

Indigent Defense - A System in Crisis

BY LAZAR EMANUEL

The verdict is in. The Spangenberg Group, specialists in assessing indigent defense systems for many states and organizations, has submitted its report to Chief Judge Kaye's Commission on the Future of Indigent Defense Services. The verdict....?

New York's indigent defense system is in a serious state of crisis. The 'system' is a patchwork composite of multiple plans that provides inequitable services across the state to persons who are unable to afford counsel. ...sixty two counties have created their own systems that suffer from lack of uniformity [and] oversight and a chronic lack of funding. The result is a fractured, inefficient and broken system.

How do you fix a system that's fractured and broken? Not by patching its pieces back together again. We need to go back to the drawing board and design a new and different system that meets the needs of the poorest among us. And the state bar has to lead and light the way. What are the basic components of a fair and efficient indigent defense system?

The first and most fundamental is state-wide organization, administration and funding of the entire system. The state is now divided into sixty-two different systems, each a creature of one of our sixty-two counties. Only a small portion of the total state-wide indigent defense budget (36%) is contributed by the state; the balance is paid by the counties. Because each county fixes its own budget and provides its services as its own legislature determines, there is enormous disparity in the quality of services across the state.

The state needs to create a centralized system consisting of:

- 1) a separate and independent Department of Indigent Defense, headed by a Chief Public Defender and staffed by defense lawyers paid by the state; staff lawyers and other employees should be full time and salaried.
- 2) a comprehensive assessment annually of the cost of providing fair and efficient indigent defense to all persons entitled to defense under New York law. This should include a study of population distribution, income distribution, number of criminal defendants entitled to public defense, number of parties entitled to defense in the Family Courts and the Surrogate's Courts, and the number of defense lawyers required in proportion to the general population and the number of indigent persons eligible for defense in all the courts.
- 3) public funding of all costs.
- 4) parity with the state's prosecutorial system in number of lawyers and amount of funds per capita.

In addition, the state must supply:

- a. Guidance and supervision over all state judges empowered to assign counsel to indigent defendants. Judges should be required to undergo special training in treating indigent parties with respect and compassion, in providing adequate time for interview and preparation by counsel, in treating counsel with civility, in providing adequate facilities for private conferences between lawyer and client, and in understanding the function and goals of an adequate indigent defense system. As the New York Times reported in a recent series of articles, and as the TSG Report confirms, many criminal matters are decided by judges in the town and village courts. Many of these judges are not lawyers and have no basic training in criminal law or procedure. Many of them simply ignore or misconstrue the constitutional guaranty of assistance by defense counsel.
- b. Continuous vertical representation of every criminal defendant by one lawyer and one lawyer only. Clients who are able to pay for legal services have the privilege of retaining counsel of their own choice. Although the criminal defense system cannot provide that degree of choice and flexibility, it can and should insist that representation be continuous and undivided. One lawyer should be assigned to handle each matter from arraignment to disposition. That's the only way to recreate for the criminal defendant that same degree of commitment and loyalty expected of lawyers who are compensated by the client directly.
- c. Adequate and up-to-date resources, facilities and equipment. Although most observers agree that a sound defense system requires adequate investigation by assigned counsel, many of the counties provided no staff investigators. As a result, some defense offices resorted to outside investigators. This slowed the process of investigation down to the point of inefficiency. Some offices were forced to forego any investigation at all. Few of the defender offices had facilities for case-tracking and conflict-checking. In many of them, facilities for legal research were "woefully lacking." Some of the offices had no computers.

New York deserves better. It's not enough to enunciate worthy principles and majestic concepts. As the courts have often declared, assistance of counsel in all matters must be effective assistance. As we apply this standard to lawyers generally, "effective" assistance means ordinary competence measured by the skill and knowledge possessed by other lawyers.

If this is the standard, why do we allow it to fail in the most vital expression of our concern for others who are less privileged -our indigent defense system? How can a system which is under- funded, unregulated, under-staffed and under-served give "effective assistance" to anyone, let alone the most deprived of our citizens.

We urge everyone involved in the judicial system and everyone charged with any responsibility to help design an effective system for guaranteeing competent indigent defense - the governor, the state legislature, our courts and judges, the state and local bar associations, county officials and legislators, and all lawyers - to join in overhauling and redesigning our "fractured" and "broken" indigent defense system.

We recognize that this is not a small assignment - but it is one that goes to the very heart of our commitment to Justice and Equity.

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