sums of money by reducing prison costs, preventing recidivism and stabilizing these individuals and their families.

We present these budget recommendations on behalf of the ATI Coalition:

New York State is nationally known for its highly effective network of alternative to incarceration (ATI), reentry programs and probation. These programs have been critical to the State's success in simultaneously reducing crime, reducing the prison population and saving taxpayers many millions of dollars, and are essential to successful implementation of Rockefeller drug law reform and ending the cycle of addiction and crime. The contrast between New York and other large states is dramatic. New York has the lowest crime rate of the largest states and by far the lowest incarceration rate: as of January 1, 2010, California's prison population was 169,413, Texas 171,249 people, and Florida 103,915, while New York's prison population was 58,648. It is no coincidence that New York has a strong network of ATI and reentry programs, and the other states do not.

We strongly support Governor Cuomo's proposals to reduce excess prison capacity. However, the state must maintain ATI, reentry programs and probation which have played a key role in reducing incarceration in order to ensure the prison population continues to decline. We are also pleased to see a continued commitment in the Executive budget to effective implementation of Rockefeller reforms but this, too, requires an effective ATI and reentry network.

We therefore urge the Legislature to take the following steps:

Entirely Restore the Proposed 8% Cut and as much as possible, the Legislative adds from prior years to ATI, Reentry and Probation to Continue Reducing Crime and Saving the State Money.

In the past two years ATI and reentry programs have experienced not just the nearly 20% in across-the-board cuts experienced by the criminal justice system as a whole, but also the loss of millions of dollars

added with Legislative support. During the past year the Executive, recognizing the crucial role played by the ATI and reentry system and the grave risk to their survival, came to the rescue by allocating, with support from the Legislature, more than \$1.5 million to ATI and reentry programs; we are most grateful for this support. However, this funding was not enough to restore all services.

Further cuts to ATI, Reentry programs and Probation are extremely unwise as New York State implements initiatives to continue reducing its prison population. The current proposed cut to ATI and Reentry programs should not be implemented at all given that more, not less, ATI and reentry services are needed to address the needs of individuals who would otherwise be incarcerated as well as to effectively implement Rockefeller drug law reforms and reduce the numbers of individuals being re-incarcerated due to technical parole violations. Additionally, we are troubled by the Executive proposal to collapse all local aid into one "lump" sum that provides no guarantees about the level of support ATI, Reentry programs and Probation will receive. While last year's merger included probation and correctional alternatives into the larger Division of Criminal Justice Services (DCJS), we strongly believe that community corrections should maintain a clear and distinct identity and function with the Division.

Support the Governor's Proposal to Close Prisons

Since 1999, as a result in significant part of the work of ATI, Reentry programs and Probation, the Department's under-custody population has fallen by over 15,000, or 21%, and is expected to continue declining this fiscal year. More than 8,000 prison beds are now empty. The Governor's Budget estimates that there are currently at least 3,500 excess beds in medium and minimum security facilities. We support the Governor's proposal of closing 10 prisons. We also urge the Legislature to maintain funding for ATI,

reentry programs and Probation so the prison population will continue to decline and not rise, and reinvest savings from additional prison reductions in funding these critically important programs.

State agencies should be limited to using DCJS or OCA data bases

For the past seven years, the legislature has passed a number of important pieces of legislation that lower barriers to reentry and encourage the employment of individuals with criminal records. Tough budget times make it even more urgent that we lower barriers that keep qualified people with criminal records from becoming tax-paying citizens. One major barrier is the dissemination of rap sheets and arrest histories that contain incomplete or sealed information. To prevent this from happening, we recommend the following:

1. DCJS and OCA should be prohibited from disclosing old, undisposed case information. A bill that addresses this problem was introduced (S5223/A8222) and was a DCJS program bill last year.
2. No governmental entity other than OCA and DCJS should be allowed to provide arrest or criminal history records to employers. Some counties are selling local data bases, and these data bases include information about arrests that should have been sealed. Some employers are requiring job applicants to sign an authorization for the employer to get these local data bases or obtain them at their cost, and bring it to the employer.

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Empire Justice Center

Making the law work for all New Yorkers

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Joint Legislative Public Hearings on the 2011-12 Executive Budget Proposal:

Public Protection

Albany

February 9, 2011

Presented by:

Anne Erickson

President and CEO, Empire Justice Center

Good afternoon and thank you for the opportunity to testify on 2011-12 Executive Budget. My name is Anne Erickson and I am President and CEO of the Empire Justice Center. The Empire Justice Center is a statewide, multi-issue, multi-strategy non-profit law firm focused on changing the “systems” within which poor and low-income families live. With a focus on poverty law, Empire Justice undertakes research and training, acts as an informational clearinghouse, and provides litigation assistance to local legal services programs and community based organizations. As an advocacy organization, we engage in legislative and administrative advocacy on behalf of those impacted by poverty and discrimination. As a non-profit law firm, we provide direct legal assistance to those in need and undertake impact litigation in order to protect and defend the rights of disenfranchised New Yorkers.

The Empire Justice Center is a statewide organization with offices in Rochester, Albany, White Plains and Central Islip. Our work – which cuts across some 30 areas of substantive law – mainly involves three inter-related services:

Training, technical assistance and information sharing. Our staff provides training and support to legal services and other community-based organizations to keep them apprised of any change in law, rule or regulation that will impact their clients. We are an accredited provider of Mandatory Continuing Legal Education and between 2008 and 2009 we issued over 1,200 CLE credits to over 11,400 attorneys through 281 trainings on legal issues ranging from special education law to the provisions surrounding emergency assistance. In an effort to use our resources as efficiently as possible, we have partnered with the Western New York Law Center in creating an on-line training center which now puts 49 training sessions at the fingertips of advocates across the state. In our role as an informational clearinghouse, we also run a very vibrant website, bringing information and legal resources right to the desktops of advocates. Our website had more than 200,000 visitors in 2008-09 and sees an average of just over 10,000 visitors a day.

Direct legal representation and impact litigation. We are one of the core legal services providers in the Rochester area, representing clients in the areas of consumer, foreclosure, disability and special education. In the Albany area we provide representation to immigrant victims of domestic violence and to some homeowners at risk of foreclosure. In White Plains we provide representation to immigrants in Westchester County. Our Long Island office provides a blend of individual representation, policy advocacy and training. Organizationally, between 2008 and 2009 we closed 1,898 cases impacting 7,800 low income individuals. This direct representation generated approximately \$7.5 million in back awards and settlements for our clients.

Legislative and administrative advocacy. In order to ensure that the needs of low income families are heard within the state’s policy-making processes, we engage in both legislative and administrative advocacy on a range of issues impacting our clients. We are a resource to the legislature on a broad range of substantive law matters and we work closely with the state’s administrative agencies to identify and help address issues that we see emerging from our work with legal services organizations across the state. We have helped lead the effort to secure funding for legal services since 1993 when the state Assembly first provided general funding for the delivery of legal services in New York.

The Need for Legal Services

In the best of times, across this country and here in New York we have barely met 15% to 20% of the legal needs of the poor. Add to this the increased need for legal assistance during times of recession and the need far outstrips all available services. In an effort to assess the current unmet need for civil legal services among low-income New Yorkers, Chief Judge Jonathan Lippmann appointed the Task Force to Expand Access to Civil Legal Services in New York last Spring. I am honored to be a member of the Task Force which immediately assisted in the preparation for four public hearings that were held this past Fall and which were presided over by the Chief Judge. The Chief Judge was joined by Chief Administrative Judge Ann Pfau, the Presiding Justice in each of the four Judicial Departments (each presiding at the hearing in their Department) and by the leadership of the New York State Bar Association.

As a result of these hearings the Task Force learned that there are now 2.3 million New York residents who come before our courts each year without a lawyer – and 70% of all civil matters that come before our courts involve family law, consumer credit, and housing-related cases. According to the Task Force’s findings:

- 99% of tenants in New York City and 98% of those outside New York City are unrepresented in eviction proceedings;
- 97% of parents are unrepresented in child support proceedings in New York City; 95% of parents in child support proceedings throughout the rest of the state face these proceedings without representation; and
- 99% of consumers facing credit problems and debt collection cases are unrepresented in New York City.¹

According to research undertaken by Lake Research, a national independent polling firm, 2.98 million low-income New Yorkers, living at or below 200% of the poverty level (\$36,620 annually for a family of three) confront at least one civil legal problem throughout the course of a year. Over 1.2 million low income New Yorkers confront three or more civil legal problems in a given year – for example the loss of a job might lead to a denied application for unemployment insurance and the need to appeal the denial while at the same time the loss of employer-sponsored health care might drive a family to apply for Family Health Plus where initial denials of coverage are not unusual.

Ultimately the study found that nearly half of all low-income New Yorkers experienced one or more civil legal problems in the preceding year.²

¹ The Task Force to Expand Access to Civil Legal Services, Report to the Chief Judge of the State of New York, available with all related materials at: <http://www.nycourts.gov/ip/access-civil-legal-services/> (“Task Force Report”).

² Task Force Report <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>

Cost Benefit of Legal Services: Every dollar invested generates five dollars in revenue and savings

Providing legal assistance to those in need generates federal funding in certain instances and helps avoid more costly interventions. For example, by preventing evictions and foreclosures, legal services helps avert homelessness and the expense of emergency shelter and helps stabilize homes, neighborhoods and the local tax base. According to a data analysis by the Interest on Lawyer Account (IOLA) Fund, a total of 9,845 families avoided evictions due to legal services intervention in 2009 driving state and local emergency shelter cost savings of \$97.5 million. From 2005 through 2009, legal services helped prevent the eviction of over 40,800 individuals and families, resulting in over \$355 million in emergency shelter costs avoided.

Legal services also assist low-income disabled New Yorkers so that they are better able to obtain federal disability benefits, moving them from state and local charges to more appropriate federal benefits. In 2009, the combined federal Social Security Income (SSI) and Social Security Disability (SSD) benefits won by clients represented by legal services total more than \$57 million in that one year. On-going benefits secured in previous years also continue to flow into New York's economy.

In total, IOLA calculates that legal services drove over \$320 million in federal funding into New York State in 2009 through a combination of SSI, SSD, earned income tax credits, additional Medicaid funding and veteran's benefits.

In addition to the federal funding generated and the cost avoided, the United States Department of Commerce estimates that every dollar brought into the New York economy generates a multiplier effect of 1.48 as low-income families and individuals use the money to purchase necessities like food, rent, and clothing, which support local businesses. Therefore, based on data from the IOLA fund we can estimate that at the current inadequate level of funding, legal services are responsible for generating \$475 million in economic activity in New York State.³

The View from the Front-lines

As part of the Task Force efforts, we asked legal services providers across the state to share with us the changes they were seeing at the front-lines. The input, while not surprising, added a better sense of the day-to-day needs legal services are confronting.

Changing Client Demographics

The most significant finding is the change in the demographics of those seeking legal assistance. Among those legal services providers that would be available to provide assistance to these populations, 91% report an increase in requests for assistance from formerly moderate income households, 90% report an increase in unemployed individuals seeking assistance, and 72% report an increase in homeowners seeking legal assistance.

³ All data and further explanation presented in the Task Force report.

Sixty-nine percent of providers reported an increase in homeless families seeking assistance while nearly the same amount (66%) reported an increase in homeless individuals seeking assistance.

Changing Legal Needs

The most significant reported change in the substantive law areas in which people are seeking assistance includes housing and consumer debt. Ninety percent (90%) of the legal services organizations participating in the survey reported an increase in homeowners seeking assistance in foreclosure matters, 85% are seeing an increase in tenants seeking assistance with evictions, and 81% reported an increase in consumers seeking legal assistance with credit and debt issues.

- **Housing and Homelessness.** Issues relating to housing and homeless were among the legal issues generating the greatest increase in demand. Sixty-one percent (61%) of those responding reported an increase in the number of people seeking legal assistance to address housing code violations; 85% reported an increase in those needing legal assistance to assist in eviction prevention; 91% in foreclosure assistance; 77% in homelessness; 71% in tenant rights; and 61% in utility shut-offs.
- **Consumer Issues.** Of those reporting an increase in demand, every area of consumer law saw a reported increase in demand: credit/debt issues 81%; bankruptcy 78%; non-mortgage loans 70%; medical debt 68%; rent to own issues 54%; and tax problems 64%.
- **Domestic Violence.** In the area of family law, 67% of those responding reported an increase in demand among those seeking legal assistance for issues related to domestic violence.
- **Employment and Economic Support.** Almost 70% (69%) of those responding reported an increase in clients seeking assistance in employment insurance claims. Over 50% (54%) reported an increase in demand for legal assistance in dealing with wrongful termination issues. In the area of income supports, 63% of those responding are seeing an increase in request for legal assistance on issues related to public assistance, 76% are seeing an increase in those dealing with emergency assistance and 60% are seeing an increase in those seeking legal assistance for issues dealing with Food Stamps/Supplemental Nutrition Assistance Program.
- **Immigrants and Immigration.** In the area of immigration law, 59% reported an increase in those seeking assistance in securing special visa protections (for crime victims and victims of human trafficking for example) and 53% reported an increase in immigrant victims of domestic violence seeking legal assistance to pursue protection under the Violence Against Women Act (VAWA).

Turn-away Data

In 2009, IOLA determined that, due to insufficient resources, legal service providers were turning away one out of every two eligible low-income New Yorkers who were seeking legal assistance. In the survey conducted for the Chief Judge's Task Force, providers were asked if they were experiencing any change in this level of turn-aways. Of those who had collected turn away data in 2009, 20.7% reported turning away significantly more people seeking assistance in 2010; 62.1% are turning away somewhat more; and 17.2 percent are turning away potential clients at the same rate they were turning them away in 2009.

The Impact of Inadequate and Unstable Funding

At a time of increased need, legal services organizations are facing diminishing resources. Of those responding to the survey, 57.7% have reduced staff, eliminated positions or left current positions unfilled, further reducing their capacity to serve clients in need. Local offices have been closed in the Bronx, Clinton and Wyoming counties. Four organizations have reduced hours of service.

Almost 40% of those responding have imposed a salary freeze and have either reduced employee health coverage or increased employee cost-sharing for health benefits.

Unprecedented Public Support for Expanding Access to Legal Assistance

Against this backdrop of increased need, and reduced ability to serve, it was heartwarming to hear the unprecedented support for civil legal services. At each hearing held by the Chief Judge, testimony was offered by a unique and diverse group of interested parties –local governments, the medical and health communities, business and labor leaders, bankers and real estate brokers, Judges and District Attorneys, religious leaders as well as from individuals and families impacted by our justice system on a daily basis.

Those testifying focused not just on the societal “good” that comes from ensuring access to justice, but on the very practical impact that lack of legal assistance can have not only on the courts, but on other systems as well. The following excerpts are but highlights of the testimony received from some of the 97 witnesses at these hearings:

Michael Smith, President & CEO of the **New York Bankers Association**, noted that “legal representation for those who could not otherwise afford to have counsel in civil litigation, not only assures a fair outcome, but also greatly decreases the amount of time needed to resolve disputes and enhance efficiencies in the court system. Such efficiencies would help courts to more speedily address their overburdened dockets, provide resolution to all litigants in a more timely manner, and ultimately, save time and resources for all.”⁴

Ken Raske, President of the **Greater New York Hospital Association**, testified about the stabilizing – and cost effective -- impact of providing comprehensive legal services to patients. To illustrate, he related this account from the General Counsel of a hospital serving a large Medicaid and uninsured population:

“We recently saw a case involving a cleaning woman with asthma who had to be readmitted to the hospital regularly for frequent asthma attacks. She had to breathe in fumes from cleaning materials and carry heavy baskets up stairs every day, and her health was plainly deteriorating. In addition to her medical needs, she needed legal assistance to pursue Social Security Insurance [SSI], disability payments, or at least reasonable accommodations in her workplace. Solving her

⁴ Statement of Michael P. Smith, President and CEO of the New York Bankers Association, September 28, 2010 available at: <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/1st-Dept-Testifying-Witnesses.pdf>

problems from a legal perspective not only helped her physically and emotionally, it decreased the financial burden placed on the hospital and New York State in terms of her readmissions and ongoing needs. There's a huge financial impact involved.”⁵

Mr. Raske went on to testify that “Ironically, helping patients get Medicaid or insurance coverage is the least of our legal concerns. Our patients need support for immigration, housing, and special education legal battles on an ongoing basis. If there’s no safe home or if they’re in the wrong educational setting, you can guarantee they’ll be back in the Emergency Room again soon. This is a huge need, and it’s biggest among the urban poor.”

The Task Force heard from Judges working on the front lines of our judicial system as they raised concerns both about the burden on the courts when confronting unrepresented litigants and the sense that they may not always be able to reach “justice.”

The Honorable Joseph G. Nesser, a **Monroe County Family Court Judge** testified that “My job is to protect children’s rights which are jeopardized if the parties represent themselves pro se because they can not afford an attorney. Only an attorney can adequately and competently prepare a litigant’s case, negotiate a reasonable settlement and if necessary try a case which can not be resolved through a settlement. Imagine an indigent litigant who usually is from a low socioeconomic class probably without a high school diploma and unable to articulate their position. Imagine further that they are in a custody trial and they are the better parent. The standard in Family Court (is) the best interests of the child. The child’s best interests are not going to be served by having a litigant represent themselves, since they can not properly prepare and try a case...

“In addition to adversely affecting the best interests of the child,” the judge noted, “unrepresented litigants cause additional time and work for the Court. The Court must take extra measures to explain procedure and what is happening without any guarantee that the litigants actually understand the Court. This extra time created by unrepresented litigants adds to the already unduly burdensome dockets the Court handles. As a result of the economic recession, there has been a significant increase in the number of custody, family offense and child support petitions.”⁶

Thomas S. Richards, **Corporation Counsel for the City of Rochester** at the time of the hearings, testified that “the consequences of inadequate access to civil legal service is not just borne by the individual in need of that service. It is a burden on the legal system, civil society and very often the entity or individual, no matter how well represented, on the other side of the issue. Individuals wandering around the legal and regulatory system without proper guidance make it more difficult for everyone. Relatively simple aspects of the process take more time and are more likely to be adjourned or repeated. The outcome is less likely to be understood and accepted by the unrepresented party, which makes a resolution more difficult, even when an accommodation is offered. All of this adds time,

⁵ Testimony of Kenneth Raske, President of the Greater New York Hospital Association, September 28, 2010 <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/1st-Dept-Testifying-Witnesses.pdf>

⁶ Testimony of the Honorable Joseph Nesser, September 29, 2010 <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/4th-Dept-Testifying-Witnesses.pdf>

frustration and expense that is borne by everyone involved and ultimately by society with a less effective legal system.”⁷

New York’s Approach to Ensuring Access to Justice

For far too long, New York’s commitment to ensuring access to justice has been a legislative commitment only. With the exception of one year, each year since 1993 the Governor has stripped all legal services funding out of the Executive Budget; every year the legislature restores these critical funds.⁸

Now, with the number of unrepresented New Yorkers continuing to burgeon, we are pleased to see added to the legislature’s ongoing commitment the leadership and support of the Chief Judge and the Office of Court Administration. Chief Judge Lippman has been tireless in his efforts to determine the level of need and to generate support for the critically needed investments.

As Governor Andrew Cuomo noted in his budget presentation, the state’s budget is not just about dollars and cents, it lays out our values as a state and a community. The value we cherish in our democracy and one of our most fundamental principles -- is justice. We welcome the support of the new administration as the budgetary process continues to unfold.

Chief Judge Lippman has woven into the Unified Court System’s budget a balanced approach to begin addressing the need for stable, on-going funding for legal services so that we can relieve some of the pressure on the courts and better ensure access to justice in this state. We urge you to support his recommendations.

In addition, given the unprecedented client needs we continue to confront as New York works its way out of the recession, we respectfully ask that general state funding be continued at last year’s level of \$5.768 million statewide. This is a 66% reduction from the 2009 level of \$13.2 million.

In sum, we urge the Legislature to:

- 1) Support the budget request of the Office of Court Administration**
- 2) Restore state access to justice funds at least to last year’s level of \$5.768 million**
- 3) Ensure that funding for civil legal services becomes a core part of the annual state budget going forward.**

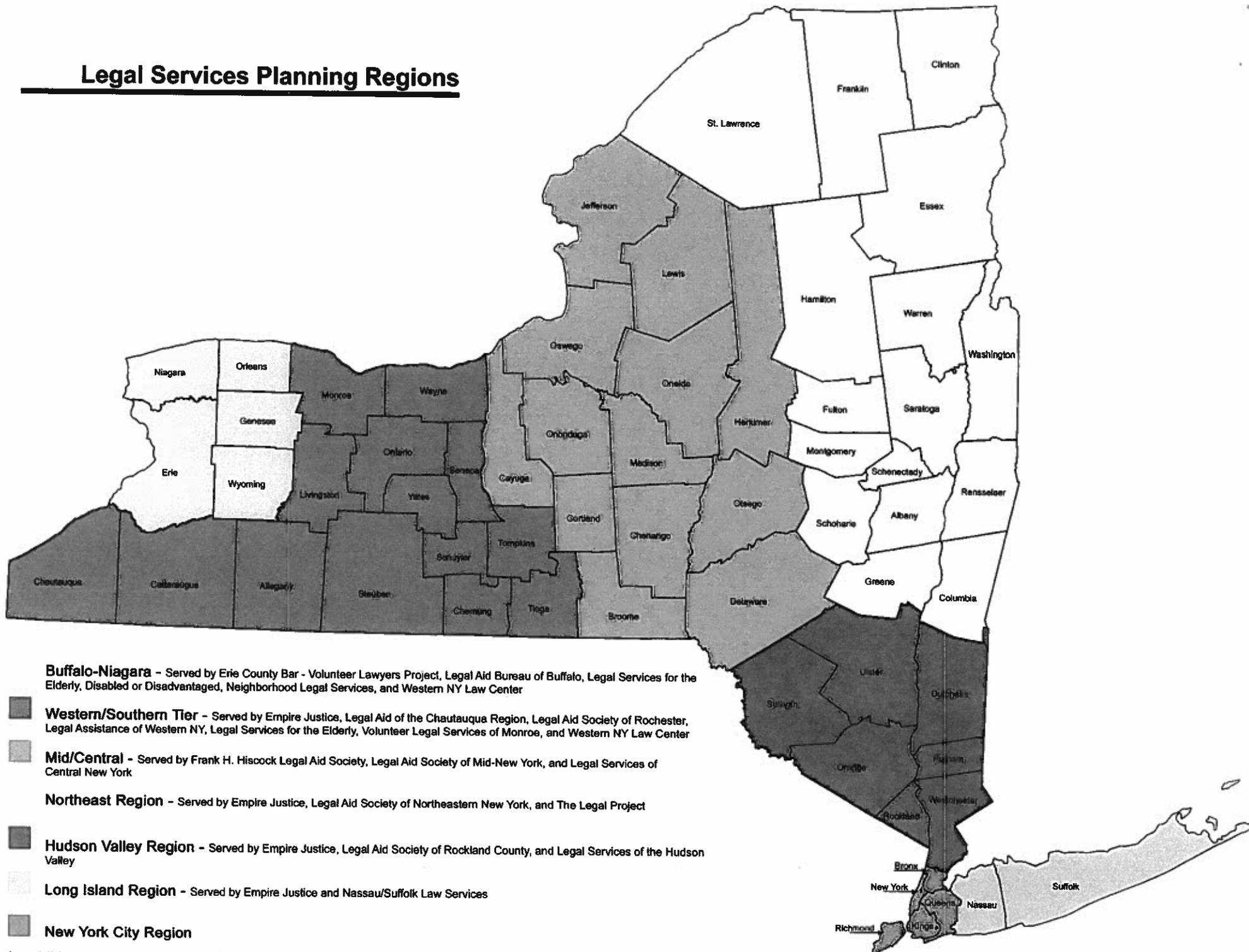
Thank you for your time and I look forward to working with you as the budget process continues to unfold.

For more information: Anne Erickson, 518.462.6831

⁷ Testimony of Thomas Richards, City of Rochester, September 29, 2010 <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/4th-Dept-Testifying-Witnesses.pdf>

⁸ Governor Spitzer included base funding for civil legal services in his first Executive Budget and then eliminated all general state funding from his Executive Budget the following year.

Legal Services Planning Regions



Buffalo-Niagara - Served by Erie County Bar - Volunteer Lawyers Project, Legal Aid Bureau of Buffalo, Legal Services for the Elderly, Disabled or Disadvantaged, Neighborhood Legal Services, and Western NY Law Center

Western/Southern Tier - Served by Empire Justice, Legal Aid of the Chautauque Region, Legal Aid Society of Rochester, Legal Assistance of Western NY, Legal Services for the Elderly, Volunteer Legal Services of Monroe, and Western NY Law Center

Mid/Central - Served by Frank H. Hiscock Legal Aid Society, Legal Aid Society of Mid-New York, and Legal Services of Central New York

Northeast Region - Served by Empire Justice, Legal Aid Society of Northeastern New York, and The Legal Project

Hudson Valley Region - Served by Empire Justice, Legal Aid Society of Rockland County, and Legal Services of the Hudson Valley

Long Island Region - Served by Empire Justice and Nassau/Suffolk Law Services

New York City Region

In addition, statewide and special services are provided by: Empire Justice Center, Farmworkers Legal Services, Rural Law Center, and Western New York Law Center



Testimony of The Legal Aid Society

on

THE 2011-2012 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 9, 2011

The Legal Aid Society welcomes this opportunity to testify at this 2011-2012 Executive Budget hearing concerning necessary State funding for the Society's essential legal services for constituents in all five boroughs of New York City. During the past year, with a staff of 1,500 – including some 900 lawyers – the Society provided legal assistance in more than 300,000 cases and legal matters for clients.

State funding from the Executive and the Judiciary has supported the Society's legal assistance in the areas of civil legal services, criminal defense, indigent parolee defense, and juvenile rights. Special annual allocations from the Legislature for civil and criminal services have also provided crucial funding for the Society's legal assistance for New Yorkers who have nowhere else to turn for legal help. This testimony describes the impact of the proposed State budget on civil legal services, criminal defense, indigent parolee defense, and juvenile rights.

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. The need for the legal help that the Society provides to these struggling families and individuals is increasing exponentially. However, due to lack of resources, we are forced to turn away eight out of every nine New Yorkers who, among other things, seek our help 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. It is therefore essential that the final adopted State budget make provision for low-income New Yorkers who urgently need civil legal assistance in the midst of this severe economic downturn as well as New Yorkers accused – often wrongfully – of criminal conduct.

The Legal Aid Society: The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform.

The Legal Aid Society has performed this role in City, State and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of 900 of the brightest legal minds. These 900 Legal Aid Society lawyers work with 600 social workers, investigators, paralegals and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 25 locations in New York City, the Society provides comprehensive legal services in all five boroughs of the City for clients who cannot afford to pay for private counsel.

The Society operates three major legal practices – Civil, Criminal and Juvenile Rights – and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. With its annual caseload of more than 300,000 legal matters, the Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession.

The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits some 2 million low-income families and individuals in New York City and the landmark rulings in many of these cases have a Statewide and national impact.

Funding For Criminal Defense Services: Since 1965, the Legal Aid Society has served as the primary defender for persons accused of crimes in New York City who cannot afford counsel. With criminal defense trial offices in the Bronx, Brooklyn, Manhattan and Queens, the Legal Aid Society represents indigent defendants accused of crimes ranging in seriousness from alleged disorderly conduct to first degree murder. At the City's request as a result of a recent competitive bidding process in which the Society's status as the city-wide primary defender was reaffirmed, the Legal Aid Society will also be providing criminal defense services in Staten Island shortly.

The Legal Aid Society's criminal defense program is at the forefront of efforts to address new issues in the criminal justice system, ranging from assisting in the design and staffing of specialized court parts that deal with drug abuse, domestic violence, mental illness and juvenile offenders to consulting regularly with State and City officials on policy issues of importance to our clients and securing system-wide reform through our Special Litigation Unit. The Society's Special Litigation Unit, for example, litigated the landmark case that established the 24-hour standard for arrest-to-arraignment in New York State.

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 will be phased in over the next four years. This action by the Legislature is so significant that the United States Attorney General has 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 2011-2012 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.

To provide constitutionally mandated criminal defense services, the Society is 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), and to \$6.6M in 2010 (out of an overall allocation of \$8.8M). During this time, however, the Society's criminal defense caseload increased from 210,000 new cases annually to

in excess of 225,000 new cases annually. As a result, New Yorkers who are accused of crimes, often improperly, have been represented by Legal Aid attorneys with annual weighted caseloads of 682 cases. This is far in excess of the 400-case standard set by the Appellate Division, First Department that has now been adopted by the Chief Administrative Judge as the annual caseload standard that will be phased in by April 1, 2014 in New York City.

Against this background, it is therefore essential that the Society's direct allocation of State Aid to Defense funding continue, 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 the 2011-2012 Executive Budget, Aid to Defense funding – as well as Aid to Prosecution funding – is included in two lump sum amounts (\$106M and \$7.6M) designated for a variety of programs in the Division of Criminal Justice Services' budget in addition to defense and prosecution services. These two lump sum amounts are subject to the overall spending reduction of approximately 10 percent for Executive agencies. As the budget process proceeds, we urge the Legislature to continue to make specific provision for the Society's Aid to Defense allocation from the funding in these two lump sums and to avert any disproportionate cuts in the Society's allocation.

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 deteriorating financial condition, for the 2010-2011 fiscal year, the Legislature was only able to provide the Society with \$361,000 in Senate funding for criminal defense and \$270,000 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 \$825,000 in annual Byrne funding to the Society to operate a special program for persons accused of crimes who are mentally ill and chemically addicted. This program has also had significant success in preventing re-arrests for clients the Society represents. For 2011-2012, 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.

In the consideration of these continuing funding needs to provide constitutionally

mandated representation, we also want to note that, as we have described in prior testimony, the Society has already implemented the types of internal cost saving measures that the State itself is proposing – our defined benefit pension plan has been frozen and replaced with a defined contribution plan, employees contribute to health care, and there have been no Cost of Living Adjustment salary increases since 2008.

Funding For Indigent Parolee Representation: The Legal Aid Society's Parole Revocation Defense Unit, 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 persons accused of parole violations prosecuted in New York City. Annually, the Society'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. The Legal Aid Society has 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, social workers are specifically trained to identify special needs parolees and refer them for necessary services and programs.

Historically, the State had provided \$1.3 million in Statewide funding to support these critical parole defense services. However, in recent years, this State funding for indigent parolee defense was eliminated from the Executive Budget and had to be restored by the Assembly. 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 2010-2011, but we urge the Legislature to consider maintaining this critical constituent program in 2011-2012.

Since our indigent parolee defense program is designed to divert low-risk parole violators from prison to community-based treatment programs, the loss of these funds will lead to a larger number of parolees returning to prison. 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 report found – 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.

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 addition to contacting us directly, clients are referred to the Society by the constituent services staffs of elected officials as well as the courts, community and social services organizations, government agencies, or by word of mouth. Other legal services groups also refer their clients to us when they cannot provide all necessary services, have limited or no case intake capacity, or do not serve a particular community.

Over the past year, we worked on some 39,000 individual civil matters benefiting more than 90,000 of 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; consumer credit and debt matters; HIV and AIDS; housing development and community development opportunities to help clients move out of poverty; and re-entry to the community from correctional facilities.

The continuing extraordinary economic conditions are having a particularly adverse impact on low-income New Yorkers and the need for civil legal help for these struggling families and individuals is increasing exponentially. Without ongoing State support for the provision of civil legal assistance, the Society and other civil legal services programs across the State and in New York City will have to turn away increasing numbers of families and individuals who desperately need legal aid to obtain and maintain the basic necessities of life – housing, health care, food, personal safety, and subsistence income or self-sufficiency.

The current deep economic downturn has clearly increased the need for civil legal services. 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 \$7 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 the Society 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.¹

However, because of a lack of resources that the IOLA reductions have exacerbated, the Chief Judge’s task force found that civil legal services programs are at best able to meet only 20 percent of the need for civil legal assistance for low-income New Yorkers. For example, although the Society worked on some 39,000 civil legal matters over the past year in literally every zip code in the City, we are able to help only one out of every nine New Yorkers who seek our help with civil legal problems because of our lack of resources. The situation has become particularly dire during the continuing economic downturn. Since the economic downturn began in 2008, we have seen unprecedented increases in requests for help in core areas of need:

- a 29% increase in requests for help with unemployment benefits and employment problems;
- a 40% increase in requests for health law assistance and help obtaining Medicaid, Medicare, and other health care coverage;
- a 12% increase in requests for help to obtain food stamps, federal disability benefits, and public assistance;
- a 16% increase in requests for domestic violence and family law help;
- a 15% increase in requests for help from current or former low wage workers with earned income tax credit or other low income taxpayer problems;
- a 21% increase in requests for eviction prevention representation; and
- a stunning 800% increase in requests for foreclosure defense assistance.

In these severe economic times, civil legal assistance is needed now more than ever. In fact, an unprecedented series of hearings in all four Judicial Departments of the State that the Chief Judge conducted last fall revealed widespread support for civil legal assistance.

At the Chief Judge’s hearings, business leaders, including representatives of both private and public property owners and the banking industry, presented clear testimony about the adverse impact on represented parties that results when unrepresented parties require repeated

¹ The Chief Judge’s Task Force Report is available at <http://www.nycourts.gov/ip/access-civil-legal-services/>.

adjournments and cannot present or resolve their cases that otherwise could be resolved by counsel without the need for protracted litigation.²

Similarly, front-line Judges in every Judicial Department in the State described how each day extra court time is expended unnecessarily when parties appear without representation. The Judges further testified that the lack of counsel undermines the Judiciary's core function of serving as a neutral arbiter of disputes when Judges struggle to help vulnerable unrepresented litigants.

Both representatives of the business community and Judges testified that the provision of legal assistance at an early stage would in many instances avert the need to commence litigation in the first place. Indeed, the lack of civil legal aid is having an adverse impact on the bottom line for represented private and governmental parties as well as on judicial resources.

Local government officials also testified about the cost-savings to State and local governments resulting from the provision of civil legal assistance – particularly legal assistance to prevent wrongful evictions and foreclosures that lead to homelessness and the expense of providing emergency shelter. They also testified about the key role that civil legal services plays in stabilizing neighborhoods.³

Testimony from leading District Attorneys⁴ cautioned that the lack of available civil legal assistance undermines comprehensive assistance for crime victims, particularly survivors of domestic violence. They further testified that the lack of access to civil legal aid diminishes innovative programs to divert New Yorkers from the criminal justice system who have underlying civil legal needs – such as problems relating to housing and homelessness, lack of mental health services, and improper denials of employment and education assistance.

Leading educators testified that civil legal assistance is very important to the education of children and young adults because without the provision of legal services to resolve a family's legal problems their education is often disrupted, frequently with a permanent impact.⁵

Likewise, physicians and medical providers described how in the absence of civil legal aid chronic health problems (such as asthma) can worsen until the cost of providing ongoing medical care to address the situation far exceeds the cost of providing legal assistance to resolve

2 The business leaders who provided testimony included: Kathryn S. Wylde (President and CEO of the Partnership for New York City); Michael S. Helfer (General Counsel of Citigroup); Michael P. Smith (President and CEO of the New York State Bankers Association); Joseph Strasburg (President of the Rent Stabilization Association); Kenneth E. Raske (President and CEO of the Greater New York Hospital Association); and Steven T. Longo (Executive Director of the Albany Housing Authority).

3 Local government representatives who testified included: New York City Council Speaker Christine Quinn, Albany County Executive Michael G. Breslin, Rochester Corporation Counsel Thomas S. Richards (also the former CEO of Rochester Gas and Electric), and Suffolk County Attorney Christine Malafi.

4 Charles Hynes of Kings County and Kathleen B. Hogan of Warren County.

5 The leading educators included: the Superintendent of the Rochester City School District Jean Claude Brizard and the President of Monroe Community College Dr. Anne M. Kress.

the matter (such as negotiating an agreement to remedy a housing condition that is an asthma trigger for a child).⁶

Providers of domestic violence prevention services and other community leaders also testified about the dire consequences for vulnerable New Yorkers when civil legal assistance is lacking – and the resulting destabilizing impact on entire neighborhoods in combination with the destabilizing impact on individual families.

In addition, leaders of prominent labor unions in New York described how the need for civil legal assistance has been growing among their own rank and file members across the State because, despite having a job, many members still have a very low-income. They identified foreclosures and consumer debt as the most pressing areas of need among their members who earn less than 200 percent of the federal poverty level.⁷

Against this extensive evidence developed at the Chief Judge's hearings documenting both a dire human need and a positive State and local economic impact resulting from investing in civil legal assistance, 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).

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 2010-2011 fiscal year, only the following legislative support could be provided: \$131,000 in Senate civil legal services funding, \$321,000 in Assembly civil legal services funding, and \$45,000 and \$67,000 grants as part of the Assembly's Legal Services Assistance Fund allocation for legal aid for senior citizens and supplemental domestic violence legal assistance. Restoration of these funds for the Society's

⁶ For example, Helen Morik of the New York-Presbyterian Hospital – the largest provider of health care and the largest employer in New York City – stated that the stress attendant with legal problems associated with the essentials of life literally interferes with the ability of patients to get well.

⁷ The labor leaders who provided testimony were: Denis M. Hughes (President, New York State AFL-CIO); Denise Berkley (Statewide Secretary, Civil Service Employees Association); Julie Kushner (Director of the United Auto Workers Region 9A); George Gresham (President, 1199 SEIU); and Patricia Bentley (Board of Directors, New York State United Teachers).

civil legal assistance in all five boroughs of the City is crucial again this year.

Support For The Representation of Children In Family Court: The Society's Juvenile Rights Practice is funded through the Judiciary's budget. The Juvenile Rights Practice is the primary counsel 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. Annually, we represent some 34,000 children in these matters.

The continuing impact of the tragic deaths of children who were known to the City's child welfare system highlights 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 representation of children in these cases. The Family Court workload problem in New York City has been further exacerbated by the State's permanency law which requires semi-annual hearings on cases instead of annual hearings, but does not provide funding for these additional hearings.

To begin to address this crisis, during the 2007 session the Legislature passed and the Governor signed a new law authorizing the Chief Administrative Judge to set client caseload standards for lawyers representing children in these Family Court cases, including the maximum number of children who can be represented at any given time. As a result of this landmark legislation, the Chief Administrative Judge implemented a client case cap rule to reduce the number of children our lawyers represent in Family Court to 150 at any given time from an average of approximately 250 when the legislation was introduced. This new law has had an extremely positive impact on the children we represent.

As the budget process proceeds, we also appreciate the Legislature's continued focus on the need to increase the number of Family Court Judges to help alleviate Family Court workload problems that adversely affect children by delaying consideration of their 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 we have highlighted in this testimony can be addressed.

Submitted by,

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Testimony of UAW Local 2325

The Association of Legal Aid Attorneys

on

THE 2011-2012 EXECUTIVE BUDGET

TOPIC: PUBLIC PROTECTION

Presented before:

**The Senate Finance Committee
and
The Assembly Committee on Ways and Means**

Presented by:

**Deborah Wright
President**

February 9, 2011

Good afternoon. My name is Deborah Wright, and I am President 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 41 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 823 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. Unlike other states, and most notably New York's closest neighbors, New York has been almost dead last in the amount spent per-poor-person for legal services.

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 2011-2012 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 the criminal defense area, 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 many years now, 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 annual criminal defense attorney caseloads 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. In Fiscal Year 2005-2006, the Society's annual criminal defense caseload increased sharply from approximately 210,000 new cases to more than 225,000 new cases in Fiscal Year 2007-2008. During Fiscal Year 2009 – 2010, the Society's caseload was again in excess of 225,000 cases, and that trend of increased cases is continuing this year thus far.

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, and approximately 30 percent of those cases are felonies. This means that New Yorkers who are accused of crimes in New York City, often wrongfully, are represented by Legal Aid attorneys who annual weighted caseloads of 682 cases, which is far in excess of the First Department's annual standard.

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 will be phased in over the next four years. The Chief Administrative Judge is proceeding with the process of implementing the required standards and the Judiciary's 2011 – 2012 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.

To provide constitutionally mandated criminal defense services, Legal Aid is 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), and to \$6.6M in 2010 (out of an overall allocation of \$8.8M). During this time, however, the Society's criminal defense caseload increased from 210,000 new cases annually to in excess of 225,000 new cases annually.

Against this background, it is essential that the Society's direct allocation of State Aid to Defense funding continue, 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 the 2011-2012 Executive Budget, Aid to Defense funding – as well as Aid to Prosecution funding – is included in two lump sum amounts (\$106M and \$7.6M) designated for a variety of programs in the Division of Criminal Justice Services' budget in addition to defense and prosecution services. These two lump sum amounts are subject to the overall spending reduction of approximately 10 percent for Executive agencies. As the budget process proceeds, we urge the Legislature to continue to make specific provision for Legal Aid's Aid to Defense allocation from the funding in these two lump sums and to avert any disproportionate cuts in Legal Aid's allocation.

The Governor's proposed 2011 – 2012 Executive Budget also eliminates essential legislative funding which Legal Aid needs to continue to provide constitutionally mandated representation to clients. In recent years, Legal Aid has received the following legislative funds to represent clients: \$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 deteriorating financial condition, for the 2010-2011 fiscal year, the Legislature was only able to provide Legal Aid with \$361,000 in Senate funding for criminal defense and \$270,000 in Assembly criminal defense funding. Restoration of these funds for Legal Aid's criminal defense services in all five boroughs of the City is crucial again this year.

Two final budget concerns involve our members who represent clients who are mentally ill and chemically addicted and those on parole from State prisons. The Division of Criminal Justice Services has allocated \$825,000 in annual Byrne funding to Legal Aid to operate a special program for persons accused of crimes who are mentally ill and chemically addicted. This program has also had significant success in preventing re-arrests for clients Legal Aid represents. For 2011-2012, it is essential that the Division of Criminal Justice Services continue to allocate this Byrne funding to enable Legal Aid 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.

Historically, the State had provided \$1.3 million in Statewide funding to support these critical parole defense services. However, in recent years, this State funding for indigent parolee defense was eliminated from the Executive Budget and restored by the Assembly. 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 2010-2011 but we urge you to consider maintaining this critical constituent program in 2011-2012.

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, prisoner's rights, 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.

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 \$7 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. a

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).

a The Chief Judge’s Task Force Report is available at <http://www.nycourts.gov/ip/access-civil-legal-services/>.

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 2010-2011 fiscal year, only the following legislative support could be provided: \$131,000 in Senate civil legal services funding, \$321,000 in Assembly civil legal services funding, and \$45,000 and \$67,000 grants as part of the Assembly's Legal Services Assistance Fund allocation for legal aid for senior citizens and supplemental domestic violence legal assistance. 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 in the \$7.6 million lump sum. 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 were afforded the opportunity to apply last year and receive much needed financial assistance in repaying their loans. 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 from the funding in this lump sum 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.

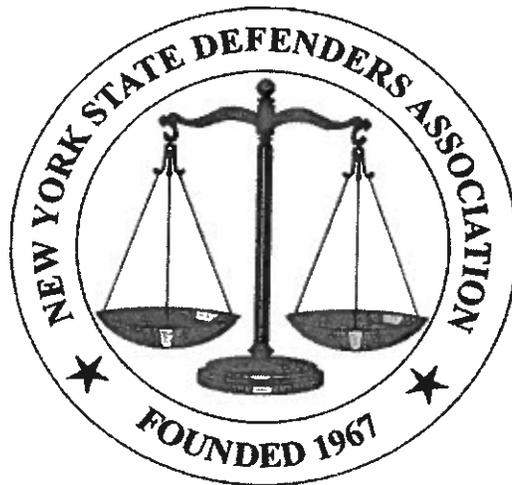
In these severe economic times, our clients need our legal assistance more than ever. We are mindful of the extreme financial difficulties that the State is facing, but it is time that funding for legal services becomes one of its top priorities. New York State was once an historic leader in protecting 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.

LEGISLATIVE PUBLIC HEARINGS
ON THE 2011-2012 EXECUTIVE BUDGET PROPOSAL

Testimony before
The New York State Assembly Ways and Means Committee
and
The New York State Senate Finance Committee

Jonathan E. Gradess
Executive Director
New York State Defenders Association, Inc.



February 9, 2011
Albany, NY

Counties are already fiscally strained and subject to multiple cuts in the Governor's budget. Eliminating any Backup Center services will only exacerbate that problem. The New York State Defenders Association (NYSDA) provides mandate relief to counties by centralizing services, saving them money. Our budget request for FY 2011-2012 is \$1.8 million.

Who are We and What is Our Relationship to New York State?

Urged by the New York State Association of Counties (NYSAC), this Legislature funded NYSDA in 1981 to establish the nation's only not-for-profit public defense backup center.¹ That center provides mandate relief by directly serving the needs of this state's nearly 6000 public defense attorneys who represent people unable to afford counsel.

Some of our basic functions were previously handled by the New York State Division of Criminal Justice Services (DCJS). The State Legislature in 1981 delegated these functions to us because an internal audit of DCJS had found that agency unable, without conflict of interest, to perform them.

We deliver part of the services New York is obliged to provide under the Sixth Amendment. Our appropriation requires close scrutiny by the Senate and Assembly because cuts to our budget impose expenses directly on counties.

What do We do in Partnership with the State and Counties?

The daily work of our 18-member staff involves the following:

- We handle some 2000 criminal/family law case requests for assistance per year;
- We handle approximately 1000 inquiries made by lawyers working at the intersection of criminal and immigration law;
- We have implemented and support the case management information system for 40 public defense offices. Our Public Defense Case Management System is in 30 counties, supporting the information needs of more than 300 licensed users;
- We publish training and technical manuals and a bi-monthly training periodical;

¹ We were first recommended to Governor Hugh Carey in 1980 by then-Lieutenant Governor Mario Cuomo. In his memorandum to Governor Carey, he stated:

I am convinced that the Association's public defense backup center serves a unique purpose and improves the quality of criminal defense representation for the poor in this state. Counties are required to furnish counsel for indigent defendants. Funding this resource center and clearinghouse for defenders will pass along savings to the counties.

NYSAC strongly supports both this program and this request for funding.

With Governor Carey's agreement, we were first funded by a legislative add recommended by each of the Codes Committees and concurred in by Warren Anderson, the then-Majority Leader of the Senate, and Stanley Fink, Speaker of the Assembly.

- Through our regularly updated website, we provide online access to expert witnesses, case summaries, an investigator resource bank, and an information clearinghouse;
- As a NYS accredited continuing legal education provider, we train thousands of defenders at regional and statewide training programs and run the only statewide entry-level Basic Trial Skills Program;
- In cooperation with the Appellate Divisions in the Third and Fourth Departments, we conduct specialized criminal and family law appellate training;
- We acquire for and distribute from an electronic library with tens of thousands of holdings containing litigation information, pleadings and briefs, and forensic and mitigation materials;
- We assist county governments directly in response to requests for technical assistance to improve their local public defense systems;
- We assist State agencies needing information about public defense services and the system providing such representation; and
- Our office, *inter alia*, has a duty to review, assess, and analyze the public defense system, and to make recommendations to the Governor, the Legislature, the Judiciary, and other appropriate instrumentalities.

Why the Public Defense Backup Center?

The bipartisan legislative decision to fund us in 1981 recognized that funding NYSDA would pass on dramatic cost savings to localities. By consolidating services and expertise in one Albany office, you realized that we could create efficiencies and economies of scale that could not be realized in the sprawling county-based patchwork of local defender systems.

This truth remains the essence of why we should be funded this year at \$1.8 million and not the proposed \$1,086,052 *apparently* proposed by the Governor.² I need today to explain why thinking of that needed amount as an “increase” is wrong.

NYSDA is asking you to provide only \$20,000 more than it cost last year to run the Backup Center. (See Appendix 1: Summary of Funding for Backup Center Expenses 2006-2010.) Because the baseline services of the Backup Center cost \$1,781,800 last year, the Governor’s proposed budget amount has the same impact on our program as a 40 percent cut. A reduction of \$700,000 cannot be sustained by us or the county public defense systems we serve.

Years without State oversight have brought NYSDA to this place. The cut proposed by the Executive would provide NYSDA only about \$165,000 more than the Backup Center’s operating budget in 1994. (See Appendix 2: New York State Defenders Association, Inc. State & Federal Funding History.)

² I say “apparently” because this year’s budget does not have a line item for us or a number of other criminal justice agencies traditionally line-itemed in the DCJS budget. It appears that we may be in a lump sum appropriation of \$106 million in the Aid to Localities Budget (S.2803/A.4003), at page 25, but so far this has not been confirmed. That lump appears to utilize a cut of 8.35 percent from last year’s programs, and we are using that figure here.

This is not our first cut; we have often “shared the pain.” During 12 years of being left out of the Executive Budget during the Pataki Administration, the Backup Center received an 11 percent cut in 1995, a 19 percent cut in 2001, and a 9 percent cut in 2003. The Backup Center received 4 percent and 5 percent cuts in 2007 and 2008, and a 21.8 percent cut last year. This intense budget slashing cannot be sustained.

We are not being greedy, not whining, and not blind to the fiscal deficit that besets New York. **We are simply reporting to you from the end of our fiscal rope.**

The serious problem we face, and the problem upon which we ask you to focus, is that the New York State Division of the Budget (DOB) deems us to have spent merely \$1,185,000 last year when in fact it cost \$1,781,800 to operate the Backup Center.³ We need \$1.8 million to run the Backup Center in 2011-2012.

We are a prudent service provider economically performing a state function that simply cannot get a meaningful executive hearing on what is required to sustain our base program of service delivery.⁴

We have been running for three decades, but we are pulling into this hearing running on fumes. It is simply wrong to expect us to function at a lower appropriation level than New York State funded us at 15 years ago (\$1,147,000), an amount substantially less than we received in 1998 (\$1,400,000). (See Appendix 3: NYSDA Appropriations 1998-2011.)

For 30 years, as you requested we do, we have built an infrastructure for supporting local public defense systems. Counties have come to rely on that infrastructure; you cannot so radically underfund this function without harming defenders and county administrators.

We need \$1.8 million just to sustain our baseline work of providing backup center services to counties and their defender systems. That is our request.

³ Since 1991 our contractual relationship with the State (negotiated for 11 months with the Comptroller, the Attorney General, the Division of the Budget, and the New York State Division of Criminal Justice Services) has recognized the State’s willingness to reimburse us through early payments and interest accumulation for subsidies made by us to help New York State run the Backup Center. The amount spent last year arose from these subsidies and the prudent use of now terminated private foundation support. Subsidies are not the proper way to fund a constitutionally required obligation however; planned incremental increases are.

⁴ Each year by contract we are required to advise the Executive of the amount we believe is appropriate to provide backup services. This year the amount we reported was \$2.8 million. But that is not the \$1.8 million base level amount we are asking for. The New York Prosecutors Training Institute, Inc. (NYPTI) received \$2.5 million last year. We received an appropriation last year that was less than half that amount. Basic fairness demands that you apply principles of parity as you examine this budget and the impact it will have on local criminal justice systems.

Counties Will Face Far Greater Costs This Year If We Are Cut

The proposed cut to our operational budget will be felt in every county of this state. I will briefly detail why this is so using but four examples of our work.

Case Management

Our Public Defense Case Management System – in 40 sites in 30 counties – is the most widely used system in New York State. It has proven to be a powerful tool to help defender offices efficiently manage cases, provide required state and other reports, and serve clients more effectively. The proposed budget puts all existing contracts, as well as pending contracts, at risk. **This service alone would cost counties more than our \$1.8 million request.**⁵

Direct Defender Services

Every day, defenders in the field seek our help on complicated sentencing calculations and litigation strategies, and on how to secure qualified forensic experts. By linking defense lawyers facing similar issues, and providing information from a litigation bank with access to state and national pleadings, briefs, and memoranda, as well as thousands of in-house work products, the Backup Center saves public defense lawyers time and energy. When a lawyer calls the Backup Center for assistance, he or she is also saving localities money. For example, if a State-funded Backup Center attorney writes a memorandum for a county defender, he or she is immediately passing on savings to the locality. We don't charge the \$75 an hour to the county where that lawyer practices. If the memo takes a day and a half to write, we don't charge the county \$900, and the local lawyer doesn't need to either. When we then later use that memo in 35 other counties, we pass on savings of more than \$30,000 to localities.

Handling 2000 of these cases per year and 1000 more immigration matters passes on hundreds of thousands of dollars annually in local savings to localities, all of which are threatened by the cuts to the Backup Center.

Training

Most Bar Associations train lawyers in order to make money for the organization. The Backup Center, subsidized by the State, runs free and low-cost training in order to raise the quality of defense and family court practice so that clients have qualified lawyers. In addition to customized (non CLE) training, in 2010 we trained 1738 lawyers and presented 25 CLE trainers, including 7 immigration trainers dealing with the recent Supreme Court case of *Padilla v Kentucky*. In addition, NYSDA co-sponsored 5 trainers with the Federal Public Defender, the Appellate Division, Third and Fourth Departments, and others. Trainers were held across the state in New York City and the Mid-Hudson (Poughkeepsie), Capital District (Albany, Saratoga Springs), Southern Tier (Binghamton), and Western New York

⁵ It may be of interest for members of the Joint Fiscal Committees to see which of their counties use the PDCMS and are thus at risk of losing it: Albany (*Breslin, McEneny*); Broome (*Crouch*); Cattaraugus (*Young*); Chemung; Chenango (*Crouch, Seward*); Columbia (*Molinaro, Saland*); Dutchess (*Cabill, Molinaro, Saland*); Erie (*Hayes, Hoyt, Schimminger*); Essex (*Little*); Franklin (*Little*); Genesee (*Burling*); Jefferson; Madison; Monroe (*Alesi, Gantt, Morelle, Nozzolio, Robach*); Nassau (*Fuschillo, Hannon, Hooper, Marcellino*); New York (*Duane, Farrell, Glick, Krueger, Perkins, Wright*); Niagara (*Hayes, Schimminger*); Oneida (*Destito*); Ontario (*Nozzolio*); Otsego (*Seward*); Putnam; Rensselaer; Rockland; Saratoga (*Farley*); Schenectady (*Farley*); Schuyler; Seneca (*Nozzolio*); Ulster (*Bonacic, Cabill, Crouch, Larkin*); Wayne (*Nozzolio*); Westchester (*Oppenheimer, Pretlow, Spano, Stewart-Cousins*).

(Rochester) regions. Immigration training took place in Queens, Albany, Oneida, Rockland, Erie, Cattaraugus, Livingston, and Tompkins counties. And our Basic Trial Skills Program for entry-level public defense attorneys trained lawyers from the following counties: Monroe, St. Lawrence, Suffolk, New York, Albany, Ontario, Broome, Oneida, Kings, Genesee, Westchester, Erie, Wyoming, Cayuga, Madison, Essex, Onondaga, Schenectady, and Richmond. NYSDA quickly apprised defenders of recent legislative changes regarding the DWI law, Leandra's Law, and Ignition Interlock Devices with trainings in New York City, Albany, Binghamton, and Rochester.⁶ **All these programs would have cost upwards of 5 times as much per session if counties even had the training budgets to pay for them.**

Criminal Defense Immigration Project

Our Criminal Defense Immigration Project (CDIP) provides expert legal advice, publications, and training on current developments and issues involving the intersection between criminal and immigration law. We also staff a legal assistance hotline to advise public defense attorneys. Most importantly, the Project trains and advises defense lawyers across New York State about the requirements of the landmark U.S. Supreme Court decision, *Padilla v Kentucky*, 130 S Ct 1473 (2010) [Effective criminal defense representation must include affirmative, competent advice on the immigration consequences of a criminal conviction for noncitizens]. It is impossible for every county along our northern border, every county with a substantial immigrant population of farmworkers or relocated refugees, every county through which immigrants travel on the Northway, the Thruway, Amtrak trains, and Greyhound buses to implement *Padilla's* mandate without help. **Without the CDIP – which advises lawyers before they advise their clients – counties will be routinely called upon to pay the extra costs for defense counsel and district attorneys in post conviction proceedings challenging the incorrect advice given in violation of the *Padilla* rule.**

Without the Backup Center's daily legal advice and research, its website, its newsletter, its training and technical assistance, and its analysis of new laws, public defense lawyers would be at a distinct disadvantage. Assigned counsel in small or solo offices would have to charge counties for the time researching legal issues piecemeal as they arise in client cases. Overworked public defenders would be at risk of representing a client without knowing the latest case law or legislative change affecting the case.

New York State's public defense system continues to be in crisis. It is the subject of a class action lawsuit. A 2006 blue ribbon commission of the Chief Judge convincingly identified its many failings, but noted one positive aspect of the system was the efficient services provided by our office. The commission study reported that the Public Defense Backup Center "fosters well-trained defense attorneys that reduce delay, unnecessary incarceration and claims of ineffective representation that can result in costly reversals and retrials" and provides "excellent support." *Status of Indigent Defense in New York: A Study for Chief Judge Kaye's Commission on the Future of Indigent Defense Services, Final Report*, The Spangenberg Group, June 16, 2006, at p. 24.

⁶ Likewise, in 2009, with the passage of the changes in the Rockefeller Drug Laws, NYSDA responded with a statewide program to train public defenders, legal aid lawyers, and assigned counsel, conducting 10 trainings in all.

The Public Defense Backup Center is exactly the type of consolidation of governmental services now being desperately sought to achieve necessary efficiencies and reduce unfunded mandates. It should be funded at \$1.8 million. (See also, Appendix 4: NYSDA's Public Defense Backup Center – We Are Still Essential.)

*** **

I want to bring to your attention four other unfunded mandates your respective houses must address.

The Sweep of the Indigent Legal Services Fund

Last year this Legislature and Governor Paterson took a great step forward. After years of debate and discussion, you created the Office of Indigent Legal Services – an independent office governed by an independent 9-member board and chaired by the Chief Judge.

The office was given responsibility in last year's budget to distribute to localities money that accumulates in the Indigent Legal Services Fund (ILSF). In the past you have given authority to "sweep" that fund along with other special revenue accounts.

You must forbid the sweep of these funds.

The purpose of the ILSF distribution is to improve the quality of public defense services in localities. If you do not allow the distribution of the accumulated ILSF funds to be directed to localities, you will soon, by sweeping the account, recreate the problems at the county level that have for years been the subject of criticism. For the new system to work as intended, those funds need to be part of the new annual grant program designed to enhance county public defense systems.

We will welcome the opportunity to talk with your staffs to identify further why the sweep of these funds needs scrutiny and why the Constitution and public defense mandate relief for localities demand that this fund be treated differently from other similar funds.

Defunding Prisoners' Legal Services

A number of you will recall that many not-for-profit agencies and a list of appropriations directed toward them were vetoed by the Governor in the 1998-1999 budget. NYSDA was fortunate to have been spared through the intervention of then-Assembly Minority Leader John Faso, who recognized the daily value we provide to counties. He was able to demonstrate that value to then-Governor Pataki.

What he was not able to help with – no one was – was the negative impact on local public defender offices of the veto of Prisoners' Legal Services of New York (PLS).

When PLS was defunded, prisoners turned immediately to their former lawyers, already overworked public defenders and legal aid attorneys. They contacted the local defender offices in the counties where they were incarcerated. They used legal services directories in phone books and prison lists, and began to seek help from attorneys everywhere. These calls for help all led to the same places. Local public defense offices and the Backup Center were inundated with requests to help with civil and quasi-civil legal problems; it created an unmitigated disaster.

At the time, I documented this problem for the Governor's office to demonstrate the problem of unfunded mandates flowing from the veto. My memorandum to a member of the PLS Board is attached as Appendix 5.

I urge you, particularly in this fiscal environment where defenders and NYSDA are already stretched to the breaking point, to not allow a repetition of this situation.

Prisoners' Legal Services of New York must be restored in this year's budget.

The Case of Aid to Defense and the Indigent Parolee Representation Program

The cuts to Aid to Defense (ATD) and the virtual elimination of county reimbursement for the Indigent Parolee Representation Program (IPP) represent the elimination of existing mandate relief.

- **Aid to Defense**

Forty years ago, mindful of the increased demands on both sides of the courtroom, the State funded both the defense and prosecution in a handful of New York's largest counties. Since the 1980s, New York State has funded (unevenly) an Aid to Prosecution and an Aid to Defense program.

Aid to Defense funding has now been whittled down from a high of \$20 million in 1988 to the current amount of \$8,073,586, a cut of \$787,414 from last year. The amount of that cut should be restored.

- **Indigent Parolee Representation Program**

New York State law entitles poor people facing parole proceedings and parole appeals to court appointed counsel. To ensure that counties would not be fiscally burdened by this state mandate, the Indigent Parolee Representation Program was created in 1978. The program was designed to reimburse expenses incurred by localities – especially those with prisons in their jurisdictions – in providing counsel in these parole-related proceedings. Four localities (New York City [Legal Aid Society] and Monroe, Nassau, and Wyoming counties) have traditionally had contracts to provide parole representation as part of the Indigent Parolee Representation Program.

Last year this program was not funded in the State budget, although Wyoming County received \$80,000 in Byrne Grant funding. The absence of this program substantially increases the direct financial obligation on counties and the City of New York. This program should be restored in the FY 2011-2012 budget.

*** **

Our Association was born in 1967, in the wake of the United States Supreme Court decision in *Gideon v Wainwright*. We have been present through all the changes of our public defense system.

Recessions are not new to us; with or without them we face cuts. In good times and bad our services are not easy for legislators to understand or support.

This year we have a gift. Our Governor has committed New York to look at consolidation and mandate relief. We want that to happen.

NYSDA's Backup Center was begun in a better fiscal moment, but we began by consolidation; we were funded to provide mandate relief to localities. Through thick and thin, we have done our job. We need \$1.8 million to do it next year.

The sweep of the Indigent Legal Services Fund, the fallout from cutting Prisoners' Legal Services, the cuts to Aid to Defense, and the elimination of the Indigent Parolee Representation Program all undermine the continuing need for New York State to take responsibility for adequately funding public defense services.

As you dissect this budget and balance the equities in our sour fiscal environment, I ask that you analyze these issues and honor the constitutional obligation to provide effective representation to those unable to afford counsel.

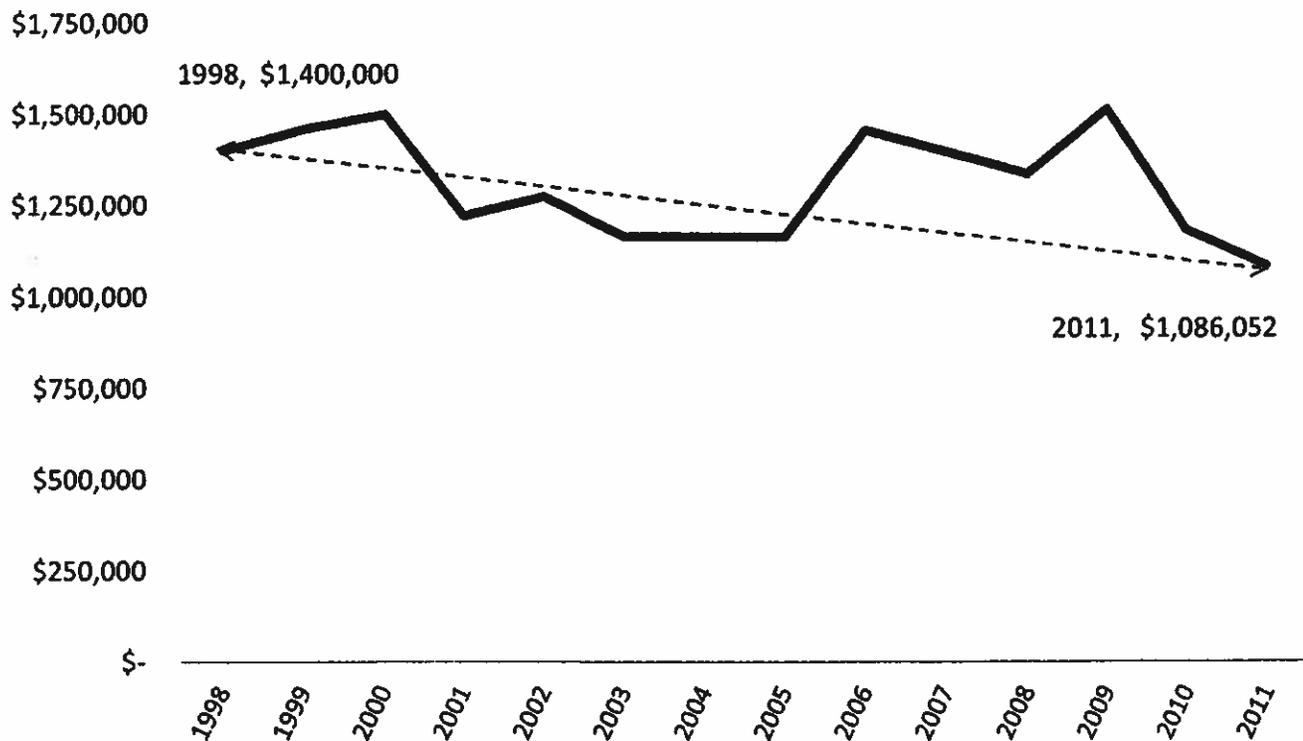
Summary of Funding for Backup Center Expenses

Summary of Funding for Backup Center Expenses														
	NYSDA Backup Center - New York State Funding						NYSDA Backup Center - Other Funding			Justice Fund (in Service to the Backup Center) - Other Funding			TOTAL	
	Executive Budget	Assembly Add	Senate Add	Enacted Budget (Subtotal)	Deficit Reduction Plan (DRP)	Total NYS Funding (Actual)	NYS Bar Foundation	Open Society Institute	Various CDIP Grants & other sources	Atlantic Philanthropies	Open Society Policy Center	Justice Fund accrued interest		
FY 2006	-	1,459,209	-	1,459,209	NA	1,459,209	10,000 A		81,200 D	-	-	-	1,550,409	
FY 2007	1,400,000	-	-	1,400,000	NA	1,400,000		15,000 C	93,200 D	147,300 E	-	-	1,655,500	
FY 2008	1,400,000	-	20,000*	1,420,000	(84,000)	1,336,000		32,100 C	98,600 D	210,900 E	-	-	1,677,600	
FY 2009	1,212,000	104,000	200,000**	1,316,000	(0)***	1,516,000			-	206,700 E	14,700 E	14,400 E	1,751,800	
FY 2010	1,185,000	-	-	1,185,000		1,185,000	10,000 B	200,000 C	5,200 D	81,600 E	-	-	1,781,800	F
* Senator Volker provided \$20,000 in member item funding for a re-entry program. ** Senator Smith provided NYSDA with a last minute \$200,000 legislative grant. It was passed in a resolution outside of the budget. *** NYSDA funding was not subject to the 2009 Deficit Reduction Plan because NYSDA had already received the total \$1,316,000.														
A 2006 New York State Bar Foundation - to fund Backup Center's Criminal Justice Researcher B 2010 New York State Bar Foundation - to fund the Criminal Defense Immigration Project (CDIP) Director C \$200,000 Open Society Institute - to fund 2010 salaries for Backup Center employees D Criminal Defense Immigration Project specific funds (grants from various foundations, CDIP training stipends, net immigration manual sales, CDIP donations) used to fund the Criminal Defense Immigration Project Director E The Justice Fund [NYSDA's related 501(c)(4)] paid for a pro-rata share of six NYSDA Backup Center employees F This total includes \$300,000 of NYSDA support for the State Backup Center Program- see footnote 3														

New York State Defenders Association, Inc.
State & Federal Funding History

Budget Year Beginning 4/1/XXXX	New York State	Federal	Total	Annual Change	
				\$\$	%
1981	420,281	-	420,281		
1982	442,400	-	442,400	22,119	5.3%
1983	442,400	-	442,400	-	0.0%
1984	510,000	-	510,000	67,600	15.3%
1985	618,000	-	618,000	108,000	21.2%
1986	630,000	-	630,000	12,000	1.9%
1987	797,500	-	797,500	167,500	26.6%
1988	831,300	-	831,300	33,800	4.2%
1989	830,800	-	830,800	(500)	-0.1%
1990	830,800	-	830,800	-	0.0%
1991	830,800	-	830,800	-	0.0%
1992	706,200	-	706,200	(124,600)	-15.0%
1993	806,200	-	806,200	100,000	14.2%
1994	856,200	65,000	921,200	115,000	14.3%
1995	822,000	-	822,000	(99,200)	-10.8%
1996	822,000	325,000	1,147,000	325,000	39.5%
1997	1,120,000	100,000	1,220,000	73,000	6.4%
1998	1,400,000	-	1,400,000	180,000	14.8%
1999	1,000,000	460,000	1,460,000	60,000	4.3%
2000	1,400,000	100,000	1,500,000	40,000	2.7%
2001	913,625	307,528	1,221,153	(278,847)	-18.6%
2002	915,000	359,447	1,274,447	53,294	4.4%
2003	915,000	250,000	1,165,000	(109,447)	-8.6%
2004	915,000	250,000	1,165,000	-	0.0%
2005	1,165,000	-	1,165,000	-	0.0%
2006	1,459,209	-	1,459,209	294,209	25.3%
2007	1,400,000	-	1,400,000	(59,209)	-4.1%
2008	1,336,000	-	1,336,000	(64,000)	-4.6%
2009	1,516,000	-	1,516,000	180,000	13.5%
2010	1,185,000	-	1,185,000	(331,000)	-21.8%
	27,836,715	2,216,975	30,053,690		

New York State Defenders Association, Inc. Appropriations 1998 thru 2011



NYSDA's PUBLIC DEFENSE BACKUP CENTER

WE ARE STILL ESSENTIAL

The Governor and Legislature recognized the ongoing indigent defense crisis when they created the new Office of Indigent Legal Services in FY 2010-11. But this entity does not replace the existing county-based system, which is an overburdened, underfunded, patchwork of programs that lacks the resources to provide clients with their constitutional guarantee of an adequate defense. The new office will change the way state funding is distributed to localities, monitor public defense services, and recommend changes. It will not provide the Backup Center services – upon which counties, public defense providers, and public defense clients depend and through which the State provides needed substantial mandate relief.

WE STILL SAVE MONEY FOR COUNTIES AND THE STATE

- **Concentrated Expertise.** The Backup Center houses expertise in one place; it allows skilled attorneys, social science researchers, and management and technology experts to collaborate and focus – at no cost to localities – on identified problems of counties and public defense providers.
- **Keeping Public Defenders Effective and Well Versed on New Law.** Backup Center legal experts keep public defenders current on the flood of changes in the law. We explain new legislation like the Rockefeller Drug Law Reform and the mandatory DWI Ignition Interlock Device so public defense providers know how the law is to be implemented. When the United States Supreme Court makes decisions which directly affect public defense practice, like *Padilla v Kentucky* requiring defense lawyers to give advice on immigration consequences, Backup Center lawyers immediately send out legal advisories and conduct trainings on what is required. This protects clients, reduces time and confusion in the courts, guards against legal claims against counties, and prevents costly retrials from errors and omissions in representation.
- **Public Defense Case Management System.** The Backup Center meets the needs of localities for a low-cost effective defender management information database to track cases and conflicts of interest, review and rearrange assignments, manage and count caseloads, project workloads, and promulgate reports. NYSDA has addressed this need by developing the Public Defense Case Management System (PDCMS), currently implemented in 40 sites. Training, legacy data conversion, upgrades, and support are all provided in house by NYSDA at tremendous savings to localities and defender offices. Additionally, all state reporting currently required can be accomplished by utilizing this system's features.
- **Information Clearinghouse.** By maintaining an extensive, constantly updated clearinghouse of legal research information on public defense services, NYSDA provides a comprehensive one-stop resource for counties, defenders, government officials, state and local agencies, academia, the media, and the public. This gives counties the data and technical assistance they need to plan and improve their public defense systems. Also, NYSDA's extensive website, updated weekly, provides defenders access to case summaries, expert directories, training calendars, current developments in substantive areas of law, research links, and other resources. We make available a ten-year archive of NYSDA's publication, the *Public Defense Backup Center REPORT*, which contains case digests, practice tips, legislative reviews, and defense news. NYSDA's website (www.nysda.org) permits overloaded defenders instant access to the latest information in their field.

- **Savings from Direct Defender Services.** Public defense lawyers throughout the state seek legal research and consultation services from the legal experts at the Backup Center. Each day defenders in the field seek our help on complicated sentencing calculations, litigation strategies, and how to secure qualified forensic experts. The Backup Center links defense lawyers facing similar issues, saving time and energy. It also maintains a litigation bank with access to state and national pleadings, briefs, and memoranda, as well as thousands of in-house work products. With these types of resources, the legal research specialists at the Backup Center can save counties the hours of legal research and analysis that court-appointed lawyers would otherwise bill. For example, one Backup Center legal memorandum taking 10 hours to research and write can be shared with one defender in the field saving a county \$750 at current assigned counsel rates. By providing it to public defense attorneys in 30 counties with the same legal issue, it is simple to see that localities have been spared more than \$20,000 of charges for that single work product. Multiplied by the more than 2000 direct defender service requests NYSDA handles annually, the daily internet library assistance provided by skilled researchers, and the hundreds of complex immigration questions answered by NYSDA's Criminal Defense Immigration Project, it is easy to see how NYSDA's legal research saves hundreds of thousands of dollars for counties.
- **Low Cost Training and Continuing Legal Education (CLE).** It is costly for public defense lawyers to fulfill their current Mandatory Continuing Legal Education obligations. As a New York State accredited CLE provider, NYSDA significantly offsets these CLE costs by providing excellent, low cost training. We conduct regional programs in New York City, Rochester, Binghamton, Albany, Poughkeepsie, Buffalo, and Syracuse, and cooperate with the Appellate Divisions (3rd and 4th Departments) to provide appellate training to appointed counsel. At NYSDA's two-day annual conference, public defense lawyers can obtain all of their needed credits for less than half the cost of bar or commercial CLE programs. Through our Criminal Defense Immigration Project we also conduct some 30 to 40 additional training programs. By providing these low or no cost programs we substantially reduce stress on county training budgets.
- **Intensive Trial Skills Training.** NYSDA's Defender Institute Basic Trial Skills Program is the only statewide entry level training program for new defenders. Begun in 1987, it is entering its third decade teaching critically necessary skills and directly engaging lawyers to be sensitive to their clients. Recommended in 1991 by the New York State Judicial Commission on Minorities as a model for teaching client-centered representation, it is directly threatened by budget cuts. Similar trial skills training alone would cost counties substantially more at the National College of Criminal Defense in Macon, Georgia.
- **NYSDA's Criminal Defense Immigration Project (CDIP).** As mentioned, the United States Supreme Court held this year in *Padilla v Kentucky* that it is constitutionally required for defense lawyers to affirmatively advise clients about the immigration consequences of guilty pleas. The CDIP is important to counties and the state because defenders giving erroneous or limited advice (or none at all) to noncitizen defendants can be grounds for reopening convictions. Those cases cost counties for the time of defenders and prosecutors litigating post conviction claims in the trial and appellate courts. They cost the State in judicial and court time. They involve the Attorney General in an ever-widening net of ongoing case litigation, particularly in federal court. All of these unnecessary expenses can be avoided when public defense attorneys are able to obtain from the CDIP the expert legal assistance they need to understand the intersection between criminal and immigration law in their cases.



New York State Defenders Association, Inc.

Public Defense Backup Center

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MEMORANDUM

TO: John R. Dunne

FROM: Jonathan E. Gradess

DATE: April 26, 1999

RE: Administrative burdens to local public defenders and NYSDA as a result of the closing of Prisoners' Legal Services of New York

In our recent conversation about the fallout from the PLS veto on local defender offices, you asked that I outline in a brief memorandum the evidence that I had concerning the problem. I got a bit carried away in doing so, but as I explored the question I began to see that the scope of the problem is larger than even I had envisioned. In what follows, I describe the problem as I see it. I hope that together we can work toward a solution.

INTRODUCTION

On April 14, 1999, the Defenders Association received a letter from an attorney requesting assistance. The letter stated in pertinent part:

[My clients] are the targets of systematic violence by the corrections officers at Great Meadow. [T]he guards assault these defendants, and numerous others, without provocation and if confronted, manufacture charges against the defendants to cover their own actions. My clients...have each attempted to resolve these matters through normal channels, by writing to the Superintendent of the prison and by contacting the Department of

Corrections in Albany. They have received no assistance.

A year ago, a request like this would have been brought to the attention of our staff, reflected in our records so that information would be easily retrievable, routinely referred to Prisoners' Legal Services, and closed.

Today it languishes as a "problem case," unnecessarily cluttering the docket of staff attorneys who are funded by the taxpayers to service defenders in localities and to link lawyers with clients who have a right to counsel and a need for representation.

Before the demise of PLS, this linking function, though never entirely free from difficulty, was workable. It could be carried out in an efficient manner without burdening the staff of the Backup Center. Without PLS, it has become an awesome burden, particularly when viewed against the backdrop of the Code of Professional Responsibility.¹

Before the demise of PLS, we received approximately 300 requests a year from prisoners. Clearly 50 to 75 percent of them were referable to PLS, and most of those were resolvable by PLS without litigation. At least three times that many cases are now coming into our office, most not referable, all imposing a burden on us.

Since October of last year, we have come to discover that we are not the only providers to face this problem, and the problem – legal, ethical and fiscal – is growing.

¹The Code recognizes "...that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence." (Canon EC 1-1) Yet while the Canons impose upon lawyers a duty to "...help members of the public to recognize legal problems and to understand why it may be unwise for them to act for themselves in matters having legal consequences" (Canon EC 3-7), disciplinary rules prevent lawyers from aiding non-lawyers in the unauthorized practice of law (DR 3-101). Canons 8 and 9, read together, make it clear that lawyers are duty bound to facilitate the representation of inmates with colorable or potentially colorable claims. When there is no law office to make referrals to, there is inherent difficulty in complying with these ethical responsibilities. Yet on pain of disciplinary sanction, lawyers are duty bound not to neglect matters entrusted to them (DR 6-101).

THE ALTERNATIVE TO PRISONERS' LEGAL SERVICES IS A PROBLEM IN DISGUISE.

In a March 11, 1999 letter from Carole Stone, Deputy Director of the Division of the Budget, Ms. Stone expresses the Governor's position regarding PLS, stating that New York is required to supply either law libraries or lawyers, but not both. Stone's letter states:

The existing Department of Correctional Services library resources satisfy [legal requirements]. These libraries, available in every state prison, provide up-to-date legal reference materials for use by all inmates.

Letter from Carole E. Stone, Deputy Director, NYS Division of the Budget, to Jonathan E. Gradess (Mar. 11, 1999)

According to *DOCS Today*, a publication of the Department of Correctional Services, the Governor "...is committed to ensuring that inmates have access to the courts to redress legitimate issues." (*Inmate law libraries remain a critical resource*, *DOCS Today*, Oct. 1998 at 12) It is clear from this departmental magazine that not just politically controversial conditions suits, but matters involving veterans affairs, bankruptcies, immigration and domestic relations are the kinds of cases for which inmates need legal assistance:

... Our prison law libraries have been developed to allow inmates to pursue legal remedies regarding their family lives, financial situations, or, where applicable, a host of personal matters.

(*DOCS Today*, Oct. 1998, at 12, 13)

Instead of allowing trained lawyers who could efficiently handle and help with these matters however, DOCS boasts that it is having the "...taxpayers underwrite the training of approximately 500 inmates in basic legal research

techniques and writing to serve as law library clerks. Taxpayers then pay those inmates to provide legal assistance to other inmates.” Id. at p. 13.²

In other words, an army of taxpayer financed writ-writers is being substituted for the 32 lawyers formerly employed by PLS – this while the State Unemployment Fund has paid out, as of April 9, 1999, more than \$208,000 in unemployment claims for former PLS lawyers. Unfortunately, history teaches that using jailhouse lawyers in this way causes undue difficulties for courts, clients and prisons.

In *Johnson v. Avery*, 393 U.S. 483, 487 (1968), the Supreme Court recognized that “[j]ails and penitentiaries include among their inmates a high percentage of persons who are totally or functionally illiterate, whose educational attainments are slight, and whose intelligence is limited.” The Court held that indigent prisoners could not be prevented from working with jailhouse lawyers if to do so interfered with their constitutional right to have access to the court system. Despite this holding, the Court went out of its way to cast doubt on the wisdom of systems which used jailhouse lawyers as the means to the end of assuring court access, stating:

...It is indisputable that prison writ writers are sometimes a menace to prison discipline and...that their petitions are often so unskillful as to be a burden on the courts which receive them.

Johnson, supra, citing Spector, *A Prison Librarian Looks At Writ Writing*, 56 Calif. L. Rev. 365 (1968)

Justice Douglas, concurring, recognized that writ-writers lack the key skill that makes lawyer-assisted access so much more cost-effective:

*'...A lawyer, after...conducting an independent investigation of the facts could immediately advise [a prisoner] on a course of action. *** Sometimes years pass before the prisoner discovers what a lawyer could have told him in several weeks – that his case either has or lacks merit. The prisoners*

² It should be noted that while departmental regulations variously refer to the inmate job titles as Paralegal Assistant, Administrative Clerk, Legal General Clerk, Clerk Typist, and Porter [DOCS Directive 4483, III(F)], their training, according to this same directive, “...will be carried out by the most qualified individual at the correctional facility [which] may be...an experienced inmate Law Clerk.” [Directive 4483, III (G)]

who have militantly prosecuted frivolous actions have wasted time they could have devoted to preparing themselves for release from prison. The state, by shouldering these indigent prisoners with the responsibility of acting as their own counsel, has dissipated the taxpayers' money and wasted manpower and court costs.

Johnson, supra at 494, n. 10, quoting Larson, *A Prisoner Looks At Writ Writing*, 56 Calif. L. Rev. 343, 345-346 (1968) (Douglas, J., concurring) (Emphasis supplied)³

It must therefore be seen at the outset that New York State's plan for solving the access issue for prisoners – using other prisoners – will exacerbate the problem of referrals to other providers. The hardest cases to deal with from inmates are those where an inmate is writing to a lawyer about the claim of another. (cf. DR 3-101, *supra*) A lawyer outside, with little time, can not begin, long distance, to sort out the reasonable legal strategy from the unreasonable one. Yet that is the problem presented by tax-paid writ-writers sanctioned by the state.⁴

³ Justice White, dissenting from the Court's holding, did so on the ground that the relief granted - allowing prisoners access to inmate writ writers - would often be no relief at all:

*... [U]nless the help the indigent gets from other inmates is reasonably adequate for the task, he will be as surely and effectively barred from the courts as if he were accorded no help at all. *** ... [T]he problem of the incompetent needing help is only exacerbated as is the difficulty of the courts in dealing with the mounting flow of inadequate and misconceived petitions. *** ... I doubt that the problem of the indigent convict will be solved by subjecting him to the false hopes, dominance, and inept representation of the average unsupervised jailhouse lawyer.*
Johnson at 499-501 (White, J., dissenting)

⁴ The abuse of inmate writ-writers is of sufficient concern to prison administrators that DOC's own regulations require either the law library administrator or the superintendent to first determine that "security, order, or discipline" of the facility will not be endangered before assigning an inmate to help another prisoner with legal work (see, DOCS Directive 4483). Moreover, despite a prohibition on accepting payment for legal work, it is common knowledge that such exchanges take place.

**AT THE CHIEF DEFENDER CONVENING OF OCTOBER 30, 1998,
DEFENDERS COMPLAINED ABOUT AN INCREASED WORKLOAD
DUE TO THE VETO OF FUNDING FOR PRISONERS' LEGAL
SERVICES.**

On October 30, 1998, Chief Defenders from around the state briefed Katherine Lapp, New York State Criminal Justice Director, on the state of upstate defense services. A significant number of defenders complained of the added burden imposed on their office by the veto of PLS. They made clear that the absence of PLS has created a problem in local public defender offices and legal aid offices, as well as for their incarcerated clients. Defenders reported that their own clients were contacting them for assistance formerly provided by PLS, and defenders in counties with prisons were receiving new communications seeking direct assistance.

These requests have had a threefold impact. First, defenders are burdened with mail that must be answered, addressed and dealt with by a staff already overburdened with high workloads and caseloads. Second, for the vast majority of requests, there is little or nothing that they can easily do within the scope of their responsibilities; further referral efforts are usually required. Third, these cases are an additional unfunded state mandate imposed on county-funded defender systems. This off-loading of PLS work has been a comparatively invisible fallout of the Governor's 1998 veto.

**THE LEAGUE OF WOMEN VOTERS HEARINGS REINFORCED
CONCERNS ABOUT THE DEMISE OF PRISONERS' LEGAL
SERVICES.**

Between October and December 1998, the League of Women Voters, in cooperation with NYSDA, held hearings in New York City, Rochester, Syracuse and Albany on the issue of public defense services. The transcripts and submissions provide further insight into the problem created by the veto of PLS. What is most clear from the hearings is that 1) there have always been few offices or lawyers where even meritorious cases could be referred, 2) the closing of PLS has imposed unique burdens on local defender offices, and 3) there is currently nowhere to refer the cases that formerly went to PLS.

Mary Lynch, a professor at Albany Law School and former director of the Domestic Violence Post Conviction Remedies Project, testified about her four-year experience representing incarcerated domestic violence survivors. Testifying

that New York State needs a mechanism for ensuring counsel for the indigent on post-conviction applications, she talked about the lack of assistance available for indigent incarcerated persons beyond their first appeal. Significantly, her experience arose between 1993 and 1997, a period during which PLS was funded. Her testimony is instructive:

... We received and still receive many letters from inmates who did not fit our grant requirements and had no one to whom to refer these potential clients, even when the issue seemed legitimate or when family members contacted us with potentially meritorious issues.

Prisoners' Legal Services attempted to help us find counsel for such persons or some resources to assist the families, but the most common answer to such requests was that no one really does that work. [T]here's no place for people to go to get representation. (T-A 128-129)⁵

Milton Zelermeyer of the New York City Legal Aid Society's Prisoners' Rights Project (PRP) testified that:

... We now receive approximately 150 letters each week. The concerns raised in this correspondence include discipline, harassment, brutality (including assaults by correctional staff and by other inmates), protective custody, medical care, religious rights, racism, visitation, time computations and immigration issues. (T-A 117)

His testimony indicated that, in addition, prisoner correspondence which previously had been forwarded to PLS from the State Division of Human Rights

⁵ References in the text to the transcripts are all denoted by a "T," with the Albany, Rochester, Syracuse and New York City transcripts bearing respectively the initial "A," "R," "S" and "N" prior to the relevant page number.

and the Public Affairs Office of the Department of Correctional Services was now coming to the Prisoner's Rights Project.⁶ By December 1998, Zelermyer stated, PRP was receiving many more letters about disciplinary matters than it had previously received.⁷ Increased correspondence requesting legal representation in the Court of Claims and in federal court was also reported. (T-A 117)

What is striking about Zelermyer's testimony on behalf of PRP – an office charged with representing prisoners – is the extent to which PRP, like public defenders, is inundated with requests it can not handle. According to Zelermyer, PLS' resources enabled it to represent prisoners in individual actions (Article 78s, Court of Claims suits, deportation hearings, civil rights claims, etc.). "By contrast," he stated, "PRP pursues relief for prisoners almost exclusively in class actions and almost never in actions for damages." (T-A 119)

Zelermyer's testimony makes clear that there is no venue to which PLS-type requests can be easily redistributed. He stated:

Given the size of PRP's staff, its location in New York City, and its current commitments and caseload, we can not responsibly contemplate taking on any greater share of the advocacy service

⁶ This has been our experience as well. Since the veto, the OCA Inspector General has begun to refer inmate cases to us, presumably instead of PLS. Also the law school and State Bar referrals, traditionally a mere trickling of cases, have increased exponentially. Indeed, Arlene McKeon-Coons, Administrative Assistant at the Clinical Legal Studies Project at Albany Law School, informed me just last week that prior to the veto of PLS they were receiving one letter per month. After the veto of PLS, prisoner letters increased to three to four per week, and there has been an even greater increase in the past six months.

⁷ Zelermyer's testimony concerning disciplinary proceedings was corroborated by the testimony of Justice Dolores Denman, Presiding Justice of the Appellate Division Fourth Department. Like Zelermyer, she stated:

... [W]e have noticed we get prison disciplinary proceedings. That is prisoners who are brought up in prison on disciplinary charges. There's a hearing officer in the prison. They take an administrative appeal to the superintendent, and then they can take the appeal to the court and we get those appeals. We have noticed a tremendous increase in rioting, fighting, attacks on corrections officers; not just in one prison, but in all the facilities within our jurisdiction. (T-R 7)

or litigation work performed by Prisoners' Legal Services. (T-A 122)

PRP is not alone. The Capital Defender Office has been receiving and turning back requests for representation from prisoners which it attributes to the demise of PLS.⁸ Cynthia Wolpert, Managing Attorney for the Legal Aid Society of New York City's Criminal Appeals Bureau, notes:

My office handles correspondence for clients whose cases have not yet been assigned to a staff attorney to work on, or whose appeals are over. We also receive telephone calls seeking assistance for those who are incarcerated, clients and non-clients. While much of the correspondence and telephone calls received by the Legal Aid Society requesting assistance in matters formerly handled by PLS is forwarded to our Prisoners' Rights Project, my office has seen a significant increase in requests for assistance in Family Court matters such as divorce, custody and visitation, as well as time computations and the denial of parole. Also, we receive many letters requesting assistance with immigration concerns: those who want to stay in this country, and those who want to be deported. We lack the resources to assist most of those who write to us. Although it is difficult to quantify, I believe that we receive approximately 50 inquiries a week.⁹

The Wolpert letter underscores the real tragedy in these cases: The guards' union supports PLS representation for these very issues now going unrepresented:

*Council 82 believes that there is a legitimate role for Prisoners Legal Services within the correctional system. ***We believe that PLS should assist indigent inmates with post-conviction issues, Family*

⁸ Letter from Mark B. Harris, First Deputy Capital Defender, to Jonathan E. Gradess (Mar. 29, 1999)

⁹Memorandum from Cynthia Wolpert, Managing Attorney for the Legal Aid Society of New York's Criminal Appeals Bureau, to Jonathan E. Gradess (Mar. 30, 1999)

Court matters such as child custody or divorce, with immigration issues and with matters within the administrative network established by the Department of Correctional Services. When PLS carries out this mission, we believe that it can act as a safety valve by allowing inmate access to the courts and administrative proceedings.

Edward Draves, Legislative Director of AFCSME District Council 82,
Testimony before the New York State Senate Committee on Crime
Victims, Crime and Correction (Oct. 2, 1995)

Manny Vargas, who administers our Criminal Defense Immigration Project, testified that for the last three years (1996-1998), approximately 80 percent of individuals going through deportation proceedings in upstate New York prisons were unrepresented.

[T]he one not-for-profit in New York State that was providing some representation to non-citizens undergoing their deportation proceedings in upstate New York prisons was Prisoners' Legal Services. And as you have already heard today, their funding was eliminated.... (T-A 215-216) (Emphasis supplied)

Despite the fact that DOCS supports inmate access in the area of immigration and Council 82 approves of representation by PLS in immigration cases, the Governor's veto of PLS has essentially eliminated legal assistance in immigration matters for indigent persons. Worse, referrals in such cases are virtually impossible.

Richard Greenberg, Attorney in Charge of the Office of the Appellate Defender in New York City, testified:

[We]...are not equipped to comprehensively handle the wide array of legal problems that arise in an incarcerated population. Such legal problems, for which we receive constant requests for assistance, include immigration issues, prison disciplinary proceedings, sentence computation questions, issues related to merit time and earned eligibility certificates, temporary release issues, sex offender

classifications, parole release appeals, medical malpractice, and an array of civil rights and due process issues arising out of the conditions of confinement and allegations of brutality against inmates.

While we attempt to serve our clients in as many of these areas as feasible, given our resources and areas of expertise, we are simply not able to address all these legitimate legal concerns of our clients. In eliminating funding for PLS, the state has committed a grievous error. (T-N 54-55.)

Daan Zwick of the Genesee Valley Chapter of the New York Civil Liberties Union, who has received hundreds of telephone calls and letters from a wide variety of people in the nine counties covered by that chapter, is also the representative of one of the few organizations that accepts collect telephone calls from prisoners at county jails and state correctional facilities. In unequivocal terms, he stated in his testimony:

There has – with the disappearance of the Prisoner's [sic] Legal Services, it is now almost impossible to find referral agency for inmates of the State prison system. And we get a lot of calls from them. There never has been adequate referral for the inmates of any county jails. Most of the public service agencies do not handle criminal matters, and their case loads have increased faster than their funding.

As this need grows greater, I find it personally increasingly frustrating and depressing that we have to tell so many people that there is no help for them anywhere. (T-R 247-248)

According to David Steinberg, Chief Assistant Public Defender of the Dutchess County Public Defender Office:

Since the loss of funding to Prisoners Legal Services last year, state prisoners or their families, have contacted our office seeking legal assistance

or representation on many legal matters. Often, the requests detail compelling circumstances regarding their legal status or conditions of confinement. Unfortunately, the Dutchess County Public Defender's office is neither qualified nor mandated to provide assistance on non-criminal matters, so we must turn down such requests. Where once we could refer these individuals to the local PLS office in Poughkeepsie, we are no longer able to do so.

So, too, we represent inmates accused of new crimes in state correctional facilities in Dutchess County (i.e., Green Haven, Downstate, Fishkill, and Camp Beacon). Where once, PLS staff provided invaluable and time-saving assistance in the representation of such individuals, they are no longer available for consultation and assistance since the closing of Prisoners Legal Services.¹⁰

¹⁰ Letter from David Steinberg, Chief Assistant Public Defender, Dutchess County, to Jonathan E. Gradess (Apr. 20, 1999). Significantly, during the League of Women Voters hearings, William R. Steinhaus, Dutchess County Executive, submitted written testimony which in pertinent part stated:

The Dutchess County Public Defender's Office represents persons who are accused of committing crimes while incarcerated at Greenhaven Correctional Facility, Downstate and Fishkill Correctional Facility. The rate [of reimbursement] is exceptionally low and does not adequately compensate Dutchess County for the attorney time expended. The rate is outdated and should be increased. Certainly Dutchess County should be fairly and adequately compensated for performing a State function of providing legal counsel to persons accused of crimes while incarcerated in a State Prison.

Memorandum from William R. Steinhaus, Dutchess County Executive, to Wendy Pogorzelski, New York State Defenders Association (Oct. 13, 1998)

Thus the demise of PLS in Dutchess County exacerbates through an additional unfunded mandate an already existing crisis in the state funding of defense services.

THE NATURE OF REQUESTS TO NYSDA FOR ASSISTANCE REVEAL THE NEED FOR PRISONERS' LEGAL SERVICES

- An inmate writes in December, 1998, with a pending lawsuit covering a serious allegation of medical malpractice. The allegations include deliberate indifference to a serious medical need, delayed surgery and subsequent emergent chronic disorder.
- An inmate writes in March, 1999, seeking legal assistance to enforce his legal right to practice his religious faith, alleging a current denial. The case also involves a traditional equal protection inquiry concerning a potential non-merits dismissal for failure to pay filing fees due to indigency.
- In March, 1999, a letter typed by another inmate for an illiterate prisoner already incarcerated for 16 years states:

I don't read or write so I have to ask other inmates to help to write to you. My problem is in my spine they removed some splinters and it was fine. Now in this bad operation they have committed some errors or better said malpractice they have cut three nerves from my left arm and I have lost strength from my arm and it is getting skinny also my left leg is having problems as well.

Let me also say that I have papers from the hospital to prove it. I am asking for your help for I could take further action, for I don't have family to help me.

- In November, 1998, an inmate writes simply needing a Spanish-speaking lawyer.
- In August, 1998, an inmate with a First Amendment question writes to ask for help with the Media Review Committee which is withholding a legal magazine.
- In January, 1999, a prisoner concerned about his release date and sentence calculation writes to us for help.

All of these instances, and hundreds more, represent the kind of claims diverted to us and other defender offices due to the veto of PLS. These requests - simple enough for an institutional lawyer routinely present within correctional facilities - represent complexities for defenders. Unless the requests are to be ignored, defenders must reinvent PLS' service on an inefficient, ad hoc and expensive basis. As they handle these matters, they must simultaneously withdraw resources from important legally mandated tasks.¹¹

IT IS WRONG TO ASSUME THAT THESE CASES CAN BE REFERRED OUT

Beginning in 1986, and on the heels of the Bedford Hills hearings concerning battered women (1985), we tried to develop a *pro bono* panel for prisoner cases. This was at a time when PLS was fully funded and staffed, and was routinely referring criminally related matters to us. We engaged in many meetings. We developed a series of relationships with various groups. We approached the Council of Law Associates, Debevoise & Plimpton, Paul Weiss, Skadden Arps and other law firms. We also created liaisons with several federal *pro se* clerks.

Our simple plan was to develop a *pro bono* panel to handle state post-conviction matters. It was unsuccessful and disappointing. We found that prison cases, police and institutional brutality, conditions of confinement, clemency, CPL 440 matters and *coram nobis* applications do not have the patina of other *pro bono* matters. The Council of Law Associates routinely declined the requests of referred inmates. Few of our members volunteered for the panel. The law firms

¹¹ It should not be assumed that handling the PLS cases can be done without herculean effort. They are a unique burden because defenders are already overtaxed with work. The cuts of the last five years to defender staff at the local and state levels have themselves increased the caseload/workload of the offices to which PLS' cases have been off-loaded. The League hearings revealed unconscionable caseloads of enormous magnitude: Chemung (Attorney handling 1200 cases per year) [T-R 136-137]; Monroe (1000 misdemeanors per attorney) [T-S 3]; Erie (Misdemeanor/violation caseload approaching 2000 cases per lawyer) [T-S 5]; New York City (650 cases per attorney) [T-N 248]. There is no excuse for a system with caseloads this high. They violate all known legal norms. See National Advisory Commission on Criminal Justice Standards and Goals, *Courts* 13.12 (1973). See also National Legal Aid and Defender Association *Performance Guidelines for Criminal Defense Representation*, 1.3 (1994); American Bar Association *Standards*, The Defense Function (3d ed.), 4-1.3(e); ABA *Standards*, Providing Defense Services (3d ed.) 5-3.3(b)(v), 5-5.3; NLADA, *Standards for Defender Services*, IV.1, IV.1.a.iii., IV.1.b; National Study Commission on Defense Services *Guidelines*, Recommendation 5.1. Yet on top of these caseloads and enormous workloads in defender offices, PLS' former cases are being referred.

had elaborate procedures which tended to exclude the very types of cases we referred.

Our experience in 1988 was paralleled by the experience of PLS in 1998. At the Albany hearing, David Leven said:

[W]hen our funding was vetoed, we made a real effort to try to find private counsel to take the cases that we could no longer handle. We made motions to withdraw in most cases because we were unable to find other counsel, particularly lawyers in the Northern District where mostly the prisons are located, particularly the mid-Hudson area, the northwestern part and the northern part of the state, where there simply are not lawyers who are available who have the resources, the knowledge or the expertise to take these cases. We were able to find counsel to take some cases in the Southern District, lawyers from New York City who work in large law firms who do have the resources, do have the interest and, if not the expertise, certainly a lot of attorneys who can work on developing those cases. (T-A 194-195) (Emphasis supplied)

CONCLUSION: WE SHOULD FIND COMMON GROUND AMONG THE OPPONENTS OF PRISONERS' LEGAL SERVICES AND URGE THE GOVERNOR TO RESTORE FUNDING

When I started this memo to you, it was designed to outline the problems that local defenders and NYSDA face in the wake of the Governor's veto of PLS' funding. As I endeavored to document the facts, I was startled at the scope of the problems caused by the loss of PLS, and troubled by the continued intractability that surrounds everyone's efforts to refer meritorious prison litigation matters to lawyers outside the institutionalized PLS offices.

I was also astounded to find that Council 82 is publicly on record in support of certain of PLS' functions. Placed against the record of the fact-finding hearings held jointly by NYSDA and the League of Women Voters, it is clear that a continued need for PLS exists. It is also clear that the very cases most troubling

to many defender offices are those that fall in litigation areas where the guards' union approves of PLS representation.

Unquestionably, the closing of PLS offices has caused a diversion of prisoner requests for assistance to defender offices far less equipped to handle those requests. These offices, funded by localities, already have their hands full and need no further mandates with which to contend. It seems to me that it would be most productive to raise these issues — the cases which everyone agrees PLS should do, the unions support for those cases, the problems being faced by defenders in the field, the continuing need to obtain lawyers for prisoner representation, and the potential disaster if prisoner law clerks are alone given free reign over the inmate population — with executive branch officials who may face the question this year of the final veto of Prisoners' Legal Services of New York.

LEGAL SERVICES FUNDING ALLIANCE

Clyde Card—Chautauqua
County Legal Services

Robert Elardo—Erie County
Bar Association Volunteer
Lawyers Project, Inc.

Susan Horn—Frank H.
Hiscock Legal Aid Society

Alex Bursztein—Legal Aid
Society of Rockland County

Paul Lupia—Legal Aid
Society of Mid-New York

Lillian M. Moy—Legal Aid
Society of Northeastern
New York

Alan Harris—Legal Aid
Society of Rochester

David Schopp—Legal Aid
Bureau of Buffalo

Ken Perri—Legal Assistance
of Western New York

Dennis Kaufman—Legal
Services of Central New York

Barbara Finkelstein—Legal
Services of the Hudson Valley

Jeffrey Seigel—
Nassau/Suffolk Law Services

William Hawkes—
Neighborhood Legal Services

Shelia Gaddis—Volunteer
Legal Services Project of
Monroe County

Joe Kelemen—Western New
York Law Center

**TESTIMONY OF
LEGAL SERVICES FUNDING ALLIANCE
ON
2011-2012 EXECUTIVE BUDGET:
PUBLIC PROTECTION**

PRESENTED BEFORE

**ASSEMBLY COMMITTEES ON WAYS AND MEANS,
JUDICIARY, CORRECTIONS, CODES AND
GOVERNMENTAL OPERATIONS**

AND

**SENATE JUDICIARY COMMITTEE, SENATE
FINANCE COMMITTEE, SENATE COMMITTEES ON
CRIME VICTIMS, CRIME & CORRECTIONS AND
INVESTIGATIONS & GOVERNMENT**

PRESENTED BY:

**LILLIAN M. MOY, EXECUTIVE DIRECTOR
LEGAL AID SOCIETY OF NORTHEASTERN NEW YORK
AND
LEWIS CREEKMORE, DEPUTY DIRECTOR
LEGAL SERVICES FOR THE HUDSON VALLEY**

**ON BEHALF OF THE
LEGAL SERVICES FUNDING ALLIANCE**

FEBRUARY 9, 2011



The Legal Services Funding Alliance (LSFA) (www.nylsfa.org) welcomes this opportunity to testify at the 2011-2012 Executive Budget Hearing concerning essential state funding for legal services for low income residents throughout upstate New York and Long Island. The Legal Services Funding Alliance represents the providers of core comprehensive civil legal services to the poor and needy throughout upstate New York and Long Island. Our 15 members are, in each of their communities, the primary providers of such services in a broad variety of areas, all of them designed to meet the essential needs of our clients. The LSFA members are listed on our letterhead and a map of our service areas is attached.

Alliance programs form a network of free civil legal help for poor and low-income people outside of New York City. Our members include large, multi-county organizations with federal and state funding as well as smaller programs dedicated to representing particular counties. We leverage significant amounts of pro bono volunteer service as well as provide back-up services to local human services and legal providers. We provide advice, brief service and representation in court and before administrative agencies to ensure income, health care, safety, stability and housing. In addition to individual representation, Alliance members provide training and litigation back-up to pro bono attorneys throughout the state, preventative educational training for clients and community groups in areas including domestic violence, elder law, special education, workplace safety, human trafficking, housing and consumer, and engage in legislative and administrative advocacy on behalf of those impacted by poverty and discrimination.

The Alliance has worked together for many years to support policy initiatives, coordinate direct legal services for low income residents and seek adequate funding to meet our clients' needs. LSFA members serve rural, urban and suburban communities efficiently and effectively. Our network of 34 offices ensures that our services are physically accessible; our sophisticated use of technology ensures that we are virtually available throughout the state. Nevertheless, there has never been adequate funding to meet the legal needs of our low income clients.

On behalf of the Alliance we want to thank the Assembly and Senate for taking the time to hold this hearing. We also want to thank the Assembly for always taking a statewide approach to funding civil legal services to ensure that poor and low-income people around the state have access to representation. We thank the Senate as well for its support for our essential work. Rest assured that Alliance members speak with one voice in advocating for state funding for core, comprehensive civil legal services for low income New Yorkers.

The Executive Budget

Historically, the provision of Civil Legal Services has been curtailed by inadequate financing to meet an ever growing demand for legal representation. This year, Chief Judge Lippman's Task Force to Expand Access to Civil Legal Services issued a ground-breaking report that provides specific information on the economic value of civil legal services. When individuals are left to fend for themselves they clog the courts and often fail to gain the federal dollars that they may well be entitled to. To help address these judicial and economic concerns, Chief Judge Lippman provided in his judiciary budget two significant funding streams (\$25 million and \$15 million) dedicated to civil legal services. We believe that the Chief Judge is correct in his assessment of the importance of civil legal services to the economic wellbeing of the state as well as

the individual client. The Executive Budget adopts the Judiciary budget and we are here today to ask you to include the proposed Executive Judiciary Budget in its entirety in the final 2011-12 State Budget.

The LSFA Client Community

Over one million people live below the federal poverty guidelines in upstate and suburban New York State, which is \$22,350 for a family of four. Twice as many live at incomes which are 200% of poverty or less, \$44,700 for a family of four. In 2009, LSFA members closed more than 58,287 individual civil matters.

More than 2/3 of legal services clients are women, many mothers with young children. Others are elderly, disabled and marginalized. The issues they need legal representation for speak to their essential needs for shelter, food, safety and health. The current economic crisis has intensified the need for legal assistance. LSFA members throughout the State cannot keep up with the calls, emails and walk-in clients pleading for legal representation to save homes, gain safety and access benefits and health care.

The Justice Gap in New York State

The Chief Judge's Task Force to Expand Access to Civil Legal Services recently issued a ground-breaking report on Access to Justice in New York (November 2010). A legal needs study commissioned for the Task Force found that 47% of low income New Yorkers experienced one or more legal problems in the past year. Applying the survey results to the approximately two million low income New Yorkers outside of New York City, about 940,000 – almost one million people —experienced one or more legal problems in the last year.

Limited LSFA resources coupled with the economic recession have caused The Justice Gap – the gap between legal needs and available resources – to continue to grow. In 2009, Legal Services Funding Alliance members turned away more than 74,000 eligible clients at the door due to lack of sufficient staff resources. In the same year, we closed more than 58,000 cases. Due to lack of resources, LSFA members had to turn away thousands more than we were able to serve. In 2010, LSFA members estimate that the number of people turned away at the door has only increased.

LSFA members participated in the Chief Judge's Task Force survey of legal services providers which highlights the impact the recession has had on The Justice Gap: 91% of the core civil legal services providers in New York reported an increase in requests for legal assistance from formerly moderate income households; 90% reported an increase in unemployed people seeking representation. In addition, most providers reported increased requests for assistance to stop foreclosures, evictions, assist with consumer debt, bankruptcy and domestic violence.

Impact on Access to Justice

The Chief Judge's Task Force Report also shows that the inability to obtain representation places a devastating burden on the courts. The number of unrepresented litigants continues to soar, causing delayed proceedings and unfair results. Many judges testified about vulnerable low income litigants who lose their case or get less favorable settlements simply because of lack of representation. The Task Force report also notes the adverse impact on other litigants, even

those who are themselves represented. Even adverse parties – landlords and banks -- agree that everyone benefits when low income litigants are represented. Significant judicial resources, especially the time of both judges and court personnel, is required to serve the many unrepresented parties. These scarce judicial resources could be better used if more legal services were available to serve the unrepresented.

Legal Services Benefit New York's Economy

The Chief Judge's Task Force report also conclusively demonstrates that providing civil legal services to low income New Yorkers increases federal benefit payments for low income New Yorkers, and reduces the need for state and local government assistance payments. As described below, LSFA members provide substantial support for the New York economy.

The Chief Judge's Report exhaustively examined the data from the IOLA Fund on the economic benefits of providing civil legal services. Weighing the federal benefits legal services providers bring to New York and their impact on the local economy, the savings in avoiding publicly funded emergency shelter costs and the cost savings from protecting a victim of domestic violence, the Task Force concluded that **New York recoups nearly \$5 for every \$1 spent to support civil legal services organizations.**

The LSFA Produces Substantial Economic Benefits for New York

- **Homelessness Prevention** – LSFA members prevent homelessness in communities throughout the state by representing families to prevent evictions or to provide time to attain alternative housing. Based on the cost of providing publicly funded emergency shelter as well as LSFA closed case data, the Alliance estimates that in 2009, its members in suburban, urban and rural New York outside of New York City saved approximately \$36 million for local governments by preventing or delaying evictions. Our work also benefitted at least 6,284 households.
 - In **Westchester County**, Legal Services of the Hudson Valley prevented or delayed eviction for 649 households, saving \$15.7 million in shelter costs.
 - In **Ulster County**, Legal Services of the Hudson Valley prevented or delayed eviction for 155 households, saving \$2.4 million in shelter costs.
 - In **Orange County**, Legal Services of the Hudson Valley prevented or delayed eviction for 146 households, saving \$2.3 million in shelter costs.
 - In **Dutchess County**, Legal Services of the Hudson Valley prevented or delayed eviction for 54 households, saving almost \$1 million in shelter costs.
 - In **Nassau and Suffolk Counties**, Nassau-Suffolk Law Services prevented homelessness for 1,755 households, saving \$6,528,600 in shelter costs.
 - In **Rockland County**, the Legal Aid Society of Rockland County prevented homelessness for 182 households, saving an estimated \$2,847,936 in emergency shelter costs.
 - In **Albany County**, the Legal Aid Society of Northeastern New York prevented homelessness by preventing evictions and foreclosures for 97 households, saving the County an estimated \$702,816 in publicly funded shelter costs.

- In **Onondaga County**, the Hiscock Legal Aid Society prevented homelessness for 128 households, with an estimated shelter cost savings of \$153,412.
- LSFA brings federal benefits to New York. Like other civil legal services providers throughout the state, LSFA members also help bring federal benefits into New York. Alliance members won Supplemental Security Income (SSI) and Social Security Disability Income (SSD) benefits for thousands of low income New Yorkers who are too disabled to work. In 2009, LSFA members generated about \$17,117,288 in retroactive benefit awards and monthly benefits. Looking at the IOLA Fund's statewide data, LSFA members generated about 30% of all new SSI/SSD benefits for 2009. As the IOLA Fund notes in the Chief Judge's Report, the average duration of federal disability benefits is 9.7 years. Again, the IOLA Fund conservatively looked back only five years and found that, statewide, the total of all ongoing SSI and SSD benefits received in 2009 was more than \$96 million. Assuming that the LSFA is responsible for about the same percentage of these ongoing benefits as it was for newly won benefits in 2009 means that LSFA members were responsible for generating about \$28,800,000 in ongoing federal disability benefits. Thus, LSFA members generated a total of \$45,917,288 in federal SSI and SSD benefits coming into upstate New York and Long Island in 2009.

As the Chief Judge's Report notes, the United States Department of Commerce estimates that every federal dollar brought into the New York economy generates a multiplier effect of 1.48 as low income families and individuals use the money received to purchase necessities such as rent, food, medicine and clothing, purchases which in turn support local businesses. Although LSFA members also generated federal Medicare dollars, federal Earned Income Tax Credits and millions of dollars in additional federal benefits such as veterans' benefits and Medicaid, taking only the SSI and SSD benefits for the moment, and using the same methodology the IOLA Fund used, the \$45,917,288 in SSI/SSDI benefits LSFA members brought in for their clients generated a total economic stimulus effect of \$67,957,586.

- Savings in Costs Related to Domestic Violence. Finally, many LSFA members represent low income victims of domestic violence. We assist victims of domestic violence in gaining orders of protection, custody orders, orders for child support, or divorces from batterers. In addition to a client's safety and stability, communities also enjoy cost savings from keeping a survivor safe and independent. Wages and police resources are saved, medical costs and counseling for children avoided. The IOLA Fund used a conservative cost savings per victim of \$3,406. Based on the 2,116 domestic violence victims LSFA members assisted in 2009, we estimate our work saved a minimum of \$7,207,096.

Given the minimum cost savings of more than \$43 million from homelessness prevention and domestic violence representation, and the almost \$46 million in SSI/SSD benefits, LSFA representation had a direct dollar impact of about \$89 million in upstate New York and Long Island. With the addition of the economic stimulus of about \$68 million from Alliance

representation in SSI and SSD cases, **LSFA members generated about \$157 million in overall economic impact for New York.** With such a substantial economic pay-off for upstate New York and Long Island, it is abundantly clear that funding civil legal services makes economic sense for New York.

The Legal Services Funding Alliance's Request

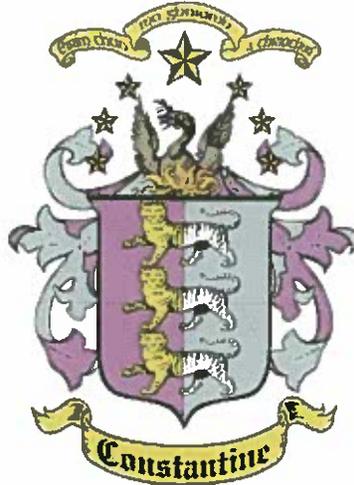
We ask for your support in ensuring that civil legal services are available to low income residents of New York throughout the state. The Legal Services Funding Alliance strongly supports the Chief Judge's budget in its entirety, and urges you to adopt it without change. The Chief Judge's budget is based on documented need and the crisis our justice system currently faces due to the lack of civil legal services. Given the substantial economic benefit from providing civil legal services, this funding is easily justified, especially during the fiscal crisis New York faces.

In addition, the Legal Services Funding Alliances urges restoration of state funding received in the 2010-11 budget year, a total of \$2.5 million.

These funds are necessary to allow the Courts and New York to ensure justice to all, no matter where you live or where you're from. Thank you for your support. The Legal Services Funding Alliance looks forward to meeting with you individually and working together through this difficult fiscal period. Thank you for the opportunity to testify before you today.

Senate

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JOINT LEGISLATIVE FISCAL COMMITTEE HEARING EXECUTIVE BUDGET PUBLIC PROTECTION 9 FEBRUARY 2011 STATEMENT OF TERRY O'NEILL, DIRECTOR THE CONSTANTINE INSTITUTE, INC.

INTRODUCTION

The Constantine Institute, Inc. has been organized to promote the highest constitutional, legal, ethical and professional standards in law enforcement, to encourage innovation in public safety strategy, tactics, training and education and to foster a seamless continuum of cooperation, support and mutual respect among public safety agencies and organizations.

We offer these comments in reaction to the governor's Public Protection Budget proposal and make some suggestions of our own for the Legislature to consider.

COMMUNITY POLICING

The concept of community policing has been widely known for nearly three decades. It is based on a police agency's building and working in partnership with community stakeholders to identify and solve problems that degrade quality of life and create an environment in

which crime thrives. It has never been systematically promoted by the state of New York. Governor Cuomo's budget proposal offers nothing to suggest that he will change that.

The epidemic of drug-fueled violence that took hold in the 1980s resulted in the lion's share of public safety resources being invested in prison capacity during the administration of Governor Mario M. Cuomo. The Pataki years saw the emergence of Operation IMPACT, the state's primary local assistance program for law enforcement derived from the widely influential, statistics-driven, technology-based policing made popular under the administration of New York City Mayor Rudolph Giuliani under the name CompStat in the mid-1990s.

The popularity of Giuliani-style enforcement nationwide has effectively driven police agencies apart from the communities they serve and stymied the growth of the community policing movement. It has also, as research published this past year by Dr. Eli Silverman and Dr. John Eterno has indicated, resulted in downgrading of felonies and discouraging victims to file complaints by commanders who are under relentless pressure to report steadily declining rates of crime.

Leading figures in contemporary policing are saying loudly and clearly that police/community partnership has become attenuated. Baltimore Police Commissioner Frederick Bealafeld, III has observed that we have turned police cars into rolling high-tech offices. Now, officers won't get out of the "office" and interact with the public. Bernard Melekian, Director of the US Justice Department's COPS program has noted that while the numbers show that cities have grown safer, opinion polls confirm that Americans still fear crime.

In Albany, recent years have seen an extraordinary community discussion on the direction we want our police department to take. This was catalyzed by a number of tragic homicides involving victims and perpetrators of a very young age. These kids are not statistics. In a small city like ours, they have names. The kids in our neighborhoods and schools know them. For nearly four years, however, we had a chief of police who was addicted to the flashy technology we got through Operation IMPACT, created a "strike force" and responded to expressions of public dissatisfaction with the department's service and performance by citing statistics from DCJS indicating a decline in reported crime.

This past year, Albany went through a very public process of searching for and selecting a new police chief. The people had the opportunity to tell the search committee empanelled by the mayor what kind of chief they wanted. At the same time, the interim team managing the Albany Police Department worked closely with the Common Council to develop a framework for designing and implementing a community policing plan. That plan is now in place. It has as its most visible component the establishment of Neighborhood Engagement Units that have divided the city into police beats with permanently assigned officers who have a community policing mandate.

I have the honor of having been appointed recently to the Buffalo Police Department Reorganization Commission which has a mandate to review the organization and geographic deployment of the department and to develop a plan for the implementation of community policing. If the state's Capital and its second largest city are taking the lead on community

policing at last, it's high time that the state's program of local assistance to law enforcement administered through DCJS get on the bandwagon.

THE NEIGHBORHOOD PRESERVATION CRIME PREVENTION ACT

There is a moribund statutory framework in New York to promote a type of community-based problem-solving that focuses on neighborhood preservation and renewal. It is the Neighborhood Preservation Crime Prevention Act (NPCPA) (Chapter 55, Laws of 1983). It was intended to promote the creation of an infrastructure of community-based nonprofits that would partner with local police and other municipal agencies to preserve and renew neighborhoods and thereby reduce crime. DCJS was charged with administering the NPCPA and tasked with awarding small grants and providing technical assistance to the nonprofits encouraged by the program.

This forward-looking legislation, which Albany County District Attorney David Soares has called "one of the most brilliant pieces of legislation ever drafted, empowering neighborhoods and empowering people," was never implemented. In fact, early in the Cuomo administration, DCJS' entire community crime prevention program was abruptly terminated. But neighborhood deterioration, specifically the abandoned building problem, continues to be a major criminogenic problem in all of our in all of our cities. We should, if not activate the NPCPA, at least come up with a program that fully integrates neighborhood preservation into our overall crime-fighting strategy.

PRISON INMATE RE-ENTRY LYDIA'S HOUSE

Between 1983 and 1994, the population of the state prison system exploded from 17,000 to 71,000 at its peak. Today, the Department of Correctional Services releases almost as many individuals in a year as were in prison in 1983. Very slowly has our system moved to put in place the network of community resources that are needed to ensure that these people make a successful transition back to the community. Since former President George Bush proposed and Congress passed the Second Chance Act, there has been positive development in this direction. In New York, DCJS has administered funding to support prisoner re-entry task forces in a number of the state's counties. President Obama has just empanelled a Cabinet-level re-entry task force to co-ordinate programs of a range of federal agencies in support of state and local re-entry efforts.

Several years ago, I worked with Albany County District Attorney David Soares on an effort to integrate an inmate re-entry program into the county's total public safety strategy. In Albany County, there are some 600 persons under parole supervision at any given time. The problem of caseload overburdening of parole officers leading to lax supervision of parolees is well known. The rate of recidivism of ex-convicts can rise to two-thirds in many places. These facts cannot be responsibly ignored by any subdivision's public safety authorities.

In the course of developing a proposal for Mr. Soares, I learned that there are many organizations in the community that collectively offer a full range of services that transitioning inmates need. It has become increasingly accepted that generic transition programs are not the most effective. Each returning inmate has different needs. Each is

most effectively served by a program individually tailored to meet those needs. It is in our interest to have available the widest array of options out of which to fashion individual reentry programs. To date, the established providers have not been coordinated, they have competed against one another for resources and clients and some large providers have monopolized the field. The county re-entry task forces have begun the process of cataloging and coordinating services. But we think we could do something more.

That something is represented by a program in Albany called Lydia's House, Inc. Several years ago, Tamika Williams, an Albany woman who had done time in state prison, incorporated a nonprofit to own a house offering temporary housing and assistance in accessing transition services to up to six women returning to the community from prison. A small, intimate and most importantly, community-based program. We strongly support this kind of program. For decades now, our distressed and mostly minority neighborhoods have produced most of our prison population. These neighborhoods, which, outside of New York City, are very often Operation IMPACT zones, are where most individuals under parole supervision cluster. They are also the neighborhoods where lie much of the abandoned housing stock in our cities. Lydia's House is an example of neighbors helping neighbors. In this instance, ex-offenders are being housed and served, a building in an IMPACT zone is being used in a way that reduces the risk of recidivism and the people of the neighborhood are being empowered. A very healthy situation. And when it is combined with community policing and a renewed investment in neighborhood preservation, perhaps by providing job training in the building trades for returning inmates, a win-win-win situation.

PREDICTIVE POLICING

I have long been a critic of New York City's CompStat and the state's Operation IMPACT. Statistics-driven policing tactics like CompStat are powerful management and accountability tools. But policing by the numbers does little to build a sense of community well-being. Accordingly, we advocate a resurgence of community policing. For those who must have their technology and data-driven policing, not to worry. A powerful new resource is about to be debuted. It is called predictive-policing. It takes in and analyzes enormous amounts of data and using very sophisticated computer modeling it predicts where future crime is likely to emerge.

One of the truly outstanding achievements of the New York State Police in recent decades and a major contribution to the advancement of the law enforcement profession is the prestigious annual Lt. Col Henry F. Williams Homicide Investigation Seminar established in 1987 in memory of a celebrated homicide investigator and early champion of the scientific investigation of crimes of violence. For investigators, prosecutors, defenders and forensic scientists, this annual gathering has showcased some of the most sophisticated investigative methods and advancements in forensic science and technology. In the years since its inception, a worldwide fellowship of Williams Associates has grown steadily sharing knowledge and valuable cooperation and assistance in the investigation of crimes of violence.

We have recommended to the administration of Superintendent Joseph D'Amico that the New York State Police reach out to Chief Charlie Beck of the Los Angeles Police

Department. His agency has been at the forefront of developing the next generation of information and intelligence-based policing under the rubric of predictive-policing. The LAPD is awaiting a \$3 million federal grant to put it into effect. In that it has significant potential in preventing violent crime, particularly retaliatory gang violence, the Williams Seminar would provide a great venue for debuting this innovation on the world stage and bring considerable credit on the NYSP for recognizing its enormous potential.

RESTORATIVE JUSTICE THE SPINAL CORD INJURY RESEARCH PROGRAM

At this writing, the news of the shooting in Tucson, Arizona that took the lives of six people and left U.S. Representative Gabrielle Giffords with a gunshot wound to the head is continues to be the headlines. An injury such as Representative Giffords has sustained is very serious. No one sustains an injury like that without neurological consequences. This tragedy underscores the fact that it is critical that medical research toward better treatments for such brain and spinal cord injuries goes forward. New York has, in fact, invested more than \$60 million in such research under the Spinal Cord Injury Research Program (SCIRP) over the past decade.

SCIRP was created in 1998 by Paul Richter of Albany, a former State Trooper whose career was ended when he was shot and paralyzed near Lake Placid on September 30, 1973. With the support of many retired law enforcement officers and veterans' organizations, we were able to accomplish the extraordinary legislative feat of getting the SCIRP bill introduced, passed and enacted in the space of four months as Chapter 338 of the Laws of 1998.

The Act imposes a small surcharge on Vehicle & Traffic Law fines that goes into a fund from which grants are made to medical research facilities in our state. The statute explicitly states that these funds SHALL be applied to SCI research. In effect, the program puts the state's entire force of law enforcement officers to work, not only making our roads and highways safer and free of drunk drivers, but generating up to \$8.5 million annually that goes directly into research leading to treatment and cure of spinal cord injury (SCI) paralysis, traumatic brain injury (TBI) and many other neurological conditions. As traffic accidents are the leading cause of SCI and TBI, we consider it the most extraordinary example of restorative justice we've yet seen. Moreover, TBI is at epidemic levels among our military personnel because of the enemy's weapon of choice in our current overseas conflicts, the IED. Our commitment to neurological research has brought aid, comfort and hope to tens of thousands of military families.

Last year's chaotic budget process resulted in SCIRP revenue being diverted to other general government purposes. We hope that the Legislature will recognize that this program invests in an industry that holds great promise for New York's future prosperity and great hope for our citizens who live with neurological impairments of various causes. This is restricted revenue. Honor the restriction.

MENTOR INTERNATIONAL

The fiscal crisis has made it difficult to commit police personnel to the Drug Abuse Resistance Education Program. The State Police has had to terminate its School Resource Officer Program. Cops and kids still belong together.

We challenge OASAS Commissioner Arlene González-Sánchez and State Police Superintendent Joseph D'Amico to lead us in a new direction, one that promotes best practices and evidence-based programs to protect children from the effects of mind-altering drugs and all the crime, violence and degradation they bring.

Last year, I was introduced to Mentor International, a global organization that promotes innovative and scientifically vetted youth anti-drug abuse programs. At its Prevention Awards Gala in Washington last October, Mentor's founder Queen Silvia of Sweden recognized outstanding programs selected from nominations representing fifty nations.

New York has world class institutions on the cutting-edge of medical, mental health and social welfare research, law enforcement organizations with a proven commitment to kids and organizations that teach, guide and advocate for children. Bring them together on a regional basis to brainstorm and develop concepts for next generation youth anti-drug abuse programs.

The Mentor Awards are given every two years. If we set a goal now and go after it with resolve, imagination and all of the intellectual resources we have at our disposal, we can proudly have a new program to be New York's nominee in 2012.

A PUBLIC SAFETY CAREERS ACADEMY

Lt. Gov. Robert Duffy has been tasked with the portfolio of ambassador to upstate business and development interests. Certainly, the stability and prosperity of our upstate communities require they have top-notch public safety services.

Duffy, the former mayor and police chief of Rochester, has policed and governed a population that is rapidly approaching 50 percent people of color. There is an intense public discussion in the city about diversity in the municipal work force, especially the police and fire departments. This is a problem in our other upstate cities as well.

In a recent op-ed article in the Rochester *Democrat and Chronicle*, Duffy noted that this is an urgent problem in many municipalities and called for creative responses. One of his most intriguing ideas was creation of a public safety charter school.

There are many reasons why young people of color are not going into the public safety professions. High dropout rates are high on the list. Kids who do well academically have many other career options. Having spent time in our public schools, I've observed that there is an animus against law enforcement traceable to decades of the war on drugs and the long-term effect of the mass deportation of young men of color to our prison gulag.

CeaseFire reaches the highest risk young people

selection criteria	percent of clients	low-high range across sites
age 16-25	82%	33 - 100
involved in a gang	92%	75 - 100
key member of a gang	51%	14 - 80
victim of a shooting	8 %	3 - 21
risky street behavior	91%	73 - 98
arrest record	60%	31 - 95
probation or parole	44%	19 - 73
served in prison	22%	3 - 46
classed "high risk" on 4/7 criteria	84%	58 - 94

Note: 593 active clients in 12 CeaseFire sites.

CeaseFire collaborates with community partners from many different sectors

Sector	Total No. Collaborators with CeaseFire
Business	46
Clergy	58
Community	25
Police	50
School	58
Service Providers	101
Political Leaders	57
Total	395

Of the 395 total collaborators, 243 were described as “centrally involved.”

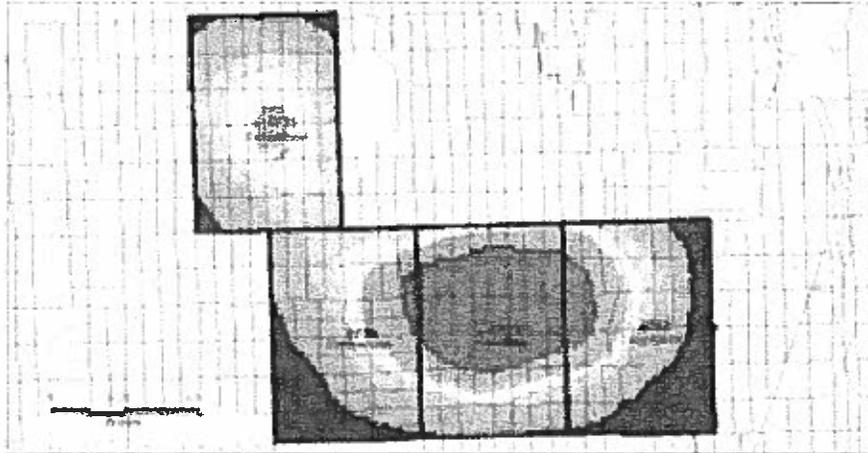
Impact was found for every CeaseFire community (Three Methods Used to Asses Effectiveness)

	Changes in Violence Due to the Program		
	shootings down ^a	hot spots cooler	gang homicide decline
Auburn-Gresham	-17%	-15%	gang involvement in homicide down reciprocal killings down
Englewood	-34%		
Logan Square	-22%		gang involvement in homicide down reciprocal killings down
Rogers Park		-40%	
Southwest	-24/-27%		gang involvement in homicide down
West Garfield Park	-24/-23%	-24%	reciprocal killings down
West Humboldt Park	-16%	-17%	
East Garfield Park	not evaluated	not evaluated	reciprocal kllings down gang involvement in homicide down

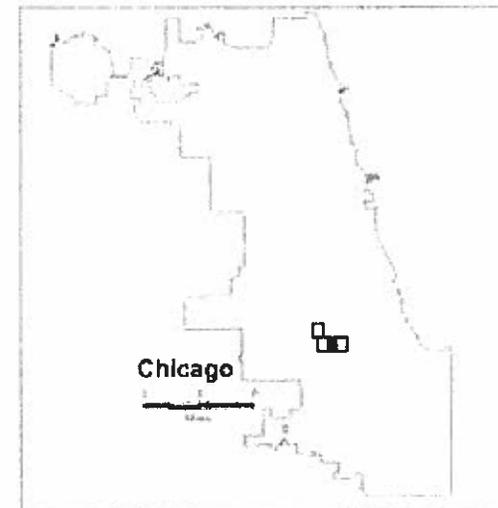
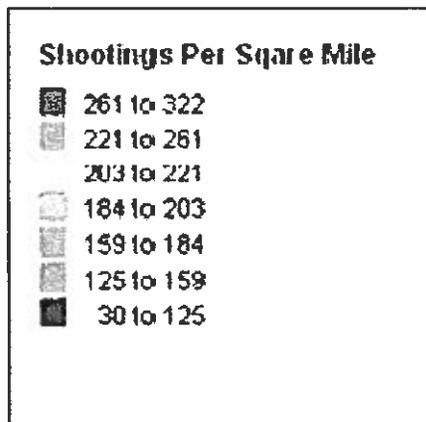
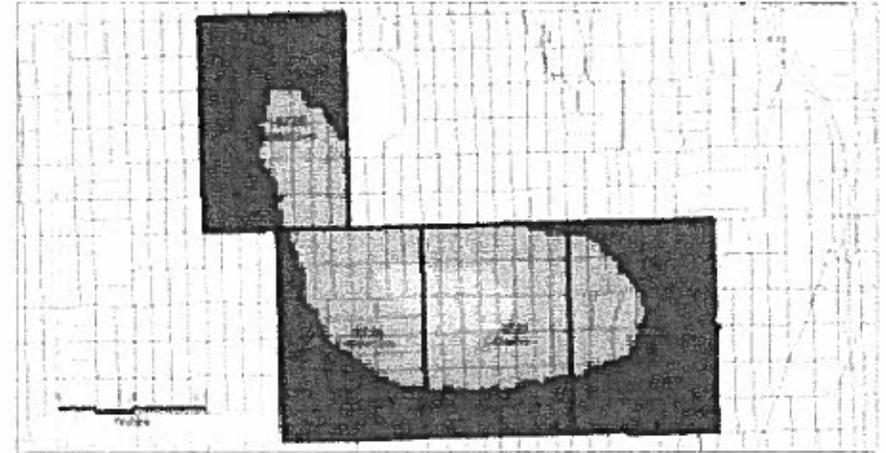
Note: ^a Two measures: all actual and attempted shootings, and all persons shot or killed; gun homicide alone also lower in Auburn-Gresham due to the program

Reduced Shooting Hot Spots – Englewood

Before CeaseFire

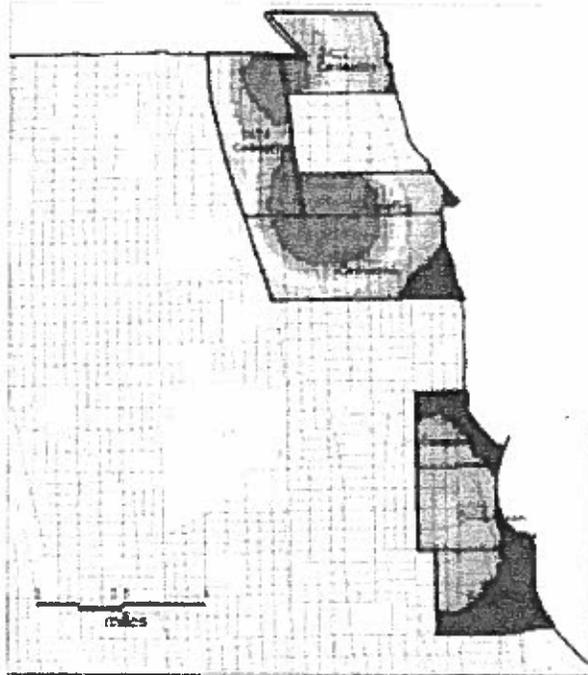


After CeaseFire

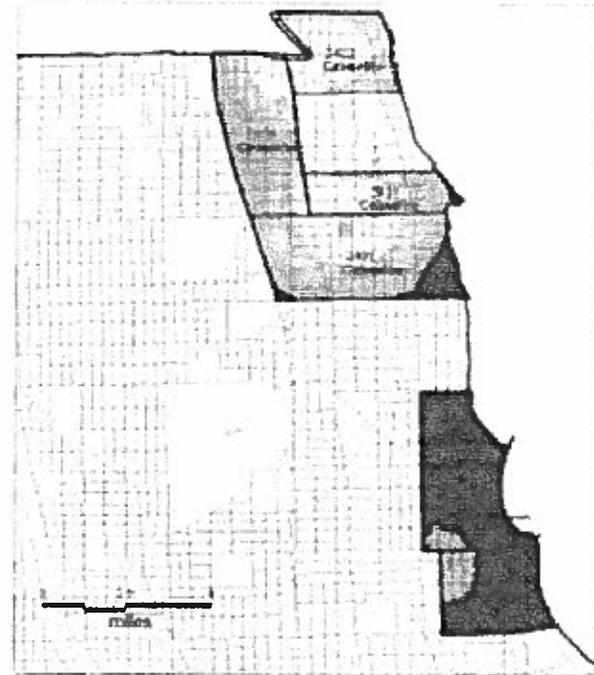


Reduced Shooting Hot Spots – Rogers Park

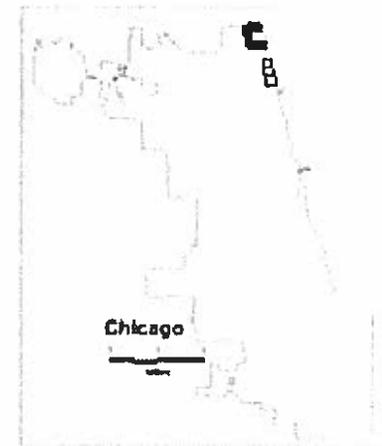
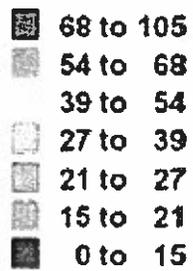
Before CeaseFire



After CeaseFire



Shootings per Square Mile

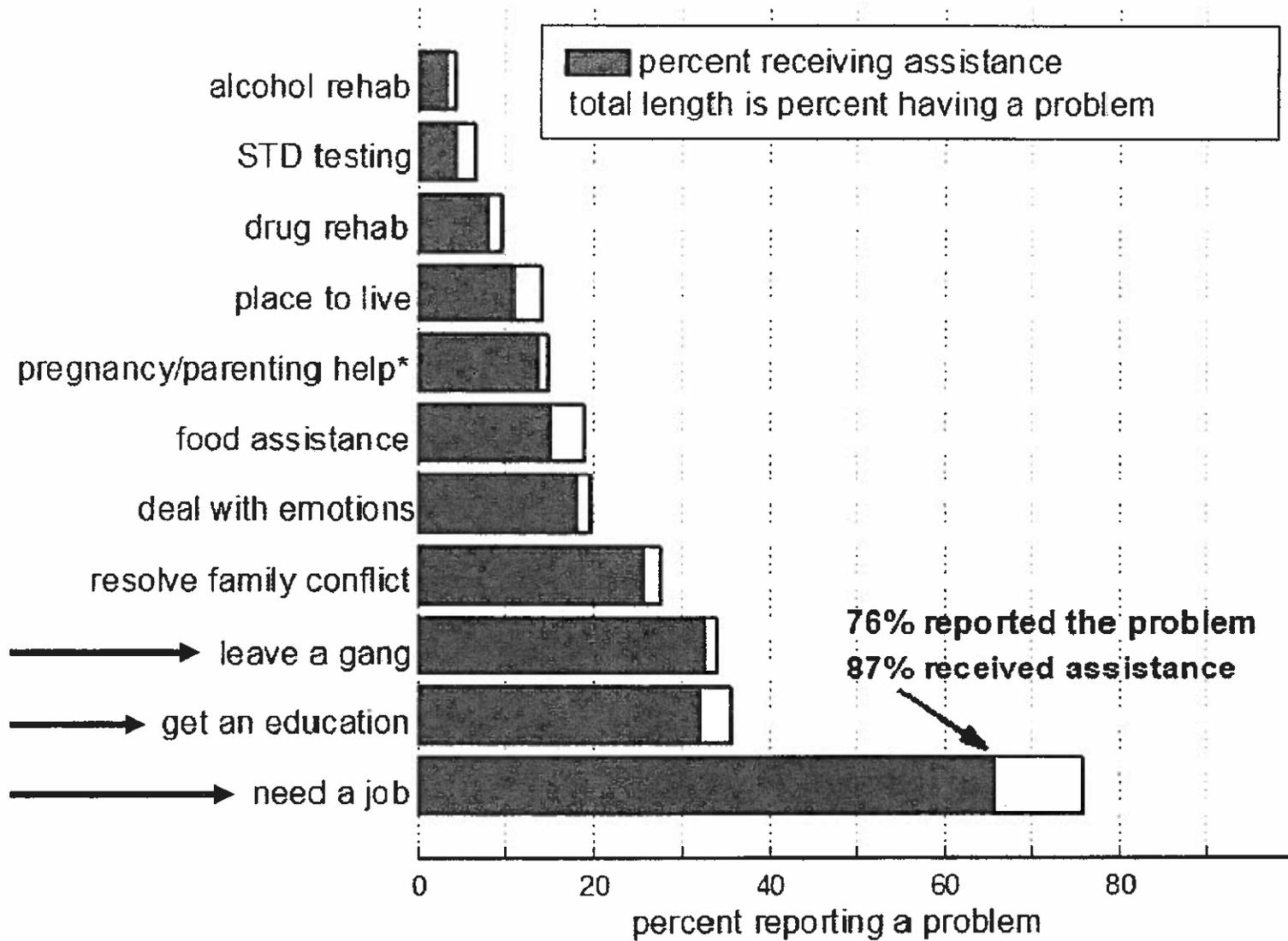


Up to 100% Percent Drop in Reciprocal Murders

Results from Gang Network Analysis

	program	control
Auburn Gresham	-100%	-25%
Englewood	-100%	-100%
Logan Square	-100%	+100%
Rogers Park	no change	n/a
Southwest	-100%	no change
West Garfield Park	-46%	+41%
West Humboldt Park	-50%	-57%
East Garfield Park	-100%	+60%

Helped 85-99% of highest risk clients with job, education or get out of gang (Department of Justice study - interviews of 297 clients)



*clients with children only

Selected Quotes from DOJ Evaluation Study

Impact on Individuals

- “CeaseFire tried to focus on ‘high risk’ This goal was achieved.”
- “after [the clients’] parents, their outreach worker was rated the most important adult in their lives.”

Reducing Retaliations and Murders

- “It was clear that Violence Interrupters provided men and women with the opportunity to resolve their grievances.... Their efforts were groundbreaking.”
- “One measure in which the CeaseFire areas displayed consistent changes was with regard to reciprocal murders.”

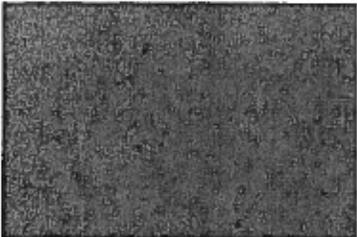
Impact on Community

- “Overall, the impact of the CeaseFire Program is significant and moderate-to-large in size.”
- “In every program area there was a substantial decline in the median density of shootings following the introduction of CeaseFire.”

“I found the statistical results to be
as strong as you could hope for.”

Prof. Wes Skogan
Department of Justice Study Lead investigator

Quoted in
New York Times Magazine, May 4, 2008


FINN

THE JOHN F. FINN INSTITUTE
FOR PUBLIC SAFETY, INC.

CeaseFire-Chicago: A Synopsis

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October, 2008

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The John F. Finn Institute for Public Safety, Inc., is an independent, not-for-profit and non-partisan corporation, whose work is dedicated to the development of criminal justice strategies, programs, and practices that are effective, lawful, and procedurally fair, through the application of social science findings and methods. The Institute conducts social research on matters of public safety and security – crime, public disorder, and the management of criminal justice agencies and partnerships – in collaboration with municipal, county, state, and federal criminal justice agencies, and for their direct benefit. The findings of the Institute’s research are also disseminated through other media to criminal justice professionals, academicians, elected public officials, and other interested parties, so that those findings may contribute to a broader body of knowledge about criminal justice and to the practical application of those findings in other settings.

The Finn Institute was established in 2007, building on a set of collaborative projects and relationships with criminal justice agencies dating to 1998. The first of those projects, for which we partnered with the Albany Police Department (APD), was initiated by John Finn, who was at that time the sergeant who commanded the APD’s Juvenile Unit. Later promoted to lieutenant and assigned to the department’s Administrative Services Bureau, he spearheaded efforts to implement problem-oriented policing, and to develop an institutional capability for analysis that would support problem-solving. The APD’s capacity for applying social science methods and results thereupon expanded exponentially, based on Lt. Finn’s appreciation for the value of research, his keen aptitude for analysis, and his vision of policing, which entailed the formulation of proactive, data-driven, and – as needed – unconventional strategies to address problems of public safety. Lt. Finn was fatally shot in the line of duty in 2003. The Institute that bears his name honors his life and career by fostering the more effective use of research and analysis within criminal justice agencies, just as Lt. Finn did in the APD.

Introduction

The term “Ceasefire” is widely associated with Boston’s “Operation Ceasefire,” which was a focused deterrence initiative conceived and implemented in 1996, and replicated (with some variations) in a number of other cities since then. Focused deterrence initiatives target high-risk offenders for enhanced enforcement, and notify the offenders that continued violence will evoke extraordinary enforcement actions, in order to more effectively deter the violence in which the targeted offenders are prone to engage.¹ However, a number of other violence-reduction programs go by the name “Ceasefire,” and they are not focused deterrence initiatives. One of those, implemented by the Chicago Project for Violence Prevention (CPVP), differs from the Boston model in a number of respects, but it too has been favorably evaluated.² We briefly describe the philosophy and theory behind CeaseFire-Chicago, describe the program components, and discuss the findings on its effectiveness.

Chicago implemented the Project for Violence Prevention in 1995. Unlike the enforcement-focused, deterrence-based CeaseFire strategies favored by Boston and its progeny, Chicago’s program applies what it characterizes as a public health approach to violence prevention. That is, violence is viewed as a serious health threat in the same way as polio, smallpox, and HIV/AIDS. The disease metaphor implies that the spread of violence can be interrupted. According to CPVP Executive Director Gary Slutkin, “punishment doesn’t drive behavior. Copying and modeling and the social expectations of your peers is what drives your behavior.”³ A two-stage approach toward violence follows from this premise. First, Slutkin observes, as you would fight tuberculosis, “find those who are most infectious and stop the transmission. This means going after young men most likely to fire a gun and set off a spiral of further violence and try to stop them pulling the trigger. The longer-term aim, like treating AIDS, is to change the behavior of the whole group so that shooting (like unsafe sex) becomes unacceptable in the peer group, even gang communities.”⁴

We would note that if CeaseFire-Chicago represents the public health approach to gun violence,⁵ it does not differ dramatically from a contemporary criminal justice approach. Over the past twenty-five years, criminal justice has become more proactive and more preventative in its approach to public safety problems, more eclectic in the tactics that are designed and implemented, and more prone to partner with social service agencies and community institutions to reduce crime and disorder. The parallels between these approaches extend from strategic theory to strategic practice. Criminologists will recognize the proposition that peer influences shape the (delinquent) behavior of youth as social learning theory. Law enforcement will recognize the concentration on high-risk youth as the same strategic focus of focused deterrence initiatives.

CeaseFire’s program theory rests on three factors that contribute to violence – norms, decision-making, and risks – and the CeaseFire model addresses each in turn. First, to

¹ See Heidi S. Bonner, Robert E. Worden, and Sarah J. McLean, *Focused Deterrence Initiatives: A Synopsis* (Albany: John F. Finn Institute, 2008).

² For a comprehensive description and evaluation of CeaseFire-Chicago, see Wesley G. Skogan, Susan M. Harnett, Natalie Bump, and Jill DuBois, *Evaluation of CeaseFire-Chicago* (Chicago: Northwestern University Institute for Policy Research, 2008).

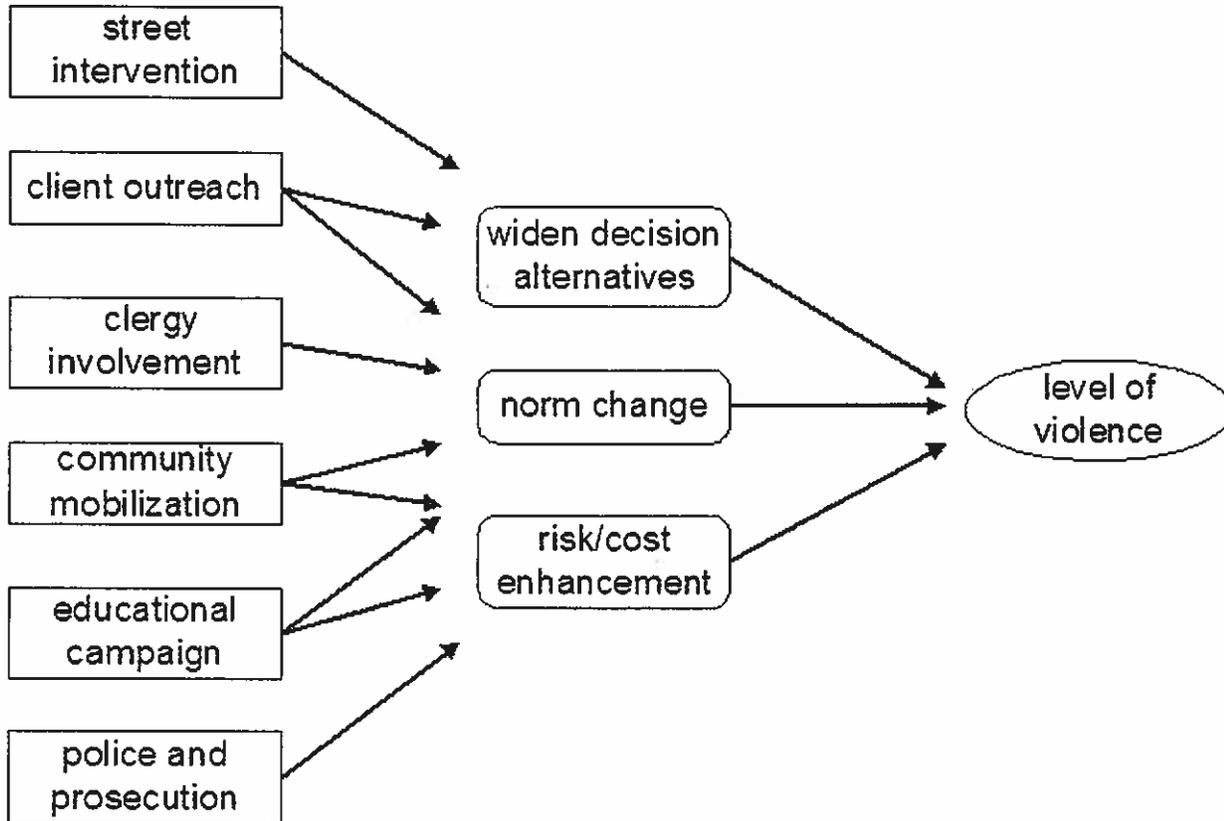
³ Alex Kotlowitz, “Blocking the transmission of violence,” *The New York Times Magazine* (May 4, 2008).

⁴ Damian Whitworth, “Street violence is an infection. I can cure it,” *The Times* (July 2, 2008). Available online at http://women.timesonline.co.uk/tol/life_and_style/women/the_way_we_live/article4251027.ece.

⁵ Also see David Hemenway, *Private Guns, Public Health* (Ann Arbor, Mich.: University of Michigan Press, 2004), especially chap. 2.

influence community norms about the appropriateness of violence, CeaseFire-Chicago provides for community mobilization, public education, and mentoring via outreach workers (more on these components below). Second, to provide immediate alternatives to violence at the time when individuals are making decisions about retaliation, CeaseFire-Chicago uses “violence interrupters” to intervene. Finally, to heighten awareness of risks – incarceration, injury, or death – CeaseFire communicates a classic deterrence message.

CeaseFire-Chicago’s Program Theory⁶



To date, Baltimore, Maryland, Kansas City, Missouri, and a number of cities in New Jersey, including Newark, Irvington, and Camden, have adopted the CeaseFire-Chicago model. Rigorous evaluations have not been conducted in these other jurisdictions, and in some cases it is difficult to ascertain whether the jurisdiction is implementing the Boston model, the Chicago model, or some hybrid of the two.

⁶ Skogan, et al., *op cit.*, p. 1-4.

Program Components

The goal of CeaseFire is simple – prevent shootings. Although CeaseFire staff hopes for broader behavioral changes, there is no expectation that offenders will desist from offending altogether, only that they refrain from gun violence. Furthermore, the Chicago strategy focuses on *preventing* harm (in the form of shootings), though harm *reduction* is also seen as a worthwhile goal. Although CeaseFire staff frequently negotiate truces to prevent violence, they also occasionally negotiate a fistfight or payment of a fine in order to prevent a *shooting*. On-the-spot alternatives to gun violence are improvised. Because the CeaseFire goal is so tightly defined, the program focuses on behavior change among a small number of individuals in a community (most outreach workers have only ten clients at a time).

CeaseFire-Chicago puts community involvement, not law enforcement, at the forefront. Project members involve community-based organizations and focus on street-level outreach and conflict mediation to change community norms regarding violence (particularly gun violence). These CeaseFire activities are conducted in each of 25 sites across Chicago, and they are organized around five core components: outreach and violence interruption, public education, faith-based leader involvement, community mobilization, and criminal justice participation.⁷

Outreach and Violence Interruption

Outreach workers are street-smart individuals who maintain a client base of high-risk youth. Their goal is to establish a relationship with their clients so that they may attempt to steer them away from violence and toward education and employment opportunities. Outreach workers are trained to recruit as clients high-risk individuals, who meet at least four of the following criteria: between the ages of 16 and 25; have a prior offense and arrest history; a member of a gang; formerly in prison; the recent victim of a shooting; involved in high risk activity (in practice, this meant involvement in street drug markets).⁸ CeaseFire participants are recruited on the streets.

Violence interrupters, generally former gang members, represent a newer CeaseFire component, which dates to 2004. Violence interrupters were added to the CeaseFire program because outreach workers were unable to reach the most high-risk people. Interrupters have the necessary background – a familiarity with the players and an intimate understanding of gang culture – to navigate the street gang world. Under the program model, interrupters work at night to monitor impending conflicts; their focus is to reach out to high-level gang leaders to call for truces and to stop retaliations. In January 2005, two full-time violence interrupters were placed at a local hospital to mediate with victims of violence and their families.

Public Education

In addition to client-oriented outreach work and case-oriented conflict mediation, CeaseFire-Chicago employs a broad-based public education campaign to promote nonviolence. Following a public health approach that has been successful in targeting smoking, seat belt use, drunk driving and more, the public education campaign seeks to change community norms and increase awareness of the costs of violence. Neighborhoods are saturated with succinct nonviolence messages (“Stop the Killing,” “No More Shooting”) in a variety of formats (posters,

⁷ CeaseFire: Fiscal Year 2007, Report to the State of Illinois (August 2007). Available at: <http://www.ceasefirechicago.org>.

⁸ Skogan, et al, *op cit*.

flyers, yard signs, bumper stickers, etc) that point out the consequences of gun violence. CeaseFire staff believe that it is the volume of literature distributed rather than the details of the message that result in behavior change, which is why saturation is key to the public education component. The goal is “massive messaging.”⁹

Faith-Based Leader Involvement

CeaseFire also enlists the help of faith-based leaders in the community, whose work is intended to complement that of CeaseFire outreach workers and assist in community mobilization. Clergy are considered one of CeaseFire’s most important local partners both for outreach and for direct service provision. Eighty-seven percent of the churches collaborating with CeaseFire had separate not-for-profit arms that provided services.¹⁰ Clergy also operate safe havens, counsel high-risk youth, provide leadership in response to shootings, and preach nonviolence. Because many people turn to their place of worship for comfort and guidance, “faith-based leaders are in a unique position to influence the thinking and behavior of community members and those who are at risk of involvement in shootings and killings.”¹¹ Indeed, 72 percent of surveyed clergy had direct contact with CeaseFire clients.¹²

Community Mobilization

Community mobilization efforts are designed to build a base of support for CeaseFire activities, stop violence in the near term, and change the underlying conditions that lead to violence in the long term. According to the CeaseFire-Chicago website, the development of a violence prevention plan – which describes the violence in the community, efforts to respond, and identified the goals and activities directed at stopping the shootings – is central to mobilizing a community. Additionally, community organizations were often asked to provide citizen input (via local coalitions). Members served on hiring panels, and helped generate turnout for marches and responses to shootings. Additionally, when CeaseFire staff had to travel to the state capital to lobby for support, community organization members often help fill the buses.

Law Enforcement

Finally, CeaseFire is heavily dependent on partnerships with criminal justice, especially for information. CPVP basically “structured their entire initiative around the availability of timely information on shootings and killings from police.”¹³ However, the police were generally reluctant to share intelligence, and although police headquarters was aware that CeaseFire wanted access to information in the police districts, no policy guidance was given to local commanders on how to respond to information requests. Some sites managed to gather information in other ways (e.g. via a police scanner). But we might expect that such reluctance to share information with non-sworn personnel – especially people whose backgrounds afford them access to the street gang world – would be found in any city that implements a CeaseFire program. At the same time, CeaseFire staff had information that law enforcement wanted, but their credibility with clients and others would be compromised were they to share it. These

⁹ Skogan, et al., *op cit.*, p. 1-11

¹⁰ Skogan, et al., *op cit.*

¹¹ CeaseFire: Fiscal Year 2007, Report to the State of Illinois (August 2007), p. 4, available at <http://www.ceasefirechicago.org>.

¹² Skogan, et al., *op cit.*, based on survey results.

¹³ Skogan, et al., *op cit.*, pp. 6-12.

mutually unfulfilled expectations, along with histories of unpleasant contacts with the police, were the sources of tension between police and CeaseFire staff.

Police commanders also sat on hiring panels and officers frequently participated in CeaseFire directed community responses to shootings, providing security and traffic control at CeaseFire events. But plans for enhanced prosecution of perpetrators in shootings were never realized.

Costs

Original funding for CeaseFire-Chicago came from multiple sources; contributions from federal and state grants as well as from local foundations and corporations led to a budget of \$6.2 million for 2005 and \$9.4 million for 2006. However, in 2007 Illinois' governor discontinued funding for CeaseFire and the operating budget dropped to \$3.6 million.¹⁴ Interestingly, although the mayor was supportive of the program, the City of Chicago never provided any funding. Individual CeaseFire sites operate on budgets of about \$250,000 per year.¹⁵

The CeaseFire program currently operates in five areas in Chicago – only two of these sites remain under the CPVP umbrella. Due to the loss of state funding in 2007, CPVP operates a CeaseFire demonstration and training program on Chicago's West Side (with federal funding) and also has grant funding to provide training and technical assistance to other cities seeking to implement the CeaseFire model.

Outcomes

Skogan and his colleagues conducted an extensive process and outcome evaluation of CeaseFire-Chicago. For the process evaluation they conducted observations, interviews and surveys to examine how the program operated in the field, and for the outcome evaluation they utilized statistical models, hot spot maps and network analyses to assess CeaseFire's impact on shootings and murders.¹⁶ The authors caution that shortcomings of the data and the time series research design temper the conclusions that can be reached about the impact of CeaseFire on violent crime.¹⁷ However, an analysis of seven Chicago sites (of the twenty-five in which the program then operated) reveals that the introduction of CeaseFire was associated with significant declines in actual and attempted shootings in four areas. Additionally, four sites experienced declines in persons actually shot. Overall, six of the seven program areas became

¹⁴ Funding for CPVP staff was stable because it came from local foundations and the Illinois Criminal Justice Information Authority (which manages federal pass through money). Individual CeaseFire sites, however, were funded by yearly appropriations from the state legislature which made them vulnerable to political machinations. See Skogan, et al, *op cit*.

¹⁵ Skogan, et al., *op cit*.

¹⁶ Evaluation staff observed 63 headquarters meetings and 52 weekly meetings of violence interrupters and outreach workers, and conducted interviews with 10 headquarters staff. Multiple visits were made to 18 program sites and staff conducted 79 interviews, attended 31 meetings, and went on 15 ride-alongs with outreach workers. A total of 153 surveys were gathered from CeaseFire staff and evaluation staff conducted 230 interviews with potential CeaseFire collaborators (clergy, police, business, etc). Additionally, staff interviewed 297 CeaseFire clients.

¹⁷ These shortcomings include a lack of any measures of strength of the programs in the analysis, the use of crime rates (due to significant changes in beat populations over the time frame) and potential errors from projecting population figures forward from the 2000 Census, and a large degree of spillover in the geographical targeting of interventions.

safer and there is conclusive evidence in four of the six sites that a decrease in the intensity of shooting hot spots was due to the introduction of CeaseFire.¹⁸

Transplanting Ceasefire-Chicago

Chicago-CeaseFire is based on an explicit and plausible set of expectations – its program theory – and the evaluation conducted by Skogan, et al., was well-designed and executed, with fairly persuasive evidence of impacts on shootings and shooting related injuries. CeaseFire-Chicago is, then, a program that offers promise of some relief from gun violence in urban neighborhoods in which gun violence is rife. We would caution localities considering such a program, however, that the generalizability of the findings from Chicago are unknown. Programs that have sought to replicate the model are in the early stages, making it difficult to assess the success with which the program can be adapted and implemented in other settings. Nor do we know whether every component (e.g., outreach workers, violence interrupters, the faith community) is vital, or whether sites exploring the development of such a program might eliminate a component or alter the model without compromising its violence reduction benefits.

In making an informed decision to adopt a CeaseFire program, which is service intensive, localities should take stock of existing resources to ensure that offenders contacted by program staff have access to a broad array of services (e.g. social, educational, and vocational) and, where available, evidence-based services and programs.

Localities considering the adoption of such a program should acknowledge at the outset the importance of information sharing. The resistance of Chicago law enforcement to sharing information with CeaseFire staff is not surprising, given the entrenched resistance of law enforcement to sharing information, the background of many violence interrupters, and the multi-site scope of the program, which necessitates buy-in from multiple districts and levels within the police department. The resistance of CeaseFire staff to sharing their information with law enforcement is also unsurprising, as they must maintain the trust of their clients and other people on the street in order to be effective. Program planners should describe the nature of needed information and work with law enforcement to prescribe information sharing protocols.

Justice, service, and community-based agencies working together can interrupt the cycle of violence. With the shared commitment of a multi-agency partnership, violence prevention efforts benefit from the perspective and expertise of each agency, and the costs need not be borne by any single agency. Moreover, the sustainability of any program is bolstered by multiple streams of funding, as it becomes less likely that cuts in one source of funding will force the program to close its doors. Jurisdictions considering the adoption of a CeaseFire program should capitalize on the opportunity to tap blended funding streams.

¹⁸ The intensity of shooting hot spots declined in two other sites as well, but evidence linking the decline to CeaseFire was inconclusive.