

New Office of Indigent Legal Services: Helping Those In Need

This year marks the beginning of operations of the Office of Indigent Legal Services [ILS], which I serve as director, and the nine-member Indigent Legal Services Board (ILSB), which is chaired by New York Chief Judge Jonathan Lippman. The mission of the office and the board is to work cooperatively with both chief defenders and the county governments to improve the quality and the efficiency of New York's indigent defense system, and to help it achieve compliance with nationally accepted standards such as the American Bar Association's 10 Principles of a Public Defense Delivery System.

From its beginning, in our early efforts to improve the quality of legal services to those who cannot afford an attorney, the Office of Indigent Legal Services has been promoting close cooperation and clear communication with the counties. On March 10, three weeks after I began serving as director, the ILSB authorized the office to offer counties additional grants, so long as they were designed to improve the quality of representation, and were formulated in consultation with the county's criminal and family court chief defenders or leaders of assigned counsel programs.

I am happy to say that the response to this solicitation has been overwhelmingly positive. County after county has come forward with creative and quality-enhancing ideas such as increasing investigative and/or expert witness capacity; reducing excessive attorney caseloads by filling an additional position or increasing one from part-time to full-time; providing more frequent and more sophisticated training; adding an alternatives-to-incarceration coordinator to promote rehabilitation and prevent recidivism; obtaining a case management system to allow the concentration of time on client representation; purchasing modern communications equipment to facilitate legal research, and many others.

Law Day 2011 falls almost precisely between two very important dates on what I call the Right to Counsel calendar: the 48th anniversary of the historic decision by the U.S. Supreme Court in *Gideon v. Wainwright* on March 18, 1963, and the fifth anniversary of the Final Report to the Chief Judge of the State of New York issued by the Commission on the Future of Indigent Defense Services on June 18, 2006.

The first anniversary, that of the *Gideon* decision, celebrates a national commitment to ensuring equal justice for all, by guaranteeing that every person charged with a crime will be represented by a capable attorney, without regard to his or her ability to hire counsel

The second anniversary, more recent and local, acknowledges that New York has failed in many important ways to fulfill the constitutional promise made by *Gideon* and its successor cases. The commission concluded unanimously that "New York's current fragmented system of county-operated and largely county-financed indigent defense services fails to satisfy the state's constitutional and statutory obligations to protect the rights of the indigent accused."

In particular, the commission highlighted bad practices such as the unavailability of counsel at arraignment, the lack of uniform attorney qualifications and experience, the inadequacy of investigative and expert witness resources, and the absence of enforceable statewide standards to govern the performance by counsel, among many other deficiencies. The commission also pointed out that "[t]he current method of providing indigent defense services in New York imposes a large unfunded mandate by the state upon its counties...."

The commission issued a clarion call for a state-funded, Independent Indigent Defense Commission - a call that was not heeded. The reality on this Law Day is that the counties, with their widely disparate financial resources, continue to labor to enforce a constitutional mandate that has been imposed upon them by the state. As a result, there is no statewide uniformity of quality representation, no uniform distribution of right to counsel funding, and no independent overseer to ensure quality control for the representation of those who cannot afford to hire counsel.

ILS is not the office proposed by the 2006 commission. Unlike many statewide commissions, ILS has not been given responsibility for the representation of any person, and it has discretionary authority over only a tiny portion of the total expenditures which are made, mostly by the counties, for the provision of indigent representation. Nevertheless, it has important responsibilities to:

"[E]xamine, evaluate and monitor services provided in each county," Executive Law Article 30, section 832(3)(a);

To collect a wide variety of information and data, section 832(3) (b);

To analyze and evaluate that information so as to "recommend measures to enhance the provision of indigent legal services ... to ensure that recipients of services ... are provided with quality representation," section 832(3) (c);

To "develop recommendations to improve the delivery of such services," section 832(3) (e);

To "develop recommendations regarding the distribution and expenditure of any monies appropriated for indigent legal services," section 832 (3) (f);

"[T]o target grants in support of innovative and cost effective solutions that enhance the provision of quality indigent legal services, including collaborative efforts serving multiple counties," section 832(3) (g);

"To investigate and monitor any other matter related to indigent legal services that the director deems important," section 832(3) (h); and

"[T]o establish measures of performance which programs and counties shall regularly report to the office, to assist the office in monitoring the quality of indigent legal services," section 832(3) (j).

The extensive and important scope of these responsibilities means that — once fully staffed and supported in its work - the ILS office will be well placed to assist the counties and the defenders (public defender, assigned counsel, and conflict defender) in their effort to improve the quality of representation which New York provides to the people who are entitled by law to the assistance of counsel, but who cannot afford to hire a lawyer.

Our pledge is to carry out our responsibilities in a manner that always affirms the commitment to equal justice that is a hallmark of the United States and the State of New York, that always seeks out and respects the perspective of local defenders and county or city officials, and that never forgets that it is the quality of the representation provided to the poor that is our touchstone.

Anyone seeking more information about the office may contact me via email at Bill.Leahy@ils.ny.gov, or by telephone at (518) 486-5747.