

LEGISLATIVE PUBLIC HEARINGS
ON THE 2013-2014 EXECUTIVE BUDGET PROPOSAL

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

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February 6, 2013
Albany, NY

March 18, 2013 marks the 50th anniversary of *Gideon v Wainwright*, the Supreme Court decision declaring the right to counsel for those who could not afford lawyers. The decision said, in part:

The Sixth Amendment stands as a constant admonition that, if the constitutional safeguards it provides be lost, justice will not 'still be done.'

Yet in 2013, Sixth Amendment justice is still not being done in New York.

The Rockefeller Administration thoughtfully established the *Gideon* right to a lawyer for those unable to afford one, but unwisely delegated responsibility to counties for implementation. This has not worked.

Year after year, New York Governors have failed to establish a State-run and State-administered public defense system. Yet they have also failed to provide adequate mandate relief to counties to provide these delegated services. This year, again, it has been left to the Legislature to mop up, and I hope you will.

- Our office performs New York State's Sixth Amendment *Gideon* backup function. We are essential to what little semblance of order and sophistication is present in the patchwork, unregulated charity we call our defender system. We are clearly State-funded county mandate relief, and despite the fact we held our budget request at last year's appropriated amount, the proposed budget cuts our funding nearly in half. We need to be restored to last year's level of \$2,089,000.
- In its request for funds to the Executive, NYSDA has sought restoration to last year's level as a backdrop to a larger request (\$3,112,400) that we believe is required to perform the State's Sixth Amendment backup function. The larger request includes a Military and Veterans Defense Unit to address the training and support of public defense attorneys handling combat veterans' cases, and a Family Court expert. These requests, too, were overlooked by the Executive.
- The Indigent Legal Services Office, working against incredible odds and under interfering pressure, needs every cent of the Indigent Legal Services Fund for distribution to improve the statewide quality of public defense services.

- Additional revenues are called for in the Indigent Legal Services Fund to meet the *Gideon* obligation. These revenues are not in the Executive Budget. The responsibility falls to you to inspire appropriate action and to act unilaterally or as part of the collegiality recently born in our Capitol.
- The Indigent Legal Services Office should be funded at no less than \$3,000,000. It was again cut in the Executive Budget to \$1,500,000. \$1.5 million needs to be restored in the final State budget. The Office's budget request of \$91 million to be distributed to counties should also be honored.
- Funding for Aid to Defense has dropped from a high of \$20 million in the late 1980s to some \$14 million during the Pataki administration to just over \$8 million now. Counties rely on these funds; they should be restored to the 1980s level.
- In 2000, following the lead of the Senate (which had added a member item to increase Aid to Prosecution the year before), Governor Pataki expanded Aid to Prosecution to all 62 counties with no accompanying expansion for Aid to Defense. Thirteen years later, this imbalance (62 counties with Aid to Prosecution and 26 counties with Aid to Defense) continues. The Assembly and Senate should remedy this injustice.¹
- The Indigent Parolee Representation Program has been devastated over the years. By cutting the reimbursement to counties for cases arising from parole representation – a completely state-administered system – and by perpetual reduction of the amount provided to localities, the State has wrongly imposed another unfunded mandate on localities. Last year the Senate took the lead in restoring about a third of the annual amount (\$600,000) historically paid to counties (\$1.6 million). In 1989, NYSDA was asked by the Division of Criminal Justice Services and the Division of the Budget to project the amount needed for this program in light of the 1986 assigned counsel fee increase. We reported a need in counties then

¹ NYSDA has submitted a plan to DCJS whereby all counties can be held harmless and, for a small amount of money, all can be funded to make improvements to public defense services. We will share it with your staff.

more than twice the traditional appropriation amount (\$3.5 million). [See, *The Deepening Crisis in the Indigent Parolee Representation Program: The Critical Need for Additional Funds* (NYSDA, 1990).] Today the appropriation would need to be higher; yet it is completely absent in the Governor's budget. Moreover, the counties traditionally served by contracts (Nassau, Monroe, and New York City) have lost them. But public defense lawyers still represent clients, and counties still absorb the cost.

- The New York State Court of Appeals in *Hurrell-Harring et al. v. State of New York*, 15 N.Y.3d 8 (2010) has made clear that first appearance is a critical stage that requires the actual presence of counsel. For many years, at this very table, I have cautioned that the absence of lawyers at arraignment was a giant flaw in our system. Repair of that flaw requires State resources above and beyond those currently being made available, or those which appear in the proposed budget directed at the problem. And the apparent suggestion made in the Executive Budget that some agency other than the Office of Indigent Legal Services distribute the proposed \$3 million is at best misguided.
- It would be prudent for you to urge the State to play a strong and meaningful role in settlement discussions in the *Hurrell-Harring* lawsuit, now scheduled for trial in October. The defects of our system from 1965 to the present will be on public display; it would be best for the State through its Executive and Legislative Branches to finally solve this ongoing problem before then.

None of this paints a pretty picture for the anniversary of the *Gideon* decision.

Without resources adequate to the task, the guilty are often wrongly convicted for doing more than they did; the innocent are wrongly imprisoned for things they didn't do; mothers and children are needlessly separated from one another; foreign national taxpayers who have lived peaceful law-abiding lives are torn from their citizen children; the young are turned off to the authority of government; and dedicated lawyers doing public defense work are in pain.

New York has ignored too much for too long. It has swept the story of injustice under the rug. It has lost sight of *Gideon's* call to Sixth Amendment justice. I ask you to change that.

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You heard the call in 2010 and established the Office of Indigent Legal Services, but it has been hung out to dry. The office is understaffed, underfunded, and interfered with politically. It must be liberated and adequately funded, its funding stream enhanced and made secure, its independence protected.

You must convince the Governor to stabilize the amount of Backup Center funding, or it must be stabilized legislatively.

The Indigent Parolee Representation and Aid to Defense programs have been allowed to shrink drastically. New York State must reverse this trend.

Counties, as long as they bear the public defense mandate, must be economically encouraged to carry the load the State has imposed on them to provide quality representation.

The Senate and Assembly, together with the Governor, must focus on a large scale initiative to make these things happen, beginning now, this year.

This is a question of lives – the lives of clients permanently damaged by a system that doesn't care enough to provide them a real day in court. The results are cataclysmic, and justice is not done. And you can change this.

On behalf of those clients whose voice I urge you to hear, I ask for your help on all these issues.