



2010 – 2011 JOINT BUDGET HEARING

FEBRUARY 8 – 9:30 am

PUBLIC PROTECTION

HEARING ROOM B

LEGISLATIVE OFFICE BUILDING

NYS Office of Court Administration	Honorable Ann Pfau Chief Administrative Judge
NYS Office of Home Land Security	Thomas Donlon Director
NYS Division of Criminal Justice Services	Denise O'Donnell Commissioner
NYS Division of Parole	Andrea W. Evans Chairwoman & CEO
	Mark Manthei Executive Director
NYS Division of State Police	Harry J. Corbitt Superintendent
NYS Department of Correction Services	Brian Fischer Commissioner
NYS Chief Information Office & Office for Technology	Dr. Melodie Mayberry-Stewart Chief Information Officer & Director of Office of Technology
NYS Correction Officers PBA	Donn Rowe President

NYS Troopers PBA	Thomas Mungeer President
Legal Aid Society	Steven Banks Attorney in Chief
	Deborah Wright President
Prisoners' Legal Services of New York	Karen Murtagh-Monks Executive Director
	John Dunn Board Member
NYS Bar Association	G. Robert Witmer Former President of NYS Bar Association
NYS Defenders Association	Jonathan Gradess Executive Director
NYS Commission on Judicial Conduct	Robert Tembeckjian Administrator
Osborn Association	Elizabeth Gaynes Executive Director
Empire Justice Center	Anne Erickson President & CEO
	Kristin Brown Lillie Director of Legislature Advocacy
Legal Action Center	Tracie Gardner Director of NYS Policy
NYS Council of Probation & Administrators	Robert Iusi President
NYS Probation Officers Association	Larry Evans Legislative Chair

NYS Association of Fire Chiefs

Tom LaBelle
Executive Director

Legal Services for NYC

Edwina Martin
Director of Government
Relations

Legal Services Funding Alliance

Alan S. Harris
President & CEO

League of Women Voters

Barbara Bartoletti
Legislative Director

Interest on Lawyer Account
Fund of the State of NY

Christopher O'Malley
Executive Director

Constantine Institute

Terry O'Neill
Director

Corporation for Supportive Housing

Ryan Moser
Deputy Director

JOINT LEGISLATIVE HEARING ON THE 2010-2011 JUDICIARY BUDGET

REMARKS OF CHIEF ADMINISTRATIVE JUDGE ANN PFAU

February 8, 2010

Good morning Chairpersons Kruger, Farrell, Sampson 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 2010-2011. And, up front, I want to thank you for your long support of the court system.

We in the Judiciary fully recognize our obligation to join the other branches of government in responding to our State's grave economic problems and achieving cost savings wherever possible. At the same time, as a separate, coequal branch of government that performs constitutionally-mandated, nondiscretionary functions, we must secure the resources necessary to meet our institutional obligations. Our mission under the State Constitution is to hear and decide each and every case that is filed in the courts. We do not have the option of picking and choosing which cases we will hear, of turning people away, of cutting programs and services.

And, yet, we are keenly aware that we do not live in a vacuum. That is why over the past two years, we have taken concrete steps to cut

spending. Last year we submitted a zero-growth budget request and in the process absorbed significant mandatory cost increases. We undertook a program to encourage targeted nonjudicial employees to leave State service. We established employment ceilings in the courts. We are now well into the second year of a strict hiring freeze on administrative positions. Vacancies at the Office of Court Administration remain unfilled, allowing us to direct scarce funds to the courts, where they are most needed. As a result of these efforts, we have reduced the court system's nonjudicial workforce by several hundred positions during the current fiscal year.

We have also streamlined our administrative structure, reducing the number of Deputy Chief Administrative Judges and Administrative Judges. Other spending controls include a ban on all but essential travel (24% reduction over the prior year), restrictions on the purchase of equipment (42% reduction), strict control of overtime (10% reduction), and an increased reliance on online rather than print legal materials (12% reduction).

We are constantly striving for more efficient, cost-effective ways of doing business. Just a few of our initiatives in this regard include

expanded video conferencing, eTrack, which is an automated system that sends parties email notices of any activity in their case, and, within the next six months, online attorney registration.

We are also committed to finding more efficient and effective ways to resolve the millions of cases commenced annually in the New York Courts. For example, the court system convened government agencies, legal services providers and others involved in child protective cases to jointly develop and implement a comprehensive plan to expedite and improve the handling of these important cases. Similarly, the court system took the lead in bringing together many parties to improve criminal arraignments in New York City, eliminating downtime and other unnecessary delays in that important stage of the criminal process. In connection with improved case management, I particularly want to thank the Legislature for authorizing further expansion of electronic filing, including, for the first time in the New York Courts, three mandatory e-filing pilots in Supreme Court civil cases. E-filing offers significant benefits, including convenience and cost savings to the court system and the bar, as well as a "greener" system of justice.

And, lastly, we have made a significant effort to improve the operations and enhance the efficiency of the Justice Courts, which play

such an important role in our legal system. Over the past several years, and especially since the release of our Action Plan for the Justice Courts in November 2006, we have forged a new, closer partnership with the Justice Court community and, as a result, have strengthened these courts in many tangible ways. Key accomplishments include enhanced training for local Justices, greater automation support, and, for the first time, a requirement that Justice Court proceedings be recorded. Here I must express our appreciation of your support for our Action Plan for the Justice Courts, and especially of the Justice Court Assistance Program, which is dramatically improving these local courts.

We are committed to working with the other branches to address the serious fiscal challenges that face New York by building on these and other efforts to reduce costs and increase efficiencies.

This is what we have been doing. Now we look forward. Next year the Judiciary will be confronted with extraordinary mandatory cost increases over which we have no control. Among these is an \$85 million increase in the Judiciary's pension contribution, triggered by the decline in the stock market over the past two years. Other mandated increases include \$7.5 million for health insurance and other fringe benefits, \$58.4

million for contractual nonjudicial salary increases, and \$10 million to implement criminal case caps pursuant to chapter 56 of the Laws of 2009.

We simply cannot absorb these cost increases – not of this magnitude, and not at a time when we are experiencing record-level caseloads. In 2009, new filings hit an all-time high of 4.7 million cases. The sharpest increases came, not unexpectedly, in those categories that are particularly sensitive to the economy. A recent article in the New York Times confirmed what New York’s judges and court staff experience every day – the state courts are the emergency room for society. When the economy collapses, and families are unable to pay their mortgages, consumers default on credit card payments, business deals go bad, it is the courts that are called upon to sort it all out. As the New York Times pointed out, these increased filings involve “not only bad debts and soured deals, but filings that are indirect but still jarring measures of economic stresses, like charges of violence in families torn apart by lost jobs and houses in jeopardy.”¹ Among the case types that have grown especially quickly are foreclosure filings, which have more than doubled since 2006, contract disputes, which are up 23% over the same period, and family

¹See Glaberson, “The Recession Begins Flooding into the Courts,” New York Times, December 27, 2009.

violence cases, which are up 30% in just two years.

From 2001 to 2009, the Judiciary's caseload grew by more than three-quarters of a million new cases a year - an increase of 20 percent. While the economic downturn has fueled the latest surge in the courts' workload, and while growing caseloads are nothing new for the New York Courts, these increases are pushing us to the limit.

Over the years, the growth in the court system's resources has consistently and significantly lagged behind this steadily mounting caseload. Between 2001 and 2009, during this period of 20 percent growth in our caseload, the combined number of judges and nonjudicial employees increased by 8 percent, with much of that increase attributable to the post-September 11 enhancement of court security. Year in and year out, the demands on judges and nonjudicial employees have grown continuously, without a commensurate increase in resources.

Moreover, these statistics do not tell the full story. At the same time that the number of cases is increasing, the work of the courts is becoming more complex and labor-intensive than ever before.

There are many reasons for the increasingly difficult nature of the courts' work. One factor is the growing number of unrepresented litigants

– another reflection of the economic downturn. It has been 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, an estimate that we fear is significantly understated. These litigants, who often face serious consequences in cases involving eviction, consumer debt, foreclosure, and family matters, have unique needs that require disproportionate time and attention from judges and court personnel.

A second factor that has added considerably to the work of the Judiciary is the expansion of drug treatment and other problem-solving courts. While these courts have been enormously successful, producing better long-term outcomes for the parties, reducing recidivism, and saving the State and local governments untold millions in incarceration, social services and other costs, they require a significant investment of the court's time and attention.

There have also been legislative enactments that have added to the courts' work, invariably without provision for additional court resources. We are not complaining about these mandates. We recognize that they serve very important public interests, but the truth is that each demands much more time and effort on the part of judges and nonjudicial

employees. Examples include legislation (L.2005, c. 3) that mandates heightened judicial monitoring of children in foster care and has doubled the number of permanency planning hearings; legislation (L.2008, c. 472, and L.2009, c.507) that requires intensive judicial involvement in settlement of foreclosure cases and is expected to generate more than 150,000 settlement conferences this year; and the custody record-checking legislation (L.2008, c. 595), pursuant to which we have conducted background checks in multiple data bases for more than 1.5 million persons (for a total of more than 5 million searches), and which requires a judge to review the search findings before issuing an order in a custody or visitation case.

In the face of continuing increases in court workloads, the judges and staff of the Unified Court System have redoubled their efforts. Between 2001 and 2009, the number of dispositions per year increased by 16 percent. However, the cumulative effect of years of steady increases in workload without a comparable increase in resources has stretched the Judiciary to the limit. A typical New York City judge hearing child protective cases now has a docket of 2,100 cases, up from 1,600 in 2005. In Rochester City Court there are almost 8,000 new filings each year for each

judge, up from 6,800 in 2001. Every judge in every courthouse in the State can tell a similar story.

Unlike Executive Branch agencies, the Judiciary does not run programs or undertake projects. There is nothing to defer, consolidate or cut. Our constitutional obligation is to decide cases. More than 90 percent of our budget is for people, the nonjudicial staff and judges who process and decide these cases. If our budget is cut, there is no option except to further reduce our workforce. If that is done, what cases should we defer? Do we stop providing assistance to unrepresented litigants in Housing and Family Court? Should New York follow other states and close its courts one day a week? Whatever the choice is, the ultimate impact will be felt by the families, businesses, crime victims, and countless others who rely on the New York Courts to dispense justice.

From the perspective of court operations, our request is in effect another zero-growth budget. Despite record-level caseloads, there are no additional funds here for enhanced support for the courts. The General Fund State Operations and Aid to Localities portion of the Judiciary budget request is \$2.4 billion, which represents an increase of 7.4 percent, or \$168 million, over the current year's budget. Virtually the entire increase,

however, is for mandatory cost increases over which we have no control.

The single discretionary increase we seek for the courts is \$6 million to increase the Judicial Supplemental Support Fund to assist judges with professional expenses. This modest amount represents less than one-quarter of one percent of the Judiciary budget request. After more than eleven years without any adjustment in judicial compensation, a longer salary freeze by far than that borne by judges in any other state, during which the Judiciary has been called upon to do more and more, we believe that this supplement is appropriate.

With respect to judicial compensation, our budget request again includes language that would raise judicial salaries, as well as reappropriation of funds for that purpose. As you know, the issue of judicial compensation is now before the Court of Appeals. However, it remains our position that the best resolution is a legislative solution that not only addresses the need for an immediate adjustment in compensation, but also establishes an open and accountable process for the regular adjustment of judicial salaries.

Finally, I want to say a few words about our request for \$15 million for civil legal services. This amount, included at the request of the justice

community, is intended to offset the precipitous decline in IOLA revenues. Nothing is more fundamental to the court system's mission than ensuring equal justice for all. This funding is particularly critical at this time, when so many of our most vulnerable citizens are at risk because of the economic downturn.

We believe that the Judiciary's 2010-11 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 minimal resources necessary to carry out our constitutional mission. This budget is being submitted at an already difficult time for the Judiciary, with court dockets at record levels and judges now having gone more than eleven years without a single salary adjustment. 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 — just as they been doing year after year, meeting their obligations with great professionalism and dedication. I want to thank you, the members of the Legislature, for your ongoing support of our efforts and for your consideration of our needs.

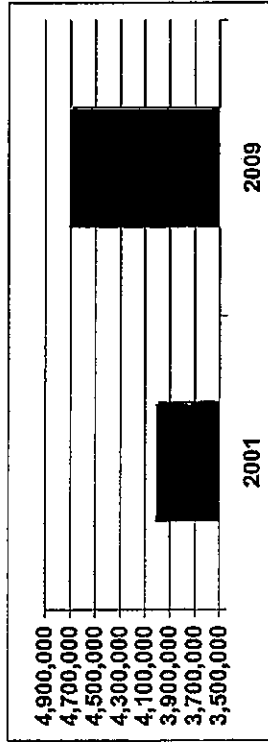
Thank you for inviting me to discuss the Judiciary's budget proposal.

I would be happy to answer any questions.

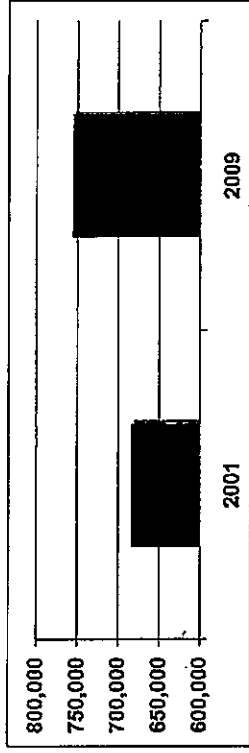
NEW YORK STATE UNIFIED COURT SYSTEM

FILINGS 2001 vs. 2009

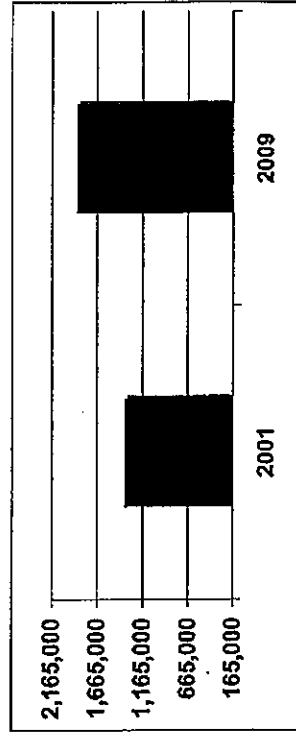
Total Filings



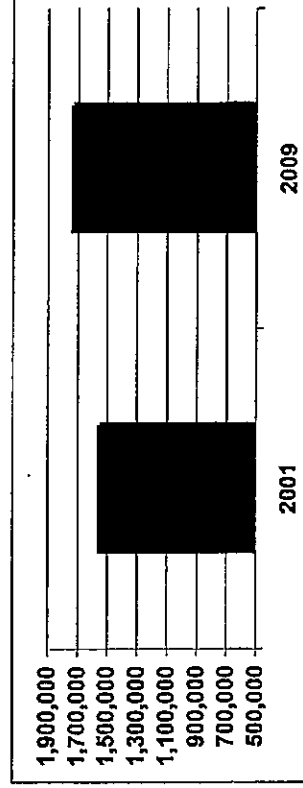
Family Filings



Civil Filings



Criminal Filings



2010-2011 Executive Budget
Testimony of the New York State Office of Homeland Security
Thomas G. Donlon
Director

Before the
Joint Fiscal Committee Hearing on the Executive Budget

Assembly Ways and Means Committee
Hon. Herman D. Farrell, Jr., Chairman
&
Senate Finance Committee
Hon. Carl Kruger, Chairman

February 8, 2010
Albany, New York



Introduction

Good morning. Thank you Chairman Farrell, Chairman Kruger and all members of the joint committee for the opportunity to appear before you today.

My name is Thomas G. Donlon and I am Director of the New York State Office of Homeland Security. I want to take this opportunity to give a brief overview of the evolving terrorism threat we face, as well as our ability as a State to meet and counter those threats.

Deputy Secretary Denise O'Donnell will address the public safety agency merger aspects of Governor Paterson's Executive budget proposal. However, I want to take this opportunity to express support for Governor Paterson's proposed structural reform of the State's Homeland Security and Emergency Services operations. The ever-growing budget deficit New York State continues to face must, without a doubt, be addressed and this proposal would do that – all while maintaining the integrity of counterterrorism and emergency services capabilities.

This proposed merger will offer the most coordinated Homeland Security structure for the people of the State of New York – all while streamlining the respective agency operations as efficiently as possible. The most critical aspect of the Governor's proposal is that the merged structure will allow the Office of Homeland Security to maintain its counterterrorism focus to effectively protect and prepare our citizens from the risks we face on a daily basis.

Since OHS's inception in October of 2001, originally as the Office of Public Security, our mission has been to direct and coordinate a comprehensive counterterrorism and all-hazards prevention, preparedness and response strategy for the State of New York.

This Prevent – Protect – Prepare frameworks guides all of our efforts to address the threats we face, and we appreciate the Legislature's steadfast support for these efforts.

Therefore, it is critical that we continue in our work with our State, federal and local partners collaboratively as a seamless web, with the underlying tenet of information sharing. This can only be done effectively if we remain flexible and adapt to the current threat environment. The terror plots uncovered in 2009 have served to challenge much of what we, as a Nation, understood about the threats we face and the constructs in which we work.

2009 Terror Plots

In looking back at this past year, it is abundantly clear that we cannot rest on past successes nor can we assume that the passage of time alone will bring us closer to safety.

As a matter of fact, we have unfortunately witnessed a series of attempted plots on United States soil. This past year bore witness to perhaps the largest number of domestic terrorist plots in a single year than in all the years since 9/11.

On Christmas day, we witnessed Umar Farouk Abdulmutallab attempted to destroy Northwest Airlines Flight 253 with 300 innocent travelers onboard. Abdulmutallab's failed plot included injecting chemicals into a package of explosives concealed in his undergarments. We are incredibly fortunate that he was unsuccessful in accomplishing his mission, and, with the quick action of courageous passengers, he was restrained and prevented from causing any further harm.

Just last year in Riverdale, New York, a counterterrorism operation by the Joint Terrorism Taskforce netted the arrest of four suspected terrorists who attempted to attack a Synagogue and Jewish Community Center. They also planned to shoot down our military airplanes from Stewart Air National Guard base with stinger missiles. The 4 suspects were arrested after placing inert bombs in the trunks of two cars outside a Synagogue and Jewish Community Center in the Bronx prior to making their way up to the Stewart Air Base.

We also recall the arrest of Najibullah Zazi and two others in September over an alleged plot linked to Al Qaeda targeting New York City all the way from Denver, Colorado. Remember, also, Bryant Neal Vinas from Long island who, in January 2009, pled guilty to providing material support to Al Qaeda; the November shootings in Fort Hood, Texas by Nadil Hasan; and the shooting by Abhulhakim Bledsoe at a Little Rock, Arkansas military recruiting center in June.

While homegrown terrorists have become an ever increasing concern, the impact of international terrorists is clearly just as significant. It has been reported that Abdulmutallab was trained in Yemen by Al Qaeda. We now understand the significance that Yemen plays in the current threat environment as the new training grounds for Al Qaeda.

Make no mistake – this is *not* an 'either/or' scenario.

These examples reveal that the threat of both international and domestic terrorists is by no means a distant issue for New York.

Revised Homeland Security Strategy

No one person or agency can counter the terrorist threat alone. In line with this understanding, in updating the State's Homeland Security Strategy this past year, we solicited feedback from over 600 representatives from all sectors and layers of government across the State, including law enforcement, fire, EMS and emergency management professionals.

This Strategy provides a comprehensive framework to guide, organize, and unify Homeland Security efforts in New York, including strategic planning and the investment of federal Homeland Security grants and other applicable local, state or federal funding sources. It also mirrors the U.S. Department of Homeland Security Strategy and is

intended to serve as guidance for the future and a focal point for implementing both State and federal homeland Security policy at the State and local level.

Federal Homeland Security Funding

The Homeland Security Strategy drives where we allocate our resources, including federal Homeland Security funding. Homeland Security funds have long been a fundamental underpinning for the preparedness and response efforts of the local first responders in every corner of our great State. This funding stream has provided the means with which to better prepare New York's law enforcement, fire and emergency services communities to prevent, prepare for and respond to disasters – both natural and man-made.

As such, OHS has been building and directing targeted grant programs in areas such as urban search and rescue, HazMat, explosive detection canine teams, bomb squads, interoperable communications and companion animal sheltering.

We are happy to report that we have recently benefited from an increase in our two most significant pools of federal funding - State Homeland Security funding and New York City Urban Area Security funding. For 2010, New York State expects to receive over \$275 million dollars from these two grants alone, and over \$455 million is expected to be provided to State localities and New York City metropolitan area agencies under the various federal funding streams. Both the 2010 State Homeland Security Grant Program and New York City Urban Area Security Initiative allocations are by far the highest in the Country.

To ensure that OHS has the necessary levels of “receive and spend authority” legally required in distributing federal awards to our local partners, you will notice an additional \$100 million in local assistance appropriations in the 2010-11 OHS budget. I want to emphasize that this \$100 million increase represents an increase in federal spending authority *only*, and not an actual dollar increase in our agency budget.

In addition to our responsibility as the State Administrative Agency for the U.S. Department of Homeland Security, OHS has been leading the effort to ensure that these funds are programmatically available for use in all the ways that best serve the interests of our first responders.

As an example, in November 2009, the Federal Emergency Management Agency (FEMA) reversed an earlier policy determination from September 2009 which stated that federal Homeland Security funds would no longer be available to support ongoing equipment maintenance and sustainment costs. This determination would have had a serious, detrimental impact upon the State and our first responder community.

FEMA's reversal was the result of an effort led by the Office of Homeland Security to coordinate the feedback from the first responders of New York and other partner states and lobby FEMA and convey such a policy's surely negative impact. Again, I am very proud that OHS was a leading proponent of this policy change, rallying state, local and

federal support for this reversal. Not being able to support equipment maintenance and sustainment with the grant funds would have compromised State and local response capabilities and resulted in a significant fiscal impact for New York State's first responders.

State Preparedness Training Center

With the support of the members of this panel, another major initiative being led by OHS is the ongoing development of the State Preparedness Training Center (SPTC) in Oriskany, New York (located in Oneida County), which continues to advance unique training opportunities to our State and local first responders in Homeland Security, emergency management, law enforcement, fire, EMS and other professions.

I am happy to report that, in 2009, more than 400 state and local first responder agencies, private and nonprofit organizations, and federal agencies collectively sent 5,000 students to the Training Center.

We also support the SUNY based National Center for Security and Preparedness (NCSP) in its efforts to obtain congressional authorization for its membership in the National Domestic Preparedness Consortium. The NCSP business model entails progressive collaboration with all Homeland Security stakeholders to develop cutting edge training programs. NCSP's membership in the national consortium would make it the first in the Northeastern United States – the closest now being in Anniston, Alabama - and will greatly enhance New York's ability to develop and offer the very best in Homeland security training for our first responders.

The Governor's Executive Budget includes \$42 million in new capital investments for further, multi-phased development of the SPTC, to achieve the long-term goal of building a facility in New York that is more than suitable for consortium membership. Such a facility will effectively exploit and make available to first responders across the State the deep well of experience, talent and skill that resides within our resident trainers.

We are by no means doing this alone. OHS has had the benefit of collaborating with partner agencies, task-specific focus groups, and professional organizations such as the State Association of Chiefs of Police, the State Sheriffs Association, and the NYS Association of Fire Chiefs. Altogether, more than 50 local, State, and federal agencies, colleges, and nonprofit organizations have contributed to the Center's planning.

A milestone we are particularly proud of is having become accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA) in 2008, a designation achieved by only 22 public safety academies in the Nation. We are in the good company of the NYPD Police Academy, the only other law enforcement academy in the state to enjoy this accreditation.

The revamped SPTC will feature "smart" classrooms for general first responder training and instruction, as well as state-of-the art, specialized training facilities, including an improved Emergency Vehicle Operations course; a simulated "Cityscape" for training in "active shooter" scenarios; and a new firearms and weapons training complex.

When fully operational, the State Preparedness Training Center will be a centrally located, state-of-the-art, training facility that serves and strengthens the capabilities of our State and local law enforcement, fire services, emergency medical services, and emergency management communities.

Intelligence, Information Sharing & Outreach

In addition to the funding, equipment and training, another critical component to our mission is the sharing of timely, relevant and actionable information. We at OHS and in conjunction with the New York State Police and the NYSIC are constantly evaluating new ways to get into the hands of our first responders - not only the most timely and accurate information - but also the most useful and actionable. In order to improve the collection, analysis and dissemination of information, we are continually evaluating our State's needs depending on the changing time and circumstances.

The OHS Intelligence Division, in conjunction with the NYSIC, produces advisories for law enforcement and the private sector throughout the state as a way to disseminate, in a timely fashion, information on current terrorism threats, incidents, tactics and trends. To date, OHS has issued 552 Advisories to the State and local law enforcement community, including 28 Advisories so far this year, as well as information memos that provide such relevant background on topics and events for both law enforcement and the private sector.

Our Operation Safeguard Program continues to be beneficial to the counterterrorism mission, the most recent example being the outreach efforts conducted after the Newburgh plot where we were able to immediately tap into our local communities to brief them on what had transpired, as well as steps they can take to be on the lookout for suspicious activities.

The Path Forward: Focusing the State's Efforts through an All-Hazards Approach

We have experienced numerous attempts to attack our Country since September 11th. We very simply have to remain proactive in our fight against terrorism. However, we are faced with an environment of limited resources and must make common sense decisions that will enhance our ability to keep New Yorkers safe, while streamlining administrative processes involved in such an effort.

I am proud of the work we have accomplished thus far and I thank each of you for your support of this agency and your unwavering dedication to the people whom you serve.

Chairmen Farrell and Kruger and members of the joint committee, I thank you for the opportunity to testify today and I will be happy to answer any questions you may have.

2A

“Public Safety Agencies Leading the Way: A Blueprint for Reform”

Testimony of Denise E. O’Donnell, Deputy Secretary for Public Safety/ Commissioner

New York State Division of Criminal Justice Services

Before the Legislative Fiscal Committees

February 8, 2010

Good morning Chairman Kruger, Chairman Farrell and distinguished members of the Committees. I am Denise O’Donnell, Deputy Secretary for Public Safety and Commissioner of the Division of Criminal Justice Services. Thank you for inviting me here today to explain Governor Paterson’s budget as it pertains to public safety.

As you know, New York remains in the throes of the most serious economic crisis any of us have witnessed in state government. We are confronted with the grim and daunting reality of an \$8.2 billion budget deficit, and a long-term structural deficit. The budget Governor Paterson presented reflects extraordinarily difficult choices and a very careful balancing of public interests. This is not the budget the Governor would like to submit; it a budget of necessity, not a budget of choice. But for these times, it is a *responsible* budget, one that recognizes that delaying action will only cause greater hardship and inflict greater pain in the future.

At DCJS, we have been implementing strict budget control measures to reduce state operations since Governor Paterson asked every executive branch agency to cut back nearly two years ago. We imposed a firm hiring freeze and travel restrictions, and implemented other stringent, cost-cutting measures as well. Since 2008-2009, the DCJS personnel target has been cut by 83 positions, a reduction of 11 percent. Additionally, the Governor's budget includes a \$6.4 million across-the-board state operations reduction for DCJS, on top of \$2 million in cuts imposed in 2009-10.

The story of crime reduction efforts in New York over the last 20 years is a remarkable one. The crime *rate* – a measure of crimes per capita – in New York State has declined 62 percent; nationwide, it has declined less than 35 percent. In 1990, there were more than one million crimes reported in New York; in 2008, there were less than a half million. And while our crime rate has plummeted, so too has our prison population. While the nationwide prison population increased 16 percent between 2000 and 2008, New York's decreased 14 percent. In fact, New York is the only large state whose prison population has declined since 2002.

We have no intention of giving back *any* of the hard-fought ground we have won. The Governor and I are committed to a criminal justice policy that combines proven, cost-effective strategies and dynamic, creative responses to the ever-increasing challenge of combating crime. We are changing the way we do business in fighting crime in New York through intelligence-driven policing, drug law reform with an emphasis on treating rather than punishing addiction, a re-entry strategy that invests in lives and communities, and innovative law enforcement programs. At the same time, we are – as we must be – very

mindful of the state's fiscal crisis. To that end, the Governor's budget imposes a 10 percent, across-the-board reduction on local criminal justice programs.

The Governor's public safety budget represents a balance between two vital objectives: public protection and fiscal austerity. Neither the Governor nor I view these as mutually exclusive goals. Neither the Governor nor I believe we need sacrifice one to achieve the other. But we do need to make difficult, strategic, long-range decisions to guarantee the people we represent both fiscal integrity and safety. Before you is a blueprint for how New York can fulfill its obligations to the citizens of this great state.

Streamlining State Government

In order to streamline state government and to ensure the most efficient and effective delivery of services, Governor Paterson is proposing a number of mergers and consolidations. The Public Safety Directorate is leading the way to consolidating services and downsizing state government while preparing and strengthening our core mission of protecting New York. The 2010-2011 budget proposal includes consolidation of public safety agencies in both the Criminal Justice and Homeland Security areas.

Merge Three 'Hosted' Agencies into DCJS

DCJS currently provides administrative support for and shares many of the same functions carried out by the Crime Victims Board (CVB), the Office for the Prevention of Domestic Violence (OPDV) and the Division of Probation and Correctional Alternatives (DPCA), including data collection and analysis, administration of Federal and State criminal justice funds, grant-making, and support of criminal justice-related agencies

across the State. Consolidating these agencies within DCJS will create operational efficiencies, foster improved coordination of policies and programs, and provide for more efficient and cost-effective delivery of the programs and services for which the agencies are responsible. The proposal would create separate offices under DCJS headed by a Deputy Commissioner who would continue the important mission and function of the hosted agencies. It is anticipated that the merger would yield savings of \$1 million in 2010-11, growing to \$1.9 million annually thereafter. These savings will be achieved through the elimination of positions providing duplicative functions and by eliminating highly paid positions on the Crime Victims Board.

The 2010-2011 budget also proposes transferring the Rape Crisis Program from the Department of Health (DOH) to the Division of Criminal Justice Services. Since DCJS already administers federal Violence Against Women Act funds, which support many of the rape crisis centers funded through the DOH, shifting responsibility to DCJS will streamline funding to the grantees and improve the management of the programs. The transfer would include \$1.9 million in State funding for rape crisis programming (counseling, advocacy, etc.); \$500,000 in federal Centers for Disease Control Funding for hotlines; and approximately \$464,000 in Prevent Block Funding.

Indigent Defense

New York State has historically been a leader in ensuring that its citizens are provided with adequate legal representation if they are accused of a crime and unable to afford an attorney. However, the current system for funding indigent defense is uneven and lacks an organized, coherent structure and common vision.

Governor Paterson's budget would address those concerns by creating an Office of Indigent Defense within the Division of Criminal Justice Services. The office would be governed by a board of stakeholders tasked with identifying ways to improve the delivery of indigent defense services statewide in partnership with the counties. The board would be chaired by the state's Chief Judge and would include representatives from the Legislature, the Association of Counties, the New York State Bar Association and the defense community.

The Governor's budget includes \$3 million to establish the office; another \$7 million would be available to supplement the \$70 million currently distributed from the Indigent Legal Services Fund to counties and the City of New York for the cost of providing indigent defense.

Merger of Homeland Security and Emergency Services

Given the ever present threats to New York from terrorism and from a variety of man-made and natural disasters, it is critical that our efforts to prevent and respond to these threats be highly coordinated and that we eliminate duplication of efforts and 'silos' wherever they exist.

Consistent with the all-hazards approach adopted in New York, the Governor's proposed budget will merge the Office of Homeland Security, the State Emergency Management Office, the State 911 Board, the Office of Cyber Security and Critical Infrastructure Coordination and the Office of Fire Safety and Control into a single State agency, the Division of Homeland Security and Emergency Services. This new agency will

preserve the key missions of the existing organizations and will provide greater support to local first-responders, improve coordination of a wide array of State and Federal grant programs, and advance the vision of a county-driven, statewide communication network. The office will support a 25-member board that will replace the 911 Board and the Statewide Wireless Network (SWN) Board and oversees the distribution of grants – \$50 million in 2010-2011 and \$75 million going forward to support interoperable communication and 911 centers. We anticipate a savings of at least \$1.5 million annually and the elimination of 15 positions through attrition.

State Preparedness Training Center at Oriskany

One of the most exciting and innovative proposals in the 2010-2011 budget is the investment of \$42 million in bonded capital over five years to transition the State Preparedness Training Center at Oriskany into a statewide, state-of-the-art training center for first responders. The Training Center is a unique 700-acre campus located on the former site of the Oneida County Airport. The Center has been growing in recent years in infrastructure, as well as in the number of training programs that are conducted there. The Center also carries the prestigious accreditation of the National Commission on Law Enforcement Academies.

One of the initial components of the plan is to construct a state-of-the-art “Cityscape,” a model community which will include prototype retail stores, businesses, school classrooms, streets and alleys and city-style apartments. While police, fire and EMS operate side-by-side in the real world, they are oftentimes forced to train separately. This true-to-life training environment will offer a rare opportunity for first responders to train

together, developing a unified response to emergency situations and improving safety for our police officers, firefighters and EMS personnel..

FIGHTING CRIME

In prior years, I have told you that the historic reduction in crime that we have achieved during the past two decades is largely generated by the success in New York City. That continues to be the case: In the City, crime has decreased 72 percent since 1990; outside the City it has decreased 52 percent.

Preliminary figures for 2009 show that crime in New York City declined another 10 percent; in Upstate and on Long Island, it declined 3 percent. However, we continue to experience unacceptable levels of violent crime in some of our communities outside New York City. That is why Governor Paterson is committed to continued funding for Operation IMPACT, a critical component of our crime reduction efforts in Upstate and on Long Island.

Operation IMPACT

Governor Paterson's budget commits \$15.7 million to IMPACT. The funding level proposed for the next IMPACT cycle, beginning in July, is approximately \$1 million more than allocated in 2006, and about \$1 million less than it was last year.

Operation IMPACT provides funding to the 17 counties in Upstate New York and on Long Island that report the highest volume of crime outside of New York City, enabling those jurisdictions to fight violent and gun crime through intelligence-based policing,

cutting-edge technology, the use of timely, accurate crime data and effective partnerships both among law enforcement and with the community.

IMPACT supports crime analysts, assistant district attorneys, field intelligence officers, and specialized units that these counties cannot afford on their own. Some counties also receive funding for gang outreach workers, university-based research partners to determine the effectiveness of crime-fighting strategies and other community-based crime reduction initiatives. IMPACT supports strategies such as coordinated and targeted operations in areas that are proven, through analysis, to be high-crime areas; multi-agency operations targeting known offenders; warrant initiatives; and community-based crime reduction programs. The IMPACT counties herald it as the most comprehensive state crime reduction program in New York's history.

The 2010-2011 budget also continues funding for state-of-the-art crime analysis centers in Erie, Monroe, Onondaga and Albany counties which build upon partnerships established under Operation IMPACT and expand the key components of that initiative – such as accurate use of timely crime data and the use of technology to complement and enhance traditional crime-fighting strategies – to law enforcement agencies throughout those counties.

Drug Market Intervention

Nothing is more of an open sore on a community than a drug market, and DCJS has embraced a new strategy designed to help communities reclaim their streets and neighborhoods from drug dealers. Approximately \$367,000 in federal Byrne aid has been

committed to promoting “Drug Market Intervention” (DMI) programs in four regions: Mount Vernon, Nassau County, Poughkeepsie and Rockland County. DMI is a nationally recognized anti-drug model established by Professor David Kennedy of the John Jay College of Criminal Justice. DMI enlists law enforcement, community members and families in a strategy aimed at shutting down neighborhood drug markets.

Drug Law Reform

Eliminating the Rockefeller Drug Laws and focusing on treatment and rehabilitation rather than incarceration was a major priority of Governor Paterson long before he became governor. The Governor is acutely aware that to successfully transition from an incarceration-based system to a treatment-based system we must have the services to assist non-violent, drug-addicted offenders prepare for a drug-free and crime-free life. Last year, you partnered with the Governor to enact historic reforms to New York’s drug laws, essentially eliminating the remaining vestiges of the “Rockefeller Drug Laws.”

The new law eliminates mandatory prison sentences for many drug offenders and provides greater discretion to judges to sentence non-violent, drug-addicted offenders to treatment rather than prison. The new judicial diversion program expands on the highly successful Drug Court model that has been in operation in many counties around the state. Upon successful completion of treatment, defendants are eligible to have the charges reduced or dismissed and the case sealed; additionally, up to three misdemeanor drug convictions can be conditionally sealed.

The law also permits resentencing of certain individuals sentenced under the former "Rockefeller Drug Laws." As of Jan. 29, 154 individuals have been resentenced, and 94 of them had been released; on average these offenders were released eight months earlier than their original sentence. Further, for the last quarter of 2009, 813 individuals charged with a drug or property offense were diverted to felony Drug Court. That represents a 71 percent increase over the 474 admitted during the same quarter of 2008.

Investment in Drug Law Reform

To ensure the success of drug law reform in New York, the Governor and the Legislature have agreed to use \$67 million that New York State has received for criminal justice initiatives under the American Recovery and Reinvestment Act (ARRA) to support implementation of the drug law reform.

In addition to millions of dollars allocated to the Office of Alcoholism and Substance Abuse Services (OASAS) to expand the number of residential drug treatment beds to support drug law reform, \$12 million in stimulus funds will aid re-entry initiatives crucial to the implementation of Rockefeller Drug Law Reform. Receiving the grants are the Center for Employment Opportunities; Doe Fund; Fortune Society and the Osborne Association. The grants will help provide transitional employment for former offenders statewide, both upstate and downstate, and represent a major step forward in our efforts to transform individuals' lives and protect the public. Each of these providers has a proven record in securing jobs for people with criminal records.

The Office of Court Administration (OCA) will implement new Drug Treatment Courts in Nassau, Westchester, Dutchess, Hamilton, St. Lawrence and Madison counties, expand the number of courts in New York City and Suffolk County, and increase drug court staff to manage additional anticipated workload in the Albany, Clinton, Saratoga, Rockland, and Broome County Drug Courts, and the Ogdensburg, Utica, Syracuse, Rochester and Buffalo City Drug Courts. OCA will create 33 new jobs in the locations described above; \$10.5 million has been set aside for OCA for these purposes.

The Division of Probation and Correctional Alternatives (DPCA) will receive \$11.6 million in stimulus funds over two years to support three initiatives: the hiring of probation officers to supervise additional individuals sentenced to probation as a result of drug law reform; the expansion and development of regional Probation Violation Residential Centers (PVRs), targeting felony drug offenders; and the continued support for seven alternative-to-incarceration programs for which current funding is expiring. These seven programs provide services to 175 people annually and resulting in the retention of 15 jobs in New York City and Onondaga, Cattaraugus, and Westchester counties.

Additionally, the Department of Correctional Services (DOCS) has been awarded \$2 million over the next two years for a digital literacy program. This program provides inmates (who may or may not have had any prior computer experience) with hands-on training on how to use the Internet and e-mail to search for employment opportunities upon release.

Re-Entry

Offender re-entry is a critical component of our overall public safety strategy; a strategy designed to ensure that former offenders remain *former* offenders and become tax-paying, productive members of their community. The 2010-2011 budget allocates \$3.3 million to DCJS to promote the successful re-entry of offenders through county re-entry task forces that partner with local governments, not-for-profit agencies and the criminal justice community. That represents the same 10 percent reduction applied to other local assistance programs. DCJS supports re-entry task forces in 16 counties: Albany, Broome, Dutchess, Erie, Monroe, Nassau, Niagara, Oneida, Onondaga, Orange, Rensselaer, Rockland, Schenectady, Suffolk, Westchester and Ulster. At both the state and local level, the re-entry partners are committed to assessing the quality of existing re-entry programming and expanding the availability of proven services that address the needs identified in the State's returning offender population.

All Crimes DNA

Since its establishment in 1996, the DNA Databank has resulted in nearly 1,600 convictions, including 128 homicides and 429 sexual assaults. It has been expanded gradually over the years – in 1999, 2004 and 2006. There are now approximately 375,000 offender profiles and crime scene samples in the Databank. And while we are solving and preventing crimes and exonerating the innocent through our Databank, we are not solving and preventing as many crimes as we should.

Currently, New York State collects DNA from only 46 percent of the offenders

who are convicted of a Penal Law crime. We are neglecting to collect DNA from those convicted of 453 misdemeanor crimes – including arson, auto stripping, bribery and providing prisoners with contraband.

Over the past several years, three governors of two different political parties have urged the Legislature to expand the Databank to include everyone convicted – mind you, convicted, not arrested – of any Penal Law offense. For far too long, this common-sense and largely non-controversial initiative has been held hostage to unrelated or marginally related proposals which have been appended to every proposal for DNA expansion. It is simply unconscionable to continue using the lives of New Yorkers as a bargaining chip, and the Governor and I urge you to enact all-crimes DNA as part of the 2010-2011 budget. The proposed expansion is projected to result in 48,000 additional samples annually (on top of the 54,000 currently collected). The investment in dollars is relatively small, approximately \$1.7 million on an annual basis; it costs about \$35 for each DNA test. The investment in the lives of New Yorkers is priceless.

Crimes Against Revenue Program (CARP)

New York has one the fairest tax systems in the world. Our tax code is full of deductions and credits, to make sure that people do not pay *more* than their fair share. Yet some people, be they engaged in a criminal enterprise or a legal enterprise attempting to evade responsibility, are failing to carry their weight. In this economic climate, when government resources are scarce and needs are high, we must be especially vigilant to discourage and punish cheating.

The Crimes Against Revenue Program, or CARP, was established in 2005 to provide assistance to local district attorney's offices so they can commit time and resources to chasing down not only tax cheats, but others who profit from a wide range of financial crimes, such as gaming the unemployment, Workers' Compensation, insurance, welfare and Medicaid systems.

Governor Paterson believes we can do more to track down those who break the law and recover the money they stole from honest taxpayers. His budget would increase CARP by \$10 million. We believe this investment will generate up to \$32 million in gross revenues in 2011.

Sex Offender Management

The Division of Criminal Justice Services plays a key role in sex offender management, working in partnership with law enforcement agencies across the state to ensure the accuracy of the state's Sex Offender Registry. DCJS processes any change of information to an offender's registration – address, photo, employer information, vehicle information – within one business day. Those changes are done in “real time”; once the information is updated on the registry, it is available to the public. There are approximately 170 new offenders added to the registry each month, and we recently surpassed the 30,000 registered sex offenders.

In May 2008, Governor Paterson signed the Electronic Security and Targeting of Online Predators Act (e-STOP). The law: (1) requires convicted sex offenders to register their Internet screen names with the Sex Offender Registry; (2) allows social networking

web sites to obtain those screen names in order to prohibit those account holders from accessing web sites through which they could contact children; and (3) mandates that dangerous convicted sex offenders who are serving a term of probation, conditional discharge or parole be prohibited from using the Internet to contact children. To date, DCJS has shared information with the most popular social networking sites – including Facebook and MySpace – resulting in more than 3,500 offenders being removed from those sites. Another 13 sites also have agreed to use e-STOP to purge sex offenders.

Next month, a law that you enacted and Governor Paterson signed will allow citizens to sign up for a free, automated alert system through which they will be notified by e-mail whenever a moderate or high-risk sex offender moves into a neighborhood of interest. Under the law, the public will be able to register up to three zip codes and will receive alerts related to all three. DCJS has been working to establish the program so it is up and running when the law takes effect March 16, 2010.

Information Technology

The criminal justice system in New York State depends on automated systems to provide quick, accurate, and reliable processing of criminal fingerprint transactions, and the delivery of “rap” sheets on criminal history records as well as real time information to law enforcement officers via NYSPIN (the New York State Police Information Network). DCJS and the New York State Police have been working diligently to migrate these critical applications to a new shared platform – the Integrated Justice Portal. The Department of Correctional Services, Parole and Homeland Security are also running applications on the Integrated Justice Portal.

If the DCJS site at 4 Tower Place, Albany, became unavailable for a significant period of time, the administration of criminal justice in the State would be seriously disrupted. To ensure continuity of critical services, DCJS has undertaken an initiative to establish a secondary site where a backup of the Integrated Justice Portal will be established for our core applications.

Domestic Violence

Domestic violence has long been viewed as a crime so volatile and unpredictable that law enforcement is reduced to responding to its tragic consequences, rather than preventing these crimes in the first place. But that is changing as those of us in law enforcement adopt a more *proactive*, and less *reactive*, data and intelligence-driven strategy to combat domestic violence.

In 2008 in New York State, violence by an intimate partner was the leading cause of homicide for women 16 and older: 68 of the state's 91 intimate partner homicide victims were women. How can this be when we often have numerous warning signs that an attack may be imminent and know the identity of the likely assailant? The problem is that the right information is often not getting in the right hands at the right time.

Using approximately \$1.5 million available to New York through the federal American Reinvestment and Recovery Act, the state is developing a centralized, electronic repository for DIRs, modeled after one successfully implemented by the New York City Police Department. The state DIR database will then be connected with the City database to create a statewide repository.

New York State is investing another \$5.2 million in federal stimulus aid to foster a coordinated victim-centered response to domestic violence. Fifty eight law enforcement and non-profit organizations – in 30 counties across the state – have received grants to enhance or create community-based approaches to fighting domestic violence.

CONCLUSION

The extraordinary fiscal crisis confronting New York State demands leadership and courage. The budgetary decisions that you, in partnership with the Governor, make this year will not be popular and they will not be easy. But you have it within your power – right now – to institute key reforms to put New York on the road to fiscal and economic recovery. I urge you to work with Governor Paterson – who I know is eager to work with you – to safeguard the future of New York State and New Yorkers. Thank you again for the opportunity to outline the Governor's public safety budget. I would be happy to answer any questions you may have.

**Testimony of Harry J. Corbitt
Superintendent of State Police
Before the Joint Legislative Fiscal Committee
On the 2010-2011 Executive Budget
February 8, 2010**

Thank you Chairman Kruger, Chairman Farrell and distinguished members of the Joint Committee for the opportunity to discuss with you Governor Paterson's Budget for the Division of State Police. I am Harry Corbitt, Superintendent of State Police.

I would like to take this opportunity to thank the Governor for the opportunity to serve as the Superintendent and to thank the Legislature for its past support of the New York State Police. Because of your past support, the New York State Police is recognized as one of the premier law enforcement agencies in the United States.

Throughout New York State, the State Police operates the same today as it has since inception with the simple philosophy to prevent and detect crime, apprehend criminals and to cooperate with any other agency whether Federal, State or local authority. As you are aware, the missions of the State Police are to ensure highway safety, to prevent crime and enforce the law and to provide high quality support to law enforcement agencies across the State. Our mission priorities include reducing the number of deaths, injuries and property damage caused by motor vehicle accidents through vehicle and traffic enforcement and education, reducing violent crime on a statewide basis, providing support to local law enforcement agencies and serving a crucial role in the State's counter-terrorism efforts working with Federal, local and other State agencies to ensure the continued safety of the people of New York State. The State

Police remain unique as the only law enforcement agency in New York State with the ability to deploy large numbers of professionally trained, sworn police officers anywhere in the State on short notice in response to an emergency or natural disaster. The State Police is also available for large-scale deployments to meet a particular, immediate need for law enforcement services in a community.

During my tenure, my top priority continues to be the safety of the employees of the State Police. This year we completed training of our Troopers in our Patrol Rifle Program which will provide an additional tool for our Troopers in the performance of their duties with an increased level of personal safety, in these times of rising risks.

In further support of the 2005 Work Zone Safety Act and to improve highway safety, speed enforcement photo-monitoring equipment to combat speeding in work zones and targeted highway locations will be in place this year. This program is essentially self-funded through the generation of civil fines from violators.

The State Police are part of the Criminal Analysis Centers in the counties of Erie, Monroe, Onondaga and Albany to further cooperative law enforcement efforts with the law enforcement agencies in each of these counties. These partnerships are the result of the cooperation and participation of law enforcement agencies through Operation Impact. The Crime Analysis Centers use current technology to collaborate crime data through an integrated database allowing centralized analysis of crime data from all participating agencies at one time for improved information sharing and identification of criminal

patterns and trends. This analysis provides a comprehensive picture of the criminal environment within the particular counties where the Centers exist, allows law enforcement to make more informed decisions in the areas of strategic planning and tactical deployment, and aids investigators in solving crimes.

Our agency's collaborative efforts also extend to the State Office of Homeland Security through the operation of the operation of the New York State Intelligence Center. NYSIC serves as the State's Fusion Center, bringing together federal, State and local agencies to analyze and share information related to terrorism and other crimes. In addition, State Police personnel remain active in support of the State's 16 Counter-Terrorism Zones (CTZ) that continue to play a vital role in coordinating and sharing terrorism-related information with New York's 70,000 State and local law enforcement officers.

The State Police remains committed to Operation IMPACT. As a result, New Yorkers live in one of the safest large states in the nation. Using specific targeted enforcement strategies, State Police Troopers and Investigators work with local law enforcement to supplement these agencies through asset integration strategies where the State Police provides highly trained specialized units including:

- Forensic Investigative Units which process violent crime scenes and collect evidence;
- Community Narcotics Enforcement Teams which provide assistance to local law enforcement agencies with narcotics enforcement and gun interdiction;

- Violent Felony Warrant Squads which provide investigative support to locate and apprehend violent fugitives and wanted criminals;
- Violent Crime Investigative Teams which support local law enforcement agencies investigating violent crime with highly trained and experienced investigators, and with specialized forensic services; and
- New York State Intelligence Center (NYSIC) which is designed to increase the sharing of information and intelligence among Federal, State and local law enforcement agencies.

To accomplish these objectives, while at the same time being cognizant of the State's fiscal situation, the Governor's Budget seeks to strike a balance between implementing the missions of the Division, while at the same time limiting resource requests to those necessary to maintain essential program levels. To that end, the State Police will forego any hiring and training classes for Troopers for the current year. As an agency we continuously assess and evaluate our deployment to maximize provision of services. A redeployment plan is constantly reviewed to insure staffing in the priority assignments, those with the greatest impact on public safety. As part of this redeployment, ninety (90) school resource officers will be reassigned in June 2010. While these Troopers will no longer have a dedicated assignment at these schools, our Troopers will maintain a liaison with the schools in support of continuing the positive impacts of the SRO program and will respond to calls for service upon request from the schools. We will continue to assess and evaluate how our services are provided to ensure the citizens we serve receive the full range of law enforcement services. It must be clear the State Police mission will

be preserved but is not intended and will not be attainable for our agency to supplant local resources if local governments reduce or eliminate law enforcement services in their communities.

As you may be aware, 85% of the appropriations made for State Police operations are made in support of personnel service obligations, of which approximately 90% supports the salaries and overtime expenses of sworn members. The vast majority of the nonpersonal service appropriations made in support of State Police operations are best characterized as non-discretionary expenditures. Expenditures for vehicles, facilities and communications are all essential to providing the tools necessary for the men and women of the State Police to fulfill their law enforcement missions.

We in New York can rightfully share a tremendous sense of pride for the many accomplishments of the men and women of the State Police and their daily efforts to keep New York State safe. It is the integrity, knowledge, dedication and quality of our men and women that distinguishes them and the agency. I am honored and privileged to be a part of this premier police agency and its great traditions.

I thank you for your support of the New York State Police and for this opportunity today to address you.

Testimony of Brian Fischer
Commissioner, New York State Department of Correctional
Services
Before Joint Legislative Fiscal Committees, February 8, 2010

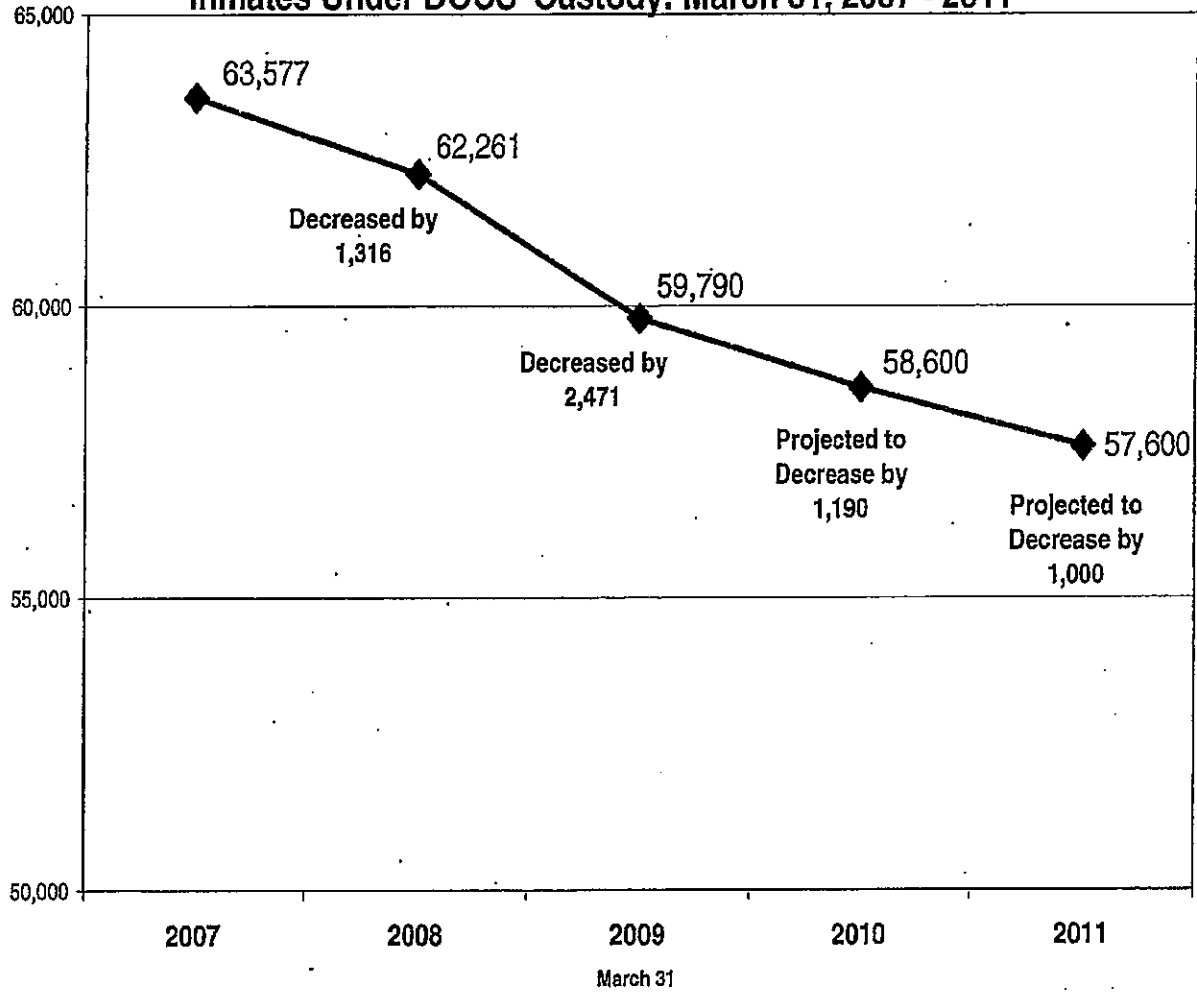
Chairman Kruger, Chairman Farrell, Senators and Assembly members, thank you for the opportunity to testify. I am Brian Fischer, Commissioner of the Department of Correctional Services.

As the Governor has said, this is a budget of necessity, not choice. For the prison system, this budget not only reflects the current fiscal crisis but anticipates our needs for the next few years. However painful this year's decisions may be, delaying action will only make the problem worse - and more difficult to address in the future.

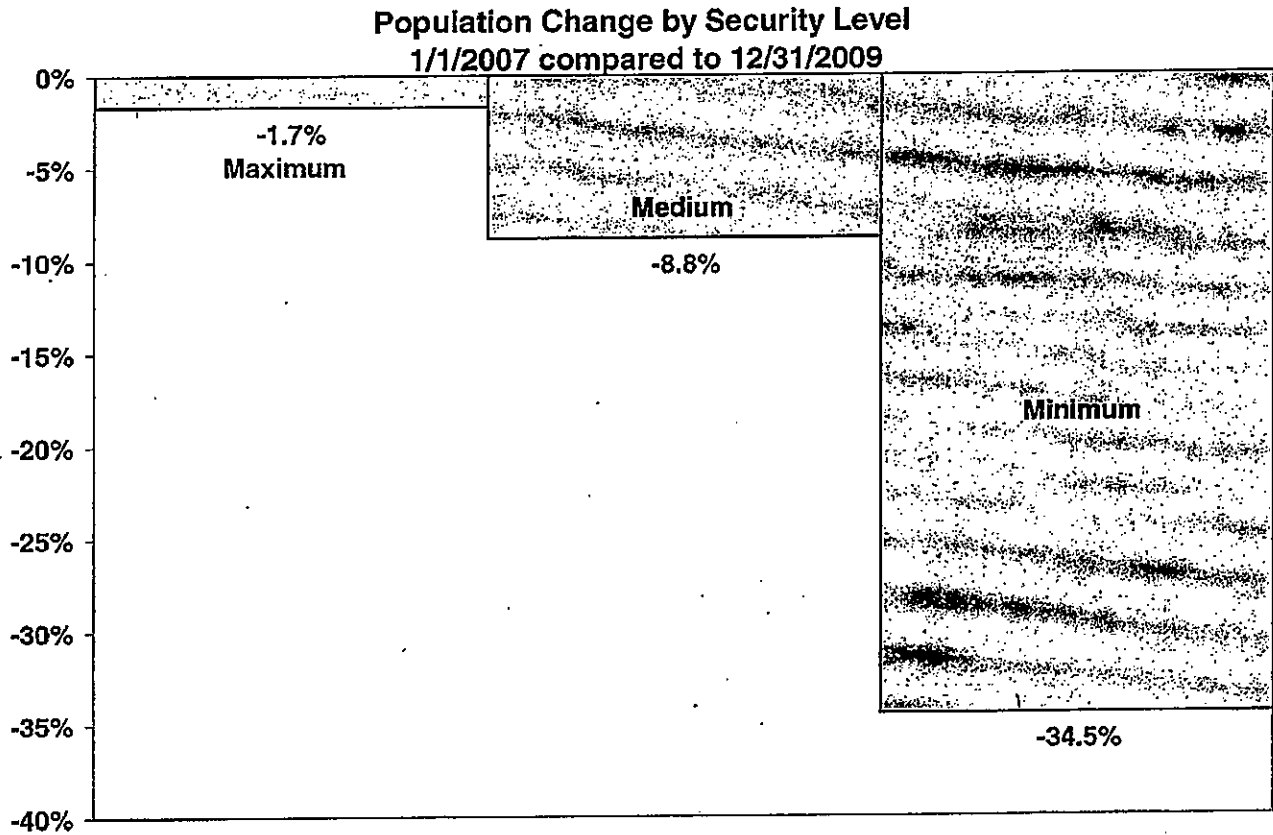
Therefore, I ask that you view the Governor's proposed Departmental budget for 2010-11 as a long-term approach to the issues facing Corrections. The Governor's proposal recognizes a number of critical issues:

- An ongoing, significant decrease in the size of the inmate population – overwhelmingly among offenders housed in minimum and medium security prisons.
- A projected decrease of another 1,000 inmates in 2010-11.
- A major shift in the criminal profile of that population towards a higher percentage of violent felony offenders.
- The need to enhance in-prison treatment programs in accordance with last year's reform of the Rockefeller Drug Laws, as well as for those offenders with medical and mental health needs and those with a lack of education and vocational skills.
- Concern over public and prison safety with respect to offenders convicted of sex crimes and those with patterns of violent behavior both in the community and in prison.

Inmates Under DOCS' Custody: March 31, 2007 - 2011



The following chart demonstrates the precipitous drop in our minimum security population and the considerable drop in the medium security population between the beginning of 2007 and the end of last year, while the maximum security population experienced a minimal decline.



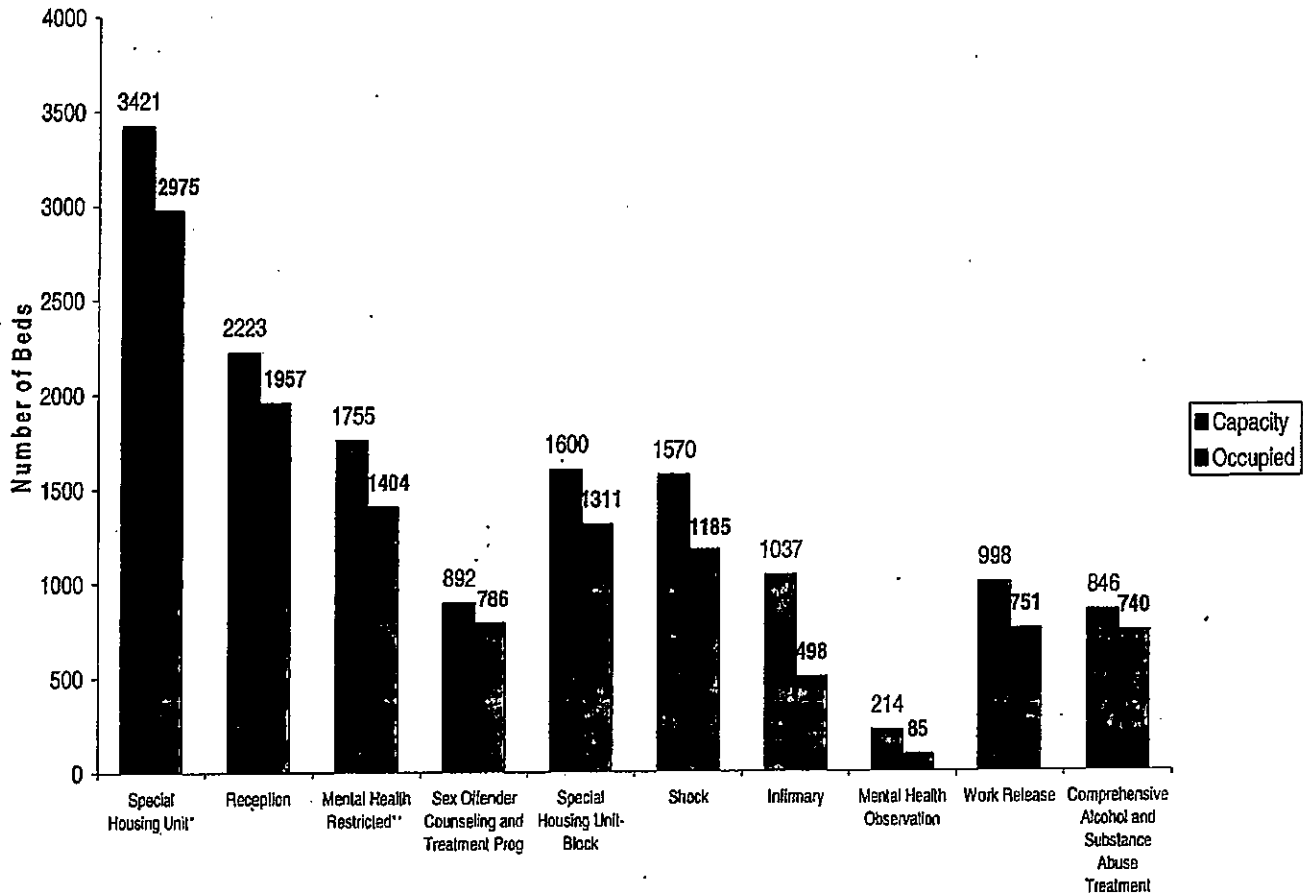
The chart below was developed to give you a flavor of the varied types of specialty beds the prison system has developed to provide the treatment programs in secure settings required to meet the needs of all offenders by recent court and legislative mandates. We never lose sight of the fact that all this must be done while providing a safe environment for staff and offenders alike. The chart's heading, "Restricted Beds," describes those beds that are set aside from general confinement beds for the programming needs of certain offenders and to ensure the safety of staff and other offenders.

Breakdown of the Department of Correctional Services

14,556 Restricted Beds (includes 375 unstaffed beds)

(50,501 General Confinement)

12/31/09



* Includes: Specialized Treatment Program (STP)

** Includes: Intermediate Care Program (ICP), Marie 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 Marcy Residential Mental Health Unit (RMHU)

This approach has proven highly effective in managing the prison system. But it has also required us to devote significant resources and redefine the use of each correctional facility, limiting which facilities can be considered for closure.

Included among the "restricted beds" are 1,969 treatment beds specifically designated for mental health services. That's a 29 percent increase from the 1,392 treatment beds we had for mental health services in 2007. This increase was driven largely by recent mandates that required us to provide vastly expanded and enhanced services and programs for incarcerated sex offenders and inmates with mental illness: the Sex Offender Management and Treatment Act of 2007 and the April 2007 court-approved Private Settlement Agreement of a lawsuit brought against the State by Disability Advocates Inc.. The department

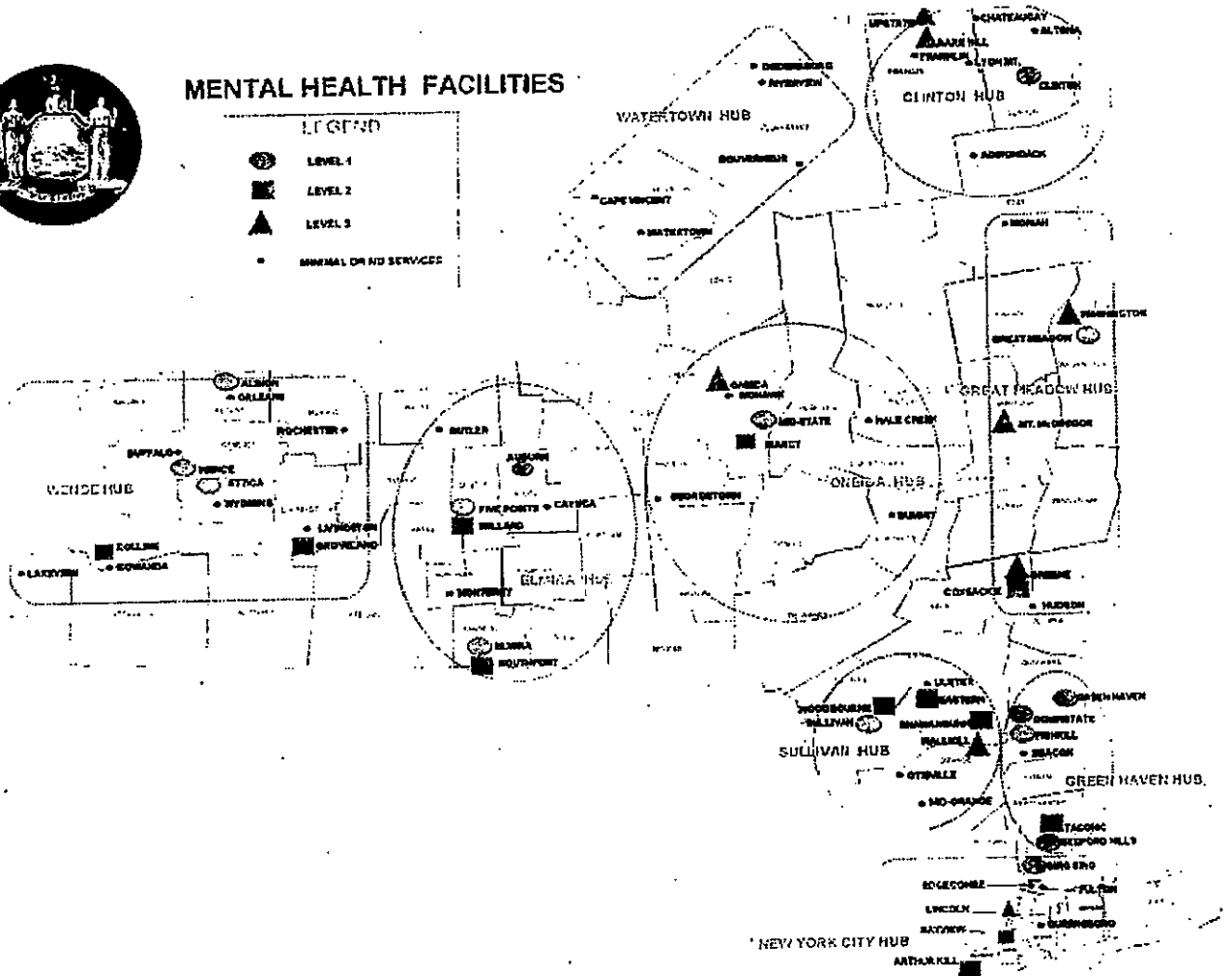
also faces additional mandates for the care of inmates with mental illness as a result of the SHU (Special Housing Unit) Exclusion Law of 2008, which aims to provide alternative placement to all inmates with serious mental illness and disciplinary confinement sanctions.

Mental health services are located at all 17 of our maximum security facilities and at 18 of our 37 medium security facilities. The location of these treatment facilities, shown in the map below, was determined by external factors largely beyond the Department's control, including the availability of Office of Mental Health services, doctors, nurses and other medical personnel and the proximity to outside medical facilities equipped to provide specialized treatment.



MENTAL HEALTH FACILITIES

- LEGEND
- LEVEL 1
 - LEVEL 2
 - LEVEL 3
 - MINIMAL OR NO SERVICES

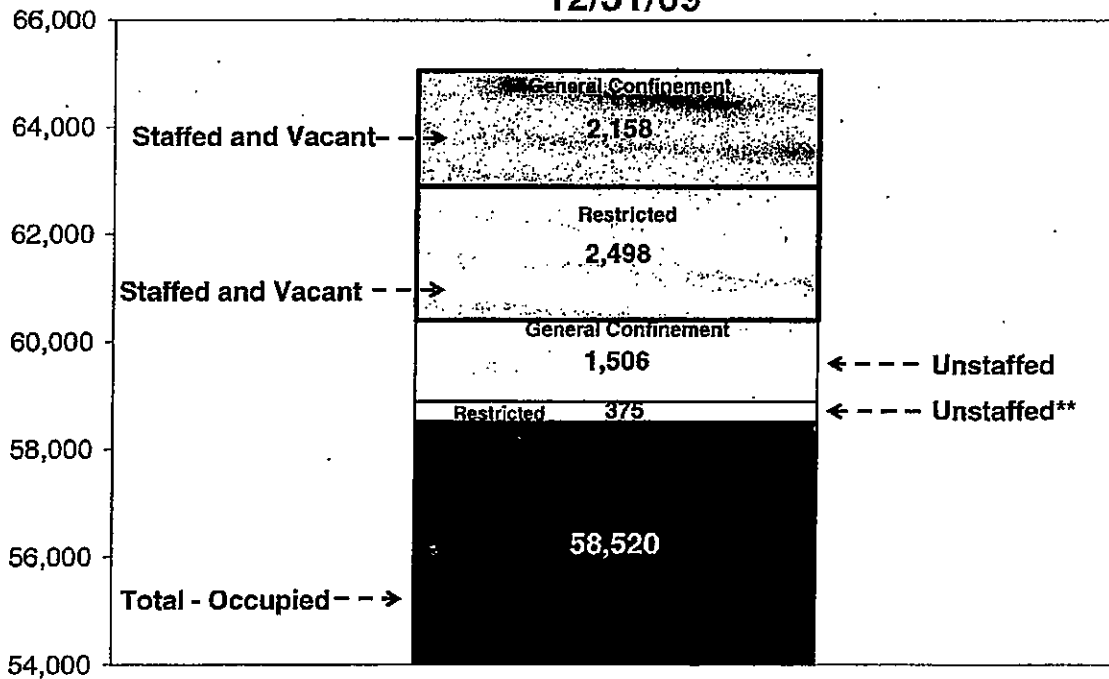


As noted earlier, while the number of specialized programs has increased since 2007, the overall inmate population will have dropped by nearly 6,000 inmates, or 9 percent, over four years by the end of 2010-11.

This ongoing population decline prompted the Department to consolidate operations in the fall of 2008, saving State taxpayers about \$11 million per year, and to close three (3) camps and six (6) annexes last year to save State taxpayers an additional \$31.7 million on an annual basis. The consolidations consisted of vacating 48 housing units in 21 different correctional facilities. We did that by transferring the inmates out of underutilized units into vacant beds in other occupied units within the same facility. At the same time, we redeployed security staff from those underutilized units and into other, vacant positions within the same facility. Not a single employee lost a job or even had to transfer out of the facility as a result of these consolidations.

Operationally, the consolidations and closures resulted in a combined reduction of 3,454 beds and 742 staff positions. Of those beds, the Department permanently removed 2,004 and consolidated the other 1,450, which remain in place but sit empty in the vacated housing units. Such beds are identified as "unstaffed" beds, as opposed to "staffed beds." The following chart shows that even after the consolidations and closures of the last 16 months, the State prison system still had more than 4,600 vacant beds in staffed housing units at the end of 2009, plus the unstaffed beds that remain available for use should the need arise:

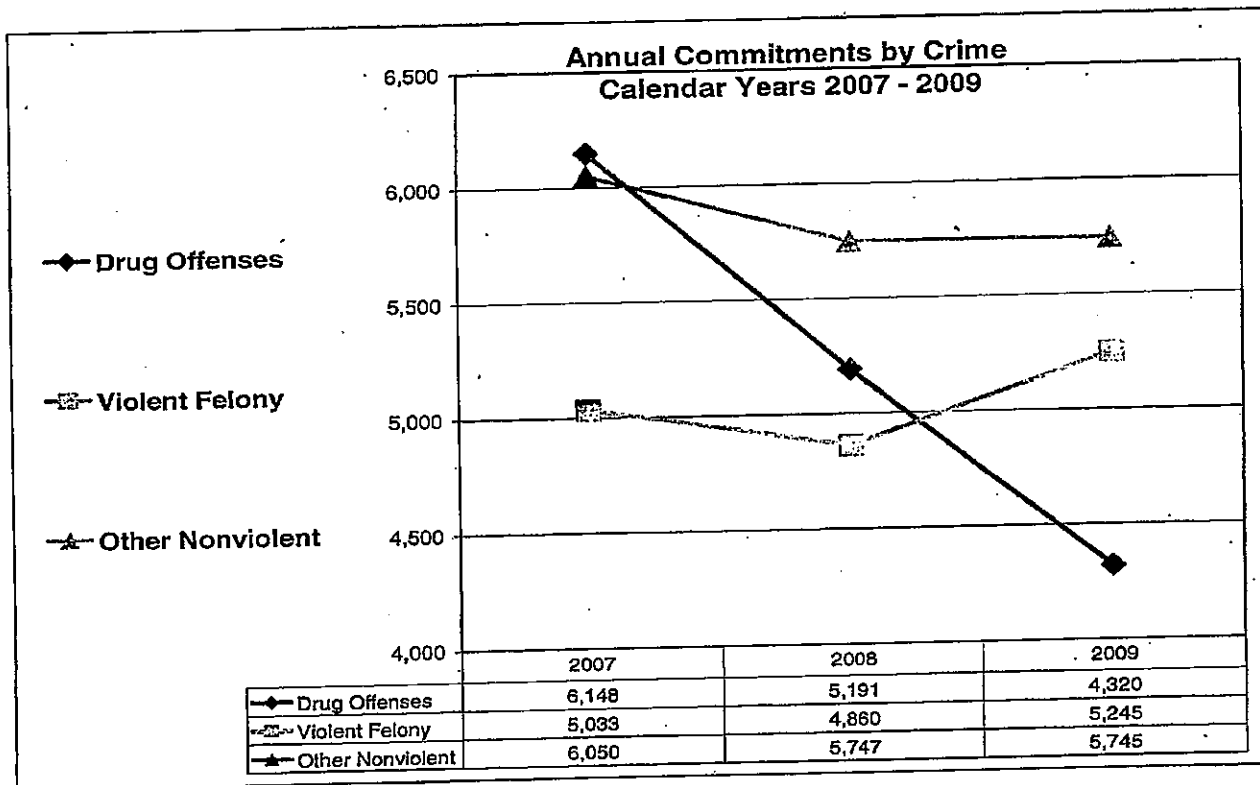
Department of Correctional Services
65,057 Total Beds*
12/31/09



* Excludes 117 Out of Order beds at Woodbourne and 84 at Otisville
 **Includes 28 Fishkill SHU, 210 Shock, 123 Male WR and 14 Female WR

Because offenders convicted of non-violent crimes are responsible for the overwhelming majority of the inmate population decrease, while the number of offenders incarcerated for violent crimes has increased, 60 percent of the prison system now consists of violent offenders, up from 57 percent in January 2007. We must seriously consider the impact of this trend on staff and offender safety, as well as rethink our treatment plans. And we must factor this trend into any strategy for additional consolidation and/or closure.

Additionally, as the next chart shows, the number of drug commitments has steadily declined in recent years, and last year's reforms to the Rockefeller drug laws are sending additional low-level drug offenders into treatment programs rather than prison. Those two factors are expected to continue driving down the number of participants in the Shock Incarceration program, nearly half of whom are drug offenders. That is happening despite the Legislature's expansion of Shock last year to include otherwise crime-eligible offenders in their 40s or in general confinement and within at least three years of their earliest release. The expansion resulted in a temporary increase in the use of Shock beds when we implemented the new criteria retroactively; however, the retroactive group will all graduate from the rigorous six-month program within the next two months. After that, the expanded rules will not offset the monthly drop in the number of Shock eligible inmates entering the prison system.



All of these factors support the Executive Budget's proposal to close one minimum security Shock Incarceration facility, one men's medium security prison, one men's minimum security prison and the minimum security portion of another men's facility, actions that will save taxpayers \$45.8 million a year when fully effective. In determining which specific facilities to close, I had to look at a number of additional factors, including the small size of the selected facilities, their relative cost, their lack of capacity to offer specialized programs and services we are mandated to provide to more and more of our inmates, reentry considerations and potential capital needs. That is why I specifically selected Moriah Shock Incarceration Facility, Ogdensburg and Lyon Mountain Correctional Facilities and the minimum security portion of Butler Correctional Facility.

Savings from additional housing unit consolidations in 2010-11 in response to the continuing prison population decline will save taxpayers another \$4 million a year when fully effective.

The New York State Correctional Officers & Police Benevolent Association (NYSCOPBA) union has argued that additional closures and/or consolidations will create dangerous conditions. But the evidence shows otherwise. In 2009, after two rounds of housing unit consolidation at the end of 2008 and during a time when we closed three camps and six annexes, the incidents of inmate assault actually decreased from the prior year. Data shows our prisons are as safe as they have ever been.

NYSCOPBA and a number of legislators have also suggested that we should cut what they term "top-heavy" administration at DOCS rather than front-line staff. I've reduced Central Office positions at more than triple the rate of Correction Officer positions since the 2007-08 fiscal year began.

Specifically, we cut the number of employees working at Central Office by 9.4 percent since April 2007, from 865 to 783. During the same period, we reduced the number of front-line Correction Officers by 3.1 percent, from 19,405 then to 18,797 as of our most recent count.

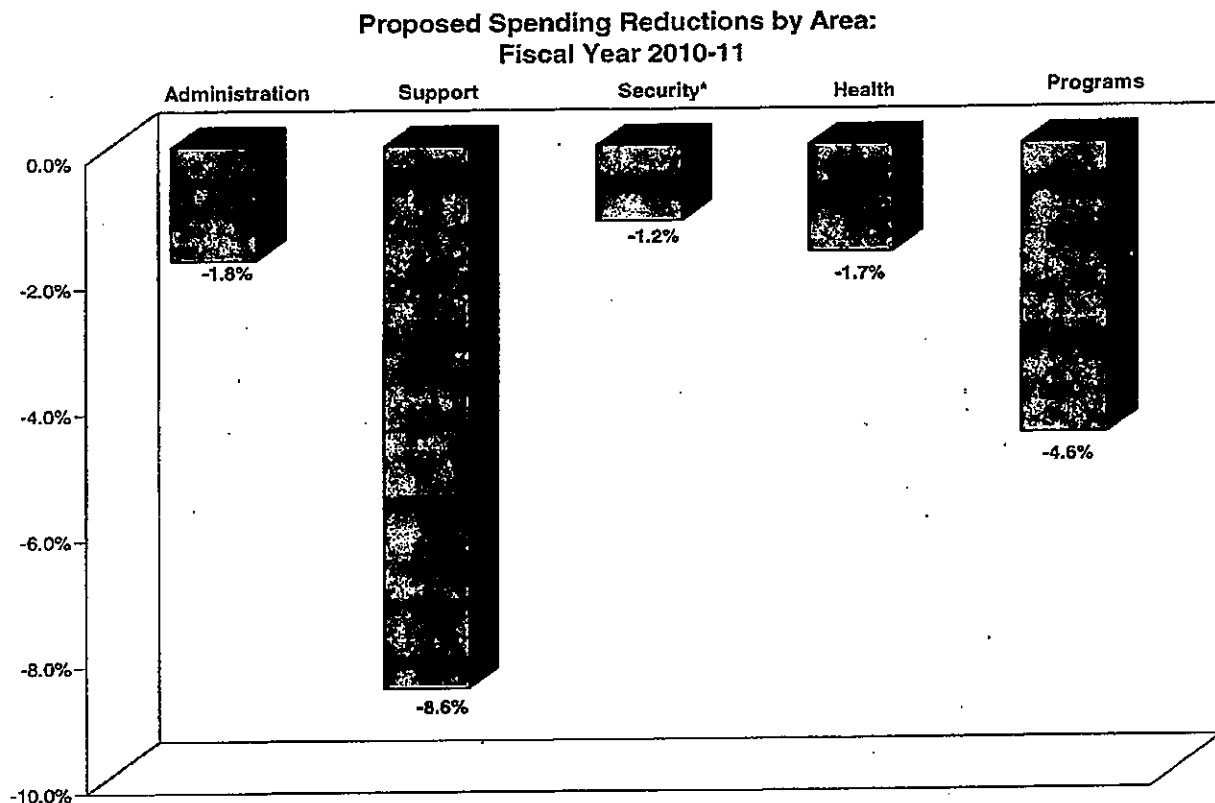
I should note that a number of employees counted as part of Central Office actually work in the field for varying reasons. Additionally, the decrease in Central Office staffing occurred during a time when the court and legislative mandates I mentioned earlier required me to add 23 positions in Central Office for oversight of new programs and services. Could we save more in Central Office? Yes. And I will continue to look for ways to do so. But administration accounts for less than one percent of our proposed \$2.5 billion General Fund-supported operating budget, and we must move forward with continued consolidation and closure in light of both the State's fiscal climate and the ongoing decline in New York's inmate population.

The Department has already cut its spending considerably in the last two years. We reduced our original 2008-09 budget by \$150.5 million and we anticipate that we will have reduced this year's budget by \$141.9 million by the end of the fiscal year on March 31. We achieved these savings through a wide variety of actions, including:

- The consolidation of 48 inmate housing units at 21 different prisons, as noted earlier.
- Closing three camps and six annexes, as noted earlier.
- Closing our 12 prison farms.
- Eliminating lower priority not-for-profit contracts.
- Eliminating lower-priority purchases.
- Reducing the number of Central Office positions by 82 since April 2007, as previously noted.
- Reducing the number of summer school hours.
- Reducing transportation of inmates from five days per week to four days per week.
- Reducing overtime.
- Reducing energy consumption and costs.
- Reducing the cost for our statewide laboratory services by nearly \$1 million per year through a new contract.
- Drawing down inventory.
- Delaying the replacement of equipment.
- Enacting strict controls on purchases and hiring.
- Reducing our workforce (by 497 positions) through attrition and the limited offering of severances.
- Reducing travel expenditures by 40 percent since 2007-08.

Most of those actions will produce recurring savings for 2010-11, and, unlike many other states facing similar fiscal difficulties, we achieved most of these savings without cutting treatment and program services.

The Governor's Executive Budget would cut our all-funds spending by 8.6 percent, or \$283 million. Even discounting nearly \$200 million of that reduction because it reflects a one-time lump sum payment of back pay to members of NYSCOPBA in 2009-10 for prior fiscal years that was required by an arbitrator's ruling – a payment we won't have to make in the coming fiscal year - spending in all areas of our agency - administration, support, health, programs and security - would still decrease in 2010-11.



* Measures comparable year-to-year security spending by discounting a one-time, lump sum payment of \$196 million made in 2009-10 to satisfy an arbitrator's award of back pay to members of the New York State Correctional Officers & Police Benevolent Association for fiscal years prior to 2009-10.

Moving Forward

We are developing a number of initiatives to save additional money, including:

- Working with the Office of Mental Health to consolidate treatment services to save both agencies operating costs and to maximize the use of limited staff.
- Finalizing a modern, computerized central pharmacy complex that will become operational in April 2011 and that will allow the Department to further reduce expenditures on medication, and possibly offer such savings to other state and local agencies. The pharmacy, at Marcy Correctional

Facility in Oneida County, will enable us to package and ship unit dosages of medication for all our facilities, approximately one-third of which lack in-prison pharmacies and now must pay more to purchase such unit dosages from outside pharmaceutical companies.

- Constructing a wind turbine to power Chateaugay Correctional Facility in Franklin County and possibly even produce revenue for the State by generating excess electricity to sell back to the grid.
- Realizing savings from the most advanced "green" building in the American correctional community to date – the Residential Mental Health Unit at Marcy Correctional Facility in Oneida County that opened December 15, 2009 - and from our potentially pioneering solar water heating project at Walkkill Correctional Facility in Ulster County.
- Expanding our network of recycling centers with a center at Beacon Correctional Facility in Dutchess County, which will further reduce our waste disposal expenses and generate revenue through the sale of recyclables. I would note that the recycling center at Beacon, a women's minimum security facility, as well as our plan to expand and move our Department of Motor Vehicles call center to the women's maximum security Bedford Hills Correctional Facility in Westchester County from its current location at Bayview in Manhattan, demonstrates our commitment to improving programming for female inmates while saving taxpayers money.
- Potentially centralizing inmate banking to enhance oversight accountability and save on unnecessary workloads of our inmate account offices.
- Pursuing an estimated \$3 million in federal Medicaid reimbursement for the treatment of inmates in community hospitals.

All of these efforts demonstrate our ongoing commitment to run the State prison system more efficiently and save State taxpayers money while improving and expanding programming for inmates, which is critical to their rehabilitation and, by occupying them productively, to keeping our prisons safe.

In the coming year, we plan to provide state-of-the-art personal alarms to our civilian staff at additional correctional facilities and undertake analysis of and planning for at least one Special Needs Unit for female offenders with developmental disabilities. The Department currently provides three such units for similarly situated male offenders.

These efforts will require investment, as was the case for our recent positive and groundbreaking efforts in dealing with inmates with mental illness, efforts that have been acknowledged even by some of our critics.

As noted, late last year we opened a 100-bed Residential Mental Health Unit that provides a heightened level of structured out-of-cell programming and treatment for inmates with serious mental illness and disciplinary sanctions as required by the 2007 Private Settlement Agreement with Disability Advocates. This unit, at Marcy Correctional Facility, is the first of its kind in the nation. Work on a second, 60-bed RMHU at Five Points Correctional Facility proceeds and will be ready in time for the Department to meet the requirements of the SHU Exclusion Law.

We will look to institutionalize our successful programs and policies, while undertaking a critical review of our overall effectiveness in several areas, and we will begin to make the hard decisions to remove, revamp or standardize all our service components.

We will also carefully monitor the impact of the 2009 Rockefeller Law reforms and pay careful attention to the impact of drug courts and diversion programs on offenders entering DOCS.

Thank you for your time and attention.

Note: Both the Department and Division of the Budget have historically used total inmate numbers that do not include those offenders under our custody at Willard Drug Treatment Center or Edgecombe Residential Treatment Facility, or parolees in any DOCS facility.

Since we are responsible for the cost of housing and providing services to these offenders, once the 2010-11 Budget is enacted, future inmate population figures will include all offenders to provide a truer picture of the prison population and the true cost of incarceration.



5



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GOVERNOR

STATE OF NEW YORK
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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
Monday, February 8, 2010
Hamilton Hearing Room B, Legislative Office Building

WRITTEN TESTIMONY – Final

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

- Chairmen Kruger, Farrell and distinguished members of the Senate Finance and Assembly Ways and Means Committees, thank you for the opportunity to appear before you today. I will keep my remarks brief, as I know you have gone through several weeks of hearings and there are many speakers coming before you today.
- Again, I am honored to have the opportunity to testify before this Joint Hearing on the Technology Initiatives outlined in Governor David A. Paterson's 2010-11 Executive Budget. During these challenging fiscal times, we are all confronted to rethink the manner in which we conduct our daily business and to seek innovative ways to become more efficient and effective, while lowering our costs to deliver services.
- As you know, New York is facing an \$8.2 billion budget deficit and a long-term structural deficit of \$60.8 billion over the next five years. Both are addressed in Governor Paterson's budget through necessary, but very difficult, decisions.
- CIO/OFT responded to the Governor's call for reduced spending in the current fiscal year. The 2010-11 budget includes an additional 11.5% reduction, representing a \$3.7 million cut in our general fund spending. Operationally, we continue to lower our total cost of information technology ownership by aggressively implementing the strategies and goals outlined in the New York State Enterprise IT Strategic Plan, which we published in June 2009 and is available on our website (www.cio.ny.gov).
- The Enterprise IT Strategic Plan includes the following three major strategic initiatives designed to improve operational efficiencies and drive down costs. I will describe each broad category in my testimony:

1. **Streamlining Enterprise IT Operations for Greater Cost-Efficiencies and Service Delivery** — With the release of the Governor's Executive Budget, he unveiled plans to streamline technology operations through the Office of Taxpayer Accountability (OTA) and CIO/OFT. Through this collaboration, OTA and CIO/OFT are working together to implement several shared IT services initiatives regarding enterprise IT Operations.
2. **Making Necessary Capital and Infrastructure Investments** — Securing a consolidated Enterprise Technology Multiplex to consolidate our aging data centers, and a disaster recovery site are necessary to upgrade our mission-critical IT infrastructure.
3. **Developing a Talented and Innovative NYS IT Workforce, While Reducing Consulting Costs and Usage** — To minimize the cost of IT consultants the state continues to use, last week CIO/OFT announced the award for the State's first Enterprise Staff Augmentation Contract. This unprecedented contract helps by aggregating the current agency procurements for IT staff augmentation contracts into an enterprise contract, we can now leverage the state's buying power to standardize rates and reduce costs associated with staff augmentation consulting services across the State. Our model will optimize the use of small and MWBE firms.

CIO/OFT continues to significantly reduce spending on temporary workers and staff augmentation services. Temporary workers represent a small fraction of the state payroll. In 2009-10, the state is projected to spend nearly \$8 billion on salaries and fringe benefits for permanent state employees in executive agencies under the Governor's direct control. Executive agencies are projected to spend less than 0.3 percent or \$19 million of that total on temporary workers during 2009-10.

A representative analysis by the Division of the Budget of agency spending concluded temporary personnel services are overall, on average, at least 10 percent less expensive than an equivalent permanent state worker. When the medical field and certain trades are excluded, the estimated savings is even higher at 42 percent.

TO ACHIEVE OUR COST-SAVINGS TARGETS, WE WILL FOCUS ON FOUR GOALS:

GOAL #1 – MIGRATE ALL AGENCIES TO A SINGLE EMAIL PLATFORM

- We are looking for quick wins. CIO/OFT is working with OTA to consolidate all Executive agencies onto a single e-mail platform to gain operational efficiencies and cut state operating costs across the state enterprise.
- On January 28, 2010, Valerie Grey, Director of State Operations, directed state agencies to immediately begin to plan to migrate from existing email systems to NYSeMail, the state's consolidated, unified email system operated by CIO/OFT. This move supports Governor David A. Paterson's priority for state agencies to improve efficiencies and cut costs.
- On February 4 and 5, 2010, CIO/OFT hosted Enterprise NYSeMail Migration Kick-Off Meetings. The meetings provided Executive agencies with an overview of the project,

CIO/OFT's support and planning approach, our planned migration schedule, and the product offerings by CIO/OFT.

- **Over 40 agencies, representing approximately 100,000 email users, will migrate to NYSeMail over the next eighteen months.** By consolidating all state agencies' e-mail systems into a single system, the State will gain operational efficiencies projected to result in at least \$4 million in annual savings when fully implemented.
- Several states including Alabama, Michigan, Georgia, Virginia and Massachusetts have either executed email consolidation initiatives or announced plans to consolidate email systems in the coming fiscal year. Email consolidation has been an early step for many State IT organizations looking to lower costs and combine enterprise IT infrastructure.
- We are excited to take on this short term challenge, and just as eager to work with OTA and the agencies on other long-term initiatives.

GOAL #2 TRANSFORM OUR IT SERVICE DELIVERY MODEL TO ACHIEVE GREATER OPERATIONAL EFFICIENCIES THROUGH FURTHER IT CONSOLIDATIONS

ON THE LONG TERM HORIZON TO BUILD EFFICIENCIES AND LOWER COSTS, OUR SECOND GOAL IS TO DESIGN AN ENTERPRISE INFRASTRUCTURE NETWORK TO SUPPORT AN IT SHARED SERVICES BUSINESS MODEL.

- When the Office for Technology was created in 1997, its mission was to serve as the state's central IT organization. While the state's mainframes were consolidated, the majority of other IT assets were not consolidated.
- ***In cooperation with OTA, CIO/OFT will develop a new business model to jump start the further consolidation of information technology services.*** Using the NYS Enterprise IT Strategic Plan as a basis, a charter between OTA and CIO/OFT will require a reduction in statewide technology costs and will focus on customer-driven business relations. State agencies will be required to utilize CIO/OFT services and adhere to statewide technology policies and principles. CIO/OFT will enter into a Service Level Agreement (SLA) to enhance our accountability and service delivery.
- ***In addition to the new business model with OTA, we also will implement a 3-Tier IT service delivery approach, shown in Figure 1, which is outlined in the NYS Enterprise IT Strategic Plan.*** This approach designates CIO/OFT as the central entity for enterprise infrastructure and IT shared services, while fostering strategic alliances at the agency cluster level to promote collaboration between agencies sharing common constituents and IT needs. This will also allow agencies to forego mundane and duplicative IT operations and focus on their mission-critical applications.

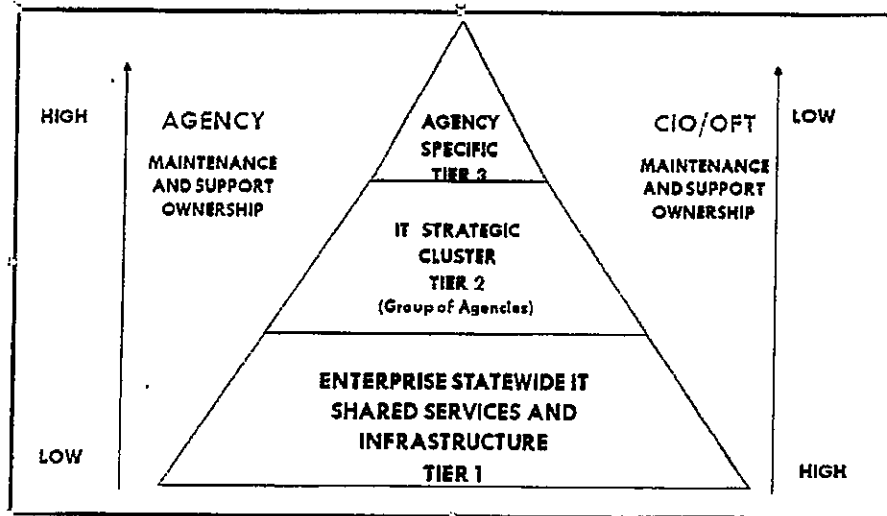


Figure 1: IT Shared Services Delivery 3-Tier Model

- **Figure 1** shown in the slide gives a pictorial view of this approach. CIO/OFT and OTA will look to jointly develop **Tier 1**, the Enterprise Statewide IT Services and Infrastructure Tier, which is operated for cost-efficiency and supports data centers operations, telecommunications, networks, desktop support and other enterprise IT “back office” operations in support of other state agencies. Tier 1 will be centrally managed and operated by CIO/OFT. Ownership for the enterprise infrastructure is the highest at this level. This Tier focuses on cost efficiencies with dependable services.

- Agencies with similar missions, referred to as clusters, will be encouraged to engage at the strategic cluster level, which is **Tier 2**. At the strategic cluster level, agencies will leverage mission-critical applications related to two or more agencies who share a common constituency. These applications, along with other IT assets such as web portals, may be shared among the agencies within the Cluster or between Clusters. Ownership for operating a shared application is usually the responsibility of the State agency or may be shared by related agencies. However, CIO/OFT will operate the enterprise IT services infrastructure supporting the mission-critical application. Mission-critical applications are developed and supported by the respective lead agency or shared agencies in an IT Strategic Cluster.

- Our IT Strategic clusters include:
 - *Labor, Health and Human Services*
 - *Financial Regulations*
 - *Public Safety and Security*
 - *Economic Development and Infrastructure*
 - *Education*
 - *Energy and Environment*
 - *Government Operations And Oversight*

- Kick-off Cluster meetings are scheduled to begin in March. Every agency has been designated into one of the seven clusters.
- Finally, **Tier 3** is for special purpose applications, which are not shared by any other agency. These niche applications, if tied to the state network, must comply with enterprise technical standards, policies and procedures. However, the agency must be self-sufficient and is responsible for acquiring, maintaining and supporting the application.
- This new 3-Tier IT Service Delivery approach enables CIO/OFT and OTA to develop a new Service Delivery Business Model to drive down costs. We plan to transform our service delivery capabilities by enhancing our infrastructure to allow for innovations and instituting service level agreements (SLAs) to ensure transparency and accountability for our agency customers. Outside experts will be sought to help transform the CIO/OFT business model and ensure the State is trained and operating efficiently and effectively when purchasing IT products and delivering services statewide.

GOAL #3 UPGRADE IT MISSION-CRITICAL IT INFRASTRUCTURE

WHAT TYPES OF INITIATIVES OUTLINED IN THE EXECUTIVE BUDGET ARE NECESSARY TO UPGRADE OUR MISSION-CRITICAL IT INFRASTRUCTURE?

- ***As a first step we must secure the Enterprise Disaster Recovery site.*** The Disaster Recovery site will not only keep mission-critical, state operations safe from disruption from unexpected events such as major disasters, terrorist attacks, large-scale power outages, or other instances of IT infrastructure outages, but will also serve as a staging area for infrastructure upgrades and cost reduction consolidations.
- CIO/OFT is awaiting lease approval from the Office of the State Comptroller for data center space outside of the Capital Region to offer the Disaster Recovery service to both managed service customers and to other state and local entities in need of disaster recovery space. Through expanding shared services and IT centralizations, we can further reduce costs to operate the Disaster Recovery Center. Our budget includes \$6.4 million within the Data Center appropriation to lease the disaster recovery space.
- ***In addition to the need for disaster recovery site, CIO/OFT looks to consolidate its remaining mainframe data centers into an Enterprise Technology Multiplex.*** Today, three concurrent challenges – replace and consolidate the state’s aging data centers; recruit and train an innovative and talented IT workforce as the baby boomer talent pool reaches retirement age; and establish a permanent program of training and technology refreshment to enhance government services – have converged upon us.
- To maximize the \$99.1 million reappropriation for a consolidated data center, the State is looking to forge strategic collaborations with academic and private partners. This will ensure we meet mutual goals, within available resources on an aggressive timetable.

- ***In December, academic leaders from Cornell University, Columbia University Medical Center and New York Universities submitted Letters of Intent to CIO/OFT to work collaboratively preparing recommendations for the development of a shared world-class IT Enterprise Technology Multiplex to deploy IT, high-performance computing and data processing innovations; to deliver state-of-the-art solutions for greener, cost-efficient and effective government services; to support leading-edge academic research and development; and to build a talented and innovative IT workforce to meet the growing and rapidly evolving computing needs of the State of New York. We look forward to forging this historical partnership to share IT assets and drive down costs.***

- ***We will also fast track our ability to utilize Voice Over Internet Protocol (VoIP) across the state enterprise to improve communications and drive down telecom and network costs. This telecommunications technology will allow for audio and data transmission over the Internet and other digital networks to assist agencies with achieving greater operational efficiencies. These efforts have already begun with the Department of Taxation and Finance. CIO/OFT will upgrade 70,000 lines of CAPNET infrastructure to replace the aging legacy PBX phone switching environment. This core telecommunications modernization initiative is expected to take approximately 18 months to complete. No longer will we need to build a separate voice and data network. These will become one.***

- ***On a macro scale, another key infrastructure modernization initiative is our continued broadband build out. Through the Governor's Economic Recovery Cabinet, the Broadband Program Office continues to assist New York State agencies, businesses and citizens competing for federal broadband stimulus grant dollars. New York applied for nearly \$800 million in the first round of funding. Award announcements began in November 2009 and are continuing. To date, two NYS broadband development projects received \$44 million in federal stimulus funds. We have almost \$500 million going through the federal governments due diligence process.***

- ***As part of Governor Paterson's Innovation Economy Matching Grant Program, ION/DANC, one of the federal broadband grant recipients, will receive a 10% match of \$4.95 million, enabling them to build out networks in the shortest timeframe possible. This match was unique to New York State.***

- ***The Broadband Stimulus Notice of Funds Available (NOFA) for Round 2 was announced in mid-January. There is \$7.2 billion available for investing in broadband nationwide. New York State will continue our efforts to maximize funds to the State.***

- ***Additionally, in 2009, CIO/OFT and public safety agencies collaborated to develop a common strategy to streamline functions and reduce costs. The unfortunate termination for default of the M/A-COM contract for the Statewide Wireless Network (SWN) provided an opportunity for the state to refocus, restructure and redefine the state's "public safety grade" interoperability strategic approach. Engaging the first responder community and working collaboratively with the public safety agencies, the state's enhanced strategy emphasizes developing a system to give state agencies and local jurisdictions the ability to communicate interchangeably with high performing public safety networks. The renewed approach enables the state to accelerate replacing and upgrading obsolete state and local public safety systems and reaffirms the state's commitment to statewide interoperability.***

- To continue this mission, the former Statewide Wireless Network Program Office has been restructured as the Statewide Interoperability Program Office (SIPO). Its purpose is redefined to focus on enabling regional deployments to build a statewide interoperability "network of networks." We are working closely with Denise O'Donnell, Governor Patterson's Deputy Secretary for Public Safety and Commissioner of the Department of Criminal Justice Services to ensure a smooth transition to the new strategy.
- ***Governor Paterson's proposed new Division of Homeland Security and Emergency Services will award up to \$50 million annually in new grants to county consortiums to assist in the development of county-driven interoperable communications networks for use by both State and local first-responder agencies. These grants will be funded from a portion of the cellular surcharge revenues formally dedicated to the build out of the Statewide Wireless Network.***

GOAL #4: REDUCE OUR RELIANCE AND COSTS FOR IT CONTRACTORS

OUR FOURTH AND FINAL GOAL IS TO RELIANCE AND COSTS FOR IT CONTRACTORS USED PRIMARILY FOR STAFF AUGMENTATION SERVICES.

- IT workforce related issues have been an important priority and challenge since my appointment as State CIO. At the onset, ***we have continuously advocated for actions to reduce both the reliance on contractors and the costs of procuring IT contractors or consultants, especially for staff augmentation purposes.***
- New York State is challenged in recruiting, developing and retaining a skilled and talented IT workforce. The State needs skilled employees who understand the new technologies and are prepared to exploit newer technologies to deliver better government services. There has been an over reliance on consulting services. However, agencies have been diligent in phasing out contractors to the extent possible.
- As shown in **Figure 2**, we are starting to achieve success in reducing our utilization of IT consultants.

Change in IT Consultant Spending for Top 10 Agencies (2008 vs. 2009)

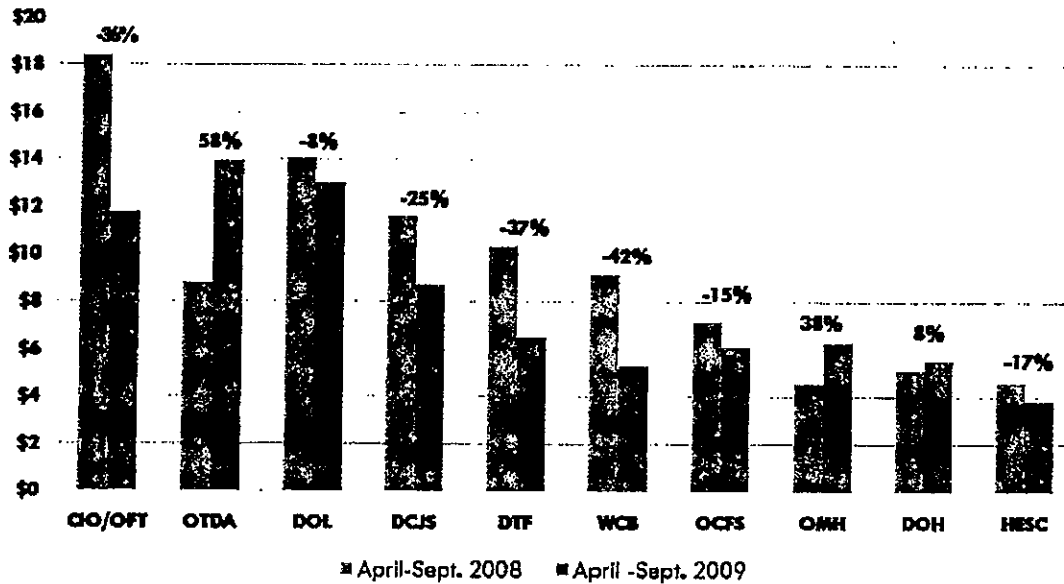


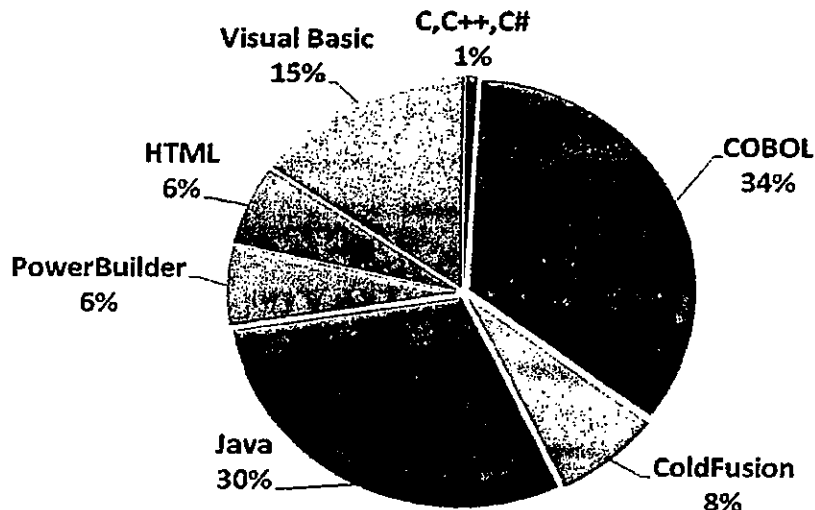
Figure 2: Year-to-Year Reduction in IT Consultant Spending for Top 10 Agencies

- **Figure 2** highlights the top 10 state agencies with the highest spending on technology last year. These 10 state agencies collectively represent approximately 70 percent of the state's total IT spend for executive agencies. *An analysis of IT consultant spending by those agencies reveals a 14 percent overall reduction in IT consultant spending for the first half of this fiscal year, compared to the same period last fiscal year.* We are very pleased with this result. However, we are not resting on this progress.
- One of the major factors contributing to the use of staff augmentation contractors is the pressing need for skills in newer technologies which are currently lacking within the State workforce. Newer critical skills make up a smaller portion of the current IT workforce. This situation will only be exacerbated by the retiring of baby boomers over the next few years, when nearly 20 percent of the IT workforce is eligible to retire.

Last year, Governor Paterson introduced and the Legislature adopted Bill A.40011/S.66011, which was signed into law as Chapter 500 of the Laws of 2009. Thank you for supporting this bill. This new law authorizes up to 500 term IT appointments, for up to 5 years each. We thank you for this passage because it is a critical component of our ability to continue reducing the use of IT consultants for staff augmentation purposes. These positions will be established at the entry level through the grade 27 level, enabling agencies to appoint staff at higher levels commensurate with their skills. Agencies will use this mechanism to in source consultants into lower-cost state positions. Existing state employees can apply for these positions as well. Agencies will be required to eliminate a consultant for each position filled.

- To further illustrate how critical this legislation is to achieving our IT workforce development goal, **Figure 3** highlights our eminent necessity to retrain and retool our current IT workforce.

Figure 3: IT Programming Staff By Application Language Type (~1500+)



Source: 2008 Annual Technology Plan Addendum Analysis

- **As shown, Figure 3 further emphasizes the State's critical skills gap is a major barrier to rapidly deploying newer, more cost-efficient technologies. This crisis continues the reliance on external consultants for critical skills in modern programming languages.**
- **The same skill shortage applies to security, networks, web services, and other areas.**
- ***The lack of critical skills by the State IT workforce was confirmed by the 2008 Annual Technology Plans submitted by 89 agencies to CIO/OFT. The current state agency IT workforce is approximately 5,300 employees, of which approximately 1,500 or 28 percent are programmers. 34 percent of the programmers are maintaining old technology legacy systems written in the COBOL programming language.***
- ***To minimize the cost of IT consultants the state continues to use, on January 28, 2010, CIO/OFT announced a contract award to Tapfin Process Solutions (TAPFIN), a wholly owned subsidiary of Manpower, to manage a network of subcontractor staff augmentation providers to deliver IT consulting services for staff augmentation to New York State Agencies.***
- **By aggregating the current agency procurements into a single enterprise contract, we can now leverage the state's enterprise buying power to standardize rates and reduce costs associated with staff augmentation consulting services across the State.**

- CIO/OFT views this unprecedented and transformational procurement as an opportunity for more small, woman and minority owned businesses to have access to the dollars traditionally spent by NYS for IT staff augmentation purposes. This procurement will allow small specialty firms and those firms that have found the NYS contracting process too daunting in the past, and opportunity to compete for state business on a level playing field.

IN SUMMARY

- In a time of severe resource constraints, not all of this is possible immediately. It is a goal we must continue to work toward every day if we are to lower our total cost of IT ownership and attract and retain the IT workforce we need today and tomorrow.
- In conclusion, CIO/OFT recommends the following actions be considered to address the current fiscal and workforce challenges:
 1. **Transform the Delivery of IT Services by Enhancing the IT Shared Services Model for Executive Agencies.** The new infrastructure service-delivery model is designed to operate for cost efficiency and supports data centers operations, telecommunications, networks, desktop support and other Enterprise IT "back office" operations in support of other State agencies. We must modernize practices and learn from proven private industry models to deliver better government services at a lower cost.
 2. **Foster Academic Partnerships to Support Innovative Capital Investment and Educational Curriculum Development.** The State must optimize educational institutions whose vast resources can leverage our capital projects and also help with the future IT curriculum to build tomorrow's talented and innovative workforce.
- Finally, with your strong commitment to continue leveraging IT for delivering better government, I believe we can, and will, achieve these cost saving goals for the benefit of New York State and our taxpayers.
- Thank you for offering this opportunity to speak and highlight the many IT efforts we have underway to deliver better services while driving down the cost of those services.
- I look forward to answering your questions.

6

TESTIMONY PRESENTED BY

Donn Rowe

President



February 8, 2010

Testimony of Donn Rowe

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

February 8, 2010

Good morning Chairman Kruger, 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 DOCS Executive Budget proposal places the safety of our members and many of the communities they proudly serve in serious jeopardy.

I would like to focus my comments today specifically on the proposal to close four prisons in New York State: the medium security Ogdensburg Correctional Facility; the minimum security Moriah Shock Incarceration Correctional Facility; the minimum security Lyon Mountain Correctional Facility; and the minimum security component of the Butler Correctional Facility.

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. We support the Governor's efforts to help us through these challenging times and respect the tough choices our Legislature has before them.

However, we would submit that while Albany is being forced to make difficult choices on the budget, keeping our communities safe and protecting good-paying jobs must be top priorities.

For years now NYSCOPBA leadership has testified before you about overcrowding in our prison system. I have told you that there are thousands of inmates living in double bunked cells designed to hold only one person. I have explained that this is not only a danger to our brave correctional officers but also to those incarcerated. And I have

discussed the vital importance of minimum security correctional facilities in reducing recidivism rates, rehabilitating inmates and best preparing them for reentry into our society. Sadly, I am before you today feeling as if our repeated concerns have again fallen on deaf ears at DOCS.

DOCS' has yet again refused to look internally at their own bloated bureaucracy for cuts and decided to balance their budget on the backs of the men and women who serve as our front lines of protection for a prison system that remains overcrowded and understaffed.

Commissioner Fischer has chosen to close prisons and reduce the number of correctional officer positions, despite the fact that our prison system as a whole is operating at 102% capacity, with maximum security facilities operating at more than 122% capacity.

Commissioner Fischer refuses to look internally at the bureaucracy, and is instead proposing cuts on the front lines.

Let me be clear, this plan proposes reducing the number of line item correctional officer positions within the Department without reducing a single administrative position.

NYSCOPBA believes that any honest and thorough review of DOCS practices should have resulted in a decision to reduce spending on the administrative level, not the front lines of public safety and security. It is the administrative level – where there is little to no direct impact on the security function of New York's prisons – that can afford cuts. Cuts to the administrative bureaucracy will not put the safety of our inmates, our

correctional officers and the general public in danger. Sadly, the plan to cut more correctional officers will do just that.

We believe the process of seeking ways to cut costs should begin at the top of the food chain where the potential for consolidation of administrative functions is enormous.

Each prison has layer upon layer of bureaucracy in New York. Individuals who rarely interact with inmates and perform duties that must be considered non-essential to public safety and inmate rehabilitation collect what are often six-figure salaries at each of New York's prisons.

Each prison this state operates has a Superintendent; Deputy Superintendent for Administration; Deputy Superintendent for Programs; Deputy Superintendent for Security; Institutional Steward; and two or three Captains. Many of our maximum security facilities also have a First Deputy Superintendent and many of the Superintendents receive additional salary for being the "HUB Superintendent."

A troubling recently released report by Senators Klein and Savino further shows a gross misuse of DOCS resources and what the Senators said is "rampant mismanagement" at DOCS. The report finds that DOCS has spent more than \$15 million on "wasteful" administrative, housing and overtime costs. Details uncovered by the report show that DOCS is currently providing at least 8 Superintendents with luxury housing at a

miniscule cost to the Superintendents and a significant loss to the Department and the State.

The findings in a report of this magnitude merit serious scrutiny and a demand for honest answers and accountability from DOCS. The report clearly illustrates that DOCS is capable of making significant cuts on the administrative level instead of cutting away at public safety and essential transitional programs for inmates.

We need our correctional officers to keep our families safe and our communities strong.

I would be remiss if I did not also mention the dire economic impact the proposed prison closures will have on the larger communities where they lie. In every single municipality where these facilities reside they serve as one of the largest – if not the largest – employers in the area. Their longtime presence in these communities has helped to spawn economic growth in areas that have been and continue to be incredibly hard hit but these challenging economic times.

The Department of Correctional Services' proposal to close four 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, the closures will make New York's tough times even tougher by damaging a prison system that is already overcrowded and understaffed. Any cuts to the Department of

Correctional Services should start with the top-heavy bloated bureaucracy within the agency and not the safety of the public.

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.

TESTIMONY PRESENTED BY

Donn Rowe

President



February 8, 2010

Testimony of Donn Rowe

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

February 8, 2010

Good morning Chairman Kruger, 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 DOCS Executive Budget proposal places the safety of our members and many of the communities they proudly serve in serious jeopardy.

I would like to focus my comments today specifically on the proposal to close four prisons in New York State: the medium security Ogdensburg Correctional Facility; the minimum security Moriah Shock Incarceration Correctional Facility; the minimum security Lyon Mountain Correctional Facility; and the minimum security component of the Butler Correctional Facility.

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. We support the Governor's efforts to help us through these challenging times and respect the tough choices our Legislature has before them.

However, we would submit that while Albany is being forced to make difficult choices on the budget, keeping our communities safe and protecting good-paying jobs must be top priorities.

For years now NYSCOPBA leadership has testified before you about overcrowding in our prison system. I have told you that there are thousands of inmates living in double bunked cells designed to hold only one person. I have explained that this is not only a danger to our brave correctional officers but also to those incarcerated. And I have

discussed the vital importance of minimum security correctional facilities in reducing recidivism rates, rehabilitating inmates and best preparing them for reentry into our society. Sadly, I am before you today feeling as if our repeated concerns have again fallen on deaf ears at DOCS.

DOCS' has yet again refused to look internally at their own bloated bureaucracy for cuts and decided to balance their budget on the backs of the men and women who serve as our front lines of protection for a prison system that remains overcrowded and understaffed.

Commissioner Fischer has chosen to close prisons and reduce the number of correctional officer positions, despite the fact that our prison system as a whole is operating at 102% capacity, with maximum security facilities operating at more than 122% capacity.

Commissioner Fischer refuses to look internally at the bureaucracy, and is instead proposing cuts on the front lines.

Let me be clear, this plan proposes reducing the number of line item correctional officer positions within the Department without reducing a single administrative position.

NYSCOPBA believes that any honest and thorough review of DOCS practices should have resulted in a decision to reduce spending on the administrative level, not the front lines of public safety and security. It is the administrative level – where there is little to no direct impact on the security function of New York's prisons – that can afford cuts.

Cuts to the administrative bureaucracy will not put the safety of our inmates, our

correctional officers and the general public in danger. Sadly, the plan to cut more correctional officers will do just that.

We believe the process of seeking ways to cut costs should begin at the top of the food chain where the potential for consolidation of administrative functions is enormous.

Each prison has layer upon layer of bureaucracy in New York. Individuals who rarely interact with inmates and perform duties that must be considered non-essential to public safety and inmate rehabilitation collect what are often six-figure salaries at each of New York's prisons.

Each prison this state operates has a Superintendent; Deputy Superintendent for Administration; Deputy Superintendent for Programs; Deputy Superintendent for Security; Institutional Steward; and two or three Captains. Many of our maximum security facilities also have a First Deputy Superintendent and many of the Superintendents receive additional salary for being the "HUB Superintendent."

A troubling recently released report by Senators Klein and Savino further shows a gross misuse of DOCS resources and what the Senators said is "rampant mismanagement" at DOCS. The report finds that DOCS has spent more than \$15 million on "wasteful" administrative, housing and overtime costs. Details uncovered by the report show that DOCS is currently providing at least 8 Superintendents with luxury housing at a

miniscule cost to the Superintendents and a significant loss to the Department and the State.

The findings in a report of this magnitude merit serious scrutiny and a demand for honest answers and accountability from DOCS. The report clearly illustrates that DOCS is capable of making significant cuts on the administrative level instead of cutting away at public safety and essential transitional programs for inmates.

We need our correctional officers to keep our families safe and our communities strong.

I would be remiss if I did not also mention the dire economic impact the proposed prison closures will have on the larger communities where they lie. In every single municipality where these facilities reside they serve as one of the largest – if not the largest – employers in the area. Their longtime presence in these communities has helped to spawn economic growth in areas that have been and continue to be incredibly hard hit but these challenging economic times.

The Department of Correctional Services' proposal to close four 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, the closures will make New York's tough times even tougher by damaging a prison system that is already overcrowded and understaffed. Any cuts to the Department of

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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.

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Remarks by NY State Troopers PBA President Thomas H. Mungeer on February 8, 2010 regarding the 2010-2011 Executive Budget

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NCO East Delegate

FRANK A. PACE
Officers Delegate

MICHAEL E. DISILVIO
Retiree 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 2010 – 2011 Executive Budget specifically provides for no new State Police Academy recruit classes to help fill in staffing gaps. 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.

Under the Governor's current proposal, we will not likely see new Troopers on the road until 2012, at the earliest, when you consider that it takes nearly one year of classroom and field training to assign new Troopers to road patrol. In this scenario, it will take years for the State Police to restore the number of sworn members to appropriate levels.

This situation is resulting in a ripple effect on various programs in which the New York State Police is partnered with communities. One such program involves the

presence of Troopers in various school districts across the state as School Resource Officers. It has been announced that due to budget cuts, this program will be terminated at the end of this current school year. This program has been extremely popular with school administrators, students, and parents, in that Troopers provide a positive role model, act as a deterrent for crime, and are on the school premises if any threats of violence or other emergencies arise. Unfortunately, this program has to be sacrificed because no new Troopers are being added to the State Police.

Other successful programs that may be targeted for elimination due to manpower struggles include the Community Narcotics Enforcement Team and Operation IMPACT. In both of these programs, Troopers pair up with municipal police officers across the state to target drug sales and crimes as well as general police work in areas that need extra assistance. While the Troopers who work in these programs see great results and receive positive feedback from municipal law enforcement officers, citizens and municipal leaders, these proactive initiatives may also fall victim to the effects of not having enough Troopers available for patrol duties.

Ironically, one area that the Division of State Police may have not difficulty devoting manpower and resources to is ticket-writing details. These additional ticket-writing details will be scheduled by the Division of State Police and will leave even fewer Troopers working on the road. While the Executive Budget neglects the need for new Troopers to help fill in manpower gaps and allow successful programs to continue, our members are still counted on to help generate revenue for the state through traffic tickets.

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.

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Testimony of The Legal Aid Society

on

**THE 2010-2011 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 8, 2010

The Legal Aid Society welcomes this opportunity to testify at this 2010-2011 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 1450 – including 850 lawyers – the Society provided legal assistance in more than 300,000 cases and legal matters for clients.

State funding supports the Society's legal assistance in the areas of civil legal services, criminal defense, indigent parolee defense, and juvenile rights. Special annual allocations from the Legislature for civil and criminal services have 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 proposed State Executive Budget funding levels for civil legal services, criminal defense, and indigent parolee defense. The Society's Juvenile Rights Practice representation of children in Family Court proceedings is funded separately by the Office of Court Administration, but we will also highlight needs in that practice area.

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 and the need for the legal help that the Society provides to these struggling families and individuals is increasing exponentially.

Against this backdrop, the proposed State cuts for criminal defense and civil legal services in the Governor's 2010-2011 Executive Budget will hurt families and individuals who need legal help in the midst of this severe economic downturn and New Yorkers accused – often wrongfully – of criminal conduct.

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 and we are forced to turn away eight out of every nine New Yorkers who seek our help. With the new proposed State cuts, we will have to turn away more families and individuals who need legal aid to get unemployment and disability benefits, flee from domestic violence, and prevent evictions, foreclosures, and homelessness – which is at record levels in New York City.

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 850 of the brightest legal minds. These 850 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 New York City for clients who cannot afford to pay for private counsel.

The Society's legal program operates three major 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 State-wide 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. 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 enact 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 this process and the Judiciary's 2010 – 2011 budget makes provision for implementing this historic new law.

This law was enacted in order to ensure that low income New Yorkers who are accused of crimes – often wrongfully – in New York City will be represented by lawyers with proper caseloads. This action by the Legislature is so significant that the United States Attorney General Eric Holder has cited this law as one of two major breakthroughs for the provision of

indigent defense in the entire nation.

Unfortunately, three proposals in the Governor's 2010 – 2011 Executive Budget threaten to undo this landmark criminal defense case cap law.

First, the Governor's proposed 2010 – 2011 Executive Budget cuts State Aid to Defense funding from \$9.8 million to \$8.8 million, including a cut from \$7.6 million to approximately \$6.8 million for the Legal Aid Society based on the traditional allocation of this funding. This proposed reduction comes on top of a cut of nearly \$1.1 million in State Aid to Defense funding for the Legal Aid Society in the final 2009 – 2010 State budget. The proposed 2010 – 2011 reduction also comes on top of annual reductions from the 2003 State-wide Aid to Defense funding level of \$13.6 million, of which \$10.8 million had been allocated to the Legal Aid Society.

The proposed \$1 million cut in State Aid to Defense funding can be restored without adding any expense to the 2010 – 2011 Executive Budget by reallocating \$1 million to the Aid to Defense budget line from the \$10 million in new funds the Governor has proposed to add to the Division of Criminal Justice Services' budget from new court fees for unspecified improvements in indigent defense. It makes no sense to propose to add funds to improve indigent defense while at the same time cutting existing funding for State Aid to Defense which the Legal Aid Society is currently using to represent clients in New York City.

Second, the Governor's proposed 2010 – 2011 Executive Budget also eliminates essential legislative funding which the Society needs to continue to provide constitutionally mandated representation to clients. In the current 2009 – 2010 State budget, the Society is relying on 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. Without a restoration of these funds, the Society's criminal defense caseload crisis will be exacerbated and the 2009 landmark case cap law will be negated.

Third, the Governor's 2010 – 2011 Executive Budget proposes to cap the allocation of State indigent legal services funding for New York City and make other changes in the State Finance Law which will also negate the 2009 landmark case cap law. Indeed, the City has contended that the Governor's proposal will result in a reduction of funding for criminal defense in New York City.

The urgent need to reverse these three budgetary proposals by the Governor is highlighted by the continuing caseload crisis which we are experiencing. This extreme situation is what led to the enactment of the landmark case cap law nearly a year ago. Unfortunately, even before the case cap law implementation process has begun the situation has become worse and the Governor's proposed budgetary actions will only exacerbate this criminal defense crisis.

As we reported to the Legislature last year prior to the enactment of the case cap law, the Society's annual criminal defense caseload increased from approximately 210,000 new cases in City fiscal year 2005 – 2006 to nearly 227,000 new cases in 2007 – 2008. During 2008 – 2009, our caseload increased even further to 232,000 new cases and that trend of increased cases is continuing this year.

As a result of these increased arrests in New York City, annually the Legal Aid Society's criminal defense staff of 435 attorneys is handling more than 100,000 cases which survive a first court appearance, and approximately 30 percent of those cases are felonies. Nearly 83 percent of our criminal defense attorney staff has caseloads significantly in excess of the annual standards set by the Appellate Division, First Department, which limit annual criminal defense attorney caseloads to 400 misdemeanors or 150 felonies, with felonies counted as 2.66 misdemeanors in mixed caseloads. The average annual weighted caseload for attorney staff who handled more than the First Department standards permit is now 718 cases, and our overall average pending caseload is in excess of 100 cases per attorney.

Making this situation even worse – as the Governor's three budgetary proposals would do – is intolerable, 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.

A final budget concern in the criminal defense area involves our representation of clients who are mentally ill and chemically addicted. The Division of Criminal Justice Services had allocated \$910,000 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. In both 2008 – 2009 and 2009 – 2010, the Legal Aid Society was allocated reduced funding of \$825,000 for this program. For 2010 – 2011, it is essential that Division of Criminal Justice Services continue to allocate 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 you do so again.

The Need For Restored Funding For Indigent Parolee Representation: The Legal Aid Society's Parole Revocation Defense Unit (PRDU), established in 1972, was the first program in the nation to provide legal representation and social work diversion services specifically to persons who have been paroled from State prisons. By contract with New York City, the Society serves as the primary defender of persons accused of parole violations prosecuted in New York City. Annually, the Society's Parole Unit conducts approximately 7,300 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 need parolees and refer them for necessary services and programs.

Historically, the State had provided \$1.3 million in funding to support these critical parole defense services. However, during the Pataki Administration, this State funding for indigent parolee defense was eliminated from the Executive Budget and restored by the Assembly. This year, the Executive Budget again does not include this funding.

We are very grateful for the Assembly's restoration of \$472,122 in funding for the Legal Aid Society's representation of indigent parolees in the adopted 2009 – 2010 budget. Likewise, we greatly appreciate the Assembly's restoration of \$273,700 in funding for the Society's representation of mentally ill parolees in the 2009 – 2010 budget. For the 2010 – 2011 fiscal year, restoration of State funding in the amounts of \$472,122 and \$273,700 for parolee legal assistance is critical to enable the Society to maintain these vital services for vulnerable clients.

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 would result in 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.

The Need For Restored Funding For Civil Legal Services: The Society provides civil legal services through our neighborhood-based offices in all five boroughs of New York City and city-wide units that serve families and individuals with special needs. Our civil program provides legal assistance in literally every community in New York City.

In 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.

Annually, we handle some 32,000 individual civil matters for the most vulnerable New Yorkers: survivors of domestic violence, senior citizens, disabled or chronically ill children and adults, immigrants fleeing oppression, unemployed workers, persons with HIV infection, and children and adults faced with evictions, foreclosures and homelessness. We help clients with legal problems involving: domestic violence and family law; elder law for senior citizens; housing and homelessness; income and economic security assistance such as federal disability

benefits, employment and low wage worker matters, earned income tax credits, federal food stamps, and public assistance; immigration; health care, including Medicare Part D, Medicaid, and access to hospital charity support; HIV and AIDS; and housing development and community development opportunities to help clients move out of poverty.

The continuing extraordinary economic conditions are having an especially harsh impact on low income New Yorkers and the need for the civil legal help for these struggling families and individuals is increasing exponentially. Without ongoing substantial support for the provision of civil legal assistance in New York State, the Society and other civil legal services programs across the State and in New York City will have to turn away more families and individuals who need legal aid to get unemployment and disability benefits, flee from domestic violence, and prevent evictions, foreclosures, and homelessness.

This increasing need for substantial support for civil legal services in New York State is coming at a time when a catastrophic drop in Interest on Lawyer Account funding for civil legal assistance in New York State is looming in 2010. The IOLA Board allocates civil legal services funding on a calendar year basis. In December 2008, IOLA made State-wide grants to civil legal services providers totaling over \$31 million covering a 15-month period. This 15-month funding level is equivalent to \$24.8 million annualized over 12 months, which is the approximate level of the 2008 calendar year IOLA funding. However, primarily as a result of the drop in interest rates as well as the drying up of economic activity when the downturn began, the IOLA Fund's program revenue is projected to drop to approximately \$6.5 million for the period April 1, 2010 through December 31, 2010. This \$6.5 million revenue level for the first 9 months of the State fiscal year that begins on April 1, 2010 and runs through March 31, 2011 is in comparison to \$18.6 million which had previously been the proportionate level for a 9-month period. These substantial losses are expected to continue during calendar year 2011 through the last quarter of the State's April 1, 2010 – March 31, 2011 fiscal year and thereafter into the April 1, 2011 – March 31, 2012 fiscal year. Based on these projected losses, the Society's \$4.5 million annual 12-month IOLA grant will be decimated. Other providers in New York City and in the rest of the State are facing similar deep cuts.

Against this background, we are extremely grateful for the Legislature's strong support for a bailout of the IOLA Fund in the April 1, 2010 – March 31, 2011 fiscal year budget. The Legislature's leadership on this issue has now led to Chief Judge Jonathan Lippman's inclusion of \$15 million in the Judiciary's proposed budget in order to make the IOLA Fund substantially whole for one year in an effort to preserve current levels of civil legal services in New York State. This proposed funding will be reviewed by the Governor and the Legislature during the budget process and it will not become final until the 2010 – 2011 State budget is adopted on April 1, 2010. Continued support for this \$15 million IOLA bailout is therefore critical to ensure that this funding is included in the final 2010 – 2011 State budget. However, the proposed bailout for 2010 – 2011 simply attempts to preserve the current status quo in which there is a significant gap in available civil legal assistance and the increasing need for civil legal services. It also may not cover the entire reduction of available IOLA funding during the 2010 – 2011 State fiscal year. Moreover, this one-year bailout does not address the need to stabilize the IOLA

Fund after March 31, 2011.

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 saves New York State millions of dollars a year and is a proven, tested and wise investment. Last year, for example:

- millions of public dollars were saved by legal services programs because they were able to preserve homes, avert homelessness for New Yorkers, and keep families together;
- legal services programs obtained \$24,494,483 in retroactive federal disability awards for clients and \$131 million in total benefits for clients, bringing millions of dollars into the State annually;
- the monthly disability benefits, Earned Income Tax Credit refunds, and Unemployment Insurance benefits civil legal services programs obtained for New York residents were reinvested by them and stimulated the economies of their communities; and
- these community investments, in turn, sustained jobs and additional economic activity.

Based on the number of low income families and individuals seeking civil legal services at the Legal Aid Society and at other civil legal programs across the State and in the City, the looming IOLA cuts could not come at a worse time for vulnerable New Yorkers. Even at current funding levels before any IOLA reductions, national studies have found that at least 80 percent of the low income persons who need civil legal assistance are unable to obtain it

For example, the Society annually handles some 32,000 civil legal matters in literally every zip code in the City, consisting of 35.9% of our cases from Brooklyn, 26.7% from the Bronx, 16.5% from Queens, 14.4% from Manhattan, and 6.5% from Staten Island. However, we are able to help only one out of every nine New Yorkers who seek our help with civil legal problems because of lack of resources. The situation has become particularly dire since the economic downturn which is having such a harsh impact in our client communities, and the need for our civil legal services is more crucial than ever. Homelessness, for example, is at record levels in New York City, and unemployment, hunger, and foreclosures are on the rise.

In recent months, 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.

The situation will become even more extreme in 2010 if the final 2010 – 2011 State budget does not include the \$15 million in the Judiciary’s budget to bail out the IOLA Fund to address the dramatic drop in the Fund’s revenue for civil legal services because of the economic downturn. In these severe economic times, civil legal assistance is needed now more than ever.

In fact, the sad truth is that even with the inclusion of \$15 million in IOLA bailout funds in the Judiciary’s 2010 – 2011 budget, there is more that New York State can and should do to address the shocking gap in access to justice that our staff sees first-hand every day.

For many years the Assembly has supported civil legal services with special legislative funding. With the leadership change in the Senate last year, the Senate has also supported civil legal services with special legislative funding during the current fiscal year. These levels of Senate and Assembly funding are essential to continue as part of efforts to preserve and expand access to justice through the provision of civil legal services.

Unfortunately, notwithstanding the harsh impact the economic downturn is having on low income New Yorkers, the Governor’s 2010 – 2011 Executive Budget eliminates all of the civil legal services funding that the Assembly and the Senate provided in the 2009 – 2010 State budget. Without a restoration of this critical funding, the Legal Aid Society and other civil legal services programs across the State and in New York City will have to dramatically reduce staff and turn away even more constituents who need civil legal help to address problems resulting from the continuing economic downturn. For example, without a restoration of this legislative funding in the final State budget for 2010 – 2011, the Society will lose the following funding which is crucial for continuing to provide civil legal aid to low income families and individuals: \$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.

Against this background of proposed State funding cuts, decreased IOLA funding, and an increased need for civil legal help in the economic crisis, a restoration of core State funding which has historically been provided as part of a series of State-wide civil legal services initiatives is essential to preserve client services in all five boroughs of New York City. The consequences of eliminating critical State civil legal services funding will be dire – increases in evictions, foreclosures and homelessness, increases in the number of women and children who cannot escape domestic violence, increases in the numbers of immigrants lawfully in this country who will be wrongfully deported, and increases in the numbers of children and adults who will go without subsistence income, health care, and food because of bureaucratic mistakes that cannot be challenged effectively in the absence of counsel.

The Need To Support The Representation of Children In Family Court: The Society's Juvenile Rights Practice is funded through the Office of Court Administration's budget and no funding is included in the Executive Budget itself. The Society's 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.

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 new State 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 requiring the Office of Court Administration to set workload 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 Office of Court Administration 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.

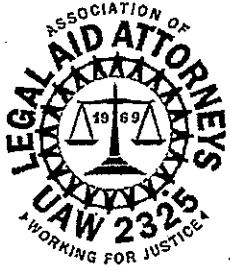
As the budget process proceeds, we also appreciate the Legislature's continued focus on the need to increase the number of Family Court Judges to help alleviate Family Court workload problems that adversely affect children by delaying consideration of their cases.

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 met.

Submitted by,

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Testimony of UAW Local 2325

The Association of Legal Aid Attorneys

on

THE 2010-2011 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 8, 2010

UAW Local 2325, The Association of Legal Aid Attorneys, welcomes this opportunity to testify at this 2010-2011 Executive Budget hearing. Our Local is comprised of 800 attorneys who staff the criminal, juvenile rights, and civil practices at the Legal Society. Today my testimony focuses on the devastating impact that the proposed cuts to critical State funding for the Legal Aid Society will have on our ability to maintain essential legal services for constituents in all five boroughs of New York City.

Before becoming President in 2007, I proudly defended clients accused of crimes, many times wrongfully, for nine years in the Society's Manhattan criminal defense office. I came up through the ranks and know firsthand how difficult it is to manage an unconscionable caseload with very few resources. This level of dedication is not unique, but is shared by all of us at the Society as we strive to achieve the same goal - to give a voice to the poor who are still treated unequally in our legal system. For forty years, the members of our Local have always felt our interests to be inextricably intertwined with the clients that we represent.

Despite the daily hardships that we face - struggling to provide quality representation while handling unconscionable caseloads coupled with inadequate levels of support staff and resources, not having the capacity to assist all that seek our help, struggling to make a living on lower wages than the private sector while strapped with high levels of educational debt - we fight every day with pride on behalf of the neediest of New Yorkers.

Equal access to justice is an important issue for labor. As attorneys, we see every day the adversity low-income New Yorkers face when they confront the legal system on their own, without the aid of a trained legal advocate. We see this in the many forums in which we appear as Legal Aid staff attorneys for our civil clients: housing court, civil court, welfare centers, unemployment offices, administrative hearings for administrative benefits ranging from food stamps and federal disability benefits to welfare and Medicaid. We see this in State and Federal courts. We represent 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.

Equal access to justice for working families, individuals, and all who seek it should be the cornerstone of our legal system, but, sadly, it is not due to the constant underfunding of vital legal service programs like the Legal Aid Society. Without adequate funding, the rift that already exists between the rich and the poor in our legal system continues to widen. We can add more judges and court personnel, fix up court houses, and distribute pamphlets and sample court papers to unrepresented litigants, but without advocates like the attorneys at Legal Aid, litigants will still not have full access to justice. Without proper funding, Legal Aid cannot be the presence it has been in the communities in every borough of 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 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 is almost dead last in the amount spent per-poor-person for legal services. This is both deplorable and shameful, yet the amount that New York has allocated to spend each year on legal services for the poor has continued to decrease.

The proposed Executive budget for FY 2010-2011 chooses once again to cut vital funding for legal service programs across the board. 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.

If the cuts proposed for criminal defense and civil legal services in the Executive's 2010-2011 budget are enacted, 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. With the new proposed State cuts, we will have to turn away more families and individuals who need our legal assistance.

Funding for Criminal Defense Services

The caseloads of our members in Legal Aid's Criminal Defense Practice have been in violation of the Appellate Division, First Department standards for years. Despite Mayor Bloomberg's assurances that crime in New York City is down, arrests have consistently been on the rise over the past several years. The Society's annual criminal defense caseload increased from approximately 210,000 new cases in City fiscal year 2005-2006 to nearly 227,000 new cases in 2007-2008. During 2008 – 2009, our caseload increased even further to 232,000 new cases and that trend of increased cases is continuing this year.

As a result of these increased arrests in New York City, annually the Legal Aid Society's criminal defense staff of 435 attorneys is handling more than 100,000 cases which survive a first court appearance, and approximately 30 percent of those cases are felonies. Nearly eighty-three percent of our criminal defense attorney staff has caseloads significantly in excess of the annual standards set by the Appellate Division, First Department, which limit annual criminal defense attorney caseloads to 400 misdemeanors or 150 felonies, with felonies counted as 2.66 misdemeanors in mixed caseloads. The average annual weighted caseload for attorney staff who handled more than the First Department standards permit is now 718 cases, and our overall average pending caseload is in excess of 100 cases.

In the 2009 – 2010 budget, the Legislature enacted a landmark law authorizing the Chief Administrative Judge to enact 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 this process and the Judiciary's 2010 – 2011 budget makes provision for implementing this historic new law. Finally, it appeared that New York State was about to address a

long standing problem by ensuring that low income New Yorkers accused of crimes would be represented by attorneys with proper caseloads, but then Governor Paterson released his Executive Budget for FY 2010-2011 which threatens to undo this landmark legislation before it even begins.

First, the Governor's proposed 2010-2011 Executive Budget cuts State Aid to Defense funding from \$9.8 million to \$8.8 million, including a cut from \$7.6 million to approximately \$6.7 million for the Legal Aid Society based on the traditional allocation of this funding. This proposed reduction comes on top of a cut of nearly \$1.1 million in State Aid to Defense funding for the Legal Aid Society in the final 2009 – 2010 State budget. The proposed 2010 – 2011 reduction also comes on top of annual reductions from the 2003 State-wide Aid to Defense funding level of \$13.6 million, of which \$10.8 million had been allocated to the Legal Aid Society.

The proposed \$1 million cut in State Aid to Defense funding can be restored without adding any expense to the 2010 – 2011 Executive Budget by reallocating \$1 million to the Aid to Defense budget line from the \$10 million in new funds the Governor has proposed to add to the Division of Criminal Justice Services' budget from new court fees for unspecified improvements in indigent defense. It makes no sense to propose to add funds to improve indigent defense while at the same time cutting existing funding for Aid to Defense which the Legal Aid Society is currently using to represent clients in New York City.

Second, the Governor's proposed 2010 – 2011 Executive Budget also eliminates essential legislative funding which the Society needs to continue to provide constitutionally mandated representation to clients. In the current 2009 – 2010 State budget, the Society is relying in 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. Without a restoration of these funds, the Society's criminal defense caseload crisis will be exacerbated and the 2009 landmark case cap law will be negated.

Third, the Governor's 2010 – 2011 Executive Budget proposes to cap the allocation of State indigent legal services funding for New York City and make other changes in State Finance Law which will also negate the 2009 landmark case cap law. Indeed, the City has contended that the Governor's proposal will result in a reduction of funding for criminal defense in New York City.

The urgent need to reverse these three budgetary actions by the Governor is highlighted by the continuing caseload crisis which we are experiencing. This extreme situation is what led to the enactment of the landmark case cap law nearly a year ago. Unfortunately, even before the case cap law implementation process has begun the situation has become worse and the Governor's proposed budgetary actions will only exacerbate this criminal defense crisis.

Two final budget concerns in the criminal defense area involve our representation of clients who are mentally ill and chemically addicted and those are parole from State prisons. The Division of Criminal Justice Services has annually allocated \$910,000 in Bryne 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. In

both 2008 – 2009 and 2009-2010, the Legal Aid Society was allocated reduced funding of \$825,000 for this program. For 2010 – 2011, it is essential that Division of Criminal Justice Services continue to allocate 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 you 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, the Society's Parole Unit conducts approximately 7,300 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 need parolees and refer them for necessary services and programs.

Historically, the State has provided \$1.3 million in funding to support these critical parole defense services. However, during the Pataki Administration, this State funding for indigent parolee defense was eliminated from the Executive Budget and restored by the Assembly. This year, the Executive Budget also does not include this funding.

We are very grateful for the Assembly's restoration of \$472,122 in funding for the Legal Aid Society's representation of indigent parolees in the adopted 2009-2010 budget. Likewise, we greatly appreciate the Assembly's restoration of \$273,700 in funding for the Society's representation of mentally ill parolees in the 2009-2010 budget. For the State's 2010-2011 fiscal year, restoration of the \$472,122 and \$273,700 in funding for parolee legal assistance is critical to enable the Society to maintain these vital services for vulnerable clients.

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 would result in 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 \$34,000 annually, any savings from the elimination of this State indigent parolee representation funding would be offset by the need to commit significantly higher amounts of money to the budget of the State Department of Correctional Services. The Society's program for mentally ill parolees is particularly cost-effective given the substantial cost of incarceration of mentally ill clients that would otherwise be absorbed by the Department of Correctional Services and local governments.

The Need for Restored Funding for Civil Legal Services

Our members 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. 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.

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 the Society provides to these struggling families and individuals is increasing exponentially. Due to the lack of adequate funding, we are not capable of assisting 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 a Legal Aid attorney's job – having to turn away families and individuals who need our legal assistance because we do not have enough staff or resources. 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 these cases, but there is a limit to the number of cases that we can handle with fewer resources. Our members dedicate themselves to serving their clients and winning their cases, turning away others in need is heartbreaking.

This increasing need for legal assistance is coming at a time when a catastrophic drop in Interest on Lawyer Account funding for civil legal assistance in New York State is looming in 2010. The IOLA Board allocates civil legal services funding on a calendar year basis. In December 2008, IOLA made State-wide grants to civil legal services providers totaling over \$31 million covering a 15-month period. This 15-month funding level is equivalent to \$24.8 million annualized over 12 months, which is the approximate level of the 2008 calendar year IOLA funding. However, primarily as a result of the drop in interest rates as well as the drying up of economic activity when the downturn began, the IOLA Fund's program revenue is projected to drop to approximately \$6.5 million for the period April 1, 2010 through December 31, 2010. This \$6.5 million revenue level for the first 9 months of the State fiscal year that begins on April 1, 2010 and runs through March 31, 2011 is in stark contrast to \$18.6 million which had previously been the proportionate level for a 9-month period. These substantial losses are expected to continue during calendar year 2011 through the last quarter of the State's April 1, 2010 – March 31, 2011 fiscal year and thereafter into the April 1, 2011 – March 31, 2012 fiscal year. Based on these projected losses, the Society's \$4.5 million annual 12-month IOLA grant will be decimated. Other providers in New York City and in the rest of the State are facing similar deep cuts.

We are extremely grateful for the Senate's strong support for a bailout of the IOLA Fund in the April 1, 2010 – March 31, 2011 fiscal year that, together with support from the Assembly, has now led to Chief Judge Jonathan Lippmann's inclusion of \$15 million in the Judiciary's proposed budget in order to make the IOLA Fund whole for one year and thereby preserve current levels of civil legal services in New York State. This proposed funding will be reviewed by the Governor and the Legislature during the budget process and it will not become final until the 2010 – 2011 State budgets is adopted on April 1, 2010. Continued support for this \$15 million IOLA bailout is therefore critical to ensure that this funding is included in the final 2010 – 2011 State budget. However, the proposed bailout for 2010 – 2011 simply preserves the current status quo in which there is a significant gap in

available civil legal assistance and the increasing need for civil legal services and it does not address the need to stabilize the IOLA Fund after March 31, 2011.

In fact, the sad truth is that even with the inclusion of \$15 million in IOLA bailout funds in the Judiciary's 2010 – 2011 budget, there is more that New York State can and should do to address the shocking gap in access to justice that our staff sees first-hand every day. For many years the Assembly has supported civil legal services with special legislative funding. In the past year, the Senate has also supported civil legal services, providing special legislative funding in the current fiscal year. Those levels of funding are essential to continue as part of efforts to preserve and expand access to justice through the provision of civil legal services.

In other States, however, the Executive has become a partner with the legislative branch to provide far more significant funding for civil legal services. Beyond stabilizing the IOLA Fund this year, New York must commit substantial additional resources to bridge the access to justice gap. In the mid-1990s, a task force led by then Chief Judge Judith Kaye found that at least \$40 million in additional annual State funding was needed to bridge the justice gap in New York State. Sadly, the situation that we now find ourselves has only become more dire and the looming cuts of IOLA and general funding could not come at a worse time for vulnerable New Yorkers.

Unfortunately, notwithstanding the harsh impact the economic downturn is having on low income New Yorkers, the Governor's 2010 – 2011 Executive Budget eliminates all of the civil legal services funding that the Assembly and the Senate provided in the 2009 – 2010 State budget. Without a restoration of this critical funding, the Legal Aid Society and other civil legal services programs across the State and in New York City will have to dramatically reduce staff and turn away even more constituents who need civil legal help to address problems resulting from the continuing economic downturn. For example, without a restoration of this legislative funding in the final State budget for 2010 – 2011, the Society will lose the following funding which is crucial for continuing to provide civil legal aid to low income families and individuals: \$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 Fund allocation for legal aid for senior citizens and supplemental domestic violence legal assistance.

We are proud that we represent clients to effect systemic changes through law reform and class action litigation and advocacy. Even with the plummeting levels of unrestricted IOLA funding, we currently represent clients in twenty-one law reform cases on behalf of 2 million low income children and adults living in New York City.

One example of our Law Reform work that will have an impact on low-income New Yorkers is a class action lawsuit we filed related to the foreclosure crisis. As the economic crisis places record numbers of homeowners at risk of losing their homes, we filed one of the first federal class action lawsuits against a national mortgage servicer. That servicer is denying homeowners access to the Obama Administration's Home Affordable Modification Program (HAMP) for spurious reasons, and denied them the ability to contest such denials. Our clients include Ms. K., a mother of three employed as a registered nurse, who fell behind in payments on her mortgage as a result of a temporary loss of income. If her home is foreclosed on, Ms. K and her children would become homeless. Even though Ms. K meets the eligibility criteria to be considered for HAMP, her servicer claimed that she was only eligible for a plan that would not lower her payments and would require her to waive all of her legal

rights. When Ms. K asked why she did not qualify under the President's plan, her servicer lied to her, telling her that the plan did not cover loans like hers. If our lawsuit is successful, Ms. K and others in her situation will be given the opportunity to save her home.

Another example is our work of our employment law practice, responding to a hugely increased demand for assistance from unemployed low-wage and immigrant workers. According to the NYS Department of Labor, the New York state unemployment rate edged up to 9 % in October 2009. In New York City, the unemployment rate officially hit 10.3%. However, according to the report of James Parrot, Deputy Director and Chief Economist for the Fiscal Policy Institute released on November 10, 2009, our "real unemployment rate" in New York City is 16 % when we factor in under-employed and discouraged workers -- and over 20% for blacks and Hispanics who make up half of the City's workforce.

We help displaced workers obtain unemployment insurance and other crucial benefits every day. For example, one of our clients, Ms. A, worked as a custodian. She struggled to make ends meet at her job where she worked 25 hours a week. Due to the economic crisis, Ms. A's hours were slashed to seven hours of week -- not enough earnings to live on -- and thereafter she lost her job altogether. When she applied for unemployment benefits, her employer contested the application. Ms. A represented herself at the hearing and lost. She applied for public assistance benefits and was denied as well. When she came to us, she had no money and was on the verge of eviction from her home. We got her an expedited hearing and with our representation, Ms. A received unemployment benefits, was able to pay her back rent, and saved her home.

Ms. A's story is not unusual. Without representation, only 24% of claimants win unemployment benefits. With representation, 41% win benefits. When we represent claimants, 80% win their hearings.

Our Immigration Law Unit is the only free, citywide provider of comprehensive immigration legal services with intake or referral sites in all five boroughs of New York City. We represent low-income immigrants in obtaining lawful status, dealing with employment issues, and defending against deportation and removal proceedings. Despite the high stakes and the dire consequences of deportation, including separation from family, clients in immigration proceedings have no right to appointed counsel. Last year, more than 60% of immigrants whose cases were completed in immigration court had no attorney or legal representative. With our current limited funding and resources, the Legal Aid Society is only able to represent a small percentage of those detained and non-detained immigrants facing removal each year. Loss of IOLA funding would be devastating because the Society will not be able to continue to provide free legal representation to vulnerable low income immigrants.

These examples just give you a small picture of the work we do every day and the desperate straits of the people who seek our help. Many of you know our work because the people we assist are your constituents.

The situation will become even more extreme in 2010 if the final 2010 -- 2011 State budget does not include the \$15 million in the Judiciary's budget to bail out the IOLA Fund, as well as a restoration of core State funding which has historically been provided as part of a series of State-wide civil legal services initiatives. Both sources of funding are essential to preserve client services in all five boroughs of New York City. The consequences of eliminating critical State civil legal services funding will be

dire – increases in evictions, foreclosures and homelessness, increases in the number of women and children who cannot escape domestic violence, increases in the numbers of immigrants lawfully in this country who will be wrongfully deported, and increases in the numbers of children and adults who will go without subsistence income, health care, and food.

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.

Reduction in Funding for NYS Educational Loan Forgiveness Assistance Fund

The FY 2010-2011 Executive budget proposes a 10% reduction in funding for the educational loan forgiveness fund for Assistant District Attorneys, Indigent Defense and Civil Legal Services attorneys. Until the law was amended last year, only the District Attorneys were afforded the opportunity to receive State assistance. Thankfully, many of our members were afforded the opportunity to apply this 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.

The FY 2010-2011 Executive Budget also proposes new language restricting that these funds be solely available to New York residents. This restriction cannot be adopted by the Legislature. Again, our members do not earn the types of salaries that are available in the private sector and struggle everyday to live in an expensive city and pay their bills. Unfortunately, some are forced to live outside of New York City in neighboring states and bear the burden of ever increasing commuting costs. It would be unfair to restrict much needed assistance to only those who both live and work in New York at an eligible place of employment, especially when our members who live outside of New York still pay city taxes. This program must remain available to all eligible attorneys who have dedicated their lives to serving the neediest of New Yorkers.

The Legal Aid Society Cannot Absorb any Reduction in Funding

Finally, I would like to stress one crucial fact. Despite our size, we simply cannot absorb any further reductions in funding. Due to years of constant underfunding, we have been cut to the bone and these gaps in our budget cannot be filled on the backs of our members. For years, the Society has been operating as lean as possible - we have nothing left to cut.

Any further reduction in funding will not only result in a disruption of services, but will most likely result in layoffs of our members. This would not only hurt our clients, but it would create even more of a crisis in the courts and administrative forums where we appear.

Our members have been sacrificing for years due to the constant underfunding of our programs. 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 began contributing to their healthcare plans years ago, only to face increasing costs during bargaining each year. 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 have had in the past, and have been working under a wage freeze this past year. 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 Society open.

In these severe economic times, our clients need our legal assistance more than ever. 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.

9

Testimony of Prisoners' Legal Services of New York
before the
Joint Legislative Hearings
on the
New York State Public Protection Budget for 2010
conducted by the
Assembly Ways and Means and Senate Finance Committees
Legislative Office Building
Albany, NY
February 8, 2010

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INTRODUCTION

Initially we would like to thank the members of this Committee for inviting representatives of Prisoners' Legal Services (PLS) to testify before you today. It is a great pleasure and privilege to appear before this Committee. As we will demonstrate in our testimony today, providing State funding for Prisoners' Legal Services (PLS) is good public policy and a sound economic investment for New York State.

As you all know, PLS is a state-wide agency that was created by New York State in 1976 in response to "the bloodiest prison confrontation in U.S. history": the Attica uprising. For the past 34 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.

PLS Ensures Prison and Public Safety

As a state-wide agency, PLS listens and responds to the concerns and grievances of all those incarcerated in New York State prisons. PLS is a voice for prisoners who have no voice. Despite the decrease that has occurred in the overall prison population, every year the requests to PLS for assistance rise. In 2007 we received over 12,000 requests, in 2008 the requests totaled approximately 14,000 and in 2009 the requests for assistance rose to over 15,000. Among those requests were over 600 complaints from prisoners alleging excessive use of force against them by correctional officers, and 729 complaints concerning inadequate medical and mental health care. PLS investigates, advocates and, when necessary, litigates these complaints. Our advocacy and representation helps calm the fears of our clients. This translates into a reduction in tension within the prison population and a resulting decrease in the likelihood of another Attica.

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 re-enter society as law-abiding, productive, 'tax-paying' members of society.

PLS Increases the Likelihood of Successful Reintegration

PLS works hard to increase the chances of successful reintegration for our clients. In addition to our day-to-day work with clients on issues that help them plan for successful re-entry, since 2006, PLS has been assisting the Department of Correctional Services (DOCS) in its Reentry Program at Orleans Correctional Facility. The program services between 60 and 90 inmates who are transferred to Orleans from other facilities across the State, all of whom have set dates for release to the Buffalo area. On a quarterly basis PLS, together with the Legal Aid Bureau in Buffalo, makes presentations to the Orleans group on employment, parole, and family law issues. In 2009, DOCS implemented a similar program at Hudson Correctional Facility. In December 2009, PLS presented information on various legal issues associated with issues related to re-entry for 32 incarcerated individuals at Hudson Correctional Facility who were scheduled to be released within the next three months to Albany, Schenectady, Columbia, and Rensselaer counties. We are scheduled to make a similar presentation in March 2010.

PLS Is a Sound Economic Investment

As part of our core work, PLS reviews disciplinary hearings and, either through administrative advocacy or litigation, we are often successful in having these disciplinary hearings reversed. As a result, inmates are released from SHU confinement and recommended loss of good time is restored. In addition, we review and advocate for corrections in sentence and jail time computations and such advocacy often results in our clients being credited with significant time toward their sentences. Our advocacy regarding parole and merit time issues also results in our clients being credited with time toward their sentences.

Last year, PLS was not included in the Executive Budget, but funding of \$2,285,000.00 was subsequently restored by Legislature. And yet, PLS saved the State over \$4 million by, obtaining reversals in Tier III disciplinary hearings resulting in the expungement of 36 years of solitary confinement and restoration of 29 years of lost good time and correcting jail time and sentencing errors that resulted in a total of 79 years being credited to prisoners' sentences. But for PLS, it is unlikely that these savings to the State would have occurred.

But PLS does so much more. By engaging in extensive education efforts, PLS prevents hundreds of unnecessary lawsuits annually. PLS authors over 75 form memos on various areas of the law and we provide those memos to thousands of prisoners every year. Our quarterly newsletter, *Pro Se*, is sent to over 6000 prisoners every quarter advising prisoners of changes in the law, providing practice pieces to assist them in complying with statutory and regulatory requirements, and explaining technical aspects of various laws that affect them. When issues arise that prisoners do not understand or have questions about, we explain the law to them and answer their questions.

More important than the measurable savings, however, is the immeasurable benefit PLS has provided to New York State in helping to prevent another Attica. 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 Needs Adequate Funding

In the 1990s, when the prison population reached 72,000, PLS had a staff of 40 attorneys plus additional support staff and an allocated State budget of almost \$5,000,000.00. Today, the prison population is 59,000 and PLS has a staff of 12 attorneys, five paralegals and support staff: That is one lawyer for every 5,100 inmates. In the 1990s, 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 has a staff of four attorneys, one paralegal and two support staff, is responsible for providing representation to 35 prisons with a total prison population of 25,000. The workload is overwhelming given our current staffing.

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.

CONCLUSION

In these times of economic turmoil everyone is looking for ways to save money. These are the times when organizations such as Prisoners' Legal Services are of utmost importance. For 34 years, PLS' work has helped insure against an escalation of tensions in the prisons and has increased the

likelihood that prisoners will be able to successfully reintegrate into society when they are released. PLS is a critical, necessary and economically sound component of New York State's public protection efforts – both inside and ultimately outside of prison for the communities to which the formerly incarcerated individuals will someday return.¹

Dated: February 8, 2010

¹ Attached is a report highlighting PLS' 2009 Advocacy and Litigation.

PRISONERS' LEGAL SERVICES

2009

ADVOCACY AND LITIGATION HIGHLIGHTS

2009 -Advocacy

Obtained Wheelchair Accessible Cube for Disabled Client: A. G. is a disabled prisoner due to cerebral palsy and MS. He is dependent on a wheelchair. He wrote us because he had just been moved from a wheelchair accessible cube to a double cube that was not wheelchair accessible. After advocacy by PLS A.G. was returned to a wheelchair accessible cube.

Obtained 77 Days Parole Jail Time Credit for Client: We determined that our client was entitled to 88 additional days of parole jail time credit after obtaining numerous documents, including parole jail time certificates, and comparing the various documents, Our advocacy with Parole resulted in our client receiving this credit. His maximum expiration date was changed from 5-29-09 to 2-28-09.

Advocated on behalf of Mentally Ill Inmate Resulting in Reversal of Disciplinary Hearing: W.H. wrote from Mid-State complaining that he was not getting the treatment he needed for his serious mental illness. He said he was hearing voices but the treatment he was receiving was breathing exercises instead of medication. He was given a misbehavior report alleging that he had said that he had voices in his head telling him to harm a OMH nurse. He was found guilty at his hearing and given two months in SHU. We sent an appeal letter arguing that since the ticket specifically said he was describing hearing voices in his head, it did not provide substantial evidence for the one charges. We also argued that admitting that he was hearing voices raised an issue of mental illness, not discipline. The hearing was reversed.

Obtained 204 Days of Jail Time Credit: Our client spent 7 months in the Delaware County Jail, and then was sentenced to probation. He later violated probation, and was sentenced to 1 to 3 years. He did not receive any jail time credit for the approximate 7 months he spent in the Delaware County Jail. Our advocacy resulted in our client being credited with 204 days of jail time.

Assisted in Discharge Planning for Inmate with Serious Medical and Mental Health Problems: K.D. suffers from serious heart and neurological conditions, and was hospitalized in the Wende Regional Medical Unit. He was approved for parole for medical and mental health reasons, and DOCS counsel's office asked PLS to initiate a guardianship for K.D.'s father. PLS staff met with K.D., and explained what PLS was hoping to do. However, K.D. was released soon after and his father agreed to take him so a guardianship proceeding was not necessary. We did, however, send the K.D. family information concerning Advance Directives, HIPAA release of information, and Representative Payee for Social Security benefits. We also referred the father to the Urban Justice Center, an organization that is involved in the litigation involving the issue of the failure to provide discharge plans for parolees with mental health issues.

Applied for Medical Parole and Clemency for Seriously Ill Prisoners: M.D. is diagnosed with end stage cancer of his liver and bones, and is currently hospitalized in the Wende Regional Medical Unit. In the 1st Quarter 2009, we submitted applications for Medical Parole and Executive Clemency. We also provided M.D. with information concerning Advance Directives. We continue to work on administrative advocacy related to his medical issues, visitation with his family, and hopeful early release.

Obtained Reduction of SHU Sentence: R.B. is a mentally ill, Spanish speaking inmate, who received a disciplinary penalty of 21 months SHU, but failed to appeal. We appealed the disciplinary hearing, and the disposition was modified to 14 months SHU.

Assisted Prisoner Family Member in Understanding Sentencing Issue: We helped explain PRS re-sentencing to the father of an inmate having a difficult time understanding what was happening with son and what he could do to help him. The son had previously written to the Albany PLS and was provided with form information, which the son sent to his father who lives in Plattsburgh. The father was concerned he would have to hire an attorney to file a lawsuit on behalf of his son and could not understand whether his son was coming home soon or not. We counseled the father on this issue to help him understand the issues surrounding PRS.

Advocated for Disabled Inmate to Be Housed in Proper Location: We advocated on behalf of a wheelchair bound client who had completed his SHU sentence to be transferred out of Upstate. He was continuing to be held there with the facility administration asserting that they could not transfer him because they were having difficulty finding an opening for a handicapped cell elsewhere in the state. We advocated for him to at least be provided with all the privileges possible while awaiting transfer, while continuing to advocate with DOCS' administration about the need to move him. He was finally transferred to another a facility.

Obtained Immediate Release For Prisoner Held Past Release Date: In a January 21, 2009 - decision in Franklin County Supreme Court, Judge Feldstein determined that the prisoner petitioner was entitled to habeas corpus relief and immediate release from prison. The prisoner petitioner and his wife, however, were told by the facility IRC and the Sentencing Review Office that it could take weeks or even months to complete the paperwork necessary to release him. We intervened and advocated on his behalf with the IRC and Parole and within a few days he was released.

Obtained Reversal of Tier III for Disabled Client: A.G. is disabled due to cerebral palsy and MS. He is dependent on a wheelchair. He was ordered to provide a urine specimen for drug testing, but said he could not do so because he had just urinated. He was charged with refusing to provide a specimen for urinalysis, and was found guilty at a Tier III hearing. He received a penalty including 90 days SHU. He was moved from a wheelchair accessible room, to a SHU cell in which he could not use his wheelchair. He stated that he had difficulty moving within the cell, and that he could not use the shower. We wrote to the Superintendent and argued that client was being held in cruel and unusual conditions because of his inability to use his wheelchair in SHU. We appealed the Tier III hearing on three grounds. First, we argued that according to the National MS Society website, 80% of people with MS have bladder dysfunction, which tends to corroborate A.G.'s claim that his disability made him unable to urinate on command, and as a result his failure to provide a urine sample should not be grounds for discipline. Secondly, we argued that he was held in cruel and

unusual conditions in SHU because of his inability to use his wheelchair, or to shower. Finally, we argued that the maximum expiration date of A.G.'s sentence is 8-25-2009, the 90 day SHU penalty is scheduled to run until approximately 8-10-2009, and it is not conducive to re-entry efforts or public safety to keep a prisoner in SHU until he is within two weeks of his maximum expiration date. On 6-10-2009 the Tier III hearing disposition was administratively reversed.

Secured Adequate Medical Treatment for Client: J.R. had a problem with his ankles and Achilles tendons, and as a result he was issued medical boots. He received a new pair of medical boots in December 2008. He claimed they were made defectively and that he could not wear them because they caused extreme pain and swelling in his ankles and feet. J.R. is also an insulin-dependent diabetic and is required to go to the infirmary twice a day for insulin shots. An officer in his dorm told J.R. that he could not go to the infirmary unless he was wearing state-issued boots. J.R. was concerned that if he went to the infirmary wearing state sneakers, which were his only other footwear, he would be denied his insulin, or charged with refusing a direct order. We sent an advocacy letter to the Superintendent asking her to insure that our client was able to receive his insulin and not charged with misbehavior for going to the infirmary. We also asked the Superintendent to work with the medical department to replace our client's boots. J.R. wrote back and said that as a result of our letter to the Superintendent, he was given a consult with a podiatrist. The podiatrist documented that our client's boots were made improperly, and he recommended that J.R. receive a new pair of properly fitting.

Obtained Protective Custody for At-Risk Prisoners: M.W. is a transsexual inmate at Sing Sing. He said other inmates attacked him and threw boiling water at him. He then requested protective custody and was denied. At that point he wrote to PLS for assistance getting protection. We wrote a letter to the Superintendent noting that M.W. claims he has been physically assaulted by other inmates, and fears that he will be further assaulted. We advised the Superintendent that our client had requested and had been refused protective custody. Our letter asked the Superintendent to investigate M.W.'s claim that he was in need of protection. We received a response from the Deputy Superintendent of Security stating that our client had requested and was placed in protective custody and that a transfer to another facility was pending.

Obtained Orthopedic Consult For Client: After investigating S.R.'s assertion that he needed an orthopedic consult because of structural problems with one of his ankles, we wrote an advocacy letter to Dr. Wright and the Superintendent at Auburn, asking that they address S.R.'s orthopedic issues. Shortly thereafter, S.R. informed us that DOCS was scheduling an orthopedic consult for him.

Warrant Lifted As a Result of PLS' Efforts: P.M., an inmate at Albion C.F., requested assistance in having a warrant for unpaid restitution lifted. The warrant prevented our client from getting work release, and would have impacted on her eligibility for parole release. As a result of our intervention, the court agreed to drop the warrant and impose an order of encumbrance.

Persuaded Division of Parole to Hold an Earlier Parole Hearing: R.O. was entitled to an additional 4 months of parole jail time credit which would have made him eligible for parole in December 2005 rather than March 2006, the date he first saw the parole board. PLS asserted that since those dates had long passed and R.O. had been denied parole, the only remedy for the failure to

credit the time was to move his next scheduled parole date from October 2009 to June 2009. In response, the Division of Parole agreed to change R.O.'s next parole board hearing to June 2009, at which time he was granted parole. As a result of our advocacy, R.O. will be released from prison four months earlier than originally scheduled.

Obtained 11 ½ Months of Out-of-State Jail Time Credit: P.N. claimed that he was entitled to approximately a year of out-of-state jail time credit. PN was arrested in Pennsylvania on Pennsylvania DWI charges. A fugitive from justice warrant from New York State was lodged against him. After a year, the Pennsylvania charges were dismissed and P.N. was returned to New York for a parole revocation hearing. His parole was revoked and he was returned to state prison, where he was informed that he was not entitled to any jail time credit for the time that he had spent in jail in Pennsylvania. After investigating P.N.'s claim, and collecting and reviewing documents supportive of the claim, we advocated to the Division of Parole to credit the time. The DOP agreed to credit the time and P.N. will now be released from prison 11½ months earlier than his original maximum expiration date.

Reduced Sentencing Time By Obtaining Proper Credit: We contacted the Division of Parole and argued that as T.M. had already served more than the 9 months upon which his plea was conditioned, he should be released to complete the remainder of his period of post release under parole supervision. The Division of Parole agreed with our argument and T.M. was released on May 27, 2009, 8 months earlier than his max expiration date.

Enforced Original Plea Agreement: Upon investigation, PLS determined that E.A.'s earliest release date was 3 years and 7 months longer than he had been informed it would be when he pled guilty at his parole revocation hearing. We contacted the Division of Parole and asked that it change E.A.'s earliest release date so that it was in accord with his plea. The Division of Parole issued an amended parole revocation decision, and changed his release date from July 10, 2013 to September 11, 2009, a reduction of 3 years, 7 months.

Secured Proper Sentencing Credit: D.H. believed that when the court sentenced him, it wanted him to be given jail time and/or prior sentence credit from 8/8/00; this would have made his maximum expiration date 8/8/09. DOCS gave him a max date of 9/9/09. After obtaining his sentence and commitment order, upon which the court had written, "Credit for all time served in prison starting from 8/8/00," we contacted DOCS Counsel's Office and persuaded the sentencing unit to give him the credit. As a result, D.H. was released on 7/27/09, 43 days earlier than his original maximum expiration date.

Advocacy and Extensive Investigation Results in 271 Days Additional Jail Time Credit: E.B. had been trying to obtain credit for jail time he served in Rikers 1975. This time could not be accounted for because the NYC Charter only requires NYC agencies to maintain records in their archives for 20 years. After consulting with Legal Aid in NYC, we were able to obtain the "jacket" from E.B.'s criminal court file. This jacket basically noted his bail and whether he was produced, etc. With further help from Legal Aid to interpret all of the notations and abbreviations in the jacket, we were able to present Rikers with plenty of circumstantial yet compelling evidence that indeed E.B. was in jail for the time period he had claimed. They accepted these arguments and as a result certified the jail time in question. Unfortunately this did not result in what would have been an

earlier release from prison had the time been certified previously because E.M. had already been conditionally released by this time. However, it did result in the immediate and important benefit that he was no longer subject to parole supervision.

Secured Necessary Surgery For Client: J.D., an inmate at Upstate Correctional Facility, was suffering severe and on-going breathing difficulty as a result of a badly broken nose. He complained that he was severely limited in what he could do because of his poor and difficult breathing. He also stated that although he had been led to believe that surgery would be provided to repair the severely deviated septum, nothing had been done for an extended period and he was unable to get any explanation or idea on what would happen. We intervened and wrote several letters on his behalf. He was then finally provided with the necessary surgery which was successful in alleviating his problem.

Advocacy on PRS Issue Results in Time Saved on Sentence: S. R. had administratively-imposed PRS on a prior sentence. When he was released to the improper PRS, the prior indeterminate sentence was held in abeyance. Through our advocacy, our client was referred for resentencing on the prior determinate sentence, and the result was that he was resentenced without PRS on the determinate sentence. With PRS removed from the sentence, the prior indeterminate sentence could continue running, and was not held in abeyance. The result saved S.R. 4 months and 7 days on his sentence.

Advocated for Medical Parole for Terminally Ill Prisoner: The mother of M.D., a forty year old inmate with terminal cancer, contacted PLS asking that we help him get medical parole before he died. We advocated on M.D.'s behalf and a month before he died, he was granted medical parole and released to live out the last month of his life in his mother's house.

Successful Administrative Appeal Based On Failure of Hearing Officer to obtain OMH testimony: A participant in the Group Therapy Program, was charged with threats and assaulting staff. He was found guilty and the hearing officer imposed a penalty of 24 months SHU and 24 months loss of television. We argued that because he was in GTP, the hearing officer should have requested mental health testimony. Based on this argument, J.R.'s penalty was reduced to 12 months SHU and 112 months loss of television.

Successful Administrative Appeal Based On Deficiencies in OMH testimony: Shortly before a scheduled family reunion visit, R.R. was charged and found guilty of drug use and sentenced to 12 months SHU and 24 months loss of good time. In addition, his family reunion visit was cancelled. R.R. was so disappointed about the loss of visits and so upset by the severity of the sentence that he made a serious suicide attempt, following which he was sent to CNYPC. We argued that the sentence was excessive in light of our client's mental health issues and as a result the loss of good time was reduced to 12 months and the SHU time to 9 months.

Advocated on Behalf of Transsexual Prisoner Results in Proper Placement: A.C., a transsexual inmate, spent many years in Clinton Involuntary Protective Custody (IPC) and could not leave her cell for fear of harassment. She developed mental and physical disorders from paranoia and a sedentary life. A.C. was released from DOCS custody but later was returned to prison, sent to Clinton and placed in general population. She said she was doing fine in general population, but

suddenly and without explanation was placed in IPC. We wrote Clinton Superintendent Artus a letter, explaining the difficulties inmate A.C. had had in IPC and that she very much felt ready for and wanted to be in general population. The response was to grant the request and inmate A.C. was returned to the facility general population, and is doing well.

Disabled Prisoner Moved to Accommodate Disability: J.O. is a disabled inmate with mobility problems and must wear metal knee braces. Due to placement far from the mess hall and medical department, J.O. was forced to walk very long distances every day, causing his knees to swell and expand into the metal braces. This, in turn, caused severe discomfort. We wrote to facility Superintendent LeClair, who agreed to move our client to a more suitable location that minimized his need to walk. J.O. since reports that his knees are feeling much better.

2009 –Litigation

Constitutionality of Statutes

Haywood v. Drown, et al. , United States Supreme Court, No. 07-10374

In this particular case, Plaintiff Haywood alleged that DOCS employees engaged in tortious conduct in violation of his federal and state constitutional rights. Plaintiff Haywood filed his Section 1983 complaint in state court. The Attorney General argued that Correction Law Section 24 prohibited the state court from hearing Plaintiff Haywood's case. Correction Law §24 prohibits any civil action in state court for damages against a DOCS employee in his personal capacity. The state supreme court agreed with the Attorney General's argument and dismissed the case. The Appellate Division, 3rd Department affirmed the order of the supreme court. PLS, together with numerous other agencies, filed an amicus brief in the Court of Appeals, arguing that Correction Law Section 24 is unconstitutional because it violates the Supremacy Clause. The Court of Appeals found New York State, in enacting Correction Law §24, had passed a statute to limit the subject matter jurisdiction of its state supreme courts over a certain type of claim, damage claims against DOCS employees. The Court concluded that because the statute does not discriminate against one claim in favor of another but rather prohibits all damage claims, both state and federal, there is no Supremacy Clause violation.

Dechert, LLP, the law firm representing Plaintiff, filed a motion for certiorari in the U.S. Supreme Court and PLS, together with 8 other organizations, prepared an amicus brief in support of Plaintiff's motion. Certiorari was granted. On May 26, 2009, the United States Supreme Court issued its opinion in *Haywood v. Drown*. In a 5-4 decision, Justice Stevens delivered the opinion of the Court, finding that New York State could not close its courthouse doors to federal damage claims and, in turn, that Correction Law §24, violated the Supremacy Clause. In finding that Correction Law §24 was unconstitutional, the Supreme Court relied on the fact that because New York had created "courts of general jurisdiction that regularly sit to entertain analogous suits, New York is not at liberty to shut the courthouse door to federal claims that it considers at odds with its local policy." The Court concluded that, "Correction Law §24 is effectively an immunity statute cloaked in jurisdictional garb."

Disciplinary Hearings

Matter of Ivy v. Fischer, Supreme Court, Erie County, Index # 08-1196

In March 2008, Stanley Ivy, an inmate at Attica C.F., was charged with assault on staff, violent conduct, refusing a direct order and non compliance with frisk procedures. At his hearing, when Mr. Ivy noted that he needed additional time, the HO, without more, concluded that Mr. Ivy wanted to leave the hearing, and had him escorted out. Nowhere on the record did the hearing officer state that he had informed Mr. Ivy of his right to attend the hearing, or of the consequences of leaving the hearing. Having completed the hearing in Mr. Ivy's absence, the hearing officer found Mr. Ivy guilty of the charges, and imposed a penalty of 12 months SHU and 12 months loss of good time. In June 2008, DOCS modified the disposition to 9 months SHU and 9 months loss of good time. PLS filed an Article 78 Petition alleging that the hearing officer violated Mr. Ivy's fundamental right to attend his hearing. The court agreed and issued a decision ordering reversal and expungement of the hearing.

In the Matter of Espinal v. Fischer, Supreme Court, Franklin County, Index No. 2009-0398

This Article 78 challenged a Tier III disciplinary disposition on the grounds that the disposition was not supported by substantial evidence as a result of the Hearing Officer's failure to ensure the integrity and accuracy of the drug urinalysis test results. Petitioner was taking three different prescription medications on or about the time the urine sample was collected and tested. Through testimony of a Syva Company representative, only two of those medications were excluded as capable of producing a false positive test. The third medication had not yet been tested. Nonetheless, the Hearing Officer chose to rely upon the test results, citing the representative's testimony in purported support for the test results' validity. Petitioner was found guilty and a penalty of 18 months confinement to SHU with loss of privileges and 18 months loss of good time was imposed. Upon administrative appeal, the SHU penalty was reduced to 12 months. After PLS filed an Article 78 challenging the disposition, DOCS administratively reversed the hearing.

Hayes v. Fischer, Albany County Supreme Court, Index No. 1990-08

This Article 78 challenged the disposition of a Tier III prison disciplinary hearing. At issue in this case was whether our client's request for documentary evidence, a visitor's log, was properly denied by the Hearing Officer. Our Article 78 argued that the Hearing Officer's failure to produce the visitor's log was a denial of Mr. Hayes' right to present documentary evidence and witnesses.

Albany County Supreme Court dismissed our petition and we appealed. The Attorney General declined to file a brief. Instead, the Attorney General submitted a letter stating that the Tier III hearing at issue was administratively reversed, and requested that the appeal be dismissed as moot.

Matter of Johnson v. Fischer, Supreme Court, Albany County, Index No. 6581-08, Appellate Division, Third Department, #505634

This Article 78 challenged a Tier III disciplinary disposition, on the grounds that the disposition was not supported by substantial evidence as a result of the Hearing Officer's failure to make a proper independent assessment of the reliability and credibility of confidential information. Petitioner received a penalty of 18 months in SHU with a corresponding loss of privileges and good time. After we filed, we received correspondent from our client that the disposition had been

reversed.

In the Matter of Gustus v. Fischer, Albany County Supreme Court, Index No. 451-08

In this Article 78 we challenged the disposition of a Tier III prison disciplinary hearing on *res judicata* grounds. Our client received a misbehavior report for fighting. A facility investigation ensued. Our client then received a second misbehavior report, for the same incident, charging him with assault, and alleging that he instigated the incident. The two misbehavior reports resulted in separate hearings. He was found guilty at each hearing, and received cumulative penalties. We received an unfavorable decision from the lower court rejecting our *res judicata* argument. We appealed. In the third quarter of 2009 we received a favorable decision from the Third Department. The court held that the second hearing was barred by *res judicata*.

Matter of Ortiz v. Fischer, Supreme Court, Clinton County, Index No. 08-1755 (Feldstein, J.), Appellate Division, Third Department

This Article 78 challenged a Tier III disposition on the grounds that the HO failed to abide by the protections afforded to inmates where mental health is at issue. It also raised a related issue of hearing officer bias in how the hearing was conducted. Mr. Ortiz received 12 months SHU with corresponding lack of privileges and loss of good time. After PLS filed, respondents notified the court that the disposition had been reversed and requested that the matter be dismissed as moot. On November 10, we sent a letter to the court clarifying that, although the matter was rendered moot, this did not preclude an award of costs as the petition was a catalyst for reversal. We urged the court to grant an award of costs and reasonable attorney's fees. On November 18, respondents sent a letter to the court objecting to our request for costs as premature and against public policy of reducing litigation by resolving matter administratively. On December 9, we received a letter from the court stating that the above correspondence would be submitted with petitioner's brief for determination at the next available term.

Excessive Use of Force

Heraclides Rosario v. Brenzo, et. al., W.D.N.Y., 06-CV-0283

This section 1983 civil rights action sought compensatory and punitive damages for an assault on plaintiff and for due process violations in the Tier III hearing based on the underlying incident. The complaint alleged that on January 4, 2004, while he was locked in his cell at Elmira Correctional Facility, plaintiff had a verbal exchange with one of the defendants, CO Brenzo. CO Brenzo allegedly referred to plaintiff as a "piece of shit" and plaintiff responded by throwing "the remaining cold cup of coffee he was drinking at the time on defendant Brenzo." CO Brenzo allegedly walked away and a few minutes later CO Brenzo returned with five other officers. The officers allegedly entered plaintiff's cell and maliciously beat him. Plaintiff was then escorted to the facility infirmary. The complaint alleges that during the escort, CO Howarth struck plaintiff's head with his baton. As a result of the incident, plaintiff received injuries including a laceration to the left side of his head, an egg-sized swollen area on the right side of his forehead, a golf ball-sized swollen area on his left cheek, bruises and discoloration to both eyes, swelling to head and facial area, and knee pain and swelling.

Subsequently, plaintiff received two misbehavior reports. The first alleged he assaulted staff

and committed an unhygienic act by throwing an unknown fluid on an officer. The second report charged plaintiff with assault on staff and self-inflicted injury, alleging in part that he smashed his own face into his cell wall. During the hearing plaintiff presented testimony from two facility nurses who both testified that plaintiff's injuries did not appear to be consistent with running his face into the wall. Nonetheless, he was found guilty of all charges and a penalty including 24 months SHU and 12 months recommended loss of good time. In response to a PLS request for reconsideration, DOCS reversed and expunged the hearing disposition. After extensive discovery the parties agreed to settle the case.

Wheeler v. Edward J. Savio, et. al. , W.D.N.Y., 02-CV-6575 (Siragusa, J)

This excessive use of force case alleged that at Lakeview Correctional Facility - S Block, defendant officers used excessive force against plaintiff in retaliation for plaintiff's earlier assault on another officer. The case also alleged claims of failure to intervene to prevent or terminate the use of force, failure to properly supervise subordinate officers, and, deliberate indifference to plaintiff's serious medical needs. Plaintiff sustained bruises over much of his body, including his anus, both of his eyes were swollen shut, a rib was fractured, and he was in and out of consciousness for at least a week after the incident. After extensive discovery the parties agreed to settle the case.

Forced Medication

In The Matter of the Application of Carol Waughter, Superintendent of Mohawk Correctional Facility For An Order Authorizing The Medical Treatment of Duane Crockett, Oneida County Supreme Court, Index No., CA2009-001982

Mr. Crockett was confined at Walsh RMU because of his poorly controlled diabetes. He had conflicts with the medical staff about treatment for diabetes. Among other things, there were disputes about the type and dose of insulin that he received. Facility staff claimed that he refused insulin. The petition was based on the evaluation of OMH psychiatrist Adele Pace, who indicated that she had diagnosed Crockett as a paranoid schizophrenic. The petition alleged that the reason Mr. Crockett refused treatment for diabetes was that he was schizophrenic, and that if the court would authorize forced administration of anti-psychotic drugs such as Haldol, he would be calmer and would comply with treatment. Mr. Crockett has no known history of any inpatient or outpatient psychiatric treatment or diagnosis prior to Dr. Pace's recent diagnosis.

The case went to trial before Judicial Hearing Officer John L. Murad. Judge Murad delivered his decision from the bench holding that the State had not met its burden of proving that Mr. Crockett lacked the capacity to make a reasoned decision with respect to the proposed treatment. The JHO recommended that the petition be dismissed. The transcript was forwarded to Supreme Court Judge Hester for final decision. Judge Hester accepted the JHO's recommendation and dismissed the petition.

Merit Time

deJesus and Ramos v. Fischer, Albany County Supreme Court, Index No. 7182-08

This was an Article 78 challenging DOCS' policy of withholding merit time on the ground that an inmate has multiple minor disciplinary infractions, each of which resulted in less than 60 days

keeplock, but which, cumulatively, resulted in imposition of more than 60 days keeplock. Both petitioners were eligible for merit time and/or supplemental merit time under Correction Law §803(1)(d) and section 30 of Chapter 738 of the Laws of New York (2004). Both of the merit time statutes provide that, "merit time shall be withheld for any serious disciplinary infraction..." However, neither statute defines the phrase "serious disciplinary infraction." That phrase is defined in DOCS' regulations as behavior that results in (1) any state or federal conviction while in DOCS' custody; (2) a finding, in a prison disciplinary hearing, that an inmate committed any of a list of specified offenses; (3) disciplinary sanctions which total 60 days or more SHU or keeplock; and (4) any recommended loss of good time.

This case specifically challenged DOCS' policy that a "serious disciplinary infraction" includes situations where an inmate received 60 days of keeplock, which is not the result of any single disciplinary infraction that would be considered "serious," but is instead the result of aggregating multiple minor disciplinary infractions, each of which, individually, resulted in less than 60 days keeplock.

The Attorney General proposed to settle the case by having DOCS grant relief to our two clients. That is, DOCS offered to settle the case based on a finding that our two clients had no "serious disciplinary infraction" and were therefore eligible for merit time.



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10

Testimony

G. Robert Witmer
Past President
New York State Bar Association

Joint Legislative Public Hearing

February 8, 2010
Proposed 2010-11 Public Protection Budget

I am G. Robert Witmer, a former President of the New York State Bar Association, the oldest and largest voluntary state bar association in the nation. Association President, Michael E. Getnick, who is at a previously-scheduled meeting of the American Bar Association, asked that I present testimony for the State Bar. Mr. Getnick regrets that he is not able to appear before you today, but on behalf of our 77,000 members, he and 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. In short, our court system functions as well as it does because of the diligence exercised by its judges, court administrators and staff.

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, while constantly working to contain costs wherever possible.

That is the context in which we review the current Judiciary budget request.

2010-11 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.

The Judiciary's General Fund State Operations and Aid to Localities request for fiscal year 2010-11 is \$2.44 billion, an increase of approximately \$168 million, or 7.4 percent over the current year appropriation. The All Funds budget request totals \$2.7 billion, an increase of \$183.5 million, or 7.2 percent. Apart from a single discretionary increase of \$6.3 million for the Judicial Supplemental Support Fund, to provide judges assistance with certain work-related expenses, and which amounts to one-quarter of 1% of the proposed budget, the increased funding sought by the Judiciary is mandatory and beyond the control of the Judiciary. The bulk of the increased costs are mandatory pension contributions, employee health insurance and fringe

benefits, non-judicial salary increases required by collective bargaining agreements, and statutory mandates (such as costs related to the implementation of caseload standards for criminal defense attorneys in New York City, pursuant to Chapter 56 of the Laws of 2009; and, increased costs for legal representation for children as a result of the caseload caps established pursuant to Chapter 626 of the Laws of 2007).

Last year the Judiciary submitted a zero-growth budget, adopted stringent spending controls, and took steps to reduce the court system's non-judicial workforce by more than 200 positions by the end of this fiscal year. Nevertheless, the annual caseload of the courts is at an all-time high, exceeding 4.7 million filings for the first time. Further, it is expected that the economic downturn will continue to bring additional cases to the courts. If the Judiciary does not receive funding requested in its budget, it will be forced to reduce its workforce, potentially through layoffs, at a time when the courts' workload is increasing. Undoubtedly, this would jeopardize the fair and swift administration of justice.

Accordingly, we view the Judiciary's budget request as reasonable and necessary to keep our courts functioning in an efficient manner.

It is beyond dispute that the Legislature should provide adequate funding to sustain the essential functions of the courts. The proposed Judiciary 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 the issue of funding for civil legal services. Unfortunately, the need for civil legal services has far outpaced the available resources. In late 2005, the Legal Services Corporation ("LSC") released a study that documented the unmet legal needs of low income Americans. *Documenting the Justice Gap*, found that at least 80 percent of the civil legal needs of low-income Americans are not being met.¹

Also in 2005, a report of New York's Equal Justice Commission ("EJC"), *Expanding Access to Justice, New York's Challenge*, emphasized that the essential legal needs of more than 85% of low income New Yorkers are not being met under the current funding levels. This is an alarming statistic, which has been exacerbated by the current economic downturn. We cannot ignore a gap of this magnitude, which for many New Yorkers will mean the difference between losing a home or keeping it, suffering from domestic abuse or finding refuge from it, or gaining or losing custody of a child. When basic human needs are at risk—those involving shelter, sustenance, safety, health or child custody—everyone deserves the right to counsel. The promise of equal justice for all must extend to every person.

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

¹ In September 2009 an updated report by LSC confirmed the conclusions of the 2005 report and the continuing major gap between the civil legal needs of low-income people and the legal help that they receive.

reiterate our view that New York State should: 1) create a permanent Access to Justice Fund in the State budget; 2) identify a State agency to assume responsibility for administration and oversight of this Fund; 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 which was created by the Legislature in 1983, so we have a great concern over impact that the weak economy has had on the Fund.

Hearings conducted by the Senate and the Assembly during December 2009 and this January established the record regarding the emergency that the IOLA Fund faces due to the economic recession and low interest rates. However, it is worth repeating that according to its 2008 report, the Fund awarded grants totaling \$25 million and that grants for the 2010-2011 fiscal year are expected to drop to approximately \$6.5 million.

As the State Bar leadership testified during those hearings, we are pleased that the Judiciary's proposed budget includes a \$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 applaud the Judiciary for this important step and we strongly urge that you and your colleagues in the Legislature approve that appropriation.

Support Change of federal law (Eliminate restrictions on funds for legal services)

During his testimony on January 7 at a joint Senate-Assembly hearing on IOLA, President Getnick urged outreach to members of New York's Congressional delegation in order to change a federal law that now imposes unreasonable restrictions on the use of funds by legal services organizations.

By way of background, the Omnibus Consolidated Rescissions & Appropriations Act of 1996 imposed numerous restrictions on funds within the budget of the Legal Services Corporation (LSC), which provides funds to providers throughout the United States. That legislation resulted in the enactment of Public Law 104-134. Each year since 1996, Congress has restricted how LSC grantees may spend both LSC funds and their non-federal dollars through an Administrative Provision attached to the annual LSC appropriation.

Congress should pass an appropriations bill that would lift most of the restrictions imposed on LSC grantees' use of non-federal funds.

Although the State Bar's position is that Congress should eliminate all federal restrictions on legal-service funds, we believe that eliminating the restriction on use of non-federal funds will go farthest towards improving the resources available to legal services organizations, permitting them to operate more efficiently.

In times such as these, when every dollar makes a difference, eliminating burdensome restrictions on funds will have a positive impact for programs in New York State. We believe that adding your voices to those of the New York State Bar Association and others who are calling for this change in federal law would be an important step forward on this issue.

Continuing Efforts to Resolve Budget Crisis

The leaders of the New York State Bar Association will do whatever we can to support you on this critically important issue. In order to assist your efforts to appropriate funds for civil legal services, we will continue to explore the post-judgment fee enacted by California and other sources of revenue that would not impair access to justice for the people of New York State.

Benefit of funding legal services programs

Given the current economic circumstances, the cruel irony is that the significant drop in IOLA revenue is compounded by an increased need for the civil legal services these funds support. These services help protect those who are or are about to become homeless, or have been denied other social service benefits to which they may be entitled.

Indeed, investing in legal services saves the State money that would otherwise have to be expended on public assistance. The societal benefits of providing civil legal services are clear. Such benefits are demonstrated by the report by the New York City Department of Social Services entitled, *The Homelessness Prevention Program: Outcomes and Effectiveness*, which concluded that every dollar spent on indigent representation in eviction proceedings saves four dollars in costs related to homelessness.

More recently, distribution of stimulus funding through the American Recovery and Reinvestment Act has highlighted the fact that preventative efforts pay off for the State. As part of an announcement in July 2009, the City of New York stated that the use of funds to serve at-risk and vulnerable households cost a small percentage of the \$36,000 that would otherwise be required to shelter a family for one year. Legal representation certainly is part of such a cost-benefit equation.

Additionally, legal services lawyers help ensure that their clients receive the unemployment and federal social security benefits to which they are entitled. Neither of which benefit is paid for with state dollars. To the extent that such individuals do not receive these needed social security safety net benefits they would very likely end up on the State's doorstep looking for state assistance.

Proposed Fee Increases

The proposed Executive Budget would "allow for the increase in certain court fees," to offset recent declines in interest earnings as a source of funds for civil legal services, to provide funds to reform the county-based indigent criminal defense system, and provide funds to the Court Facilities Incentive Aid Program.

Although we believe that the Governor recognizes the need to ensure access to justice for those of limited means, and has in the past supported programs that help the indigent, the proposed Executive Budget inappropriately links funding for such programs to increased fees imposed on those who use the courts to enforce their rights under the law. The Executive Budget would increase the State's portion of the index number fee in Supreme Court, increase fees for motions and cross-motions in Supreme and Appellate courts, and increase the "first-paper fee" in several lower courts.

This proposal would further burden the court system and those who depend upon the system to resolve disputes and enforce the law. Linking those fee increases to programs intended to serve the poorest and most vulnerable members of our society would be the wrong approach to solving the serious fiscal problem that confronts the government. Therefore, the Association opposes that portion of the proposed Executive Budget.

Lawyers' Pro Bono Efforts

Lawyers are committed to doing their share. The bar contributes many hours a year in voluntary pro bono legal services to the indigent.

The New York State Bar Association recently marked the 3rd Anniversary of the Empire State Counsel Program, to honor our members who donate a minimum of 50 hours of direct legal services to low income New Yorkers.

In 2009, with approximately 1500 participants in this growing program, direct legal services were provided by Empire State Counsel in the areas of housing, immigration and asylum, domestic violence, divorce, Social Security benefits, public benefits, family law, bankruptcy, criminal appeals, federal habeas corpus, and civil rights litigation. The Empire State Counsel program alone provided nearly one-quarter million hours of pro bono service in 2009.

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.

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.

To address this "on-going crisis" the Commission recommended, and the New York State Bar Association supports, the restructuring of the delivery of indigent defense services by establishing a statewide defender office, which would include an independent Indigent Defense

Commission, Chief Defender, and Regional and Local Defender Offices. Doing so would help ensure that low-income New Yorkers are guaranteed their constitutional right to the effective assistance of counsel.

The Executive Budget proposal to provide an "Office" with oversight responsibility for the indigent defense system represents a good first step, notwithstanding our objection to the proposed increase of court fees as the mechanism for funding this initiative. However, we note the lack of independence that the proposed "Office" would have, which we view as a critical flaw in the proposal. Housing the "Office" within the Division of Criminal Justice Services (DCJS) raises the issue of undue influence upon the "Office," because of the different core missions of the two entities. The ultimate goal should be to create an independent Commission. And, any long-term solution must include an independent commission that adopts standards of representation (such as those previously adopted by our Association) and a mechanism for enforcing them, provisions not contained in the proposed budget bill. Finally, any data collection by the new Office must take into account the fact that the caseloads of many defense services providers include Family Court cases.

With the Governor's proposal as a starting point, we look forward to working with the Governor, the Assembly and the Senate in crafting legislation to further the cause of making the constitutional guarantee of effective assistance of counsel a reality for all.

JUDICIAL SALARY REFORM

Next, I want to highlight a topic that is important to our Association and to the Judiciary, but which is also crucial to the integrity of the court system itself -- Judicial Salary Reform.

An independent, well-functioning judicial system, accessible to all, is a bedrock principle of our democracy. The courts, more than any other arm of government, are the bulwark of liberty. As the State of New York now faces the challenges and limitations presented by a slow economy, the Governor and Legislature must ensure that adequate resources are provided so that the courts can meet their essential role.

Judges are critical to the delivery of justice in our society's system of government. Judicial salaries reflect the value that society places on the important work our judges perform. Therefore, it is of paramount importance to compensate judges fairly and without further delay.

Although the Executive and Legislative Branches publicly agree that our hard-working, dedicated judges deserve a pay adjustment, it is unfortunate that this issue has been sidetracked.

We should renew our best efforts to ensure going forward that our judges are fairly compensated on a regular and ongoing basis. Several years ago the Judiciary developed a proposal to establish a permanent mechanism for the regular salary review of officials in all three branches of government. Under that proposal, judges would receive an immediate increase, and judges, legislators and executive-branch officials would receive future cost-of-living adjustments, or COLAs, at appropriate intervals.

The proposed mechanism for reviewing salaries and establishing the COLA would be a Quadrennial Commission on Executive, Legislative and Judicial Compensation, a majority of whose members would be drawn from the general public. Its first order of business would be to determine an initial catch-up increase for legislators and senior executive-branch officials. This Commission and its subsequent iterations also would prescribe appropriate COLAs for the four-year period following their deliberations. Those would then take effect on April 1st of each year, unless abrogated or modified by the Legislature. The New York State Bar Association strongly supports such a comprehensive salary reform proposal as a fair and appropriate approach to resolving the ongoing salary issue.

We strongly urge immediate action to accomplish Judicial Salary Reform.

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.

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**LEGISLATIVE PUBLIC HEARINGS
ON THE 2010-2011 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

and

Executive Director
New York State Defenders Justice Fund

Albany, NY
February 8, 2010

TESTIMONY ON THE PUBLIC PROTECTION BUDGET

INTRODUCTION

I welcome the opportunity to come before you this year. Public defense services have come onto the radar screen of state government in a new, and hopefully meaningful, way. The Governor has offered to open a genuine dialogue by presenting both of your houses with an Article VII bill creating an Office of Indigent Defense (Office) accountable to what is termed an independent Board within the Division of Criminal Justice Services (DCJS).

While we are excited about this potential new way of thinking about public defense services, which I will address in more detail below, we have the foreboding that no real paradigm shift has occurred in the State's approach to many existing public defense services. We see omission of some key programs, insufficient funding as to others, and a proposal to retroactively approve, without examination of the effect on quality of public defense services, local measures taken in excess of legal power or authority to cut public defense costs.

My budget testimony a year ago opened with the State's on-going neglect of public defense and the frightful results of that neglect. In the intervening year, our broken public defense system has continued to harm clients every day. So while we hail a revived commitment to fix New York's broken public defense system, and acknowledge the political preference for incremental rather than immediate, system-wide reform, we want to be sure that changes will be more than cosmetic, and commitments more than mere words. We want to be sure that the foundation on which reform is to be built is not weakened before building can begin. And we want to be sure that public defense clients are not worse off this time next year.

Therefore, we note that some appropriations in the proposed budget need to be adjusted, and several omitted programs need to be restored:

- The Indigent Parolee Representation Program (IPP) and the four important IPP contracts with Monroe, Nassau, New York City, and Wyoming omitted from the Executive Budget should be restored.
- Appropriations for important contracts with the Neighborhood Defender Service of Harlem and The Legal Aid Society that have been overlooked as well must also be restored.
- NYSDA's Backup Center, which is the glue that holds the current public defense system together for many across the state, is slated by the Governor to receive \$1,185,000. That is a cut of \$331,000 (22%) from the final amount slated to be received for the current fiscal year (\$1,516,000¹) and a distinctly lower amount than the \$2.5 million – which amounted to a 10% cut – reserved for the New York Prosecutors Training Institute (NYPTI). To maintain basic services, NYSDA needs \$1.5 million this year.

¹ \$200,000 of this amount is forthcoming from the Senate but not yet received.

We know that the economy, which has devastated the lives of public defense clients, continues to hammer the State. We are grateful for much of what appears in the Executive Budget, and anticipate that the Legislature will, as it has in the past, ensure that the vital and always underfunded governmental function of providing public defense services is not driven further backward. We also anticipate that the Legislature will work with the Governor to assure the viability of the proposed new investment in public defense.

I now turn to that investment, set out as Part E of the Article VII Public Protection bill (S.6606-A.9706).

THE GOVERNOR'S PROPOSED OFFICE OF INDIGENT DEFENSE SERVICES

The Article VII bill recognizes that the State's public defense system is failing to meet its purpose. The proposal is a declaration that the state needs to play an oversight and financial role in improving public defense services currently offered through a county-based system. All of this is very good; the Governor is to be congratulated for the initiative and the commitment apparent in Part E. We anticipate this will lead to an agreed upon three-way piece of legislation passed in this year's budget.

This good first step must not be a sidestep or backward step, but one that moves true public defense reform forward. Therefore, we also anticipate discussions during which we all remain open to ideas and suggestions as well as to compromise, collaboration, criticism, and collegiality. NYSDA and the Justice Fund are committed to that course. It is in that spirit that I offer my remarks.

This is a modest but crucial investment in public defense improvement

Part E creates a state Office to address public defense issues and disburse monies from the Indigent Legal Services Fund (ILSF). While placing the Office within an entity that is charged with assisting the prosecution function, the bill acknowledges the need for independence by having the Office report directly to a new Board. That Board is to accept, modify, or reject the Office's suggestions about use of the state funds available for disbursement. Members of the Board are to be, respectively: drawn from the Judiciary (1); recommended by leaders of the Legislature (1 for each house); selected from recommendations by bar leaders (1) and county representatives (2); experienced in public defense work (1); and selected by the Governor without restriction (2).

Three million dollars are provided to set up and run the Office. An additional \$7 million, along with ILSF funds, are to be available for the Office to distribute at the direction of the Board. I cannot emphasize enough the importance of investing new state funds in long-overdue efforts to pull public defense in New York State out of its ongoing crisis. I cannot overemphasize the need to ensure that those funds are truly new funds to be used in truly new ways to improve the quality of public defense representation. The new money must be real, not a sleight-of-hand illusion.

We do not abandon our belief that ultimately there must be a state defender system

It has been 30 years since this body funded the Public Defense Backup Center of our association; we were and are charged on behalf of the State to help improve public defense services and with making recommendations to you. At least 10 years ago we were recommending creation of a commission to oversee disbursement of state money to localities for public defense. For the last 3 years, following the recommendations of the former Chief Judge's Commission on the Future of Indigent Defense Services, we have been calling upon the State to create an Independent Public Defense Commission overseeing a statewide, state funded and administered defense system. Bills have been introduced, discussions held. During this decade of debate more than 19 million clients

have passed through our courts represented by overworked public defenders, underpaid legal aid lawyers, and poorly resourced assigned counsel practitioners. We can wait no longer for something to happen. Our clients are being swallowed whole by delay.

Many of you have listened to the descriptions of the crisis in public defense. You have tried to find a solution to the endemic problems of the system. Seven bills have been introduced. More than 100 members in both houses have come out in support.

But we have been made to see that in light of the economic situation, New York State is not ready. So we must start with something smaller. While disappointed with certain aspects of this proposal, we are ready to work with the Executive, with you, and with the Judiciary to make it the best it can be.

We believe that when the new Office collects the data, and determines the salaries and caseloads, and looks at procedures taking place in the patchwork system we now have; when it recognizes the impossibility of solving the day-to-day on-the-ground problems without a supervising legal relationship to hold performance to accountable standards; when it has seen the same client complaints that we daily field, and feels the faint public defense pulse that flows through the anemic body of the system it will study, the proposed Office of Indigent Defense will ultimately conclude that total transformation of the administration of the public defense system is necessary.

In the meantime we need to make it possible for this Office to do as much good as possible and to do no harm to public defense clients. It must function without conflict of interest, political interference, or reduced funding. I will highlight below what the Board of NYSDA - convened in late January in New York City - deems critical to make this happen. We want to work with you and with the Governor to help ensure that this new investment achieves the return it seeks – improvement of public defense representation across New York State.

DCJS is the wrong venue in which to house this new Office and Board

The proposal would house the new Office and Board within DCJS, a prosecutorial and law enforcement agency that represents, serves, and hosts interests uniquely adverse to the defense. A structural guarantee of professional independence for public defense is the core issue for NYSDA, the defense bar, the client community, and others concerned about justice.

- The New York State Bar Association makes *independence* the first of its Standards for Providing Mandated Representation.
- The ABA has *independence* as the first Principle of a Public Defense Delivery System.
- NYSDA's Standards for Providing Constitutionally and Statutorily Mandated Legal Representation in New York State similarly lead with the concept of *independence*.

DCJS is statutorily mandated to (among other things) “undertake to furnish or make available to the district attorneys of the state such supportive services and technical assistance as the commissioner and any one or more of the district attorneys shall agree are appropriate to promote the effective performance of his or their prosecutorial functions.” (Executive Law § 837(5-a).) We can, like internal DCJS auditors before us, foresee many possibilities for conflict – I will not set them all out here.

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With the conflicting missions of DCJS and the Office and Board in mind, we all must look carefully at the structure of the proposed Board, the relationship of DCJS to any service delivery by the new Office and Board, and the question of whether more neutral space can be found that is agreeable to key proponents of the new legislation. Several possibilities exist.

- Fifteen years ago this Legislature established the Capital Defender Office as an independent office suspended between the Judicial and Executive Branches; the statutory infrastructure for that office remains. An independent office within the Executive Branch could be modeled on the CDO.
- Two years ago a very similar Executive proposal called for such an office to be housed with the Secretary of State.
- A Legislative enactment 7 years ago placed a similar program with the Comptroller.
- The Kaye Commission suggested an interim office similar to this in the Office of Court Administration.

Each venue should be examined closely and carefully by the Legislature to best protect the Office from political interference.

To protect independence, the proposed Board needs strengthening

Under the current proposal the Governor controls most seats on the Board and the Office Director. There are no requirements that any of these individuals have a demonstrated commitment to improving public defense services.

In fact, there are few qualifications of any type for Board membership. There is no requirement that the Board, which is to determine how best to use state funds to improve the quality of public defense services, have lawyers among its members. Only one seat on the Board calls for any public defense expertise. And qualifications for the position of Director are equally lacking.

Similar problems exist as to Office staff. Because they are to be chosen by the commissioner of DCJS “in consultation” with the Director, staff in the current draft of this proposal could be made up of former prosecutors or DCJS staffers well-trained in the DCJS duty to assist the prosecution.

The bill needs to provide meaningful qualifications for the Director, and for Board members. Permitting the Board to hire the Director, and the Director to hire Office staff, will strengthen the Board’s independence. Along with a few Board exclusions (no current prosecutors, for example) and other enhancements, these changes would go a long way toward making the Office design acceptable to proponents of true public defense reform.

Other drafting problems need to be addressed

Also needed are textual assurances regarding spending the ILSF funds equitably, providing a role for client community input, and assuring the continued commitment to spending state funds for quality. These items reflect the kinds of drafting problems that the Legislature must address and which the Governor has indicated the Executive would be open to discussing. We look forward to working with all parties to make the kinds of changes that will encourage defense participation and support for the ultimate product.

NYSDA FUNDING IN THE EXECUTIVE BUDGET

In a year of painful cuts, we are grateful for the \$1,185,000 included in the Executive Budget for NYSDA's Backup Center. Last year the Governor's budget provided \$1,212,000 for the Backup Center, and the Legislature added \$304,000. With that \$1,516,000 we were able to continue providing the training, basic backup services, and technical assistance that local public defense providers and counties rely on to stretch their own over-burdened budgets. Like many others, we have foregone many plans to better assist those we serve. For example, we have been unable to step up placement of the latest version of our Public Defense Case Management System in counties without a CMS, to institute a Veterans and Military Representation Project to provide to public defense lawyers information about representing clients with combat-related injuries, or hire a staff attorney to improve our ability to help public defense lawyers who represent adult respondents in Family Court. If we are to again maintain our basic services, which are increasingly needed as local budgets decline, we need no less than \$1.5 million.

Some of the services we seek to provide or seek to improve relate to the proposal contained in Part E. The proposal omits certain functions that were included in a 2008 executive proposal to create an office of indigent defense services (OIDS) that was rejected by this Legislature. The omissions indicate a recognition that the NYSDA's Public Defense Backup Center already performs – and is better placed to perform – those functions. (The functions include maintaining our PDCMS in many localities and routinely training public defenders, legal aid attorneys, and assigned counsel practitioners in criminal and family court representation and at the critical interface between criminal and immigration law.) The Executive appropriately resisted duplicating or moving those functions into DCJS as part of Part E. However, the Executive failed to fund necessary expansion of these services in the budget. The new Office should be able to contract with NYSDA for those enhanced services, or NYSDA should be provided additional resources to enhance them.

AID TO DEFENSE, DIMINISHED BEFORE THE BUDGET CRISIS, SHOULD GROW

The Executive Budget includes \$8,861,000 for the Aid to Defense (ATD) program, about a 10% cut from what was appropriated last year (\$9,846,000). Once deployed in parity with the prosecution, ATD is now available in only 30 counties while Aid to Prosecution goes to all 62 counties. ATD was funded at \$20 million in 1988; the proposed ATD budget is substantially less than half that. The state money appropriated to create the new Office and Board set out in Part E and provide \$7 million in funding for distribution to localities above the amount in the ILSF must be truly additional funds if it is to secure that much-needed improvement. Cuts in ATD and other public defense funding will only further erode the base upon which the provisions of Part E are intended to build.

INDIGENT PAROLEE REPRESENTATION PROGRAM SHOULD BE BROUGHT BACK FROM THE BRINK

Between 1978 and 2000, funding through DCJS partially reimbursed local public defense services providers and counties for the work done to represent state parolees facing revocation hearings, appeals from them, and appeals from adverse release decisions. This program, known as the Indigent Parolee Representation Program (IPP), is intended to ease the burden placed on localities by the state mandate to provide representation to eligible clients in such cases. Four counties historically received set appropriated amounts for IPP through contracts with institutional providers, while other counties could submit vouchers to seek reimbursement for providing such representation. At its height, about \$1.7 million in IPP funding was provided to the four contract

counties and those submitting vouchers. Over time, shortfalls in appropriations led to increasingly smaller payments on vouchers (the percentage of vouchered amounts paid dropped from 73% in 1988-98 to 23% in 1992-93). IPP as part of the entire program was an executive item from 1978 to 1996, but fell off the table during the Pataki years.

The four contracts with institutional providers – Monroe, Nassau, New York City, and Wyoming – represented a successful model for delivering these services as the vouchering system floundered. By last year, only contract counties received IPP funds – and only three of the four historically included counties received restorations – in the amount of \$598,000: Monroe (\$78,067); Nassau (\$47,811); and New York City (Legal Aid Society - \$472,122).

Erosion of funding for IPP is an example of the State renegeing on funding criminal justice mandate relief, a problem that has led to distrust of state efforts to improve public defense services at the local level and created a barrier to public defense reform.

The Special Case to Be Made for Wyoming County's IPP Funding

As noted above, provision of parolee representation by way of contract with institutional providers represents the model by which these services should be delivered in the future. Institutional parole representation providers consolidate services, provide them efficiently, develop expertise over time in one place, and are therefore cost effective for the State. Unfortunately even these are not funded by the Governor this year, and should be restored. One of these programs has a unique problem which I ask both houses to solve together.

In 2001, after years of restorative funding by the Democratic Assembly, the Wyoming County-Attica Legal Aid Bureau – one of the four contracts previously supported by the Assembly – was accidentally dropped from the Assembly's list. Between 2001 and 2009 the Republican Senate was able to carry the program. Last year this orphaned \$180,000 program lost \$100,000 because:

- It was not included in the Executive Budget.
- It had been previously eliminated from the Assembly table.
- It had been a Senate Republican item and was caught up in the circumstances surrounding last year's Senate budget.

This is not the way to deliver public defense services. I ask your houses to resolve this glitch and, together, incorporate assured funding for the Wyoming IPP program in any final budget.

OTHER PUBLIC DEFENSE FUNDING OMITTED IN THE EXECUTIVE BUDGET SHOULD BE RESTORED

As has been the case in previous years, other traditional public-defense-related state funding has been omitted from the Executive Budget. The Legislature must, as it has in the past, be sure that the vital services offered by those programs do not disappear when they are needed more desperately than ever.

Last year, the Legislature provided \$325,000 for the Neighborhood Defender Service of Harlem, a small program that serves as a model for quality services in an area that greatly needs such services. The Legal Aid Society of New York City, a program that in many regards led the way in provision of

public defense services in New York, also received a state appropriation in the amount of \$798,700. At a minimum, that amount should be restored by the Legislature this year.

Prisoners' Legal Services of New York, Inc. (PLS) was again not included in the Executive Budget. Far from an expendable entity, PLS provides the only safety valve for prisoners with legal issues that ultimately affect not only their own health, safety, and rights, but the well-being of the prison system as well. We receive mail at the Backup Center from people in prison expressing frustration and desperation about legal matters that we cannot assist them with. Many relate to issues such as prison conditions, discipline, proper health care, and other matters that, left unresolved, bear fiscal and social costs not only for the prisoners but for prisons and the State. At a minimum, the Legislature should provide the same \$2,285,000 that was appropriated for PLS last year. It is important for both houses to more affirmatively help PLS. The restoration amount is not enough for this program to do what it exists to do; without an increase PLS will be even further submerged.

ATTEMPT TO RETROACTIVELY LEGITIMIZE CONFLICT DEFENDER OFFICES

In Part F of the budget bill, the Executive has included a hasty "fix" to a complicated problem that developed over time and embodies much of what is wrong with New York State's current statutory scheme for providing public defense. The Third Department decision in *Goehler v Cortland County* shed light on a bad county practice that had been spreading since this body raised assigned counsel fees in 2003 – the creation of conflict defender offices not authorized by County Law § 722 and too often designed solely to lower local public defense costs regardless of negative effects on quality of representation. Many of those offices were, from their creation, so underfunded and/or poorly designed they were certain to suffer from excessive caseloads, high turnover, lack of training, and other crippling deficiencies making them unable to provide quality representation.

The *Goehler* decision declaring the creation of one such office illegal offers an opportunity to improve the quality of public defense services offered in conflict cases. That could occur at several levels. Before Part F was released, we had begun to propose that, as local and state leaders looked at whether and how to act to preserve conflict defender offices potentially threatened by *Goehler*, they consider the ability of that office to provide quality representation. We hoped that any proposed state legislation with regard to conflict offices would include requirements that they be designed and funded to provide quality representation.

Part F would perpetuate and extend the very problems meant to be addressed by the bill preceding it. Part E creates an Office charged with, among other things, examining the different types of delivery systems for providing public defense services in New York State. Part E also creates a Board charged with determining the types of public defense delivery system that should be used in New York State. It would be logical for the new Office to examine conflict defender offices to determine how they work, and how best to make them work. It would be logical to have the new Board then decide whether such offices should be used at all – before they are given a State stamp of approval. Yet, instead, Part F would immediately and retroactively legitimize any program called a "conflict defender." That is irrational.

It is particularly so in light of the casual, even lackadaisical attitude about conforming to Article 18-B requirements that prevailed pre-*Goehler*. The Backup Center on many occasions advised counties that proposed offices were probably not authorized by the County Law. That advice was almost uniformly ignored. Since *Goehler* was decided, we have seen efforts to shoehorn those offices into

the County Law, efforts aimed only at avoiding the increased assigned counsel costs the conflict offices were designed to mitigate. But we have not seen lawsuits brought against every office – or any office aside from one at issue in *Goebler*. There is no need to give the State’s imprimatur to these offices in such haste. More importantly, existing structural problems in many of the “conflict” defender offices will not be solved by the proposed fix. Some of these offices are housed in the offices of county attorneys, itself a conflict. Still other “offices” are in reality simply contracts with individual lawyers – not authorized in the County Law – and some of those are constitutionally questionable² low-bid contracts that lack contractual requirements to assure that the contract can and will provide proper representation. Part F will not deter lawsuits against these offices even if the Legislature passes it.

CONCLUSION

Thank you for the opportunity to present this information to you. I will close as I began – with excitement that this budget includes movement toward real public defense reform; with determination that Part E must be improved and passed to ensure that it will raise the quality of public defense representation across the state; with gratitude for the public defense funding that is included in the Executive Budget in a difficult year, coupled with concern that underfunded and omitted public defense programs be made whole; and with resolve that the Legislature must not endorse any change in its public defense laws that does not lay a foundation for providing quality representation to every public defense client across the state.

² See *Arizona v. Smith*, 140 Ariz. 355; 681 P.2d 1374; 1984 Ariz. LEXIS 213. [Low bid contract requiring high caseloads and inadequate preparation held unconstitutional.]

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

TO THE

JOINT LEGISLATIVE BUDGET COMMITTEE HEARING
ON THE
2010-11 EXECUTIVE BUDGET



Albany, New York
February 8, 2010

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 address 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 \$5.2 million, which was 2% less than the year before. For FY 2010-11, to cover the contractual increase in rent and mandated salary obligations, and conservatively estimating the annual increases in basic operating costs, we would need a budget increase of \$352,000 (7 %), just to maintain our current level of services. However, in consultation with the Governor's Office, we are asking for only \$206,000 (4 %). This will require us to continue making serious economies. We have voluntarily limited ourselves to 49 staff, rather than the 55 positions allotted to us – an 11 % reduction in personnel.

We have suspended our valuable annual training and education programs. We have given up certain physical assets, such as an agency automobile and periodical subscriptions, in order to save even relatively small amounts of money.

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 approximately 25 judges per year.

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: 4 by the Governor, 4 by the leaders of the Legislature and 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

Last fiscal year, in light of the significant financial situation constraining all of state government, the Commission, like many agencies, agreed to its share of sacrifice. At the same time, the Governor and the Commission propose to follow through on the extraordinary commitment the Legislature made three 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 three fiscal years, my office has worked cooperatively and successfully on a range of matters with the Governor's Counsel, 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. The Public Protection Unit at DOB has been especially attentive to our needs and conducted an extensive review of our operation to ensure that we were deploying the public's money wisely.

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.
- Through careful stewardship of our resources and postponing certain hires, we absorbed \$250,000 in capital expenses two 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.
- Although it would take a 7% increase to maintain our services at present levels, we have agreed to 4%, meaning we still have to find 3% in savings, on top of the 2% we reduced this year and the 5% we saved the year before.

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.

Helene E. Weinstein, Chair of the Assembly Judiciary Committee; and John A. DeFrancisco, immediate past Chair of the Senate 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 now chairs both the Senate Majority Conference and the Senate Judiciary Committee, has followed suit. He has met with and offered guidance to us, held vigorous oversight hearings during 2009 to explore ways in which the disciplinary process might be improved, and introduced legislation that among other things would make formal judicial disciplinary proceedings public—long a Commission goal.

Other legislative leaders have devoted special attention to the Commission's situation and encouraged me along the way: Assembly Government Operations Committee Chair RoAnn M. Destito, Assembly Codes Committee Chair Joseph R. Lentol, Assembly Ways and Means Committee Chair Herman D. Farrell and former Senate Finance Committee Chair Owen H. Johnson. The Speaker's Counsel William Collins, the Senate Majority Counsel Shelley Mayer, the staffs of the Assembly and Senate Judiciary Committees, and the staff of the Assembly Ways and Means Committee have been especially attentive to the Commission's situation. And I look forward to a productive working relationship with the Chair of the Senate Finance Committee, Carl Kruger.

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 Malcolm Smith, and Minority Leaders Dean Skelos and Brian Kolb.

From the Governor's Office, Counsel to the Governor Peter Kiernan devoted invaluable time and attention to the Commission when it was most needed in the past year. Budget Director Robert Megna and the Public Protection Unit in

DOB – Chief Budget Examiner Susan Knapp and her team, Gerard Minot-Scheuermann, Timothy Eskeli and Joseph Paolucci – applied their professional skill and dedication to the Commission’s mission, offering guidance on the most effective way to deploy our resources and altogether ensuring that the Commission’s resources were most effectively positioned to advance the public interest.

Throughout the past three years, Attorney General Andrew Cuomo has been especially helpful, and his Chief of Staff Steven Cohen and Deputy Attorney General Leslie Leach have generously responded to my various requests for guidance. Comptroller Thomas DiNapoli and his counsel, Luke Bierman, have been unfailing and unstinting in their advice and cooperation.

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 – all three branches, working in harmony to promote the public interest.

From outside government, civic organizations such as the New York State Bar Association, the New York City Bar Association, the New York County Lawyers and the Fund for Modern Courts have continued to offer advice and, when appropriate, spoken up on the Commission's behalf. State Bar Executive Director Patricia Bucklin, Special Counsel Richard Rifkin and Legislative Affairs Director Ronald Kennedy have always been attentive to and supportive of the Commission, as have the Chairs of the Committee on Judicial Disciplinary Procedures, Rene Hollyer and now Judge Robert Noonan. Modern Courts' Chair Victor A. Kovner, a former member and chair of the Commission, vigorously promotes the Commission's goals and is always available to encourage and advise.

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 you both, Governor and Legislature, continue this welcome and cooperative development.



TESTIMONY

by

THE OSBORNE ASSOCIATION

to

**JOINT LEGISLATIVE BUDGET HEARING
ON FY 10/11 PROPOSED EXECUTIVE BUDGET**

**Senate Finance Committee Chair Carl Kruger
Assembly Ways and Means Committee Chair Herman Denny Farrell**

February 8, 2010

SUBJECT: Impact of Proposed Budget on Public Protection

I am Elizabeth Gaynes, Executive Director of the Osborne Association, one of the oldest nonprofit organizations in New York and in the nation providing direct services to incarcerated and formerly incarcerated men and women and their children and families. The Osborne Association was founded early in the last century by Auburn mayor and prison reformer Thomas Mott Osborne, who served as Warden of Sing Sing Prison nearly 100 years ago.

Our community sites are in the Bronx, Brooklyn, and Beacon, NY, and we operate programs in more than 15 state prisons. Programs range from “pre-entry” to “re-entry” – diverting defendants from jail and prison, and serving individuals in jail and prison, and after release, focusing much of our effort on the families – and especially the children – of the men and women we serve.

We are mindful of the fiscal environment affecting all New Yorkers, including the Executive and the Legislature. In the 25 years that I have been leading the Osborne Association, we have not faced a more daunting challenge. We remain very grateful for the key support that we have received from the Legislature over the last two decades. And if the proposed and anticipated budget cuts did not come on top of multiple reductions last year and the year before, we would be able to shrink the net rather than shredding it.

Both the Assembly and the Senate have provided critical support to this web of services: our Family Resource Center is supported solely by legislative funding, enabling us to provide a support network and toll-free Hotline for families of people in prison all over New York State, providing needed information, referrals and support. The Assembly literally created Family Ties, a parenting and visiting program for mothers at Albion and their children. For reasons we well understand, our most recent Assembly grants for these programs were half their original size, and have been helped enormously by additional support from the Senate, for the first time in FY 2010. When things go well for us, programs initially supported by the Legislature are picked up by an agency of the Executive: our nationally recognized FamilyWorks program, now funded by DOCS, began with legislative support more than two decades ago, and offers parenting

education for incarcerated fathers, along with courses in healthy relationships and marriage, child-friendly visiting, and family counseling. We have been fortunate also that DOCS has provided material assistance to the Family Ties program at Albion: this year, faced with dwindling funds from the Legislature, we asked DOCS to help us establish “tele-visiting” between mothers at Albion and children at our community site, and they have assumed the staffing and technology costs on their end to make it happen. .

Osborne’s ATI Programs (defender-based Court Advocacy Services and an OASAS certified day treatment ATI program known as El Rio,) also supported by Legislative as well as NYC tax levy funding, are embedded in a wrap-around approach to diversion and reentry that goes outside the criminal justice system. I am aware that this hearing relates to the Public Protection budget, but while the Osborne Association and other members of the ATI Coalition have enjoyed contracts with criminal justice agencies such as DOCS, Parole, DPCA, and DCJS, we have also received support from the Departments of Health, Labor, Social Services, OASAS, OCFS, OMH and OTDA. In fact, the public protection infrastructure, especially in terms of the diversion, treatment and transitional services provided by nonprofit agencies and the critical needs of individuals, families and communities affected by incarceration, is threatened by cuts in many other parts of the budget as well as the dire budgets facing the traditional Public Protection agencies.

For example, most of Osborne’s extensive HIV/AIDS prevention and discharge planning services in prisons located in the Green Haven, Sullivan, and New York City hubs, as well as in the community, are funded by the AIDS Institute. Multiple reentry services by Osborne and other ATI and Reentry providers are available that, in addition to family services and substance abuse treatment, include job readiness, job training and job placement receive support from wage subsidy and other TANF-funded programs that seem destined for elimination in the Executive budget. For example, Osborne’s Wage Subsidy program contributes substantially to the prospects of employment for people leaving prison, a critical need when you consider people on parole have an unemployment rate over 60%, and only 1 out of 6 people on parole have full time jobs with benefits. The Wage Subsidy funding does more than just cover salaries and benefits for a few months: it offers a pathway to full time permanent employment, and “converts” hesitant employers to supporters who go on to hire others with criminal records. Elimination of wage subsidy and other employment programs that serve individuals with criminal records is short-sighted.

Osborne and other ATI Coalition providers have received support from the executive branch and its agencies. The Governor and Deputy Secretary Denise O’Donnell chose to invest stimulus funding in jobs for people diverted through drug law reform or released from prison, demonstrating a clear understanding that addressing complex issues involving crime and addiction are inextricably linked to jobs and job training. With this funding, Osborne recently launched the Green Career Center for formerly incarcerated men and women in the Bronx and lower Westchester County. Osborne also received a grant from DCJS to coordinate the Dutchess County Reentry Task Force. And DOCS invested a share of a federal grant – that unfortunately runs out in May – for Osborne to pilot a Family-Focused Discharge Planning initiative at Queensboro, a prison that releases 4,000 men a year. By engaging families in the release plan, and offering ongoing support and connection to a full range of reentry and family services, we

can avert homelessness, improve child welfare, increase employment, and reduce recidivism further – and close even more prisons.

And while we applaud the decision to close and consolidate under-utilized prisons – and think it could have gone farther – we are concerned that those savings are not being re-invested in ATI, prison programs or reentry services that will support the continued population reduction. It does not seem like the right year to ask the Legislature to pick up the tab for Family-Focused Discharge Planning at Queensboro and other promising reentry strategies, but we urge you to stress the importance of Justice Reinvestment, wherein savings in the prison budget would be invested in the success of those who remain incarcerated or are released to the community.

Every dollar invested in alternatives to incarceration, or programs in and after prison that are effective in reducing recidivism, will reduce the extremely expensive burden of incarceration of adults and juveniles, and foster care.

Everything we know about recidivism tells us that people with strong family ties, those engaged in college or employed, are least likely to return to prison. We are blessed with a state Corrections department that leads the nation in its efforts on both family visiting and access to higher education, and has thus far met drastic budget cuts with logical steps like closing excess prisons. But we are concerned that prison programs, the kinds of programs that are known to reduce recidivism, cannot continue to survive draconian cuts.

We realize that in the current budget environment, services for people with criminal records may have difficulty competing with education and healthcare, and nonprofits are hardly a match for unions representing law enforcement. As a Westchester County homeowner plagued by exorbitant property taxes, I am certainly sympathetic to concerns about tax relief. But the small, targeted, and highly effective programs that are operated by Osborne and our colleagues in the ATI and Reentry Coalition are important to public safety and public health, and frankly you get a pretty big bang for the buck – this year and the out years.

Following are specific requests and recommendations regarding the Executive Budget:

- **Fully fund the ATI and Reentry Services, including Assembly and Senate support of Osborne programs at the same level as last year.**

Osborne has received, and deeply appreciates, legislative support for its programs, including Family Ties (for women and their children at Albion), the Family Resource Center and Hotline for families with loved ones in prison, our ATI Programs (Court Advocacy Services and El Rio). This support has been reduced substantially in recent years. While we understand the difficult fiscal climate, we believe our programs, and ATI and Reentry programs in general, save money – this year and in the out years, and further cuts would lead to program closures.

- **Support prison closures and consolidations, place and count people near their homes and families, and expand Work Release eligibility**

In addition to counting people in prison as residents of their home districts rather than where they are involuntarily imprisoned, their classification and placement in facilities should be guided (after giving due consideration to security and mental health needs) by where their children and families live. Osborne's New York Initiative on Children of Incarcerated Parents has called for family-friendly facilities and "A Hub Near Home," This would more easily enable incarcerated parents to comply with the requirements of the Adoption and Safe Families Act, and support children as they struggle to make, mend and maintain relationships with their incarcerated parents – and manage in their absence. Since we already have prisons in areas distant from where the "residents" lived, prisons remaining open (and the communities that now benefit from counting prisoners and claim to serve them) should be required to offer affordable access/transportation.

Continual closing of the smallest, minimum security, least expensive facilities does not provide maximum savings, and only makes sense when we continue to classify people based on a crime in the distant past. I am not naïve, I work in prisons. I know that there are people for whom high walls between us are the best option we can come up with right now. But we do need to reconsider a classification system that maintains people in maximum security facilities until release, based on a crime or prison behavior that is long past - even when we KNOW that they will be released within a year or two.

We should not, and don't need to, release people directly from maximum security prisons and special housing units. There is a radical difference between the amount of independence and decision-making a person can exercise while incarcerated, and what he is expected to manifest upon release. People released directly from maximum security prisons are unprepared for what is expected of them. People with known release dates should go to less restrictive environments prior to release. The risk is small compared to the opportunity to prepare people to live successfully after release. Such a step would also mean that prison closures could focus on closing beds in more expensive small or large maximum security facilities. I can no longer claim to have visited every prison, but surely closing one of the 500 bed max jails would save more money than the camps, where more people should be placed pre-release. So next time we are ready to close additional facilities, try a small maximum security facility with little industry and a lot of porter jobs, or a medium. If the system had fewer max beds, they would have fewer max prisoners.

And if you think we're running out of room, think again. The Work Release facilities in New York City are under-utilized because of restrictions on eligibility that the Legislature could and should change. The budget implications are obvious. So are the Public Protection implications. If we know someone is going to be released within a year or two after serving a long sentence, why would we not offer the graduated responsibility that work release allows. They can begin paying child support, adjusting to life in the community before having to find housing or reunite with family. In fact, work release should not be restricted to work. Attending college, vocational

training, drug treatment, or providing child care, all contribute to improved public protection, public health, and child welfare outcomes.

In fact, rather than barring people with convictions on violent crimes from going to work release facilities, let's offer everyone scheduled to be released with a conviction for a violent crime the opportunity for work release on a priority basis. These facilities would be equally effective at housing people within a year of parole eligibility or already granted parole on a condition of residing in these facilities until they achieve a certain level of job and financial security. Such an option might encourage parole to consider the thousands of men and women now excluded from work release because of their records. If the public realized that these individuals WILL be released, and could be released gradually and prepared rather than suddenly without resources, they might well support such a change.

- **Oppose reductions in parole board staffing while reforming appointment process, qualifications, community input and training requirements**

The low parole release rate and the antiquated parole statute should be addressed by the Legislature, but the Public Protection Executive Budget is not the best way to consider them. Reductions in the size of the parole board save little money and assume that reductions in the parole-eligible prison population can translate to reductions in the number of parole commissioners. Parole Board members already spend much too little time fully considering each case, sometimes reviewing the file only after the incarcerated person is sitting in front of him or her. If we really want to reduce prison populations, we should be focusing on selecting qualified parole commissioners based on training and temperament, focusing on individuals who believe that people can change and are not perpetually second-guessing judges and re-sentencing individuals based on subjective criteria not subject to review. As the proportion of parole-eligible individuals increasingly tilts toward individuals serving A-1 and very long sentences, the depth of training and insight needed to be effective, and the amount of time they need to devote to fully consider the cases before them, increases. Our Parole laws are out of date, and rather than cut the number of parole commissioners, we ought to be improving the appointment process and training requirements, and modernizing the criteria to consider and measure the person who stands before the board TODAY.

- **Support Effective Prison Programs and Reentry Units**

Prison programs should – and DOCS and Parole are trying to make sure that they do – insure that each person leaves with valid social security and ID documents and medication. We are not quite there yet. People on parole are expected to work, but prison work is not always the best preparation. Training in customer service and data technology should be available for everyone nearing release IN ADDITION to any vocational or educational or treatment programs pursued during incarceration. Those with chronic medical conditions or a parole condition mandating substance abuse treatment should leave with medication, Medicaid and an appointment. Reentry units at Queensboro, Bayview, Hudson and Orleans should be expanded and fully funded, including access and inclusion of families and contracts with community-based organizations for in-reach, mentoring and linkage to community-based services, including employment.

- **.Support Justice Reinvestment and Strengthening Communities**

If we reduce prison populations and related costs, through prison closures, alternatives to incarceration, and parole reform, we should reinvest the savings in maintaining programs in prison, and providing ATI and reentry services through the nonprofit sector.

We should be strengthening existing community and faith based organizations and networks that already exist in these communities. I happen to support Government Run Health Care, and even Government Run Public Protection. We are not looking for private prisons, but sometimes our law enforcement and court systems undermine the naturally occurring self-regulation that communities need and that is supported by local CBO's, houses of worship, community health care and self-help groups. And all of our public and private institutions need to be family-friendly and child-supportive.

Thank you,

Elizabeth Gaynes
Executive Director

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Empire Justice Center

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**Joint Legislative Public Hearings on the
2010-11 Executive Budget Proposal:
Public Protection**

Albany

February 8, 2010

Presented by:

Anne Erickson

President and CEO, Empire Justice Center

Good afternoon and thank you for the opportunity to testify on 2010-11 Executive Budget. My name is Anne Erickson and I am President and CEO of the Empire Justice Center. A member of the Legal Services Funding Alliance, the 20 civil legal services providers outside New York City, 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 backup 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 legal assistance to those in need and undertake impact litigation in order to protect and defend the rights of disenfranchised New Yorkers.

As many of you know, we have helped lead the effort to secure state funding for legal services programs across the state since 1993. We worked with you through the years of the Pataki administration, including the year when state funding was completely lost to gubernatorial veto. We worked with you through the bare bones budget following the attacks of 9-11. We worked with you during years of increased funding and the creation of the Legal Services Assistance Fund in 2003. We worked with you last year as the new Senate Majority joined the long-term supporters of legal services in the Assembly and included a new funding for legal services in the final budget last year.

It is from this history that we believe this is the most critical year we have ever faced in terms of access to justice and the support needed by the legal services delivery system.

Most years we confront the need to restore state funding to the budget. This year we confront that and so much more. We are facing a triple whammy: the elimination of over \$13 million from the Executive Budget that had been in last year's budget; a dramatic decline in funding from the Interest on Lawyer Account (IOLA) fund; and an unrelenting increase in people desperately seeking legal assistance as the economy continues to strip them of the ability to hold onto their jobs, homes and their economic stability.

The Need for Legal Services

It is important to remember why we need legal services: it is our effort to ensure access to justice. Justice and the rule of law our fundamental to our democracy. For most of us, our interactions with the law are few and far between. Perhaps we need a lawyer to close on a new home or to put our wills and estates in order. For those living on low or moderate incomes, the law plays a critical and often on-going role in their lives. The law determines their access to critical benefits; it defines their protection from eviction and foreclosure; it establishes their right to health care and food assistance. Many laws touch the daily lives of those on the economic edge in the most fundamental of ways.

The law in general is complicated, dynamic and ever changing. The areas of law that most impact poor, low and moderate income households are exceedingly complex. Take Medicaid with its

vast and intricate eligibility rules, asset tests and application processes many of which vary based on age, income level and household size. It can be an exceedingly difficult application process - one in which a denied application can literally threaten one's very life or the health of one's children. The laws governing unemployment benefits, disability assistance, public assistance, immigration, domestic violence, consumer protections, evictions, foreclosures, public housing and family law are equally complex.

These are dynamic areas with constant change in law, rule and regulations. For example, in 2009, the Office of Temporary and Disability Assistance (OTDA) which oversees basic public benefits issued 24 administrative directives, 24 informational letters and 36 general informational messages clarifying and interpreting the rules of the system. The Department of Health issued four administrative directives, 29 general information notices, an additional nine just on Long Term Care and two informational messages. Add to these two state agencies the many directives from other state agencies and any number of federal agencies and the scope of constant clarification and interpretation becomes apparent.

Appropriately, into this mix, we build due process provisions and legal avenues for those adversely impacted by decisions made by those overseeing these benefits of health, safety and economic security. We enable individuals to appeal denials and terminations before a neutral decision-maker.

Now imagine confronting these issues and trying to navigate these legally complex arenas, without the benefit of counsel. As the New York State Bar Association noted in its report on the legal needs of New York's low income populations in the late 1980's:

few middle class Americans would represent themselves in court if their access to shelter, income, food or clothing were at issue... Yet, the poor are confronted by such problems repeatedly and are often defeated due to the lack of counsel...¹

Or as Chief Judge Jonathan Lippman noted last month in his testimony before the joint Senate and Assembly hearings on the IOLA crisis:

"Many of us cannot even begin to imagine what it would be like to have to fight for life's most basic necessities – shelter, personal safety, food, income, health services – much less to have to go it

¹ New York State Bar Association, *The New York Legal Needs Study*, Albany NY (1990, revised 1993). This comprehensive statewide review, combining field visits, research and direct interviews with over 400 low income households, defined a "legal need" as a situation "that an experienced attorney would recognize as potentially amenable to legal relief and would, therefore, merit an attorney's professional attention and advice."

alone, without the help of someone with legal training. For these vulnerable New Yorkers, civil legal services are the ultimate safety net- often the only means by which they can keep their lives afloat.²

The Cost-Effectiveness of Legal Services

Not only are legal services part of our social safety net, not only do they address one of our core values by ensuring some access to justice, they are also cost-effective for the state as an investment.

- **Client Benefits:** In 2006 civil legal services generated **\$131 million in benefits for their clients, a return of 93 cents on the dollar.** The majority of the benefits flow almost immediately into state and local economies resulting in **sales tax revenues and business income to state and local businesses.**
- **Leveraging Federal and Private Funding:** legal services leveraged over **\$29 million in federal funding, and over \$34 million in private dollars** to provide legal assistance to low income clients resulting in **payroll taxes, health benefits, rent, utilities, and staff salaries paid here in New York.**
- **Increasing Child Support Payments:** legal services programs generated a total of **\$12,391,387 in child support payments to clients in 2006,** increasing family resources and thus decreasing the need for publicly funded benefits including public assistance and child care subsidies.
- **Maximizing SSI/SSD payments to clients and to state and local government:**
 - ✓ **In 2007 DAP advocates generated \$24,494,483 in retroactive awards for their clients and \$7,620,771 in interim assistance for benefits provided for the State.**
 - ✓ According to the **Office of Temporary and Disability Assistance's** most recent Biennial Report to the Legislature, it is estimated that in 2005 **DAP generated \$10.5 million in public assistance cost reduction, resulting in a net gain of \$14.6 million for the state and localities, more than twice the initial investment.**
- **Maximizing Food Stamps -** For every family of three who receives Food Stamps, as much as **\$5,556 in federal dollars is generated** in nutritional support and subsequent expenditure in the local economy.
- **Avoiding the High Cost of Homelessness:** In 1999 legal services providers helped a total of 48,014 adults and children avoid homelessness. We estimate that **for each family in New York City that avoids eviction as a result of civil legal services representation, \$31,215 in savings is generated.** Savings around the state will vary, but are still substantial. One study estimates a **\$4 savings for every \$1 invested.**

² Testimony of Chief Judge Jonathan Lippman at the January 7, 2010 Senate and Assembly Hearings on IOLA and Civil Legal Services.

- **Averting Foster Care Costs:** For every child a legal services program is able help keep out of the system, government will save an average of 16,200, at bare minimum. For many children, the savings would be much higher - as much as \$48,600 for children without special needs, and much more for those who have disabilities or need therapeutic care.
- **Creating Efficiencies in the Courts:** Civil legal services program resolve an estimated two out of three client problems by providing advice or non litigation services. Increasing the availability of legal services will help cut down on the number of cases that wind up before a judge unnecessarily.

New York's Approach to Ensuring Access to Justice

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 now the growing need for legal assistance among more moderate income households as they confront the legal morass of foreclosures or perhaps their first denial of needed benefits.

For far too long, New York's commitment to ensuring access to justice has been a legislative commitment only. Every year the Governor strips all funding out of the budget as he prepares the Executive Budget; every year the legislature restores these critical funds.³ Sadly, this year is no exception. Even the scant \$1 million that Governor Paterson had in his Executive Budget last year is eliminated.

Over \$13 Million - All of Last Year's Funding for Civil Legal Services - Eliminated

- \$4.2 million, Department of State, Assembly add
- \$4.4 million, Department of State, most targeted to civil, new Senate funds
- \$2.4 million Legal Services Assistance Fund, Division of Criminal Justice Services, Assembly add
- \$1.2 million for Domestic Violence Legal Services, Senate and Assembly
- \$1 million Legal Services Assistance Fund, Governor

We should note that the Senate Majority also used a portion of the Legal Services Assistance Fund to expand the District Attorneys' Loan Repayment Assistance Program to include all public interest lawyers, including those working in legal services programs.

We urge the Legislature to restore these crucial access to justice funds.

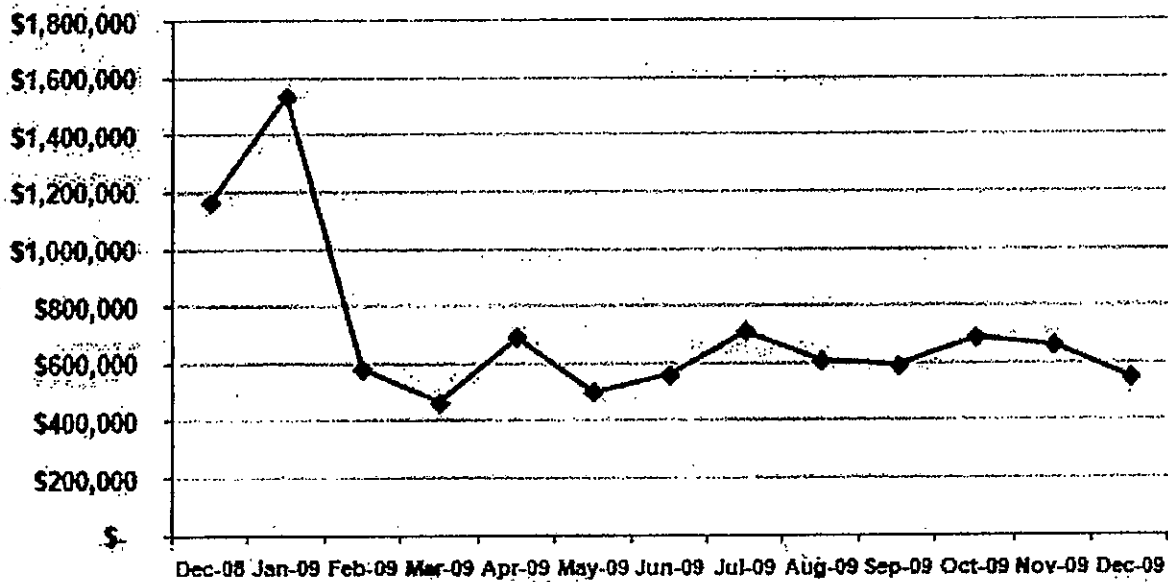
The Looming Crisis in IOLA

³ 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.

Created in 1983, the Interest on Lawyer Account Fund (IOLA) “requires attorneys to deposit funds received from clients either in interest bearing accounts for the benefit of the clients or in interest bearing IOLA accounts, in accordance with the provision of the statute (Judiciary Law §497). The interest on IOLA accounts is pooled and provides the money for grants made by the Board of Trustees of the IOLA Fund to non-profit civil legal services providers across the state.”⁴

The interest earned on these pooled funds provide a critical source of support for civil legal services. Unfortunately, with interest rates hovering near zero since 2008, IOLA’s earnings – and therefore its grant-making capacity -- are down dramatically. Last year, IOLA made \$24.8 million in annualized grants to legal services programs across the state. IOLA revenue is projected to drop to approximately \$6.5 million for the period April 1, 2010 through December 31, 2010

Interest Income as of December 31, 2009



The Response of the Unified Court System and the Office of Court Administration

In response to this looming crisis, Chief Judge Lippman included a \$15 million appropriation in the Unified Court System’s budget for 2010-11. These funds, already included as part of the Executive

⁴ About IOLA: <http://www.iola.org/about.html>

budget submission and therefore already accounted for in the underlying financial plan, will be sub-allocated to JOLA, allowing the Fund to maintain current grant levels in the coming year. Without this rescue, there will be a complete meltdown in the delivery system

It is critical that the Legislature maintain this appropriation in the final budget.

Revenue Options

To generate the level of funding needed to adequately fund legal services will require a combination of new revenue from dedicated sources like fees and fines and an increased general fund commitment. Just as the health or education system are not be expected to be self-funding through fees and charges neither should the justice system.

Clearly new revenue sources must be identified and secured. Most states that fund legal services in any significant way do so through a combination of general funds and fees or fines. Using fees to support legal services is not entirely new. In 2003, the Legislature, at the urging of the Assembly, created the Legal Services Assistance Fund by dedicating a portion of a fee increase; in this case the fee imposed to conduct a criminal records search.

The American Bar Association's Resource Center for Access to Justice Initiatives is currently updating its data on how states fund legal assistance. Its most recent compilation shows that California generates over \$6.7 million from court fees and fines and provides \$11 million through general state funds to support legal services.⁵ Connecticut recently approved \$7.7 million in new or increased court fees to support legal services in addition to its \$1 million appropriation of general funds. New Jersey now provides over \$29.5 million in funding for legal services through a combination of court fees and general fund appropriations. Texas generates \$9.77 million through court fees and the state recently approved \$10 million in general state funding over two years to replace lost IOLTA funds.

While we do not want to impose fees that will limit access to justice, we believe at this point, no revenue source should be "off the table" until a full review has been conducted of anticipated revenue levels as well as any real adverse impact such a revenue stream may have on access to justice.

The Lack of an Institutional "Home" for Civil Legal Services

Access to justice is not some special interest, but an obligation of the state to meet the core values of our democracy. Unfortunately, as noted, the Legislature has basically been alone in ensuring access to justice. They are joined in a very significant way this year by the Judiciary.

⁵ This is California's base funding for legal services and does not include the new fee-generated funding expected to raise an additional \$10 million to fund a number of right to counsel pilot projects in the coming year.

New York first provided general support for the delivery of legal services in 1993 when the Assembly Majority responded to that day's dramatic decline in IOLA funding. One of the criticisms of New York's approach to state funding since then is that it is purely driven by legislative add-ons. Frankly, we consider this a blessing because were it not for the Assembly Majority's legislative adds over the years there would not have been any general support for the delivery of legal services in any state budget over those many years. So we again thank the Assembly and we thank the Senate Majority and the Judiciary for taking a new leadership role on these issues.

Now is the time to move this funding process more formally and permanently into the initial budget making process so that the state's investment in access to justice finally and appropriately becomes part of the base budget of the State of New York.

We believe this will require an entity within state government that has clear budget making authority and is at the table from the start of the budgeting process. We believe the appropriate "home" for civil legal services within state government is with the Office of Court Administration (OCA).

Funding for civil legal services must become part of the core state budget.

A Note on the State Contracting Process

This is directed more to your role as monitors of state funding, but as we meet here today on February 8, 2010 we have yet to receive a single penny of the over \$13 million included in the 2009-10 state budget for legal services. We all fought long and hard to restore those funds and we have been fighting since last summer to move those funds out into the community where they are so desperately needed.

We understand the state is trying to manage its cash flow, but it is being done by starving the non-profit sector. While we may have a "prompt" contracting law on the books, given what we have been through this year that law, as best I can tell, it is meaningless. We would welcome an opportunity to work on strengthening its provisions – and its enforcement mechanisms.

The Impact on Empire Justice

For the Empire Justice Center, state funding is a critical part of our annual budget. We have been the support center for legal services programs outside New York City since 1973. Until 1996, state support centers were funded as part of the federal infrastructure for legal services through the Legal Services Corporation (LSC), one of the three core funding streams that to this day support the delivery of legal assistance. In 1995, a Congress hostile to legal assistance for the poor, severely cut LSC funding, imposed a number of practice restrictions on those programs receiving LSC funding, and

eliminated all funding for state and national support centers. We lost one-third of our budget in a single year and we have struggled to maintain our services ever since.

The lack of federal funding for support services makes state funding even more critical.

Urgent Recommendations:

Avoid disaster. We face a disastrous dislocation of services if something is not done to back-fill the \$15 million that has been lost due to the historic near-zero interest rates currently being paid on IOLA accounts. Supporting IOLA to maintain existing funding levels will help avoid complete meltdown in the legal services delivery system.

Support the \$15 million proposed in the Unified Court System's budget. This is not an expansion or an increase in funding -- it will simply allow the maintenance of current efforts.

Protect the base. Restore and maintain all current funding, including the Assembly's on-going support and the Senate Majority's new financial commitment.

This cannot be a zero sum game where funding provided to IOLA to avert disaster leads to reductions in other critical funding.

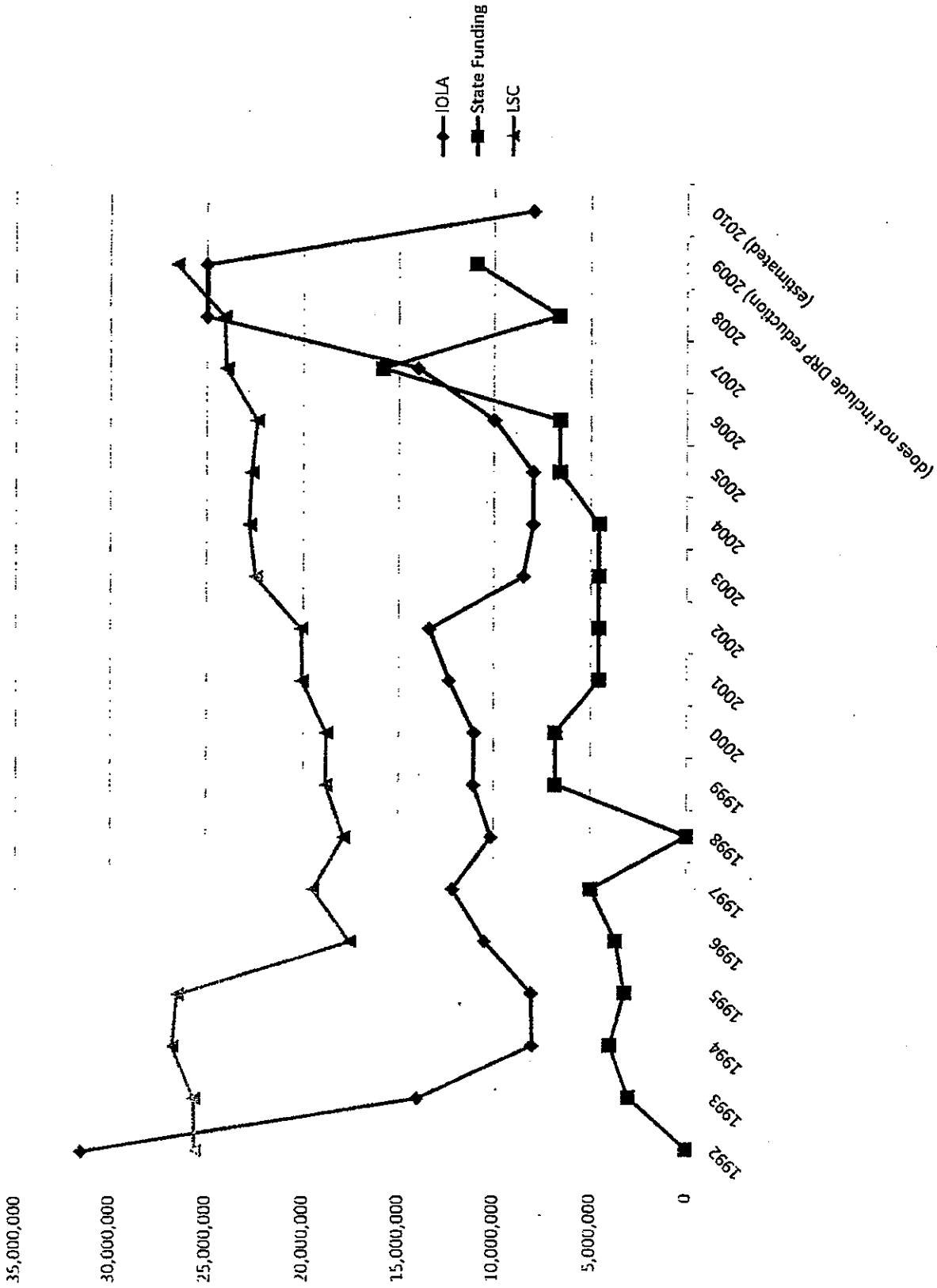
Create a Permanent Infrastructure. We must create a more stable permanent funding stream for legal services. We cannot continue with the "wipe out and restore" process we go through every year. We know this will require support from the Governor but it will also depend on your leadership and we look forward to working with you to make this happen.

Investigate the Contracting Process. We simply cannot operate in any reasonable fashion when we spend so much time, effort and energy trying to move the state contracting process. Nor can we afford to carry the state's obligations. Something must be done to ensure that the state honors its obligations in a timely fashion.

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

History of Core Funding Sources for the Provision of Civil Legal Services in New York 1992 to 2009



15

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 2010-2011

February 8, 2010

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)
Project Greenhope for Women
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 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's highly effective network of probation, ATI, reentry and related programs (pre-trial services, defender based advocacy, client specific planning, community service sentencing, addiction and mental health treatment diversion programs, TASC, legal and employment assistance, family case management) plays a key role in keeping our state one of the safest in the country. It is no coincidence that New York has the largest network of ATI programs and – unlike California and Texas – has seen crime and incarceration rates plummet simultaneously, improving public safety while saving lots of money. Through monitoring and supervision, overseeing and imposing sanctions, and intervening to prevent future crime, all at a fraction of the cost of incarceration, these programs protect public safety and save New York tens of millions of dollars every year.

While we recognize the difficult economic circumstances facing the state, **the Legislature must continue its support of ATI and related programs and Probation to preserve their ability to operate and to keep crime rates low, strengthen families and communities, and save large amounts of money.** Additionally, the momentum of last year's landmark reforms of the Rockefeller Drug laws relies on an effective ATI and reentry network to meaningfully realize the goals of reform.

We therefore urge the Legislature to take the following steps:

Restore Cuts to Probation, Alternative-To-Incarceration, Reentry and Related Programs

New York State's ATI, reentry, and related programs and Probation have played a key role in designing, developing and implementing safe and effective community-based programs that reduce the use of incarceration and facilitate productive and safe reentry. New York's programs are national models. Yet, the ATI Demonstration Projects received a 12.5% cut during last year's Deficit Reduction Plan and additional ATI, Reentry and probation have been cut 10% resulting in almost \$1.3 million dollar loss to the field.

We urge the Legislature to restore funding for ATI programs to enable these programs to continue their cutting edge work, including diversion, supervision, punishment and rehabilitation in community settings and case management. Cutting these programs makes no sense at a time when New York State is in the process of creating a number of initiatives to continue reducing its prison population, including by diverting individuals into drug treatment as part of the Patterson Drug Law Reforms that the Legislature succeeded in passing last year, as well as through the State's efforts to reduce the numbers of individuals being re-incarcerated due to technical parole violations. Cuts to ATI, Reentry and related programs, now in the beginning stages of the implementation of drug law reform is akin to building new floors on a house that is at the same time having its foundation pulled out—the infrastructure support must be maintained.

ATI and reentry and related programs are already experiencing increasing demand because of the reforms. These programs play an integral role in all aspects of reform, especially in working with the drug courts, court advocacy, screenings and evaluations, working with both defense and prosecutors,

on resentencing cases and through reentry task forces. And as ATI and reentry programs adjust to the landscape that has been changed by reform, these programs continue to serve thousands of men and women – the vast majority people of color – who can be appropriately supervised in the community to be diverted from much more expensive prison beds into less expensive community supervision and appropriate community services. It would also assist individuals who are released from facilities to reenter the community successfully, thereby reducing the likelihood of recidivism.

These programs play a key role in increasing the likelihood that individuals who are diverted from incarceration or who are reentering the community from prison will succeed in avoiding recidivism and becoming productive members of society, thereby reducing long term costs to the state.

Therefore, restoring the \$1.6 million in cuts that are being made to these programs is a wise investment that is likely to result in vastly more significant cost savings to the State.

Support the Governor's Initiative to Close Three Prisons and Consolidate Dorms.

Since 1999 the Department's under-custody population has fallen by over 12,000 and expected to decline by over 13,000 by the end of the current fiscal year. We urge the Legislature to support the Governor's recommendation for closing three prisons in early 2011. We encourage the Legislature to support these closures and to continue looking for any other areas of excess capacity within the Correctional system that could also be closed or consolidated. The amount of excess capacity is likely to continue increasing as a result of the Legislature and Governor's courageous reforms to

New York's Drug Laws last year, as well as efforts to reduce the number of technical Parole violations.

Across the nation, states are examining and in some cases, implementing Justice Reinvestment that seeks to reduce spending in corrections, improve public safety and channel resources to address the needs and services in communities to which most people return after prison. In this vein, we urge the Legislature to look to savings from these closures as a source for reinvestment in the ATI, Reentry and related programs so that the network of these services can increase their capacity, which would result in ever greater reductions to the Correction system and additional savings to New York State.



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TESTIMONY BEFORE JOINT LEGISLATIVE HEARING
ON PUBLIC PROTECTION

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February 8, 2010

Legislative Office Building, Albany, NY

Assemblyman Farrell, Ways and Means Committee Chairman. Senator Kruger, Finance Committee Chairman. Members of the Committees. My name is Larry Evans and I appear here today as the Legislative Chair of the New York State Probation Officers Association (NYSPOA). I'm honored to have this opportunity to discuss Probation Services as we enter a new budget year.

Of all the charges of our various levels of government, perhaps none is more important than security and safety. In this age of both domestic and terroristic threats, it is of paramount importance that the agencies responsible for public safety are functioning at their maximum effectiveness. Due to the dire fiscal situation at all levels of government, this challenge is heightened.

The NYSPOA, a professional organization of Probation Officers with the common goal of increasing public safety, raising awareness, and promoting professionalism in the field of community corrections, has long advocated for a unified Criminal Justice Policy for New York State. Such a policy would clearly define the roles of Probation (both Family Court and Criminal Court), Local Jails, the Department of Correctional Services, Parole, and various Alternatives to Incarceration Programs, in the State's Correctional System.

The 2010-11 Proposed Executive Budget appears to be moving away from a unified Criminal Justice System. Specifically, three major proposals regarding Probation Services would potentially encourage the 58 Local Probation Departments to focus primarily on their localities, with minimal concern for the system as a whole. It cites the falling prison population due to "real reduction in crime", but fails to recognize the role Probation has had in crime prevention and diverting offenders from prison. These proposals, which the NYSPOA is opposed to are:

- 1) merging the Division of Probation & Correction Alternatives (DPCA) into the Division of Criminal Justice Services (DCJS);
- 2) the distribution of Aid To Localities and several Alternatives To Incarceration Programs through Block Grants to localities, and;
- 3) a 10% reduction in the funding allocated for localities in the proposed Block Grants.

Probation Services represent the single largest component of the Criminal Justice System. They supervise over 120,000 adult offenders, which is more than DOCS and Parole combined. Furthermore, they provide preventive services for the Family Courts and divert juveniles from detention. Being at the front-end of the Correctional System, Probation Services are in the best position to prevent further victimization by addressing the needs of offenders. By preventing unnecessary incarceration and detention, Probation Services also have had a significant role in reducing the high cost associated with jails, prisons, and juvenile detention. This very important role in the State's Criminal Justice System

Because of Probation's vital role in Criminal Justice, the Division of Probation & Correctional Alternatives (DPCA) should remain an independent agency. Unlike the Division of Criminal Justice Services (DCJS), DPCA is a regulatory agency, which oversees local Probation Departments and ATIs. Worth noting is that the other two agencies which have been recommended for merger with DCJS, i.e. the Crime Victim's Board and the Office for the Prevention of Domestic Violence, are service agencies.

Historically, Probation Services had been a "50-50" partnership between the State and Local Governments until approximately 1990. Aid To Localities had been based on a percentage, which rarely went below about 46.5%. Since then, with the budgetary view that Probation Services are a local issue, Aid To Localities has been based on specific fiscal allocations. This has led to a drastic reduction in the percentage of State Aid for regular probation caseloads because of the annual budgetary increases in local Probation Departments. Many Counties have had to drastically increase their probation budgets in order to prevent laying off Probation Officers. Even when the State Police and DOCS saw increases in funding to battle crime and Probation Departments were given additional responsibilities, Aid To Localities for Probation Services continued to decrease. This has led to the current situation whereby the State reimbursement rate for Probation Services is approximately 15%. With the current fiscal situations in both the State and Local Governments, it's unknown as to whether or not Local Probation Departments will be able to make up the possible 10% decrease in State Aid without laying off Probation Officers. If the latter occurs, Public Safety will most certainly be compromised because caseloads will rise and criminals will have less accountability.

Local Probation Departments perform duties which serve the State as a whole. They are required to conduct presentence investigations on all inmates sentenced to DOCS. In fact, DOCS will not take an inmate without such an investigation. Parole also uses presentence investigations conducted by Local Probation Departments. Probation Officers collect samples for the DNA Database and as the direct result of this service, 78 homicides have been solved. With the passage of Rockefeller Drug Law Reform, cases which are now being diverted from prison, have become eligible for probation supervision. And with the passage of "Landra's Law", Probation Departments will be taking on more responsibilities with additional offenders being sentenced to probation for Driving While Intoxicated and being ordered to comply with mandatory ignition interlock devices on their vehicles. In the near future, the Integrated Probation Registrant System (IPRS) will ideally share information with the Department of Motor Vehicles and New York State Police Information Network (NYSPIN), which would allow tracking of probationers who leave their Counties without permission and also enhance Police Officer Safety.

The proposal to create a "Probation Aid Block Grant" would combine Aid To Localities and three Alternatives To Incarceration (ATI) Programs: Adult Intensive Probation Supervision (ISP); Enhanced Supervision of Sex Offenders (ESSO), and; Juvenile Risk Intervention Services Coordination (J-RISC). Other ATIs, including Probation Eligible Diversion (PED), would remain as individual grants. These ATIs are traditionally reimbursed at a higher rate than Aid To Localities. The new "block grant", along with the other criminal justice grants would be reduced by 10%. Although the Proposed Executive Budget cites "mandate relief" as "partially mitigating" the \$5.2 million cut in aid to local probation Departments, the negative impact is expected to far exceed any advantages incurred from the proposed "mandate relief". It is not clear how the "Probation Aid Block Grant" would be distributed to local Probation Departments, since the current provisions of Section 246, Executive Law would be replaced by "rules and regulations" adopted by the Commissioner of DCJS. Furthermore, it is unclear what these yet un-adopted rules and regulations would take into account for Counties that implemented Adult ISP, ESSO, and/or J-RISC type programs, since the Governor's Proposal indicates that they "may" reimburse local Probation Departments "additional State Aid" for such diversion programs. Between the 10% loss State Aid in the proposed "block grant" and uncertainty of additional fiscal support for ATIs, it is possible that local Probation Departments will become more focused on local issues. With County Governments and the City of New York paying over 85% for regular Probation Services, the potential of having 58 Probation Departments with minimal interest in the State's Criminal Justice System is great. The long-term consequences of this may be more (unnecessary) use of prison and juvenile detention, which would more than negate any of the short-term fiscal savings.

The NYSPOA continues to advocate for a long-range Criminal Justice Policy. This would maximize effectiveness of Probation, Juvenile Detention, Jails, Prison, and Parole, which would in the most cost effective manner, enhance public safety. Within such a plan, Probation Services would be funded at or near the "50-50" State Local Partnership of the past.

Prior Executive Budgets have proposed various "mergers" and "Block Grants" through the years. But the Legislature has historically denied their enactment. The NYSPOA encourages both the Assembly and Senate to oppose these proposals in the 2010-11 Executive Budget.

Thank you for holding this very important Public Hearing and the privilege to testify before it.

PROBATION PROTECTS...PROTECT PROBATION

Larry S. Evans
Legislative Chair

18

Joint Legislative Public Hearing

February 8, 2010

Testimony of

Thomas L. LaBelle, Executive Director
New York State Association of Fire Chiefs

Good Afternoon:

Thank you for the opportunity to present out support and concerns with portions of the governor's proposed budget to you today.

Although outlined in detail below today we provide information on:

- Our conditional support of the governor's "all hazards" approach to government reorganization.
- Our concerns with the removal of some boards that provide input into the policy making process.
- Code enforcement is primarily a function of public safety and as such the connection between the Office of Fire Prevention and Control and code training and enforcement must not be diminished in this budget
- Removal of the current method of distribution of the annual \$10 million in 911 funds also removes any motive or support for improving county 911 systems.
- We must find dedicated funding streams to provide for the equipment, staffing and training of career and volunteer departments.

Members of our organization have long advocated for the consolidation of state emergency services agencies as a means to improve and streamline the coordination of state resources and response. The Emergency Services Council was formed through state legislation in the late 1990s to facilitate these objectives, while the state agencies remained intact and relatively autonomous. We believe that the lines of communication between the agencies showed some improvement, and the

Council ultimately provided municipal and county level departments with a previously unavailable mechanism to influence and strengthen the coordination of state services. Unfortunately, the events of 9/11/01 diminished the Council's relevance, as a new Office of Public Security (predecessor to OHS) and a Weapons of Mass Destruction Task Force were formed to quickly address and manage new, unprecedented and complicated federal homeland security priorities and funding opportunities. The emergency services, as a whole, were consequently, temporarily and reactively transformed into a terrorism response force, but were ultimately reawakened and re-focused toward an all-hazards approach in the wake of the Hurricane Katrina and Rita response. Clearly, the needs and responsibilities of the first response community as a whole have greatly expanded in this decade, and the lines of authority and communications between the state agencies and local and state responders have been further blurred and complicated.

The proposed consolidation of departments is a strong step in the direction of improved coordination and cooperation between the agencies, but in and of itself, the merger does not ensure that the obvious "disconnect" that also exists between state and local levels will be improved. The Commissioner and his/her affiliated departments will need to actively engage and routinely consult with the first response community to ensure that the delivery of state emergency services is effective and responsive. A formal, all-hazards type council that recognizes and incorporates local government/response perspectives could support these needs and ensure that state efforts correctly support those who truly are the first responders.

There is little doubt that the potential benefits to be realized in the efficient coordination of programmatic initiatives, the ability to leverage grant funding across disciplines, the streamlining of information sharing in a singular bureaucratic structure with defined lines of authority and accountability and the efficiencies gained by the sharing of administrative resources make this a promising proposal. At the County level the move to combine the responsibility for Fire, Emergency Medical and Emergency Management response into "Emergency Service" agencies

has gradually grown to the point where this has become of the predominant form of organizational structure. That being said however there are still a number of issues that demand clarification and specification.

The training and certification of personnel charged with enforcing the State's Fire Prevention codes should continue to be the responsibility of the Director of Fire Safety. Codes enforcement is the first line of defense in the arsenal of fire suppression forces enhancing the survivability of our citizenry from the deadly effects of fire while also reducing the risks of injury and death to those responsible for battling those fires.

The deployment of fire service resources should remain the exclusive prerogative of the Director of Fire Safety. The fire service in New York State has a long and well established history of successful mobilizations of the statewide fire mutual aid system for a wide range of both natural and manmade disasters. The protections afforded in General Municipal law that have evolved over the course of successive mobilizations are notable in their specificity and are an enviable model to other proposed mutual aid compacts and cooperative intermunicipal agreements. Unfortunately these protections are still unique to the fire service and need to be carefully guarded until commensurate protections can be codified by statute to protect the responders from other disciplines.

The provision of local and regional fire service training to local fire and rescue first responders remains the most important function of the Office of Fire Prevention and Control. The constancy of fiscal support for this mission must be an essential element of any reorganization scheme and the commitment of the state to this essential service should be clearly specified in statute. The historical reliance upon insurance policy surcharge revenues to support the field training program has ameliorated some of the potential vagaries of budget contractions as competition for constricted general revenue appropriations occur. A statutory commitment to this funding mechanism or some similar funding mechanism that is at least

somewhat insulated from the cyclical nature of general fund fluctuations should be given serious consideration.

The proposed funding of \$50 million in the first year, and a continuing appropriation of \$75 million thereafter, toward the development and maintenance of county-based regional radio systems is an important first step toward the creation of workable and sustainable communications systems that will meet the needs of both state and local responders. This investment of state funding, however, will only account for a portion of the needed dollars to make these systems a reality. Consequently, for these systems to develop and perform, local governments will need to commit to their construction and maintenance. A commitment of long-term state assistance, in the form of shared wireless communications surcharge monies, will get these efforts moving.

The Executive and Legislature should consider amending the bill to provide for formal working groups under the proposed Interoperability Board that can devote substantial subject matter expertise, advice and input toward (1) Interoperable Communications Planning, (2) 911 Systems and Standards, and (3) Radio Communications Systems Infrastructure design, coordination and integration. The proposed board cannot possibly meet these needs as ambiguously proposed.

Finally, the bill repeals sections of County Law that provide \$10 million annually to county government public safety answering points (911 Centers) for reimbursement of expenses related to the provision of wireless 911 answering costs. The loss of these funds will negatively impact their ability to keep pace with the rapidly changing technology and developing "next-generation" 9-1-1 enhancements. We urge you to maintain this funding stream by leaving the reimbursement mechanism in the County Law and amending its language to reflect the new state communications structure. We believe this is a neutral impact, as the allocation of 10 million dollars has remained in the Taxation Law.



TESTIMONY OF LEGAL SERVICES NYC

ON

THE 2010-2011 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:

**ANDREW SCHERER
EXECUTIVE DIRECTOR AND PRESIDENT
LEGAL SERVICES NYC**

FEBRUARY 8, 2010

Andrew Scherer
Legal Services NYC
February 8, 2010

"I am seeing the ripple effects that destroy the family structure,"
Hon. Pam Jackman-Brown (Family Court, Queens County)¹

Good afternoon. My name is Andrew Scherer and I am the Executive Director and President of Legal Services 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 Legal Services NYC, and the people we serve, to thank you for the tremendous support we have received, especially over the long-term from Assembly Member Weinstein and the Assembly leadership and more recently from the Senate Democratic Leadership, both in terms of funding for civil legal services to the poor and ensuring the poor have a voice in state government. In that continuing effort, we are also here to ask that you restore funding for Civil Legal Services to the FY2009-2010 level, to continue to vigorously support the inclusion of \$15 million in the state budget to address the shortfall in IOLA funds, and to ensure that a stable source of funding for civil legal services becomes a part of the New York State budget.

WHO WE ARE

With 18 community-based offices and numerous outreach sites located throughout the city's five boroughs, Legal Services 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 Legal Services NYC's central office, which provides expert litigation and advocacy support as well as Continuing Legal Education (CLE) programs and trainings that are available to New York City's greater poverty law community.

¹ William Glaberson, "The Recession Begins Flooding Into Courts Nationwide," The New York Times, December 28, 2009, A3, Col. 2.

**CRUCIAL FUNDING FOR CIVIL LEGAL SERVICES
MUST BE PUT IN THE FY2010-2011 NEW YORK STATE BUDGET**

This year we are confronting a crisis in The Interest on Lawyer Account (IOLA) Fund of the State of New York because of the “perfect storm” of historically low interest rates and the decline in the real estate market. As a result, IOLA has suffered a 75 percent decline in funding revenues. Because IOLA is a vitally important aspect of civil legal services funding statewide, we are deeply appreciative of your support of the proposed \$15 million appropriation in the Judiciary’s budget for 2010-11 which will supplement the substantially diminished IOLA funds and help ensure the continuation of critical legal services over the next several months. Further, we wish to once again publicly thank Chief Judge Lippman of the New York State Court of Appeals for his tremendous support and vision on this issue.

But that alone won’t fill the gap. New York State lags far behind other states in its support for the delivery of civil legal services (CLS). The State began funding CLS in 1992 and until last year, with the exception of 2007, annual State *general fund* support for civil legal services has been limited to an Assembly legislative add of roughly \$4.2 million. In fiscal year 2009-2010, we were very pleased that the New York State Senate, under new leadership, was able to demonstrate its strong support through an appropriation of \$4.4 million for legal services.

In the “Great Recession” that New York State is now experiencing, it is critically important that the Legislature maintain its commitment to free civil legal services for the poor by renewing all current funding.

And, as recognized by both the Senate and Assembly in a series of hearings held by both houses on Access to Justice, the Legislature and the civil justice community must work together to figure out the best way to create a stable long-term permanent state funding source.

THE NEED FOR CLS CONTINUES TO GROW

“People who have lost their jobs, or have taken a lesser-paying job, are not able to make their mortgage payments. People in default of their credit cards may have gotten a job but they can’t accumulate enough money to pay back what they owe plus interest.”

Hon. Philip G. Minardo (Supervising Judge, Richmond County)²

The “Great Recession” has hit New York State, the financial capital of the world, extremely hard—and our client population the hardest. With massive lay-offs over the last year, unprecedented numbers of people requiring unemployment insurance, and off-the-charts rates of foreclosure, the low-income people and communities that we serve are suffering more now than at any time since the Great Depression.

² Jeff Harrell, “Empty Pockets, full dockets: Foreclosure filings, family cases soar as economic woes come to roost in Island courts,” The Staten Island Advance, January 24, 2010, A1, Cols. 4-5.

For example, as the unemployment rate has continued to climb citywide, many are now at the stage of exhausting their unemployment insurance benefits and facing 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. Moreover, Unemployment Insurance hearings currently have a backlog of up to 12 weeks—not surprising, given that New York City had an unemployment rate in December 2009 of 10.1 percent, with some parts of the City, like East New York, Brooklyn, approaching an unemployment rate of 20 percent.

Statewide home foreclosure filings increased 17 percent in 2009, to 48,127 filings. Cases involving charges like assault by family members have increased 18 percent statewide. Consumer credit card debt continues to escalate. Civil Court cases, where most credit card debt actions occur, ballooned to 577,000 in 2009, up from 200,000 10 years ago. Food insecurity is at its highest level in 14 years, with use of food stamps in New York City ranging from 11 percent of children in Queens to 46 percent of children in the Bronx. And more homeless families are now in the shelter system than ever before.

The resources allocated to meet these enormous needs are fairly meager. More than three (3) 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, a New York State Bar Association study found nearly two decades ago that the State's civil legal services programs met less than 14 percent of the legal needs of the poor. Since that study, the rate of poverty has only continued to grow.

Not surprisingly, Legal Services 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 life-saving legal assistance that is crucial to our clients' survival is growing virtually 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, Legal Services NYC has noted, in particular, a dramatic surge in the need for Unemployment Insurance Benefits Advocacy and Foreclosure work, two of the areas hardest hit by the economic crisis:

TOTAL CASES OPENED			
	<u>2007</u>	<u>2008</u>	<u>2009 (1/1/09-11/30/09)</u>
UIB	669	959	1269
Foreclosure	41	622	1629

In the case of Foreclosure, over the last year Legal Services NYC assisted has more than 1,500 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. Almost 75 percent of the homeowners who sought assistance had adjustable rate mortgages, many with costly features like balloon payments and pre-payment penalties.

**CLS PROGRAMS PROVIDE CRITICAL SERVICES
TO ADDRESS THE LEGAL NEEDS OF THE POOR**

Legal Services 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 no where else to turn. Every day, poor families are threatened with eviction; mothers do not get the child support they are legally entitled to; victims of domestic violence have nowhere else 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. We are also working to address systemic barriers to receipt of benefits, such as Language Access barriers. We are 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, our 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 SSI and Social Security cases each year, obtaining

millions of dollars in federal disability benefits for clients—saving more than \$4 million in state and local funds.

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. Finally, statewide, civil legal services programs garner almost \$25 million dollars in retroactive disability awards for clients and \$131 million in benefits for clients, bringing millions of dollars into the State annually.

CONCLUSION

“Justice cannot be for one side alone, but must be for both.”

Eleanor Roosevelt³

We are very grateful to the Legislature for its historic leadership with respect to including funding for civil legal services for the poor in the State budget.

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.

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. Creating a permanent funding source for legal assistance in New York would be a meaningful step towards making access to justice for all New Yorkers a reality.

Thank you.

Andrew Scherer
Executive Director and President
Legal Services NYC

³ 2009 Marks the 125th Birthday of this former First Lady of the United States, great fighter for civil rights, co-founder of the United Nations, and Chairwoman of the 1963 Presidential Commission on the Status of Women

Legal Services NYC

**Bedford-Stuyvesant Community Legal Services * Legal Services NYC-Bronx
Brooklyn Family Defense Project * Brooklyn Legal Services Corporation A
Legal Services NYC Brooklyn Branch * LS-NYC Legal Support Unit
Manhattan Legal Services * Queens Legal Services
South Brooklyn Legal Services * Staten Island Legal Services**

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LEGAL SERVICES NYC SAMPLE CASE NARRATIVES**FEBRUARY 8, 2010***Foreclosure and Housing***Mr. P (Staten Island Legal Services)**

Despite falling victim to a predatory refinance loan, Mr. P managed to stay current on his loan until he became disabled and lost his construction job. He fell behind on his payments while waiting for Social Security Disability Insurance and foreclosure proceedings commenced. When he finally received his disability income, he entered a repayment plan that he was told would lead to a loan modification after a year of payments. Even though the promised modification after a year failed to materialize, Mr. P continued to make timely payments for the full duration of the three-year repayment plan. However, for the final payment the servicer demanded \$40,000, a sum which was much greater than the original arrears and which had not been disclosed in the repayment schedule that Mr. P had been given.

We determined that this extraordinary balloon payment was in part the result of unjustified servicing fees — late fees, broker price opinion fees, and property inspection fees — that the servicer, Countrywide, had been charging but not disclosing to Mr. P throughout the duration of the repayment plan. On Mr. P's behalf, Legal Services' Homeowner Defense Project filed a motion in federal court challenging the original predatory loan as well as the egregious servicing violations during the repayment plan's duration. We are also defending Mr. P in the foreclosure action in state court.

Mr. G (Staten Island Legal Services)

Mr. G was referred to us by the Community Agency for Senior Citizens. He suffers from dementia, and was misled into a series of predatory re-finances. He owned his house outright, and was manipulated by several national mortgage companies into re-financing four times and cashing out all of his equity, then told to use that equity to make the ever-increasing mortgage payments. Over and over again, despite the fact that he lived on a fixed income, the client was peddled loans with high interest rates, unaffordable monthly payments, and excessive closing fees.

Because his loan was from Indymac, which went into FDIC receivership, rather than filing suit in state or federal court, Legal Services' Homeowner Defense Project filed with the FDIC a proof of claim laying out the legal claims pertaining to the loan. We were prepared to litigate the case via the FDIC procedure. However, following an interview our client gave to CNN, in which he described what Indymac had done to him, we were able to quickly settle Mr. G's case. He remains in his home, now with an affordable mortgage.

Ms. S (Legal Services NYC-Bronx)

Ms. S was referred to Legal Services for assistance at her Fair Hearing so that she could proceed with an application to increase her housing subsidy and avoid being evicted. Beginning in February 2009, Ms. S was sanctioned for failure to attend a scheduled work appointment because she had to care for her sick five-year old child who has severe Type 1 diabetes. Ms S is required by her son's school to be present every day to check his sugar level and administer his medication. Even though the Income Maintenance Center was aware of the child's condition (Ms. S had properly filed all of the paperwork to verify her son's illness), they still sanctioned her.

At the hearing, the Legal Services advocate argued that extenuating circumstances prevented Ms. S from attending the work appointment. In addition to submitting updated medical documents, Ms. S herself testified about her child's illness. She received a favorable decision which resolved the sanction and has enabled her to proceed with the housing subsidy application, and we are currently in the process of discontinuing the housing case.

Ms. L (Brooklyn Legal Services Corporation A)

Ms. L resides with her son in a rent-stabilized apartment, and receives a rent subsidy under the New York City Housing Authority Section 8 program. Her landlord commenced a holdover proceeding against Ms L on claims of misconduct. As required, the landlord sought approval to terminate the tenancy under Section 8 and sought a certificate of nonobjection. The agency found the landlord's claims were without merit and refused to give permission. The landlord did not add the Housing authority as a party as required when refusal is not granted, and proceeded with the court proceeding to evict the family.

Ms. L was ready to agree to move at the time she sought our help. The case was scheduled for trial and based on motion papers submitted to the court, we were able to get the case dismissed. Ms. L still resides in her apartment.

Ms. J (Brooklyn Legal Services Corporation A)

Ms. J resides with her seven children in a 4-unit apartment building. At the time we saw her, her eviction was pending with a scheduled date for the marshal to take possession. We were able to vacate the judgment and warrant based on the landlord's failure to credit thousands of dollars in payments made by the Department of Social Services. The judge then dismissed the case because the landlord failed to have a multiple dwelling registration on file with the Buildings Department. The family still resides in their apartment.

Unemployment Insurance (UI)

Mr. H (Manhattan Legal Services)

Mr. H is the father of an infant whose family is facing eviction. Mr. H worked as a carpenter and construction building site manager. Like many others, he was misclassified as an independent contractor by both his employer and the Department of Labor (DOL) and was denied Unemployment Insurance benefits based on this incorrect classification.

Legal Services appeared at the hearing on behalf of Mr. H. The Commissioner of Labor opposed his eligibility for Unemployment Insurance benefits. However, through a vigorous direct-examination we established that the employer exerted sufficient direction and control over our client to legally render him an employee. A copy of the employer's job posting was entered into evidence and it proved that the employer advertised for an employee, not an independent contractor. The client testified that he received daily instructions from the employer, was not authorized to make any decisions on his own, and that the employer appeared at the construction site once a day for supervision purposes.

The administrative law judge ruled that our client was an employee and eligible for benefits and referred the case to the DOL for a calculation of benefits consistent with the decision. Legal Services delivered the decision to DOL counsel's office with proof of wage payments because the employee was paid in cash. Counsel's office contacted us and agreed that this had been a bad DOL decision, that it would not be appealed and that it would serve as a teaching case for DOL investigations regarding employee/independent contractor status. DOL expedited the calculation of benefits and our client received a new determination that included his cash earnings. As a result of our work in this case, Mr. H could receive up to \$39,900 in total UI benefits.

Ms. M (Queens Legal Services Corporation)

Ms. M was employed for three months as a part-time teller at a check cashing service. One day she asked the manager if she could take the coming Friday off to attend a funeral. The manager was evasive but gave her permission to take the day off. Upon her return to work on the following Monday, she was discharged for absence. The manager denied giving her the approval to take the day off. At the hearing, the administrative law judge did not find the manager's testimony credible and concluded that because the claimant believed she had been granted the day off to attend the funeral, she separated from her employment under non-disqualifying conditions. The judge also concluded that there was no issue of overpayment and granted claimant unemployment benefits. As a result of Legal Services' work in this case, Ms. M will receive \$8,000 in retroactive Unemployment Insurance benefits and \$440 in monthly benefits.

Ms. W (South Brooklyn Legal Services)

Ms. W 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 resulted in substantial expenses due to parking, tolls, etc. She also had increased expenses due to babysitting. Ms. W was not compensated for any of these expenses.

In addition to the increased expenses, Ms. W's immediate supervisor was verbally abusive to her. The client's rising stress level elevated her blood pressure and affected her ability to produce milk for the baby. Ms. W asked her employer to change her hours back to her old schedule for two days a week. She requested other positions within the company which might allow her to return to her old schedule. Two fellow employees offered to cover the hours that she could not work. However, despite Ms. W's many attempts to try to get the employer to modify the hours she was working, the employer denied all of her requests.

After suffering an anxiety attack wherein her blood pressure was elevated and she was experiencing heart palpitations and dizziness, a doctor told her that her symptoms were stress related, and that she should avoid anything that was causing her the stress. She was left with no choice but to quit. On November 22, 2009, there was a favorable decision in this case. We estimate that Ms. W will receive \$18,630 since her Unemployment Insurance benefit rate is \$405 and she is eligible for 46 weeks of regular and extended benefits if she needs them.

Ms. B (Manhattan Legal Services)

Desperate for legal help, Ms. B, a former payroll coordinator at a home health attendant agency, came to the Henry Street Settlement Single Stop partner site served by Legal Services. Ms. B reported that her employer had terminated her for failure to comply with a directive and that she was denied unemployment insurance by the Department of Labor (DOL).

Our attorney found that Ms. B had asked her immediate supervisor whether a home health attendant was entitled to receive overtime pay for extra hours worked. Ms. B's immediate supervisor told Ms. B not to pay for the extra hours. Ms. B disagreed with this decision but was again instructed not to pay for the extra hours. Ms. B called the regional payroll manager to inquire further and was told by the general manager that the employee must be paid for the work. Ms. B reported this to her immediate supervisor and was told that the general manager was wrong. The employer gave the home health attendant's timecard to another payroll coordinator and terminated Ms. B the next day for failing to follow an order.

We appeared at the hearing on behalf of Ms. B. The employer appeared with a witness, the head of human resources, who testified for the employer. At the hearing we established that Ms. B had a duty to inquire about proper payment of all home health attendants, as required by her job description, and that there was nothing in the employer rules or regulations that prevented an employee from calling a regional manager to ask for clarification on a payroll matter. The employer witness also admitted during cross-examination that all employees must be paid for all time worked. The Court overturned the DOL's decision and Ms. B received \$33,970.00 in UI benefits.

Consumer/Bankruptcy

Ms. C (NYC Bankruptcy Assistance Project)

Ms. C bought a two-story brick bungalow with a rental unit in Queens along with her husband in the mid-eighties. About ten years later, Ms. C's husband passed away and Ms. C herself developed a chronic auto-immune disorder. She managed to continue making mortgage payments until the home was paid off, but she frequently fell behind on her property taxes. Over the past two years, Ms. C struggled to put her daughter through college while battling illness and depression, which affected both her ability to work and her ability to manage her finances. She fell behind, caught up, then fell behind again. Finally, Ms. C's credit problems collided head-on with the financial crisis of 2008 and the resulting disappearance of credit. At the end of 2008, a company that had bought her property tax arrearage from the City of New York commenced a foreclosure action. Although Ms. C had ample home equity—she owed less than \$40,000 on a house worth \$400,000—she could not find a loan to pay off the property tax arrearage.

Ms. C knew that she might be able to get more time to repay the tax debt through a Chapter 13, but when she tried to find an attorney, their fees were far beyond her ability to pay. Finally, she was referred to Legal Services' Bankruptcy Assistance Project, where she was able to get free legal representation in filing a Chapter 13 bankruptcy. We prepared a Chapter 13 bankruptcy, filed it for her, and represented her in the bankruptcy proceedings. Ms. C is now making affordable monthly payments on her property tax arrearage through a Chapter 13 Plan. Had it not been for the assistance of Legal Services, Ms. C would almost certainly have lost her home. Now, she appears to be on the road to saving her home and putting herself on a more stable financial foundation.

Benefits (Public Assistance/Disability/Pension)

Ms. E (Manhattan Legal Services)

Ms. E had to leave her job because of a work-related injury. Due to her physical condition, which included degenerative disc disease, pinched nerves, ulcers and an inflamed liver, Ms. E was in constant and excruciating pain and thus unable to handle

the long wait at the HRA office to process her application for food stamps. Because she left before a face-to-face interview took place, Ms. E's case automatically closed.

Ms. E met with a Legal Services advocate who began the process of obtaining disability status – but, knowing that it would take considerable time to resolve, also pressed for immediate relief. Our advocate had the client reapply for food stamps, as well as for medical expenses, and made sure that HRA received all of the necessary documentation. She argued that Ms. E should be allotted \$200/month for food stamps, and that her benefits should be retroactive from the date she first applied, instead of the date she reapplied. Within a day, Ms. E received just over \$2,000 in retroactive food stamps, as well as her monthly \$200 benefit.

Ms. O (South Brooklyn Legal Services)

Ms. O was a former employee of Sears Roebuck whose long term disability benefits had been cut off even though the Social Security Administration had determined that it would be impossible for her to return to full-time employment. Legal Services filed a friend of the court brief in support of Ms. O's claim. Ms. O had worked for Sears Roebuck for 14 years when life-threatening heart disease suddenly forced her to quit. Despite the consistent and repeated word of her doctor that she was unable to return to work, Met Life, the insurance company contracted by Sears to handle their long term health insurance policy, refused to acknowledge that she had a permanent disability and insisted she return to some form of work. The Met Life policy had a clause that gave it "discretion" in making eligibility determinations. The practical effect of this is that employees who challenge a decision by filing a lawsuit have very little chance of winning, even if federal judges themselves believe the company made the wrong decision. This is because courts have been required to give great deference to how a benefit plan "exercises its discretion."

Ms. O lost her case challenging Met Life's decision in federal district court, but won when she appealed to the U.S. Court of Appeals for the Sixth Circuit. Taking into account Met Life's conflict of interest, the Court refused to rubber-stamp Met Life's decision and instead looked closely at the evidence. Based on this review, the Sixth Circuit came to the conclusion that the cutoff of Ms. O's benefits had been unreasonable.

Met Life asked the Supreme Court to review the Sixth Circuit decision and the Court upheld the Sixth Circuit's decision. According to the Supreme Court, in cases such as this, courts should take into consideration conflicts of interest as well as other facts that might indicate that the denial was unfair. Although the Met Life case concerned a long term disability plan, the Court made it clear that its ruling applied to all types of employee benefits, include retirement pensions that are regulated under the Employee Retirement Income Security Act.

Mr. A (South Brooklyn Legal Services)

Legal Services NYC's Pension Counseling Project, one of few such projects in the nation, successfully represented Mr. A, a former Ground Zero worker whose disability pension was denied by the New York City Employees' Retirement Services (NYCERS) which claimed that the evidence failed to prove his disability. Mr. A, an emergency bridge worker for the City who spent months after 9/11 working at Ground Zero, was examined briefly by NYCERS' Medical Board to determine whether or not he could receive a disability pension. However, the Board failed to examine the respiratory ailments he acquired after six weeks of prolonged exposure to the dust of Ground Zero. Manhattan Supreme Court Justice Walter Tolub ordered the Medical Board to re-examine Mr. A. As a result of the Pension Counseling Project's efforts, Mr. A can finally expect to collect his \$20,000-a-year pension. This case should have an impact on how the NYCERS' Medical Board treats similar 9/11 disability pension requests.

Domestic Violence/Family Law**Ms. U (Queens Legal Services)**

Ms. U is a 30-year-old woman who needed representation in custody and family offense matters. She and her husband participated in an arranged marriage, traveling from Pakistan to Afghanistan, where they were married in an Islamic ceremony in 2004. The couple moved to the United States in 2005 and Ms. U became a stay-at-home mother. Her husband began to verbally abuse her, calling her vulgar names and telling her that she was "nothing" and "worthless." The husband's mother later moved from Afghanistan to New York, residing in their home. She joined in with the husband's verbal abuse of Ms. U. The abuse began to escalate—Ms. U's husband attacked her, hitting her all over her face and body, pushing her into walls, dragging and kicking her, and threatening to kill her and take their child away from her. The mother-in-law would tell her that as a woman, Ms. U had no rights, that the husband could divorce her and take their child the same as if they were still in Afghanistan. Finally, after another threat by the husband to kill her, Ms. U called the police and the husband was arrested. Represented by a Legal Services attorney, Ms. U filed petitions for an order of protection and for custody of the child in the Family Court. She was granted an order of protection for two years and sole legal custody of the child. Ms. U subsequently applied to a local college and began taking classes earlier this summer as a step toward obtaining better employment and economic independence.

Ms. V (Queens Legal Services)

Ms. V was referred for legal assistance by staff at Sakhi, where she was already receiving counseling services in connection with violence committed against her by her husband. Ms. V indicated that she was a conditional legal permanent resident whose conditional status would expire in February, 2009. She wanted to discuss her immigration matter as well as the prospect of a divorce. A phone call by the Legal

Services attorney to U.S. Citizenship and Immigration Services revealed that her husband had never filed an I-485 on her behalf. The attorney discussed filing a VAWA Self-Petition with Ms. V, and they began to draft her affidavit and develop the necessary documents in support of the petition. Evidence was accumulated to demonstrate that the marriage was undertaken in good faith. The Sakhi caseworker provided an affidavit speaking to the nature and extent of abuse. When the application and supporting material was completed, a two-inch thick document was sent to USCIS for processing. While approval has not yet been received for the petition, Ms. V did receive her Employment Authorization, the first step toward obtaining employment and the ability to be self-supporting and financially independent.

Domestic Violence/Immigration

Ms. Y (Staten Island Legal Services)

After Ms. Y moved to the U.S. from Mexico, her husband became physically abusive, threatening to have her deported if she told anyone about the beatings and to kill her if she tried to leave him. Ms. Y first came to Legal Services in 2007 seeking an order of protection. However, when she became convinced that her husband had gone back to Mexico, she dropped the case. Ms. Y had moved in with a relative and found a job in a laundromat when her estranged husband showed up at work. Infuriated by her refusal to rekindle their relationship, he stabbed her repeatedly, puncturing her lung and liver. She lost consciousness, and he fled the scene. He was never apprehended. Once again, Ms. Y turned to us. Because she had helped the police and the District Attorney in their attempts to find and prosecute her husband, our attorney realized that she was eligible for a U-Visa, a new type of visa that offers a pathway to legal status for immigrant crime victims who cooperate with criminal investigations.

We helped Ms. Y assemble the documents she needed to apply for a U-Visa. Because the visa requires certification that the applicant cooperated in a criminal investigation, our attorney went with Ms. Y to meet with the DA's office, which provided certification. We then prepared an affidavit describing the history of domestic violence and gathered evidence to support the affidavit, including medical records, photos, police reports, and a statement from her domestic violence counselor.

Ms. Y's application was approved. She now has work authorization and will soon have her U-Visa. With the U-Visa, she will be able to get a Green Card.

Tax

Mr. F (South Brooklyn Legal Services)

Mr. F, who receives Social Security Disability benefits, has been a victim of identity theft for more than five years. His identity has been used by others to earn wages in at

least three states, sometimes apparently simultaneously. We intervened to suspend a pending federal payment levy resulting from this fraudulent income; the levy nevertheless went through a few months later, even though we had submitted proof of identity fraud to two IRS departments. With our advocacy, the levy was released and the fraudulent income and liabilities are being removed from our client's accounts.

Mr. Q (Queens Legal Services Corporation)

Mr. Q filed his 2006 tax return jointly with his wife, and she took the documents to the tax preparer, assuring him that she represented her husband as well as herself. Two years after Mr. and Mrs. Q's returns were filed, the IRS audited them, primarily because they were investigating the tax preparer the couple had used. The IRS requested additional information on deductions and credits. When Mr. Q asked his wife about the return, she grew defensive and would not answer his questions. Conflict between the two intensified until ultimately they got divorced. Though she was the only one with access to it, Mr. Q's ex-wife refused to provide him with the information the IRS needed, including proof of the tuition she claimed she had paid for her daughter from a previous marriage. Furthermore, Mr. Q began to uncover a number of financial matters his wife had hidden from him, such as the fact that she had collected Unemployment Insurance during their marriage and had the checks sent to her daughter's address. Mr. Q had been representing himself *pro se*, but when the IRS claimed that he owed \$9,000 in back taxes, he realized he was in over his head and sought help from Legal Services.

After obtaining and scrutinizing transcripts of Mr. Q's and his former wife's tax returns, our attorney discovered a number of discrepancies and brought them to the attention of the IRS. She also pointed out that since Mr. Q was a divorced stepfather, he should not be held liable for the fraudulent tuition deductions his former wife had claimed on their tax returns. In representing Mr. Q in U.S. Tax Court, our lawyer argued successfully that her client was an "innocent spouse," unaware of any of his wife's financial misdeeds.

The IRS readjusted its calculations based on the court's finding, and reduced Mr. Q's payment from \$9,000 to \$3,000. Our attorney also helped him work out a payment plan to cover the amount he owed. Mr. Q's ex-wife is still liable for the entire \$9,000 due to the IRS. If the IRS is successful in collecting from her, Mr. Q will not owe anything.

Ms. K (Bedford-Stuyvesant Community Legal Services)

When 67-year-old Ms. K received a notice from the IRS Automated Underreporting Reconsideration Office she was first puzzled, then alarmed. The notice stated that she had grossly underreported her taxable income in the amount of \$61,074 for the tax period ending December 31, 2005. Ms. K had retired in 2001 after working as a bank clerk for 27 years and her only sources of monthly income were the \$212 she received from her pension and \$1,306 from Social Security. She remembered a letter her former employer had sent in 2005 warning that computers containing personal information such as names, Social Security numbers, dates of birth, bank account numbers, medical

claim histories, and employee service history had been stolen from the subsidiary that handled actuarial and benefits consulting for the bank's retired employees.

After seeking help from several attorneys and trying unsuccessfully to solve the problem on her own, Ms. K turned to Legal Services for assistance. Our attorney confirmed that computers had indeed been stolen from the bank's consulting firm. Suspecting that Ms. K was the victim of identity theft, he contacted the IRS Collection Due Process Department and obtained a transcript listing all sources of income reported to the IRS for Ms. K during the tax year 2005. The transcript showed that \$61,074 had been withdrawn from a vested retirement account in Georgia using Ms. K's Social Security number and the proceeds used to trade securities through a security clearing house, again using her Social Security number. The action had reduced Ms. K's pension from \$900 to just over \$200 per month. The attorney then contacted the Federal Trade Commission and the IRS Identity Theft Unit to report the crime.

Working with the IRS and the Consumer Fraud Unit of the U.S. Treasury, our attorney negotiated a fair settlement in which the stolen \$61,074 was restored to Ms. K's account. Furthermore, her monthly benefit was increased from \$212 per month to the full \$900. Problems arose again when the IRS levied her bank account in the amount of \$16,589.02 for taxes owed on the profits of the security trades. The IRS has since refunded the levy.

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“Justice, Justice, Shall You Pursue:”
The Chief Judge’s Perspective on Justice and Jewish Values
Jethro Shabbat
February 5, 2010- Central Synagogue

Shabbat Shalom

I am honored to join you for Jethro Shabbat in this magnificent synagogue. The majesty of this sanctuary brings back fond memories of my childhood at the historic Bialystoker Synagogue on Willet Street on the Lower East Side, where I grew up in an Orthodox family. Throughout my life, and continuing to this day as a member of a reform Jewish congregation, I have tried to stay true to the enduring values that have been imparted to me as a part of my Jewish upbringing and heritage.

The timeless values we as Jews embrace – equal justice for all, charitable acts in our communities, goodwill and mutual respect for our neighbors – have informed my outlook on life and on my chosen profession in the law. I marvel at how our forefathers, thousands of years ago, grappled with many of the very same philosophical and practical problems that we continue to struggle with in the year 2010. As Rabbi Rubinstein discussed earlier, one of the things we learn about in this week’s parsha is Jethro’s sage counsel to his son-in-law, Moses, to establish a formal judicial structure to promote a more efficient process to adjudicate disputes. Jethro recognized the patent unfairness and demoralizing effect that Moses’s one man judiciary was having on the populace. While Moses certainly was working hard to resolve the people’s disputes, Jethro could see that the task was simply too overwhelming for just one person, and so he advised Moses to recruit capable and honorable judges to share in the burden of dispensing justice.

In essence, Jethro understood that justice delayed is justice denied; that for people to have confidence and faith in their laws, they must have meaningful access to justice. So when Ron Tabak requested a title for this talk, it seemed appropriate for me to focus on the

following passage from Deuteronomy:

You shall appoint magistrates and officials for your tribes . . . ,
and they shall govern the people with due justice. You shall not
judge unfairly: you shall show no partiality; you shall not take
bribes, for bribes blind the eyes of the discerning and upset the
plea of the just. Justice, Justice shall you pursue, that you may
thrive and occupy the land . . . that God is giving you (Deut 16:
18-20)

In particular, I want to focus on the words "*Tzedek, tzedek tirdof*" (Justice, justice shall you pursue), which in the context of this passage, have a very special resonance for me personally, bringing home the Torah's supreme emphasis on the equitable application, administration and enforcement of the law, the repeated admonition to hear the rich and poor, the high and low, alike.

The Torah never mentions rights - - only obligations. We have responsibilities to G-d and to our fellow human beings, from which - - today - - we distill the basic human rights that Jewish teachings lead us to and that, in the end, are truly the ethical underpinnings of our society. These teachings, these responsibilities that we all have, weigh heavily on me as Chief Judge of this great State, and pose enormous challenges for anyone entrusted with the responsibility of administering justice. Not long ago, I spoke about the enormity of this challenge with a New York Times reporter. Some of my words became the New York Times Quote of the Day on December 29, a little more than a month ago. What did I say that was so timely or profound? Well, I said something that we in the courts have known for years - - very simply that: "Society's problems come to us. We are the emergency room for society."

And it is true. The courts have long been the emergency room for society's worst ailments - - substance abuse, drug-related crime, family violence, child abuse, mental

illness, and so many more. But something new has started happening over the last couple of years. Not only did the New York courts close last year with 4.7 million new cases - the highest ever - but a noticeably larger share of those cases reflected the direct legal and human fallout from the recent economic collapse – cases involving not just bad debts and bad business deals, but broken lives . . . broken families . . . people who have lost jobs and lost homes. Last year, we saw major increases in home foreclosures, evictions, assaults among family members, divorces, child support, child custody, consumer debt cases, and on and on.

And what is especially troubling about this trend is the rapidly growing number of New Yorkers, many of them newly indigent, who can no longer afford a lawyer to guide them through these life-changing challenges. An estimated 2.1 million people appeared in our courts last year without a lawyer. And, of course, the ones who suffer the most in this situation are the vulnerable in our society – the elderly, children, struggling families, disabled people, abuse victims. How many of us can imagine what it would be like to have to fight for life's most basic necessities – shelter, personal safety, health services – and to have to fight alone, without the help of a trained professional who knows the ins and outs of the law and our complex legal system?

Today, unfortunately, too many of our citizens never feel, or have reason to believe, that justice is available to them – the very justice that most of us take for granted as our G-d-given right.

From my perspective as Chief Judge, no issue is more fundamental to the mission of the courts than ensuring that the scales of justice are balanced for every one of our citizens. From my perspective as a Jew, how can we fulfill the Torah's injunction to “pursue justice” when so many of our fellow citizens do not, for all intents and purposes, have meaningful access to our legal system?

As I'm sure you know, the United States Supreme Court has ruled that the federal

constitution guarantees every person accused of a crime the right to be represented by a lawyer, even if they can't afford one – that's the landmark 1963 decision of Gideon v Wainwright. Many of you may know about it from the book by Anthony Lewis, called Gideon's Trumpet, later made into a movie starring Henry Fonda.

But what some of you may not know is that there is no similar guarantee for poor litigants in civil proceedings. They generally must represent themselves in court, or, if they are very fortunate, they may be represented by one of the civil legal services programs that provide free representation to low-income New Yorkers. But even when the economy was strong, these programs were chronically underfunded, serving only a fraction of those in need – well less than 20% according to different studies. For every person represented by a legal services provider, eight to ten others are turned away because of a lack of resources. And now that the economy is weak, we are experiencing dramatic funding declines for legal services at the worst possible time, when more New Yorkers than ever before are hurting – and bringing their legal problems to the courts.

These programs are critically important for many New Yorkers – for the mentally impaired elderly person who is served with an eviction notice, for the single mother pursuing child support or an order of protection against her abusive partner. For all these people, and many more like them, legal services programs are a critical safety net – often the only thing that stands between human dignity and human tragedy.

The most important funding source for civil legal services programs in New York is the "IOLA" Fund. IOLA is the acronym for Interest on Lawyer Accounts. It is literally a fund derived from the interest earned on monies held in escrow by attorneys. However, the prevailing record-low interest rates and sharp decrease in real estate transactions have resulted in almost a 75% reduction in IOLA funds, creating a major funding crisis for civil legal services in New York.

This crisis explains why, as Chief Judge, I broke from tradition recently and allocated

\$15 million dollars for IOLA in the court system's budget request for the next fiscal year, to be used to fund the work of legal services providers around the state. Ensuring adequate legal representation for the poor is indispensable to the court system's ability to carry out our constitutional mandate of providing equal justice under law. And it is very much consistent with the Torah's supreme insistence on the pursuit of justice and righteousness. We are required, as Jews, to act "beyond the letter of the law" and "do what is right and good in the eyes of G-d."

Justice, justice, shall you pursue. Scholars over the centuries have given much thought to why the word justice is repeated again. One Hasidic explication says that the word "justice" is repeated in the final verse because in matters of justice, one may never stand still. That is an interpretation that surely resonates with me. Certainly, the word "pursue" suggests an ongoing endeavor, or a constant striving. On that point, I can honestly say that this is one area where the New York courts have not stood still and where we will never stop striving, ever mindful that these efforts strengthen the fabric of our communities.

That is why the courts launched a new program last month that I'm excited about, one that targets the skills and experience of a valuable but largely untapped resource – the many thousands of lawyers in New York who have retired, or are about to retire, from the practice of law – many of whom may be here tonight. We have created a new and unique status for them – Attorney Emeritus. In return for enjoying this privileged status and title within the Bar, retired lawyers will perform at least 30 hours annually of pro bono legal services to low-income clients. In designing this Program, we addressed several problems that senior lawyers traditionally cited as obstacles to engaging in pro bono activity. For example, we have arranged for malpractice insurance to be provided by the legal services program that the senior attorney signs up for. Similarly, they will be exempt from mandatory continuing legal education and the biennial attorney registration fee. And, of course,

beyond the personal satisfaction derived from aiding someone in need, Attorneys Emeritus will receive a special acknowledgment from me, as Chief Judge, and the President of the State Bar Association.

To kick off the program, I wrote a letter to 8,500 retired lawyers last month urging them to become Attorneys Emeritus. So far, we are very encouraged by the response, which seems to have struck a chord with senior lawyers who want to use their retirement years in a way that contributes to the public good.

To me, this program is an example of how our pursuit of *tzedek* – justice – can be realized in our daily lives. As Jews, one way we can respond to the challenges of fostering equal access to justice is by fulfilling our obligation – our *mitzvot* – to bring about *tikkun olam*- to repair the world. As Chief Judge, I will strive, in this same spirit, to energize the members of our legal profession and maximize the opportunities they have to assist the less fortunate who come into our courthouses.

Gideon

There is no question in my mind, however, that there must be a much, much greater commitment toward truly equal access to justice in this State, so that the day will finally come when all New Yorkers, no matter their station in life, can get the legal assistance they need to deal with life's most daunting problems – which sooner or later are reflected in the cases coming to our state courts.

In this regard, I would like to revisit the words of the United States Supreme Court in Gideon v. Wainwright, back in 1963:

“In our adversary system of justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.”

Nearly half a century later, is it not (?) an equally obvious truth that there are certain types of civil proceedings involving fundamental human needs – shelter, income, health care, child custody, family violence and abuse – where it is extremely difficult, if not impossible, for a person to get his or her day in court – to obtain due process – without a lawyer’s help? Yet, in 2010, this is the sad reality facing hundreds of thousands of our fellow citizens.

New York can do better. We have to. Equal access to justice in our courts – in our state – is one of the most fundamental obligations we owe our citizenry. The time has come for New York State to make good on the promise of Gideon and ensure that there is a right to counsel at public expense in at least those types of cases where basic human needs are at stake, like shelter, sustenance, safety, health, and children.

I believe that access to justice is not a luxury, affordable only in good times, or something that should fluctuate according to the ups and downs of the economy. Of course, we all know that the State is in terrible fiscal shape at this moment, and that sacrifices are being made on many fronts, but I believe that access to justice can never be sacrificed. The Torah makes clear that G-d’s love of justice is so great that we as Jews are called upon to value and pursue justice above all, to be unapologetic in pursuit of justice, and to work tirelessly for a just and righteous society. Indeed, the pursuit of justice is at the very heart of what it means to be a Jew.

I am personally committed to using every one of the precious days that G-d has allotted to me as Chief Judge of this State to meet the challenge of ensuring that every person has equal access to our courts . . . particularly so for the poorest and most vulnerable among us. The Torah tells us that we should measure our commitment to justice by how we treat the weakest in our midst – the “widows” and the “orphans”, to use the words of the Torah.

Justice, justice, we must all continue to pursue, for rich and poor, high and low alike,

as we practice our profession and live our daily lives. For as it says in the Pirke Avot, the Ethics of the Fathers: “The sword comes into the world because of justice delayed and justice perverted.” And what more compelling example of justice perverted than where poor litigants do not have equal access to our civil justice system . . . where the scales of justice seem weighted against them when they step foot into our courthouses?

And what could be more of a challenge for me and for all of us?

I know that this topic, which consumes so much of my own thought and energy these days, is meaningful to this great congregation. I can see from your extensive community outreach and mitzvah initiatives – everything from making homemade sandwiches for food pantries, to delivering breakfast to homebound seniors, to knitting blankets, sweaters and hats for needy babies – that this congregation fervently believes in reaching out to and sharing with the less fortunate in our community. Through your collective efforts, you are putting into daily practice the principle of “Justice, justice shall you pursue.” We all prosper when the needs of the community are met. These collective efforts of *tzedek* – to go beyond the letter of the law to do what is right – are the hallmark of our faith and our society.

I commend you all, and I thank you. Shabbat Shalom.



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The League of Women Voters of New York State
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**THE LEAGUE
OF WOMEN VOTERS**
of New York State

**TESTIMONY FOR 2010-2011 JOINT BUDGET HEARING
LOCAL GOVERNMENT/GENERAL GOVERNMENT
HEARING ROOM B-LOB
FEBRUARY 8, 2010**

Good afternoon Assemblymember Farrell, Senator Kruger and members of the Fiscal Committees. We are pleased to be here today to testify before your committees in this challenging fiscal environment as we prepare for an admittedly difficult 2010-2011 state budget. My name is Barbara Bartoletti and I am Legislative Director of the League of Women Voters of New York State (League). Aimee Allaud, our Election Specialist, was instrumental in preparing this testimony.

The League is a multi-issue, nonpartisan political organization working to promote political responsibility through informed and active participation of citizens in government. Our over fifty local Leagues statewide provide us with eyes and ears to monitor the activities of local boards of elections.

The first election law reform advocated by the League of Women Voters of New York State was the one which gave birth to its founding as an organization—the women’s suffrage amendment. Since the 1920s, the League has been in the forefront as a grassroots advocate on behalf of all voters.

In 1973, the League position on election procedures recognized the state responsibility for uniform and efficient administration of elections, including the need for a single state

elections office and improved election officials' training. In 1974, a four-member bipartisan New York State Board of Elections (NYSBOE) was established to assume this responsibility. Mindful of its leadership role in the creation of the NYSBOE, the League has encouraged and supported the board's attempts to execute and enforce all laws related to the elective franchise and oversight of the disclosure and enforcement of campaign finance and practices. However, like any parent, we also know when our offspring are not living up to their capability.

Since the creation of the NYSBOE in 1974, the League is the only organization that attends every NYSBOE meeting. We have monitored not only the NYSBOE's administration of elections, but importantly the recent state implementation of federal HAVA. Our mission to promote informed and active participation of voters in government is closely allied to the duties of this agency as set forth in Sec. 3-102, of the NYS Election Law, that is "take all appropriate steps to encourage the broadest possible voter participation in elections." Throughout the state, our local leagues work with local boards of elections to assist voters by providing accurate information on all aspects of the voting process. The League sits as a member of the Citizens' Election Modernization Advisory Committee and has been primarily responsible for the selection of optical scan technology, which will be used throughout the state beginning in the upcoming election in 2010.

Before the election of 2010, boards of elections are being tasked with a new challenge: to educate the electorate on the use of new voting machines mandated under the federal Help America Vote Act (HAVA). In addition the NYS Board of Elections must implement a new federally mandated statewide process (Military and Overseas Voter Empowerment Act) which will ensure absent uniform services members and overseas voters their right to vote. New York will receive \$6.4 million dollars to implement the act.

The NYS Board of Elections is the lead agency which advises and guides the local boards of elections in the administration of elections and in developing a statewide plan for voter education and curriculum for elections personnel.

The Executive Budget reappropriates all unspent HAVA funds relating to the implementation of HAVA for voting machine replacement, education and training. Although this agency has acquired new responsibilities under the HAVA and now the Military and Overseas Voter Act, the staffing level remains at the current 63 FTE.

The League recognizes that the fiscal situation of the state requires all agencies of state government to reduce excessive spending where possible. Especially in this year where statewide elections for the Legislature and the Executive will occur, and coincide with the introduction of new voting machines, it is imperative that the NYS Board of Elections budget be held at levels which will not impact the operations of this agency in protecting the basic right of citizens to vote.

The League would now like to address the issue of campaign finance enforcement. As a result of League advocacy, the 2007-2008 Executive Budget allocated \$1.5 million dollars for increased staffing for NYSBOE Campaign Finance Enforcement Unit. The legislature agreed to this appropriation and with passage of the budget on April 1, 2007, authorization for 21 new full-time employee staff positions was made. Only six of those positions were filled in 2008 and when four of those six new employees resigned, we suspect, because they were not doing the job they were hired to do; it became apparent to us the problem was more than just budgetary. New budget restrictions were then imposed by the Division of the Budget, thus leaving the agency with only two staff to handle hundreds of calls for assistance with the filing of required campaign finance reports. The 2009-2010 Executive Budget cut funding for all 21 positions. Over the

many years we have monitored the NYSBOE, we know well how this bipartisan state board operates and what its shortcomings are. We have frequently criticized the agency when we felt it was not living up to its stated mission. Often the shortcomings involve the lack of appropriate funding and we have then testified and lobbied for additional state funds to support the work of this vital agency. Under recent new laws, the NYSBOE has been mandated that all local filings be processed through the NYSBOE, the workload surrounding the candidate contribution filings has grown five-fold. The NYSBOE now receives upward of 9,000 candidate and committee finance reports. Although the NYSBOE have secured approval for a scanning machine to input the filings electronically, the filings must still be reviewed by hand. Because of the work of the League and its good government colleagues, we are aware that investigations driven by written complaints are woefully behind; there is a backlog of two or more years. Over-contributions to candidates is done by a hand review of data, as no computer program exists to do this. The elimination of staff positions at the NYSBOE has seriously impaired this agency's ability to perform its acknowledged feeble mandated functions of enforcement of the campaign finance laws.

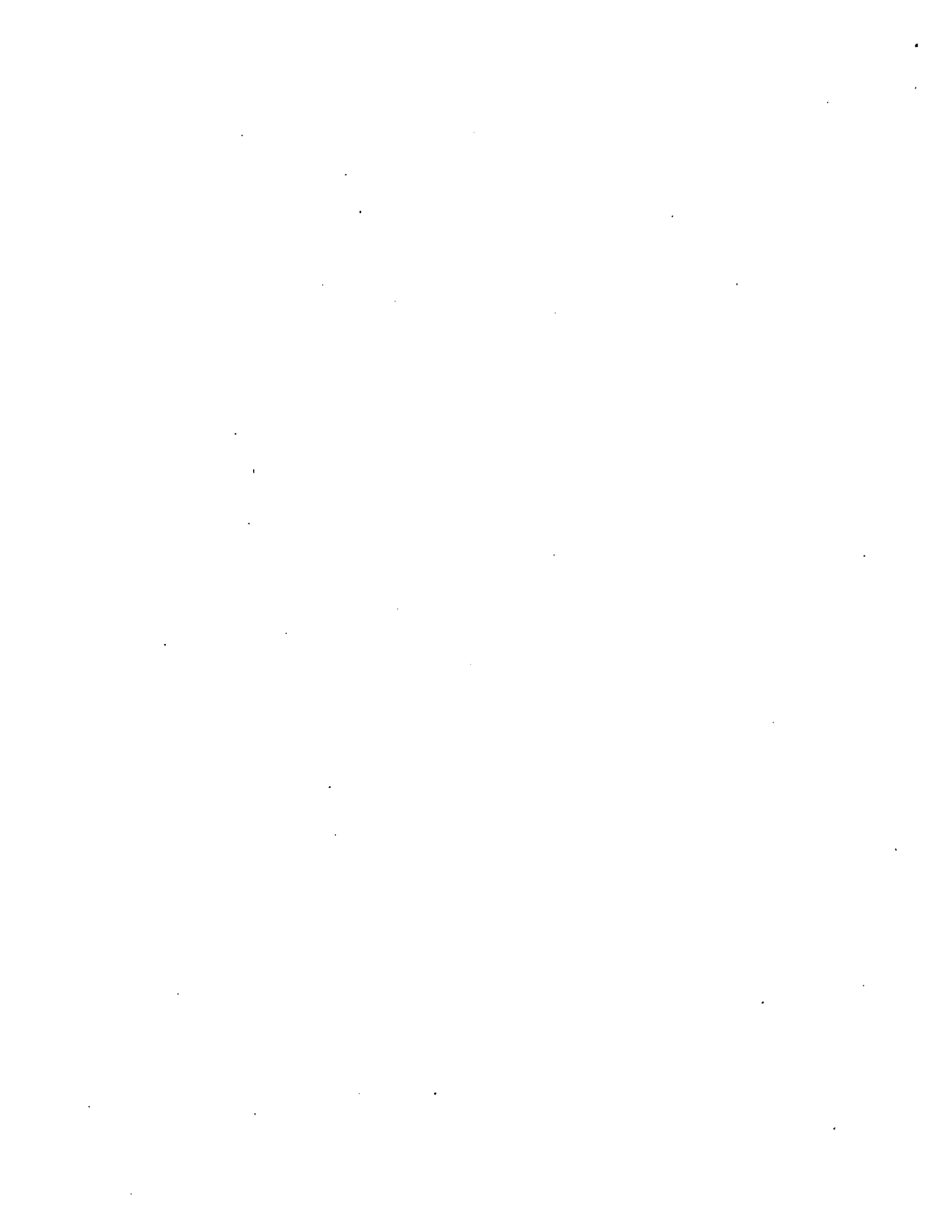
The League is concerned that the shortcomings of the NYSBOE involving of the campaign finance laws involve a lack of political will, not on the part of staff of the board, but because of the bi-partisan political gridlock of the political parties which underpin it. The difficulty of fully staffing an enforcement unit with the necessary investigators serves to tell us that on the part of the political parties exists a propensity toward maintaining the status quo.

The League has fought hard for passage of the ethics legislation that the legislature passed two weeks ago and we commend you for the bi-partisan support for that legislation. Certainly not a perfect bill, we felt that particularly in the area of campaign finance enforcement,

this legislation provided the possibility for more independence and openness. The legislation, as passed by the legislature would appropriate 35% of the agencies total budget for use by this new enforcement unit. It would mean hiring new investigators as was envisioned in 2008 with the \$1.5 million dollars appropriated at that time. The League will watch closely to ensure that the political pitfalls of the past are not repeated. Our organization's credibility, as well as yours, demands that we accomplish, this time, the goal of bringing timely disclosure of all campaign finance filing and swift penalties for those who violate this new law.

In conclusion, we urge the legislature to first override the Governor's veto today, and with the hoped-for passage of this new legislation work with the Executive to appropriate the necessary funds to provide for effective implementation of the new enforcement unit. We recognize the enormous burden this may place on this small agency, however, it is the responsibility of this Executive and the Legislature to ensure that this agency has the tools to accomplish its mission to execute and enforce all laws relating to elective franchise and overseeing the timely disclosure of campaign financing and practices.

Thank you for this opportunity to testify before you today.



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**THE ASSEMBLY OF THE STATE ON NEW YORK COMMITTEE ON WAYS
AND MEANS HEARING ON THE PUBLIC PROTECTION BUDGET, 2010-2011
ALBANY, NY**

FEBRUARY 8, 2010

TESTIMONY OF CHRISTOPHER B. O'MALLEY

EXECUTIVE DIRECTOR

**THE INTEREST ON LAWYER ACCOUNT FUND OF THE STATE OF
NEW YORK**

Good morning, my name is Christopher O'Malley and I am the Executive Director for the IOLA Fund of the State of New York.

The History and Administration of the IOLA Fund

IOLA was established by the Legislature in 1983 as an independent agency within the Executive branch, governed by a 15 member Board of Trustees appointed by the Governor, with recommendations from the court of appeals, the president pro tem of the senate, the speaker of the assembly, the minority leader of the senate, and the minority leader of the assembly. The bi-partisan approach to the selection of the Board has fostered a culture on the Board of administering the fund in a non-partisan manner, focusing solely on IOLA's mission, which is to fund civil legal assistance for low-income New Yorkers. I am proud to say that spirit continues to guide the IOLA Fund's Board today.

Under the IOLA statute, an attorney who holds “qualified funds” in escrow must establish and maintain an IOLA account. Qualified funds may be settlement proceeds, money judgments, real estate closing funds or other client funds held by specific agreement that are either too small, or would be held too briefly, to generate interest in excess of the costs of opening and maintaining an account for the client’s benefit.

For the 26 years of its existence IOLA has received no tax dollars and has been financed solely by the interest earned by New York attorneys in IOLA escrow accounts.

Currently, there are approximately 48,000 IOLA accounts in New York holding over \$3 billion dollars. The interest generated from these accounts is then swept into a common fund, which IOLA distributes in the form of grants. Currently, IOLA funds 71 organizations in New York State. The IOLA grantees are divided among 7 Geographic Units that cover every county in New York.

Annually, the Legislature and the Governor “appropriate” a sum of money to IOLA to provided legal authority for IOLA to award and administer grants. The “appropriation” is not an allocation of taxpayer of other state funds. The “appropriation” is just a mechanism that allows IOLA to spend the money it has earned in IOLA accounts.

By statute, at least 75% of IOLA’s funding is allocated to Civil Legal Services, or CLS grants, which are programs that provide direct civil legal services to clients living at or below 125% of the federal poverty level. CLS grants are apportioned by the number of indigent residents in each of IOLA’s 7 Geographic Units. Up to 25% of IOLA funding is allocated to Administration of Justice, or AOJ grants and these are for programs that

serve clients who have special legal needs such as domestic violence victims and the elderly. AOJ grants are also used to enhance the services provided to the poor through innovative and cost-effective means such as volunteer lawyer programs and support and training services.

The Crisis in IOLA Funding

The IOLA Fund relies on the interest rate provided by the banks holding IOLA accounts to generate revenue. However, interest rates can be extremely volatile. Compounding this problem, a decrease in the interest rate is often associated with a downturn in the economy, and thus during periods when both the need for civil legal services, and the actual number of indigent New Yorkers increases, the IOLA Fund's ability to fund those services decreases.

This scenario is exactly what is happening to IOLA and its grantees now. In December of 2008 when the Board of Trustees met to award grants, IOLA had nearly \$32 million dollars available to fund its grantees. Aware that revenue was likely to decrease significantly in 2009 the Trustees took the unprecedented step of awarding grants for a 15 month period from January 1, 2009 to March 31, 2010. With \$24 million to be distributed in calendar year 2009, matching the grants awarded in 2008, with the remaining \$8 million to be applied for the first three months of 2010.

Unfortunately, the dire forecast of the Trustees was accurate. As a result of the historic drop in interest rates precipitated by the economic crisis and the seizure of the credit

markets that began in fall of 2008, IOLA's income has plunged more than 75% to under \$8 million dollars. As IOLA prepares to make grants for Fiscal Year 2010-2011, it has approximately \$6.5 million dollars available, a stunning decline from the \$32 million dollars available to fund grantees in December 2008. To make matters worse the Federal Reserve has repeatedly stated that it sees no change in the Federal Funds Target Rate for the immediate future.

Many of you here are already aware of the crisis in IOLA funding, and like the IOLA Fund are grateful for the leadership demonstrated by Chief Judge Lippman for including \$15 million dollars in funding for IOLA as part of the Office of Court Administration's budget. In December and January a series of hearings were held culminating in a Joint Hearing of the Assembly and Senate on the crisis in IOLA funding, and more generally on the future of civil legal services in New York State.

At this hearing a number of civil legal service providers and their clients testified eloquently to the impact that legal representation had made on their lives. Whether it was a family that avoided homelessness, or a recently laid-off mother who obtained food stamps to feed her children, the services provided by IOLA grantees is life-changing for many of New York's most vulnerable citizens. And at a time when demand for these services is sky-rocketing, many of our grantees testified that spending cuts to their programs would be devastating.

As compelling as these benefits to both individuals and the communities in which they live are, I thought today that I would focus my testimony on the economic benefits and savings which resulted in New York State from civil legal services in New York in 2008, the most recent year for which data is available.

The Economic Benefits and Savings from Civil Legal Services in New York, 2008

The total economic impact in New York from civil legal services is nothing short of astounding. In 2008 alone the figure totaled over \$428 million dollars. I have attached to my testimony the data that supports this figure. In sum, \$253 million came into New York as the result of federal funds primarily in the form of Social Security benefits and Medicaid funds. Nearly another \$111 million came in the form of awards and settlements in unemployment compensation, consumer cases, and other benefits. And then there were the savings by the State and local governments as a result of civil legal services. For example, the data indicates that in 2008 alone, \$49 million was saved in emergency shelter costs, with 8,722 people avoiding homelessness. In addition the clients of legal service providers gained nearly \$8 million dollars in child support payments, and the victims of domestic abuse realized over \$7 million in savings from the protection afforded them through legal representation. Adding all of these savings and benefits together from 2008 creates the \$428 million dollar figure.

My hope is that these figures will underscore that supporting Civil Legal Services in New York is not only a matter of justice that benefits the New Yorkers most in need, but is an investment that benefits all New Yorkers by bringing in desperately needed funds into the

State, while saving State and local governments substantial costs, thus providing a significant return on any monies invested in the form of funds to support these services.

Thank you.

A Report for
The IOLA Fund
of the State of New York

On

Summary of Economic Benefits
And Savings From Civil Legal Services
In New York State in 2008

The Resource for Great Programs, Inc.

February 8, 2010

**Exhibit 1: Summary of Economic Benefits and Savings
From Civil Legal Services in New York, 2008**

	Total
Direct Dollar Impacts (\$Millions)	
A. Federal Funds Brought into New York State (Exhibit 2)	\$ 253.3
B. Savings in emergency shelter costs (Exhibits 3 and 3A)	\$ 49.2
C. Savings in costs related to domestic abuse (Exhibit 4)	\$ 7.4
D. Child support payments (Exhibit 5)	\$ 7.8
E. Other direct benefits including awards & settlements in family, L/T, employment, consumer & other matters (Exhibit 6)	\$ 110.7
F. Total Economic Impact (\$Millions)	\$ 428.4
G. Total budget support received by programs (all sources including IOLA, federal, state, other public & private; in \$millions):	\$ 197.8

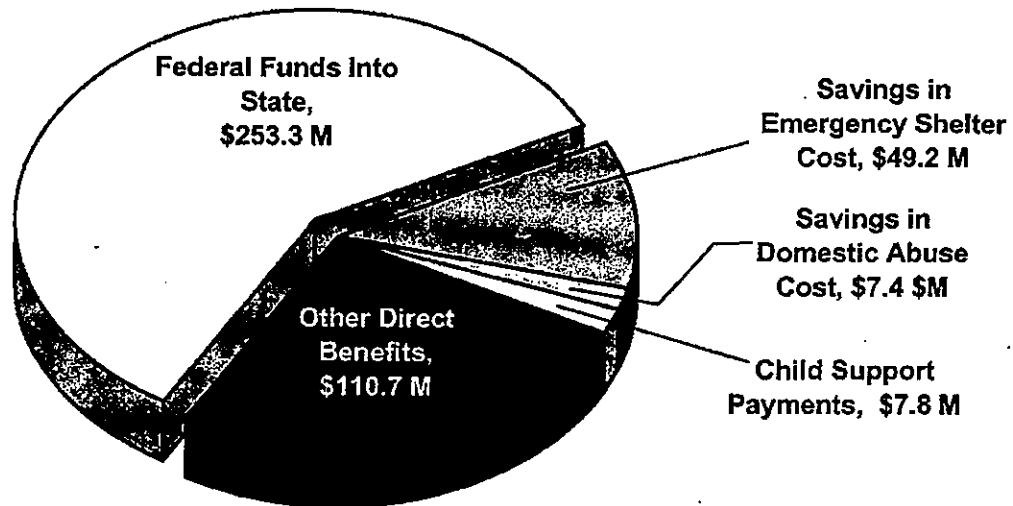


Exhibit 2: Federal Funds Brought Into State in 2008

	Benefits from Cases Completed in 2008		Benefits Received in 2008 From Past Years' Cases				Total Impact in 2008
	Back Awards	Monthly Benefits	2007 Cases	2006 Cases	2005 Cases	2004 Cases	
A. Federal Funds Coming Into the State							
1. SSI/SSD back awards	\$ 32,762,721						\$ 32,762,721
2. SSI/SSD monthly benefits going forward*		\$ 2,226,410	\$ 1,834,890	\$ 1,680,284	\$ 1,954,278	\$ 2,465,609	
3. Total monthly benefits received (12 times Line 2)		\$ 26,716,914	\$ 22,018,675	\$ 20,163,406	\$ 23,451,336	\$ 29,587,311	\$ 121,937,642
4. Total SSI/SSD benefits received in 2008 (Line 1 + Line 3)							\$ 154,700,363
5. Other Federal Benefits -- Back Awards	\$ 2,921,912						\$ 2,921,912
6. Other Federal -- monthly benefits going forward**		\$ 608,600	\$ 884,956	\$ 260,033			
7. Total "Other Federal" monthly benefits received (12 times Line 5)		\$ 7,303,202	\$ 10,619,477	\$ 3,120,396			\$ 21,043,075
8. Total "Other Federal" benefits received in 2008 (Line 5 plus Line 7)							\$ 23,964,987
9. Federal share of Medicaid benefits received in 2008 (Exhibit 7):							\$ 41,672,589
11. Total Federal benefits received in 2008 (sum of lines 4, 8 and 9)							\$ 220,337,939
10. Federal operating grants for legal aid programs in 2008 (LSC, Title III, Other Federal Funds)							\$ 32,964,024
Total federal funds into state in 2008 (sum of lines 9 and 10)							\$ 253,301,963

* Assumed average duration of SSI/SSD benefits: 9.7 years, per Social Security Administration data.

** Conservative assumption regarding average duration of "Other" federal benefits: 3 years.

**Exhibit 3: Summary:
Savings in Emergency Shelter Costs,
Five Years 2004-2008**

	2008 (See Exhibit 3A)	2007	2006	2005	2004	Total 2004-08
A. Number of cases for which eviction was avoided or delayed or foreclosure was averted	16,613	14,847	11,473	10,532	10,574	64,039
B. Estimated # of people for whom eviction was avoided or delayed:	41,733	39,013	30,912	31,236	28,746	171,640
C. No. of cases in which family avoided homelessness	3,775	3,470	2,557	2,266	2,479	14,547
D. Estimated Savings for Taxpayers (\$Millions)	\$ 49.2	\$ 45.6	\$ 33.2	\$ 29.1	\$ 32.6	\$ 189.7
E. Estimated total no. of people who avoided homelessness	8,722	8,863	6,906	6,464	6,580	37,535

Exhibit 3A: Savings in emergency shelter costs, 2008

	<i>NYC (Unit 1)</i>	<i>Suburban (Units 2&3)</i>	<i>Upstate (Units 4-7)</i>	<i>Total</i>
A. Number of cases for which eviction was avoided or delayed or foreclosure was averted:	9,449	2,772	4,392	16,613
B. Estimated # of people for whom eviction was avoided or delayed:	20,817	8,487	12,429	41,733
C. Percentage of the above for which homelessness was avoided:*	34%	12%	5%	
D. No. of cases in which family avoided homelessness (line A times line C):	3,248	319	209	3,775
E. Average cost to taxpayers per homeless family:*	\$ 14,174	\$ 9,533	\$ 754	
F. Estimated Savings for Taxpayers (line D x line E -- in \$Millions):	\$ 46.0	\$ 3.0	\$ 0.2	\$ 49.2
G. Estimated total no. of people who avoided homelessness (line B x line C):	7,155	977	590	8,722

* Data source for assumptions in lines C and E: "The Homelessness Prevention Program: Outcomes and Effectiveness," New York State Dept. of Social Services, 1990; Table 3.2.

Exhibit 4: Savings in costs related to domestic abuse, five years 2004-08

	2008	2007	2006	2005	2004	Total 2004-08
A. No. of cases for which families obtained protection from DV	2,300	2,008	2,307	2,476	2,060	11,151
B. Average cost per victim:*	\$3,201	\$3,201	\$3,201	\$3,201	\$3,201	
C. Estimated cost savings (\$Millions):	\$ 7.4	\$ 6.4	\$ 7.4	\$ 7.9	\$ 6.6	\$ 35.7
D. No. of people who obtained protection from domestic violence	5,800	4,387	5,927	6,434	5,258	27,806

* Source: "Increasing Access to Restraining Orders for Low-Income Victims of Domestic Violence: A Cost-Benefit Analysis of the Proposed Domestic Abuse Grant Program," L. Elwart, et. Al. (December 2006), page 13.

Exhibit 5: Child support payments

	Benefits from Cases Completed in 2008		Benefits Received in 2008 From Past Years' Cases*		Total Benefits in 2008
	Back Awards	Monthly Benefits	2007 Cases	2006 Cases	
A. Benefits Awarded to Clients					
1. Back Awards	\$ 1,976,695				\$ 1,976,695
2. Monthly Benefits Awarded*		\$ 321,496	330,875	280,642	\$ 933,013
3. Total of Monthly Benefits Awarded (12 x Line 2)					\$ 11,196,161
4. Total Amounts Awarded (Line 1 + Line 3)					\$ 13,172,856
B. Percent of the awards for which benefits were actually received**					59%
C. Estimated Dollar Impact					\$ 7,772,000

* Assumed average duration of child support payments: 3 years. Under this assumption, clients from 2006 and 2007 continued to receive support in 2008.

** Source of "59%" figure: Analysis by U.S. Census Bureau

Exhibit 6: Other Benefits

	Benefits from Cases Completed in 2008				Benefits Received in 2008 From Past Years' Cases*				Total Benefits In 2008 (i) = (d) + (f) + (h)
	Back Awards (a)	Monthly Benefits (b)	Assumed Duration of Benefits in 2008 (Mos) (c)	Total Benefits in 2008 (d) = (a) + (b x (c))	2007 Cases		2006 Cases		
					Monthly Benefits Awarded (e)	Total Impact In 2008 (f) = 12 x (e)	Monthly Benefits Awarded (g)	Total Impact in 2008 (h) = 12 x (g)	
A. Unemployment compensation	\$ 1,527,471	\$ 181,894	6	\$ 2,618,835					\$ 2,618,835
B. Family Law - Alimony*	\$ 271,377	\$ 202,378	12	\$ 2,699,910	\$ 41,949	\$ 503,394	\$ 19,880	\$ 238,560	\$ 3,441,863
C. Affirmative Landlord	\$ 3,426,397	\$ 105,060	12	\$ 4,687,121					\$ 4,687,121
D. Affirmative Employment	\$ 9,045,068	\$ 13,581	12	\$ 9,208,035					\$ 9,208,035
E. Affirmative Consumer	\$ 551,653	\$ 5,228	12	\$ 614,389					\$ 614,389
F. Other Benefits	\$ 49,602,912	\$ 3,378,712	12	\$ 90,147,452					\$ 90,147,452
					Estimated Dollar Impact >>>				\$ 110,718,000

* Assumed average duration of alimony payments: 3 years. Under this assumption, clients from 2006 and 2007 continued to receive alimony in 2008.

Exhibit 7: Medicaid Benefits 2008

	Benefits From Cases Completed in 2008	Benefits Received in 2008 From Past Years' Cases				Total Impact in 2008
		2007 Cases	2006 Cases	2005 Cases	2004 Cases	
A. Benefits from Successful Medicaid Cases						
1. Cases in which Medicaid benefits were obtained or preserved	1,995	1,937	1,261	1,333	1,889	\$ 8,415
2. Average Annual Benefit*	\$ 8,460	\$ 8,332	\$ 8,107	\$ 8,255	\$ 8,104	
3. Total benefits received (Line 1 times Line 2)	\$ 16,876,944					\$ 16,876,944
B. Medicaid Benefits From Successful SSI Cases						
1. Cases in which SSI eligibility was obtained or preserved	3,035	2,474	3,064	3,001	3,882	\$ 15,456
2. Cases for which 24-month wait period for SSI recipients had been satisfied				3,001	3,882	
3. Average Annual Benefit*	\$ 8,460	\$ 8,332	\$ 8,107	\$ 8,255	\$ 8,104	
4. Total benefits received (Line 1 times Line 3)	\$ -	\$ -	\$ -	\$ 24,773,952	\$ 31,458,910	\$ 56,232,862
C. Total Medicaid Benefits Received by Clients in 2008 (sum of lines A.3 and B.4)						\$ 73,109,806
D. Federal reimbursement percentage:**						57%
E. Federal Medicaid Funds Into New York State in 2008						\$ 41,672,589

* Source: New York State Department of Health.

** Under current rules, the federal government usually pays about 57 percent, on average, of the costs of Medicaid benefits. Source: Firedoglake web site, 11/20/09.

**IOLA Funding as Percent of Total Funding
for Civil Legal Services, 2008**

IOLA Funding as Percent of Total	12.4%
IOLA Funding	\$ 24,524,191
Non-IOLA Funding	\$ 173,249,225
Total Funding	\$ 197,773,416



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Corporation for Supportive Housing
Testimony before Joint Legislative Public Hearing on
2010-2011 Executive Budget Proposal for Public Protection

Monday, February 8, 2010

The Corporation for Supportive Housing (CSH) is pleased to submit this written statement to the Joint Legislative Public Hearing on 2010-2011 Executive Budget Proposal for Public Protection.

About the Corporation for Supportive Housing

The Corporation for Supportive Housing (CSH) is a national non-profit organization established in 1991 whose mission is to help communities create permanent housing with services to prevent and end homelessness. CSH strives for a day when homelessness is no longer a routine occurrence and supportive housing is an accepted, understood, and easy-to-develop response. Working with state and local governments, non-profit providers, for profit developers, and by shaping national policy, CSH will help communities create 150,000 units of supportive housing during the next decade.

Since 1991, CSH has worked in New York State to:

- Raise over \$221 million from foundations, corporations, and through government contracts for use in expanding supportive housing nationwide, and has leveraged over \$1 billion in federal, state, and local public and private sector financing for capital, operating, and service dollars.
- Commit nearly \$124 million in loans and grants to support the creation of 27,000 units of supportive housing which have ended homelessness for at least 21,000 adults and children.
- Support the creation of nationally recognized reentry supportive housing models targeting homeless individuals leaving correctional institutions with chronic substance use, mental health and other health conditions.

Re-entry Supportive Housing and Rockefeller Drug Law Reform

New York State should dedicate \$5 million, roughly ten percent, of the OASAS-administered Rockefeller Drug Law Reform service dollars to create 250 additional units of re-entry supportive housing.

New York's historic Drug Law Reform (DLR) of 2009 gives a pivot point for failed public policy which has led to unparalleled incarceration rates, collateral consequences for individuals and families, disjointed communities, and unsustainable fiscal burdens. In 2010, it is essential to keep moving New York toward a treatment-based approach to public protection by moving public funds toward the resources needed to maintain safe and stable communities. The risks of a failure to do so can be seen in mental health deinstitutionalization of the '60s and '80s, where a lack of community health investment contributed to the dramatic rise in homelessness and incarceration that we are now looking to counter. For the most vulnerable people who will be released or diverted from prison through DLR, stand-alone services and treatment will not be effective. Individuals with histories of substance use, mental illness, and homelessness face higher risks of re-incarceration than almost any other group.^[1] A recent study showed that parolees without housing are seven times more likely to be re-arrested,^[2] and mentally ill re-entrants who stay in a shelter after release face a shocking 53% rate of re-incarceration in the first two years.^[3] They need the integrated foundation of housing and

services offered by Re-entry Supportive Housing. Put simply, if you do not build it, they will come back.

CSH was very pleased to see that the executive budget included the first baseline funding for reentry supportive housing targeted to DLR at OASAS, twelve beds being released in New York City. We have also been encouraged by the diligent efforts of the Office of Mental Health to launch the first twenty beds of reentry supportive housing targeting parolees with mental illness. These achievements are significant, particularly in light of the unprecedented State budget crisis. However, despite these challenges, we believe more must be done to begin to meet the current need. CSH estimates that 10-30% of people affected by DLR would be appropriate for Reentry Supportive Housing. Of the roughly \$50M OASAS-administered DLR funding that is overseen by the Division of Criminal Justice Services (DCJS), about \$18M is being dedicated to residential treatment, early data shows that only about 20% of people being diverted are accessing this resource. \$5M of this funding should be repurposed to Reentry Supportive Housing. The units should be targeted in line with the demographic data DCJS is collecting for people released and diverted through Rockefeller, primarily to address substance use through an expansion of the OASAS Reentry Supportive Housing program. A portion could be coordinated with the Office of Mental Health to expand their pipeline for people with mental illness and to offer services for people who are dually diagnosed. In three years, the ongoing support should be tied to savings being realized from prison closures and representing the first explicit criminal reinvestment of scale for New York State.

Breaking the Cycle

Re-entry supportive housing builds stronger communities, increases public safety and promotes public health.

Re-Entry Supportive Housing, which combines quality affordable housing with comprehensive support services, has proven enormously successful in helping people involved with the criminal justice system to build lives in the community, significantly reducing recidivism and improving housing retention.

A pilot program conducted in New York City, called the Frequent Users Service Enhancement (FUSE) Initiative, exemplifies the model's success with populations at highest risk for cycling between homelessness and incarceration. The FUSE Initiative identifies some of the highest users of both jails and shelters^[4] and offers them affordable housing combined with comprehensive support services including relapse management, entitlements assistance, education and employment assistance.^[5] An evaluation of the first year of the initiative showed a 91% housing retention rate, a 53% reduction in the number of jail days, and a 92% reduction in the number of shelter days one year later.

The positive effects of supportive housing for re-entrants from the State prison population are even more striking: a landmark study by University of Pennsylvania's Dennis Culhane found that for individuals with prison records, supportive housing reduced re-incarceration by 85% over the two year study period.^[6] These results are substantiated by a number of independent studies around the country recording 45%, 76% and 100% reductions in jail and prison use resulting from placement in supportive housing. ^{[7],[8],[9]}

This ties in with the value and cost-benefits of supportive housing initially documented in the seminal 2002 NY/NY III Cost Study which found decreases in the use of homeless shelters, hospitals, emergency rooms, jails and prisons among supportive housing tenants compared with a matched comparison group. These reductions in public services resulted in an annualized savings of \$16,282 per unit. Since 2002, the fiscal common sense of permanent supportive housing has been borne out repeatedly. The most recent findings were released in November from a study in Los Angeles that tracked over 10,000 homeless people in LA County, 9000 of whom were homeless and

on General Relief and 1000 who exited homelessness to supportive housing, many with criminal justice backgrounds. Researchers found that supportive housing reduces public costs by 79% for chronically homeless individuals with disabilities. And the savings grew in correlation to aging and severity of behavioral health challenges. (Homeless Cost Avoidance Study, Los Angeles Homeless Services Authority, 2009).

Recommendations

Bearing in mind the critical role that stable housing plays in successful re-entry and diversion from the prison system, we advocate investment in a range of resources to address the full spectrum of housing-related needs.

- **Dedicate \$5 million, roughly ten percent, of the OASAS-administered Rockefeller drug reform service dollars to fund 250 additional units of permanent re-entry supportive housing.**
- **The bulk of these units should be scattered-site supportive housing which can be brought on line rapidly to deal with early releases and judicial diversion in the coming months. A portion of the units could be tied to set-asides in mixed-use supportive housing to take advantage of development in coming years.**
- **Support the State Office of Mental Health as it works to bring 50 new units of reentry supportive housing online over the next year.**
- **Look at adaptations of Reentry Supportive Housing for emerging populations. Give flexibility to behavioral health agencies to explore alternatives for youth detained in the juvenile justice system and in local jails (particularly for those who overlap with the foster care and group home systems with chronic health challenges), for parents reunifying with children, and family preservation through diversion.**

CSH would welcome the opportunity to answer any questions related to this testimony or provide further information that might be helpful to the Committees.

Respectfully submitted by the Corporation for Supportive Housing:
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^[1] Metraux, Stephen P. and Dennis Culhane. "Homeless Shelter Use and Reincarceration Following Prison Release." *Criminology and Public Policy* 3.2 (2004): 139-160.

^[2] Nelson, Deess, and Allen. "The First Month Out: Post-incarceration Experiences in New York City." The Vera Institute, September, 1999.

^[3] Cho, Richard. "All the Way Home: Re-entry and Housing." Presentation at the NAEH Conference July 13, 2005. p.5

^[4] Metraux, Stephen P. and Dennis Culhane. "Homeless Shelter Use and Reincarceration Following Prison Release." *Criminology and Public Policy* 3.2 (2004): 139-160.

^[5] Eligibility for FUSE requires a minimum of four jail and four shelter stays over the five years prior to housing and a clinical disabling condition, either mental health or addiction.

^[6] Culhane, Dennis P., Stephen Metraux, and Trevor R. Hadley. "The Impact of Supportive Housing for Homeless People with Severe Mental Illness on the Utilization of the Public Health, Corrections, and Emergency Shelter Systems: The New York-New York Initiative" *Housing Policy Debate* 13.1 (2002): 107-163.

^[7] Downtown Emergency Service Center. "1811 Eastlake: Preliminary Data on One-Year Outcomes" (2007) Quoted in "'Housing First' Approach to Homelessness Brings Hope to Hard Lives." Office of Mayor Gregory J. Nickels, City of Seattle (2008)

^[8] Noqaski, Alyssa, et al. "Supportive Housing in Illinois: A Wise Investment." Heartland Alliance and Mid-America Institute on Poverty (2009)



Just
Submitting



Testimony

Public Hearings on the Executive Budget

before the

Joint Fiscal Committees of the Senate and Assembly

Public Protection

Presented by Denise Kronstadt,

Deputy Executive Director/Director of Advocacy

February 8, 2010

The Committee for Modern Courts · 351 West 54th Street · New York, NY 10019

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Committee for Modern Courts Testimony

Public Hearings on the Budget

February 8, 2010

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

The Committee 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 presented by the Judiciary. The budget reflects an efficient and appropriate use of resources to meet the growing needs of our Court system. As the Chief Judge emphasized in his comments about the budget - it is "the Judiciary's basic constitutional obligation to hear each and every case that comes before it." Modern Courts believes that sufficient resources must be provided to the courts so that judges can do their jobs. If the Judiciary is to maintain its independence and effectiveness, its budget submissions must be accorded the respect befitting this separate branch of government.

It has become clear that the courts in New York State have been strained to the breaking point with court filings at an all-time high of 4.7 million in 2009, up 200,000 from 2008. Although the Judiciary submitted a zero-growth budget request for the past

Committee for Modern Courts Testimony

Public Hearings on the Budget

February 8, 2010

two years, it simply can not be expected to do that year after year and maintain the quality of justice the public deserves.

Modern Courts understands that the State is facing an unprecedented budget deficit, but the budget gap should not be closed by denying families in need access to our already overburdened Family Court or by closing the doors to those who because of the recession have turned in increasing numbers to the courts for relief.

The largest portion of the increase in the Judiciary budget is needed to meet salary and benefit payments for which the system is contractually obligated. The only way to reduce these costs would be to cut a significant number of non-judicial positions primarily through layoffs, which is unthinkable in view of the increased caseloads of the courts.

Modern Courts also supports the inclusion of \$48 million in the Judiciary budget for judicial compensation increases for state judges retroactive to April 1, 2005, which represents one-quarter of 1 percent of the court budget. Given that the Judiciary has not received an increase in compensation, nor even a cost of living adjustment, in over 11 years, the inclusion of this amount in the budget is entirely justified. Modern Courts further vigorously supports the increases coupled with legislation that would create a Quadrennial Commission – an objective mechanism - as a means by which judicial compensation can be determined in the future. Such a system ensures that New York's judiciary will remain independent.

Committee for Modern Courts Testimony

Public Hearings on the Budget

February 8, 2010

Modern Courts has long believed that insufficient compensation may dissuade our most talented and committed lawyers from becoming judges. For most judges, the call to public service, rather than the salary, is the motivating factor in seeking judicial office. But the judiciary and, perhaps more importantly, the public are ill-served by the failure to adjust judicial compensation more than twice in 20 years.

Modern Courts recognizes that additional state funding for civil legal services is an absolute necessity. This need exists as a result of our current low interest rates generated from the Interest on Lawyer Accounts (IOLA) fund which has been caused by dire economic conditions. We believe that the Governor, Legislature and the Judiciary should work together to devise a method of funding that ensures, now and into the future, necessary support to replace the loss of IOLA funds for civil legal services and provide for additional funding as well.

According to the ABA, 80% of the civil legal needs of low income individuals go unmet nationally. Here in New York, this "justice gap" has been estimated at over 85%. The Committee for Modern Courts supports the inclusion of \$15,000,000.00 in the judiciary budget for the rescue of IOLA funding for civil legal services. As a result of the recession, the crisis faced by civil legal service providers is unprecedented this year. The \$15,000,000.00 does not provide any new money nor substitute any additional funding needed to fund civil legal services. It presents a one time fix to ensure that the IOLA funding, as the primary source of legal services funding, does not fall short this year.

Committee for Modern Courts Testimony

Public Hearings on the Budget

February 8, 2010

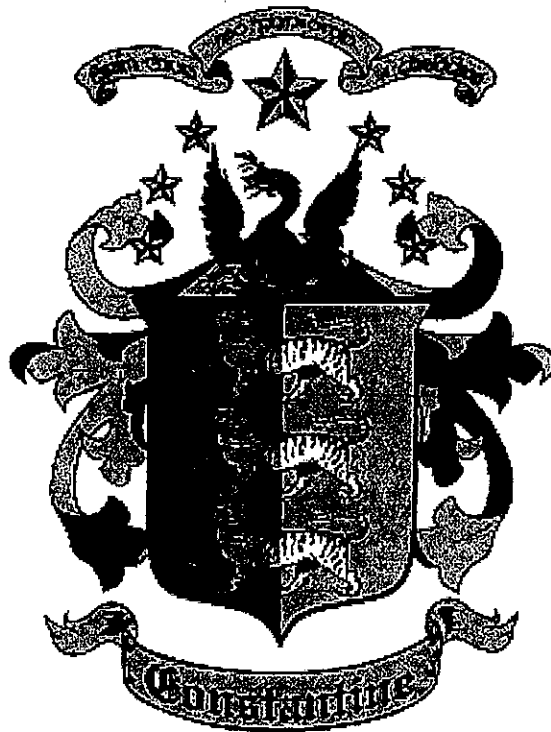
It is troubling that the poorest citizens, who at times of economic stress have the greatest need to access to justice, may lose critical services. For Modern Courts, this is a matter of simple justice.

Thank you.

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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THE CONSTANTINE INSTITUTE

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**JOINT LEGISLATIVE FISCAL COMMITTEE HEARING
EXECUTIVE BUDGET
PUBLIC PROTECTION
8 FEBRUARY 2010
STATEMENT OF TERRY O'NEILL, DIRECTOR
THE CONSTANTINE INSTITUTE**

INTRODUCTION

The Constantine Institute 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, in the words of our eponymous patron Tom Constantine, "a seamless continuum of cooperation, support and mutual respect among law enforcement agencies." We offer these comments in reaction to the governor's Public Protection Budget proposal and make some suggestions of our own.

OPERATION IMPACT

The governor's proposed budget for the Division of Criminal Justice Services would appropriate \$16 million to continue Operation IMPACT, the state's primary local assistance program for law enforcement. That amounts to less than \$1 million for each of the seventeen counties that account for 80% of the state's crime. Aside from that amount being inconsequential, the real opportunity being squandered by devoting what resources we have to the kind of 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, is in failing to reignite the movement toward community policing.

The popularity of Giuliani-style enforcement nationwide has effectively driven police agencies apart from the communities they serve. Leading figures in contemporary policing are saying so loudly and clearly. 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. Michael J. Carroll, president of the International Association of Chiefs of Police, says: "We've emphasized technology and de-emphasized personal partnerships. Some police departments now have community-policing units. We need the whole department to be community-oriented." Bernard Melekian, the new Director of the US Justice Department's COPS program just last week at John Jay College pointed out that while the numbers show that cities have grown safer, opinion polls confirm that Americans still fear crime. That is the consequence of the breakdown in partnership that Chief Carroll decries and, in his view, without that partnership, all of our investment in crime-fighting science and technology will never achieve its potential in making the public feel safer. The cops will stay in their "rolling offices" and the people will stay in their homes. Everyone will look at statistics. And no one will feel safer.

In Albany, recent years have seen an extraordinary community discussion on the direction we want our police department to take. This was occasioned 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 and forever citing the statistics spewed by DCJS. This in no way responded to the needs, concerns and all too often the grief of our community. That chief is gone and we want to see the CompStat/IMPACT style of policing go with him.

In Albany, the people have spoken. They have told the Mayor and the Common Council that our next police chief must be a leader who will give us community policing. If

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we are to have that, then the state's premier local assistance program should be tailored to give the people of my city what they want. 16 million Operation IMPACT dollars are not that much, but just give municipalities like Albany the opportunity to spend their share on community policing initiatives and the state will get maximum bang for every scarce buck.

A means of achieving this community empowerment has been introduced in Assembly by Assemblywoman RoAnn Destito. Assembly Bill No. 1048 would direct the creation of Community Justice Councils to develop action plans to fight crime and preserve neighborhoods that reflect the priorities of the people who live in high crime areas. Read her bill. Better yet, join her in sponsoring it.

CONSOLIDATION

The big buzzword we've been hearing is "consolidation." As pertains to public protection, we see that some small agencies are proposed to be absorbed by DCJS. We are unimpressed by the unambitious scale of this proposal. Last week, I appeared before these committees with the SUNY Police Officers Union to present the union's proposal to centralize the administration of the twenty-eight independent campus police departments. The union makes a strong case for saving \$3 million a year in administrative costs by streamlining management and raising the standards and quality of service and preparedness of all of them to the highest possible level. But the fiscal crisis should inspire us to go further.

The state has four uniformed police agencies — the Division of State Police, the Park Police, the Environmental Conservation Police and the University Police. They have distinct missions, but in furtherance of Mr. Constantine's concept of a seamless continuum and to save a lot of money, we should consolidate them. We have accomplished the same before, notably with the absorption of the former Capital Police into the State Police, with no disruption. I'll wager that everyone here today feels safer with the Troopers around. The New York City Police Department accomplished the same in the 1990s when it absorbed the former Transit and Housing Police. One doesn't read so much about subway crime these days, does one.

And while we're consolidating, let's look at how we can better combat organized crime, tax evasion, insurance fraud, Ponzi schemes and all manner of white-collar crime that are bleeding us dry. Fully 20% of New York's tax revenue derives from the financial industry. After 9/11, federal enforcement efforts in all forms of white collar and financial crimes were have been sharply reduced. The economic crisis may have changed that, but while we're waiting for the feds to lurch toward the next crisis, the State of New York must act to enhance our ability to protect banking, insurance and state revenue collection.

The three state agencies charged with oversight of banking, insurance and revenue collection respectively all maintain investigative divisions. Their agents are designated peace officers (CPL section 2.10, subdivisions (4), (47) and (61)). Simple legislation can amend the Criminal Procedure Law to give them full police officer status under CPL section 1.20. We can then work toward forming these units into a cooperative force to work with the State Police and other agencies to fight a variety of forms of organized crime, terrorism, banking and insurance fraud and tax evasion that affect the financial industry and the state's revenues

-- forms limited only by the boundless ingenuity of those inclined to crime, corruption and fraud. The highly specialized expertise of these investigators will considerably amplify the effectiveness of our full panoply of state and local law enforcement agencies and add another dimension to our seamless continuum of cooperation in public protection.

CIGARETTE TAXES

The illicit trafficking of tobacco -- much of it in the form of counterfeited name-brand products -- is a multibillion-dollar global business today, fueling organized crime and corruption, robbing governments of tax revenue, and spurring addiction and disease. So profitable is the trade that tobacco is the world's most widely smuggled legal substance. It is estimated that fully half the cigarettes sold in New York alone are untaxed. This booming business now stretches from counterfeiters in China and renegade factories in Russia to Indian reservations in New York, warlords in Pakistan and North Africa and our al Qaeda antagonists in Afghanistan. The handful of retailers on New York's Indian reservations account for the tiniest fraction of this global illicit commerce.

New York has to recognize that every time we jack up the taxes on cigarettes, as the Executive Budget proposes, we increase the value of this form of contraband quite considerably, drive the expansion of the black market, contribute to the profitability of criminal enterprises the world over and, yes, we support terrorist organizations. If, however, the state insists on going forward with this dubious initiative, it should, at the very least, turn the Petroleum, Alcohol and Tobacco Bureau of the Department of Taxation and Finance, which investigates revenue crimes, into a fully empowered and capable police agency because its employees are facing on a day to day basis increasingly powerful and vicious criminal organizations engaged in ever-growing and lucrative contraband trafficking.

COMMUNITY CRIME PREVENTION -- NPCPA

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. In April 1983, Governor Mario M. Cuomo signed into law 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 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 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. DA Soares has said: "There is a drastic need for that sort of legislation in all upstate communities, not just here in the city of Albany. It fits in perfectly with my community-prosecution philosophy that says people in neighborhoods are the only

people that can change their community. And we've got to give them the resources to do it." Your colleague Assemblyman John J. McEneny says of NPCPA: "It's one of those good laws on the books nobody has taken ownership of, for whatever reason." It appears to us that Mr. Soares is willing to take ownership of it. Why don't we encourage him to do so?

THE CONSTANTINE INSTITUTE

It has been my ambition for twenty years now to make Albany a center for research and development on cutting-edge ideas in public safety, tackling problems ranging from youth gangs and street crime to transnational organized crime and terrorism. Albany has the resources, notably the New York State Police Academy, Albany Law School and the University at Albany School of Criminal Justice, to contribute to this institution. It can also serve as a focal point for connecting our youth with the global career opportunities that have emerged virtually overnight in the areas of homeland security, disaster preparedness and private security.

These difficult times challenge us to be resourceful in finding the means to create and sustain new programs and initiatives. We must be creative in looking at resources we possess of which we have not realized their maximum value. We do, in fact possess a unique and untapped resource of great value in the record of the New York State Police and our eponymous patron Tom Constantine himself.

In 1957, the NYSP made history when it exposed the existence of organized crime in an incident known as the Apalachin organized crime meeting. That incident sparked a tremendous engagement on the part of the federal government and law enforcement agencies all over the nation to confront and combat what has today grown into a global network of criminal enterprises. The United Nations estimates that criminal organizations worldwide profit over \$2 trillion a year, twice what all the nations on earth spend on their annual military budgets. In 1991, under the leadership of Tom Constantine, the first superintendent of state police to come up through the ranks of the organization in thirty years, the operations of Colombia's Cali Cartel were exposed in New. Four years later, as head of the Drug Enforcement Administration, Constantine presided over the dismantling of the cartel and the capture, sentencing and imprisonment of its leaders. The Cali Cartel is acknowledged to have been the largest and most powerful criminal conspiracy in history. An alumnus of our New York State Police took it down.

Between 2000 and 2003, Mr. Constantine, serving as Oversight Commissioner for reform of the Police Service of Northern Ireland, played a major role in ending more than three decades of terrorist violence in the British Isles by giving the people of the province a police service that is committed to the highest legal and ethical principals, excellence in professionalism and the philosophy of community policing. This is a remarkable achievement and it stands as a model of what needs to be achieved in many areas of the globe that do not have so trusted an institution to maintain public order.

This unique and internationally acknowledged legacy of pioneering achievement is an asset of considerable but unrealized value for purposes of developing a privately-funded endowment to support research, development, training and education in the struggle against transnational organized crime and terrorism.

The Constantine Institute will marshal the intellectual resources of our great state university system and serve as a focal point for research and deliberation on the control of transnational organized crime and terrorism. It will sponsor a diverse research program that will reflect a balance among the issues relating to legal, operational, social, political, and economic aspects of responding to these threats. It will organize conferences and symposia that will bring together the best minds among academics, law enforcement professionals, the military services, the intelligence community, lawmakers, the diplomatic corps and the business and financial community to develop strategies, tactics, relationships and legal and diplomatic frameworks for more effective international cooperation. Its ultimate goal is to be a valuable and practical resource for the world's law enforcement agencies, governments and the international business community.

THE NEW YORK STATE POLICE -- 1917-2017

Governor Paterson recently vetoed legislation that would have empanelled and funded a commission to plan for the bicentennial of the War of 1812. His reason for doing so was obvious -- he couldn't justify the cost. These anniversaries, however, should be opportunities for government to make money, not spend it.

On April 11, 1917, Governor Charles Whitman signed Chapter 161 of the Laws of 1917 which created the Department of State Police. Seven years hence, we will be celebrating that centennial here in Albany and at troop headquarters and sites of significance in the history of the New York State Troopers all over the state. We have already begun laying plans to make the most of this occasion to project the prestige of the State Police, the dedicated service of generations of Troopers and the compelling saga of New York's pioneering history of leadership and achievement in advancing the best in policing. We look forward to years of exciting collaboration with the Legislature toward making this a celebration to remember.

CONCLUSION

I thank you for this opportunity to appear before you and share some thoughts about the public protection aspects of this most challenging year of budget-making. I first sat through one of these hearings in 1984. It has always been a privilege to do so. And the result of your diligent work has always worked out to the benefit of the state and people of New York. I wish each and every member of these committees every success in completing this most intricate, demanding and critical aspect of the people's business.

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Thank you Assemblyman Farrell and Senator Kruger for holding this hearing today as well as your leadership in seeking funding for the legal needs of the poor. With your leadership, you have provided our organizations core legal services funding to provide needed legal services to low income New Yorkers. Thank you for opportunity to testify on this important issue. My name Barbara Lowery, the Executive Director of Northern Manhattan Improvement Corporation, a member of LEAP, a coalition of ten civil legal services providers who work on behalf of underserved low-income populations and communities in New York City. In 2004, ten civil legal services providers in New York City came together to create Leap. The purpose of Leap is to enhance the breadth and depth of services provided to indigent, near indigent, and working poor clients throughout New York City.

Leap's membership includes established community-based legal services providers and city-wide public interest advocacy groups that receive funding from a variety of public and private sources. We work collaboratively to increase the

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availability of quality civil legal services for low income persons in New York City. Leap supports diversity and innovation in organizational models, delivery systems and methodology and specifically recognizes the need to maintain community-based service delivery.

LEAP's members employ nearly 200 lawyers 150 paralegals, social workers, researchers and administrative staff and serve over 60,000 low-income clients per year in all five boroughs of New York City. Our lawyers and paralegals provide assistance with a wide array of civil legal problems including landlord-tenant; foreclosure; consumer debt; government benefits including social security, food stamps and unemployment insurance; family law; health law; employment law; education law; and environmental justice. Leap organizations provide critical assistance to thousands of low-income New Yorkers every year through innovative legal services delivery models. By working together and coordinating their efforts, members strive to ensure increased access to justice for the neediest New Yorkers. Together, the LEAP organizations received \$5 million in support from IOLA in December 2008. Many LEAP organizations are housed within community based settlement houses that serve multiple needs for low income New Yorkers. LEAP is unique in that the members provide a wide array of services that focus on the needs of neighborhood and communities and take direct action trying to solve the problems of low income and working poor New Yorkers in a comprehensive way.

I. New Yorkers continue to face tough times

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New York is an amazing City, the center of so much art, music, theatre. You come to New York to find yourself, make it rich, "become something." However, New Yorkers face deep problems. Over 1.5 million people live below the poverty line(19.1% of the population) while at least another 1.5 million people(19% of the population) live near the poverty line(make up to 200% of poverty) according to a September 2006 report by Mayor Bloomberg titled "increasing Opportunity and Reducing Poverty in New York City. The report determined that approximately 50% of those families living in poverty are working poor families. LEAP members do not have traditional legal services income restrictions and can serve individual and families at or above 200% of poverty.

In a report released by the Urban Justice Center, in July, 2008 called "Nourishing NYC," stated that while 19.1% of New Yorkers were living at or below the federal poverty level in 2005, only 14% of the city's population participated in the Food Stamp Program (U.S. Census Bureau, 2005; New York City Human Resources Administration, 2006, p. 2). The report went on to state that the Food Bank for New York City and City Harvest (2006) estimate that in the same year, less than half of the households that sought help from nonprofit emergency food programs received food stamps. Therefore, the report concluded that New York City's economy missed

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out on an estimated \$430 million in federal aid in 2004 (Food Research and Action Center, October 2006).

New York State Office of Temporary and Disability Assistance found that from September 2008 to September, 2009 over 500,000 families were added to the food stamp roles in New York. In September, 2009 a staggering 2,555,081 households received food stamps in New York State. On November 29, 2009, the New York Times reported that food stamp use is at record highs in the United States and climbing every month. One out of eight adult and one out of every four children in the United States use food stamps.

In an October 2009 report titled "Iced Out" from the National Employment Law Project found in a survey of 4,000 workers in New York, Chicago and Los Angeles that 26% of workers were paid below the minimum wage and a startling 76% did not get paid for overtime worked.

Turning to the New York City Court system, we see large numbers of cases filed every year. In New York City, Civil Court consumer debt cases filed in 2008 exceeded 300,000 and approximately 300,000 eviction cases were filed against New York City residents. At the same time, according to the Center for New York City Neighborhoods, foreclosure case numbers have increased by 200% in various neighborhoods around the city. There has been substantial increase in

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Unemployment insurance according to the United States Department of Labor. With 10% of the workforce unemployed, a record number of employers, (more than one quarter of all employers) are disputing benefits according to a report released by the Urban Institute in July 2009. In an October, 2007 titled "Debt Weight" the Urban Justice Center found that less than less than 4% of all consumers were represented in consumer debt cases. We also determined that predatory lending practices are substantial cause for the serious debt problems New Yorkers face. This type of predatory lending continues to exist in the foreclosure context as well.

In a report adopted by the New York State Bar Association on November 1, 2008 found at least 80% of the civil legal needs of low-income people go unmet. While more than 20% of low income New Yorkers may find our offices, we play triage with the cases that walk in the door or call our hotlines. Which case can we win? Who can we help the most? If 30 people come in for intake on a specific day, we may end up representing 10 at best. That is the life in our legal services office. We have limited staff, few resources and we end up making choices all the time that can have dire consequences on people's lives.

III Human Costs

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The human consequences of our inability to meet the demand for civil legal services are dire: children whose families have been wrongly denied unemployment benefits, or public assistance, or food stamps go hungry; families whose homes could be saved through aggressive foreclosure or eviction defense become homeless; people with disabilities are denied access to the disability benefits they need to live in dignity; workers who have been cheated of wages by unscrupulous employers go without redress; and women who need legal assistance to effectively separate from their abusers remain unsafe.

When we save people from homelessness and eviction we are not just helping clients but also keeping the fabric of communities and neighborhoods intact. By creating stability in both the client's life but also the neighborhood we help make NY a less insecure and frightening place to live. That kind of stability and security allows local neighborhoods to keep long term tenants, seniors and grand parents in their homes, it allows children to go through school without disruption and develop in a stable community, and it permits everyone to feel part of a neighborhood. Our services have a ripple effect on the quality of life in our city and help keep the forces of displacement at bay.

There are also measurable financial costs to failure to meet the demand for civil legal services. In 2008, LEAP's clients obtained over \$50 million in dollar

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benefits as a result of our work.¹ Much of those funds are federal benefits and thus have the dual effects bringing federal money into New York and relieving state and local government of the cost of providing assistance to the recipients. Specifically, in 2008 LEAP organizations assisted our clients in obtaining over \$19 million dollars in federal social security and supplemental security income benefits and over \$2.5 million in other federal benefits. If civil legal services funding drops below 2008 levels, these financial benefits will drop as well. The Office of Court Administration had put 15 million dollar in their budget. This funding will just keep us whole for this current calendar year. On the other hand, should additional funding be made available for civil legal services, the dollar benefits to clients, including the influx of federal funds to New Yorkers, would proportionately increase.

The direct dollar benefit to State and the City of our work is not limited to reduced state public assistance costs for those clients for whom we obtain federal social security or SSI benefits. For example, there are also enormous savings from our eviction prevention work. As you know, the cost of providing shelter and services to the homeless is huge. The cost of housing an individual in shelter is at least \$23,000/year² and for a family the cost is \$36,000/year. The cost of publicly funded services for homeless mentally ill individual is over \$40,000/year.³ Thus, if

¹ These dollar benefits are drawn from LEAP members' 2008 reports to the IOLA Fund.

² Dennis P. Culhane, et al, *Impact of Support Housing for Homeless Persons with Severe Mental Illness on the Utilization of the Public Health, Corrections and Emergency Shelter Systems: The New York/New York Initiative*, May 2001.

³ Culhane, et al.

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only one-third of the over 5,000 households whose evictions are prevented by LEAP member organizations each year would otherwise become homeless, the annual savings to state and local government are over \$48,000,000 per year. Again, a drop in civil legal services funding would cause a significant decrease in these cost savings to government while an increase in funding would increase the social services savings to government.

The precipitous drop in IOLA funding that is facing the civil legal services community would have a devastating impact on LEAP's member organizations and our clients. We would be forced to substantially reduce staff and our capacity to help our clients would be similarly reduced. More people would be turned away in all areas of our practice. The dollar benefit to our clients would go down, the federal dollars brought into New York through our representation would go down, and the social services costs that could have been avoided through our intervention would go up.

This is why the current crisis calls out for a short-term fix, an additional 15 million dollars allocated by the Courts must be approved by the legislature to address the immediate crisis and long-term reform to insure a stable source of civil legal services funding in the future.

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II. Right to Counsel is the long term solution for the legal needs of low income New Yorkers

New York State has always taken a leadership role in providing the right to counsel for low income New Yorkers. The issue of Civil Gideon has been something that New Yorkers have been discussing over the last three decades. New York has provided counsel in a variety of child custody cases and for people who are placed in mental health facilities where their liberty might be jeopardy. New York State Bar led the effort in placing a Civil Gideon resolution before the American Bar Association.

In August, 2006 the America Bar Association passed the following Resolution:

RESOLVED: That the American Bar Association urges federal, state and territorial governments to provide legal counsel as a matter of right at public expense to the low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction."

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See ABA, Resolution on Civil Rights to Counsel 2006

Now New York must be the first State that creates a right to counsel or “Civil Gideon” for the poor as outlined by the American Bar Association. This must be a legally enforceable right to counsel to have substantial long term impact of the lives of low Income and working poor New Yorkers.

This will require the New York State Government to create stable funding for legal services programs. When we discuss stable, we mean that there will be dedicated funding stream that will continue to exist, year after year that will be available to all legal services programs, large and small throughout the state.

This type of large scale legal services system can only occur with a “home” within State Government that oversees legal services funding and makes sure the each year, there is adequate funding for the needs of all low income New Yorkers. This “home” either in the Judiciary will submit budgets that will provide realistic funding requests for the work actually provided in communities around the State.

While California’s Right to Counsel’s program is groundbreaking by creating a six year pilot project that takes effect in July 2011, it is only a

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pilot project. It is not a long term legally enforceable right. The question we must ask ourselves, is should we have a system of government that says if you steal a loaf of bread, you have a right to lawyer to defend you, but if you are going to lose your home, have your credit history destroyed, get paid below the minimum wage, be denied access to our healthcare system, you have no right to counsel. Leap knows the type of State we all want to live in and hope you support our vision of providing for the systemic needs of low income and working poor New Yorkers.

Conclusion

Our organizations work tirelessly, at low pay rates, to make sure poor people in New York have food, security, and shelter. By helping the most disenfranchised, our offices act as the conscious of our State, and save the State significant dollars.

We truly appreciate your efforts and thank you for recognizing the importance of this work. We appreciate your energies and political capital fighting for the poorest and least powerful members of the State.

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