



## SYRACUSE UNIVERSITY

COLLEGE OF LAW  
*Office of Clinical Legal Education*

It is our honor to speak before this esteemed panel on this subject that is of such great importance. Before our testimony begins, we would like to stress that we speak only as individual professionals highly invested in the topic of providing the highest caliber representation to indigent persons standing accused of crimes. In this regard, our experience is based on our work as public defenders and legal educators. However, we would like to stress that the opinions expressed in this testimony are ours alone and we are in no way claiming to speak on behalf of the Syracuse University College of Law. Our professional opinions as commentators do not reflect any endorsements or policy positions of the University.

It has been five decades since the clarion call of equal justice rang from Gideon's Trumpet. But as Professor Stephen Bright states, "fifty years after Gideon the right to counsel and equal justice are as fiction as the adversary system"<sup>1</sup>

If an indigent defendant is lucky he/she will be assigned a diligent and passionate attorney who like many dogged public defenders, legal aid attorneys, conflict defenders and court appointed attorneys, will advocate zealously for their clients.

However, far too often where a community fails to fund, supervise, and ensure effective legal representation a perfunctory culture of "meet 'em and plead 'em"<sup>2</sup> arises. When the defense attorney simply views their role as a messenger of plea offers then the adversarial system disappears - and along with it equal justice.

Over 2.2 million people—a grossly disproportionate number of them African Americans and Latinos—are in prisons and jails at a cost of \$75 billion a year.<sup>3</sup> A criminal conviction scars a person with a stigma for life that in many cases causes them to be disenfranchised from employment, professional licensing, where they can live, go to school and some cases even exercise the most basic and fundamental civil right of voting. As Professor Michael Pinard states "collateral consequences and reentry [are] interwoven and integrated components along the criminal justice

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<sup>1</sup> FIFTY YEARS OF DEFIANCE AND RESISTANCE AFTER GIDEON v. WAINWRIGHT, Stephen B. Bright, Yale Law Journal 2013

<sup>2</sup> Id., at pg 1.

<sup>3</sup> Id., at pg 5.

continuum. These components are critically intertwined, as they heavily influence and directly impact one another. Collateral consequences relate directly to reentry and the formerly incarcerated individuals ability to move on to a productive, law-abiding life.”<sup>4</sup>

We have a great opportunity in our community to address important criminal justice related concerns and to improve the quality of indigent defense representation in Onondaga County and throughout the State of New York.

What we have learned most in our experience as public interest lawyers and what we teach, as legal educators is that the promise of equal justice is ensured by a compassionate, invested, and effective advocacy. Thus, we are hopeful that our community will embrace this opportunity to achieve the highest caliber indigent criminal defense.

We certainly recognize that there are many concerns that may be raised and suggestions made with respect to improving upon the current system of indigent defense representation currently employed by Onondaga County. However, in the interests of the panel’s time, we have chosen to limit our focus to the below suggestions. We trust that other advocates have brought a range of issues and concerns to the panel’s attention.

To that end, we encourage this panel, the judiciary, and our fellow defense practitioners to implement the following policies. We believe these policies will better able court appointed attorneys to do the job they very much wish to do- to provide the highest quality representation to their clients.

- 1) Funding indigent legal defense in way that comports with the important societal principal it represents: The fair administration of justice.
  - a. Legal commenters have recognized that assigned counsel must be compensated at a level at which they are not forced to decide between working harder for their paying clients vs. the impoverished clients.<sup>5</sup> In other words, whether to visit a client in jail or to work on another client’s case should not be a decision that is based reimbursement.

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<sup>4</sup>An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals, Michael Pinard, Boston University Law Review, Vol. 86, No. 3, pp. 623-690, June 2006, U of Maryland Legal Studies Research Paper No. 2006-30

<sup>5</sup> NEITHER EQUAL NOR JUST: THE RATIONING AND DENIAL OF LEGAL SERVICES TO THE POOR WHEN LIFE AND LIBERTY ARE AT STAKE, Stephen B. Bright, New York University School of Law Annual Survey of American Law Volume 1997, page 783 “A lawyer assigned to represent an indigent defendant is paid far less than he or she could make doing any other type of legal work, and is denied the resources necessary for a full investigation and the retention of necessary expert witnesses.”

- b. Funding for investigators and experts must be meaningfully accessible to poor defendants. Assigned counsel should not be forced with the choice of diverting their time away from other matters such that they perform investigation themselves, or even worse are simply unable to investigate the matter at all and rely on the State's evidence.<sup>6</sup>

2) Training, supervision, and accountability.

- a. It is fundamental that those lawyers who are given the important responsibility of defending those amongst us who are the most vulnerable - are the most effective and prepared. For that reason we strongly advocate that robust training opportunities be made available, accessible, and affordable to those representing the accused.
- b. To ensure that those tasked with this weighty responsibility are effective and that they are in fact using "best practices," it essential that our legal community ensure there is proper supervision and accountability with respect to the quality of representation being provided.
- c. To ensure proper supervision then there must be accountability. While we are not in the position to postulate what this system of accountability would look like; it must be more than simple post-conviction remedies such as CPL 40.40 which do little prevent and discourage over-worked and under-funded bad practices.

Indeed, the current post-conviction remedies that are in place to ensure that the quality of representation provided to the accused comports with the Sixth Amendment's guarantee of effective assistance of counsel have proven to be woefully inadequate. In this regard, the current test for ineffective assistance of counsel, which is partly employed in the State of New York,<sup>7</sup> was articulated by the United States Supreme Court in the seminal case of *Strickland v. Washington*.<sup>8</sup> As one legal scholar has noted, "Strickland has created an almost 'insurmountable hurdle for defendants claiming ineffective assistance' and has 'foster [ed] tolerance of abysmal lawyering.' Indeed, they have lamented "[t]he degree of Strickland's damage to the rule of

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<sup>6</sup> *Id.*

<sup>7</sup> *People v. Henry*, 744 N.E.2d 112 (2000).

<sup>8</sup> 466 U.S. 668 (1984).

law, expressed in doctrines carefully developed over years, the quantity of unjust, even fatal, consequences fostered in individual cases, and the disservice done to the very essence of the relationship between attorney and client.”<sup>9</sup>

### 3) Holistic Approach.

- a. If our legal community is to seize this opportunity to raise our defense bar to the level such it is the model for others, then we must view our defense work holistically and not simply in a compartmentalized manner. This means addressing our client’s needs and goals as a human being and not simply as a criminal defendant. This means addressing their mental health needs with the assistance of mental health providers in the community. Addressing their social and family needs with social work. And it means addressing the myriad of Re-Entry issues that face our clients post prosecution.
- b. In order for assigned counsel to approach their criminal defense practice in a holistic approach then the necessary resources must be provided by the community and there must be adequate funds for mental health workers, social workers, alcohol and substance abuse treatment.
- c. In order for a holistic approach to be successful then there must be a recognition that this approach does not simply address our client’s individual needs,<sup>10</sup> but rather makes our communities safer. In this regard, by addressing the underlying sources of the behavior that led to a defendant’s involvement in the criminal justice system, defendants can lead more productive and law-abiding lives, which in turn benefits our community as a whole.

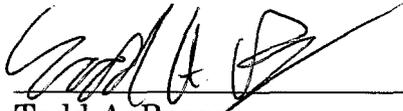
Once again, we would like to thank the panel for its important work and for the opportunity to be heard regarding this extremely important matter of public concern and the fair administration of criminal justice.

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<sup>9</sup> Sanjay K. Chhablani, Disentangling the Right to Effective Assistance of Counsel, 60 Syracuse L. Rev. 1, 3 (2009)

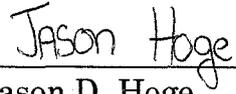
<sup>10</sup> Supra, Integrated Perspective on the Collateral Consequences of Criminal Convictions, Pinard, pg. 11, “Similarly, reentry is impacted directly by the constellation of consequences confronting the individual upon his or her release. Communities in turn are broadly affected by the influx of returning individuals weighed down by obstacles imposed by their criminal convictions long after their formal sentences have lapsed.”

Respectfully submitted,



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