



The unwavering voice for public defense

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, New York 12224

October 7, 2014

RE: Hurrell-Harring Class Action
Right to Counsel

Dear Governor Cuomo:

The National Association for Public Defense (NAPD) is an organization committed to strengthening and improving the justice systems across our nation through the improvement and reform of indigent defense services provided in our courts. We are writing to you on behalf of indigent defense providers across the nation and asking that you take action to remedy the broken system of indigent defense in upstate New York. As Governor you are in the unique position of being able to ensure that all who come before the courts of New York are provided a fair and meaningful right to be represented by counsel and who can provide professional and functional representation to them, bringing a voice for the poor who are accused of crimes and whose liberty is at stake.

As you are aware, the United States Department of Justice has filed a Statement of Interest in the case of *Hurrell-Harring*, which alleges deep and systemic failures with the system of providing counsel in upstate New York for anyone who cannot afford a lawyer. It is being alleged that public defenders there are operating under a lack of resources, under-staffing and high workloads. As a result, “traditional markers of representation” are not present, such as appropriate investigation of cases, timely consultation between defendant and her attorney, and the adversarial testing of the state’s case.

It is important to note that this is only the second time that the Department of Justice has entered into this type of case. It has done so because it has a fundamental interest in making sure that those who are accused of crimes are ensured fundamental due process, the most basic of which is providing counsel who is adequately funded and who has the necessary time and resources to provide meaningful assistance. The *Hurrell-Harring* case does not allege infrequent or isolated instances of ineffective assistance of counsel. It alleges a systemic failure across the region to provide adequate funding, resources, and assistance which result in the functional failure to provide counsel at all.

These allegations are not new or novel. Since 2005, there have been no fewer than 5 reports about the state of indigent defense in upstate New York.

1. NYCLU. *State of Injustice: How New York State Turns its Back on the Right to Counsel for the Poor*. September 17, 2014
2. National Legal Aid & Defender Association. *Justice Impaired: The Impact of the State of New York's Failure to Effectively Implement the Right to Counsel*. October 2007.
3. Commission on the Future of Indigent Defense Services. *Final Report to the Chief Judge of the State of New York*. June 2006.
4. The Spangenberg Group. *Status of Indigent Defense in New York: A Study for Chief Judge Kaye's Commission on the Future of Indigent Defense Services*. June 2006.
5. New York State Bar Association, Special Committee to Ensure Quality Mandated Representation. *Standards for Providing Mandated Representation*. April 2005.

Each of these reports finds that the system of providing indigent defense services in New York are systematically deficient. They are underfunded, understaffed, and result in fundamental due process violations for every poor person who needs assistance.

The justice system, by design, is adversarial in nature. When the system becomes unbalanced because one side is underfunded, under resourced, and has little in the way of quality oversight, the system stops functioning as intended. The risk of innocent persons going to prison increases. The risk of inappropriately excessive punishment becomes a reality. Where an innocent person is in prison the real culprit remains free. Where excessive punishment is imposed taxpayers expend vast sums of money for excessive sentences that will result in higher recidivism rates. And these are just two examples of failures that result from an underfunded and under resourced system. Countless lives of those who suffer injustice at the hands of a broken adversarial system and the lives of their families are forever altered.

As Governor, we ask that you lead your state and the nation in correcting this failure. It is for the good of all citizens of your state and will provide a clear message to the nation that New York is dedicated to protecting the fundamental rights of all of its citizens. The alternative will be to allow the litigation to go forward, now with the Department of Justice involved. The result will be a court order, a monitor to oversee compliance, and someone else directing New York in how to manage its indigent defense systems and how much it must spend on those systems.

Our organization, NAPD, formed in order to address the problems in our indigent defense systems. NAPD is an organization of 8500 public defense professionals, including 50 organizations nationwide. NAPD formed precisely because the legislative and judicial branches of government were failing to ensure the right to counsel nationwide. Stronger together, we banded together to bring a collective expertise to the many issues threatening constitutional public defense delivery.

NAPD believes your involvement is vital if the right to counsel is to be enforced in New York. The Statement of Interest by the Department of Justice has now made clear that this crisis in indigent defense is of vital interest to the federal government. This continues their interest as displayed earlier in Memphis, St. Louis, and Washington State.

Through your leadership on this issue, and the work of many organizations, Gideon's trumpet will no longer be "muted and dented by harsh fiscal measures that reduce the promise to a hollow shell of a hallowed right."

Sincerely,



Tim Young, Chairman, NAPD

Director, Ohio Public Defender, Columbus, OH

On behalf of the NAPD Steering Committee:

Mark Stephens, Vice-Chairman, NAPD

District Defender, Knox County
Community Law Office, Knoxville, TN

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