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## **States not keeping promise of 'Gideon'**

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Americans accused of criminal offenses have a guaranteed right to counsel, yet many who cannot afford an attorney are literally left to their own defenses.

In New York, the level of services varies widely with 120 plans for the state's 62 counties, said Jonathan E. Gradess, executive director of the New York State Defenders Association, who noted no two plans are alike.

He said there are real problems arising from heavy caseloads, widely erratic prosecutorial policies and a lack of funding.

As the nation Monday marked the 50th anniversary of the U.S. Supreme Court's decision in *Gideon v. Wainwright*, 372 US 335, Gradess and other advocates reflected on how the promise of *Gideon* is falling short.

The decision, issued March 18, 1963, held that the Sixth Amendment's guarantee of counsel is a fundamental right essential to a fair trial and, as such, applies to the states through the Due Process Clause of the Fourteenth Amendment.

"New York is failing 50 years later, to tell you the truth," Gradess said. "Not much has changed."

He said not much has even changed since 2006 when then-Chief Judge Judith S. Kaye's Commission on the Future of Indigent Defense Services found the state's largely county-financed indigent defense services failed to satisfy its constitutional and statutory obligations to protect the rights of the indigent accused.

Gradess joined the leaders of several other groups in Albany Monday, calling on state lawmakers to meet the federal

obligation to provide counsel to indigent defendants, as required.

Gradess said New York delegated its federal obligation to its counties which cannot carry out the task, with many looking to pay less for indigent defense services. Because of heavy caseloads, Gradess said attorneys are unable to spend enough time to interview or listen to clients or file documents. He said many programs also do not have the support of investigators or experts.

"The result is what you would expect," Gradess said. "The trial rate is very low; the number of plea bargains is very high. It has not gotten better. It has actually gotten worse. It's not possible to go anywhere in the state and say this is good and this is bad. They all have problems that need to be solved."

He said the real culprit is that governments, state and local, are failing to provide adequate funding and that the state should take the responsibility.

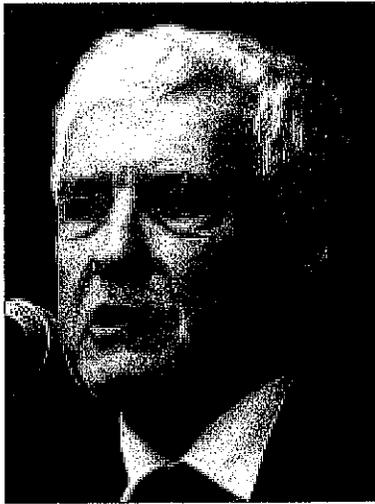
Gradess said counties last year spent about \$350 million on providing counsel for indigent defendants, of which the state contributed about 17 percent. He could not estimate how much it would cost to adequately fund all counties, but said economies of scale could be created once it was determined what level of services are needed and the different plans are consolidated.

Joining Gradess at a noon press conference at the Capitol were Barry C. Scheck, co-founder of the Innocence Project; Donna Lieberman, executive director, New York State Civil Liberties Union; New York State Bar Association President Seymour W. James Jr.; and others.

"The *Gideon* decision is arguably the greatest achievement in the history of our nation's criminal justice system, because it recognized that absent the assistance of counsel, all of the essential rights and safeguards designed to ensure a fair trial for the accused are rendered essentially meaningless," according to a statement issued Friday by New York State Chief Jonathan Lippman who was in Washington, D.C., as part of a panel discussion at the Justice Department's 50th

anniversary celebration, hosted by Attorney General Eric Holder.

"As a result of *Gideon*, we have witnessed so much progress in criminal justice over the past five decades, and we celebrate that progress," Judge Lippman said. "At the same time, we recognize that our work is far from over and we must commit ourselves each and every day to making further strides toward truly achieving equal justice for all Americans."



William J. Leahy

Also on the panel was William J. Leahy, director of the state's two-year-old Office of Indigent Legal Services.

"As every comprehensive national report concerning the right to counsel has declared, the evidence is overwhelming that we have failed as a nation to realize the dream of *Gideon*, at least in our state and local courts where 95 percent or more of criminal cases arise," he told the gathering. "We must face the fact that most poor people

charged with crime in America are not capably defended and that most lawyers who provide their representation are not 'sure of the support needed to make an adequate defense.'"

Speaking to *The Daily Record* on Monday, Leahy said where New York stands depends to some extent on the budget process which he was waiting to hear about as lawmakers were moving toward an agreement on the 2013-14 spending plan; with an announcement possible Monday.

"It's a very important day, not just because it's the 50th anniversary of *Gideon*," Leahy said. "It's a very important day as to what extent the state of New York is going to support compliance with *Gideon*."

He is particularly interested in seeing whether more than \$7 million, not included in the executive budget, is restored. He said \$4 million of that is to continue efforts started last year

to reduce upstate caseloads.

Leahy said 28 states provide 100 percent of funding, or close to that, for indigent defense services. He said New York is not one of them and has a long way to go.

"New York should have as its goal that the state will provide that funding," he said. "The point is that the quality of representation should not differ, depending on whether you're in a rural or urban county, upstate or downstate. There should be a uniform quality of effective representation throughout the state of New York. We can't realistically expect that when every county is left to its own device and fiscal health. We're looking forward to hearing the final result of the budget process as we celebrate the anniversary."

Monroe County Public Defender Timothy P. Donaher said the impact of the *Gideon* decision has come in fits and starts; sort of two steps forward and one step back.

"In the last 50 years, I think it's fair to say the philosophy of *Gideon* hasn't translated very well at the state level," he said.

Donaher said counties, under 18-B, have the option of developing a plan that either uses a Legal Aid Society, or creates a public defender or assigned counsel program, or a combination of the three.

Donaher said that created a hodgepodge of services that, until recently, had no state oversight or funding, but he said a lot of state leaders are recognizing it is time to really examine the deficiencies in the delivery of services and how they can be improved on the county level.

To that end, the state created the Office of Indigent Legal Services to "to monitor, study and make efforts to improve the quality of services provided pursuant to article 18-B of



Timothy P. Donaher

the county law," Executive Law Article 30, Section 832(1).

Donaher said when Monroe County created its public defender office in the wake of *Gideon*, it made a conscious effort to provide quality service, structuring its pay scale in line with the district attorney's office. He said his office is also well funded and that his assistants are paid the same as assistant district attorneys.

"I think that we are an excellent office," Donaher said. "We take great pride in the representation we provide to our indigent clients. Can we use additional resources? Of course, but if you ask any department in Monroe County if they could use more resources, they will say yes."

### On Gideon



Clarence Earl Gideon

Clarence Earl Gideon, 52, shown here in August 1963, was the mechanic who changed the course of legal history, after his release from a Panama City, Florida, jail. Gideon was wrongly charged in 1961 with burglary and sentenced to five years in prison. He filed an appeal to the U.S. Supreme Court arguing that his constitutional right to liberty was denied when Florida refused him an attorney. A unanimous Supreme Court issued its decision in *Gideon v. Wainwright* on March 18, 1963, declaring

that states have an obligation to provide defendants with "the guiding hand of counsel" to ensure a fair trial for the accused.

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