

Remarks by County Executive Daniel P. McCoy for July 16, 2015 Public Hearing
on Eligibility for Assignment of Counsel

First of all, may I thank the Office of Indigent Legal Services (ILS), and especially its able Executive Director, William Leahy, for this opportunity to speak regarding the ever-increasing problem of providing first-rate legal assistance to indigent defendants in both family and criminal courts in our county and our state.

While I fully understand and appreciate that the focus today is on eligibility requirements, I trust you understand how it's difficult to isolate this aspect from the multitude of problems created by our constitutional obligations under Gideon.

I must begin by saying that it is my belief that the providing of legal defense for criminal indigents is extremely important. I have always believed that the representation must be first rate and the failure to provide that would have had disastrous consequences for the inner cities in our county and I daresay in our entire state. It must be mentioned, however, that the state's decision to place the onus of this constitutional obligation on the counties has created intolerable tension for upstate county budgets.

It is with this in mind that I have drafted and had presented to the NYS Legislature a bill which would require NYS to absorb the costs of this representation and share it fairly amongst all counties. In essence, we are taking the lead in endeavoring to ensure that the "Hurrell-Herring settlement" apply to all counties not merely the five (5) counties who brought the litigation.

With that background in mind, I will attempt to address the issue of eligibility. For starters, I recognize the importance of eligible defendants obtaining this help. I believe we are all

aware that, as a general rule, criminal defendants will hire a private attorney to represent them in the unshaking belief that this will lead to a better result. However, I believe we all are aware that the system can be abused. I believe that ILS can help stem the abuse by suggesting and/or implementing certain procedures;

A. All courts should utilize the same form to obtain representation

In Albany County, there are dozens of criminal courts with many using different methods to decide on eligibility. ILS should promulgate a form to be used statewide.

B. ILS should provide some investigative services for suspicious applications

If the court, public defender, conflict defender, or the district attorney believes the system to be gamed in a particular situation, there is a need to have the matter investigated to see if fraud has occurred in a given instance.

C. In situations where large bail is posted, courts must inquire as to where the money came from.

My suggestion is that if bail of over \$20,000.00 is posted ILS should promulgate instructions (with OCA approval) that judges must inquire, under oath, as to the source of the funds and with those or other funds were not utilized to retain counsel. The common practice of saving money for bail and getting free legal service should be closely examined.

It is certainly true that by examining the suggestions I have made a dent can be made into the ever-increasing and unbeatable costs to the counties.

It is my further belief that if the legislation that I have proposed should become law, our state can properly defend those in need, provide needed collateral services, and begin to mend the major crises' in the criminal justice system in N.Y.S. that being

1. Overburdened public defenders
2. The horror of mass incarceration
3. The existence of one system of justice for the rich and one for the poor.