

FOREWORD

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The soaring rhetoric of the Supreme Court in *Gideon v. Wainwright*¹ declared that “in our adversary system of criminal 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.”² This landmark decision held that state courts must appoint attorneys for defendants who could not afford to retain counsel on their own and enshrined the principle that individuals have a right to counsel when their liberty is at stake.

Yet in so many corners of our nation, including numerous counties in our state, the realities of the public defender system do not match the eloquent pronouncements of the Supreme Court. Even over fifty years after the holdings of *Gideon*, there continue to be gross miscarriages of justice due to inadequacies in the public defense system. In many areas, poor defendants are arraigned without ever meeting a lawyer, and public defenders struggle as they labor under excessive caseloads. As a result, public defenders are unable to investigate properly each of their clients’ cases and lack the resources to build a truly competent legal defense in every instance. These overextended public defenders may fail “to give their clients informed, professional advice during plea negotiations” and may be unable to “seriously contest the prosecutions’ arguments, raise and preserve legal issues for appeal, or provide information about the defendant that is essential for individualized sentencing.”³

In New York, these deficiencies in representation stem from our fragmented, patchwork indigent defense system and from the lack of sufficient uniformity, oversight, and resources.⁴ In 2004, the

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¹ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

² *Id.* at 344.

³ Stephen B. Bright & Sia M. Sanneh, *Fifty Years of Defiance and Resistance After Gideon v. Wainwright*, 122 YALE L.J. 2150, 2152 (2013).

⁴ COMM’N ON THE FUTURE OF INDIGENT DEF. SERVS., FINAL REPORT TO THE CHIEF JUDGE

Commission on the Future of Indigent Defense Services (the Commission) was formed to examine the effectiveness of New York's criminal indigent defense system and to consider alternatives to the present system. The Commission, cochaired by Professor William Hellerstein and the late Burton Roberts, determined that New York's county-operated and generally county-financed indigent defense system failed to satisfy the state's constitutional and statutory obligations and that there was a grossly uneven distribution of services from county to county and between prosecutors' offices and public defenders.⁵ The Commission's findings made evident that the status quo could not continue in our state and led to three important developments.

First, a class-action lawsuit, *Hurrell-Harring v. State*, was filed challenging the constitutionality of the state's indigent defense system relating to a criminal defendant's right to meaningful and effective assistance of counsel.⁶ The lawsuit relied on the findings of the Commission to form the basis of its claims. Some of the facts plaintiffs relied on showed public defenders in certain counties who almost never used investigators to probe or scrutinize the facts of their clients' cases, experts who were utilized in only zero to one percent of cases in three counties, attorneys who spent less than an hour of legal research in ninety-five percent of felony cases and ninety-nine percent of misdemeanors in one county, and attorneys in one county who did not have client contact of any form in a third of all cases.⁷ The ongoing developments in the *Hurrell-Harring* litigation over many years provided a poignant reminder to the state government about its constitutional mandate.

Second, pursuant to state legislation enacted in 2009, the court system implemented nationally recognized caseload limits for indigent defense providers in New York City. Those limits have finally been fully implemented and funded, and the result has been a stark improvement in the time and commitment that defense providers in New York City are able to devote to their clients. Attorneys in New York City are now limited to handling no more than 400 misdemeanors and 150 felonies in a twelve-month period,

OF THE STATE OF NEW YORK 15-18 (2006), available at http://www.courts.state.ny.us/ip/indigentdefense-commission/IndigentDefenseCommission_report06.pdf.

⁵ *Id.* at 20-23.

⁶ Amended Class Action Complaint, *Hurrell-Harring v. State*, No. 8866-07 (N.Y. Sup. Ct. Apr. 28, 2008), 2008 WL 7801315.

⁷ Plaintiffs' Memorandum of Law in Opposition to the State Defendants' Motion for Summary Judgment at 1-2, *Hurrell-Harring*, No. 8866-07 (N.Y. Sup. Ct. Oct. 8, 2013), available at http://www.nyclu.org/files/Plaintiffs_%20MOL_SJ_Opposition.pdf.

a dramatic improvement with respect to ensuring a level playing field for indigent defendants.

Third, New York has established an independent State Office of Indigent Legal Services (ILS), whose board I chair. Since its inception in 2010, this new office has taken concerted action to improve the quality of representation in all of New York's sixty-two counties. During its tenure, ILS has strengthened the process for distribution to the counties of existing state funds for indigent criminal defense, established performance standards for criminal representation, provided funds to ensure counsel at the first court appearance in over two dozen counties, distributed funds to forty-five upstate counties for reducing excessive caseloads or to improve the quality of representation by other means, among other important achievements.

All of these trailblazing developments have culminated in the recent settlement of the *Hurrell-Harring* lawsuit on the eve of trial. After many years of litigation, including an appeal that was heard by the Court of Appeals, the State acknowledged that it bears responsibility to ensure the high and uniform quality of representation for low-income people in criminal cases. Furthermore, the settlement vests responsibility for implementation of its provisions with ILS, strengthening the office as a state-level oversight entity and committing the State to providing adequate resources to the office to implement and monitor the reforms mandated by the settlement. In this way, the settlement shows a commitment to two vital principles: that the quality of representation in cases legally mandated by *Gideon* is truly the responsibility of the state government and does not belong to the counties and that the task of securing needed improvement in the quality of representation must be vested in an independent office.

Though we welcome these milestones, the *Hurrell-Harring* settlement only requires the State to adopt reforms in five counties in New York: Ontario, Onondaga, Schuyler, Suffolk, and Washington. Though the attorneys in these counties have caseloads well in excess of nationally recognized standards—nearly 500 per attorney—the settlement fails to reach the twenty-three counties in our state where attorney caseloads exceed 700 cases per year. How can it be fair that in one county, indigent defendants receive well-qualified, trained, and supervised counsel and defendants from a neighboring county continue to receive representation from overworked attorneys who are unable to fully vigorously represent

them under the law?

In the aftermath of the *Hurrell-Harring* settlement, we once again find ourselves at a historic crossroads. What we need, ultimately, is to accelerate the level of financial support for the remaining fifty-two counties who are not covered by the 2009 legislative enactments and the settlement terms. One important way that we can demonstrate the importance of fully funding New York's indigent defense system is through the work of empirical research. It was the work of Andy Davies and others at ILS which showed that the State would need to spend an additional \$105 million to bring all of the upstate counties into compliance with national caseload limits.⁸ This essential empirical research gives us a concrete basis for our requests for increased funding from the state legislature and for any negotiations to follow. The empirical research contained in this issue of the *Albany Law Review* in so many ways highlights some of the cutting edge research and methods in criminal indigent defense. In order to push forward towards a reality where all states in our nation provide quality, effective legal assistance to their indigent criminal defendants, we need the vibrant research, hard work, and advocacy of those who are familiar with the realities of this criminal justice crisis on a macro and micro level. I am very encouraged that the *Albany Law Review* is devoting its attention and featuring these intersections of criminal indigent defense issues and empirical research.

We must bring our very best thinking as well as the statistics, data, and studies available to us to create the important policy changes in the indigent criminal defense arena. It is not only a legal obligation, but also a moral priority—the very credibility of our justice system demands nothing less.

⁸ N.Y. STATE OFFICE OF INDIGENT LEGAL SERVS., ESTIMATE OF THE COST OF COMPLIANCE WITH NATIONAL CASELOAD LIMITS—2013 UPDATE (2014), available at <https://www.ils.ny.gov/files/Estimate%20of%20the%20Cost%20of%20Compliance%20with%20Maximum%20National%20Caseload%20Limits%20in%20Upstate%20New%20York%20-%202013%20Update%209%2024%2014%20Final.pdf>.