



# A Rare Victory for Public Defense

By THE EDITORIAL BOARD OCT. 26, 2014

The Sixth Amendment guarantees a lawyer for all criminal defendants, whether or not they can afford one. But that promise is often broken as states continue to cut spending on indigent defense, leaving the poorest people without proper legal assistance.

Last week, however, New York State — which has shirked this Sixth Amendment obligation for half a century — at last agreed to start protecting this core but neglected constitutional right when it entered into a landmark settlement to provide lawyers for the indigent.

The settlement, which resolved a seven-year-long class-action lawsuit brought by the New York Civil Liberties Union and the law firm Schulte Roth & Zabel, focused on five upstate counties that had a near-total failure of public defender services. Though the conditions in those counties were inexcusable, they were not out of the ordinary.

Across the state, many poor people get no legal assistance at all; the lucky ones get an overworked, undertrained lawyer. Often, there is no investigation or money to pay for expert witnesses. Overburdened lawyers frequently have no more than a few minutes with a client before advising him or her to plead guilty.

The broken system is largely a result of a 1965 decision by state officials to pass off the costly job of providing public defense to county governments. Last week's settlement properly returns that responsibility to the state and its much deeper pockets.

Among other things, the settlement requires that every defendant be represented by a lawyer at his or her first court appearance, the arraignment, where the judge takes a plea and sets bail. It mandates extensive training and supervision of public defenders, as well as new and enforceable standards for how

many cases they can handle. It gives crucial oversight power to the independent Office of Indigent Legal Services, which was created in 2010 but has been severely underfunded ever since. And it commits the state to set new, uniform guidelines for who is eligible to get free legal representation — in some counties, people with incomes barely above the poverty line can be disqualified.

For now, the reforms apply only in the five counties involved in the lawsuit, but the failure of public defense in New York is statewide. Fourteen counties have already passed resolutions pleading with the state to take over their public defense systems. The crisis is so bad that the Department of Justice filed a rare statement of interest in the case to remind state officials of the seriousness of neglecting their constitutional duty.

How much will it all cost? According to the Office of Indigent Legal Services, bringing soaring attorney caseloads to a manageable level — upstate lawyers now handle as many as 700 cases a year, nearly double the recommended maximum — would require an extra \$105 million each year statewide. That's a bargain in a state with an annual budget of \$90 billion.

It is also a reminder that money, or the lack of it, is at the root of public-defense crises nationwide — a fact accepted by a growing bipartisan consensus. On the same day as the New York settlement, it was announced that the Koch brothers had made a six-figure grant to the National Association of Criminal Defense Lawyers to help train public defenders and fund research aimed at improving public defense.

Gov. Andrew Cuomo was right to stop fighting the lawsuit, which settled only on the eve of trial. New York had faced the embarrassment of being the first state to stand trial over its inability to provide public defense.

Now, Mr. Cuomo and state lawmakers should act quickly to provide the broader funding and other resources that public defenders throughout the state so clearly need and that the Constitution demands.

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